

Privatization, Commercialization and Low Government Financing in Education: Infringing on the Right to Education of Filipinos

An Alternative Report submitted to the Committee on Economic, Social and Cultural Rights

by The Civil Society Network for Education Reforms; Teachers and Employees Association for Change, Education Reforms and Solidarity, Inc.; Maminturan Development Foundation Inc.; PUSAKA; USM-ACES Kabataan Kontra Kahirapan Philippine Human Rights Information Center; Asia South Pacific Association for Basic and Adult Education;

Global Initiative for Economic, Social and Cultural Rights

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This report has been compiled by the following organizations:

- The Civil Society Network for Education Reforms (E-Net Philippines - <http://www.enetphil.ph/>) is a network of 150 organizations that came together to advance education rights of all Filipinos. It is envisioned to have a Philippine Society where quality education is a basic human right; everyone has access to multi-cultural, gender-fair and liberating life-long education.
- The Asia South Pacific Association for Basic and Adult Education (ASPBAE- <http://aspbae.org/>) is a regional association of over 200 organisations and individuals advocating for quality education for all and transformative adult education and learning
- The Asia South Pacific Association for Basic and Adult Education (ASPBAE) is a regional network of 200 organizations, coalitions and individuals from 33 countries in Asia and Pacific that advocate for transformative basic and adult education.
- The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR - www.globalinitiative-escr.org) is an international non-governmental human rights organization which seeks to advance the realization 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.

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Key Issues Addressed in this Report

The report analyses that:

1. Primary and secondary education is meant to be free and compulsory as provided for in the Constitution and Laws of the Philippines, and to be a basic human right, but the rising trend of education privatisation and commercialization in the country is threatening the realization of the right to education.
2. The State has encouraged the growth of private schools through the implementation of policies such as the expansion of the existing Educational Service Contracting (ESC) scheme and the Senior High School Voucher Program under the Expanded Government Assistance to Students and Teachers in Private Education or E-GASTPE.
3. The lack of State regulation allows the development of commercial private actors that provides low-quality education while making high profits on the back of poor Filipinos, such as the chain of commercial private secondary school backed by Pearson called “Affordable Private Education Centers.”
4. The privatization drive in education is also resulting in further segregation and exclusion of the poor and marginalized in Philippine society.
5. The failure of the State to use its maximum available resources to finance education adequately and address the high cost of education infringes upon the right to free mandatory education.

I. Introduction

1. This is an alternative report to the UN Committee on Economic, Social, and Cultural Rights (CESCR) based on a research conducted and compiled by several Philippine and international organizations about the realization of the right to education in the Philippines in general, and in particular the impact of the growth of the private business actors in education. It focuses on the impact of privatization on segregation and discrimination effects as well as on the realization of the right to free mandatory education. It also addresses issues related to persistent drop-out and huge number of out-of-school children and youth. The report essentially reviews the situation at the basic level (primary and secondary).
2. Privatization in education is a growing global phenomenon threatening the right to education in many countries. An increasing body of research is examining the impact of these developments on human rights and social justice. In 2014, the UN Special Rapporteur on the right to education (SR RtE), Mr. Kishore Singh, presented a report to the UN General Assembly¹ which examines State responsibility in the face of the explosive growth of private education providers, in the light of States’ human rights obligations, and lays out some of the principles applicable. He further explored the

¹Singh, Kishore, Report of the UN Special Rapporteur on the Right to Education, A/69/402 (24 September 2014). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N14/546/82/PDF/N1454682.pdf?OpenElement>

issue with another report in June 2015, dealing with the regulation of private actors in education,² and a report in September 2015 about public-private partnerships.³

3. As this report demonstrates, this issue is also largely prevalent in the Philippines, where the government-supported growth of private actors in education is infringing upon the realization of the right to education.

II. General concerns on the realization of the right to education in the Philippines

A. General Legal Framework on the Right to Education Applicable in the Philippines

4. The Philippines has ratified the main treaty protecting the right to education. These include the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of Persons with Disability; the Convention Against Discrimination in Education. The Philippines is thus legally accountable to uphold commitments under these international rights instruments and adopt and implement measures for domestic compliance.
5. In addition to educational guarantees contained in international rights instruments, the Philippines has also adopted⁴ the Education for All (EFA) and Millennium Development Goals (MDGs) targets on universalizing primary education as a priority action.
6. The right to education is well-entrenched in the Philippine 1987 constitution and assigns clear responsibility for the State for its provision. Section 1, Article XIV of the constitution states that: *“The State shall protect and promote the right of all citizens to quality education at all levels, and shall take appropriate steps to make such education accessible to all.”* Section 2 of the same article further provides that the State shall *“(1) Establish, maintain, and support a complete, adequate, and integrated system of education relevant to the needs of the people and society; (2) Establish and maintain a system of free public education in the elementary and high school levels. Without limiting the natural right of parents to their children, elementary education is compulsory for all children of school age.”*
7. Substantive educational rights have also been guaranteed in other laws passed. The Governance of Basic Education Act of 2001⁵ confirmed the constitutional right to free basic education among the school-age population and young adults to provide them with skills, knowledge and values to become caring, self-reliant, productive and patriotic citizen:

²Singh, Kishore, Report of the Special Rapporteur on the Right to Education, A/HRC/29/30. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G15/120/82/PDF/G1512082.pdf?OpenElement>

³A/70/342.

