

Background Paper The Learning Generation

Ensuring Mixed Education Systems Comply with Human Rights

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Right to Education

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Ensuring Mixed Education Systems comply with Human Rights

by the Right to Education Project (Dr. Maria Ron-Balsera, Delphine Dorsi, Trine Petersen)

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1. Summary

Constrained budgets, coupled with weakening State capacity, political choices and rapid increase in enrolments have led to increasing private sector involvement in education during the past three decades, creating mixed education systems. Private education and Public-Private Partnerships are being promoted and explored by some education stakeholders as a solution to a lack of sufficient public provision of education or underperforming public schools. However, the rapid expansion of private actors in education, particularly profit driven companies, has raised concerns about its impact on human rights. This article proposes five criteria based on international human rights law to assess in which instances private involvement in education promotes or hinders the right to education. Three case studies are then analysed using these criteria, followed by recommendations to guide States in the planning and regulation of mixed education systems.

While international human rights law imposes on States the obligation to implement and guarantee the right to education for all, on the basis of the principles of equality and non-discrimination, it also recognises the freedom of private actors to establish and direct educational institutions in connection with the freedom of parents to ensure the religious and moral education of their children in conformity with their convictions. However, the social dimension of the right to education limits the exercise of this freedom imposing obligations on States as regards the involvement of private actors in education. Analysis of international human rights law indicates that private actors' involvement in education is aligned with human rights when the following criteria are met:

- Does not lead to any form of discrimination or segregation, or create or increase inequality;
- Does not lead to fee-charging private primary schools being the only option, are optional and exist in addition to quality free publically-supported schools
- Private providers are adequately regulated and monitored, including pedagogy, infrastructure and teacher qualifications;
- The humanistic nature of education is preserved;
- Their role is publically debated in line with the principles of transparency and participation

This report aims to clarify the relevant provisions in human rights law that refers to the involvement of non-State actors in education in mixed education systems. Referring to international human rights law, it analyses three cases studies selected to represent the wide variety of roles played by non-state providers in different geographical areas.

The first case study looks at how, after being pushed by successive student uprisings, Chile's new Inclusion Law is trying to reverse the segregation produced by more than three decades of a neoliberal voucher system, where the type of schools that students attended was determined by their ability to pay as well as other school selection criteria. The analysis shows that the neoliberal reforms led to human rights violations, particularly, in terms of increasing social inequalities and discrimination. The new reforms, particularly the Inclusion Law, appears to put the Chilean education system in line with the human rights criteria stated above. The most important changes are related to the end of student selection that had led to discrimination; ending co-payment, making it free of charge; and no longer subsidising for-profit companies. However, the question remains of whether these reforms will increase the availability and quality of public schools and reverse the negative socioeconomic impact on educational opportunities and performance of the previous system.

The second case study analyses some of Pakistan's efforts to tackle the huge number of out-of-school children, gender and socioeconomic inequalities, and the historical underfunding of

education, inviting non-state actors to improve public schools through the Adopt a School Program and its evolution into Education Management Organisation Model. Although Pakistan has been a space where many different forms of mixed education provision have emerged; the case of Sindh is highlighted due to its focus on community involvement and improvement of the public education system. It finds that the Education Management Organisation Model has potential to meet the above criteria due to the strengthening of public schools; being free of charge; aiming to reach out-of-school children and traditionally marginalised groups; and being not-for-profit. However, there are doubts regarding the situation of teachers in these schools, as well as the sustainability and scalability of the model.

The third case study explores the opportunities and challenges offered by community schools in terms of reaching disadvantaged groups, enabling greater community participation and providing free and good quality education in countries such as Chad, Mali, Namibia or Zambia. This term encompasses a great diversity, but our analysis finds that for mixed education systems partly relying on community schools to comply with human rights law need to a) rely on community based management for transparency and participation in decision-making; b) provide free education, at least progressively; c) be accessible to all children without discrimination, including disadvantaged groups; d) connect with the public education system and transition into it, to ensure sustainability and valid education certificates for students; e) meet minimum education standards: both in terms of infrastructure and quality of education provided, at least progressively.

A common finding in the three case studies is the need to properly regulate and monitor non-State providers, in a planned, coordinated, transparent and participatory way that ensures compliance with human rights law. The need to regulate does not end in drafting and passing specific laws that are fit-for-purpose, but it also requires effective monitoring and enforcement mechanisms.

When non-State provision is part of market-driven reforms, it tends to lead to human rights violations, as we have seen in the case of Chile. However, some non-State actors could play a positive role in realising the right to education for all, such as the potential improvement of public schools that are the aim of the Education Management Organisation model in Sindh, Pakistan; or filling the education gap in hard-to-reach areas as many community schools that are now part of the national education system have done.

2. Introduction

“Mixed education systems”(henceforth MES) refers to the type of education provision where State and non-State-actors play a role in the delivery, management or inspection of education. This term is more inclusive than the ubiquitous “Public-Private Partnership” (henceforth PPP) - which implies the existence of a contract or agreement between the State and a private service provider - and captures a reality where education is increasingly being offered by multiple providers, sometimes not even recognised by the State, and some partnerships beyond the State, including multi-lateral agencies and transnational edu-businesses and philanthropies.

Private actors in education, meaning any non-State actor, are a heterogeneous group (Archer, 2016) that includes companies, religious institutions, non-governmental organisations, trusts or private individuals. Examples of non-State provision of education include the traditional understanding of a private school (i.e. independently owned by an entrepreneur, operated and funded outside of the public infrastructure), private tuition (sometimes called 'shadow schooling'), PPPs (such as voucher schemes, infrastructural contracts, charter and academy schools, amongst other arrangements), philanthropic or faith-based schools (e.g. madrassas, Catholic schools, charity schools, and not-for-profit schools), community schools as well as edu-businesses.

Although private education has had a long trajectory, there has been a worldwide exponential increase in terms of private sector involvement in education since the nineties. Private education is increasingly being promoted and explored by some education stakeholders as a solution to the lack of sufficient public provision of education or to underperforming public schools due to a growing demand unmatched by public funding. The scope, scale and penetration (Macpherson et al. 2014:9) of private involvement vary from country to country and from one initiative to another. There is also a great diversity in terms of the non-state-actors' claims to playing a role in education, which is reflected in their reach, practices and outcomes. The more traditional religious or philanthropic character of private provision of education is rapidly changing into a neoliberal approach where education is being traded as a commodity, seeking to profit from the \$4.9 trillion that the global education market is estimated to be worth (Verget et al., 2016). However, the rapid expansion of private actors in education, particularly profit driven companies, has raised concerns about the commercialisation of education and its impact on human rights (Singh, 2015a).

This report looks at three cases where non-State education actors have played an important role in the provision of education under different modalities and the ways they are aligned, or not, with the right to education. The first case study analyses the evolution of Chile's education system, from Pinochet's voucher reform to the student uprisings of 2001, 2006 and 2011 which led to the adoption of Bachelet's inclusion law, which aims to reverse the long-lasting extreme stratification and education inequality produced by Pinochet's neoliberal reform. The impact on the right to education that Chile's reforms have had are particularly important as its neoliberal reform is being emulated in other countries, and it is one of the longest running privatised education systems.

The second case study focuses on the Adopt a School Program in Sindh province in Pakistan, and its evolution into the Education Management Organisation model, as a way of tackling Pakistan's huge number of out-of-school children, gender and socioeconomic inequalities, and the historical underfunding of education. Pakistan has been a country where many different forms of mixed education provision have emerged; the case of Sindh is highlighted due to its focus on community involvement and the strengthening of the public education system.

The third case study explores the opportunities and challenges offered by community schools in terms of reaching disadvantaged groups, enabling greater community participation and providing free and good quality education in countries such as Chad, Mali, Namibia or Zambia

These three case studies are analysed using a human rights based approach, which explores how non-State actors' involvement in education can be regulated to ensure they comply with human rights, and in particular, with the right to education.

3. Mixed education systems and international human rights law

Education is a fundamental human right and is guaranteed under International human rights law¹, which contains a social and freedom dimension. On one hand, it guarantees the right to education of everyone on the basis of the principles of equality and non-discrimination, requiring States to adopt measures to ensure its full realisation, including "the development of a system of schools at all levels" (ICESCR, Article 13). On the other hand, it recognises the liberty of private actors to establish and direct educational institution, in connection with the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions, which includes the liberty to choose for their children schools other than public schools. These liberties were recognised

¹ Mainly the International Covenant on Economic, Social and Cultural Rights (Articles 13 and 14), the Convention on the Right of the Child (Articles 28 and 29) and the UNESCO Convention against Discrimination in Education. Other treaties and Conventions guarantee the right to education at international level. See Right to Education Project, International Instruments: <http://www.right-to-education.org/page/international-law>

in international law after the Second World War, among other things, to guarantee pluralism in the society, as a possible alternative to dictatorships (Ron-Balseira and Marphatia, 2012; Grau, 2015). However, these liberties are not absolute, and international human rights law frames their exercise.

What the right balance is between the liberties in education and the obligation to guarantee other dimensions of the right to education, is a difficult question, which is currently being researched by the Right to Education Project and the Global Initiative for Economic, Social and Cultural Rights, which are developing Guiding Principles on the issue by analysing the human rights law. However, based on the analysis of existing laws, several expert workshops, and the analysis of the situation in twelve countries, these organisations have preliminarily identified five criteria to assess the role of private actors against human rights standards.² These criteria provide an initial understanding of the limitation of the role and the conditions under which private actors may provide education services. Accordingly, the involvement of private actors in education is compliant with human rights standards when the existence or growth of private actors in education³:

- Does not lead to any form of discrimination or segregation, or create or increase inequality;
- Does not lead to fee-charging private primary schools being the only option, are optional and exist in addition of quality free publically-supported schools;
- Private providers are adequately regulated and monitored, including on pedagogy, infrastructure and teacher qualifications;
- Does not undermine the humanistic nature of education;
- The role of private actors is publically debated in line with the principles of transparency and participation.

Firstly, the exercise of the freedom of education should not lead to any form of discrimination or segregation, or create or increase inequality. International human rights law clearly states that it should not exclude any group (1960 UNESCO Convention, Article 2), with the State having the obligation to ensure it does not lead to extreme disparities of educational opportunity for some groups in society (CESCR, CG 13, § 30; CESCR, GC 2, § 39). In addition, States must ensure that the provision of essential services – such as education – by private actors *“does not threaten children’s access to services on the basis of discriminatory criteria”* (CRC, GC 16, § 34).

Secondly, human rights treaties are clear on everyone’s entitlement to free compulsory education at primary level, and that free education should be progressively introduced at the secondary and higher levels. Free education for all has been recognised as an essential element of the right to education (CESCR, GC 13, § 51) and the only way to reach the most marginalised groups (Bhalotra, Harttgen, and Klasen 2014). Human rights treaty bodies have repeatedly and consistently considered that fees should be eliminated as soon as possible, and that their introduction is contrary to the right

² These criteria have been developed by the Right to Education Project and the Global Initiative for Economic, Social and Cultural Rights based on an analysis of international human rights law, including treaties and their interpretation by courts and human rights bodies. These criteria have been used to assess the role of private actors from a human rights perspective in 12 countries and have been discussed with various experts (human rights and education specialists, CSOs, community practioners) in various fora, including at expert round tables and workshops at CIES (2015, 2016), UKFIET (2015), Science Po Paris (2015), and in Geneva (2014, 2015), London (2015), and Johannesburg (2015). This is an on-going work aiming at refining each criterion through a very careful analysis of the international human rights law. A forthcoming article which explains in details each criterion published in the Oxford Review of Education (Aubry, S. and Dorsi, D. 2016). For more information on the origin and application of these criteria to country contexts, see <http://bit.ly/privatisationproject>.

to education, often also noting their discriminatory impact. Options where private schools which are fee-charging and/or low-quality are, become, or threaten to become the only options available for some people, are therefore clearly in violation of human rights law.

The general principle is that private fee-charging educational institutions should exist in addition to public schools (ICESCR, Article 13.3)⁴ and attendance at such institutions should be optional (1960 UNESCO Convention, Article 2.b). This is also the understanding of the UN Special Rapporteur on the right to education, who emphasised: “governments should ensure that private providers only supplement public education, the provision of which is the Government’s responsibility, rather than supplant it”, adding: “it is important to ensure that States do not disinvest in public education by relying on private providers” (UN Special Rapporteur on the right to education 2014, § 96).

Ensuring the free provision of education for all necessarily implies the strong involvement of the State, either in direct provision, or in financing education. In most cases, this means that public free education should be the norm and provided for all. Indeed, according to international law, States have the principal responsibility of direct provision of education in most circumstances and an enhanced obligation to fulfil the right to education, in particular at the primary level (CESCR, GC 13, § 48). Supporting this point, the liberty to choose a non-State school recognised in article 13. 3 of the ICESCR is also recognised as a liberty to choose a school “other than those established by the public authorities”.

Thirdly, private educational institutions should conform to minimum educational standards established by States (ICESCR, Articles 13. 3 and 13.4; CRC, Article 29.2.) These minimum standards may relate to issues such as admission, curricula and the recognition of certificates and must be consistent with the educational objectives set out by international law (ICESCR, Article 13.1 and CESCR, GC 13 § 4 and CRC, Article 29)⁵. This means that States must provide for adequate regulation, implementation, and monitoring mechanisms, so as to ensure that private educational institutions provide an education of good quality, with respect to adequate infrastructure, school environment, education contents and methods, and teachers’ status among other aspects (Ron Balsera et al. 2016).

