



**RIGHT TO EDUCATION** PROJECT

# PRIVATISATION OF EDUCATION:

GLOBAL TRENDS OF HUMAN RIGHTS IMPACTS

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

2014

Right to Education Project  
ActionAid International  
33-39 Bowling Green Lane  
London EC1R 0BJ  
United Kingdom

[www.right-to-education.org](http://www.right-to-education.org)

## Contents

<b>Preface .....</b>	<b>5</b>
<b>Table of Acronyms .....</b>	<b>7</b>
<b>Executive Summary.....</b>	<b>8</b>
Background .....	8
Key Impacts Identified .....	8
Summary of Main Findings .....	9
Identifying Violations .....	10
The Need for further Research .....	10
Conclusions and Recommendations.....	11
<b>Sources, Methodology and Limitations.....</b>	<b>12</b>
<b>Framing the Issue.....</b>	<b>14</b>
Privatisation of Education .....	14
International Human Rights Law and the Right to Education .....	15
The Right to Education and the Non-State, Private Sector .....	16
<b>Analysis of the Impacts of Privatisation on the Right to Education .....</b>	<b>18</b>
Examples of How the Effects of Privatisation Could Positively Impact the Right to Education .....	18
1. Increasing Availability and Accessibility.....	18
2. Increasing Educational Choice .....	19
3. Increasing Parental Participation.....	20
4. Perceptions Regarding Quality .....	21
Examples of How the Effects of Privatisation Impact Negatively on the Right to Education .....	23
1. Lack of Standardisation, Monitoring and Regulation .....	23
2. Exacerbating the Prioritisation of Boys over Girls .....	25
3. Failures to Ensure Quality Teaching Through Competitive Salaries and Adequate Teaching Qualifications .....	25
4. Enhanced Stratification and Perpetuation of Socio-Economic Differences and Class Barriers.....	27
5. Emergence of Private Tutoring as a ‘Shadow System’ .....	29
6. Possibility of the State Exiting the Field.....	30
Summary .....	31
<b>Identifying Violations of International Human Rights Law Related to Privatisation .....</b>	<b>33</b>
Table 3: Potential Violations of the Right to Education in the Context of Privatisation .....	35
<b>The Need for Further Research.....</b>	<b>36</b>
<b>Conclusions and Recommendations .....</b>	<b>40</b>
Conclusions .....	40

Recommendations .....	40
For States .....	40
For Protagonists and Providers of Private Education .....	41
For Civil Society .....	41
For the United Nations Treaty Bodies .....	41
For the UN Human Rights Council .....	41
For the UN Special Rapporteur on the Right to Education.....	42
<b>ANNEX.....</b>	<b>43</b>
Table 1: Summaries of PERI Studies and their Methodology .....	43
Table 2: Key Impacts on the Right to Education and Examples from the PERI Studies.....	47

## Preface

There has been a growing global dialogue on the privatisation of education amongst policy-makers despite a lack of sufficient research on the topic. Some initiatives, such as the Privatisation in Education Research Initiative (PERI), have started to generate research on education privatisation to bring a critical voice on the topic. However, missing from these debates on privatisation of education is a human rights analysis of the issue. International human rights standards should form the core of government planning and implementation of education provision to ensure equitable education for all. Human rights analysis provides a framework to assess the process and the impact of the growing trend of privatisation in education across the globe based on internationally developed standards on the right to education.

The Right to Education Project (RTE) is a collaborative initiative that promotes mobilisation and accountability on the right to education. RTE is supported by ActionAid International, Amnesty International, the Global Campaign for Education, Human Rights Watch and Save the Children. Increasingly, RTE's partner organisations and education-focused civil society organisations have expressed growing concerns over the privatisation of education and its impacts on education as a human right.

In response to this, RTE incorporated the Privatisation of Education as a priority area in its 2012 Strategic Plan. RTE will provide human rights analysis of the privatisation of education and develop resources and tools to enable civil society to effectively influence the debates regarding education privatisation so that the right to education remains the central focus in these debates. By building on emerging research, RTE provides a human rights lens to ensure that civil society and ultimately decision-makers have a deeper understanding of the impact of privatisation on the right to education.

In 2011, PERI commissioned 18 pieces of research in Africa, South East Asia and East Asia to feed into the debates on privatisation. This diverse range of research initiatives did not intend to focus on education privatisation from a human rights perspective. Nevertheless, these important research initiatives begin to fulfil a major gap in the available research concerning the privatisation of education at the local, national and international levels. Supported by the Open Society Foundations, RTE conducted a human rights analysis of the findings resulting from these PERI commissioned research initiatives in order to explore the potential positive and negative impacts on the right to education, to identify recommendations for stakeholders and to consider potential areas for further human rights-focused research on the privatisation of education.

The main sources for this report include the 18 PERI commissioned research pieces, which are published by Open Society Foundations as part of the *Education Support Programme Working Paper Series*, and major international human rights legal sources, including the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights, as well as relevant interpretive documents, such as General Comments.

This report, *Privatisation of Education: Global Trends of Human Rights Impacts*, starts with details of the methodology used to carry out the analysis, including the limitations of conducting this type of human rights analysis. The report also provides an explanation of the issue of education privatisation as a human rights issue, setting out relevant international human rights legal standards. The analysis of the impacts of privatisation on the right to education is laid out in two sections. The first outlines examples of how education privatisation could positively impact the right to education, and the second section

reviews the potential negative impacts of privatisation on the right to education. Although this report does not examine actual violations of the right to education, there is a chapter that considers how violations of the right to education related to privatisation could be identified. The penultimate chapter explores possibilities for further human rights-based research on the topic. Finally, the report concludes with recommendations aimed at various human rights and education stakeholders, and the executive summary of the report is located at the beginning of the report to provide an overview of key findings.

RTE wishes to acknowledge the significant contributions made to this report by Delphine Dorsi, Sarah Jewell, Ian MacPherson, Claire Mahon, Erica Murphy, and Rasmus Weschke. In addition, this report has benefited from additional contributions through dialogue and feedback on the conceptualisation and / or substance of the report from David Archer, Sylvain Aubry, Clive Baldwin, Iain Byrne, Fons Coomans, Camilla Croso, Lutful Khaled, Steven Klees, Keith Lewin, Elin Martinez, Aoife Nolan, Caroline Pearce, Muntasim Tanvir, Toni Verger and Duncan Wilson. RTE also wishes to thank the Global Campaign for Education, which has served as a critical partner in promoting a rights-based dialogue on the topic of education privatisation, and the Open Society Foundations for their generous support of RTE's work on privatisation, including this report.

RTE provides additional information and resources concerning the topic of education privatisation on its website – [www.right-to-education.org](http://www.right-to-education.org).

Bailey Grey  
Coordinator  
Right to Education Project  
February 2014

## Table of Acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
ESC	education service contracting
GDP	gross domestic product
ICESCR	International Covenant on Economic, Social and Cultural Rights
LFPS	low fee private schools
MDGs	Millennium Development Goals
NGO	non-governmental organisation
OSF	Open Society Foundations
PERI	Privatisation of Education Research Initiative
PPP	public private partnership
RTE	Right to Education Project
RTE Act	Right to Education Act (India)
STR	student-teacher ratio
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review

# Executive Summary

## Background

This report addresses key impacts of privatisation on the right to education by compiling findings from a human rights based analysis of 18 social research papers that cover Sub-Saharan Africa and South Asia, which were commissioned in 2012 by the Privatisation in Education Research Initiative, referred to throughout this report as the PERI studies.<sup>1</sup> Through applying a human rights based analysis to these previously gathered examples of privatisation of education, our aim is to highlight some of the key positive and negative human rights impacts, and to identify recommendations for stakeholders, as well as the potential areas for further human rights-focused research on privatisation of education.

The PERI studies explore privatisation of education or more specifically, the establishment and operation of private schools and the direct and indirect process of privatising which results from the increased role of private actors in the provision of education. The PERI studies were analysed using a detailed framework derived from international human rights legal standards, including non-discrimination, educational freedoms, the best interests of the child,<sup>2</sup> and the 4A framework, which corresponds to the essential features of the right to education – Availability, Accessibility, Acceptability and Adaptability.

The PERI studies serve as case studies of the growing global trends of privatisation and its resulting human rights impacts, but this report will not provide an analysis of each research piece or on the individual countries that were the subjects of the PERI studies. This report does not seek to be a comprehensive analysis of the impacts of privatisation on education or on human rights in general, and it is deliberately limited in scope.

## Key Impacts Identified

Some key impacts of how privatisation may positively affect the right to education include:

1. An increase in the number of available schools for certain groups, especially those that can afford to pay school fees.
2. An expansion in educational choice with some examples of alternative curricula or additional subjects not covered by public education.
3. Greater participation of parents in their child's education and an increased sense of empowerment due to an interest in following through on a financial investment.
4. Perceived improvements in quality of education by parents, especially in relation to high-end, fee-paying private schools.

Some key impacts of how privatisation may negatively impact the right to education:

1. Lack of standardisation and insufficient or inadequate monitoring and regulatory mechanisms for both public education provision and in the context of increasing private education provision.



2. Gendered inequality of access due largely to household prioritisation of boys over girls for private education.
3. Failure to ensure quality teaching in private education due to the hiring of under-qualified teachers and by failing to ensure domestically competitive salaries.
4. Exclusion of children living in poverty and the exacerbation of disparities in educational opportunities along socio-economic lines.
5. The development of a 'shadow system' of education and corrupt practices concerning private tutoring through under-teaching of the core curriculum in order to create economic opportunities for under-paid school teachers.
6. The possibility of the State 'exiting the field' of education provision through public divestment and the transfer of accountability to the private sector.

### Summary of Main Findings

The main findings of this report are:

1. Privatisation of education results in complex impacts on the enjoyment of the right to education and the State's obligation to respect, protect and fulfil the implementation of this right.
2. Marginalised groups fail to enjoy the bulk of the positive impacts and also bear the disproportionate burden of the negative impacts of privatisation.
3. Although positive short-term outputs, such as increased school places, may be immediately noticeable, the longer-term impacts require further research, especially on marginalised groups.
4. Redirection of resources from the State to the private sector due to privatisation (or families through tuition fees) and reliance on privatisation by the State as a means for filling gaps and addressing public education deficiencies can have a long-term overall detrimental effect on the right to education.
5. Establishing regulatory and monitoring systems to ensure that both public and private education are covered by common, appropriate, and transparent standards with efficient accountability systems and access to enforcement mechanisms is a necessary component of protecting the right to education.

A human rights based approach ensures that the growth and development of private education provision does not result in negative impacts. By ensuring an effective and appropriate monitoring and regulatory mechanism that is human rights compliant, States will be able to fully respect, protect and fulfil education rights and maintain educational freedoms. This involves ensuring that human rights

standards, such as the best interests of the child and each of the components of availability, accessibility, acceptability and adaptability are at the forefront of policy analysis and debate.

### Identifying Violations

Although the PERI studies do not provide sufficient evidence to identify clear violations of the right to education concerning privatisation, through our analysis we were able to identify a list of potential violations, which are aimed at supporting future research. These potential violations include:

- Discrimination<sup>3</sup>
- Failure to provide free and compulsory primary education
- Failure to ensure the best interests of the child shall be a primary consideration
- Failure to provide maximum available resources to take steps to realise the right to education
- Failure to take deliberate, concrete and targeted measures towards the progressive realisation of secondary, higher and fundamental<sup>4</sup> education
- Failure to enact laws and policies to regulate the provision of education
- Failure to monitor private education providers
- Failure to ensure private educational institutions conform to the minimum standards set by the State
- Failure to provide accountability mechanisms for education complaints
- Failure to provide information about education opportunities
- Failure to use curricula consistent with the Aims of Education<sup>5</sup>
- Failure to provide education in an appropriate language
- Failure to ensure equal pay for equal work for teachers; failure to ensure that teachers are paid domestically competitive salaries
- Failure to provide access to a remedy<sup>6</sup>
- Prohibition of corporal punishment and psychological violence
- Failure to address systemic issues contributing to the reproduction and amplification of inequalities.

### The Need for further Research

The analysis undertaken in the context of this limited study highlights the vital need for further research into the issue of privatisation of education from a human rights perspective. The report identifies a number of topics that need to be explored further in order to more fully understand the complex, often context-specific, and multi-faceted impacts that privatisation of education has on the right to education.

There are three over-arching research suggestions for future research:

1. To focus more specifically on privatisation of education, i.e., the transfer of public education services to the private sector, rather than private provision. More emphasis is needed to explore how public education and its beneficiaries are affected by this process that reflects a pluralistic approach to the provision of education.

2. To place greater emphasis on the international human rights legal standards, i.e., the examination of data concerning privatisation of education against human rights standards and the analysis of policy measures taken by States to identify violations of the right to education.
3. To examine more regional and global trends and continue to further national and local research to deepen our understanding of both the wider impacts as well as the more contextual and locally-specific issues.

## Conclusions and Recommendations

A human rights analysis of privatisation helps to shed light on the State's responsibilities for ensuring the fulfilment of the right to education and the accountability measures that States must implement in order to protect the right to education. There are a number of steps that States, civil society, private education providers and international human rights monitoring bodies can take to ensure that the right to education is upheld in the context of an increasingly complex environment that includes the private sector. These recommendations are outlined on p. 40-41.

## Sources, Methodology and Limitations

This report focuses on the human rights impacts of privatisation of education, based on 18 recent studies in Sub-Saharan Africa and South Asia commissioned by the Privatisation in Education Research Initiative (PERI) in 2012. It provides empirical, qualitative evidence of global trends of privatisation of education, highlighting the positive and negative human rights impacts and avenues for further research. The purpose of this report is twofold: 1) to gather evidence and propose arguments that add a human rights perspective to the discourse on the privatisation of education, and 2) to identify some potential areas for further research on the topic of privatisation of education and its associated impacts on the right to education.

By engaging with existing research commissioned by one of the key players in the field, we aim to build on the work of others and to add value to the current discourse on privatisation of education by introducing a human rights perspective before embarking on a research project focusing solely from a rights-based perspective. By analysing the human rights perspective of the PERI research, we gain a better understanding of growing trends across these two regions and are able to identify research areas that need further analysis. From this we are also able to make recommendations to stakeholders for areas where further attention needs to be drawn, adding to the debates on increasing privatisation of education.

The scope of this report is confined to these 18 PERI studies, which explore different forms of privatisation across Sub-Saharan Africa and South Asia, including Bangladesh, Burma, Cambodia, Ghana, India, Liberia, Mali, Nepal, Nigeria, Pakistan, the Philippines, Sierra Leone, and Vietnam. The PERI studies, published by Open Society Foundations as part of the *Education Support Programme Working Paper Series*, examine and describe different facets of privatisation or the establishment and operation of private schools and the direct and indirect process of privatising that results from the increased role of private actors in the provision of education.

