



Alternative Report Submitted by the Global Initiative for Social and Economic Rights and the Sciences Po Law School Clinic

With the support of the the Foro por el Derecho a la Educación, the Red de Estudios para la profundización Democrática, the Latin-American Campaign for the Right to Education, the Privatisation in Education Research Initiative, the Right to Education Project, Education International, the Global Campaign for Education, and the Equal Education Law Centre.

Presented to the United Nations Pre-sessional Working Group of the Committee on the Rights of the Child at its 70th Session for its consideration of the List of Issues for Chile

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KEY ISSUES ADDRESSED IN THE REPORT

Although privatisation in education is a growing global phenomenon threatening the right to education in many countries,¹ the Chilean experience is unique. No other country has undergone such a systematic reform (over the whole territory of the state) over such a long period of time (three decades), and examining the situation of Chile is therefore crucial to understand the effects privatisation on human rights more generally.

Chile, a country where the State traditionally was the main provider of education, with 80% of students enrolled in public schools before 1973, has undergone radical neoliberal reforms from the 1980's which have profoundly changed its education system, up to the point where **private-school enrolment now represents more than 60% of total enrolment, in just 3 decades**. Of the 65 countries tested through the Program for International Student Assessment (PISA) of the Organisation for Economic Co-operation and Development, **Chile has the highest share of private expenditure in education** on all levels of education with 40% of education expenditure coming from private sources, most of it coming from individual households.

This report focuses on analysing the impact of this massive privatisation on segregation and discrimination. A supplementary report will be published mid-2015 about the impact on other human rights dimensions.

The report finds that because, amongst other key factors, the differentiated choices made by families, school fees charged in private schools, and the practice of entry level tests, the education system is extremely segregated in Chile, thus making the system very discriminatory, in contravention with States' obligations under the Convention on the Rights of the Child:

- **Chile has the education system that is the most segregated by socio-economic status** within the 65 PISA-tested countries;
- The education system in the State Party is also segregated according to education performance;
- Disadvantaged families in the State Party are less likely to achieve high levels of performance than in any other countries tested by PISA, except 3;
- **More than 75% of the performance differences between schools which is explained by the socio-economic status of students and schools, far above the OECD average (62.8%).**

These inequalities are a direct consequence of Chile's education system and policy choices.

Although some reforms have been implemented in the last years, they have not touched the privatisation assumptions on which the State party's education system is based, and which have high discriminatory impacts. Despite, also, concerns raised by the Committee on Economic, Social and Cultural Rights in 2004 and the Committee on the Rights of the Child in 2007 about the effect of the privatised education system on inequalities, little has changed, and the education system in the Chile is still in contradiction of some of the core the obligation of the State Party under international human rights law.

Reforms were being discussed in 2014, following two major protests, and it is essential that Chile adopts and implements as a matter of priority education reforms that are able to address systemic violations of the right to education in the country.

1. Chile will be reviewed by the United Nations Committee on the Rights of the Child (“CRC”) in September 2015. The Pre-sessional Working Group of CRC will consider a List of Issues for Chile (the “State Party”) during its 70th session in February 2015. The present report is submitted by the following organisations as part of this process.
2. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)¹ is an international non-governmental human rights organisation which seeks to advance the realisation of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. The vision of the GI-ESCR is of a world where economic, social and cultural rights are fully respected, protected and fulfilled and on equal footing with civil and political rights, so that all people are able to live in dignity.
3. The Sciences Po law school Clinic² is an educational program articulated around the mission of public interest within local, national, and global communities – in which it is inscribed in the Sciences Po Law School project. The Clinic conducts integrated scientific research, founded on a systematic documentation and on theoretical analysis. Within the Clinic, the Human rights, Economic Development and Globalization programme explores the promotion, protection and fulfilment of human rights, the responsibility of actors in globalization and economic development, and equitable and stable development.
4. The report has also received the support from the Foro por el Derecho a la Educación (FORO),³ the Red de Estudios para la profundización Democrática (RED),⁴ the Latin-American Campaign for the Right to Education (CLADE),⁵ the Privatisation in Education Research Initiative (PERI),⁶ the Right to Education Project (RTE),⁷ Education International (EI),⁸ the Global Campaign for Education (GCE)⁹, and the Equal Education Law Centre.¹⁰
5. This report is part of an 18 months research project on the impact of privatisation in education on the realisation of human rights which the organisations that support this report are involved in.¹¹

I. Education system and State support to privatisation in education in Chile

6. Under Pinochet’s dictatorship, from 1973 to 1990, Chile undertook major economic reforms in the public sector. Inspired by Milton Friedman’s neoliberal theories,¹² a group of Chilean economists trained at the University of Chicago – and who came to be known as the ‘Chicago boys’ – piloted a profound deregulation and privatisation of public services in all sectors, including in particular education.

¹ See <http://www.globalinitiative-esqr.org/>

² See <http://www.sciencespo.fr/ecole-de-droit/en/content/clinic>

³ See <http://www.educacionparatodos.cl/>.

⁴ See <http://redparalademocracia.cl/>.

⁵ See <http://www.campanaderechoeducacion.org/>

⁶ See <http://www.periglobal.org/>.

⁷ See <http://www.right-to-education.org/>.

⁸ See <http://www.ei-ie.org/>.

⁹ See <http://www.campaignforeducation.org/>.

¹⁰ See <http://www.eelawcentre.org.za/>.

¹¹ See <http://privatisationeducationhumanright.ning.com/>

¹² Milton Friedman, "The Role of Government in Education," in: *Economics and the Public Interest* (1955).

7. The reforms that were taken included the drastic alteration of education financing rules and procedures. The administration of educational institutions was transferred from the Ministry of Education to the local municipalities and demand-side subsidies were allocated to schools through a system of *vouchers*: a certain amount of money is allocated by the State to schools on the basis of the number of students attending the school. This system of vouchers is still in force today. In addition, school curriculum was given more flexibility, and a system of evaluation of school performance was established in 1988: the SIMCE (*Sistema de Medición de la Calidad de la Educación*). It consists of a national standard test conducted in all schools to evaluate the quality of the education they provide and the academic level of the pupils.¹³ The objective is that parents rely on the SIMCE results when deciding what school their children should attend, allowing them to choose the schools that get the best results at the SIMCE, which is considered to reflect quality.
8. Overall, the reforms were done in the name of efficiency. The argument for privatising education was that involving families in a “commercial” relationship with schools would be an incentive for them to seek to control the quality of education. As a consequence, schools were supposed to have an incentive to offer the best possible education – this being supposedly reinforced by competition between schools. Finally, the increased role of the private sector was supposed to enable the State to re-allocate its subsidies where they were most needed.¹⁴ The reforms thus resulted in an overall withdrawal of the State from its responsibilities in education, putting the rhetoric of “choice” at the centre of the system.
9. These reforms played a significant role in the development of private education in the 1990s. As a result, today there are three different categories of schools according to the way they are funded:
 - a. **Public schools:** subsidised by the State and managed by the municipalities - exceptionally they can be managed by private persons. They are free for the pupils. In 2011, 40% of pupils attended these schools.¹⁵
 - b. **State-subsidised private schools with mixed funding:** partially subsidised by the State and partially by private funding (mainly by students' families). Almost all of them have private owners. In 2011, 53% of pupils attended these schools.¹⁶
 - c. **Paid schools or independent private schools:** entirely private and entirely paid for by the students' families. In 2011, 7% of the pupils attended these schools.¹⁷

To understand the scale of privatisation that took place in the State Party, these figures should be compared with the Organisation for Economic Co-operation and Development (OECD) average, of respectively 82%, 14% and 4% in the three types of schools.

¹³ See: <http://www.agenciaeducacion.cl/simce/que-es-el-simce/>.

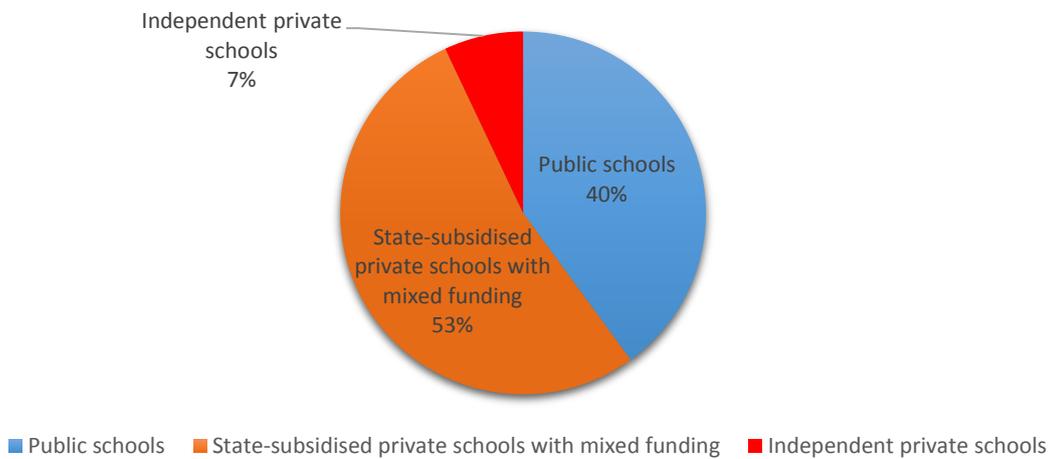
¹⁴ Javier Corvalan, “El financiamiento compartido en la educación subvencionada chilena. Apuntes a partir de los resultados de una investigación,” in: *Revista Persona y Sociedad*, volume XVII (2003).

