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Summary Report
Southern African Regional Consultation
Human Rights Guiding Principles on State obligations regarding private and
public schools
Johannesburg, 16-17 August 2017



Background

Growth of private actors in education

The last two decades have seen a significant increase in the scale and scope of non-state actors in education, particularly in developing countries. This has manifested in particular in an expansion of low-fee for-profit schools which target low-income communities. There is a diverse range of low-fee private schools, including long established community and faith-based schools and more recently developed commercial for-profit chains of low-fee private schools. Donors have supported the expansion of private provision and financing of education, including through public-private-partnerships (PPP). There has also been an increased use of private tutoring, the adoption of private sector management techniques in the public education sector and education service provision such as testing.

To assess the extent and impact of this phenomenon, in the last five years research has been [conducted in 15 countries](#) to assess the growth of private actors against international human rights law. A range of civil society organisations have produced several reports; submitted parallel reports to international and regional human rights treaty bodies including the UN Committees on Economic, Social and Cultural Rights and on the Rights of the Child; and conducted workshops with partners and advocacy towards policy makers. Due to these collective efforts, human rights norms and standards related to the role of private actors in education have largely developed, with a series of [concluding observations](#) from human rights bodies and [reports](#) from the UN Special Rapporteur on the right to education on the issue.

This better understanding of the role that private actors can play in education and its limitations, including within complex governance arrangements such as public-private partnerships has allowed organisations to take more specific, nuanced, and decisive action. Dialogue and debates have been initiated globally, with various actors including ministers and government representatives, private sector actors, civil society organisations, and the media engaging in an open and informed discussion on the role of private actors in education. This has been an attempt to surmount a previously absent, or largely divided and opaque, dialogue on the issue. Dialogue has also been initiated with international organisations and bi- and multi-lateral donors to reflect on the human rights impacts of their support to the private sector. Building on this success, an international movement of civil society organisations are now actively working together to monitor the situation and put forward constructive, principled and pragmatic solutions. These organisations have organised themselves as part of an informal Consortium on privatisation in education and human rights.

The Human Rights Guiding Principles on State obligations regarding private and public schools

The potential benefits or negative impacts of the growth of private schools on inequalities and social justice are highly debated. Stakeholders hold divergent views about which practices are acceptable and which are not within the different contexts. What is currently missing from this debate is a broadly accepted normative framework against which to assess the implications of the growing involvement of private-sector actors in education. The Human Rights Guiding Principles on State obligations with regards to the delivery of education by public and private actors (“Guiding Principles”) intend to address this gap. They will provide a universally accepted normative framework reflecting legally binding law. They are anchored in the [human rights framework](#) according to which private schools should:

- Not be a source of segregation, discrimination and inequalities;

- Provide an alternative to and not affect access to free, quality, publicly-supported education;
- Preserve the humanistic nature of education;
- Conform to minimum education standards established and adequately enforced by the State;
- Incorporate principles of transparency and participation of all education stakeholders.

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

The purpose the Guiding Principles and their development process is to:

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

The Guiding Principles are intended to be used at the local, national, regional and international levels and as a basis for constructive discussion, advocacy, law and policy development, and litigation. They may be used in courts as a legal tool and act as a powerful advocacy tool for a broad range of stakeholders.

The development of the Guiding Principles is currently being coordinated by a secretariat consisting of Amnesty International, the Global Initiative for Economic, Social and Cultural Rights, the Initiative for Economic and Social Rights and the Right to Education Initiative. The secretariat facilitates inputs from various groups and sources into successive drafts, and organises the group of experts that is in charge of the content.

As part of a broad consultative process, various regional and thematic consultations are being convened over the course of 2016, 2017 and 2018. These consultations will include a range of stakeholders from the region including civil society, ministry of education representatives, experts in the fields of education and law, academics, human rights organisations, inter-governmental organisations, private sector representatives and other actors. Key constituency groups in education, including teachers, parents and students are especially encouraged to input into the development of the principles.

Previous consultations have taken place in Bangkok for the [Asia-Pacific region](#), Nairobi for [East Africa](#) and Paris for [North America and Western Europe](#). For more information on the Guiding Principles and the consultation process, see the [concept note](#) and the [dedicated webpage](#).