The PERI studies cover a range of different situations, and are based on various methodologies and information sources. Some papers focus on education at the national level, while others deal only with specific regions within countries and yet others make comparisons between countries. In addition, the topics of the PERI studies vary considerably, covering a range of privatisation models (e.g., public-private partnerships), forms of private education (e.g., low cost private schools), as well as a variety of issues (e.g., educational choice, teacher education, etc.). Most of the PERI studies do not track progress over time, but provide a real time picture of the current situation. A brief overview of the PERI studies is presented below in Table 1 in the Annex.

Although most of the PERI studies are aimed at researching and analysing a specific context (whether local, national or between two countries) concerning education privatisation, we have used the PERI studies to identify general global trends rather than providing analysis of the specific contexts of each PERI study. Naturally, the context of locally or nationally based research is important when conducting some forms of human rights analysis. However, because the PERI studies were not developed as human rights research, they do not provide sufficient data to carry out a contextual human rights analysis, which necessarily limited the scope of our analysis. National or contextual human rights analysis would require data on the outcomes of the phenomenon of education privatisation, as well as data on the

policy efforts of States. Human rights research of this nature would involve exploring the outcomes and measuring the policy efforts of States against international human rights standards. Since the PERI studies were not designed for this type of analysis, they were used as a means of highlighting some overarching trends.

Our approach was to use the evidence contained within the PERI studies to identify trends of both positive and negative impacts of privatisation on education from a human rights perspective. We used a detailed analytical framework that was applied to the PERI studies, based on international human rights legal standards. These standards derive from major international human rights treaties, such as the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights, as well as relevant interpretive documents, such as General Comments. General Comments provide further details regarding the normative content of rights, as well as specific guidance on the obligations of the State. Our detailed analytical framework served as a filter of human rights standards through which the PERI studies were examined. These human rights standards include non-discrimination, the 4A framework on the right to education (including Availability, Accessibility, Acceptability and Adaptability), the best interest of the child, educational freedoms and many more. We limited the scope of our analysis to international human rights standards and recognise that there may be additional concerns regarding privatisation from a non-legal perspective that are not covered specifically in international law.

There were some limitations to applying this process across a small sample of research studies. Firstly, the PERI studies varied regarding quality in terms of methodological rigour and research methods. This report therefore focuses on the findings from those studies that applied the most rigorous analysis and drew more robust conclusions. Secondly, as mentioned above, the PERI studies were not specifically designed to highlight human rights impacts. For example, rights-based research would typically include an examination of the educational outcomes against a rigorous analysis of the policy efforts or structural mechanisms to implement the right to education. These policy efforts as well as specific human rights legal obligations did not serve as a central focus for most of the studies, and therefore, limited the scope of our analysis. Thirdly, the variation in scope amongst the PERI studies presented challenges when attempting to identify trends, as formulating themes across data with this much variation was not always possible, as the context-specific focus of the PERI studies presented challenges in identifying global trends. Where several studies address a similar issue and present common findings, we interpreted this as stronger (anecdotal) evidence of an impact. Where there was evidence of a potential positive or negative impact from just one source, we did not include this evidence in the report. Finally, since we analysed a small number of studies across two large geographic regions, we acknowledge that this report does not provide a complete picture of the potential impacts that privatisation may have on the right to education. Nevertheless, the report's conclusions provide a useful baseline for understanding impacts of privatisation on the right to education in Sub-Saharan Africa and South Asia.

It is important to note that despite these limitations we have extrapolated a great deal of information from the PERI studies. Due to the different nature of each PERI study (in terms of scope, focus, and analytical rigour) and the different purpose of this report (in terms of the human rights based approach), our analysis may differ considerably from the authors' of the PERI studies, who did not take a human rights focus in their research.

# Framing the Issue

## Privatisation of Education

The role of private education has grown in many parts of the world, and private education is being promoted and explored by some education actors as a solution to the lack of sufficient public provision of education or underperforming public schools. This privatising approach is increasingly being questioned by some educationalists with concerns regarding quality of education, equality of educational opportunities and the availability of free education. Missing from these debates is evidence of the impacts of privatisation of education – whether positive or negative – on communities and individuals. Moreover, there is a lack of evidence of the impacts from a human rights perspective. International human rights law sets out freedoms and limitations for private education, and this report seeks to analyse recent research from a human rights perspective in order to identify some impacts on the right to education.

According to international human rights law, private education refers to education that is provided by non-State actors, including private companies, religious institutions, non-governmental organisations, community-based groups, trusts or private individuals.<sup>7</sup> Although these private actors may have differing motivations and philosophies driving their educational activities, these private actors are treated equally in human rights law. Privatisation is a process, which can be defined as the ‘transfer of assets, management, functions or responsibilities [relating to education] previously owned or carried out by the State to private actors’.<sup>8</sup> It is important to note that privatisation should not just be understood as an intentional transfer of responsibilities. For example, a State that cannot or does not provide education in certain circumstances may leave a gap in the provision of education for private actors to fill. This has the effect of privatising education because students and parents do not have a choice of which school to attend; there is a de facto provision of education by private entities in these types of circumstances. The PERI studies analysed for this report did not directly address the transfer of education services from public to private as an active policy choice of States. However, the PERI papers treat the increasing or growing provision of private education and the experiences of private education as a trend towards privatisation – a kind of de facto privatisation. Therefore private education and privatisation (the latter referring to a process) are treated in a holistic fashion throughout the report.

There are a number of models or ways in which of privatisation takes place, such as public private partnerships (PPP) or through increasing private tutoring, and several types of private education, including religious schools, low fee private schools (LFPS) and foreign aid / international NGO-run schools, that have been recognised in the PERI studies. The growth in private sector provision of education and the expansion in the number of actors and models have resulted from both global and local drivers. International universal education targets in conjunction with economic liberalisation policies has led to a push by some education actors, e.g., the World Bank, for an increase in private provision as a means of quickly increasing enrolment rates and as a way to introduce market competition into the education space.<sup>9</sup> Furthermore, increasing concerns regarding under-performing public schools have played a role in focusing attention on private alternatives. These factors have prompted private actors to step in and fill gaps when the State has failed to meet expectations and provide quality public education for all.

## International Human Rights Law and the Right to Education

Before exploring how privatisation may affect the right to education, it is important to review education as a human right and the corresponding obligations of States to ensure this right. Education is a universally recognised human right in international human rights law.<sup>10</sup> 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. According to human rights law, the aims of education are to enable individuals to develop 'personalities, talents and abilities and to live a full and satisfying life within society'.<sup>11</sup> The right to education is therefore broad and encompassing, going beyond basic reading and writing.

Under international human rights law, States are obliged to ensure universal free and compulsory primary education, and to ensure that secondary and technical / vocational education and higher education are generally available, accessible and progressively free.<sup>12</sup> States must also develop an education system with continuous improvement of the material conditions of teaching while enhancing equality of educational access for individuals from disadvantaged groups.<sup>13</sup> States must also formulate a strategy for the implementation of the right to education, covering all levels, and prioritising free and compulsory primary education.<sup>14</sup>

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. These characteristics form part of the normative definition of the right to education, and States are also obliged to incorporate these characteristics into national laws, plans and policies for education at all levels. These characteristics are collectively known as the 4As – Availability, Accessibility, Acceptability, and Adaptability:

- 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.<sup>15</sup>

Human rights law imposes three types of obligations on the State: 1) the obligation to respect, 2) the obligation to protect, and 3) the obligation to fulfil rights. 'The obligation to respect requires States parties to avoid measures that hinder or prevent the enjoyment of the right to education. The obligation to protect requires States parties to take measures that prevent third parties from interfering with the enjoyment of the right to education. The obligation to fulfil (facilitate) requires States to take positive measures that enable and assist individuals and communities to enjoy the right to education. Finally, States parties have an obligation to fulfil (provide) the right to education. As a general rule, States parties are obliged to fulfil (provide) a specific right in the Covenant when an individual or group is unable, for reasons beyond their control, to realise the right themselves by the means at their disposal.'<sup>16</sup>

The State is therefore the primary duty-bearer and carries the ultimate responsibility for ensuring that the right to education is upheld. Although others, including private education providers, must not jeopardise the right to education, it is the State that is responsible for ensuring that non-State, private actors comply with human rights norms, usually through monitoring, regulation and legal guarantees at the national level. Human rights law is less clear about who the direct provider of education should be. Generally, human rights law is neutral on the issue of privatisation of services (i.e., human rights law does not explicitly state that privatisation of services is either legal or illegal). However, human rights law asserts that the State has the principal responsibility 'to ensure the direct provision of the right to education in most circumstances'<sup>17</sup> and to actively pursue a system of schools at all levels.<sup>18</sup> Therefore, international law recognises that the State is likely to directly provide education to communities, but particularly, the State must ensure that marginalised groups are able to realise the right to education.

Due to practicalities and lack of resources, States may not be able to immediately realise all of the elements of the right to education. States must, therefore, ensure that the right to education is progressively realised, referred to in law as Progressive Realisation. This means that States must take immediate, concrete and progressive steps towards fully realising the right to education, using the maximum of their available resources.<sup>19</sup> The principle of Progressive Realisation is a tool for States to ensure that they are fulfilling their human rights obligations through continuous and progressive steps, but it is also a means of ensuring that States do not renege on their obligations, citing limited resources as an excuse. Therefore, States must also refrain from taking backwards steps in achieving the right to education, as human rights law prohibits retrogressive measures. Regardless of the limited availability of resources, some obligations are immediately applicable. These 'minimum core obligations' include developing a national education plan, ensuring non-discrimination, maintaining national minimum standards for educational institutions, maintaining a regulation and inspections system, and achieving universal free primary education.<sup>20</sup> Progressive Realisation is inextricably linked with the issue of education financing. 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 gaps in increasing provision or continuous improvements in quality.

## **The Right to Education and the Non-State, Private Sector**

As mentioned above, the State is the primary duty-bearer and carries the ultimate responsibility for ensuring that the right to education is upheld, as international human rights law does not clearly state who the direct provider of educational services should be. Human rights law acknowledges that the State is likely to be the direct provider of education in most circumstances, which suggests that there may be a more limited scope for privatisation of direct educational services (i.e., teaching and education management).

In fact, private education is protected in international law, as private actors have the liberty to establish and direct educational institutions.<sup>21</sup> This means that non-State entities, such as individuals, organisations, religious institutions, companies or other bodies, may open schools and educational institutions and administer them according to their educational philosophies. This liberty to establish and direct educational institutions is subject to the requirement that these private actors must conform



to minimum standards laid down by the State.<sup>22</sup> International law does not outline the exact criteria for these minimum standards for private education providers, as this is left deliberately open for States to determine according to the national context. Nevertheless, States must ensure that these minimum standards comply with international human rights law.<sup>23</sup>

The minimum standards established nationally by the State may relate to private school licensing, pupil admissions, curricula, school infrastructure requirements, teacher qualifications and pay, child protection measures, school governance, etc.,<sup>24</sup> and the State must conduct regular monitoring to ensure compliance. In addition, the State must also uphold the principle of non-discrimination and should therefore ensure that the liberty of private education does not lead to extreme disparities of educational opportunity for some groups.<sup>25</sup> Therefore, national regulatory frameworks and national policies must include a means for assessing equality in education and incorporate measures to limit private educational freedoms to ensure equality. Ultimately, the State must protect individuals from non-State actors by taking measures to prevent interference in the enjoyment of the right to education.<sup>26</sup>

*'Business enterprises and non-profit organisations can play a role in the provision and management of services such as ... education ... that are critical to the enjoyment of children's rights. The Committee does not prescribe the form of delivery of such services but it is important to emphasise that States are not exempted from their obligations under the Convention when they outsource or privatise services that impact on the fulfilment of children's rights.'*<sup>27</sup>

The freedom to establish and direct educational institutions is closely associated with the freedom of parents to choose schools other than public education that is available, if they wish to do so.<sup>28</sup> The educational choice of parents and students is an important educational freedom, as it ensures that families can choose education that is in line with their own religious and moral convictions. The obligation that this freedom imposes on the State is that the State must respect the right of parents to choose the education for their children, which means that the State should not interfere with the exercise of this right. In addition, States have the obligation to protect students and families by monitoring the minimum standards that have been set nationally and by regulating and inspecting private schools to make sure that schools adhere to these standards. There is no obligation on States to fulfil – i.e., to provide educational choice. Undoubtedly, this may lead to some parts of the world where there is no educational choice. States may support the notion that educational choice is an important factor in further promoting an expanded provision of education, and States may opt to support the expansion of private education through financial support, but they are not obliged to do so in international law. Furthermore, given the importance of securing free and compulsory primary education, progressively free secondary and higher education, and the continuous improvement to the quality of education in international law, as a policy objective the active expansion of private education should not be seen as a high priority from a human rights perspective, as this will depend largely on the availability of State resources.

# Analysis of the Impacts of Privatisation on the Right to Education

## Examples of How the Effects of Privatisation Could Positively Impact the Right to Education

### 1. Increasing Availability and Accessibility

Some of the PERI studies demonstrated instances where privatisation of education led to increased physical availability and accessibility of education for certain groups, through the availability of new schools provided by the private education sector. In some of the studies, this increased the overall number of schools, and may have reduced the need for some students to travel long distances.<sup>29</sup> For example, in Boncana's study on Mali, physical accessibility was reported to increase due to madrasas (Islamic religious schools) being set up in local communities that were otherwise not serviced by any schools.<sup>30</sup> Similarly, in Bangladesh, non-government schools funded by the international community through the Bangladesh Rural Advancement Committee specifically aimed to increase accessibility for students who are usually excluded from education due to geographic distance.<sup>31</sup>

However, it is important to note that although the total number of schools may be increasing, not all communities benefit from this equally. For example, Subedi et al.'s research in Nepal showed that while the number of schools in Nepal has increased, it is the districts with the highest GDP per capita that have the highest numbers of private schools, meaning that privatisation has not automatically improved physical accessibility for rural or low-income communities.<sup>32</sup>

In terms of economic accessibility, not all private school tuition fees are expensive and unaffordable to families. According to Jamil et al., in Pakistan and India 60% of private schools are low cost, i.e., charging less than 7 USD per month.<sup>33</sup> This suggests an increase in access options for low-income groups that might not have an acceptable public option to choose from.