¹⁵ OECD, *Education at a Glance 2014* (2014).

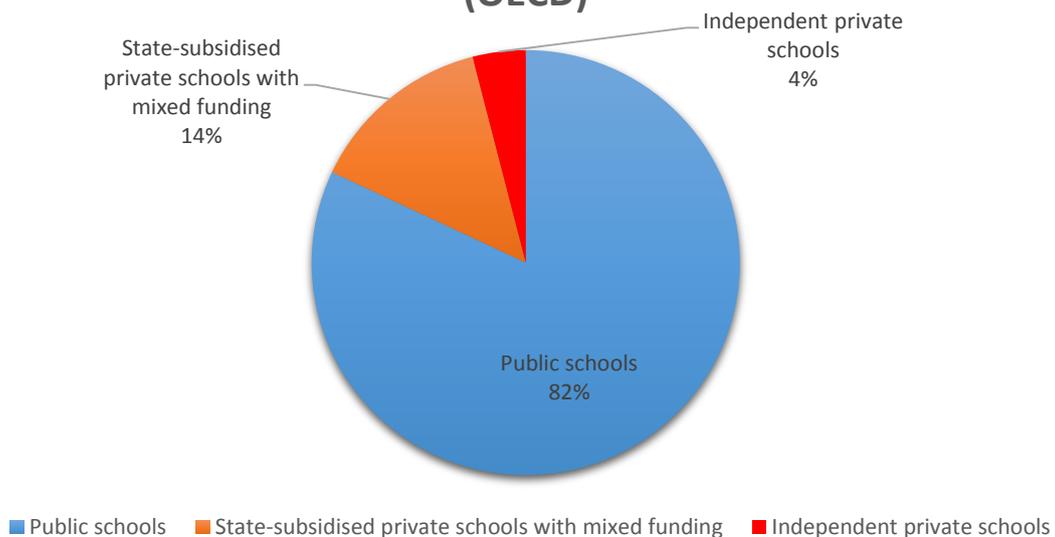
¹⁶ OECD, *Education at a Glance 2014* (2014).

¹⁷ OECD, *Education at a Glance 2014* (2014).

Share of pupils according to categories of schools (Chile)



Share of pupils according to categories of schools (OECD)



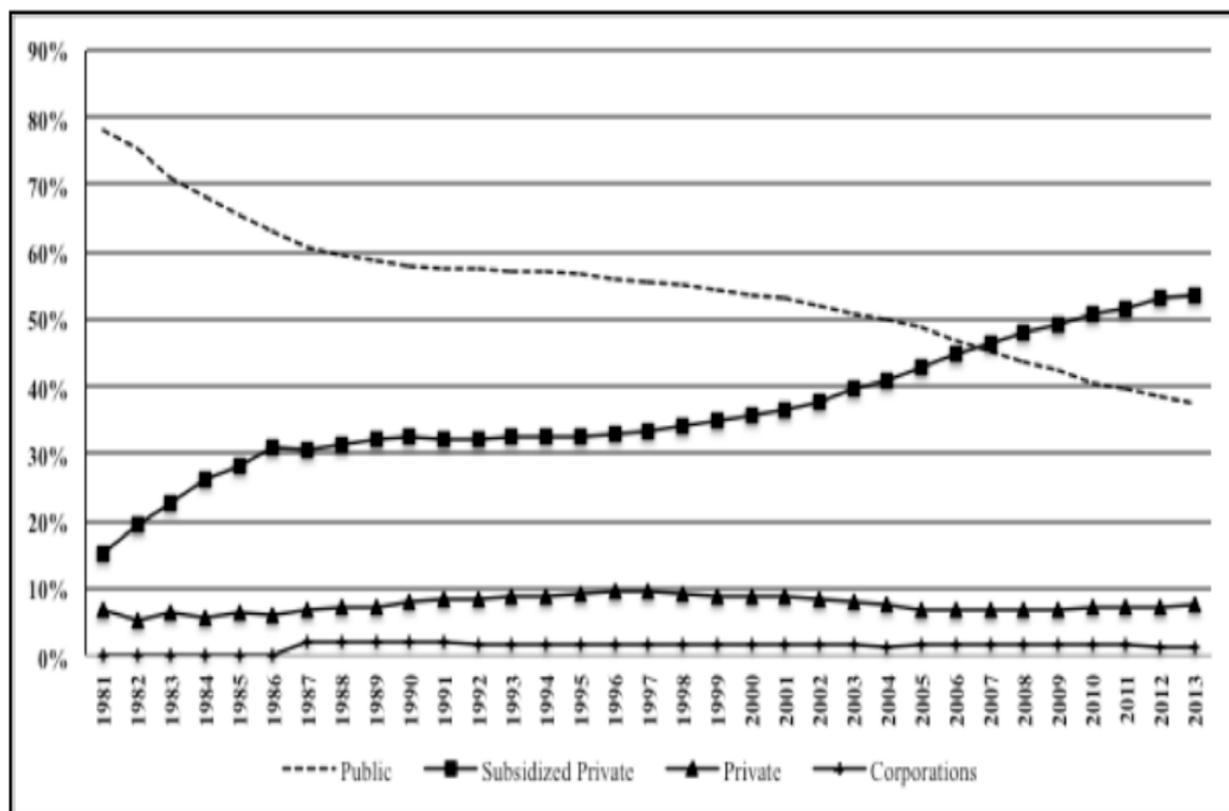
10. Until the 1990s, some guarantee of equality was provided through the regulation of State-subsidised schools which prohibited them from charging additional fees to families. However, in 1993 this prohibition was removed and public schools and State-subsidised private schools were able to charge tuition fees.¹⁸ In addition the government introduced a tax incentive to families to take part in the funding of their children’s education.¹⁹
11. The privatisation reforms led to a profound change of the Chilean education system. The introduction of this privatised education system created a dynamic educational market. The number of schools increased drastically and so did the amount of private investment in education. As a result, the number of State-subsidised private schools more than doubled

¹⁸ See: the Law on Shared Financing (*Ley de Financiamiento Compartido*) No. 18.768, Article 46 (1994).

¹⁹ See: the Law on Income Tax (*Ley de Impuestos a la Renta*) No. 19.247, Article 9 (1993).

between 1990 and 2012 whereas at the same time, the number of public schools significantly decreased.²⁰

Evolution of school enrolment in Chile by school type (%) over the years 1981-2013.²¹



Source: Verger et al. (2014) from MINEDUC statistics.

12. Although some authors consider that privatisation and the vouchers system overall had a good impact on the quality of education,²² others have criticised the system on the basis that the State renounced its role to promote equal access to education for the whole population, without having a beneficial impact on the quality of education.²³ As this report will detail, instead of reducing the gap between privileged and disadvantaged groups, it appears that the reformed educational system has contributed to deepening social inequalities.

13. In terms of the level of private funding in education in Chile, of the 65 countries that undertake the OECD Program for International Student Assessment (PISA), **Chile has the highest share of private expenditure in education** on all levels of education, with 40% of education expenditure coming from private sources. Of this private expenditure, 20.8% came from households, which is extremely high, as compared for instance to 8.8% in

²⁰ Centro de Estudios MINEDUC, *Estadísticas de la educación* (2012), p.15.

²¹ A. Verger, X. Bonal, A. Zancajo, "What role and impact do Public-Private Partnerships have in education? A realist evaluation of the Chilean education quasi-market", Paper presented at the 2014 CIES Conference, Toronto, 10-15 March 2014, p. 13.

²² C. Sapelli and A. Torche, "The Performance of Private and Public Schools in the Chilean Voucher System," in *Cuadernos de Economía*, Vol. 39, No. 118 (2002) pp. 423-454.

²³ Ricardo D. Paredes and Juan Ignacio Pinto, "¿El Fin de la Educación Pública en Chile?," in: *Estudios de Economía*, vol. 36, No. 1 (June 2009).