This implies a strong regulatory role for the State, which corresponds to its obligation to protect the right to education from third parties’ abuses. This obligation is particularly highlighted in one of the latest reports by the UN Special Rapporteur on the right to education on “*Protecting the right to education against commercialisation*” (Singh, 2015a), which recommends that States adopt a regulatory framework for private providers setting out their responsibilities and accountability requirements. In particular, the Special Rapporteur recommends that States abolish for-profit education institutions, regulate schools fees charged by private providers and strengthen the humanistic mission of education through laws and policies. According to international law, States must adopt specific measures that take account of the involvement of the private sector in

⁴ Article 13.3 of the International Covenant on Economic, Social and Cultural Rights recognises the liberty of parents to choose for their children schools “*other than those established by the public authorities*”, thereby assuming that there is a system of public schools available, which private educational institution provide an alternative to.

⁵ Committee on Economic, Social and Cultural Rights, GC 13, paragraph 29. Article 13.1 of the ICESCR states: “*The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.*”

education delivery to ensure the right to education is not compromised (CRC, GC 16, § 34). The Human Rights Council also adopted a landmark resolution⁶ on the right to education in July 2015, urging States to regulate and monitor private education providers and recognising the potential *“wide-ranging impact of the commercialization of education on the enjoyment of the right to education”*. The resolution emphasises the importance of *“expanding educational opportunities for all without discrimination, paying particular attention to girls, marginalized children and persons with disabilities, by, inter alia, recognizing the significant importance of public investment in education, to the maximum of available resources, and strengthening the engagement with communities, local actors and civil society to contribute to education as a public good”*.

Fourthly, the humanistic nature of the right to education must be preserved including when private actors are involved. According to international human rights law, education should be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms (ISCESCR, Article 13.1 and CRC, Article 29). The Committee on the Right of the Child elaborated that *“efforts to promote the enjoyment of other rights must not be undermined, and should be reinforced, by the values imparted in the educational process. This includes not only the content of the curriculum but also the educational processes, the pedagogical methods and the environment within which education takes place, whether it be the home, school, or elsewhere”* (CRC, GC 1, §8). The committee also insisted on the fundamental principle of the best interest of the child, which should be at the heart of all education systems and process. It underlined that *“the overall objective of education is to maximize the child’s ability and opportunity to participate fully and responsibly in a free society. It should be emphasized that the type of teaching that is focused primarily on accumulation of knowledge, prompting competition and leading to an excessive burden of work on children, may seriously hamper the harmonious development of the child to the fullest potential of his or her abilities and talents. [...]. Schools should foster a humane atmosphere and allow children to develop according to their evolving capacities”* (CRC, GC 1, §12).

The importance of a humanistic vision of education is also promoted by UNESCO in a recent paper the Organisation published on *Rethinking Education – Towards a global common goal?* (UNESCO, 2015). It underlines *“the purpose of education include: respect for life and human dignity, equal rights and social justice, cultural and social diversity, and a sense of human solidarity and shared responsibilities for a common future”*(UNESCO, 2015:38). The UN Special Rapporteur on the right to education also referred to the *“humanistic mission of education”* in the particular context of privatised education (Singh 2014, §54). He indicated that *“education benefits both the individual and society and must be preserved as public good so that the social interest is protected against the commercial interests in privatised education. Public authorities should not allow private providers to vitiate the humanistic objectives of education”* (Singh: 2014:§117), which entails at least: (1) *“preserving the social interest in education”* (Singh, 2014:§54), and *“giving primacy to common human values and the public character of education”* (Singh, 2015a:§82); (2) preserving *“cultural diversity”* (Singh, 2015a: §82), (3) *“not allowing the pursuit of material values to the detriment of a humanist mission of education”* and (4) to not allowing *“the propagation by private schools of a value system solely conducive to the market economy”* (Singh, 2015a: §82). A growth of private actors that undermine these dimensions would thus be contrary to the human rights framework.

Fifthly, the liberty to establish and direct educational institutions should be subject to democratic scrutiny and respect the human rights principles of transparency and participation (UDHR, Article

⁶ Human Rights Council, *Resolution on the Right to Education*, A/HRC/29/L.14/Rev.1, 2015: <http://bit.ly/1Mmu15F>

21.1; ICCPR, Article 25.a). In this regard, decisions and developments in relation to the education system, including the involvement of private providers of education, must be done in consultation with, and the participation of, various groups of society, including the poorest. This obligation has been highlighted in particular by the Committee on the Rights of the Child which recommends *“States Parties, when considering contracting out services to a non-state provider – either for-profit or non-profit, or international or local – undertake a comprehensive and transparent assessment of the political, financial and economic implications and the possible limitation on the rights of beneficiaries in general, and children in particular”* (CRC, 2002). In its General Comment 1 on the aims of education, the Committee also emphasised *“the role of national-level monitoring which seeks to ensure that children, parents and teachers can have an input in decisions relevant to education”* (CRC, GC 1).

Regarding PPPs specifically, international human rights law does not clearly state who the direct provider of education services should be (CESCR, GC 3, §8) but indicates that States have principal responsibility of direct provision of education in most circumstances (CESCR, GC 13, §48). The UN Special Rapporteur on the right to education dedicated a whole report on public-private partnerships in education and the right to education (Singh, 2015b) which provides guidance on how to interpret international law concerning this specific issue. According to him, “any modality or arrangement for PPPs should always be driven by a human rights approach, giving paramount importance to the norms and principles of the right to education” (§74). He recalls that even when governments collaborate with non-State providers in education, the State remains both the guarantor and regulator of the right to education” (§121) as stated by international law. He underlines that these partnerships must not impede access to quality education for all free of cost (§123), and recalls that the State must regulate and monitor public private partnerships (§128) and allocate the maximum resources available to the implementation of the right to education (§48).

On the financing side, an emerging treaty body practice and jurisprudence suggests that while public funding of private schools can exist, it can, generally, not be the unique or dominant solution for a whole country. The Committee on the Rights of the Child for instance recently recommended that Brazil “phase-out the transfer of public funds to the private education sector and review its policies with regard to fiscal and tax incentives for enrolment in private education institutions in order to ensure access to free quality education at all levels (...) by strictly prioritizing the public education sector in the distribution of public funds”, and “stop the purchase of standardized teaching and school management systems by municipalities from private companies” (CRC, Concluding observations, Brazil, 2015, §76). In the case of Chile, the Committee recommended that the State “accelerate the allocation of increased targeted resources to education, in particular in free public schools” (CRC, Concluding observations, Chile, 2015, §68).

The Committee on the Rights of the Child (CRC) and the Committee on Economic, Social and Cultural Rights (CESCR) have adopted other concluding observations related to mixed education systems. See extracts from the last two years in the table below.

Summary table on concluding observations related to mixed education system⁷

| STATE | BODY AND DOCUMENT | KEY EXTRACTS |
|--------|---|---|
| Brazil | CRC Concluding observations CRC/C/OPAC/BRA/CO/1 , paras. 75-76 (28 October 2015): http://bit.ly/1VTiVKy | <p>75. The Committee is concerned about the increased involvement of the private sector in education, in particular:</p> <p>(a) The high fees in private schools which exacerbate existing structural discrimination in access to education and reinforce educational inequalities;</p> <p>(b) The increase in public funding for the private education sector, including to profit-oriented education institutions as well as in the form of fiscal and tax incentives for enrolment in private education and funding for nurseries, pre-school and special education institutions through public-private partnerships (“convenimientos”);</p> <p>76. The Committee reminds the State party of its primary responsibility for guaranteeing and regulating education and reiterates the importance of public investment in education. In this regard the Committee recommends that the State party take into consideration the recommendations made by the Special Rapporteur on the right to education (A/HRC/29/30) and establish a comprehensive framework of regulations for private education providers. The Committee further recommends that the State party:</p> <p>(a) Establish a clear regulatory framework, under which all private education providers are obliged to report regularly to designated public authorities on their financial operations, in line with prescriptive regulations, covering matters such as school fees and salaries, and to declare, in a fully transparent manner, that they are not engaged in for-profit education as recommended by the Special Rapporteur on the right to education (A/HRC/29/30, para. 125);</p> <p>(b) Phase-out the transfer of public funds to the private education sector and review its policies with regard to fiscal and tax incentives for enrolment in private education institutions in order to ensure access to free quality education at all levels, in particular nurseries and pre-schools, for all children by strictly prioritizing the public education sector in the distribution of public funds;</p> |
| Chile | CESCR Concluding observations E/C.12/CHL/CO/4, para. 30 (19 June 2015) http://bit.ly/1RWOPkD | <p>30. The Committee welcomes the education reform undertaken by the State party and the efforts made to extend the coverage of primary education. However, it remains concerned that the lack of resources and, occasionally, the poor quality of public education continues to result in high levels of segregation and discrimination along socioeconomic lines, which has the effect of limiting social mobility in the State party (art. 13).</p> <p>The Committee recommends that the State party should:</p> <p>(a) Take the necessary measures to ensure that the reform of the education system eliminates all mechanisms that result in the discrimination and segregation of students based on their social or economic background and, inter alia, ensure the effective implementation of the Inclusive Education Act, which regulates school admissions, eliminates partial fee-paying and stipulates that educational establishments receiving State support must be non-profit-making;</p> <p>(b) Take the necessary measures to eliminate the sharp disparities in quality of education that currently exist between private, subsidized and public schools and to ensure that all schools have adequate infrastructure and suitably trained teaching staff;</p> |
| Chile | CRC, Concluding observations, CRC/C/CHL/CO/4-5, paras. 67 – 68 and 69 – 70 (15 October 2015), http://bit.ly/1XRUqg8 | <p>The Committee notes law No. 20845 on educational inclusion, regulating the admission of students, removing mixed funding and prohibiting profit in educational establishments receiving State funding. However, the Committee is concerned about:</p> <p>(a) The high level of segregation in the school system, the differences in the quality of education, the still limited coverage of rural areas and the deterioration of the material conditions in public educational institutions;</p> <p>[...]</p> <p>(d) The absence of a regulatory and monitoring framework regarding private educational establishments.</p> <p>2. The Committee recommends that the State party:</p> <p>(a) Promptly take measures to decrease segregation and to promote an egalitarian and inclusive educational system, prohibiting all schools, independently of the source</p> |

⁷ Extract from: Right to Education Project, Digest of Observations and Recommendations of Treaty Bodies on the Role of Private Actors and the Right to Education (2000-2015), 2015 and GI-ESCR, CRC, CESCR and CEDAW statements on private education, September 2014 – June 2015, 2015

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| | | <p>of funding, public or private, to select students on arbitrary criteria or socio-economic background;</p> <p>(b) Emphasize the quality of education and accelerate the allocation of increased targeted resources to education, in particular in free public schools;</p> <p>(c) Provide quality training for teachers, and dedicate resources to improve adequate and accessible infrastructure;</p> <p>(d) Increase efforts to improve conditions in schools in remote and rural areas and eliminate disparities in access to quality education between urban and rural areas; [...]</p> <p>(g) Promote the development of competencies, instances and procedures for children at the school level for the peaceful resolution of conflicts, in particular those of a political nature;</p> <p>(h) Develop and implement a regulatory and monitoring framework for the private educational sector ensuring respect for the principle of non-discrimination and promoting inclusion and respect for diversity;</p> <p style="text-align: center;">Aims of education</p> <p>The Committee is concerned about education being strictly evaluated according to instrumental and cognitive standards and indicators, excluding values and attitudes such as equality of rights between men and women, development of empathy, respecting commitments, participation in democratic life and respect for the environment.</p> <p>In the light of its GC No. 1 (2001) on the aims of education, the Committee recommends that the State party ensure, in all free, semi-private and private schools, that education contributes to the development of the fullest potential of every child, the development of respect for human rights, the preparation of the child for responsible life in a free society and the development of respect for the natural environment.</p> |
| Haiti | <p>CRC, Concluding Observations: Haiti, CRC/C/HTI/CO/2-3, paras 58 – 59 (29 January 2016) http://bit.ly/1TlaPTM</p> | <p>58. The Committee welcomes the measures adopted in the context of the policy of mass education. It is, however, concerned that efforts remain largely insufficient and that only a limited number of the targets of the Operational Plan have been achieved. While welcoming efforts made, the Committee is also deeply concerned that a significant number of children still do not have access to education, in particular children in street situations, children with disabilities, children in conflict with the law, children in remote areas, children engaged in labour, internally displaced children and children who have been expelled from the Dominican Republic. It also notes with concern that:</p> <p style="padding-left: 40px;">(g) The Office National pour le Partenariat en Education (ONAPE), supposed to improve the public-private partnership is not operative.</p> <p>59. The Committee reminds the State party its primary responsibility for guaranteeing and regulating education and urges the State party to provide for free access to primary education and to take all necessary measures to guarantee access to education for children in vulnerable situations. It also recommends that the State party:</p> <p style="padding-left: 40px;">(...)</p> <p style="padding-left: 40px;">(c) Increase the budget allocated to education, rehabilitate the infrastructure of the educational system, including by building additional schools, ensuring that schools are adequately equipped;</p> <p style="padding-left: 40px;">(d) Ensure that teachers are adequately qualified, expand and improve both pre-service and in-service teacher training, and provide adequate salaries for teachers paid in a timely manner;</p> <p style="padding-left: 40px;">(e) Establish a comprehensive regulatory framework for and regularly monitor private education providers, to ensure that they comply with quality standards, regularly report on their financial operations to relevant authorities, including on school fees and salaries, and that they do not engage in for-profit education;</p> <p style="padding-left: 40px;">(f) Ensure that public-private partnerships do not impede access to quality education for all children and guarantee that they do not serve private interests or entail any form of commercialization of education.</p> |
| Kenya | CRC | 56. The Committee welcomes the increase in enrolment and completion rates at |

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|--------|--|---|
| | <p>Concluding Observations, CRC/C/KEN/CO/3-5, paras. 56 – 57 (2 February 2016) http://bit.ly/1SNEIRX</p> | <p>primary and secondary education. However, the Committee is concerned about: ... (d) Low quality of education and rapid increase of private and informal schools, including those funded by foreign development aids, providing sub-standard education and deepening inequalities.</p> <p>57. With reference to the Committee's GC No. 1 (2001) on the aims of education, the Committee: ... (b) Guarantee the legal right to free mandatory education for all, without direct or hidden costs, including non-Kenyan citizens such as in particular refugee children. In doing so, prioritize free primary quality education at public schools over private schools and informal low cost schools and regulate and monitor the quality of education provided by private informal schools in line with the Convention;</p> |
| Uganda | <p>CESCR Concluding observations: Uganda, E/C.12/UGA/CO/1, para. 36 (24 June 2015) http://bit.ly/1BK6OrO</p> | <p>36. Recalling its GC No. 13 on right to education, the Committee recommends that the State party assumes primary responsibility for the provision of quality education to all children. To this end it should: (b) Allocate sufficient resources to the education sector with a view to improving infrastructure of schools including sanitation, working conditions of teachers, and teaching materials; (c) Strengthen regulations and expand monitoring and oversight mechanisms for private education institutions</p> |

4. Case studies

4. 1 Chile: Tackling the negative effects of neoliberal education policies

Chile: tackling the negative effects of the neoliberal education policies

Since the 1980s Chile has been the site of one of the world's longest-running and furthest reaching experiment in education reform involving mixed education provision.