Grants and scholarships, as well as vouchers, can also increase economic accessibility.<sup>34</sup> For example, under the Right to Education Act in India, private schools are mandated to offer 25% of student placements as 'freeships' or scholarships, to ensure that private schools do not exclude students from low-income families. However, Srivastava and Norhona's study shows that the way this policy has been interpreted at the school level means that freeship students in schools charging medium-level fees often incur additional costs that result in their education expenditure being higher than if they were enrolled in low-fee schooling without a freeship place.<sup>35</sup> Even with a scholarship, students may incur significant costs, and some families will be unable to meet them. Grants are also used in the Philippines in order to enable high school students to attend private schools, as a means of reducing overcrowding in the public system.<sup>36</sup> These grants do not always cover the full cost of education, leaving families to fund any gap between the grant and the full cost of the school fees. Thus, marginalised and disadvantaged students may still not be able to access private education in their area, even with the provision of a voucher system.

Increased private provision may increase the number of schools overall, hence increasing the availability of education in a given location. Although States must strive to ensure that education is available, according to human rights law availability encompasses more than a mere increase in schools. It also includes a number of other educational components, such as adequate sanitation facilities, safe drinking water, trained teachers receiving domestically competitive salaries, and teaching materials.<sup>37</sup> Therefore, a fuller assessment regarding other essential educational components would be required to determine if the State's obligations concerning availability were being met, which goes beyond the areas covered by the PERI research. Additionally, while an increase in physical accessibility is a positive step, States must also ensure that education will be economically accessible and that provision will not be discriminatory (i.e., accessible to marginalised groups).<sup>38</sup> According to human rights law, private schools may charge fees. However, the State must prioritise the availability of free primary education for all and the introduction of progressively free secondary education. Therefore, any policies in relation to the expansion of fee-paying private provision must keep the principle of accessibility at its core, and States should not sacrifice economic accessibility or non-discrimination measures to increase physical availability and physical accessibility. In other words, States should consider physical accessibility, economic accessibility, and non-discrimination as equally important factors when developing education policies, as these dimensions of accessibility are overlapping in nature. Finally, in those geographic regions that do not have free quality education, States must prioritise access to free education over the establishment of fee-paying, private education, as these private schools will incur costs to families.

## 2. Increasing Educational Choice

A number of the PERI studies indicated that increasing private provision may increase parental choice in the type and style of education they could choose for their children. Studies from Burma, Cambodia, and Nepal indicated that private schools offered more appealing curriculum choices to parents, such as the study of foreign or indigenous languages.<sup>39</sup> If families wish religious instruction to form a significant portion of the curriculum, they may turn to private religious schools.<sup>40</sup> Some studies also implied that increasing access to private tutoring also gave families the option to supplement classroom learning or seek remedial assistance with more personalised teaching.<sup>41</sup>

In addition to providing new curriculum choices, some of the PERI studies also revealed a perception that private schools are providing a choice of better quality education. Some of the PERI studies indicated a perception amongst parents that private schools may place greater emphasis on accountability and openness to criticism, and that parents feel empowered through the exchange of fees for education services.<sup>42</sup> In this situation, parents are consumers, which may affect the relationship that parents have with their children's teachers. Parents in Rolleston and Adefeso's report on Ghana and Nigeria complained about the lack of respect, humility and accountability when engaging with teachers in public schools.<sup>43</sup> For example, they reported that parents were met with rude and dismissive replies by public school teachers. Conversely, parents reported that private school teachers were punctual, reliable and were generally more accountable.

The focus on parental perceptions of quality in some of the PERI studies raise questions about the how quality of education is defined, as this was differently understood in focus groups and interviews across the PERI studies. Quality of education is not easy to measure; however, from a human rights perspective, parental perspectives alone would not constitute sufficient evidence to measure the quality of education.<sup>44</sup> Nevertheless, from a human rights perspective *both* public and private schools must

provide quality education, which is achieved through assessing the minimum standards that are laid down and enforced by the State for private providers. Although in reality parents often base education choices on perceptions of quality, from a human rights perspective the assessment of quality should be aimed at ensuring that minimum standards are achieved. Therefore, in situations where the State is not identifying minimum standards for private providers and ensuring that these providers meet these standards, then parents may be making educational decisions without having access to sufficient information regarding the actual quality of education institutions available to them. Furthermore, if parents are choosing private education because the public education that is available does not meet minimum standards that are laid down by the State or because the public education is not responsive to communities, then this is not an issue of educational choice, since the public education provision is not meeting quality standards (i.e., there is no real choice in this scenario, as parents may feel no other option than to utilise private education due to the poor quality of public education). Therefore, from a human rights perspective, educational choice can only occur when there are schools that offer a range of teaching philosophies and methodologies, alternate or supplemental curriculum opportunities, or alternative learning environments, rather than a means of identifying which schools provide better quality.

### 3. Increasing Parental Participation

Bhatta and Budathoki's research from Nepal suggests that privatisation may empower parents to be more actively involved in their children's education, such as when parental attitudes to their children's education change when their children move from public to private education.<sup>45</sup> Participants in their study reported that they believed private schools create more avenues for interaction between parents, teachers, and students, through regular parent/teacher interviews, checking in with parents if student homework has not been completed, and expecting parents to attend school events.<sup>46</sup> Students reported that parents were much more active in their education and increasingly told them to study well and work hard.<sup>47</sup> Subedi et al.'s research, affirmed that parents of children in private schools in Nepal increased their participation and interest in their children's education.<sup>48</sup>

According to Bhatta and Budathoki, this is linked to a critical factor – that of viewing private education as an investment in the child, whose future entry into the labour market as a result of a private education will generate a better return on educational investment.<sup>49</sup> When parents see private education as an investment, there may be a strong correlation between the financial investment and perceptions of empowerment and participation. In other words, parents may become more concerned about education of their children through the value of their financial investment. However, there is a risk that when education is seen solely as a commodity that it may lose its worth as an inherent right, ensuring the realisation of every child's human dignity.<sup>50</sup> '[T]he importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence'.<sup>51</sup>

Some of the PERI studies suggested that privatisation may create better opportunities for families and the broader community to participate in a variety of ways, including in the governance and management of schools. Mundy and Menashy's study of World Bank policy and lending practice of the IMF indicated that half of the relatively limited number of IMF education programmes encouraged community involvement in decision-making concerning schools.<sup>52</sup> In some of the studies, parental participation was

also seen in the decision making process for granting scholarships,<sup>53</sup> and school boards that oversee school activity.<sup>54</sup>

Indications that parents may increase their interest and participation in their children's education are on the surface a positive step. According to human rights law, the State must ensure that schools are transparent and accountable,<sup>55</sup> which is achieved through the State ensuring that all schools (whether public or private) have effective mechanisms for encouraging and supporting parental and community participation (e.g., governing bodies, management committees, and parents' groups). However, transparency and accountability are achieved through a variety of avenues, and parental participation, albeit an important aspect of accountability, is not the only factor for ensuring accountable schools.<sup>56</sup> In addition, a more complete and comprehensive analysis of effective participation would need to be explored across a range of public and private schools considering how various models for parental participation are effectively achieved. In other words, it is likely that a number of methods for parental participation may be effective.

#### 4. Perceptions Regarding Quality

Many of the PERI studies examined education quality yet analysing education quality across a range of individual studies is challenging, since indicators pertaining to the quality of education may vary according to national context. In several studies, education quality was explored through household surveys and interviews with parents. Parents frequently cited their belief that the State was failing in its provision of public education and the perception that private education is of better quality, as the reason for enrolling their children in private education. For example, when interviewing parents in Nepal, Subedi et al. established that 75% of parents of students in private schools believed that their child's school was providing good education, compared to only 40% of parents of students in public schools.<sup>57</sup> Parents of both private and public school children firmly believed that graduates of private schools were more qualified than those from public schools.<sup>58</sup>

There were some indications of better quality in private education in some of the PERI studies beyond parental perception, such as better test scores,<sup>59</sup> access to better resources and facilities,<sup>60</sup> and better methods of teaching.<sup>61</sup> However, there was insufficient evidence to compare similar quality indicators, so the evidence is largely anecdotal. It is also difficult to engage on these aspects of quality, as the PERI studies covered a range of private school models (such as low fee, mid-range, and high fee private schools) with varying budgets. The PERI studies were not specifically aimed at examining these quality outcomes against State standards for private schools, as this data is largely unavailable in many countries, thus making objective assessments on the quality of private education difficult to ascertain.<sup>62</sup>

From a human rights perspective education systems must provide quality education to all children,<sup>63</sup> and that the best interests of the child are served regardless of their parents' economic resources. In other words, the right to education is a right to good quality education, regardless of whether it is private or public. Personal preferences and educational choice are important factors of educational freedoms. Although perceptions of quality are often drivers of educational choice, human rights law provides some insights into determining quality, as the State has the obligation to ensure that all education – regardless of the provider – meets minimum standards. These human rights standards that pertain to quality are largely focused on ensuring an adequate learning environment, such as ensuring qualified trained teachers with domestically competitive salaries, appropriate school infrastructure to

support learning, continuing education for teachers, access to adequate learning materials, locally accountable and transparent schools, and the establishment of minimum standards which are laid down by and monitored by the State.<sup>64</sup> Discourse that seeks to compare quality outcomes between private and public education may be taking a more consumerist stance, as human rights law seeks to ensure quality education for all.

## Examples of How the Effects of Privatisation Impact Negatively on the Right to Education

### 1. Lack of Standardisation, Monitoring and Regulation

*'Failure to maintain an effective and transparent system to monitor private education and its impact on the right to education constitutes a violation. This national regulatory framework must be compatible with the right to education in international law and should be monitored by an independent body.'*<sup>65</sup>

One of the most significant failures of States regarding the privatisation of education is a failure to fulfil their oversight obligations. States must establish and maintain a transparent and effective system which monitors the right to education.<sup>66</sup> Although a lack of monitoring and regulation is not an impact or symptom of privatisation, the lack of monitoring of both public and private education has a number of negative effects on education, which requires considerable attention in the context of increasing private provision of education.

The failure to monitor both public and private education is apparent across most of the 18 PERI studies. A potential consequence of the lack of monitoring is that this can create or contribute to a culture that lacks accountability and encourages illegal or exploitative practices. This is an important aspect of the rule of law. Some of the PERI studies demonstrated that a number of private schools operate without proper registration and licence.<sup>67</sup> If a school is not registered with the State, the State has no way to enforce minimum standards, which are set nationally and which constitute a condition under which the educational freedom of private providers is permitted. It also means that States are unable to adequately collect information about education in their territory, and it may increase the likelihood of schools carrying out violations, putting both students and teachers at risk. In Jamil et al.'s survey of 151 schools in three districts in India, 89% were unlicensed.<sup>68</sup> This high figure is not representative of the whole country, but it illustrates the prevalence of the issue. It is unclear if these unregistered private schools are delivering quality education, since they are not being monitored and regulated. Without an effective monitoring and regulatory framework, the State cannot be assured that schools are adequate in terms of teaching, facilities, curricula, enrolment, and learning outcomes. Therefore, without monitoring, the risk of violations and discrimination increases.

In Nepal, research by Subedi et al. indicates that only 5% of the total teachers in their sample of private schools hold the required licences for teaching. Only 5% of 132 private schools surveyed have school management committees, as required by the Education Regulation 2003. Many private schools do not comply with government's determined standards regarding fee structure—the high standard schools charge much higher monthly fees while many low-standard schools also have a fee (albeit low) compared to the government-determined monthly fee structure.<sup>69</sup>

Among the PERI studies States are particularly failing to monitor and regulate religious schools. In Bangladesh and Mali, there are negative impacts associated with a lack of oversight by the State, and the absence of a central governing body.<sup>70</sup> In both countries, religious schools are often not registered with the State, do not follow minimum standards set by the State on curricula, and frequently underpay or are unable to pay their teaching staff. With these gaps in registration, it is impossible for the State to ensure that the right to education is fulfilled, as there is no access to information about students, staff and educational attainment. Moreover, the State is unable to effectively regulate minimum standards in these unregistered schools. The lack of registration also puts children, and even teachers - in relation to labour-related issues, at risk of abuse and exploitation in extreme cases.

Due to a lack of State standardisation, regulation and monitoring of the private education system, there is a lack of data on quality of education in private schools. This is a significant rebuttal to the frequent assumption held by proponents of privatisation that private schools are an inherently superior education provider, as these case studies demonstrate that many private schools operate outside the formally regulated education system and therefore outside the data collection umbrella. For example, in Bangladesh, there is a significant lack of basic data and knowledge, such as the number of students or funding sources concerning quomi madrasa schools.<sup>71</sup> Many of these schools are not registered with the government. In Vietnam, there are no specific criteria or effective controls on education quality, and no specific regulations on information gathering for private or public education.<sup>72</sup>

Even when there are oversight mechanisms in place, if these are not effectively implemented, States continue to violate their obligation to adequately monitor the private education system. For example, in Nepal, although there is provision to monitor the private schools (for example their fee structure, qualifications of teachers and curricula), Subedi et al. suggest that a well-defined regulatory framework and its effective implementation may not be adequate or even accepted by education stakeholders, such as the private providers.<sup>73</sup> This suggests that establishing regulatory frameworks is only one step in assuring accountability and that the existence of regulatory legislation may not necessarily result in improved educational outcomes, as the way in which the legislation and monitoring policies are implemented are also of great importance for ensuring accountability. For example, the Right to Education Act in India requires 25% of private school places to be free places, yet Srivastava's research showed that these 'freeship' places tend to be captured by those relatively more affluent, connected and mobile families that access higher fee-level private schools.<sup>74</sup> In some cases, freeship students incur significant indirect costs, to the extent that household expenditure is often actually higher than if they had paid fees and costs at a less expensive fee-level school. Thus, as Srivastava shows, the aims of the legislation have been co-opted by some relatively advantaged families. Therefore, active monitoring must go hand-in-hand with regulatory systems, to ensure compliance, in addition to accountability mechanisms for non-compliance.

If States are to minimise the negative impacts of privatisation on the right to education and ensure quality education for all, they must first fulfil their obligation to monitor the education system - both public and private. These monitoring mechanisms should include a system whereby private providers must apply for an education provider licence in order to operate, as this ensures that the provider is vetted and has met the necessary requirements to open a school. This is an important step, as it is very difficult to close down a school once it has opened if there are no other alternative schools for the children to attend. Also, there should be clear and strictly enforced minimum standards with regular monitoring through inspections with sufficient numbers of well-trained school inspectors to cover the



whole country to hold private providers accountable. Additionally, an effective monitoring of public education can help to identify, prevent and address many of the shortcomings of public education systems, as inadequacies in public education can lead to migration to private providers.