Argentina.²⁴ This situation is even more significant at the tertiary level: Chile has the smallest share of public expenditure in tertiary education of all OECD countries. The proportion of private expenditure is about three-quarters (76%), against an OECD average of less than one-third (31%). **In Chile, more than anywhere else, education is dependent upon private funding.**

14. Acknowledging the market failures in the field of education (high inequalities and insignificant improvements in overall system performance), Chile underwent a series of reforms throughout the 1990s and the 2000s. In the 1990s, although the first democratic government (1990-1994) highlighted the fact that education for rich and poor was different in terms of quality,²⁵ the central components of the system (public subsidies, parental choice, decentralisation) were left unchanged in the reforms. In the early 2000s, Governments focused on quality and accountability and extended compulsory education to 12 years through the Constitutional Reform of 7 May 2003.
15. It was only during the 2006 - 2010 period that greater emphasis was given to the right to quality education for all. In 2008, the Government passed a law called the Preferential School Subsidies Law (*Ley de Subvención Escolar Preferencial*)²⁶ which aims to allocate additional resources to subsidised schools in order to reduce inequalities in learning outcomes, by giving priority to students whose socioeconomic situation impacts their access to education.²⁷
16. Other significant reforms include the 2009 General Education Law (*Ley General de Educación*)²⁸ and the 2011 National System for the Guarantee of Quality of School Education law (*Ley sobre el sistema nacional de aseguramiento de la calidad de la educación*). They created different public institutions which aim to improve the quality of education and unify the educational system. The National Council of Education (*Consejo Nacional de Educación*)²⁹ is in charge of the assessment of pre-school, primary and secondary schools curriculum. The Quality Education Agency (*Agencia de Calidad de la Educación*)³⁰ has responsibility for student learning achievements and evaluates schools' results. The Agency conducts investigations and publishes reports on themes such as the relationship between socio-economic status of the family, or to the pupils' gender, and academic success. Finally, the Superintendent of Education (*Superintendencia de Educación*)³¹ must make sure that schools have the necessary elements to guarantee an education of quality, as provided by the law.
17. However, these reforms did not address some of the central issues related to privatisation in education. In fact, they were attempts by the Government to correct market failures by creating external incentives for schools to compete and become more efficient, and thus they reinforced the privatised 'choice'-based system.³²

²⁴ OECD, Education at a glance 2014: OECD indicators (2014), p. 245.

²⁵ The new government policies gave priority to rural schools ("*MULTIGRADO*") and launched several programs in the nineties such as the "programme of intercultural and bilingual education" (*el programa de educación intercultural bilingüe*) and the Complete Day (*la Jornada completa*).

²⁶ Preferential School Subsidies Law ([Ley de Subvención Escolar Preferencial](#)) No. 20.248 (2008).

²⁷ Article 2.

²⁸ General Education Law ([Ley General de Educación](#)), No. 20.370 (2009).

²⁹ See: www.cned.cl

³⁰ See: <http://www.agenciaeducacion.cl>

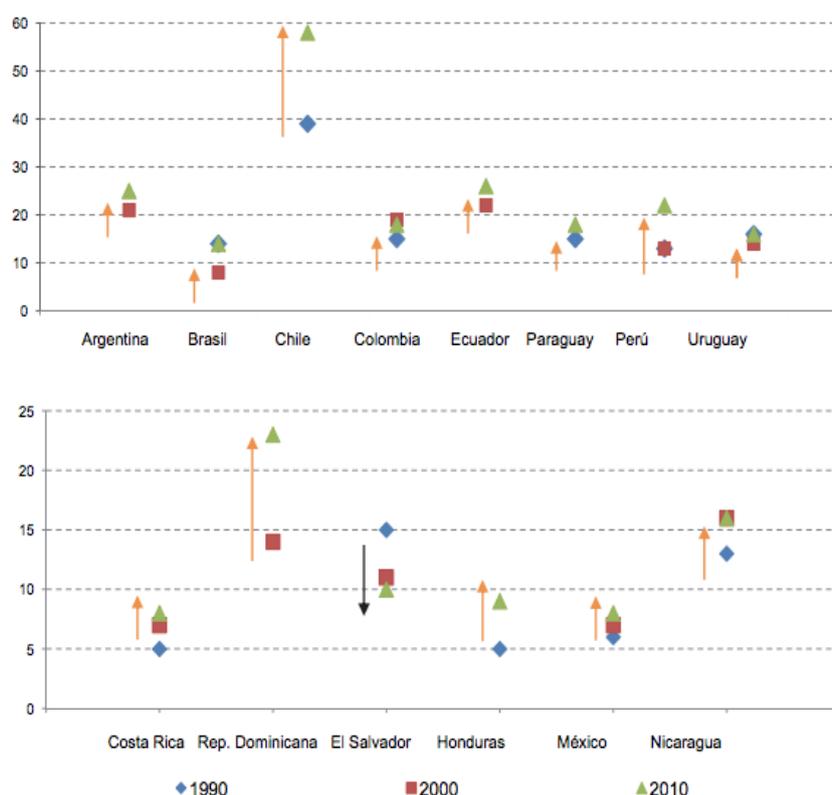
³¹ See: <http://www.supereduc.cl>

³² Verger *et. al.* (2014), *op. cit.*, p. 28.

18. In response massive student and social demonstrations took place in 2011 denouncing the inequalities created and reinforced by the education system. As a result, in 2013 the new government led by President Michelle Bachelet, placed education reform at the centre of its political agenda. As part of her election campaign, Ms Bachelet promised to transform the system, including a progressive move towards a system of free education, with a strong focus on public education. The new government has started to embark on a series of reforms, which are discussed in the last part of this report.

19. 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 undergone such a systematic reform (over the whole territory of the state) over such a long period of time (three decades). The charts below provide a comparison between the privatisation trend in Chile and in other countries in the region.

Evolution of enrolment in secondary private schools between years 1990 and 2010 in 14 different countries in Latin America³³



Source: M. Arcidiácono et. al. (May 2014), based on Unesco data.

20. The neoliberal reforms from the 1980's in Chile were radical and profoundly changed the nature of the education system. Traditionally in Chile, the State was the main provider of education, with 80% of students enrolled in public schools before 1973. 3 decades later in 2014 **private-school enrolment represents more than 60% of total enrolment**. These reforms have had a major impact on the realisation of the right to education of Chilean

³³ M. Arcidiácono, G. Cruces, L. Gasparini, D. Jaume, M. Serio, E. Vázquez, "La segregación escolar público-privada en América Latina," in: *CEPAL - Serie Políticas Sociales*, No. 195 (May 2014), p. 16

children. The reforms that are currently being undertaken (described part IV below) will be of crucial importance to enable Chile to respect, protect and fulfil the right to education.

II. The right to education and privatisation in education in Chile

21. The State Party ratified the International Convention on the Rights of the Child (ICRC) on 13 August 1990. The Convention protects the right to education in article 28 and article 29 details the aims of education.³⁴ Chile has also ratified other treaties guaranteeing the right to education, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁵

22. The CRC has provided guidance on the implementation of the ICRC in the context of privatisation:

The Committee emphasizes that enabling the private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realization of all rights in the Convention (arts. 2 (1) and 3 (2)). Article 3 (1) establishes that the best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private bodies. Article 3 (3) requires the establishment of appropriate standards by competent bodies (bodies with the appropriate legal competence), in particular, in the areas of health, and with regard to the number and suitability of staff. This requires rigorous inspection to ensure compliance with the Convention. The Committee proposes that there should be a permanent monitoring mechanism or process aimed at ensuring that all State and non-State service providers respect the Convention.³⁶

23. The CRC also addressed the issue of privatisation during its Day of Discussion on 'The private sector as service provider and its role in implementing child rights' in 2002. The Committee made a number of useful recommendations including:

In the context of its reporting obligations, the State party should specify the amount and proportion of the State budget spent on children through public and private institutions or organizations in order to evaluate the impact of the expenditure in terms of the accessibility, the quality and the effectiveness of the services provided to children in the various sectors, and should include such information in its initial and periodic reports.³⁷

The Committee recommends that States parties take appropriate legislative measures and establish a permanent monitoring mechanism aimed at ensuring that non-State service providers respect the relevant principles and provisions of the Convention, especially article 4.³⁸

The Committee recommends that States parties, when considering contracting out services to an international or local non-State provider, whether or not for profit, undertake a comprehensive and transparent assessment of the political, financial and economic implications and the possible limitations on the rights of beneficiaries in

³⁴ The aims of education are elaborated in General Comment 1, CRC/GC/2001/1

³⁵ On 10 February 1972.