The education policies that characterised Pinochet's dictatorship have resulted in a very pronounced socio-economic segmentation of the educational system with implications for access, equity and equal opportunity for students in a country with the most unequal income distribution among OECD member States.

Chile has one of the most unequal education systems in the world with more than 75% of the performance between students explained by socio-economic status and the highest share (40%) of private expenditure on all levels of education of OECD countries.

Widespread dissatisfaction with these inequalities gave rise to multiple political protests culminating in the election of a new government in 2013 on the back of promised education reforms aimed at reducing segregation, eliminating selection, banning profit, ensuring free education for all and quality and accountability at all levels, and reinforcing the role of public education.

The new government has pursued tax reforms to raise funds for education, and education policy reforms that limit profit making and selection in education, phase out fees to be paid by parents and provide fee free higher education for less privileged students.

The Chilean education system, and the level of inequality and systemic discrimination it involves, has had a major impact on the realisation of the right to education and to non-discrimination. While the new reforms are promising, questions remain about their ability to fully address the high levels of segregation and the neglect of public schools, which currently serve the most disadvantaged.

Background: Human rights issues created by Pinochet's neoliberal reforms

As a consequence of Pinochet's voucher system, Chile has one of the most unequal education systems in the world. According to PISA, Chile is the most segregated by socioeconomic status and disadvantaged families are the least likely to achieve high levels of performance. More than 75% of the performance differences between schools is explained by the socio-economic status of the students, far above the OECD average of 62.8%. Chile also has the highest share of private expenditure at all levels of education (OECD, 2014). These inequalities gave rise to the large-scale social uprisings that took place in 2006 and 2011, which, in turn, have led to Chile's current reforms to the constitution, tax and education systems that seek to reverse this economic segregation.

Pinochet's dictatorship (1973-1990) was characterised by neoliberal policies that privatised many public services, including education. Influenced by Milton Friedman, the voucher reform in Chile intended to expand choice by encouraging a rapid growth in private school enrolment, driven by an expansion of non-religious and for-profit schools. Each school's revenues were determined on a month-to-month basis by total enrolments and a government-determined voucher. Teachers lost their status as civil servants, reverting to municipal contracts, and school buildings and land were signed over to municipal control (Carnoy and McEwan, 2003:3).

During the Pinochet regime, the education system was completely transformed and became more unequal, less professional and more influenced by standardised tests (Castro-Hidalgo & Gómez, 2016). Castro-Hidalgo and Gómez (2016) have outlined the seven processes that characterised the Chilean education system under Pinochet:

- 1) Fee free education was limited to people in extreme poverty and was only available at the primary level
- 2) Educational supply was decentralised to allow private actors into the education system for efficiency and effectiveness gains. This meant that administration of schools were transferred to professional guilds linked to business
- 3) Public education was transferred to municipalities, which meant that teachers were no longer civil servants
- 4) Private citizens were allowed to set up schools using State subsidies
- 5) Subsidies provided to schools by the State were linked to student attendance rather than enrolment. This negatively impacted public schools in poorer neighbourhoods where more students missed school due to pressures to work or take care of younger siblings
- 6) Higher education was viewed as a private good, and as such was not subsidised by the State, meaning that students and their families would pay for further education. Scholarships, loans and bursaries were introduced to expand coverage but this was not sufficient to ensure access for all who wished to attend higher education
- 7) A nationwide assessment system known as Quality of Education Assessment System (*Sistema de Medición de la Calidad de la Educación*, SIMCE) which is still in use, was implemented. This system focuses on numeracy and literacy as measures of quality and resources were allocated accordingly

Thus, over three decades, Chile has been characterised by a universal voucher system, administrative decentralisation of public schools, teacher labour market deregulation, incorporation of private providers, parental choice and school competition. While this reform expanded the availability of education through the creation of new schools in some areas and cut some costs, researchers challenge whether this increased competition and greater choice fostered better quality of education. While there were savings in overall cost, these did not occur due to reducing "wasting" in school budgets or investing where most necessary, but in lowering the working conditions of

teachers and “cream-skimming” students, selecting lower cost and higher scoring students by locating schools, on average, in higher income neighbourhoods and by selecting higher rate of return students (Carnoy and McEwan, 2003, Ron Balsera and Marphatia, 2012). The cost and location of the schools also prevented the inclusion of more children from low-income backgrounds, especially in rural areas and those with special learning needs including disabilities (Ron Balsera and Marphatia, 2012).

There are mixed views on whether the introduction of vouchers and school choice improved performance of Chilean schools (Carnoy, 1998, McEwan and Carnoy, 2000). There is a lack of studies that use the same instruments to compare the situation before and after the reforms. Some cross-sectional studies that correct for selection processes have shown better performance in government-funded private schools but these differences ‘become small and insignificant with longitudinal data’ (OECD, 2012:54). Carnoy concludes “privatisation during 1980s in Chile reduced the public effort to improve schooling since it relied on the free market to increase achievement. The rise in achievement did not occur, and public schooling quality *may* have declined relative to private” (1998: 330). What seems certain is that working conditions for teachers worsened, with a greater percentage on short-term contracts, reduced salaries and pre-service training (Carnoy, 1998; Castro-Hidalgo and Gómez, 2016). The Chilean teacher performance evaluation system emphasised accountability over the developmental function of teacher evaluation constraining the extent to which evaluation processes helped teachers strengthen their practice (Santiago et al, 2013). The private school sector was not sufficiently integrated into the teacher evaluation framework, lacking public assurance that the majority of teachers (employed in the private sector) were evaluated on metrics aligned with national educational targets and learning objectives and adequately supported to do so (Santiago et al, 2013).

Although parental participation increased due to a wider selection of schools, their participation was primarily through choice and exit rather than in school governance/decision-making, thus raising doubts about how accountable the schools were to parents (Ron Balsera and Marphatia, 2012).

Since the fall of the regime, some incremental changes to the education system were made but these were insufficient to transform it. One of the significant legacies of this era is the universal voucher scheme that still characterises the system. Under this system, parents are given vouchers from the State to be redeemed at a chosen school. Schools, which could be public or private, were paid on a per child basis, and thus competed for students. Schools also implemented selection processes to increase school performance on the national assessment, attracting more students, thus accruing more vouchers and funding. Since 1993 private schools were also allowed to charge co-payments from parents.

In Chile 72% of private subsidised schools and 24% public (secondary) schools charge extra fees to parents, generating a strong socio-economic segmentation of the educational system (Garcia-Huidobro, 2007). Those who can pay the fees are then selected on the basis of interviews with parents, entrance exams and, in some cases, baptism certificates and parents' religious marriage certificate (Verger et al., 2014). This has resulted in nationwide segregation of students, with the type of schools that students attended determined by their ability to pay and selection process, while the funding available to schools was determined by the background of their students and their achievements in the assessment system. This has also meant that public schools have a lower budget per student than private subsidised schools and much lower than private schools, even when the students they teach normally require more resources to perform well academically. Thus, the system has resulted in public schools serving the most vulnerable populations with a diminished

budget, reinforcing and reproducing inequality in a country with the most unequal income distribution among OECD member States.

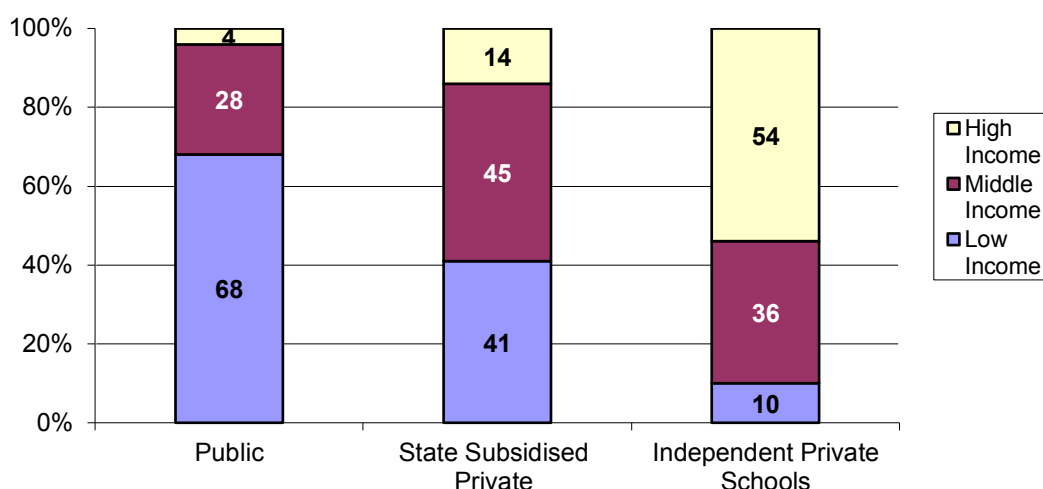


Fig. 1 Enrolment by type of school and income quintile of students in 2000 (Gonzalez, 2015)

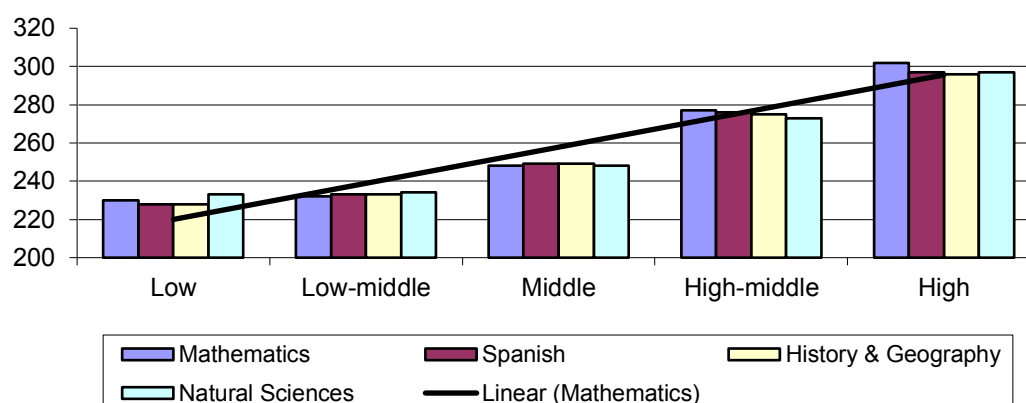


Fig. 2 Test results by subject and income quintile in 2000 (Gonzalez, 2015).

As we can see in Fig.1, there is a high correlation between the enrolment in public, State subsidised private or independent private school and social class, which results in a stratification of the Chilean student population by socio-economic status. Perhaps more concerning is the strong correlation between family's socio-economic status and students' academic performance (fig. 2), signalling the failure of the Chilean education system to provide a level playing field for educational opportunity. In 2012 the average difference in results between the students with the highest socio-economic background and the students with the lowest socio-economic background, was 105 points, higher than the OECD average of 96 points and the OECD noted "*Large differences in performance associated with the background of students and schools [...] signal that learning opportunities are not equitably distributed throughout a school system or that not all students have access to the high-quality instruction and material, financial and human resources that could help them succeed in school and beyond* (OECD, 2012).

Schools are further segregated by differentiated fees and selection processes. At the primary level, 32% of public schools, 54% of State-subsidised private schools and 90% of independent private

schools have some form of entry requirement that means they can select their students (Godoy et al, 2014). These include religious requirements, certificate of salaries, interviews with parents, entrance tests and certificates of grades at previous schools.

This kind of segregation has long lasting discriminatory effects. Research has shown that with equal skills, students who attended private schools in Chile earn salaries 18.5% higher than students who have attended public schools, in their first professional experience (Borbon, 2014).