## **2. Exacerbating the Prioritisation of Boys over Girls**

Across the studies, it was clear that families prioritise the education of boys over girls, despite the prohibition against discrimination and the obligation of the State to ensure that all children have access to education. This is highlighted in studies that found that girls were less likely to be enrolled in private education than boys.<sup>75</sup> This is often linked to parents' perceived return on costs of educating girls. Gender inequality in enrolment is particularly apparent in the lowest-income groups because boys are seen as future breadwinners for the family.<sup>76</sup> Jamil et al.'s research from Delhi, Patna, and Sonipat in India indicates that families are prepared to spend more on education for boys than girls.<sup>77</sup> Their research from Rawalpindi and Peshawar in Pakistan indicates that once children are enrolled in school gender-differentiated funding is less visible; however, households tend to prioritise boys over girls when making the decision to send a child to school.<sup>78</sup>

Subedi et al.'s research from Nepal indicates that the impact of gender discrimination differs across levels of education, although the proportion of girls in private education is consistently lower than that of boys for all levels.<sup>79</sup> Gendered inequality in attendance in private education appears to be high at the primary level and tends to decline with the increase in level of education.<sup>80</sup> This may indicate that girls face an initial barrier in accessing private education, but once access is gained it can be maintained.

According to international law, private schools may determine their admissions criteria and they may even choose to offer single-sex education.<sup>81</sup> It is, therefore, the overall impacts that government policies, individual (private and public) school policies, and family practices have on the wider enrolment patterns of girls that raise concerns. If parents are not prioritising girls' education, then the State has due diligence to rectify the situation by putting into place measures to ensure that parents are sending girls to school. This could be achieved, for example, through legislation (e.g., ensuring that the law specifies that education is compulsory for both girls and boys), government programmes (e.g., developing a girls' education unit within the education ministry to tackle gender barriers affecting education), incentives (e.g., providing grants or scholarships for girls) or other measures, depending on the local context. If States are failing to provide adequate free education for all or if extreme disparities are created as a result of practices and policies, then the State must rectify the situation.

## **3. Failures to Ensure Quality Teaching Through Competitive Salaries and Adequate Teaching Qualifications**

There was strong evidence across the PERI studies of a significant wage difference between public and private teachers and a high prevalence of under-qualified teachers in private schools. In many studies, private school teachers are paid a minimal salary, which is considerably less than their public school peers.<sup>82</sup> In many of the countries studied, teachers working in private schools often accepted lower pay for a variety of reasons, including dedication to teaching in the case of non-profit schools, or because the teachers did not meet public sector teaching qualifications. However, some private school teachers were simply individuals, particularly women, seeking employment, as they were unable to access stable

employment opportunities. In Subedi et al.'s study of Nepal, they found that only 20% of private school teachers received the salary as set by the government.<sup>83</sup>

In private fee-paying schools, teacher salaries are usually sourced from tuition fees. In order to increase teacher salaries, private schools would need to increase tuition fees, thereby reducing access to education for those who cannot afford the increased fees. Many underpaid teachers are employed by low fee private schools (LFPS), which are run by small and large enterprises, and can either operate on a non-profit or for-profit basis. While LFPS may make private education more financially accessible than other forms of fee-paying private schools, the LFPS model relies on cheap labour costs. Teachers' salaries often make up more than 50% of a school's budget, and an increase in salaries would inevitably lead to higher cost of tuition. Moreover, in countries that require parity of salary between public and private teachers, this may lead to only elite and wealthy schools opting to register.<sup>84</sup> This creates a situation whereby some private schools operate outside of the formal system, which means that these schools are not accountable.

In Ghana, teacher salaries in private schools were reported to be as low as 47 USD per month; whereas public school teachers would earn between 120 to 350 USD.<sup>85</sup>

In India, teacher salaries were reported to be proportionate to fees. For example, a teacher in a low fee school was paid the equivalent of 30 USD per month, 60 USD in a mid-range private school, and 166 USD in high cost school. Registered schools must in theory pay teachers the same as the government equivalent; however it is only the most elite schools that receive the necessary revenue from parents paying fees.<sup>86</sup>

Similar data is reported from Bangladesh, where private school teachers are paid monthly salaries of around BDT 1,500 or 20 USD, significantly less than the salaries of their counterparts at government-funded schools, who earn from BDT 4,500 to BDT 10,500/month, or 60 to 140 USD).<sup>87</sup>

While many private schools may provide employment opportunities – especially for female teachers in rural areas<sup>88</sup> – they undermine the full realisation of the right to work.<sup>89</sup> Many under-paid teachers in private schools are unable to pay for basic living expenses. For example, in Williams and Kitamura's study on Cambodia, they found that a teacher's salary was insufficient for families in rural areas to live on because of housing and transport expenses.<sup>90</sup> This is exacerbated by frequent delays in paying teachers their salaries, and first year teachers are often paid a half salary.<sup>91</sup> This can lead to under-paid teachers seeking to increase their wage by providing tutoring services.<sup>92</sup>

Because staffing costs are paid for through fees, high-income private schools are generally more able to afford highly qualified staff; whereas low fee schools are more likely to employ teachers with little or no professional qualifications.<sup>93</sup> As demonstrated by the case studies, there are few entry requirements into the teaching profession, as well as little or no budget for on-going teacher professional development in the private schools covered by PERI research. For example, in their study on Cambodia, Williams and Kitamura show that there are no systematic quality assurance mechanisms in teacher education, nor any mandatory training, minimum qualifications or expectations of on-going learning.<sup>94</sup> In Srivastava's study in India, parents spoke of teachers' inexperience, frequent turnover, and lack of

qualifications.<sup>95</sup> As teaching is a specialist skill, it seems unlikely that an under-qualified work force will be able to adequately teach to a high standard. Yet the problem of lack of monitoring to ensure minimum qualification is not exclusive to the private system. For example, in Nepal public school teachers are reported to be inadequately trained.<sup>96</sup> However, because there is even less oversight of the private system, there are fewer incentives for private schools to ensure that they only recruit adequately trained staff, and they may have fewer resources to allocate to teacher training.

Underpaying teachers is likely to lead to poor quality education. States must ensure that teachers have the necessary minimum qualifications, are adequately trained through continuing education and that they are paid domestically competitive salaries,<sup>97</sup> as this obligation seeks to ensure competency of a professional teaching workforce, which is a necessary component of quality education. In addition to this, private school hiring practices as well as pay scales must be non-discriminatory on the grounds of gender. These issues regarding teacher pay raise concerns about the rights of teachers to equal pay for equal work, but also raise concerns the rights of children to receive quality education, which requires having qualified teachers. The impact of having under-qualified, under-paid teachers on students can be devastating, as they are left with potentially inexperienced, disincentivised, and disenfranchised educators at the head of the classroom. Parity in teacher pay alone is not likely to resolve all issues regarding teacher accountability and quality education, but it is a key factor.

#### 4. Enhanced Stratification and Perpetuation of Socio-Economic Differences and Class Barriers

*'Free education is the only way to ensure compulsory education, and education was made compulsory in order to forge a collective identity'.<sup>98</sup>*

While there is no prohibition in international law on private schools charging fees, the financial burden that school fees and indirect costs place on families can significantly undermine the accessibility of education.

Nepalese households incur eight times higher expenditure in private primary schools compared to public primary schools. The per capita annual expenditure in private primary school is 11,164 Rupies (Rs.) against Rs. 1,332 in public primary schools. Lower secondary education at private schools (Rs. 16,000) is seven times more costly than that at public schools (Rs. 2,504) and it is five times more costly at secondary education level (Rs. 25,134 for private school and Rs. 5,387 for public schools).<sup>99</sup>

Similar numbers were found by Srivastava and Norhona, in their study in Delhi, India. A large discrepancy between government and private schooling household expenditure was reported. The authors found that the annual cost per child in more affordable private schools was over six times that in government schools, over 18 times in more expensive schools.<sup>100</sup>

In many of the PERI studies, an increase in the number of private schools increased the accessibility of education, but only for those with the financial means to purchase educational services.<sup>101</sup> More expensive school fees are more likely to ensure that students will benefit from smaller student-teacher

ratios, qualified teachers, and infrastructure that supports learning outcomes. Families that can afford high-end private schools are also likely to be able to purchase additional private tutoring, especially in the lead up to exams.

Those from low-income households are often shut out of the private education system due to their inability to pay school fees and associated costs. For example, in Nepal, Bangladesh and the Philippines few private schools offered scholarship opportunities specifically for low-income families, and the recipients of scholarships were often those with existing means to pay fees rather than those in genuine financial need.<sup>102</sup> While government guidelines in Nepal state that private schools should provide at least 10% of students with scholarships, Subedi et al.'s research found that only 4% of students in the private schools that they studied were receiving scholarships (mainly provided on the basis of competency rather than need).<sup>103</sup> In the Philippines, overcrowding in public schools is addressed by contracting out excess enrolments to private schools by providing grants directly to the family.<sup>104</sup> However, because there is no standardised process to assess grant applications, grants are often given to families that already have the financial means to send their children to private schools.<sup>105</sup> It is, therefore, unlikely that scholarships or vouchers can rectify inequalities for lower income families unless they are applied so that the lowest income families are included. In any case, scholarship or voucher models present challenges to ensuring access to free education, as the scholarships may not cover all costs.

*'The government of Nepal has attempted to ensure educational equity in a variety of ways, the most common being that of providing scholarships to children from disadvantaged social groups (Dalits, endangered indigenous people and bonded labourers—Haliya, Haruwa/Charuwa), girls, Martyr's children, residents of the Karnali zone, and disabled students at primary and secondary level. As private schools represent almost 20% of the enrolment in school-level education, they are also the key actors in ensuring educational equity and reducing disparity. Data reveals that only 4% of students in private schools receive scholarships, compared to nearly 22% in public schools. According to the government provision, a private school should provide at least 10% of students with scholarships. Further, it appears that private schools are less sensitive about social equity as they mainly provide scholarship on the basis of competency of students.'*<sup>106</sup>

It is also important to note that the total cost of education consists of more than just tuition fees. These costs relate to school uniforms, learning materials, books, tutoring, transport and administrative fees.<sup>107</sup> While these indirect costs also apply to public education, when combined with private school fees they serve as a barrier to economic accessibility of education. For example, according to Soriano's research, it is common that students attending private schools in the Philippines are expected to pay extra for educational supplies that would normally be provided for free at public schools.<sup>108</sup> In some instances, students attending private schools are also expected to directly contribute very basic supplies such as toilet paper and sanitizers.<sup>109</sup> Even if families are not required to pay fees, the most low-income families may not be able to access private education (or public education) because of indirect costs.

As some of the PERI studies showed, governments may be utilising private actors to fill educational gaps in delivering services or in funding. This raises concerns about the neglect and underfunding of the public system and the progressive steps that governments must take to achieve the full realisation of

the right to education. When this reliance on private education providers to fill gaps occurs, the cost structures of private education are likely to increase stratification along socio-economic lines, as there are many families that cannot afford to invest in private education. There is a risk that the State may divest in the public education system over time.<sup>110</sup> There is also the risk that families may not enrol their children at any school if there are no free education options. A system whereby the accessibility of education is determined by a family's wealth will have long-term negative impacts on society, and further entrench inequalities along socio-economic lines.

## 5. Emergence of Private Tutoring as a 'Shadow System'

Private tutoring is the practice of private and public school students taking additional lessons, often given by their school class teacher, outside of normal school hours for a fee. In many cases, tutoring complements classroom teaching by providing students with more opportunities to practice the curriculum content, to learn new subjects and to receive more one-on-one attention.<sup>111</sup> Teachers may provide practical advice on how to succeed in and prepare for exams in private tutoring and not in formal classes.<sup>112</sup> This type of privatisation is on the rise, as students that are privately tutored tend to score higher on tests on average than those who do not.<sup>113</sup> For example, in India and Pakistan, Aslam and Atherton found that children that access private tutoring are more likely to achieve better test scores for mathematics and language capabilities, regardless of whether they are enrolled in public or private education.<sup>114</sup> Purchasing private tutoring services significantly increases household costs associated with education. This, in turn, increases the likelihood that low-income families are unable to meet the costs associated with education, exacerbating existing social inequalities.

More than 50% of Indian students and 15% of Pakistani students take private tutoring to supplement school learning and prepare for tests.<sup>115</sup>

As illustrated in Brehm et al.'s work in Cambodia, classroom hours often do not present enough contact time for teachers to adequately teach the curriculum, and private tutoring is increasingly being used to finish teaching core material.<sup>116</sup> In these situations of under-teaching, private tutoring may work as a stop-gap mechanism for those who can afford to purchase extra educational support, but it poses a barrier to education for those that cannot afford tutoring, and therefore are unable to learn the expected curriculum content.

Aslam and Atherton's research from India and Pakistan suggests that the increasing demand for private tutoring changes the incentive structure for teachers, creating a situation whereby teachers might intentionally stop short of delivering the curriculum so that they can earn extra money through providing private lessons after school.<sup>117</sup> Across a number of the studies, it was clear that teacher salaries are often significantly lower than other professions with similar qualifications. Many private school teachers are paid less than a living wage and, in the case of Peshawar, Pakistan, many are paid less than the legal minimum wage.<sup>118</sup> Therefore, there is a strong incentive for teachers to supplement their income, thereby creating a market for private tutoring. This may be actively promoted by private school proprietors, as illustrated by Rolleston and Adefeso in Ghana.<sup>119</sup> Additionally, as government teachers in South Asia are appointed for life, there is little accountability to ensure that the curriculum is

delivered in normal school hours.<sup>120</sup> Private tutoring is therefore connected to issues of teacher's pay, government monitoring and evaluation of teaching standards and practices, and incentive structures for teachers.

Private tutoring in itself is acceptable under international human rights law, as private education providers, including private tutors, should be allowed to operate freely. Equally, students should be free to access private tutoring services and to benefit from the extra and varied teaching that tutoring can provide. However, State failure to adequately monitor compulsory education services (both public and private) to ensure that teachers are delivering the curriculum during normal school teaching hours, as well as the school governance and accountability mechanisms to monitor adequate teaching, creates negative impacts on students and families, thus increasing corrupt practices regarding tutoring (i.e., using tutoring to cover the core curriculum), which may exacerbate social inequalities. The impact that this situation creates is that the curriculum may be partially taught outside of school hours and only with additional payment, thus creating a situation where children are not able to enjoy free education that is compulsory. It not only affects children from low income families by creating cost barriers, but it affects all children. This is contrary to the right to education as the quality of education is being compromised, and it is not in the best interests of the child.

## 6. Possibility of the State Exiting the Field

A significant negative impact of the increase in privatisation is the possibility of the State 'exiting the field' of education provision. This means that the State no longer sees itself as the primary provider of education, which can lead to a decrease in the provision of public schools and/or public spending on education. This can have significant effects upon the availability of, and access to, the right to education for many sectors in society, particularly those already marginalised or facing discrimination, as they are less likely to be able to access the private education sector.