³⁶ Committee on the Rights of the Child, General Comment 5, CRC/GC/2003/5, para 44.

³⁷ Committee on the Rights of the Child, Report on the Thirty-First session, CRC/C/121, 11 December 2002, para 7.

³⁸ *Op cit.* para 8.

general and children in particular. Such assessments should determine in particular the manner in which the availability, accessibility, acceptability and quality of the services will be affected. Similar assessments should also be undertaken for services provided by non-State providers that may not have been specifically contracted by States parties.³⁹

The Committee recommends that policies and programmes for service provision, undertaken as part of economic or fiscal reforms initiated at the national level or called for by international financial institutions, do not in any way compromise the possibility of public or non-State service provision.⁴⁰

The Committee further recommends that, in order to ensure economic accessibility, policies on services, in particular health care and education services, be so formulated as to reduce the financial burden on low-income groups, particularly the poor, for example by reducing and eliminating user fees for those groups that cannot afford them, especially the poor.⁴¹

24. Article 19(10) of the Constitution of the State party guarantees the right to education to all persons.⁴² It further provides that the State has the responsibility to grant special protection to ensure the realisation of this right, and that the State must guarantee free access to education to the population. Article 19(11) also guarantees the liberty of parents to choose their children's school.
25. While privatisation in education is a growing global phenomenon threatening the right to education in many countries,⁴³ Chile is a striking example of the harm it can do and its impact on the realisation of human rights. An increasing body of research is examining the impact of these developments on human rights and social justice.⁴⁴ In June 2014, thirteen organisations – including some of the organisations involved in writing this report – met for three days in Geneva to discuss these issues. We held a side event at the Human Rights Council, an expert roundtable attended by amongst others, Mr Kishore Singh, the UN Special Rapporteur on the right to education,⁴⁵ and a two-day workshop with national and international civil society organisations from around the world.⁴⁶
26. These events confirmed the scale of the phenomenon and the dangers of privatisation in education. Based on this work, and on the analysis of the situation with regards to privatisation in education in seven other countries,⁴⁷ we have developed the following draft framework, which sets out how international human rights law applies to privatisation in

³⁹ Para 11

⁴⁰ Para 21.

⁴¹ Para 23.

⁴² [Political Constitution of the Republic of Chile](#) (1980).

⁴³ See: <http://www.periglobal.org/>

⁴⁴ See generally the work engaged by a number of leading organizations working in the education fields summed up on: <http://www.right-to-education.org/issue-page/privatisation-education>. See also the project under which this report is being written <http://privatisationeducationhumanright.ning.com>.

⁴⁵ See the summary of the event on: <http://globalinitiative-escr.org/wp-content/uploads/2014/07/GI-ESCR-Summary-of-Privatisation-in-Education-events-Geneva-June-2014-FINAL.pdf>.

⁴⁶ See: <http://globalinitiative-escr.org/privatisation-in-education-advocacy-and-research-workshop-and-public-events-reports>.

⁴⁷ See: <http://globalinitiative-escr.org/advocacy/privatization-in-education-research-initiative/international-advocacy-on-privatisation-in-education> and <http://privatisationeducationhumanright.ning.com>.

education, drawing in particular on articles 28 and 29 of the ICRC and article 13 of the ICESCR.

27. Furthermore, a recent report published by the UN Special Rapporteur on the right to education (SR RtE) presented at the UN General Assembly examines State responsibility in the face of the explosive growth of private education providers, from a right to education perspective, and lays out some of the principles applicable.⁴⁸ The principles laid out by the SR RtE are very similar to those we use in our analysis framework, and references are made to the SR RtE's principles in our analysis.

Privatisation in education human rights draft analysis framework

While private providers of education are permitted, States must ensure that the development of private education:

1. Does not lead to the creation of extreme disparities in access to quality education or systemic discrimination, on any ground, and does not lead to segregation or division in societies in general and in education in particular;
2. Provides a true alternative choice to quality public education, and does not replace the public system, as the State retains the responsibility to offer quality public education for all;
3. Does not lead to the marketization or commodification of education such that education is no longer directed to the full development of a child's personality, talents and mental and physical abilities to their fullest, but instead only to profit-making or achieving a narrow set of measurable outcomes, contrary to the aims of education recognised in human rights law;
4. Is adequately regulated, both in law and in practice, with adequate inspection staffing, effective accountability mechanisms, and without corruption; and
5. Is part of a considered education policy which was developed through a transparent and participatory consultation process and continues to be subject to democratic scrutiny, transparency and participation.

28. Our research on Chile to date has focused on principle 1 (non-discrimination) of the privatisation analysis framework. We are currently investigating impacts and collecting data on the other principles, in particular principles 2 and 3, and we will submit a supplementary report setting out our findings, prior to the review of the State Party.

III. Impact of privatisation in education on discrimination and segregation

A. Legal framework

29. Equality and non-discrimination are immediate and crosscutting obligations in the ICRC (and the ICESCR), which require States parties to respect and ensure the rights set out in the

⁴⁸ Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014).

ICRC without discrimination.⁴⁹ International human rights bodies have strongly underscored the importance of non-discrimination.

30. The States Parties' obligations with respect to non-discrimination under both the ICRC and the ICESCR are immediate (as opposed to being subject to progressive realisation) and require States to pay particular attention to vulnerable or marginalised groups. Non-discrimination also applies to the distribution of government funds and resources for education.

31. In General Comment 5 the CRC elaborated:

This non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.⁵⁰

32. Following its General Day of Discussion on private actors and the ICRC, the CRC adopted the following recommendation relating to non-discrimination:

Likewise, the general principle of non-discrimination as enshrined in article 2, assume[s] particular importance in the context of the current debate, with the State party equally being obliged to create standards consistent and in conformity with the Convention. For instance, privatization measures may have a particular impact on the right to health (art. 24), and the right to education (arts. 28 and 29), and States parties have the obligation to ensure that privatization does not threaten accessibility to services on the basis of criteria prohibited, especially under the principle of non-discrimination. Such obligations of the State party are also applicable in the context of article 4.⁵¹

33. The CRC also addressed this issue in its General Comment 16 (on the ICRC and private actors) where it stated that States must ensure that the provision of essential services by private actors "*does not threaten children's access to services on the basis of discriminatory criteria*".⁵²

34. General Comment 20 of the CESCR specifies that any kind of discrimination, whether direct or indirect, formal or substantive is prohibited.⁵³

35. Together with equality and non-discrimination, equality of opportunity in education has been clearly recognised as an overarching principle in most human rights treaties.⁵⁴ In addition to urging States to address "*multiple forms of inequality and discrimination in education through comprehensive policies*", the Human Rights Council has also urged States

⁴⁹ ICESCR, Article 2(1).

⁵⁰ CRC General Comment 5, UN Doc CRC/GC/2003/5, para 12.

⁵¹ Committee on the Rights of the Child, *Report on the Thirty-First session*, CRC/C/121, 11 December 2002, para 4.

⁵² Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, UN Doc CRC/C/GC/16, para. 34.

⁵³ CESCR, General Comment 20.

⁵⁴ Report of the Special Rapporteur on the right to education, "The promotion of equality of opportunity in education", A/HRC/17/29 (18 April 2011), para. 32.

to “promot[e] equality of opportunity in education in accordance with their human rights obligation”.⁵⁵

36. The principle of equality of opportunity is partly rooted in the aim of education laid out at article 13(1) of the ICESCR, which indicates that “*education shall be directed to the full development of the human personality*”. Such full development cannot be realised if the intrinsic characteristics of learners, for instance their socio-economic background, rather than their merit and efforts, is a strong factor that determines the amount and quality of education they have access to.
37. Applying the obligation to not discriminate, as well as the principles of equal opportunity and effective participation in society for all, the CESCR emphasised in its General Comment 13 that the State has an obligation to ensure that privatised education “*does not lead to extreme disparities of educational opportunity for some groups in society*”.⁵⁶
38. The CRC has made a number of observations on the impact privatisation and fees and on discrimination. Most recently, in the case of Morocco, the CRC was expressed concern that the fast development of private education “*has led to the reinforcement of inequalities in the enjoyment of the right to education*”.⁵⁷ With regards to Colombia, the Committee noted that the legislative provision that allows costs to be levied by schools upon those who can afford to pay ‘*has created a discriminatory educational system marked by arbitrary fees and social exclusion*’.⁵⁸ It has also recommended that Lebanon place stronger emphasis on public education so as to ‘*prevent any risk of discrimination*’.⁵⁹
39. Building on these principles, the SR RtE cautioned in his last annual report that privatisation “*throws overboard the fundamental principle of equality of opportunity in education, which is common to almost all international human rights treaties*”.⁶⁰ Access to education based upon the capacity to pay fees, which is a consequence of privatisation, “*flies in the face of prohibited grounds of discrimination*.”⁶¹
40. Similarly the CESCR’s concluding observations have highlighted the discriminatory impact of tuition fees. Despite the existence of scholarships and bursaries in Canada, the Committee expressed ‘*concern about the discriminatory impact of tuition fee increases on low-income persons*’.⁶² It connected the importance of free education with the realisation of the right to non-discrimination, including discrimination on socio-economic grounds. In the case of Nepal, the CESCR recommended that basic education be made free and compulsory ‘*without discrimination on the grounds of gender, ethnicity, religion or social status*’.⁶³
41. Further, in its review of the Republic of Korea, the CESCR clearly highlighted that access to education should not be based on financial capacity or, in the case of higher education, solely based on ability. It expressed its concerns with the ‘*high associated costs of education*

⁵⁵ Human Rights Council, “The right to education: follow-up to Human Rights Council resolution 8/4”, A/HRC/RES/17/3 (6 July 2011), para. 4.