Southern African consultation

The [Southern Africa regional consultation](#) was held on the 16th and 17th of August 2017 at OSISA's office in Johannesburg. It was hosted by the Equal Education Law Centre (EELC), together with the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), the Right to Education Initiative (RTE), the Open Society Initiative for Southern Africa (OSISA), the Open Society Foundation for South Africa and the Open Society Foundation's Education Support Programme (OSF-ESP).

The consultation was attended by 40 participants from eight countries in the Southern Africa region (Angola, Democratic Republic of Congo, Lesotho, Madagascar, Namibia, South Africa, Swaziland, and Zimbabwe), including civil society actors, child rights experts, human rights organisations, lawyers, ministry of education representatives, and private actor representatives. Participants shared experiences on privatisation of education from their own contexts, developing an understanding of the regional challenges. This was the fourth regional consultation on the Guiding Principles, contributing towards ensuring the Guiding Principles is an effective and complete framework.

Add final program

Introductory sessions

Introductory sessions considered the growth of privatisation and trends within Southern Africa and globally. Participants were also informed of the history and development of the Guiding Principles as one solution to emerging concerns.

Introduction

Siphosami Malunga, Executive Director at Open Society Initiative for Southern Africa gave the welcoming remarks. Hugh McLean, director of the Open Society Education Support Program; Nurina Ally, executive director at Equal Education Law Centre and Zizipho Zondani, fellow at the Global Initiative for Economic, Social and Cultural Rights provided an overview of the consultation, sharing views on the importance of hearing from the diverse range of stakeholders present to advance the often divisive debate on privatisation of education, and to input into the Guiding Principles.

Examining the growth of private actors in education: trends in Southern Africa

This session provided context to the emergence of private actors in education in Southern Africa. Presentations were given by Jacques Tshimbalanga of the Coordination Nationale Pour l'EPT (CONEPT) on the situation in the Democratic Republic of Congo, Tshepo Motsepe of Equal Education on South Africa, and Magodonda Mahlangu of Women and Men of Zimbabwe Arise (WOZA) and Taurai Chiraerae of Afrodad on the situation within Zimbabwe.

Add Image

South Africa

Tshepo Motsepe gave a presentation on the education system in South Africa. Tshepo explained that there are flaws within the public education's quintile system which splits schools into five categories ranging from predominately black no-fee schools to fee-charging schools catering to middle-classes. While there is still interest in investments in public education, there remains a question of how to hold governments accountable.

On the trends in private education in South Africa, Tshepo explained that there are elite private schools as well as the for-profit company Curro Schools which operates private schools for children from mainly middle-class households.

Since 2012, Equal Education has been following the development of the 'Collaboration Schools', a pilot of a public-private school scheme being run in the Western Cape where public schools, mostly in low-income communities, are being operated by non-state actors. The program is akin to charter schools of the US and academy schools of the UK, and is being financially supported by donors. An attempt to introduce the pilot into the Gauteng province failed as government officials there preferred for donors to give the state funds for education so that the state continues to provide education.

It was noted that extra resources are needed to assist the country achieve education, however donors need to be transparent in the Collaboration School model, including in relation to the rights and benefits of teachers employed in the Collaboration Schools, and on the admission criteria of the schools where concerns have been raised. Tshepo also explained there remains the question of whether once donors withdraw funding from the program, whether the state will have capacity to meet the shortfall, if not there remains a possibility of private actors entering that space.

Zimbabwe

Magodonga Mahlangu explained private schools have existed in Zimbabwe for some time, including before independence where they were noted as providing quality education. Following independence, the government prioritised education, with its public education system amongst the best within Africa. The Zimbabwean constitution also protects the right to education. However, these legal obligations have not been met more recently. Magodonga explained there has been a growth of private education in Zimbabwe due to state failure in the last years. Public schools charge expensive levies which can range from \$10-\$200, this has created a gap where parents are unable to send their children to public school. The levies are also a cause of financial hardship for parents who get into debt as a result. This failure of the state has been exploited by private schools, which offer education of questionable quality.