Bhatta and Budathoki's study in Nepal suggested that a less active State and increased prevalence of private schools could lead to the 'pauperisation of public schools'.<sup>121</sup> Their study found that private education has a better reputation among parents in their sample than public education in Nepal, and private education is becoming increasingly desirable across all income levels. Therefore, those with the financial means will send their children to private schools; whereas low-income families keep their children in public schools because they cannot afford private education. As wealthier students attend private schools, and those that cannot afford private schools dominate the public school system, there is an increased community perception that education is becoming stratified by socio-economic status, and public schools are being predominantly used by the poor. To counter this, States must adequately invest in public education, as private education should be a choice for parents and students rather than the only option for ensuring that their children receive a satisfactory education that will lead to their future success.

While States are not required to fund private education institutions, they also should not expect the private sector to relieve the government of its obligation to respect, protect and fulfil the right to education. The accountability remains with the State to ensure that education provision is of good quality, that it is adequately resourced, and that free and universal primary education is prioritised, available and accessible to all. These obligations cannot be transferred to private education providers.

Under international human rights law, the obligation rests on the State to use its maximum available resources, in terms of both finances and capacities, to fulfil the right to education. While the obligation on States to expend the maximum of available resources on education is recognised in a number of the PERI studies, the authors of the studies report that the trend shows a decrease in public expenditure on education in some countries. Although the international target for education budgets is 6% of Gross Domestic Product (GDP), actual government spending on education is significantly lower in some countries, e.g., Bangladesh budgets just 2.4 % of GDP expenditure on education,<sup>122</sup> India budgets between 2.2 % and 2.6 % of GDP,<sup>123</sup> and the Philippines budgets 2.9% of GDP.<sup>124</sup>

States must ensure that they are adequately investing in education and many countries researched in the PERI studies are failing to meet the international target. Without active steps to increase education financing, private actors may by default or through governmental policy be filling the gaps in education provision. This possibility threatens the expansion and existence of free education for all that is not discriminatory.

## Summary

In reviewing the PERI studies, we are able to identify some common features that may impact the realisation of the right to education:

1. Privatisation of education results in complex impacts on the enjoyment of the right to education and the State's obligation to respect, protect and fulfil the implementation of this right.
2. Marginalised groups fail to enjoy the bulk of the positive impacts and also bear the disproportionate burden of the negative impacts of privatisation.
3. Although positive short-term outputs, such as increased school places, may be immediately noticeable, the longer-term impact, especially on marginalised groups, requires further research.
4. Redirection of resources from the State to the private sector due to privatisation (or families through tuition fees) and the de facto expansion of unregulated private education as a means for filling gaps in education provision are insufficient ways of addressing public education deficiencies, which can have a long-term overall detrimental effect on the right to education.
5. Establishing regulatory and monitoring systems to ensure that both public and private education are covered by common, appropriate, and transparent standards with efficient accountability systems and access to enforcement mechanisms is a necessary component of protecting the right to education.

Taken overall, the PERI studies show that for those that have the financial means to pay school fees, the indirect costs associated with education (such as uniforms and transport), and private tutoring, privatisation may have increased choice, participation, and accountability for some students and families. While some of the PERI studies reported the perception that private education is of higher quality, there is little concrete evidence to suggest that this is the case. From a human rights

perspective, a divestment or diversion of resources from public education, which may be motivated by parental perceptions regarding quality, is a more problematic long-term concern, as parents may be abandoning the public education system in favour of education that they perceive to be of higher quality but which is not actually being adequately monitored for quality based on governmental standards.

The PERI studies link privatisation of education with discriminatory practices, inadequate oversight and monitoring by States, increased educational stratification and an under-qualified and under-paid teaching workforce. Government reliance on the private sector to deliver education services impacts on the quality of education and raises grave concerns about the State fulfilling its obligation to develop laws and policies aimed at the full implementation of the right to education and to adequately finance the provision of free and compulsory education for all.

Overall, States are failing to ensure that private schools deliver quality education, employ qualified teachers and adequately compensate teachers. These failures suggest that governments might see the privatisation of education as a 'quick fix' to increase enrolment rates, thereby fulfilling international standards such as the Millennium Development Goal of achieving universal primary education by 2015. The diversification of actors in the field of education may also have lowered the willingness of States to take full responsibility for ensuring that the right to education is meaningfully realised.

A human rights based approach can help to ensure that the growth and development of private education does not result in such negative impacts. It is only through ensuring that any private sector involvement in the education sector is compliant with the principles of human rights that we can ensure that the right to education is fully respected, protected and fulfilled and that educational freedoms are maintained. This involves ensuring that human rights standards are always at the forefront of the analysis and are considered in policy and in practice.



## Identifying Violations of International Human Rights Law Related to Privatisation

A violation of the right to education can simply be defined as a breach of any of the State's obligations vis-à-vis the right to education, either through the direct action of the State, or through a failure to act (i.e., an omission). As discussed in more detail in the section on International Human Rights Law and the Right to Education, there is a general legal obligation that States must take steps to progressively realise the right to education, although there are some immediate obligations that States must implement regardless of their available resources. These immediate obligations include the need to ensure a minimum core content of the right is fulfilled, to monitor the implementation of the right to education, to take progressive steps towards implementation, and to not discriminate.<sup>125</sup> A State fails to progressively realise the right to education if it has failed to take deliberate, concrete and targeted steps towards full implementation of the right.

There is a minimum core obligation of States to ensure that education is provided in a non-discriminatory way, that education conforms with the legal principle of the Aims of Education,<sup>126</sup> that primary education is free and compulsory, that the State implements a national education strategy and that free choice of education is provided, subject to minimum educational standards.<sup>127</sup> International human rights law sets out the relevant obligations for each level - primary, secondary, higher, and adult education.<sup>128</sup> States are also obliged to establish minimum education standards and maintain a transparent and effective system to monitor these standards.<sup>129</sup> Governments should not take retrogressive or backward steps that would constitute a failure to progressively realise the right to education for all.<sup>130</sup>

Violations of the right to education are complex to assess, and due to the limited scope of this report, we were able to only identify negative impacts on the right to education resulting from privatisation, as filtered through a framework of human rights standards. The evidence available in the 18 PERI studies was insufficient to concretely identify clear violations, as more rigorous and specifically-structured research would be required to achieve this. However, based on the analysis conducted in this report, we have identified a list of potential violations of the right to education relating to privatisation, which we feel will be useful for future research. We have identified a list of legal obligations (See Table 3) that are particularly relevant in the context of privatisation and which are inspired by the negative impacts that we uncovered during our analysis.

The PERI studies uncover a number of ways in which privatisation may result in violations of the right to education. Such instances may include a mix of violations resulting from direct actions, omissions or failure to take action, or failures to progressively realise the right to education. Although many violations may be a direct result of the State failing to protect through effective regulatory and legal frameworks, there may also be instances of the State failing to respect or fulfil its obligations on the right to education concerning private provision.

It is very important to note that many of the potential violations of the right to education identified in this report can also be found in the public education system, as they are not unique to the private sector.

However, the purpose of this report is to demonstrate which aspects of the right to education are particularly susceptible to the impacts of privatisation. When such privatisation-specific impacts manifest, targeted solutions need to be found to guard against violations of the right to education to ensure that both States and private actors comply with human rights standards.

**Table 3: Potential Violations of the Right to Education in the Context of Privatisation**

<b>Act or Omission</b>	<b>Relevant Legal Standards</b>
Discrimination	Article 2, CRC; Article 2 (2) ICESCR
Failure to provide free and compulsory primary education	Article 13 (2) (a), ICESCR
Failure to ensure best interests of the child shall be a primary consideration	Article 3 (1), CRC
Failure to provide maximum available resources to take steps to realise the right to education	Article 2 (1), ICESCR
Failure to take deliberate, concrete and targeted measures towards the progressive realisation of secondary, higher and fundamental education <sup>131</sup>	Article 13 (2) (b), (c), & (d), ICESCR
Failure to enact laws and policies to regulate the provision of education	CESCR General Comment 13, para. 57
Failure to monitor private education providers	CESCR General Comment 13, para. 57
Failure to ensure private educational institutions conform to the minimum standards set by the State	Article 13 (3) & (4), ICESCR
Failure to provide accountability mechanisms for education complaints	CESCR General Comment 13, para. 57
Failure to provide information about education opportunities	CESCR General Comment 13, para. 57
Failure to use curricula that is consistent with the Aims of Education	Article 29 (1), CRC
Failure to provide education in an appropriate language	Article 29 (c), CRC
Failure to ensure equal pay for equal work for teachers; Failure to ensure that teachers are paid domestically competitive salaries	Article 7, ICESCR; CESCR General Comment 13, para. 50
Failure to provide access to a remedy	Article 2, CRC
Prohibition of corporal punishment and psychological violence	Article 28 (2) CRC
Failure to address systemic issues contributing to the reproduction and amplification of inequalities	CESCR General Comment 13, para. 57

## The Need for Further Research

The PERI studies do not provide a complete picture of the potential impacts of privatisation on the right to education, and our analysis shows the need for further research and evidence. Based on our analysis, there are three overarching research gaps that should be addressed across a wide range of potential topics concerning privatisation of education.

Firstly, as most of the studies examined private education and its privatising effects, we feel that future research should focus more directly and explicitly on privatisation – i.e., the transfer of public education services to the private sector. Studies that examine whether private schools are better or worse than public schools do not support a rights based approach, as private education is protected under the freedom to establish and direct educational institutions. However, studies that objectively explore how privatisation may be affecting public education or how privatisation may impact on the beneficiaries or subjects (i.e., pupils, communities) of privatised education would help to provide a more rigorous assessment of the negative impacts without demonising or glorifying private education as a solution to failing public schools.

Secondly, the PERI studies did not use international human rights legal standards to assess impacts of privatisation of education and a retrospective human rights analysis of existing research is by itself insufficient to determine and identify clear violations caused by privatisation. Human rights law provides a frame of analysis for assessing the conduct of States and future research that examines quantitative and qualitative data against international legal standards will provide evidence that will be more effective at addressing negative privatisation policies, as human rights norms provide a legal ‘measuring stick’. This may help to redirect global debates on privatisation away from ideologically-driven agendas and refocus attention on core human rights principles, such as dignity, equality, and accountability.

Finally, the PERI studies in most instances provided insight at the national or provincial level. Although some studies compared two countries from the same region, there is a lack of research that identifies regional or global trends. This may be partly due to the fact that privatisation may be evolving in a very piecemeal or fragmented manner with differing privatisation models and under varied and contextualised local circumstances. However, more comprehensive global research may help to identify common threads and corresponding global policy measures needed to address them. Although we feel that increased regional or global research is needed, we also recognise that there is a continuing need to explore the local context regarding privatisation.

Since there is a lack of significant research on privatisation of education, there is also a potentially long list of areas for future research. The suggestions below are not intended to be exhaustive, and we have avoided going into details regarding research methodologies. Rather, they derive from the trends stemming from the PERI research, and in many cases the suggestions below seek to address areas that the PERI studies do not touch upon. These suggestions are meant to inspire civil society, policy-makers, researchers, educationalists and human rights experts to engage further on this topic.

### *General*

The prevalence of privatisation is largely unknown, therefore as a starting point a comprehensive study examining government policies that support or encourage privatisation at the national level (in a reasonable sample of countries) would provide a better understanding of the steps that governments are taking. In addition, community-based research to explore how education is being privatised can help to shed light on what is happening in practice, as some forms of privatisation may not be contained within government policies or under the regulatory oversight of the government.

### *Availability and Accessibility of Education*

An increase in the number of private schools will add to the increase in the overall number of schools. However, the PERI studies demonstrated that increased availability did not necessarily lead to increased access by all groups. Further research on the increase in private provision as a means of increasing access to under-served areas would help to more clearly define this phenomenon. In particular, research should focus on the policy efforts by States to increase access through private provision and the impacts this has on physical and economic accessibility as well as on non-discrimination (i.e., access for marginalised groups). These three aspects of accessibility should be examined in conjunction with one another to provide a more complete picture regarding access.

### *School Choice*

Private education, if applied according to international law, can provide opportunities for educational choice to students and families. In the PERI studies, the full extent of school choice was not clear. An assessment of the provision of both public and private schools, the corresponding geographic regions that these schools service (e.g., number of school-age children), the existence of fees and the impacts on families may help to unpack the issue of choice more clearly. Studies should explore State policy in relation to school expansion projects to ascertain if there is a commitment to ensuring free education and if areas where fee-paying private schools have been filling public school provision in under-served areas. Further research on the impact of private education expansion on low- or not-served areas and on the right to free, quality education could help to dispel myths of 'school choice' when there is no actual choice, but it could also highlight how certain groups are discriminated based on their geographic location, which may also be linked to additional factors, such as ethnicity, language, etc.

### *Participation*

Participation is a critical factor when developing education policies and community feedback on education services is a crucial step in ensuring that education meets the needs of the community. A more complete analysis of effective participation (beyond parental involvement, such as participation from a wider range of education stakeholders, such as students, community leaders, etc.) would need to explore both positive and negative models of participation across a range of public and private schools, as well as their impacts. This may include steps that governments took or did not take when making decisions regarding privatisation policies (i.e., being accountable to communities by ensuring their active participation in decision-making processes).

### *Quality of Education*

Education quality in the face of increasing access is a central topic amongst educationalists, and discourse on the quality of education reflects a range of perspectives. Quality is a complex issue and is difficult to measure, and there are disagreements among educationalists on the methods for determining if the education that is being delivered is of good quality. A human rights perspective can help to identify quality indicators, which would likely include a focus on the structures in place to facilitate quality education, such as teacher qualifications, student/teacher ratios, school infrastructure, access to learning materials, and whether or not learning outcomes are measured, rather than on the content that is being taught. From a human rights perspective, all education, whether public or private, should meet minimum standards for quality laid down by the State. Therefore, research that focuses on identifying the national quality standards for public and private schools, using a comprehensive set of rights based indicators, could help to shift focus away from public versus private debates and address the fundamental barriers to quality education that exist in both public and private schools.

### *Monitoring and Regulation*

The lack of monitoring and regulation was a key factor resulting from the PERI research. A comprehensive study on the effectiveness of national monitoring mechanisms in the regulation of both private and public education, which would include an assessment of minimum standards (that are set nationally) would help to establish how these mechanisms could be strengthened. Also, it would be beneficial to identify what comprises an effective monitoring and regulatory system from human rights legal, good governance, and educational perspectives.