⁵⁶ CESCR, General Comment 13, para. 30.

⁵⁷ CRC, *Concluding Observations: Morocco*, CRC/C/MAR/CO/3-4 (2009), para. 60.

⁵⁸ CRC, *Concluding Observations: Colombia*, CRC/C/COL/CO/3 (2009), para. 33. See also CRC, *Concluding Observations: Sri Lanka*, E/CRC/C/LKA/CO/3-4 (2010), para. 62.

⁵⁹ CRC, *Concluding Observations: Lebanon*, CRC/C/15/Add.169 (2002), para. 33.

⁶⁰ Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014), para. 48.

⁶¹ *Ibid.*, para. 45.

⁶² CESCR, *Concluding Observations: Canada*, E/C.12/CAN/CO/4 E/C.12/CAN/CO/5 (2006), para. 31.

⁶³ CESCR, *Concluding Observations: Nepal*, E/C.12/1/ADD.66 (2001), para. 57; emphasis added.

required to be paid by parents,' 'the deepening inequality in education,' and 'the fact that the chances of entering a high-level university for students are often determined by their parents' ability to afford after-school tutoring or private education.' The CESCR recommended that the Republic of Korea *'ensure that education is equally accessible to all and without discrimination, on the basis of ability, not financial capacity.'*⁶⁴

42. The constitution of the State Party protects equality before the laws in article 19(2).

B. Situation in the State Party

43. As stated by the SR RtE, *'[p]rivatization in education cripples the universality of the right to education as well as the fundamental principles of human rights law by aggravating marginalization and exclusion in education and creating inequities in society,'*⁶⁵ and it *'favours access to education by the privileged.'*⁶⁶ High levels of privatisation in education have been shown to affect particularly marginalised and vulnerable groups, such as girls, as shown in a recent submission made to the CEDAW.⁶⁷ Data in Chile show similar trends.

i. Causes of discrimination and segregation

44. There are several causes of the high segregation within the Chilean education system and the systemic discrimination it generates. We discuss below three of them which are directly connected to the privatisation of the education system, which are the result of State policies and which play a particularly important role.

1) Role of differentiated choice

45. The Chilean educational system is based on the principle of offering increased "choice". The idea is that parents choose the best school for their children on the grounds of quality.⁶⁸ Yet, the reality shows that this "choice" in fact benefits mostly socio-economically advantaged groups and is a cause of segregation.

46. A number of studies have shown that families use diverse criteria to choose their children's schools in Chile and these vary according to the family's socioeconomic status.⁶⁹ Data from the PISA, which in 2012 conducted a specific study on criteria used to choose schools in Chile, show for instance that low expenses (tuition, books, etc.) and availability of financial aid (loan, scholarship, grant, etc.) is a much more important criterion of choice for poorer families than for wealthy families. Conversely, wealthy families give much more importance to the levels of achievement of students or to the atmosphere of the school than poorer families.⁷⁰

47. In addition, parents' choice is limited by the education supply in the area. Poor families may need to adjust their preferences to the geographical limitations of their local education market.⁷¹ The majority of students in low-performing schools usually have no better

⁶⁴ CESCR, *Concluding Observations: Republic of Korea*, E/C.12/KOR/CO/3 (2009), para. 76.

⁶⁵ Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014), para. 41.

⁶⁶ *Ibid.*, para. 48.

⁶⁷ See: <http://www.right-to-education.org/news/report-highlights-how-privatization-education-negatively-impacts-girls-many-parts-world>

⁶⁸ Verger *et. al.* (2014), *op. cit.*, p. 2.

⁶⁹ See generally Verger *et. al.* (2014), *op. cit.*

⁷⁰ OECD, *PISA 2012 Results: What Makes Schools Successful? Resources, Policies and Practices (Volume IV)*, PISA, OECD Publishing (2013), p. 137.

⁷¹ Verger *et. al.* (2014), *op. cit.*, p. 17.

alternatives close to their homes. Fee-paying schools do not set up in areas where families do not have sufficient resources to afford them.

48. Poor people thus face constrained “choices” that are sources of inequalities. As concluded by the OECD, analysing the PISA 2012 results:

These differences suggest that socio-economically disadvantaged parents believe that they have more limited choices of schools for their children because of financial constraints. If children from disadvantaged status cannot attend high performing schools for this reason, then even school systems that offer parents more school choice for their children will be less effective in improving the performance of all students.⁷²

Interview with a parent about their choice of school, and role of socio-economic characteristics

An interview conducted by researchers in Chile demonstrates well how the growth of private schools and “choice” can be a factor of segregation:

Interviewer: Is this the school you chose as your first option? Did you check other schools?

Father: No, I chose this one because... There's a school closer to my home but I don't like it. It's a municipal school, and I dislike the children that go there. (Subsidized medium-cost private school)

Source: Verger et. al. (2014), op. cit., p. 17

49. Moreover, **families tend to join schools with similar socio-economic characteristics.**

School composition is a decisive criterion during the choice process. A study has shown that 87% of Chilean families only consider schools attended by students with similar socio-economic characteristics.⁷³

50. Because of the way families choose schools, increased competition and “choice” policies such as those implemented in Chile is a source of segregation and discrimination. An OECD study analysing the results of the 2009 PISA tests in several countries, including Chile, found that as a result of “choice” policies:

stratification may increase over time [...] since an advantaged student body in a privately managed school attracts more advantaged students, which increases the socio-economic advantages of the privately managed school even further, so that greater numbers of advantaged students will want to attend.⁷⁴

2) Role of school fees

51. Independent private schools have no restriction on their fees,⁷⁵ and they are largely inaccessible to most people in Chile. In 2013, tuition fees in the Colegio Cordillera⁷⁶ (the

⁷² OECD, *PISA 2012 Results: What Makes Schools Successful? Resources, Policies and Practices (Volume IV)*, PISA, OECD Publishing (2013), p. 138.

⁷³ Verger et. al. (2014), op. cit., p. 17, quoting a study by Schneider et al., (2006).

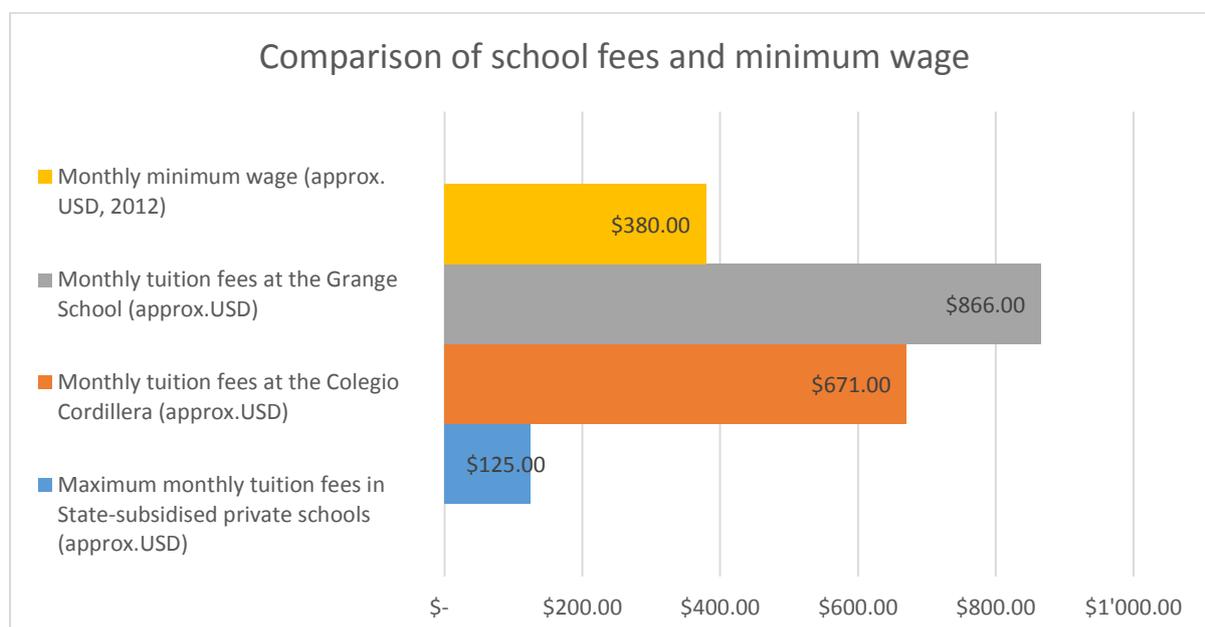
⁷⁴ OECD, *Public and Private Schools: How Management and Funding Relate to their Socio-economic Profile*, OECD Publishing (2012), p. 44.