The average Chilean student scores lower than the OECD average on the PISA scores and Chile is one of the lowest performing countries in the OECD. Outcome based evaluations generally rely solely on aggregated SIMCE data. More thorough evaluations of school quality and school processes are voluntary (e.g. the Sistema de Aseguramiento de la Calidad de la Gestión Escolar, SACGE), but while coverage reached 50% in public schools, only 1% of private schools had participated by 2005 (OECD, 2013a).

Challenging inequality

The growing inequality in the education system led to successive student uprisings from 2001, with a very large mobilisation in 2006 named the 'Penguin Revolution' due to the black and white uniforms of the students. As a response, the government set up an advisory board, which drafted legislation that included student demands around the elimination of profit from schools receiving public funds and ceasing selection in private voucher schools, but no significant structural changes were made.

Students continued to protest and organise, culminating in 2011 with a large-scale protest where hundreds of thousands of students and their families took to the streets of Santiago and other cities of Chile. They were met with violent resistance from police, which fuelled more protests and raised the profile of the movement around the world. This time the students' demands included:

- Free education at all levels
- Elimination of profit in schools
- Transition of education from the private sector to the public sector
- Inclusion of teachers, students and workers in university management to increase transparency
- Democratisation and provision of high quality education

A new government was elected in 2013 on the back of promised education reforms aimed at reducing segregation, eliminating selection, banning profit, ensuring free education for all and quality and accountability at all levels.

| Table 1. Chile's Inclusion law's extracts (LEY-20845_08-JUN-2015) https://www.leychile.cl/Navegar?idNorma=1078172 (Accessed: 25/04/2016) | Criteria for mixed provision to comply with Human Rights |
|--|--|
| Article 1. b) Free of charge. The State gradually implemented free education in subsidised permanent establishments or those receiving contributions from the State, in accordance with the law. | Fee-free |
| Article 1. k) Integration and inclusion. The system will eliminate all forms of arbitrary discrimination that impede learning and participation of the students. The system also will actively encourage educational establishments to be a meeting place between the students of different socioeconomic, cultural, ethnic conditions, gender, nationality or religion. | Non-discrimination Not exacerbating inequalities |
| Article 1. n) Human dignity. The system should be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect, protection and promotion of human rights and fundamental freedoms enshrined in the Constitution of the Republic, as well as treaties and international conventions ratified by Chile that are in force. | Humanistic vision of education |
| Article 12. The process of admission in educational establishments that are subsidised or receive regular state contributions, in no case may consider the past school performance of a potential applicant. These processes may not require information on the socioeconomic background of family of the applicant, such as education level, marital status and financial situation of the parent or parents. The process of admission of students to educational establishments will be made by means of a system that ensures transparency, fairness and equal opportunity, and ensures the preferential right of parents to choose the school for their children. | Non-discrimination Transparency and participation |
| Article 13. The admissions process must be objective and transparent, published in electronic media, in brochures or public murals. Under no circumstances may educational establishments implement processes involving arbitrary discrimination and they must ensure respect for the dignity of pupils, students and their families in accordance with the guarantees recognised in the Constitution and in international human rights treaties ratified by Chile, especially those that deal with children's rights and that are in force. Those directly affected by an act or omission that amounts to arbitrary discrimination in the educational field may bring actions of arbitrary discrimination Nº20.609 established in the law, without prejudice to the provisions of the Convention on the Fight against Discrimination in sphere of Education. | Non-discrimination Transparency and participation Complain mechanism |
| 9) Amend Article 46 in the following sense: All holders who receive grants or regular state contributions may not be profit oriented, and must allocate fully and exclusively those contributions and any other income for educational purposes. Establishments must also pay public account regarding their income and use and will be subject to the control and audit of the Superintendent of Education. | Not-for-profit |

In January 2015, a new education law, known as the Law of Educational Inclusion⁸ was introduced (see table 1). This law has introduced some progressive changes to reverse the stratification and entrenched inequalities caused by the neoliberal reform, such as the gratuity of all subsidised schools, the requirement of non-discrimination in admission processes on the basis of socio-economic status or school performance, a clause ensuring that schools receiving state funds should be not-for-profit as well as the promotion of a humanistic vision of education. These changes were preceded by tax reform imposing higher taxes on corporations and closing loopholes for wealthy individuals, predicted to raise \$8.2 billion annually for education and other social programmes (Quiroga, 2014). However, this law has limited, rather than eliminated, profit and selection of students. The law has also phased out the co-payment (fees paid by parents) for private voucher schools, but has not ended the voucher programme (Castro-Hidalgo & Gómez, 2016).

In her 2015 State of the Union address in May, President Bachelet reaffirmed her government's commitment to the reform, including pledges to introduce policies throughout 2015 that would de-municipalise public education, achieve 93% enrolment in free schools by 2018, and ensure that all State-subsidised private schools are not-for-profit by 2018. In January 2016 the President announced that free higher education for students from less privileged backgrounds would come into effect and that 165,000 students would benefit in 2016.

In February 2016, the National Teachers Association and the government agreed on a way forward on the regulation of the teaching profession which included more career development through the professional pathways plan (Education International, 2016). The National Teachers Association continues to place emphasis on taking the type of school into account when evaluating teacher performance, whereas the government is placing emphasis on individual teacher performance, regardless on the type of school. The negotiation between the two sides is ongoing (Castro-Hidalgo and Gómez, 2016).

Implications for the Right to Education

Although privatisation in education is a global trend that can be observed in many countries around the world, the Chilean experience is unique. No other country has experienced such a dramatic reform over such a long period of time. Chile went from a situation where the State was the main provider of education, to a situation where private school enrolment represents more than 60% of the total enrolment in just three decades⁹. At 40%, 'Chile has the highest share of private expenditure on all levels of education,'¹⁰ even after recent increases in public financing. Privatisation is markedly evident at all levels of school in Chile, from pre-primary through to tertiary.

The Chilean education system, and the level of inequality and systemic discrimination it involves, have had a major impact on the realisation of the right to education and to non-discrimination. Chile's experience should be a deterrent for all those countries attracted by the market-driven-reforms' promises of cost-effectiveness, efficiency and choice, since for-profit privatisation, school choice, and fee-paying have clearly resulted in discrimination and extreme social segregation. Thus, the Chilean state failed to fulfil its duty to protect the right to education from the effect of private providers.

⁸ Detailed information on this law can be found here: <http://leyinclusion.mineduc.cl/>

⁹ *Alternative Report submitted to the UN Committee on Economic, Social and Cultural Rights*, November 2014. Available at: <http://bit.ly/1JRB0D>

¹⁰ OECD, 'Country Note: Chile,' <http://www.oecd.org/education/Chile-EAG2014-Country-Note.pdf>, 2014 (accessed 20 May 2015).

This failure and the ramifications of the massive privatisation of the Chilean education system was analysed in reports submitted to the UN Committee on Economic, Social and Cultural Rights and to the Committee on Rights of the Child by civil society organisations. In its concluding observations¹¹ adopted in June 2015, the CESCR recommended that Chile take the necessary measures to ensure that the elimination of all mechanisms in the education systems that result in the discrimination and segregation of students based on their social or economic background and the necessary measures to eliminate the sharp disparities in quality of education that currently exist between private, subsidised and public schools and to ensure that all schools have adequate infrastructure and suitably trained teaching staff. In its concluding observations¹² adopted in October 2015, the CRC also recommended that Chile, take measures to decrease segregation and to promote an egalitarian and inclusive educational system, prohibiting all schools, independently of the source of funding, public or private, to select students on arbitrary criteria or socio-economic background; it also recommended accelerating the allocation of increased targeted resources to education, in particular in free public schools; and to develop and implement a regulatory and monitoring framework for the private educational sector ensuring respect for the principle of non-discrimination and promoting inclusion and respect for diversity.

The reforms that are being undertaken in Chile provide relevant examples of measures that regulate mixed education systems in accordance with international human rights law. The main axes of these reforms that meet the criteria described above involve:

- 1) The banning of for-profit education (progressive realisation of turning profit making schools into not for profit) and humanistic vision of education
- 2) The establishment of a new institutional framework for the public offering of general education
- 3) The progressive elimination of shared payment (by reducing the maximum amount of shared payment permitted every year while increasing the state's subvention of schools and with special focus on the most disadvantaged)
- 4) The banning of economic, social, academic and behavioural selection at all levels of general education

As mentioned previously, these reforms were the response to the multiple student protests and, unlike Pinochet's neoliberal reform, are the results of a participatory and transparent process.

Nevertheless, this reform has its limitations. Given the extent to which the current education is affecting the realisation of the right to education without discrimination these changes are welcome and should be implemented with urgency; although questions remain over whether these reforms will fully address the high levels of segregation as the system continues to be based on a market model, using vouchers. The continued use of the voucher is problematic since the OECD (2013) found that 'universal voucher' systems produce approximately two times the level of stratification than 'non-voucher' systems. The income of schools will still be determined by the number of students attending the schools, rather than need. The number of vouchers will double, increasing the demand and not supply. Although the new vouchers can only be spent on schools that are fee free and there is a provision for extra contributions by the State to schools that are not for profit, it is not clear that this will be sufficient to improve the quality of the public schools. Public schools

¹¹ CESCR Concluding observations, E/C.12/CHL/CO/4, paragraph 30 (19 June 2015): <http://bit.ly/1RWOPkD>

¹² CRC, Concluding observations, CRC/C/CHL/CO/4-5, paragraphs 67 – 68 and 69 - 70 (15 October 2015), <http://bit.ly/1XRUgg8>

have become ghettos ‘specialised’ in low-income families (Gonzalez, 2016), with a highly correlated low academic performance; therefore positive discrimination measures should be used to improve low performing schools and to reverse the extreme social segregation and inequality of educational opportunity created. Any reform that aims to fulfil the right to education needs to pay particular attention to increasing and improving the public education system, since public schools disproportionately serve the most disadvantaged, and in 25% of Chilean municipalities there are no private providers (McEwan and Carnoy, 2000). In time of austerity, Chile's government needs to make a sound calculation to avoid diverting too much funding into vouchers to eliminate fee-paying whilst neglecting the availability and quality of public schools, in the country with the most segregated education system and with the third highest level of correlation between socio-economic background and academic performance (OECD, 2013).

4.2 Mixed Education Provision in Sindh Province, Pakistan: Involving non-State actors to improve public schools

Mixed Education Provision in Sindh Province, Pakistan: Involving non-State actors to improve public schools

Sindh Province in Pakistan has been the site of different models of mixed education systems for school improvement. These include the Adopt-a-School model (AAS) initiated by the Sindh Education Foundation the 1990s and the more recent shift to the Education Management Organisation Model (EMO) run by the local Education and Literacy Department. Both models are distinctive for their focus on strengthening the public system, rather than creating a parallel system as well as involving communities in the management of their schools.

Adopt a School Model

- Initiated in Sindh in 1998 and replicated in other provinces of Pakistan
- 525 schools adopted involving 115,713 students and 3,894 teachers
- Private actors manage state schools through Memorandums of Understanding (MoUs) with government and with oversight and monitoring of Sindh Education Foundation
- Emphasises involvement of community in school monitoring and management
- Has improved enrolments, basic facilities, learning outcomes, support and training for teachers and head teachers as well number of teachers in schools
- Relies on philanthropy and contributions from non-State actors (NGOs, individuals, corporations etc.) for resources to improve schools
- Has not been able to achieve significant scale or reach some of the most disadvantaged schools.

Education Management Organisation Model

- Initiated in 2015 by the Sindh Education and Literacy Department (ELD)
- Currently being piloted in 2015-16 with 106 reconstructed schools in flood affected areas
- Private actors manage state schools through contracts with government
- Government contribute funds to this model based on performance using key performance indicators that include community involvement, enrolment of out of school children and gender balance
- The ELD has also committed to undertaking wide ranging consultations with stakeholders including school staff, teachers, SMCs and communities prior to signing concession agreements
- Development of model has followed legal and structural changes enabling the state to contract private services for management of state schools

The AAS model has had a positive impact on education in public schools, and the EMO has potential to achieve some of the same gains on a larger scale if the education department develops a transparent mechanism to identify schools and that extra resources provided through the EMO model are directed at ensuring free good quality education, prioritising the schools and students most in need. In addition, Key Performance Indicators should be closely linked to principles of non-discrimination and standards for education quality should include ensuring trained and qualified teachers that receive domestically competitive salaries with opportunities for continuing education (an area of strength of the AAS model), relevant and culturally appropriate curricula and child-centred teaching methods.

Background

Pakistan has one the highest number of out-of-school children. It is estimated that 25.02 million Pakistani children between the ages of five and sixteen are out of school, with girls representing more than half¹³. Those in school show low performance levels, with only 49-50% of children in grade 5 being able to read an English sentence or solve a two-digit division problem.¹⁴

The Annual Status of Education Report (henceforth ASER) Pakistan data set highlights the huge differences in access and gender disparities attributed to socio-economic status. While Pakistan needs to improve enrolment overall, the ASER Wealth Index (2013, 2014 and 2015) shows that the richest quartile of the population has the highest enrolment rate (80%) while the poorest quartile has the lowest (61%).¹⁵ Socio-economic background is also influencing gender inequity with enrolment rates for girls decreasing across all quartiles and lowest in the bottom quartile. The poorest quartile of the population has the highest level of children enrolled in government schools (87%) (ASER, 2015). ASER also found that children reporting mild learning disabilities are most likely to be enrolled in government schools (58%) (ASER, 2015).