There were a number of issues that were highlighted in the PERI research regarding inconsistent teacher pay, lack of teacher qualifications, narrowly focused or under-taught curricula, etc., that were largely due to a lack of monitoring and accountability mechanisms. Any research on these individual issues should include a review of the existing monitoring framework (including the existing standards, legislation, policies, structures, etc.) and their effectiveness over that particular issue.

### *Discrimination and Stratification*

The PERI studies demonstrated that household decisions can lead to gender-based discrimination regarding private education. The studies also showed that children from low-income families may be significantly affected by government policies and practices regarding privatisation. A more comprehensive study on how marginalised groups are being affected by privatisation efforts is needed, which should include consideration of the effects on a wider range of potential groups, including girls, ethnic and linguistic minorities, religious minorities, children with disabilities, children living in poverty, children living in areas with remote access to education, etc.

Low fee private schools have been promoted as a means of increasing access to more students but further research is needed to focus on the impacts of low fee private schools on the poor. In particular, this research should explore whether or not access is increased to all or whether there are some groups that are left out. Furthermore, this research should examine the impact that these low-fee schools have on household finances with respect to other essential needs (e.g., food, accommodation, health care, etc.). Moreover, research should be conducted in areas where there is a high prevalence of low-fee schools to determine if there are wider impacts on the availability and accessibility of free and compulsory education for all.

### *Teaching Conditions*

There was strong evidence across the PERI studies of poor conditions for teachers in private schools, particularly regarding pay. Further research of how the quality of teaching and also how teachers, as professionals, are being affected would shed more light on how the right to quality education is impacted when teachers are underpaid. More specifically, this research could focus on exploring the requirements set nationally for teacher pay and teaching conditions for both public and private schools, how these requirements are enforced and the extent to which they are followed. Since there is a strong link to labour standards and working conditions, this type of research could further explore additional hiring practices and working conditions of teachers, as there may be higher incidences of worker exploitation in unregulated private schools.

Some of the PERI studies highlighted the issue of private schools hiring under-qualified teachers, which significantly threatens the right to receiving a quality education. This topic could be explored further to uncover the extent of the problem and how minimum standards set by the State regarding teacher qualifications and continuing professional development are being undermined.

### *Private Tutoring*

Private tutoring that undercuts or is the direct result of under-teaching requires further research, especially into the root causes of shadow systems of tutoring as well as the measures that State are taking to address this issue.

### *The State's Role*

Some educationalists are concerned that private education is being viewed by States as a means of filling gaps or shortcomings of public education. The PERI studies do not directly address this issue, but some strategies, such as voucher systems, are often intended to fill education gaps when the provision is insufficient. Further research is needed on the extent to which the State is exiting the field as primary provider and relying on private providers to deliver basic education with clearer, more quantitative evidence. Further analysis is needed to explore the ramifications – both short term and long term.

States have the obligation to take concrete and progressive steps towards realising the right to education fully. This means that they must allocate sufficient resources to meet their minimum obligations, such as ensuring free and compulsory primary education, and they must continue to take steps to progressively implement the right to education by ensuring that the material conditions of teaching are improved over time and that secondary and higher education are made progressively free. The PERI studies did not focus on the correlation between public divestment and private investment. Therefore, further research could examine whether or not States are investing less in education and expecting private providers to fill gaps in education provision.

# Conclusions and Recommendations

## Conclusions

Human rights and the right to education in particular have not been a key focus in the global discourse on privatisation. The debate on the pros and cons of privatisation of education raises very strong points of view, whether for or against privatisation, despite a lack of evidence regarding the impacts, including the human rights impacts. This report seeks to contribute to the debate and to stimulate more analysis and consideration and to draw attention to the human rights effects.

A human rights analysis of the issues concerning privatisation helps to shed light on the State's responsibilities for ensuring the fulfilment of the right to education and the accountability measures that States must take in order to protect the right to education. In the recommendations below, we urge stakeholders to adopt a human rights based approach to assess privatisation of education and to continue to respect, protect and fulfil the right to education.

Privatisation carries certain considerations for States that experiment with alternatives to essential services. The privatisation of education does not lift the burden on the State system. Privatisation intensifies the need to monitor schools to ensure that they comply with a human rights compliant regulatory regime and to provide accountability mechanisms that are accessible to all in the communities where private schools exist. The existence of private schools does not alleviate the State's obligations to provide free and compulsory primary education for all, and to ensure physically and financially accessible quality education at all levels in a manner that is acceptable and adaptable. State investment in education must be a priority if the right to education is to be realised, regardless of the degree of privatisation or number of private schools.

Further investment in understanding the full impacts of privatisation on the right to education through on-going and in-depth research and information gathering must also be a priority. This should include research that examines the effect or outcomes of privatisation on the policy efforts and international human rights standards. Most importantly, the human rights framework should serve as the central foundation for continuing research and discussion on privatisation of education, as it brings internationally codified standards and a greater focus on the best interests of the child.

## Recommendations

Based on the findings of this report, the following recommendations are made to stakeholders:

### For States

- Immediately put into place an effective regulatory and monitoring framework that includes periodic monitoring of both public and private schools and providers and an adequately resourced and trained inspectorate.



- Establish minimum standards in education for private education providers that comply with international human rights standards and establish mechanisms to hold both public and private education providers accountable.
- Do not regard private schools as a stop-gap measure to providing public education; do not allow private school provision be a reason to stop or decrease funding and long-term investment in public education.
- Conduct human rights impact assessments before significantly shifting national education policy, especially with regards to privatisation, e.g., when considering public private partnerships.
- Ensure free and compulsory primary education for all and take progressive steps to achieving universal free secondary education.

#### **For Protagonists and Providers of Private Education**

- Take responsibility for understanding the content of the right to education, as enshrined in the relevant international treaties and articulated in various interpretive documents.
- Apply a human rights based approach (including consideration of the 4As and the best interests of the child) in the implementation of privatised education projects, considering both the short and long term impacts.
- Include human rights experts in the planning, implementation and monitoring of education projects.
- Ensure compliance with international labour laws, particularly concerning equal pay and hiring practices; ensure that teaching staff are qualified and that they have access to continuing professional development.

#### **For Civil Society**

- Collect evidence on the human rights impacts of privatisation and report them to international human rights monitoring mechanisms (e.g., UPR, UN treaty bodies, etc.).
- Raise awareness on the impacts of privatisation of education and work with local communities to advocate for rights based education policies.
- Lobby governments to establish clear national minimum standards for education providers and effective monitoring and redress mechanisms.

#### **For the United Nations Treaty Bodies**

- Prioritise addressing the issue of privatisation and its impact on the realisation of the right to education in the review of periodic State reports and in the drafting of Concluding Observations and Recommendations.

#### **For the UN Human Rights Council**

- In the context of the Universal Periodic Review, ensure that countries under review are adequately examined with regards to the role they play in respecting, protecting and fulfilling the right to education, particularly in the context of privatisation.

**For the UN Special Rapporteur on the Right to Education**

- Work with all relevant stakeholders to develop a clear set of human rights based guidelines for States when considering laws, policies and programmes that consider privatisation of education or that have a privatising effect in order to ensure the protection and promotion of international human rights legal standards.

## ANNEX

**Table 1: Summaries of PERI Studies and their Methodology**

Title of PERI study	Author(s) of PERI study	Country/ Region studied	Summary of PERI study	Methodology applied in PERI study
The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring	Monazza Aslam and Paul Atherton	Northern India (Uttar Pradesh, Bihar) and Pakistan (Punjab, Sindh, Khyber Pakhtunkhwa, Balochistan, Gilgit-Baltistan, Azad Jammu, Kashmir and Islamabad)	This study examines the private tutoring industry in India and Pakistan in order to determine the size, nature and the consequent equity effects of the industry. The study finds that the option of tuition outside of normal school hours changes the incentive structure of the provision of high-quality instruction within the standard school system, which in turn has implications for equity and social justice.	Household and individual surveys
Understanding Private Educationscape(s) in Nepal	Pramod Bhatta and Shak Budathoki	Nepal (Baglung, Morang, Makawanpur, Bardiya)	This study examines the different types of private schools operating in Nepal, and the impact that the establishment of a private school has on the public schools in the same area. The authors also assess the causes, motives and consequences of a student shifting from a public school to a private school. The study's main finding is that private schools have better reputations than public schools, due to marketing and recruitment of high-performing students, which creates the demand for private schooling.	Site visits, interviews, government data
Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice	Mohomodou Boncana	Mali	The study seeks to assess the benefits of privately-funded, Islamic schools as seen by parents, graduates, students and school officials, and argues that these schools are unfairly excluded from receiving government funding.	Focus groups
The Public-Private Education System in Cambodia: The Impact and Implications of Complementary Tutoring	William C. Brehm, Iveta Silova and Tuot Mono	Cambodia	The common metaphor for private tutoring is 'shadow education', implying a separation between public schooling and private tutoring. The authors argue that in Cambodia the main form of private tutoring is not a shadow separate from mainstream schooling, rather it is a compulsory (private) portion of public education and not a distorted	Focus groups, interviews, analysis, observation, comparison of student attainment.

			shadow, and that a public-private hybrid system exists in Cambodia.	
Possible Impacts of Socialization Process on Access of the Rural Poor to Education in Vietnam	Duong Thi Viet Anh and Ta Van Tuan	Vietnam (Lai Chai, Ha Tinh and DakLak)	In Vietnam, privatisation is referred to as socialisation. The study assesses the possible impacts of the socialisation process on the rural poor's ability to access education services in Vietnam. The study finds that household education expenses have significantly increased since socialization was implemented, causing further economic barriers to education for low-income families.	Interviews, surveys
Determinants of School Choice: Evidence from Rural Punjab	Naved Hamid and Masooma Habib	Pakistan (Punjab)	The paper seeks to determine why Pakistan has experienced a rise in low-fee private schools, and what factors determine a family's decision to send a child to a private school as opposed to an existing public school. The authors conclude that the demand for private schools exists for different reasons at different levels of schooling, which include cost, location, academic standard, and employment opportunities.	Surveys
Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India	Baela R. Jamil, Kiran Javaid and Baladevan Rangaraju	Pakistan (Rawalpindi and Peshawar) India (Delhi, Patna and Sonipat)	This paper examines the role, spread and nature of non-state actors in the education sectors in Pakistan and India. It considers the impact this has on social justice in terms of exclusion/inclusion, choice and equity.	Surveys
Education, Conflict and Identity: Non-State Ethnic Education Regimes in Burma	Marie Lall and Ashley South	Burma (Karen State and Mon State)	This paper is a comparison between Mon and Karen-populated areas of Burma, and examines how ceasefire agreements between armed groups and the government have affected education delivered by private actors.	Field trips, semi-structured interviews
Causes and Consequences of the Privatisation of Public Schools in Post-Conflict Societies: The Case of Liberia and Sierra Leone	Samba Moriba	Liberia and Sierra Leone	This study seeks to investigate possible causes and consequences of school privatisation in Liberia and Sierra Leone. It seeks to identify challenges that Liberians and Sierra Leoneans are faced with amid the increased privatisation of public education, to explore factors influencing the privatisation process, and to look at the types of education system that would enhance the social mobility of students.	Surveys, interviews, focus groups
The World Bank and the Private Provision of K-12 Education: History, Policies, Practices	Karen Mundy and Francine Menashy	N/A World Bank	This study seeks to determine the World Bank's position on private sector participation in education, and does so by reviewing the World Bank's formal policies and projects in Bangladesh, Haiti, Indonesia, Nepal, Pakistan and Uganda. The study finds that the World Bank's	Interviews, review of World Bank literature, case studies

			approach to private education is characterised by a stark disjuncture between policy and practice.	
The Implications of Privatisation for Citizenship Education: Views From Four Liberian Schools	Laura J. Quaynor	Liberia (Monrovia)	This study seeks to determine whether there are differences between students attending public and private schools in their understanding of citizenship and the education they receive. The author concludes that students in public and private schools in the Monrovia area are not being prepared equitably for citizenship, and that public schools may need to do more in order to foster participatory citizenship among students.	Focus groups, surveys, interviews, analysis of teaching materials
De Facto Privatisation of Basic Education in Africa: A Market Response to Government Failure? A Comparative Study of the Cases of Ghana and Nigeria	Caine Rolleston and Modupe Adefeso-Olateju	Ghana (Mfanteman District) Nigeria (Pedro)	This study seeks to explain the growth in low fee private schooling in Ghana and Nigeria, and to assess the impact of this on equity and social justice in these countries. The study focuses on parents' perceptions of private schools, and finds that the impact of the expanding private sector is unclear.	Interviews, secondary data from household and school surveys
A Perception Study of Section 12 of the Right of Children to Free and Compulsory Education Act, India (2009)	Parth Shah	India (Delhi)	This study seeks to assess and evaluate Section 12 of the Right to Education Act. This section requires private schools to allocate 25% of seats as 'freeships' that provide free tuition to students from economically and socially disadvantaged families. The author concludes that Section 12 of the RTE Act can help increase access to education and more importantly, provide marginalised families with the ability to choose their own schools. However in its current form, the clause is facing opposition from private schools because of the lack of clarity about the reimbursement procedure. The authors (the organisation) advocate for changes to be made in terms of increasing awareness levels and clearly defining reimbursement amounts and timelines.	Interviews, focus groups
Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest	Christine Sommers	Bangladesh (Dimla)	This study examines the quality and access dimensions of primary education providers in a poor rural area of northwest Bangladesh, with a focus on the social justice implications of a multi-tiered and poorly regulated system. The author concludes that while other providers can help to meet demand and generate innovation, the responsibility ultimately falls on the government to ensure quality	Observation, interviews, focus groups

			education for all children among these providers and in its own government-funded schools.	
Education Service Contracting in the Philippines	Cecilia V. Soriano	The Philippines (Masbate province, Northern Samar, Compostela Valley and Maguindanao)	This study focuses on education service contracting (ESC), whereby private schools are contracted to take excess enrolments from public schools. The study seeks to determine whether the ESC programme facilitates more equitable access to education, and assesses the programme's impact on social cohesion.	Interviews, focus groups, surveys, government data
India's Right to Education Act – Household Experiences and Private School Responses	Prachi Srivastava	India (Karampur)	This study examines the early phases of the implementation of the Right to Education Act, and focuses specifically on the role of the private sector and the 25% 'freeship' quota. The author finds that disadvantaged parents are often very aware and cautious about schooling decisions, but that they face severe institutional barriers in access, even with the RTE Act.	Household survey, interviews, observations
Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools	Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi	Nepal	This study explores the magnitude and dimensions of privatisation of school education in Nepal, especially focusing on disparity in attendance and parents' perception of private schools. The authors conclude that the numbers of private schools in Nepal is increasing; that there is disparity in school attendance by gender, social group, economic strata and place of residence; that parents' perceive that private education is of higher quality; and that private schools are not yet complying with the equity provisions required by the government.	Household and school surveys, interviews, workshop, government data
Privatisation and Teacher Education in Cambodia: Implications for Equity	James H. Williams and Yuto Kitamura	Cambodia	This study explores the complex inter-relationships between private-public provision, socioeconomic backgrounds of trainee teachers, and funding of teacher education. The authors conclude that privatisation appears simultaneously to provide greater access, to contribute to socio-economic stratification, to draw additional resources into the system, and to contribute to a culture where education (including teacher training) must to a substantial degree be paid for privately.	Surveys