⁷⁵ See: http://www.supereduc.cl/index.php?option=com_content&view=article&id=359&Itemid=134

⁷⁶ See the school website: <http://www.colegiocordillera.cl/>

secondary school with the highest scores in Mathematics and Languages at the university selection tests) amounts to 378,256 pesos (620 USD) per month, almost twice the 2012 minimum wage, and additional registration fees were 310,435 pesos (510 USD). The Grange School⁷⁷ is the school within the Top 10 of the university selection test results with the highest tuition fees: 5,034,096 (8,240 USD) pesos per year – equivalent of 690 USD per month –, in addition to the 256,366 pesos (420 USD) of registration fees. Other fees can be charged to families, such as those related to the admission process and incorporation fees to be paid once the student enters the school.⁷⁸ **As a comparison, the monthly minimum wage was 193,000 pesos (380 USD) in 2012.**⁷⁹

52. The maximum tuition fees that schools receiving public funding can charge is determined by the State.⁸⁰ Public primary schools cannot charge fees, while public secondary schools may ask for a voluntary contribution. In 2012, State-subsidised private schools were allowed to charge a maximum of 916,822.75 pesos (approximately 1,500 USD) per year, the equivalent of 76,400 pesos (125 USD) per month. Only schools which are part of the Preferential School Subsidies system must exempt priority children from paying monthly tuition fees.
53. The maximum amount set by the law hides a wide range of situations, as each State-subsidised private school can fix the monthly amount within the limit set by the law. This leads to a differentiated access between the various State-subsidised schools according to the financial resources of the families. **Stratification and separation thus occur not only between different types of schools, but also within the heterogeneous category of State-subsidised private schools.**



⁷⁷ See the school website: <http://www.grange.cl/>

⁷⁸ Emol (2013, 31 December), "Mensualidad de colegios con los mejores puntajes PSU supera los \$250 mil," in: *El Mercurio*. Web. Retrieved of: <http://www.emol.com/noticias/nacional/2013/12/30/637336/mensualidad-en-colegios-top-10-en-la-psu-supera-los-250-mil.html>

⁷⁹ See: http://www.leychile.cl/Consulta/listado_n_sel? grupo aporte&sub=807&agr=2&comp

⁸⁰ http://www.supereduc.cl/index.php?option=com_content&view=article&id=359&Itemid=134

54. Schools can use the fees they charge to attract a certain population and/or, as analysed by a group of academics, “*price can effectively be used by schools to exclude certain undesired students*”.⁸¹ This is thus a key way through which the education system is segregated and becomes discriminatory.

3) Role of entry tests

55. In addition to the natural selection operated by school fees, direct selection of students by private schools is a common practice.⁸² While public schools have, in theory, the obligation to accept all children, independent private schools do not have legal restrictions vis-à-vis the selection of students. Since 2009, the *General Education Law* prohibits schools receiving public funds from selecting children based on previous academic results and socioeconomic information, in preschool and primary education.⁸³ However, these schools are still allowed to select pupils at the secondary level. Further, even at the primary level, the law permits schools to make selections based on criteria other than those expressly prohibited in the law (academic results and socioeconomic information).
56. Traditionally, the most common requirements that were tested, at least until the 2009 LGE came into force, were students’ abilities, such as entrance examination, grades previously obtained by the student, etc. These requirements allow schools to evaluate the students’ potential academic performance. Nevertheless, private schools also select according to psychological and behavioural tests.⁸⁴
57. Thus, in practice, as the table bellows shows, many schools do practice a form of selection of children at the different levels of education. **At the primary level, 32% of public schools, 54% of State-subsidised private schools and 90% of independent private schools ask for these kinds of requirements to enter 1st grade.**⁸⁵ At the secondary level, the selection based academic criteria is widespread among the three types of school.

⁸¹ Verger *et. al.* (2014), *op. cit.*, p. 21.

⁸² Verger *et. al.* (2014), *op. cit.*, p. 13.

⁸³ See: *Ley General de Educacion*, Articles 12 (“[...] *en ningún caso se podrá considerar [...] el rendimiento escolar pasado o potencial del postulante. Asimismo, en dichos procesos no será requisito la presentación de antecedentes socioeconómicos de la familia del postulante.*”), 13 and 14.

⁸⁴ Almonacid Claudio, “Un cuasimercado educacional: La escuela privada subvencionada en Chile,” in: *Revista de Educación*, No. 333 (January-April 2004).

⁸⁵ F. Godoy, F. Salazar, E. Trevino, “Prácticas de selección en el sistema escolar chileno: requisitos de postulación y vacíos legales,” in: *Informes para la Política Educativa*, No. 1 (May 2014), p. 4.

**School enrolment requirements according to parents
(% of parents responding to each requirement).**

	Public	Subsidized Private	Private
Evaluation of preschool education	24.2	37.2	47.3
Certificate of grades at the previous school	35.5	42.6	33.9
Certificate of baptism or religious marriage	0.6	13.7	31.1
Certificate of salaries	2.6	7.4	4.8
Interview with parents	16.8	40.3	79.8
The student must attend a game session	1.6	7	33.1
The student must make a written exam or entrance test	8.5	45	58.8

Source: Source: Verger et. al. (2014), from statistics from the SIMCE.

58. In addition, other entry requirements such as application fees, interviews with families, civil marriage certificate, etc. inform the schools of the socio-cultural capital as well as the socio-economic level of the students and their families. Such information is required by 41% of municipal schools, 71% of State-subsidised private schools and 94% of independent private schools at the primary level.⁸⁶
59. Some schools also require information about the religious characteristics of the students and their families, though it is less common. 22% of independent private schools and 5% of State-subsidised private schools ask for religious information.⁸⁷
60. State-subsidised private schools and independent private schools ask for more requirements than public schools. Therefore, in addition to naturally selecting pupils that come from privileged backgrounds, – families that can pay for fees, that are based in more affluent neighbourhoods and whose social capital allows them to make better informed choices – **the structure of the system and loopholes in the law allow private schools to select the best and/or most advantaged students.** In fact, not only does the legal framework perpetuate the selection system, but it also legitimises it.

ii. Impact: discrimination and segregation in education in the State Party

61. **This selection process leads to high segregation in education, where social classes do not mix.** According to Drago and Paredes, “*the consensus view is that these three types of schools [public schools, State-subsidised private schools and independent private schools] are serving sharply stratified socio-economic groups*”.⁸⁸ The table below shows that in Chile 70% of students in public school are from the lower-income households (quintiles I and II) whereas 75% of students in private schools are from the higher-income quintile.⁸⁹ 1993 reform led to an exodus of middle-class students from public schools to State-subsidised private ones.

⁸⁶ F. Godoy et. al. (May 2014), *op. cit.*, p.5.

⁸⁷ F. Godoy et. al. (May 2014), *op. cit.*, p.6.

⁸⁸ Drago and Paredes (2011), *op. cit.*, p.164.

⁸⁹ Drago and Paredes (2011), *op. cit.*, p.164.