Magodonga discussed some of the concerns of these private schools, in which children are unregistered and as a result have to pay additional fees to sit exams in public schools. Private schools also negatively impact on the staffing of public schools. In Zimbabwe the State pays for teachers in private schools. While there is no shortage of qualified teachers in the country, most work in private schools while public schools remain understaffed. Private elite schools are also a source of discrimination in the education system. In such schools the students sit the Cambridge exam instead of local exams, with the former favoured in subsequent education and employment. In conclusion, Magodonga found problems in the education system to be a question of political will.

Taurai gave a background on how the economic crisis in the country saw the cancellation of free education and the removal of teacher subsidies. This had a dire impact on public education. By 2008, schools began to close and teachers left the country for work abroad. This left a vacuum which the private sector stepped in to fill.

Since then, the government has begun to allocate substantial amounts of resources to education, amongst the highest in Southern Africa. The State also has legal frameworks in place with registration requirements setting benchmarks for private schools under the Education Act 2001. However, implementation has been

problematic with schools failing to register and operating illegally. In Harare alone 103 private schools were found operating without the required registration.

Taurai also reflected that lessons could be learnt from the experience of health PPPs. Civil society organisations have noted PPPs are expensive and increase the burden on people. In health, it has been seen that the risk has been taken from the private sector and placed on the government.

Democratic Republic of Congo

Jacques explained the DRC has a history of privatisation in education dating back to 1880, where the first schools in the country were private. During colonisation, there were no public schools but schools managed and financed by the Catholic church. Education reforms first occurred in 1923 which saw the introduction of State managed and financed schools in 1950. The State attempted to take control of all schools in 1977, a time when the country was experiencing conflict, the State failed in this and three years later schools were handed back to the Catholic church and private actors with a new partnership in place. The State began to fund privately managed schools. Private actor involvement in education was further entrenched during the 1980s, with a reduced education budget supported by the World Bank, when this resulted in reduced quality and infrastructure the private sector increased their presence in the education space.

Private schools make up a large proportion of the DRC's education sector, with 15-20% of primary schools now private and 64% of schools in Kinshasa private. Jacques also discussed the problem of parents funding public schools through fees, 60% of which goes to the minister's office. There are also additional fees within public schools including the payment for school reports as well as administrative fees. Children from vulnerable households unable to afford these costs are denied access to schools and in some instances are taught in separate classrooms. This results in children missing out on an education for months and also in the repetition of the school year due to gaps in learning. Jacques opined that the DRC has one of the worst forms of privatisation, referring to it as "silent privatisation" where private actors hold a prominent role and parents bear the burden of financing public schools, in this context the State is said to fulfil its obligation.

Introduction to the Guiding Principles

Sylvain Aubry and Zizipho Zondani from the Global Initiative for Economic, Social and Cultural Rights gave an overview of the global trend of a growth in privatisation of education and an introduction to the Guiding Principles on behalf of the secretariat. The typology of private schools was considered, with community, entrepreneur, religious and commercial schools discussed. Focus was placed particularly on low-fee private schools and the emergence of commercial chains of low fee private schools. Such schools are increasingly being supported by international donors such as the World Bank and development departments of the UK.

The role of private actors in education is often a divisive debate amongst education stakeholders, the arguments for and against private schools were discussed with participants raising their own views on the issue and concerns on equal access to private schools including for children with disabilities. The content of the right to education was discussed and presented as a framework against which to assess private actor involvement in education.

Participants were also introduced to the Guiding Principles, with the process and role of the participants in it explained.

The presentations can be found here: *insert link to the presentations if available*

Discussion of the Guiding Principles

Subsequent sessions consisted of plenary discussions and group sessions where participants shared their perspectives on education, the presence of private actors within their countries and reflections on the Guiding Principles. In group sessions, participants had the opportunity to familiarise themselves further with the Guiding Principles, and directly input into the draft.

Some of the key observations made can be found below. More detailed notes were taken from group sessions where suggested changes were directly added to the Guiding Principles. The secretariat will incorporate the comments made into the Guiding Principles and present the debates to the group of expert that will draft the final text.