**Table 2: Key Impacts on the Right to Education and Examples from the PERI Studies**

Key impacts on the right to education	Examples identified in PERI studies
<b>Positive:</b>	
Increased availability and/or accessibility (limited to certain groups)	<ul style="list-style-type: none"> <li>▪ Mali - physical accessibility was reported to increase, as madrassas were set up in local communities<sup>132</sup> (note: relevant only for boys who attend madrassas)</li> <li>▪ Bangladesh - non-government schools specifically aimed to increase accessibility for students usually excluded from education due to geographic distance<sup>133</sup> (query the impact this has on the State no longer taking responsibility for its duty to provide schools in such areas)</li> <li>▪ India/Pakistan - private schools are not necessarily expensive – 60% of private schools are “low cost”<sup>134</sup> (often made possible through low wages paid to teachers)</li> </ul>
Increased choice in type and style of education (for those who can afford it)	<ul style="list-style-type: none"> <li>▪ Burma, Cambodia, Nepal, Liberia, Mali, India – Private schools may be perceived to offer a more appealing and beneficial variety of curriculum choices (for those that can afford it, or the boys/other select groups able to attend)<sup>135</sup></li> <li>▪ Burma - the Mon monastic schools provide extra language, culture and computer education.</li> <li>▪ Private schools can be made religiously orientated, such as the madrasas in Mali, India<sup>136</sup></li> </ul>
Empowering parents’ participation in their children’s education (when financially invested)	<ul style="list-style-type: none"> <li>▪ Nepal - parental attitudes to education may change when they shift their children from public to private schooling, in becoming more active in their interests of the child’s education.<sup>137</sup></li> <li>▪ Philippines - parental participation in the decision making process for granting scholarships.<sup>138</sup></li> <li>▪ Bangladesh and Nepal - parental participation in school boards that oversee school activity.<sup>139</sup></li> <li>▪ Mali - madrasa schools involve parents in decision-making processes.<sup>140</sup></li> </ul>
Community perception that private education is of higher quality (may not be accurate or reliable)	<ul style="list-style-type: none"> <li>▪ Nepal - 75% of parents of students in private schools believe that their child’s schools are providing good education, compared to only 40% of parents of students in public schools.<sup>141</sup></li> <li>▪ Nepal - Parents of both private and public school children believe that graduates of private schools are more qualified than those from public schools.<sup>142</sup></li> </ul>
<b>Negative:</b>	
Prioritising the education of boys over girls	<ul style="list-style-type: none"> <li>▪ Nepal, India and Pakistan - girls less likely to be enrolled in private education than boys.<sup>143</sup></li> <li>▪ Sonipat, India - families are prepared to spend more on education for boys than girls.<sup>144</sup></li> <li>▪ India and Pakistan - households tend to prioritise boys over girls when making the decision to send a child to school at the outset.<sup>145</sup></li> <li>▪ Nepal - the proportion of girls in private schooling is consistently lower than that of boys for all levels.<sup>146</sup></li> </ul>

Disparity in teachers' pay	<ul style="list-style-type: none"> <li>▪ Nepal, India, Pakistan and Mali - in many instances, private school teachers are paid a minimal salary, considerably less than their public school peers.<sup>147</sup></li> <li>▪ Nepal - only 20% of private school teachers receive the salary as set by the government.<sup>148</sup></li> <li>▪ Cambodia - a teacher's salary insufficient for families in rural areas to live on because of housing and transport expenses.<sup>149</sup></li> </ul>
Enhanced stigmatisation and perpetuation of socio-economic differences and class barriers	<ul style="list-style-type: none"> <li>▪ Nepal and Bangladesh - limited scholarship opportunities specifically for low-income families.<sup>150</sup></li> <li>▪ Philippines - have to pay extra for educational supplies that would normally be provided for free at public schools.<sup>151</sup> In some instances, students attending private schools are also expected to directly contribute very basic supplies such as toilet paper and sanitizers.<sup>152</sup></li> <li>▪ Nepal - cost of private primary education can be up to 8 times more than public.<sup>153</sup></li> </ul>
Lack of standardisation, insufficient monitoring and inadequate regulation	<ul style="list-style-type: none"> <li>▪ Bangladesh - there is a significant lack of basic data and knowledge about quomi madrasa schools.<sup>154</sup></li> <li>▪ Nepal, Bangladesh, Pakistan and India - considerable number of private schools that operate without proper registration and licence.<sup>155</sup></li> <li>▪ India - survey of 151 schools in three districts in India, 89% were unlicensed.<sup>156</sup></li> <li>▪ Cambodia - no quality assurance re: teacher education, no mandatory training, minimum qualifications or ongoing education.<sup>157</sup></li> </ul>
Corrupt practices and survival strategies in the private tutoring 'shadow system'	<ul style="list-style-type: none"> <li>▪ India and Pakistan - More than 50% of Indian students and 15% of Pakistani students take private tutoring to supplement school learning and prepare for tests<sup>158</sup></li> <li>▪ India and Pakistan - teachers intentionally stop short of delivering the curriculum so that they can earn extra money through providing private lessons after school.<sup>159</sup></li> <li>▪ Ghana – creating a market for private tutoring to supplement teachers' income (i.e. through incomplete teaching of the core curriculum) is actively promoted by private school proprietors.<sup>160</sup></li> <li>▪ Cambodia - Teachers provide practical advice on how to succeed in and prepare for exams in private tutoring and not in formal classes.<sup>161</sup></li> </ul>
Likelihood of the State 'exiting the field'	<ul style="list-style-type: none"> <li>▪ States become dependent on private schools to provide education and then neglect the public sector, with low levels of expenditure: Philippines budget the equivalent to 2.9% GDP,<sup>162</sup> 2.4% GDP in Bangladesh,<sup>163</sup> and between 2.2% and 2.6% GDP in India.<sup>164</sup></li> </ul>



## NOTES

<sup>1</sup> The Privatisation in Education Research Initiative (PERI) is a global research and networking initiative seeking to animate an accessible and informed public debate on alternative education provision. In particular, it examines the social justice implications of changes in the coordination, financing and governance of education. It seeks to contribute to a better understanding of the mechanisms and outcomes of the marketisation, privatisation, and private sector participation in education evident through the increasing adoption of a widening range educational service regulation and delivery mechanisms in hopes of developing an evidence base to lead to more effective and equitable education systems. See further [www.periglobal.org](http://www.periglobal.org)

<sup>2</sup> Convention on the Rights of the Child (adopted 20/11/1989, entered into force 02/09/1990) 1577 UNTS 3, articles 3, 9, 18, 20, 21, 37, 40.

<sup>3</sup> The principle of non-discrimination covers all aspects of the right to education (e.g., access, teaching methods, learning materials, etc.) and ‘...includes any distinction, exclusion, limitation or preference, which being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education...’, UNESCO Convention against Discrimination in Education, (adopted 14/12/1960, entered into force 22/05/1962), article 1 (1).

<sup>4</sup> Fundamental education, which was not covered by the PERI studies, is a legal term referring to basic education for individuals who have not received or completed primary education, CESCR General Comment 13, para. 21-24.

<sup>5</sup> Committee on the Rights of the Child, General Comment 1: The Aims of Education, CRC/GC/2001 (2001).

<sup>6</sup> The right to an effective remedy is contained in numerous human rights treaties (e.g., the International Covenant on Civil and Political Rights) and generally refers to effective recourse to anyone who alleges a human rights violation, e.g., access to a competent court or tribunal.

<sup>7</sup> References to ‘private schools’ in this report are synonymous with ‘non-state’ provision of education.

<sup>8</sup> 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 p. 241.

<sup>9</sup> See World Declaration on Education for All, adopted by the World Conference on Education For All March 1990; Dakar Framework for Action (2000), adopted by the World Education Forum, April 2000, Millennium Development Goal 2 (2000). See also Harry Anthony Patrinos, Felipe Barrera-Orsola and Juliana Guáqueta (2009) *The Role and Impact of Public-Private Partnerships in Education* World Bank.

<sup>10</sup> United Nations Declaration of Human Rights (adopted 10/12/1948) 217 A (III) article 26; International Covenant on Economic, Social and Cultural Rights (adopted 16/12/1966, entered into force 03/01/1976), 993 UNTS 3, article 13(1); CRC article 28.

<sup>11</sup> Committee on the Rights of the Child, General Comment 1: The Aims of Education, CRC/GC/2001 (2001).

<sup>12</sup> UDHR, article 26(1), ICESCR article 13(2), CRC article 28(1).

<sup>13</sup> ICESCR, article 13(2) (e); Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education (article 13), E/C.12/1999/10 1999, para. 25-27.

<sup>14</sup> ICESCR, article 13(2) (e) (d); Committee on Economic, Social and Cultural Rights, General Comment 13: The Right to Education (article 13), E/C.12/1999/10 1999, para. 25.

<sup>15</sup> CESCR General Comment 13, para. 6.

<sup>16</sup> *Ibid.*, para. 47.

<sup>17</sup> *Ibid.*, paragraph 53.

<sup>18</sup> ICESCR, article 13 (2) (e).

<sup>19</sup> CESCR General Comment 3: The Nature of States Parties’ Obligations, E/1991/23 (1990)

<sup>20</sup> *Ibid.*

<sup>21</sup> ICESCR, article 13 (4).

<sup>22</sup> ICESCR, article 13 (3) and (4).

<sup>23</sup> See generally, Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, A/HRC/17/31 (2011) and Committee on the Rights of the Child General Comment 16 on State Obligations Regarding the Impact of the Business Sector on Children’s Rights, CRC/C/GC/16 (2013).

<sup>24</sup> CESCR General Comment 13, para. 29

<sup>25</sup> *Ibid.* para. 30.

<sup>26</sup> *Ibid.* para. 47.

<sup>27</sup> CRC General Comment 16, para. 33.

<sup>28</sup> ICESCR, article 13 (3) and (4).

<sup>29</sup> Mohomodou Boncana (2012) ‘Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice’ *Education Support Programme Working Paper Series*, No. 41, Open Society Foundation, New York; Naved Hamid and Masooma Habib, ‘Determinants of School Choice: Evidence

from Rural Punjab' (awaiting publication); Karen Mundy and Francine Menashy (2012) 'The World Bank and the Private Provision of K-12 Education: History, Policies, Practices' *Education Support Programme Working Paper Series*, No. 40, Open Society Foundation, New York; Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication); James H Williams and Yuto Kitamura (2012) 'Privatisation and Teacher Education in Cambodia: Implications for Equity' *Education Support Programme Working Paper Series*, No. 45, Open Society Foundation, New York; Laura J. Quaynor (2012) 'The Implications of Privatisation for Citizenship Education: Views From Four Liberian Schools' *Education Support Programme Working Paper Series*, No. 42, Open Society Foundation, New York.

<sup>30</sup> Mohomodou Boncana (2012) 'Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice' *Education Support Programme Working Paper Series*, No. 41, Open Society Foundation, New York.

<sup>31</sup> Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication).

<sup>32</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).

<sup>33</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation. New York.

<sup>34</sup> James H Williams and Yuto Kitamura (2012) 'Privatisation and Teacher Education in Cambodia: Implications for Equity' *Education Support Programme Working Paper Series*, No. 45, Open Society Foundation, New York; Cecilia V Soriano 'Education Service Contracting in the Philippines' (awaiting publication); Prachi Srivastava 'India's Right to Education Act – Household Experiences and Private School Responses' (awaiting publication).

<sup>35</sup> Prachi Srivastava 'India's Right to Education Act – Household Experiences and Private School Responses' (awaiting publication).

<sup>36</sup> Cecilia V Soriano 'Education Service Contracting in the Philippines' (awaiting publication). For another example of privatisation addressing overcrowding in public schools, see Duong Thi Viet Anh and Ta Van Tuan 'Possible Impacts of Socialization Process on Access of the Rural Poor to Education in Vietnam' (awaiting publication).

<sup>37</sup> CESCR General Comment 13, para. 6 (a).

<sup>38</sup> *Ibid*, para. 6 (b).

<sup>39</sup> Marie Lall and Ashley South 'Education, Conflict and Identity: Non-State Ethnic Education Regimes in Burma' (awaiting publication); James H. Williams and Yuto Kitamura (2012) 'Privatisation and Teacher Education in Cambodia: Implications for Equity' *Education Support Programme Working Paper Series*, No. 45, Open Society Foundation, New York; Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).

<sup>40</sup> Mohomodou Boncana (2012) 'Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice' *Education Support Programme Working Paper Series*, No. 41, Open Society Foundation, New York; Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication).

<sup>41</sup> William C Brehm, Iveta Silova and Tuot Mono (2012) 'The Public-Private Education System in Cambodia: The Impact and Implications of Complementary Tutoring' *Education Support Programme Working Paper Series*, No. 39, Open Society Foundation, New York; Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York.

<sup>42</sup> Caine Rolleston and Modupe Adefeso-Olateju (2012) 'De Facto Privatisation of Basic Education in Africa: A Market Response to Government Failure? A Comparative Study of the Cases of Ghana and Nigeria' *Education Support Programme Working Paper Series*, No. 44. New York: Open Society Foundation; Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York; Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).

<sup>43</sup> For example, Caine Rolleston and Modupe Adefeso-Olateju (2012) 'De Facto Privatisation of Basic Education in Africa: A Market Response to Government Failure? A Comparative Study of the Cases of Ghana and Nigeria' *Education Support Programme Working Paper Series*, No. 44. New York: Open Society Foundation.

<sup>44</sup> See more on this topic in the section on Perceptions Regarding Quality.

<sup>45</sup> Pramod Bhatta and Shak Budathoki 'Understanding Private Educationscape(s) in Nepal' (awaiting publication).

<sup>46</sup> *Ibid*.

<sup>47</sup> *Ibid*.