Segregation by socio-economic status according to types of schools

Enrolment, by type of school (Percentages)

Type of school	Income quintile				
	I	II	III	IV	V
Municipal	42.39	27.60	16.06	10.66	4.24
Private (subsidized)	22.34	22.63	21.26	20.59	13.37
Private (fee-paying)	4.64	4.64	4.49	12.37	75.26

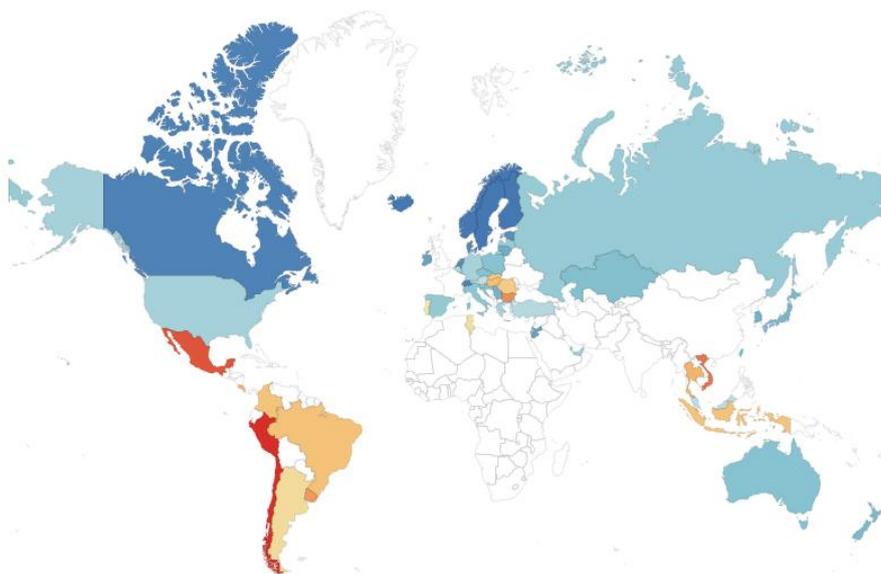
Source: Drago and Paredes (2011) on the basis of the 2006 National Characterisation Socio-Economic Survey (CASEN) database.

62. As a result, **Chile has the system that is the most segregated by socio-economic status within the 65 countries tested through the PISA.** The degree of socioeconomic integration, which measures the socio-economic diversity of the population within schools, is less than 50% in Chile, while OECD member countries have, on average, 74%, and figures peak at over 89% in Finland and Norway.
63. This stratification and segregation is reflected in standardised test results. Learning test results only give limited information about the quality of education, because “quality” of education as understood in articles 28 and 29 of ICRC and article 13 of the ICESCR is much broader than what measurable learning outcomes can indicate,⁹⁰ but they can give some indications about disparities in education.

⁹⁰ See Right to Education Project, « Learning Outcomes Assessments: A Human Rights Perspective », on http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Learning_Outcomes_Assessments_HR_perspective_2013.pdf

Social inclusion in PISA-tested countries

The more intense red the country, the less the social inclusion; the more intense blue, the more social inclusion.



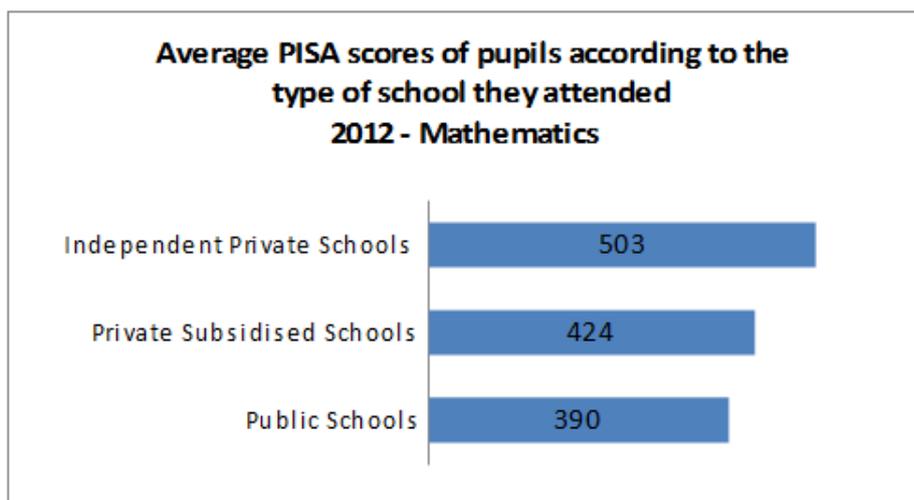
Source : OECD Pisa 2012, available at <http://gpseducation.oecd.org/revieweducationpolicies/#!node=41746&filter=all>

64. Students from public secondary schools performed less well in the latest PISA 2012 mathematics tests (mean score: 390) than students from State-subsidised private schools (424), and to a greater extent than students from independent private schools (503).⁹¹ Similarly, using the national System of quality measurement tests “SIMCE”, which evaluates learning at different grades,⁹² the scores are much higher in fee-paying private schools than they are in the other two types of schools.⁹³

⁹¹ OECD, *Education at a glance 2014: OECD indicators* (2014), p. 417. See also Agencia de la Calidad de la Educación, *Análisis de los resultados de la Prueba PISA 2012*, No. 15 (June 2014), p. 7.

⁹² See: <http://www.agenciaeducacion.cl/simce/que-es-el-simce/>

⁹³ Drago J.L. and Paredes R.D., “The quality gap in Chile education system,” in: *Cepal Review* No. 104 (2011), p.164.



Source: OECD, Education at a glance 2014: OECD indicators (2014)

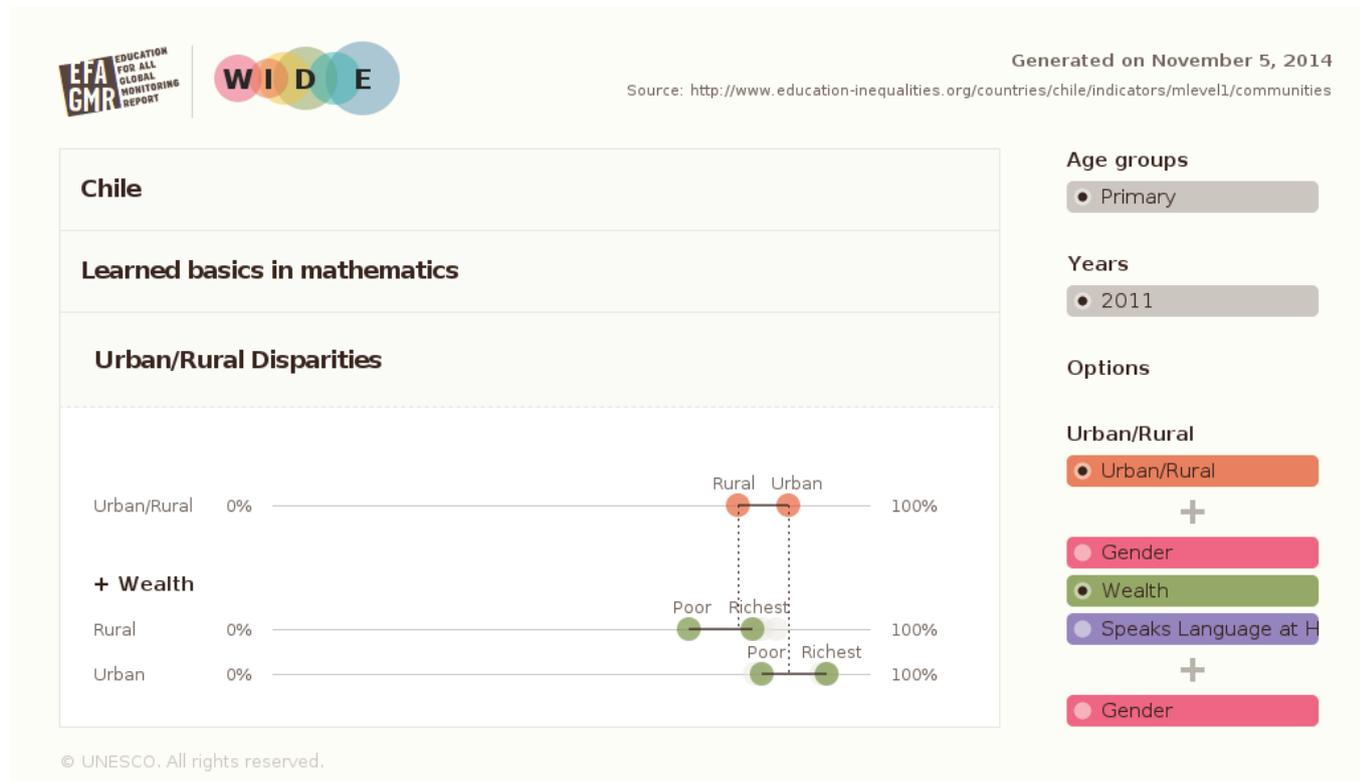
65. This difference between schools can be almost entirely attributed to students' and schools' economic and social background. After accounting for social background of students and schools, the advantage of private schools diminishes to a statistically non-significant figure,⁹⁴ which means that private schools are not necessarily much better with respect to preparing for tests.
66. These results reflect two points. **Firstly, the education system in the State Party is segregated according to education performance.** The more expensive and the less regulated the schools are, the more they take children from advantaged socio-economic backgrounds, who perform better in tests, leading to a very stratified situation where not only children with similar backgrounds are together in similar schools, but also best performing pupils study together in similar, usually fee-paying, schools, while the lowest performing students are separated in publicly funded, cheaper or free, schools.
67. Secondly, **the education system in the State party is very inequitable.** Disadvantaged families in the State Party are less likely to achieve high levels of performance than in most other countries tested by PISA. 23.1% of the difference in pupils' performance in mathematics in the State Party can be attributed to students' socio-economic status, which is much higher than the average across OECD countries (14.8%).⁹⁵ Amongst the 66 countries tested by PISA, **Chile is the third most unequal country on this basis**, after the Slovak Republic and Peru, and far above comparable countries in the region such as Argentina (15.5%) or Colombia (15.4%). In countries where this proportion is large, students from disadvantaged families are less likely to achieve high levels of performance. Taking into account the differences between the socio-economic levels of schools, as well as of students, it is **more than 75% of the performance differences between schools which is explained by the socio-economic status of students and schools, far above the OECD average (62.8%).**⁹⁶

⁹⁴ OECD, *Chile – Country Note – Education at a Glance 2014: OECD Indicators* (2014), available on <http://www.oecd.org/edu/Chile-EAG2014-Country-Note.pdf>.