General feedback

- The principles are helpful as a guide for States and to inform other actors, including private school operators, of what is and is not permissible where private actors are present in the education system. For instance private schools in Madagascar think that they can do what they want, and it would help to clarify that there are limitations.
- Some points still need to be changed to be adapted to different cultural contexts.
- The consultation process may be difficult for those not familiar with international law.
- What is the connexion between the Guiding Principles and SDGs?
- Question on whether there is a process for State support or ratification
- More work is needed on the rights *in* education.
- Translations in various languages will be needed.
- There could be an interim period where private schools are State funded to reduce fees to learners while improving public education.
- In some contexts, private education remains a privilege only for those with money (Lesotho). Principles will ensure regulation of private education and maintain education as a right, not a privilege.
- The review of the Namibian Education Act saw the addition of a chapter on private education, with an obligation for the State to fund private schools. Illustrates one of the ways the clarifications on state funding of private schools from the Guiding Principles could clarify state obligations.
- A participant had some scepticism on the capacity of international law to limit privatisation. However, the consultation process allows for national ownership of the international framework to allow for a framework that can have a lasting impact.
- The process helps reflect critically on points taken for granted, the principles show these points are not obvious to all, acting as a good source for activism.
- Should take a multidisciplinary approach, for instance learning from the experiences of healthcare, and to look at the full spectrum of economic, social and cultural rights.
- Value of principles will be enhanced by a political process and mobilisation. Should leave space for communities to give their understanding.

Key feedback from groups

- Change of title recommended, to reflect scope of the principles.

- Confusion across contexts on what the different levels of education may mean, and are covered by the principles.
- Predict and not let private sectors destabilise public education – e.g. clearly cap the number of private schools.
- PPP: distinguish subsidy of (existing) private schools from PPP to outsource to private providers.
- Definitions needed: private, public and PPP, but keeping it universal, so perhaps in the preamble or the commentary.
- Question of what to do where local law contradicts the principles?
- PPP in South African law has a very limited definition.
- Section 5 on finance and public funding of private schools sets a high standard. Also noted that state funding to private operators should be limited.
- It was questioned whether fees are not inherently discriminatory and if they should be charged at all.
- Need to explain what an undue influence of private actors in education is.
- Be consistent with use of person *or* child, the State *or* States.
- 'Parents' should be changed to 'care-givers' throughout.
- What is the nature for the preamble?
- Some provisions were noted to be too long, should be broken down.
- Discussion on the threshold for segregation in the education system.
- Discussion of temporary special measures to redress past inequalities (para.7): discrimination possible on legitimate grounds. Notion of "temporary" – essential?

Reflections on the way forward

Participants also had the opportunity to share views on how the Guiding Principles could be used, and the tools required to for their implementation.

Implementation of the principles

- Translation in global and national languages, and Braille
- Institutionalise the GPs
- Dissemination, understand the content – campaign:
 - o Social medias
 - o Radio and TV shows
 - o With the law society
 - o Community sensitisation about their purpose
 - o Workshops with different organisations and communities
 - o Train trainers
- Target groups
 - o Teachers
 - o Private providers
 - o Civil society
 - o Government officials (education, justice...) – policy maker and legislature
 - o Judges
 - o Lawyers
 - o Traditional leaders
 - o School boards

- Regional institutions : AU, ECOWAS, SADC, etc
 - UNESCO...
- Launch event
- Target human rights bodies: HRC/UPR, ACERWC, CRC, CESCR...
 - Engage
 - Parallel reports
- Engage with national human rights institutions
- Training for judges
- Contextualise the principles: studies to assess the situation against the Principles
 - Research on privatisation against the GPs
- School level quizzes and debates, fun for learners
- Incorporate the GPs into higher education curriculum
- Delegates from consultations report on implementation
- Involve musicians, artists, to interpret in a more accessible way
- Litigation
- Identify targeted campaigns, e.g cap on private schools?
- Start sensitising before adoption

Tools

- Documents to raise awareness:
 - brochures, videos, graphs
 - In an audio form
 - Summary/simplification
- Training kit/resources
 - Training manual
- Monitoring tool for advocacy
 - Indicators
- Videos, animations, to simplify: for the medias, teachers, learners
- Pamphlets for key points, for duty bearers
- Toolkit with all the sources in one book + online
- Model regulatory framework
- Website with all the material
- Map government positions
- More precise timeline, and simple information to start advocating immediately