- <sup>48</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>49</sup> Pramod Bhatta and Shak Budathoki 'Understanding Private Educationscape(s) in Nepal' (awaiting publication).
- <sup>50</sup> See also Report of the Special Rapporteur on the right to education, Kishore Singh, The Right to Education, A/68/294, 9 August 2013, p. 20.
- <sup>51</sup> CESCR General Comment 13, para. 1.
- <sup>52</sup> Karen Mundy and Francine Menashy (2012) 'The World Bank and the Private Provision of K-12 Education: History, Policies, Practices' *Education Support Programme Working Paper Series*, No. 40, Open Society Foundation, New York.
- <sup>53</sup> Cecilia V Soriano 'Education Service Contracting in the Philippines' (awaiting publication).
- <sup>54</sup> Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication); Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>55</sup> ICESCR, article 13 (1); CESCR General Comment 13 para. 49.
- <sup>56</sup> See more about accountability measures in the section on Lack of Standardisation, Monitoring and Regulation.
- <sup>57</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>58</sup> *Ibid.*
- <sup>59</sup> Naved Hamid and Masooma Habib, 'Determinants of School Choice: Evidence from Rural Punjab' (awaiting publication); Pramod Bhatta and Shak Budathoki 'Understanding Private Educationscape(s) in Nepal' (awaiting publication).
- <sup>60</sup> Prachi Srivastava 'India's Right to Education Act – Household Experiences and Private School Responses' (awaiting publication); Pramod Bhatta and Shak Budathoki 'Understanding Private Educationscape(s) in Nepal' (awaiting publication).
- <sup>61</sup> Caine Rolleston and Modupe Adefeso-Olateju (2012) 'De Facto Privatisation of Basic Education in Africa: A Market Response to Government Failure? A Comparative Study of the Cases of Ghana and Nigeria' *Education Support Programme Working Paper Series*, No. 44, Open Society Foundation, New York.
- <sup>62</sup> Conversely, see Section on Negative Impacts which highlight some examples of poor quality indicators found in the PERI research, such as under-paid and under-qualified teachers and lack of effective monitoring of private providers.
- <sup>63</sup> CESCR General Comment 13, para. 6 (d) & (e).
- <sup>64</sup> ICESCR, article 13 (3) & (4); CESCR General Comment 13, para. 6, 27, 54 & 57.
- <sup>65</sup> Bailey Grey (2012) 'Using Human Rights Standards to Assess Privatisation of Education in Africa', [http://www.right-to-education.org/sites/r2e.gn.apc.org/files/18.Using\\_Human\\_Rights\\_Standards\\_to\\_Assess\\_Privatisation\\_Africa\\_Grey\\_2012.pdf](http://www.right-to-education.org/sites/r2e.gn.apc.org/files/18.Using_Human_Rights_Standards_to_Assess_Privatisation_Africa_Grey_2012.pdf)
- <sup>66</sup> CESCR General Comment 13, para. 49.
- <sup>67</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication); Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication); Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York.
- <sup>68</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York.
- <sup>69</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>70</sup> Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication); Mohomodou Boncana (2012) 'Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice' *Education Support Programme Working Paper Series*, No. 41, Open Society Foundation, New York.
- <sup>71</sup> Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication).
- <sup>72</sup> Duong Thi Viet Anh and Ta Van Tuan 'Possible Impacts of Socialization Process on Access of the Rural Poor to Education in Vietnam' (awaiting publication).
- <sup>73</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>74</sup> Prachi Srivastava 'India's Right to Education Act – Household Experiences and Private School Responses' (awaiting publication).

- <sup>75</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication); Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York; Pramod Bhatta and Shak Budathoki 'Understanding Private Educationscape(s) in Nepal' (awaiting publication).
- <sup>76</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>77</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York. See also Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York.
- <sup>78</sup> *Ibid.*
- <sup>79</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>80</sup> *Ibid.*
- <sup>81</sup> UNESCO Convention against Discrimination in Education, article 2(a).
- <sup>82</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York; Mohomodou Boncana (2012) 'Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice' *Education Support Programme Working Paper Series*, No. 41, Open Society Foundation, New York; Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication); Prachi Srivastava 'India's Right to Education Act – Household Experiences and Private School Responses' (awaiting publication).
- <sup>83</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>84</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York; Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>85</sup> Caine Rolleston and Modupe Adefeso-Olateju (2012) 'De Facto Privatisation of Basic Education in Africa: A Market Response to Government Failure? A Comparative Study of the Cases of Ghana and Nigeria' *Education Support Programme Working Paper Series*, No. 44, Open Society Foundation, New York.
- <sup>86</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York.
- <sup>87</sup> Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication).
- <sup>88</sup> *Ibid.*
- <sup>89</sup> ICESCR, article 7.
- <sup>90</sup> For example, see James H Williams and Yuto Kitamura (2012) 'Privatisation and Teacher Education in Cambodia: Implications for Equity' *Education Support Programme Working Paper Series*, No. 45, Open Society Foundation, New York.
- <sup>91</sup> *Ibid.*
- <sup>92</sup> William C Brehm, Iveta Silova and Tuot Mono (2012) 'The Public-Private Education System in Cambodia: The Impact and Implications of Complementary Tutoring' *Education Support Programme Working Paper Series*, No. 39, Open Society Foundation, New York; Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York; James H Williams and Yuto Kitamura (2012) 'Privatisation and Teacher Education in Cambodia: Implications for Equity' *Education Support Programme Working Paper Series*, No. 45, Open Society Foundation, New York.
- <sup>93</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York.
- <sup>94</sup> James H Williams and Yuto Kitamura (2012) 'Privatisation and Teacher Education in Cambodia: Implications for Equity' *Education Support Programme Working Paper Series*, No. 45, Open Society Foundation, New York.

- 
- <sup>95</sup> Prachi Srivastava 'India's Right to Education Act – Household Experiences and Private School Responses' (awaiting publication).
- <sup>96</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>97</sup> CESCR General Comment 13, para. 50.
- <sup>98</sup> Katarina Tomasevski (2006) The State of the Right to Education Worldwide Fee or Free: 2006 Global Report, [http://www.katarinatomasevski.com/images/Global\\_Report.pdf](http://www.katarinatomasevski.com/images/Global_Report.pdf), xxii.
- <sup>99</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>100</sup> Prachi Srivastava 'India's Right to Education Act – Household Experiences and Private School Responses' (awaiting publication).
- <sup>101</sup> For example, see Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>102</sup> Cecilia V. Soriano, 'Education Service Contracting in the Philippines' (awaiting publication); Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication); Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>103</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication) p. 55.
- <sup>104</sup> Cecilia V. Soriano, 'Education Service Contracting in the Philippines' (awaiting publication).
- <sup>105</sup> *Ibid.*
- <sup>106</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>107</sup> Naved Hamid and Masooma Habib, 'Determinants of School Choice: Evidence from Rural Punjab' (awaiting publication); Caine Rolleston and Modupe Adefeso-Olateju (2012) 'De Facto Privatisation of Basic Education in Africa: A Market Response to Government Failure? A Comparative Study of the Cases of Ghana and Nigeria' *Education Support Programme Working Paper Series*, No. 44, Open Society Foundation, New York.
- <sup>108</sup> Cecilia V. Soriano, 'Education Service Contracting in the Philippines' (awaiting publication).
- <sup>109</sup> Samba Moriba 'Causes and Consequences of the Privatisation of Public Schools in Post-Conflict Societies: The Case of Liberia and Sierra Leone (awaiting publication).
- <sup>110</sup> See more about this in the section on the Possibility of the State Exiting the Field.
- <sup>111</sup> William C Brehm, Iveta Silova and Tuot Mono (2012) 'The Public-Private Education System in Cambodia: The Impact and Implications of Complementary Tutoring' *Education Support Programme Working Paper Series*, No. 39, Open Society Foundation, New York.
- <sup>112</sup> *Ibid.*
- <sup>113</sup> For example, see Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York.
- <sup>114</sup> *Ibid.*
- <sup>115</sup> *Ibid.*
- <sup>116</sup> William C Brehm, Iveta Silova and Tuot Mono (2012) 'The Public-Private Education System in Cambodia: The Impact and Implications of Complementary Tutoring' *Education Support Programme Working Paper Series*, No. 39, Open Society Foundation, New York.
- <sup>117</sup> Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York.
- <sup>118</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York.
- <sup>119</sup> Rolleston and Modupe Adefeso-Olateju (2012) 'De Facto Privatisation of Basic Education in Africa: A Market Response to Government Failure? A Comparative Study of the Cases of Ghana and Nigeria' *Education Support Programme Working Paper Series*, No. 44. New York: Open Society Foundation.
- <sup>120</sup> Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York.
- <sup>121</sup> Pramod Bhatta and Shak Budathoki 'Understanding Private Education(s) in Nepal' (awaiting publication).
- <sup>122</sup> *Ibid.*, p. 2.
- <sup>123</sup> Prachi Srivastava 'India's Right to Education Act – Household Experiences and Private School Responses' (awaiting publication).
- <sup>124</sup> Cecilia V Soriano 'Education Service Contracting in the Philippines' (awaiting publication).

- 
- <sup>125</sup> CESCR General Comment 13, para. 43. See p. 16 for more on Progressive Realisation.
- <sup>126</sup> The aims of education include the full development of the human personality, dignity, respect for human rights and fundamental freedoms, participation, and good relations among groups; See generally CRC General Comment 1.
- <sup>127</sup> CESCR General Comment 13, Para. 57. See also, 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, p. 232-237.
- <sup>128</sup> States are obliged to ensure universal free and compulsory primary education, and to ensure that secondary and technical / vocational education and higher education are generally available, accessible and progressively free. Also, fundamental education, generally referring to individuals that have not completed basic education or did not have access to basic education, should be encouraged.
- <sup>129</sup> CESCR General Comment 13, para. 54.
- <sup>130</sup> *Ibid*, para. 45.
- <sup>131</sup> Fundamental education, which was not covered by the PERI studies, is a legal term referring to basic education for individuals who have not received or completed primary education, CESCR General Comment 13, para. 21-24.

## ANNEX NOTES

- <sup>132</sup> Mohomodou Boncana (2012) 'Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice' *Education Support Programme Working Paper Series*, No. 41, Open Society Foundation, New York.
- <sup>133</sup> Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication).
- <sup>134</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York.
- <sup>135</sup> Marie Lall and Ashley South 'Education, Conflict and Identity: Non-State Ethnic Education Regimes in Burma' (awaiting publication); James H. Williams and Yuto Kitamura (2012) 'Privatisation and Teacher Education in Cambodia: Implications for Equity' *Education Support Programme Working Paper Series*, No. 45, Open Society Foundation, New York; Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication); Samba Moriba 'Causes and Consequences of the Privatisation of Public Schools in Post-Conflict Societies: The Case of Liberia and Sierra Leone' (awaiting publication); Mohomodou Boncana (2012) 'Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice' *Education Support Programme Working Paper Series*, No. 41, Open Society Foundation, New York; Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication).
- <sup>136</sup> Mohomodou Boncana (2012) 'Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice' *Education Support Programme Working Paper Series*, No. 41, Open Society Foundation, New York; Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication).
- <sup>137</sup> Pramod Bhatta and Shak Budathoki 'Understanding Private Education(s) in Nepal' (awaiting publication).
- <sup>138</sup> Cecilia V Soriano 'Education Service Contracting in the Philippines' (awaiting publication).
- <sup>139</sup> Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication); Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>140</sup> Mohomodou Boncana (2012) 'Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice' *Education Support Programme Working Paper Series*, No. 41, Open Society Foundation, New York.
- <sup>141</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>142</sup> *Ibid*.
- <sup>143</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication); Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York; Pramod Bhatta and Shak Budathoki 'Understanding Private Education(s) in Nepal' (awaiting publication).

- 
- <sup>144</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York. See also Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York.
- <sup>145</sup> *Ibid.*
- <sup>146</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>147</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York; Mohomodou Boncana (2012) 'Madrasas or Privately Funded Islamic Faith-Based Schools in Mali and Issues of Social Justice' *Education Support Programme Working Paper Series*, No. 41, Open Society Foundation, New York; Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication); Prachi Srivastava 'India's Right to Education Act – Household Experiences and Private School Responses' (awaiting publication).
- <sup>148</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>149</sup> For example see James H Williams and Yuto Kitamura (2012) 'Privatisation and Teacher Education in Cambodia: Implications for Equity' *Education Support Programme Working Paper Series*, No. 45, Open Society Foundation, New York.
- <sup>150</sup> Cecilia V. Soriano, 'Education Service Contracting in the Philippines' (awaiting publication); Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication); Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>151</sup> Cecilia V. Soriano, 'Education Service Contracting in the Philippines' (awaiting publication).
- <sup>152</sup> Samba Moriba 'Causes and Consequences of the Privatisation of Public Schools in Post-Conflict Societies: The Case of Liberia and Sierra Leone (awaiting publication).
- <sup>153</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication).
- <sup>154</sup> Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication).
- <sup>155</sup> Govind Subedi, Madan Shrestha, Raju Maharjan and Mukti Suvedi 'Dimensions and Implications of Privatisation of Education in Nepal: The Case of Primary and Secondary Schools' (awaiting publication); Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication); Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York.
- <sup>156</sup> Baela R Jamil, Kiran Javaid and Baladevan Rangaraju (2012) 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India' *Education Support Programme Working Paper Series*, No. 43, Open Society Foundation, New York.
- <sup>157</sup> James H Williams and Yuto Kitamura (2012) 'Privatisation and Teacher Education in Cambodia: Implications for Equity' *Education Support Programme Working Paper Series*, No. 45, Open Society Foundation, New York.
- <sup>158</sup> Monazza Aslam and Paul Atherton (2012) 'The 'Shadow' Education Sector in India and Pakistan: The Determinants, Benefits and Equity Effects of Private Tutoring' *Education Support Programme Working Paper Series*, No. 38, Open Society Foundation, New York.
- <sup>159</sup> *Ibid.*
- <sup>160</sup> Rolleston and Modupe Adefeso-Olateju (2012) 'De Facto Privatisation of Basic Education in Africa: A Market Response to Government Failure? A Comparative Study of the Cases of Ghana and Nigeria' *Education Support Programme Working Paper Series*, No. 44, Open Society Foundation, New York.
- <sup>161</sup> William C Brehm, Iveta Silova and Tuot Mono (2012) 'The Public-Private Education System in Cambodia: The Impact and Implications of Complementary Tutoring' *Education Support Programme Working Paper Series*, No. 39, Open Society Foundation, New York.
- <sup>162</sup> Cecilia V Soriano 'Education Service Contracting in the Philippines' (awaiting publication).
- <sup>163</sup> Christine Sommers 'Primary Education in Rural Bangladesh: Degrees of Access, Choice, and Participation of the Poorest' (awaiting publication).
- <sup>164</sup> Prachi Srivastava 'India's Right to Education Act – Household Experiences and Private School Responses' (awaiting publication).