⁹⁵ OECD, *Education at a glance 2014: OECD indicators* (2014), p. 194.

⁹⁶ OECD, *PISA 2012 Results: Excellence Through Equity: Giving Every Student the Chance to Succeed (Volume II)* (2012), PISA, OECD Publishing, p. 49.

68. The education system in the State Party is also marked by inequalities on many other grounds that the privatised system has not been able to address, or has worsened. For instance, Chile also recorded the largest difference in mathematics performance between boys and girls in PISA 2012, with a difference of 25 score points. Inequalities in mathematics test results between rural and urban areas are also still very high.



69. This high level of segregation, inequity and inequality cannot be justified by performance, as **the State Party is both one of the least equitable countries and one of the least performing at PISA mathematics tests**. In fact, the PISA results of several countries demonstrate that high average performance and equity are not mutually exclusive,⁹⁷ and in fact that the highest performing education systems across OECD countries are those that combine quality with equity.⁹⁸

70. The inequities and stratification in education in the State Party are a direct consequence of its education system and its policy choices. As noted by the OECD:

Large differences in performance associated with the background of students and schools – whether socio-economic status, immigrant or language background – signal that learning opportunities are not equitably distributed throughout a school system or that not all students have access to the high-

⁹⁷ OECD, *PISA 2012 Results in Focus: What 15-year-olds know and what they can do with what they know* (2014), p. 14.

⁹⁸ OECD, *Equity and Quality in Education: Supporting Disadvantaged Students and Schools*, OECD Publishing (2012).

*quality instruction and material, financial and human resources that could help them succeed in school and beyond.*⁹⁹

71. The growth or high level of fee-paying private schools are a strong factor leading to segregation and inequalities. Generally, PISA results and other research show that school choice – and, by extension, school competition – is related to greater levels of segregation in the school system, which may have adverse consequences for equity in learning opportunities and outcomes.¹⁰⁰
72. This effect has also been seen in other countries, such as Morocco, for which we submitted parallel reports, and where the CRC and the SR RtE recognised growing inequalities due to privatisation.¹⁰¹ In addition, a large body of research shows that vouchers, in particular universal vouchers as exist in Chile, promote group differentiation.¹⁰²

IV. Recent reforms and way forward

73. Thousands of pupils enrolled in secondary schools and students from University filled the streets of Chile for seven months in 2011. They were demanding reforms and major changes to the educational system that is deepening the State Party's social and economic inequalities.¹⁰³ Five years earlier, the 2006 “Penguin Revolution” took place for similar reasons, as students demanded better public education and more social justice in education.
74. These movements criticised the Chilean privatised education model, and compelled the authorities to put the issue of education at the centre of national debate. As a result, presidential election candidate Michelle Bachelet made educational reform one of the pillars of her campaign of 2013, and was elected largely on the promise of taking forward reform of the education system.
75. Some reforms have been put in place, but they are however not sufficient, and are still not in line with the obligations of the State party's obligations to respect, protect and fulfil the rights under the ICRC. These changes have not changed the overall privatised structure of the system which is causing segregation and discrimination in violation of the ICRC. As mentioned above, the laws that were passed after the 2006 protests did not change the assumptions on which the State party's education system is based, and which have highly discriminatory impacts: public subvention (voucher system), parental choice, shared payment, selection, etc.

⁹⁹ OECD, *PISA 2012 Results: Excellence Through Equity: Giving Every Student the Chance to Succeed (Volume II)* (2012), PISA, OECD Publishing, p. 34.

¹⁰⁰ OECD, *PISA 2012 Results in Focus: What 15-year-olds know and what they can do with what they know* (2014), p. 54.

¹⁰¹ See e.g. the press release on <http://bit.ly/1CmTZzK> and Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014), para. 46.

¹⁰² See e.g. OECD, *Public and Private Schools: How Management and Funding Relate to their Socio-economic Profile*, OECD Publishing (2012); Macpherson, “Interrogating the private-school ‘promise’ of low-fee private schools” in *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia*, Ian Macpherson, Susan Robertson and Geoffrey Walford, eds. (Oxford, Symposium Books, 2014); Emma Seery, Working for the Many: Public Services Fight Inequality, OXFAM Briefing Paper No. 182 (Oxford, Oxfam, 2014); Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014).

¹⁰³ See generally the video <http://www.periglobal.org/role-state/video/video-privatised-education-chile-legacy-and-protest>

76. Nevertheless, following the 2011 protests and the 2013 elections, new policies have been promised. The 2014 draft education reform law “*Reforma educacional*”¹⁰⁴ could address some of the issues raised in this report. The main axes of this reform are:
- a) The banning for-profit education;
 - b) The establishment of a new institutional framework for the public offering of general education;
 - c) 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);
 - d) The banning of economic, social, academic and behavioral selection at all levels of general education.
77. Given the extent to which the current education system in Chile is affecting the realisation of the right to education without discrimination, and the extent to which the State Party has been failing to fulfil its obligations under the ICRC, it is urgent that reforms in line with the 2014 *Reforma educacional* be adopted and implemented as a matter of priority.

V. Suggestions for the list of issues to the State Party

78. In 2007, the CRC identified “*the educational system and its reform, including equal access to education by all children and efforts to improve quality of education*” was a major issue for the review of Chile.¹⁰⁵ Following the review, the CRC in its Concluding Observations expressed its strong concerns with regards to discrimination in education in Chile:

*The Committee [...] remains concerned that certain vulnerable groups, including indigenous, migrant and refugee children, children with disabilities, as well as children from disadvantaged socio-economic backgrounds and those living in rural areas, continue to be victims of discrimination, particularly in their reduced access to education.*¹⁰⁶

79. In 2003 the CESCR asked, in its List of Issues for its review of Chile, “*how does the State party guarantee the principle of universal free primary education, especially for children from low-income families?*”¹⁰⁷ Following the review of Chile, the CESCR expressed its concern “*at the disparity in the quality of education offered in municipal and private schools*”.¹⁰⁸
80. In 2014, although reforms are being discussed, following the two major protests, little has changed, and the education system in Chile is still in contradiction of some of its core obligations under international human rights law. Accordingly, we suggest that the CRC raise the following issues with the State Party.

¹⁰⁴Nicolás Eyzaguirre, Ministro de Educación de Chile, *Reforma Educacional - Proyecto de ley de fin al lucro, la selección y el copago (2014) and Mapa de la reforma educacional (2014)*

¹⁰⁵ CRC, *List of Issues: Chile*, CRC/C/CHL/Q/3 (16 October 2006), part. 4.

¹⁰⁶ CRC, *Concluding Observations: Chile*, CRC/C/CHL/CO/3 (23 April 2007), para. 29.

¹⁰⁷ CESCR, *List of Issues: Chile*, E/C.12/Q/CHL/1 (18 December 2003), para. 32.

¹⁰⁸ CESCR, *Concluding Observations: Chile*, E/C.12/1/Add.105 (1 December 2004), para. 29.

Suggestions for the List of Issues

- a. Is the State party planning on moving to rebuild a public system of quality schools, in line with its obligations under the ICESR? Is the State Party considering moving away from the voucher system in the near future?
- b. Given that previous reforms have failed to guarantee the realisation of the right to education without discrimination, can the State Party give the timeline within which it is planning to effectively address segregation and discrimination in the education system?
- c. How will the government ensure that schools receiving public funds do not practice any form of entrance selection and do not charge additional fees?
- d. Does the State party plan to totally abolish the system of shared payment and by when?

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