The extremely low budget allocation for the education sector 1.84% in 2014/15 and 2.17% in 2015/16 (Rs75,580 million, out of the total expenditure of Rs 3,482,239 million; in comparison to defence 22.43%, with Rs781,162 million in 2015/16)¹⁶ can only worsen this situation, when it is recommended that States allocate at least 4-6% of their GDP and 15-20% of the national budget to education with poorer countries needing to reach or exceed the highest percentage benchmark to meet education targets (Incheon Framework for Action, 2015). This underfunding is accentuated in the case of compulsory education, since 75% out of the total education budget has been allocated for tertiary education (Rs 56,675 million), leaving only 9.58% (Rs 7,240 million) for primary and pre-primary and 11.9% (Rs 8,999 million) for secondary education (Pakistan Federal Budget 2015/16). In Sindh, education has been given more priority and the budget has increased by 7.6% from Rs134.37

¹³ Alif Ailaan. 2014. 25 million broken promises: the crisis of Pakistan's out-of-school children. Islamabad: Alif Ailaan. pp.9

¹⁴ (2015). *Annual Status of Education Report*. Lahore: South Asian Forum for Education Development (SAFED).

¹⁵ *ASER national report 2015* (2015) Available at:

http://www.aserpakistan.org/document/aser/2015/reports/national/ASER_National_Report_2015.pdf (Accessed: 11 March 2016).

¹⁶ http://finance.gov.pk/budget/Budget_in_Brief_2015_16.pdf last accessed 17/03/2016.

billion to Rs144.67 billion in 2015/16 representing approximately 19.5% of the provincial budget (Sindh Budget Strategy Paper 2015-16).¹⁷

The current National Education Policy and its predecessors (1998-2010) encourage private investment in education. Admitting inability to provide public free good quality education for all, the government has been encouraging community participation and PPPs. The policy offers special incentives for the private sector to set up education institutions, such as: (a) plots of land in residential schemes on reserve prices; (b) a reasonable rebate on income tax and on the expenditure incurred while setting up educational facilities; (c) supply of electricity and gas at the domestic rate instead of the commercial rate; and (d) matching grants for establishing educational institutions by the private sector in rural or poor urban areas through Education Foundations for example (UNESCO, 2010).

Since the 1990's, educational policies in Pakistan (1992 & 1998-2010) have encouraged partnerships between the public and private sector. Despite the law mandating government to provide free education to all its citizens and its recognition as a right as stipulated in the Article 25-A¹⁸, the involvement of private actors in education, including for-profit companies, is growing at a rapid rate without the appropriate monitoring and regulation (Ron Balsera et al., 2016). Pakistan is experiencing a dramatic transformation in the way basic education services are delivered because of an unprecedented growth in private schools. Throughout Pakistan private sector enrolment is very high and in 2012/13, 4.8 million children (34%) at the primary level (5-9 years age group) were enrolled in the private sector (UNESCO, 2015). However, non-State providers are very diverse: large and small, formal and informal, NGOs, for-profit, community, and philanthropic. The private school system is largely composed of institutions that are for-profit, fee-based, autonomous, unregulated in practice, and which lack direct government support. Provision of education via partnership models in Pakistan remain fee-free but the myriad of models that these partnerships take can have differing implications for the right to education and the ability of the State to guarantee it.

The 2009 National Education Policy¹⁹ recognised the negative consequences of the unregulated growth of private provision, creating a parallel system, and it admits: "The relative failure of the governmental educational system has resulted in the emergence of the alternative education provider i.e. the private sector". It adds: "When, a private educational institution is providing educational services for a fee or as a public good, with an almost total administrative autonomy, it remains a public function. The assurance of uniformity therefore, would remain the responsibility of the State. It can do it entirely on its own or can develop public-private partnerships to ensure that the exigency of uniformity in standards and purpose of education is not compromised".

As part of the efforts to encourage partnerships between the public and private sector, Provincial Education Foundations were established under the Acts of Provincial Assemblies (between 1991 and 1992) to encourage and promote education provision from non-commercial/non-profit private providers. The National Education Foundation (NEF) was established in 1994 to serve the federal areas as well as support the development of PPP policy with the federal government.

¹⁷ <http://fdsindh.gov.pk/site/userfiles/Final-BSP-2015-16.pdf> last accessed on 29/03/2016.

¹⁸ The Constitution of Pakistan (1973) stipulates in its Article 37-b that "the State shall provide free and compulsory education within a minimum possible period". As part of the 18th Constitutional amendment, the following article 25-A was added: "The state shall provide free and compulsory education to all children of the age five to sixteen years in such a manner as may be determined by law"

¹⁹ [NATIONAL EDUCATION POLICY 2009](http://unesco.org.pk/education/teachereducation/files/National%20Education%20Policy.pdf)

<http://unesco.org.pk/education/teachereducation/files/National%20Education%20Policy.pdf> (accessed 22/03/2016)

Sindh Education Foundation: Adopt a School Model

The Education and Literacy Department in Sindh province in Pakistan has recently put in place legal and structural prerequisites for enabling the State to contract private services for management of State schools, supported through public funds. The Education Management Organisation (EMO) Model can be seen as an evolution of the Adopt-a-School model (AAS), with a number of enhancements in the operational rules that go beyond those in other provinces.

This model offers an interesting example of local reform in a context where the national government has failed to effectively regulate educational provision and where donors are shifting from working with the federal government on improving state capacity, to working with the provincial and district level governments to expand the role of non-state actors (Fennell and Malik, 2016). While other provinces are emphasising market instruments and privatisation of education, creating parallel systems, the AAS and EMO models focus on improving the public education system and involving communities in the management of their schools, which is encouraged from a human rights perspective.

The AAS is a type of Public Private Partnership (PPP) where private actors manage State schools through Memorandums of Understandings (MoUs) with government. The model involves a range of non-State actors including individual philanthropists, corporate philanthropists and NGOs. The nature and focus of the adopters arrangement with the school varies greatly but can involve: infrastructure improvement; teacher supply, training and professional development; improving educational content as well as links and partnerships with parents and the community.

The Sindh Education Foundation (SEF), which established the Adopt a School Program in Pakistan in 1997²⁰, emphasises the need to involve the community in school monitoring and management for sustainability, and donors have found that this is a key strategy for mobilising the community to pressure government for continuity. The Pakistan Poverty Alleviation Fund, a donor agency that has partnered with NGOs to adopt schools found that in cases where the community became active and took ownership of the programme, NGOs were able to withdraw over time (Bano, 2008). However, a recent report about the AAS in Sindh and Punjab found that in the absence of a clear framework for direction for engagement with the community directed by the State, the level of engagement with communities varies greatly and that in Sindh, where school management committees (SMCs) are a non-negotiable part of the program there is greater engagement (Malik et al, 2015). Rashid (2000) found that the pivotal role played by SEF as an intermediary has had positive effects on monitoring, community mobilisation and relationships with teachers, which were not observed in Punjab where neither the Punjab Education Foundation nor any other government agency took on this type of role.

There is a lack of research on and assessment of the AAS but recent empirical data analysis has shown significant improvements in enrolments, provision of basic facilities, the state of infrastructure and learning outcomes in adopted schools (Malik et al, 2015). The same research also showed that teachers and head-teachers in adopted schools receive more support and training in key areas of school governance and teaching and that a higher proportion of teachers in adopted schools reported implementing pedagogical best practice in class rooms. There were also a greater number of teachers per school in adopted schools in Sindh increasing by 24.9% between 2008 and 2013. The average number of teachers per adopted school in 2013 was 7.46 compared with 4.43 in un-adopted schools (Malik et al, 2015).

²⁰ The Adopt a School Program was designed by Prof. Anita Ghulam Ali (S.I.), it has been recognized at the national level and replicated across other provinces of the country.

There is limited data available, but there are equity issues that this model has been unable to address. The AAS remains concentrated in urban areas or those areas where corporations are located as it is difficult to find adopters in rural or remote geographical settings. Although the government has created the space for the private sector and NGOs in particular, to engage in the delivery of social services, it has viewed them primarily as a financial resource rather than a genuine partner to be involved in design, delivery and monitoring (Bano, 2008). This distrust of NGOs and private partners has impacted the AAS and the ability of small NGOs and other actors close to the community to adopt schools. In Sindh, SEF have established mechanisms for facilitating access between civil society and the State, and these actors are involved under their patronage and the foundation which vets applicants through a steering committee with representation from the education department and private partners (Malik et al, 2015).

The AAS model was designed to be a mechanism whereby State schools could be improved by private actors and then handed back to the State, and consequently the term of adoption is specified to 5 years. However, in the absence of a system to monitor whether schools have improved enough and whether school management has been sufficiently capacitated to operate independently, very few schools have been handed back to the education department. The limitations of this model have resulted in an inability to achieve significant scale. The number of adopted school is 525 (which is less than 1% of total schools in Sindh).

Development of the Education Management Organisation (EMO) Model

The above challenges have resulted in the creation of a new model driven by the Education and Literacy Department in Sindh, who have put in place legal and structural prerequisites surrounding the contracting of private actors for management of State schools supported through public funds. A key difference between the new Education Management Organisation (EMO) model and the AAS is that the state will fund the management costs of non-State partners as part of the PPP agreement. The EMO model has an explicit focus on management, oversight and improvements rather than just infrastructure. The EMO model uses a management contract with key performance indicators (KPIs) and disbursements are linked to meeting these targets. The KPIs are organised into three categories to track progress and trigger funding disbursements (Malik et al, 2015):

| Process | Quality | Governance |
|---------------------------------------|---|--|
| - Enrolment rates | - Student performance | - Involvement of the community or school management committees in the school process |
| - Retention rates | - Teacher performance | |
| - Completion rates | - Training and capacity building of staff | |
| - Enrolment of out of school children | - Infrastructural quality | |
| - Gender balance | - Health & hygiene | |
| | - Co-curricular activities | |
| | - Learning resources | |

This EMO model is currently being piloted in 106 recently reconstructed schools in flood affected areas of Sindh. The Education and Literacy department have indicated that after this pilot they will

develop criteria for schools to be incorporated under this program. This new model has emerged alongside political and structural reforms in Sindh that includes a PPP unit and legal amendments that have made the process more systematic and transparent than previously.

Implications for the Right to Education

As described above, Pakistan faces enormous challenges in education, particularly in terms of access for marginalised groups. The entry of private providers in education is producing and reproducing segregation in terms of socio-economic status and disability, and often also gender. The most disadvantaged groups are concentrated in government schools and therefore efforts to address education challenges through mixed education systems should focus on improving government schools and diminishing segregation.

The example of Sindh, the AAS model and recent EMO model which focus on improving government schools and building State capacity with an emphasis on community involvement is an interesting example in comparison with models that focus on supporting private schools. Sindh can be contrasted with Punjab, which has also employed an AAS model but has treated partnerships as a means of expanding private provision through State finance rather than partnerships in building State capacity (Malik et al, 2015). In Punjab, the government has proactively promoted the expansion of 'low fee' private schools through PPP modalities. As previously discussed, these schools aim at affordability rather than gratuity, therefore discriminating the poorest sections of the population and results in social stratification and discriminatory practices within households that tend to promote boys over girls (Fennell, 2013; Srivastava, 2013).

Yet, some researchers have criticised the AAS model arguing that there are no operational guidelines, regulations or clear and transparent operating procedures which means that the model functions 'on the basis of patronage and political access' (Malik et al, 2015:39). Bano (2008) also noted that the AAS program is too dependent on the social and political networks of the adopter and the State has not sufficiently developed mechanism to facilitate partnerships. These critiques would suggest that the AAS model does not fulfil the criteria of transparency and participation or the adequate regulation and monitoring of this partnership.

Some barriers to the scalability and sustainability of the AAS in Sindh have been addressed in the amendment in 2014 to the PPP Act²¹ to include a clause that allows contracting in the social services, establishing legal grounds for an arrangement whereby government can commit funds to these arrangements. This means that management contracts will be governed by public procurement rules making the process more systematic and transparent. This has been accompanied by changes to administrative structures with a PPP node established in the Education and Literacy Department (ELD) of Sindh. While these development are positive, particularly the greater transparency, it remains to be seen whether the government will have the capacity to effectively monitor these arrangements without the intermediary role which has until now been played by SEF.

The ELD does not have a separate budget for the AAS model apart from some training and assessment carried out by SEF, but for EMOs it has budgeted Rs. 500 million (USD 4.8 million) for 2015-16 and this number is set to increase with the number of schools. The ELD has also committed to undertaking wide ranging consultations with stakeholders including school staff, teachers, SMCs and communities prior to signing concession agreements (Sindh EMO Notification and Policy Document, 2015), which aligns with the criterion of participation and transparency. It also addresses concerns highlighted by Rashid (2000) and others that with initiatives that involve changing the

²¹ <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.VII%20of%202015.pdf>

management of schools there should be a mechanism for reassuring teachers and others about their future and that of the school.

While it is still too early to evaluate the impact of this model, teachers remain a concern in the EMO model as although there is a built in consultation process, the contracting of teachers will be part of EMO agreement. EMOs will not be able to replace teachers (who will remain on government contracts) without due process and consultation with the ELD and evidence of non-performance. However, under the provisions of the EMO concession agreement, the ELD can either replace a non-performing teacher with another ELD contracted teacher or request the EMO to employ a replacement who will then be subject to contracts outlined by the EMO. This model should not lead to a worsening of conditions of employment for teachers and the ELD should clarify this in the terms of the concession agreement.

The enhanced partnership aspect of the EMO model and greater commitment of finances on the part of the government, and the fact that it is being run by its own department could have positive impacts not just on the sustainability of the initiative but also in the improvement of the public system. Unlike other partnerships payments such as those which pay per pupil, payments through the EMO will be performance based using KPIs that include community involvement, enrolment of out of school children and gender balance.

The EMO model is still in its very early stages and detailed information on it and its impacts is limited. However, from the information available, aspects of this model that are interesting from a human rights perspective include the establishment of a regulatory framework monitoring aspects of quality as well as access. The model also has a focus on community involvement, which will also be monitored, respecting the human rights principle of participation and the regulation criterion. The focus on strengthening the public education system will not only reach the most disadvantaged sections of the population, which tend to be concentrated in public schools, but also has the potential to attract middle class segments of the population, reverting the current socio-economic and gender segregation, as well as offering better educational opportunities for all, in a non-discriminatory manner.

To ensure that the Sindh model is in line with the right to education is imperative that the education department develops a transparent mechanism to identify schools and that extra resources provided through the EMO model are directed at ensuring free good quality education, prioritising the schools and students most in need. In addition, principles of non-discrimination should be prioritised in Key Performance Indicators and standards for education quality should include ensuring trained and qualified teachers receive domestically competitive salaries with opportunities for continuing education, relevant and culturally appropriate curricula and child-centred teaching methods.

4.3 Community Schools, reaching the most disadvantaged

Community Schools, reaching the most disadvantaged

Community schools involve community-based management, and include the creation of new schools as well as the improvement of existing schools through community management. Whilst some community schools are entirely created and managed by communities others are community driven and financially supported by NGOs, donors or faith based organisations and some are initiated under special extension schemes by the state.

Community schools can contribute to the progressive realisation of the right to education as they often

focus on underserved and hard to reach areas, increase community participation, improve retention and strengthen public education systems.

Some key lessons have been drawn from decades of implementation of this type of provision which include:

- 1) the need for these schools to be legally recognised and integrated into the national education system;
- 2) the need for government to support the training, ongoing development and salaries of teachers;
- 3) regulation and accountability that maintain standards of quality but do not limit flexibility of provision required for hard-to-reach areas
- 4) commitment and support of government and development partners to the financing of these schools to ensure they are free.

As funding for education remains a challenge, community schools can be part of the solution for groups of children who are particularly hard to reach such as children with special education needs, orphans, mobile populations and those affected by on-going conflict and crises. However, they should not result in the State abdicating its responsibility for the realisation of the right to education, or the creation of parallel education systems. While, it should be recognised that free education is not instantly achievable in some contexts, continued commitment and support from government and development partners in policy and financing should be sustained and the progressive realisation of the right to education means that governments must make continual progress in this area.

Community schools are a critical part of the educational landscape and are often cited (DeStefano & Moore, 2010; Rose, 2007) as examples of educational interventions in developing countries trying to reach universal access to basic education and improve education quality. The term 'community school' is used to describe many different forms of non-State provision. In some contexts the term is used to describe commercially driven and profit oriented 'low fee'²² private schools. However, in this report we focus on community schools that are established and managed by the community (with or without the support of NGOs, faith based groups or government) which seek to help specific disadvantaged groups gain access to education. This can take different forms so to clarify further, for mixed education systems partly relying on community schools in order to comply with human rights, they need to include the following characteristics:

²² 'Low fee' or 'low cost' is written with inverted commas because "low" is a relative qualifier, although the fees would seem very low to most people reading this report, put into context, these fees are not affordable to the lowest quintiles. For example, the famous 'low fee' chain Bridge International Academy claims to charge US\$6 a month but the minimum cost for family is actually US\$17 when the other indirect costs are added; in Kenya, this fee represents between 18 and 38 per cent of the average poor family income. In Ghana, for instance, Omega charges daily fees ₵1.50 (about US\$0.65) however, when contrasted to household income it shows that these families have to expend approximately 25–40% of their income per child (Riep, 2014). So, it is not only unaffordable, but it represents a retrogression as well as a human right violation to expect poor families to make these huge sacrifices instead of receiving free good quality education. The expansion of these 'low fee' schools usually lead to violations of human rights due to their low quality infrastructure and lack of qualified teachers, due to their being the only feasible option in areas with insufficient or unacceptable public schools, or due to the stratification and gender inequalities it entrenches or creates within communities, even within families, where the disadvantaged families who can afford it make huge sacrifices to send one or two children (usually the first-born male) to these schools, because they feel the public school is not a valid option.²³ UN General Assembly, Report of the Special Rapporteur on the Right to Education, Kishore Singh, 26 August 2015 A/70/342, available at: <http://bit.ly/1k0Eg5w> [accessed 30 March 2016]

- rely on community based management for transparency and participation in decision-making
- provide free education, at least progressively
- are accessible to all children without discrimination, including disadvantaged groups
- connect with the public education system and transition into it, to ensure sustainability and valid education certificates for students
- meet minimum education standards: both in terms of infrastructure and quality of education provided, at least progressively

From the 1980s, decentralisation of education was promoted by international development organisations as a means of more effective and efficient delivery of public services, part of a global neoliberal perspective on education reform (Edwards & DeMatthews, 2014). This focus on liberalisation was accompanied by a global trend of channeling aid through international NGOs, and in the mid 1990s it was estimated that 10-15 per cent of official aid to developing countries was provided through NGOs (Rose, 2007). These trends meant that this form of school management became popular with international funders, and the development of community schools in developing countries has been closely linked to NGOs that have been active in providing education to out-of-school children and often focused on underserved and hard-to-reach areas. These efforts have yielded a number of lessons (Miller-Grandvaux & Yoder, 2002; Hoppers, 2005; Naidoo, 2007a; Rose 2006) on the successful implementation of this sort of provision which include:

- 1) the need for these schools to be legally recognised and integrated into the national education system (as the key means to ensure sustainability);
- 2) the need for government to support the professional training, ongoing development and salaries of teachers (even where teachers are initially local people with minimum training);
- 3) regulation and accountability that ensures schools meet quality standards but does not limit flexibility of provision required for hard-to-reach areas
- 4) continuing commitment and support of government and development partners to the financing of these schools to ensure they are genuinely free, and are not a financial burden to communities

Community involvement in terms of participation and transparency in decision making and responsiveness to the needs of the community should be encouraged in all schools, whether public, private or mixed, in order to comply with human rights. This involvement is one of the main historical characteristics of community schools. In many parts of Sub-Saharan Africa, communities have traditionally played an important role in providing education in a variety of ways, in particular by offering assistance and contributions for school construction and maintenance, such as the Harambee school in Kenya (Onsomu et al, 2004). Communities and churches started and managed schools during the colonial period in Anglophone Africa and the *écoles spontanées* in Chad are a very well known example of schools entirely created and financed by communities (Miller-Grandvaux & Yoder, 2002). In Bangladesh schools have been initiated directly by the community through Registered Non-Government Primary Schools (RNGPSs), enrolling approximately one quarter of children and attending to a greater proportion of children below the national poverty line than government schools (Rose, 2006). In El Salvador, in the absences of government support during the civil war (1980-1992), communities started their own popular education based schools from a critical perspective, which by the 1990s had 13,500 students (Edwards, 2014).

In practice, community schools are created and managed by communities, usually in response to a lack of provision by the State and communities take on varying responsibilities in relation to construction, management and financing. Costs are shared variously between communities,

supporting organisations and the State. The communities themselves set up some schools, while others are financially supported by NGOs, donors or faith based organisations and some are initiated under special extension schemes by the State (Aga Khan Foundation, 2007).

Increasing access

Community schools can increase access to education where government provision is insufficient or inadequate, particularly in humanitarian crisis contexts, remote rural areas or peri-urban areas. Community schools can temporarily fill these gaps while the State works towards progressive realisation of the right to education, or as part of the State strategy to progressively fulfil the right. There is scarcity of data on the scale of community schools, as education statistics are not usually disaggregated to this level, and governments often fail in their duty to regulate and monitor this sector. Some data are available from providers, Save the Children has documented that in Mali and Malawi, for example, approximately 10 percent of school places are supplied by community schools (Naidoo, 2007) and in the case of Mali, these schools are more concentrated in rural areas (DeStefano, 2007). DeStefano (2007) shows that the scale is significant in a number of different contexts referring to the million children that attend 35,000 non-formal, primary schools run by BRAC in Bangladesh and the 30,000 students enrolled in 350 community schools in Ethiopia. He also outlines the examples of 370,000 learners in Honduras, and approximately 30,000 learners in Zambia that make use of interactive radio instruction. The Escuela Nueva in Colombia now reaches over 1 million pupils in 20,000 schools (DeStefano, 2007).

Reaching the most marginalised

Not only can community schools provide increased access by creating schools where they previously did not exist or were inadequate, they often are designed to reach the most marginalised. For example, Save the Children have developed a community school model based on their experiences in Mali, where communities build and manage their own schools in line with local needs; the curriculum is adapted to the local context and the school timetable is flexible to accommodate all children and instruction is in maternal languages. This model has been used with vulnerable children affected by the HIV/AIDS epidemic in Zambia, with war-affected populations in Southern Sudan and in remote nomadic parts of Ethiopia (Miller-Grandvaux, 2007).

Other examples include Doctor Reddy's Foundation (DRF) and Bodh Shiksha Samiti, both of which focus on working children in India. These schools introduced flexibility in the timing of the school day and year, the developed intensive short courses for working children to help them catch up and re-enter public schools, and partnered with local communities and police to work with parents and employers to ensure children can participate in bridge courses and formal school (Aga Khan Foundation, 2007). Bodh works directly with 1,000 rural and urban government schools in Rajasthan, and DRF works in 100 schools in informal settlements in Hyderabad.

These are examples where education meets the adaptability criteria defined by human rights law as education is tailored to the needs of society and is locally adapted to suit specific contexts, as well as increasing the availability and accessibility of education.

Understanding local contexts and strengthening participation

Another important feature of community schools is the focus on local ownership and community involvement in education, which under human rights law should be encouraged in all types of schools whether public, private or mixed. Effective and active school management committees can increase achievement, quality and equity and increased community involvement can contribute to sustainability as the community becomes more involved in decision making and engaging with

government on the future of the schools. An evaluation of a World Education “Development of Community Institutions” in Mali found that school and parents associations were central to school maintenance and community cohesion and that that girls’ enrolment increased, adult literacy and numeracy improved, and statistics were monitored consistently (USAID, 2005). A review of community schools in Africa by Miller-Grandvaux & Yoder (2002) found that in Guinea parents’ associations increased participation and gender equity. The same review found that communities were recruiting students, instituting regulations against children missing school to do work and gaining official recognition for schools from the government (Miller-Grandvaux & Yoder, 2002). Some have argued that community participation in education has positive impacts beyond the benefits to the learners, as it can contribute to the growth of civil society and democratic institutions which are central to sustainable development and the principles of transparency and participation, reinforcing constructive social and democratic behaviour (Miller-Grandvaux, 2007).

Successful community schools through their focus on the local context, have positive human rights implications increasing the adaptability and acceptability of education by being more relevant, increasing educational quality and achievement through not just community participation, but also student-centred teaching methods and curricula that are adapted to local needs. In Mali, for example, community schools supported by Save the Children used native language teaching at earlier stages of education, rather than French, to facilitate learning (Aga Khan Foundation, 2007). The success of this approach in improving outcomes and lowering dropout rates influenced the ten year education plan in Mali and the adoption of the *pédagogie convergente* model which relies on local languages and then slowly introduces French over time (Bleck & Guindo, 2013).

In Namibia, the Nyae Nyae Village Schools Project (VSP) aimed at providing appropriate and effective primary schooling to a marginalised indigenous group in a remote part of Namibia to prepare them to participate in the national education system. These schools focused on the use of the mother tongue with progressive introduction to English, involving parents in the teaching of traditional skills, and using the child socialisation systems of the Ju/’hoansi indigenous group themselves. This approach started as a non-State initiative but the schools as well as the indigenous language curriculum have now been absorbed into the national education system of Namibia and have become an important symbol and example for other southern African countries with San language communities (Bieseke, 2013).

This goes to show that the connection of community schools with the public education system should be bidirectional: on the one hand community schools need the government to recognise and support them. On the other hand the government has the obligation to adequately respond to the needs to these communities by creating schools that are adaptable and child-centered, emulating the community schools’ successful approaches to participation and retention of disadvantaged population in the wider public system.

Quality and retention

Community-focused approaches can lead to increased retention rates. Unfortunately, there are many cases where teachers are not qualified, the infrastructure does not meet minimum standards, making it unhygienic, unsafe or hazardous, or where teaching practices violate the students’ right to physical integrity such as in the use of corporal punishment (Archer, 2016). It is the State’s obligation to ensure that these human rights violations are prevented (through regulation) and, when they happen, they are properly identified (through monitoring and inspection), addressed and redressed (through effective and transparent accountability and punitive mechanisms).

However, a review of community schools in Africa found that overall, community schools saw an increased retention or lower dropout rate than those of government schools (Miller-Grandvaux & Yoder, 2002). The same study found that a significant number of new community schools reported better academic performance than public schools. Another review of community schools in Africa (Hoppers, 2005) also found positive outcomes in terms of retention, learning outcomes where community school learners outperformed public school counterparts in terms of language and scored as well or better in reading, writing and mathematics. The reasons for improved performance differed but both studies found that they were closely linked to positive learning environments including smaller class sizes, intensity of teacher-pupil interaction, new curricula and teaching methods, strength of school management committees, teacher conditions, community supervision and collaboration between teachers and community members on curriculum (Miller-Grandvaux & Yoder, 2002; Hoppers, 2005). When community schools' replicable and scalable innovative practices result in improvements in enrolment, retention and performance, if appropriate, these practices should be incorporated into the public education system.

Strengthening public education systems

When not incorporated in the public education system community schools are often unsustainable, the students' qualifications are often unrecognised and their existence can lead to the government abdicating its responsibility to provide free and good quality education in those areas. Effective regulation and eventual incorporation of these community schools into the public system can improve the system as a whole. Community schools should be designed or considered with the aim to form part of the public education system, this has been the case of community schools supported by Save the Children, which were planned with incorporation into the government school system in mind. As mentioned before, community schools have also impacted existing public schools and education systems by improving their teaching practices and curricula.

Implications for the Right to Education

Because of its wide variations, it is difficult to generalise about whether community schools promote or hinder the right to education. However, due to the great challenge represented by a huge number of out-of-school children globally, community schools can be part of the solution for groups of children who are in particularly hard-to-reach areas such as those in remote rural settings, urban slums, children with special education needs, orphans, mobile populations and those affected by on-going conflict and crises. However, successful community schools require considerable social capital, and cannot succeed where communities are fractured or otherwise encumbered and are therefore not a solution in all contexts. Regardless of how they develop, they should be designed to form part of the public education system in order to ensure their sustainability, their gratuity (being genuinely free of charge), the recognition of the students' qualifications and their quality.

Community schools can supplement State efforts, particularly for difficult to reach or vulnerable populations but should not result in the State abdicating its responsibility for the realisation of the right to education, or the creation of parallel education systems. Community schools should be legally recognised and integrated into the national education system. States have the obligation to ensure that community schools, whether incorporated in the public system or existing outside of it, are registered and meet the minimum educational standards defined by the State. It is the State's obligation to ensure that community schools do not lead to human rights violations. Therefore, States need to regulate them to ensure they comply with human rights and national legislation, monitor and inspect them and, if community schools do not comply with these regulations, provide

effective and transparent complain and redress mechanisms. At the same time, the state should continue to make the formal education system more inclusive, and can draw on community school initiatives.

Another key consideration relating to community schools is teachers. The lack of teacher education and qualification is a weakness of many community schools. Teachers in community schools should be qualified, adequately remunerated and supported. Many community schools rely on training local people with insufficient qualifications due to the community focus of the approach and difficulties in staffing schools in remote areas. This is not a sustainable solution, the State should supply high standard but adaptable teacher training to enable non-professional teachers in community schools to develop their skills and graduate to become trained teachers. Equally, the State should pay, or at least contribute to, teacher salaries, pay for and supply ongoing training, improve teachers' working conditions, and professionalise community school teachers.

As previously mentioned, an issue that must also be considered in relation to not only community schools but all non-State provision of education, is regulation and monitoring (Ron Balsera et al., 2016). Rose (2006) has argued that there is a tension between lighter government regulation to allow non-State actors to provide education in areas that the government has not reached and in a more flexible format, and tighter regulation to ensure quality standards are met. Regulations vary depending on national contexts and arrangements for regulation of NGOs often differ from those of private providers (Rose, 2006). In a recent report to the UN General Assembly, the Special Rapporteur on the right to education also emphasised the importance of regulation and monitoring and noted that differentiated approaches to regulation and monitoring may be needed to differentiate those actors with private business interests from those with social interests²³. Community schools usually have to undergo a process of registration to gain government support, and current regulation tends to focus on assessing quality and competence when registering with insufficient focus on ongoing monitoring (Aga Khan Foundation, 2007).

Table 2. Regulation for non-formal schools in Kenya

| Policy Framework for Alternative Provision of Basic Education and Training (APBET Policy) 2009 | Registration guidelines for Alternative Provision of Basic Education and Training (APBET) January, 2016 |
|--|--|
| <ul style="list-style-type: none"> • Enacted in response to the crisis in education and the rapid growth in non formal schools • Objectives of non formal schools • Target population <ul style="list-style-type: none"> • Before registration of an APBET institution there must be evidence of a need for alternative provision • Curriculum development- following NFEC, but they can adapt it or develop their own, to be approved by KICD • Registration – with the Ministry of Education, in accordance with enacted guidelines, registration a condition to receiving government funding • Location – no mention of locations, just facilities required • Teachers – alternative provisions shall be | <ul style="list-style-type: none"> • Registration guidelines aim to provide minimum standards and procedures for the registration of APBET institutions • Curriculum – approved by the KICD • Teachers – all teachers must meet the minimum entry requirements for teacher training; at least 30% of the teachers should be trained, all teachers should be trained and registered within 3 years • Only to be established in informal settlements in the cities and other urban areas as designated by law • Requirements for leadership, management and community involvement • Requirements for physical facilities |

²³ UN General Assembly, Report of the Special Rapporteur on the Right to Education, Kishore Singh, 26 August 2015 A/70/342, available at: <http://bit.ly/1k0Eg5w> [accessed 30 March 2016]

| | |
|--|--|
| staffed by trained teachers | |
| Source: Ashina Mtsumi, CIES presentation March 2016) | |

A recent example of regulation through registration comes from Kenya (see table 2), where in September 2015 the Ministry of Education recently developed registration guidelines²⁴ that will provide the basis for establishment and operationalisation of the Alternative Provision of Basic Education and Training (APBET) policy framework. This policy comes in the wake of increased number of 'low fee' for profit private schools that have exploited a registration loophole to not register or to register as community-based organisations or similar entities, generally with the ministry of gender, children and social development without much regulation or control attached to it. According to the new policy all the schools registered under the APBET guidelines will have to teach a curriculum approved by the Kenya Institute for Curriculum Development (KICD) and have to adhere to timetable guidelines for subjects and courses as provided by the ministry. Additionally, all teachers at the APBET institutions have to meet the minimum entry requirements in terms of teacher training. A minimum of 30 per cent of the teachers in an APBET institution must hold a relevant teacher training certificate from a recognised teacher training institution at registration and the rest must be undertaking recognised in-service training and management of the institution shall progressively ensure that all their teachers are registered with the Teachers Service Commission by the third year of registration with the institution. The aim of this policy is to progressively regulate and formalise the 'low-fee' community schools, and integrate them in the formal public system. While the institution of minimum standards is a welcome development, it remains to be seen the degree to which these guidelines will be enforced and whether and how the government will be able to continually monitor schools that are registered under these guidelines.

Most community schools involve some form of self-regulation through their model of accountability by involving communities in the delivery of education, but governments have the obligation to regulate and monitor these schools, especially if they are to be incorporated into the public system. This is not straightforward as in some contexts (particularly those where community schools are necessary) there may be limited capacity from the State. Effective regulation also requires stable political and economic conditions as well as an informed and engaged civil society. Rose (2006) has argued that this engagement between government and non State providers requires real ongoing dialogue to ensure that collaboration between community schools and the government benefits the most marginalised, and to avoid mistrust between non-State providers and governments.

Finally, although there is a large variation in configurations and models for community schools, they tend to require some form of contribution from the community, economic or non-economic. Although participation is encouraged in all type of schools, community schools should not place a burden on already disadvantaged communities. Some argue that one of the keys to the success of community schools is the vested interest of the community, but the challenges of costs to the community must be overcome. Access to education should not be determined by the ability of a family or a community to pay or be involved.

5. Analysis

Although the last century has seen massive gains in terms of the expansion and inclusiveness of education around the world, there are still 121 million children out of schools (EFAGMR 2015), and whilst there has been a continued increase in enrolment rates, great challenges remain in terms of

²⁴ Registration Guidelines for Alternative Provision of Basic Education and Training (APBET) <http://bit.ly/22NLoqo>

retention and inequality of education opportunities. These three case studies exemplify some of the variety of actors and goals, and the scale and impact of the role of non-State providers in mixed education systems. The following table analyses each case study using the five human rights criteria outlined in the introduction.

| | Chile | Pakistan (Sindh) | Community Schools |
|--|---|--|---|
| 1) Does not lead to any form of discrimination or segregation, or create or increase inequality; | <p>Due to the 1980s neoliberal reforms, the Chilean education system had high levels of selectivity and allowed co-payments (extra fees) resulting in high levels of socio-economic segmentation and segregation with the type of schools students attended determined by ability to pay and selection processes. There is also a strong correlation between socio-economic status and students' academic performance, entrenching social inequalities.</p> | <p>There are huge differences in access and gender disparities attributed to socio-economic status. The entry of private providers in Pakistan education has in many instances, produced and reproduced segregation in terms of socio-economic status and disability, and often also gender. In Sindh Province, the approach to public private partnerships has differed from other provinces, with a greater emphasis on strengthening the public system, rather than creating a parallel system as well as involving communities in the management of their schools.</p> | <p>Community schools can provide increased access by creating schools where they previously did not exist or were inadequate, and when they are designed to reach the most marginalised or those who would not otherwise have access to schooling.</p> |
| | <p>More recent reforms which ban profit making, strive towards the progressive elimination of shared payments and ban selection in education are positive step towards reducing segregation in education, making quality education accessible for all and the principles of non-discrimination. However, the continued existence of the voucher system will likely mean continued stratification within the system.</p> | <p>This model, and the more recent EMO model, recognise that the best way to improve access and reduce discrimination is through strengthening the public system. The EMO model will also measure performance using indicators that include community involvement, enrolment of out of school children and gender balance.</p> | |
| 2) Does not lead to fee-charging private primary schools being the only option, are optional and exist in addition of quality free publically-supported schools | <p>The post 1980's reform resulted in undermining public schools that serve the most vulnerable populations with a diminished budget, reinforcing and reproducing inequality in society. It resulted in only 37% of the student population attending the public schools and 40% of education expenditure coming from private sources (OECD, 2014).</p> | <p>Pakistan has a very high percentage of students enrolled in the private sector, (34%) at the primary level (UNESCO, 2015) and the country dedicates an extremely low budget to finance public education.</p> | <p>Community schools can temporarily fill gaps while the State works towards progressive realisation of the right to education. However, these schools often rely on some form of contribution from the community. Although participation is encouraged in all types of schools, community schools should not place a burden on already disadvantaged communities. The financial burden and the inequities associated with teachers' salaries and materials provision should be addressed in the shorter term through external funding and in the longer term by the State as</p> |
| | <p>Although recent reforms have addressed a number of these concerns, particularly ending co-payment in subsidised schools; there are questions as to whether they are sufficient to improve the availability and quality of public schools.</p> | <p>Both the EMO and the AAS models are free of charge for students. They focus on strengthening existing public schools which will not only reach the most disadvantaged sections of the population as they are concentrated in public schools, but also offer a more sustainable long term solution for the State to meet its obligation to provide quality public education to all its citizens.</p> | |

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| <p>3) Private providers are adequately regulated and monitored, including pedagogy, infrastructure and teacher qualifications</p> | <p>Chilean education has conformed to minimal quality standards in terms of environment, contents and methods but the deregulation of the teacher labour market has meant shorter-term contracts and lower wages for teachers. This coupled with a performance evaluation system that has emphasised accountability over strengthening practice which, has had negative consequences for the teaching profession that should be addressed.</p> <p>The National System of Quality Assurance²⁵ has created the Quality Agency, whose role is to assess and guide the education system to improve quality and equity. It applies a system for measuring the degree of compliance with the standards of student learning, mandatory for all establishments recognised by the State. It has also created the Superintendent of Education, to ensure that subsidised schools meet educational standards and legality in the use of resources and to make consultations, investigate complaints and resolve claims from the school community.</p> | <p>The AAS model has resulted in improvements in provision of basic facilities, the state of infrastructure, learning outcomes and support and training in for teachers and head teachers. The EMO model has the potential to offer similar benefits on a larger scale and includes the establishment of a regulatory framework monitoring aspects of quality as well as access.</p> <p>However, it is important to ensure that this model does not lead to a worsening of conditions of employment for teachers and the local government should clarify this in the terms of the concession agreement.</p> | <p>schools become legally recognised and integrated into the national education system.</p> <p>Positive examples of community schools meet the adaptability criteria defined by human rights law as education is tailored to the needs of society and is locally adapted to suit specific contexts. Research has shown positive impacts of community schools including increased retention and improved learning outcomes through positive learning environments.</p> <p>However, the lack of teacher education and qualification is a weakness of many community schools. Teachers in community schools should be qualified, adequately remunerated and supported. The State should supply high standard but adaptable teacher training to enable non-professional teachers in community schools to develop their skills and graduate to become trained teachers. Equally, the State should pay, or at least contribute to, teacher salaries, pay for and supply ongoing training, improve teachers' working conditions, and professionalise community school teachers.</p> |
| <p>4) The humanistic nature of education is preserved</p> | <p>The nationwide assessment system (SIMCE) is still highly focused on numeracy and literacy and measures of quality and the performance of teachers has been linked closely to these outcomes. More thorough</p> | <p>The focus on community involvement of both the AAS and the EMO is in line with the recognition of education as a common good and has the potential to increase the relevance and diversity of the</p> | <p>Community involvement with the management of schools, recognises education as a common good. Successful community schools through their focus</p> |

²⁵ <http://www.educacion2020.cl/sistema-nacional-de-aseguramiento-de-la-calidad-0> this ongoing law project will complement the Law N. 20.501 passed in 2010.

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| <p>5) Their role is publically debated in line with the principles of transparency and participation</p> <p>-</p> | <p>evaluations of school processes and quality are not enforced and vary greatly between public and private schools.</p> <p>The new reform specifically mentions that education should be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect, protection and promotion of human rights and fundamental freedoms.</p> | <p>education in those schools.</p> <p>There is a need to ensure that performance indicators do not just focus on just easily measured knowledge and skills such as numeracy and literacy but are relevant to the local community and environment including a more holistic approach to education.</p> | <p>on the local context, have positive human rights implications increasing the adaptability and acceptability of education by being more relevant, increasing educational quality and achievement through not just community participation, but, in some cases, also student-centred teaching methods and curricula that are adapted to local needs.</p> |
| | <p>The education reforms that were undertaken during the Pinochet dictatorship did not respect principles of transparency and participation. The social uprisings have resulted in greater transparency and participation in education policy, with a positive effect on education equity. The current government is making a considerable effort to increase participation and transparency through the involvement of a higher number of stakeholders (including teachers, parents and students) in education policy making.</p> | <p>The focus on community involvement of both the AAS and the EMO models respects the principles of transparency and participation. In the new EMO model, management contracts will be governed by public procurement rules making the process more systematic and transparent than previously but will nevertheless rely on the capacity of the government to monitor these arrangements.</p> <p>The local government has committed to undertaking wide ranging consultations with stakeholders including school staff, teachers, SMCs and communities prior to signing concession agreements with EMOs which if carried out effectively can also promote participation and transparency.</p> | <p>The focus on local ownership and community involvement can contribute to sustainability as the community becomes more involved in decision making and engaging with government on the future of the schools. These schools should be subject to regulation and accountability that ensures schools meet quality standards but does not limit flexibility of provision required for hard-to-reach areas.</p> |

Privatisation of education, such as Pinochet's neoliberal reforms in Chile, has been promoted as the best way to offer greater choice, cost-efficiency and increased quality. However, as we have seen, Chile's case should serve as a deterrent for those planning to implement market-driven reforms in education. The Chilean lesson is that deregulation and marketisation of education leads to the violation of the right to education due to the extreme educational opportunity disparities and segregation it produces, entrenching social inequalities and allowing discrimination as part of schools' student selection as well as charging fees. Chile, which has been the widest and longest running neoliberal experiment, is now trying to reverse the long lasting negative consequences of this deregulation. The new law, although still based on a voucher system, bans for-profit education as well as economic, social, academic and behavioural selection at all levels of general education; it also eliminates shared-payment, making education free. This reform responds to the State's human rights obligations and can serve as an example for other countries.

Pakistan's highly concerning education statistics provoke the search for innovative solutions to address the 25 million out-of-school children compounded with the socioeconomic and gender inequalities, only worsened by the historical underfunding of public education. The Adopt a School Program started in 1998 in the Sindh Education Foundation and had the potential to improve public schools by bringing additional funding and good practices. However, the successful cases represent a drop in the ocean in terms of the number of adopted schools. More monitoring, resources and funding would have been required for this initiative to be scalable. Equally, this initiative shows that philanthropy is patchy, fickle and ultimately unsustainable. The Education Management Organisation Model tries to solve some of the shortcomings of the Adopt a School Program by providing more funding, planning and oversight. Rather than philanthropy, this time private actors need to show they improve public schools using a set of key performance indicators that include community involvement, enrolment of out of school children and gender balance. Although it is still too early to see results (it started in 2015), this initiative has the potential to be a good example of private involvement complying with human rights, since the EMO model is designed to improve the public education system, the education offered is free of charge, the key performance indicators aim to reverse discrimination and social inequalities as well as encouraging community participation and ensuring minimum standards in terms of infrastructure and education quality. Yet, these types of initiatives tend to produce fragmentation with the perverse effect of government withdrawal from the provision of education. They can also place too big a burden on the provincial government both in economic terms, with a stretched education budget, and in terms of monitoring and inspection; teachers usually lose some of their benefits, with concerning effects in terms of recruitment, motivation and ultimately quality; and it is not clear what roles parent education committees and other participation mechanisms play in these models.

Unlike the novelty of the EMO model, community schools have a long tradition worldwide, which includes a wide variety of schools. However, the type of community schools that could help promote the right to education need to be free of charge, meet minimum standards in terms of infrastructure and teaching, be legally recognised and eventually incorporated into the public education system to ensure sustainability and the validity of the qualifications obtained in these centres. Community schools can provide good practices replicable in every type of school in terms of community participation, inclusiveness and adaptability, reaching traditionally out-of-school groups. Often they have emerged as a response to the State's failure to provide the right to education to certain groups, especially those in remote rural areas or urban slums. Yet, States need to properly regulate them to

protect the right to education from possible abuses such as corporal punishment, hazardous infrastructure or fanatic indoctrination.

The main lesson from these three cases studies is the need to regulate private providers in education. States have the obligation to provide a regulatory framework to ensure private providers comply with the minimum standards upheld in the international human rights framework. But regulation on its own is not enough, regulation relies on good governance and good quality public schools that set the standards in order to work effectively, as well as effective monitoring mechanisms (Ron Balsera et al., 2016). The State has the obligation to respect, protect and fulfil the right to education. Regulating private providers plays a crucial role in this responsibility; which includes not only legislation, but also providing effective monitoring mechanisms to enforce them. States have an obligation to protect individuals from human rights abuses committed by private parties, as well as the obligation to promote and fulfil the right to education.

However, there is a big gap between the reality – an increasingly growing presence of private providers and the commercialisation of education – and the legislation regulating the role of private actors in education (Ron-Balsera et al., 2016). This gap is in itself a failure of the State's obligation to protect the right to education from being commercialised and protecting right holders (children, parents and guardians, teachers) from abuses committed by private actors. In order to close this gap and prevent potential violations of human rights, States must enact legislation on clear minimum standards (based on the International Human Rights Framework) to open and operate private schools, which include clauses on non-discrimination on any of the prohibited grounds; facilities (that ensure the safety and hygiene of all students and teachers and are conducive to learning); teachers' rights, qualifications and training. Likewise, States must have effective and transparent public monitoring and inspection mechanisms to hold private actors constantly accountable. At the same time States must allocate more resources towards improving the availability and quality of public schools, rather than supporting private providers. Otherwise they will be confronted with social segregation and inequality of education opportunities as in the cases of Pakistan and Chile, with a meagre education budget, expecting families to bear an important share of the financial burden. Regarding the need to increase the education budget (4-6% of GDP or 20% of national budget being the benchmarks), the most sustainable way to increase domestic resources to invest in education is through improving domestic taxation, making it more progressive and transparent, closing tax loopholes (as in the case of Chile) and keeping tax incentives to corporations to a minimum. Equally, States must not subsidise and should ban for profit education provision to avoid the commercialisation of a human right and public good, since the market logic leads to increased social segregation and lowers the educational opportunities for the lowest quintiles, exacerbating inequalities as we have seen in the case of Chile.

6. Conclusion

Education is a human right, not just a public service or a basic need, which means that the State has the obligation to respect, protect and fulfil the right to education. Although private provision is recognised by human rights law and the State has the obligation to respect it, the State must protect the right to education from potential violations from private involvement. The State's obligation to fulfil this right, that is, to provide or ensure the provision of free and good quality education is paramount.

However the decline in public funding coupled with a growing demand has opened the door to private actors seeking to establish a new market. Private education is being promoted and explored

by some education stakeholders as a solution to the lack of sufficient public provision of education or underperforming public schools. Yet, market-driven reforms tend to lead to human rights violations as we have seen in the case of Chile. Profit driven companies are seeking to benefit from the \$4.9 trillion that the global education market is estimated to be worth (Verget et al., 2016). So it is crucial that their power and rapid expansion do not lead to the commercialisation of education and the violation of human rights.

However, some non-State actors could play a positive role in realising the right to education for all, such as the potential improvement of public schools that are the aim of the Education Management Organisation in Sindh, Pakistan; or filling the education gap in hard-to-reach areas as many community schools that are now part of the national education system have done. This paper has shown interesting examples that could be a source of inspiration to ensure that mixed education systems comply with human rights. However, as underlined throughout this paper, non-State actors' involvement in education must be regulated and can only comply with human rights within a specific framework.

The liberty to establish and choose educational institutions not provided by the State has to meet the following requirements:

- Does not lead to any form of discrimination or segregation, or create or increase inequality;
- Does not lead to fee-charging private primary schools being the only option, are optional and exist in addition of quality free publically-supported schools
- Private providers are adequately regulated and monitored, including pedagogy, infrastructure and teacher qualifications;
- The humanistic nature of education is preserved
- Their role is publically debated in line with the principles of transparency and participation

Yet, effective regulation requires good governance, well-funded monitoring and inspection mechanisms, as well as a good quality public education system that sets the standards (Ron Balsera et al., 2016).

Education, at least at primary level, must be free and of good quality. Hoping that the private sector will be the solution for the 121 million out-of-school children, school retention and inequity challenges is a delusion that could lead to entrenching gender and social inequalities and depleting the already stretched education budget to benefit profit making companies.

7. Recommendations

This report would like to make the following recommendations to the Education Commission:

1. It is the State's obligation to ensure the provision of good quality education, free at primary level and progressively free to secondary level. Private provision should never lead the State to abdicate from this responsibility. As with the cases presented here from Pakistan and community schools, mixed education systems can expand and strengthen the public education system, supplementing and not supplanting the public education system. Since fees are the main barrier for disadvantaged groups to access or remain in schools, mixed education systems must not aim at affordability but at genuine gratuity at the point of use. Community schools show how private actors may be a useful temporary complement to the public system, and may be part of a progressive strategy of realising the right to free education.

2. Regulation is essential to protect the right to education from potential abuses and violations of human rights. Therefore, the Education Commission should encourage countries to develop a clear, transparent, fit-for-purpose and effective regulatory framework that includes monitoring, inspection and redress mechanisms. Although not perfect, Kenya has made recent efforts to regulate the growing 'low cost' school sector by writing guidelines for alternative and non-formal provision of education, paving the way for more ambitious reforms in line with the human rights framework. However, regulation should not be a response to a crisis, it needs to be properly planned, analysing the current national education landscape, global trends and ensuring compliance with human rights law.

3. This regulation should ensure that the liberty to establish and choose educational institutions not provided by the State meets the following requirements:

- Does not lead to any form of discrimination or segregation, or create or increase inequality;
- Does not lead to fee-charging private primary schools being the only option, these are optional and exist in addition of quality free publically-supported schools
- Private providers are adequately regulated and monitored, including pedagogy, infrastructure and teacher qualifications;
- The humanistic nature of education is preserved
- Their role is publically debated in line with the principles of transparency and participation

4. Public education systems should be expanded, improved and strengthened. Public schools tend to serve the poorest and most disadvantaged groups, as we have seen in the three case studies. Furthermore, they usually become the benchmark that the quality of private education is judged against. Current resources for public education in developing countries are meagre and stretched, which have led to a decline in quality, people's confidence in public education, an increasing fragmentation of provision and the spread of for-profit fee charging schools – with worrying impacts on equity.

5. States must not subsidise and should ban for-profit education provision to avoid the commercialisation of a human right and public good, since the market logic leads to increased social segregation and lowers the educational opportunities for the lowest quintiles, exacerbating inequalities – as we have seen in the case of Chile – which is contrary to international human rights law.

6. Teachers' qualifications, training and working conditions (salary, contract, student/teacher ratio, etc) are intimately linked to education quality, therefore they must be properly regulated to ensure non-State actors' involvement in education maintain these standards. As demonstrated by the cases here, this is one of the most neglected aspects, particularly when the priority is to improve cost-efficiency, however, it is essential for quality of education.

7. The connection of non-State actors' provision with the public education system should be bidirectional: non-State provision needs the government to recognise, monitor and support it, as we have seen in the case of community schools. Equally, States need to analyse the reasons behind the expansion of private schools (e.g. low quality, gaps in provision) and, where appropriate, as demonstrated in the case of community schools or the Education Management Organisation Model in Sindh, Pakistan, States should integrate non-State actor's successful approaches to participation and retention of disadvantaged populations in the wider public system. Growth in mixed service provision should be planned, coordinated and done in a transparent and participatory way. It needs to link school location to demographic and education needs and have the capacity to promote equity

and inclusiveness. If States fail on these accounts, it can result in greater inequality and segregation such as in the case of Chile's neoliberal reform.

8. For States to fulfil their obligations regarding the right to education and meet the targets set by the Sustainable Development Goals, particularly in poorer countries, the education budget needs to be 20% of the national budget or 6% of GDP. Education is a long-term investment with recurrent costs, which requires predictable and sustainable financing. Increasing the national revenue through a more efficient and progressive taxation system: closing tax loopholes, putting an end to tax avoidance and evasion and minimising tax incentives given to corporations, could be key to improving the financing for education making it fairer, more accountable and sustainable.

9. Wherever private providers fill a gap in the provision of free education, their role can be positive if their role is integrated into a State plan to realise the right to education. That requires the State to identify where the gaps are, work with private actors that are genuinely interested in realising the right to education, define smart and progressive partnerships and regulations for those schools, and define how to progressively include those actors in the formal public system. Such steps need to be part of a clear and transparent plan, preferably written into law, that is adequately resourced, and identifies clear deadlines to be realised as expeditiously as possible, in the short or middle term.

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