⁴UNESCO. Philippine Education For All 2015: Implementation and Challenges. http://planipolis.iiep.unesco.org/upload/Philippines/Philippines_EFA_MDA.pdf

⁵Republic Act No. 9155. <http://www.gov.ph/2001/08/11/republic-act-no-9155/>

SEC. 2. Declaration of Policy. - It is hereby declared the policy of the State to protect and promote the right of all citizens to quality basic education and to make such education accessible to all by providing all Filipino children a free and compulsory education in the elementary level and free education in the high school level. Such education shall also include alternative learning systems for out-of-school youth and adult learners. It shall be the goal of basic education to provide them with the skills, knowledge and values they need to become caring, self-reliant, productive and patriotic citizens.

8. The Kindergarten Act of 2012⁶ widens the scope of free, mandatory, compulsory education to cover pre-school.

SEC. 2. Declaration of Policy. - In consonance with the Millennium Development Goals on achieving Education for All (EFA) by the year 2015, it is hereby declared the policy of the State to provide equal opportunities for all children to avail of accessible mandatory and compulsory kindergarten education that effectively promotes physical, social, intellectual, emotional and skills stimulation and values formation to sufficiently prepare them for formal elementary schooling... Thus, kindergarten will now be an integral part of the basic education system of the country.

SEC. 8. Appropriations. - The DepEd shall immediately include in the program of the Department the operationalization of the free, mandatory and compulsory public kindergarten education...

9. The Education Act of 1982⁷, Free Public Secondary Education Act of 1988⁸, Higher Education Act of 1994⁹ and the newly-passed Enhanced Basic Education Act of 2013¹⁰ emphasize and guarantee that the State shall promote and provide quality education accessible to all its citizens.

Education Act 1982, Sec. 3 Declaration of Basic Policy. The State shall promote the right of every individual to relevant quality education... The State shall therefore promote and maintain equality of access to education as well as the enjoyment of the benefits of education by all its citizens.

Free Public Education Act 1988, Sec. 2. Declaration of Policy. – It is the policy of the State to provide for a free public secondary education to all qualified citizens and to promote quality education at all levels.

Higher Education Act 1994, SEC. 2. Declaration of Policy. - The State shall protect, foster and promote the right of all citizens to affordable quality education at all levels and shall take appropriate steps to ensure that education shall be accessible to all.

⁶Republic Act No. 10157. <http://www.gov.ph/2012/01/20/republic-act-no-10157/>

⁷Republic Act No. 10157. http://www.congress.gov.ph/download/ra_09/RA07798.pdf

⁸Republic Act No. 6655. <http://www.pcw.gov.ph/law/republic-act-665>

⁹Republic Act No. 7722. <http://www.gov.ph/downloads/1994/05may/19940518-RA-07722-FVR.pdf>

¹⁰Republic Act No. 10533. <http://www.gov.ph/2013/05/15/republic-act-no-10533/>

Enhanced Basic Education Act 2013, SEC. 2. Declaration of Policy. – The State shall establish, maintain and support a complete, adequate, and integrated system of education relevant to the needs of the people, the country and society-at-large...a) Give every student an opportunity to receive quality education that is globally competitive...

10. Policy follow-through on educational commitments has likewise been adopted. These are contained in the national education plans that aim to achieve implementation of the laws' provisions and to comply with global targets. The Philippine Development Plan 2011-2016 laid down *“achieving universal coverage in basic education”* as one of government's social development priority strategies.¹¹ The Philippine EFA 2015 National Plan of Action aimed to provide basic competencies to everyone to achieve functional literacy for all including universal provision of out-of-school youth and adults in the provision of learning needs¹²;
11. In terms of financing education, States have an obligation to ensure that the maximum available resources are devoted to achieving education outcomes. Accordingly, Article XIV, Section 5 (5) of the Philippine Constitution provides that *“the State shall assign the highest budget priority to education...”*;
12. In the previous concluding observation of the CESCR, it stated that *“The Committee draws the attention of the State party to its statement on “An evaluation of the obligation to take steps to the ‘maximum of its available resources’ under an Optional Protocol to the Covenant” (E/C.12/2007/1), and recommends that the State party increase its national spending on social services such as housing, health and education so as to achieve, in accordance with article 2, paragraph 1, the progressive realization of the economic, social and cultural rights provided for in the Covenant”*;

B. Realization in practice: far from fulfillment

13. By structure, Philippine education is categorized either as basic (preschool, elementary and high school) or tertiary (college, graduate and technical/vocational). Basic education is being handled by the Department of Education (DepEd) while college is under the Commission on Higher Education (CHED). Vocational/technical and non-degree training under the Technical Education and Skills Development Authority (TESDA), which is under the Department of Labor and Employment (DOLE). With the enactment of the new law on Enhanced Basic Education Program which provides for an additional two years of senior high school, the education system has become more holistic and the functions of the main education agencies (DepEd, TESDA, and CHED) more integrated.
14. With regards the implementation of the Education for All (EFA) program, the Philippine EFA Review 2015 acknowledged the significant gaps to fully achieve the

¹¹National Economic and Development Authority. (2011). *Philippine Development Plan 2011-2016 Result Matrices*. <http://www.neda.gov.ph/wp-content/uploads/2013/09/CHAPTER-8.pdf>

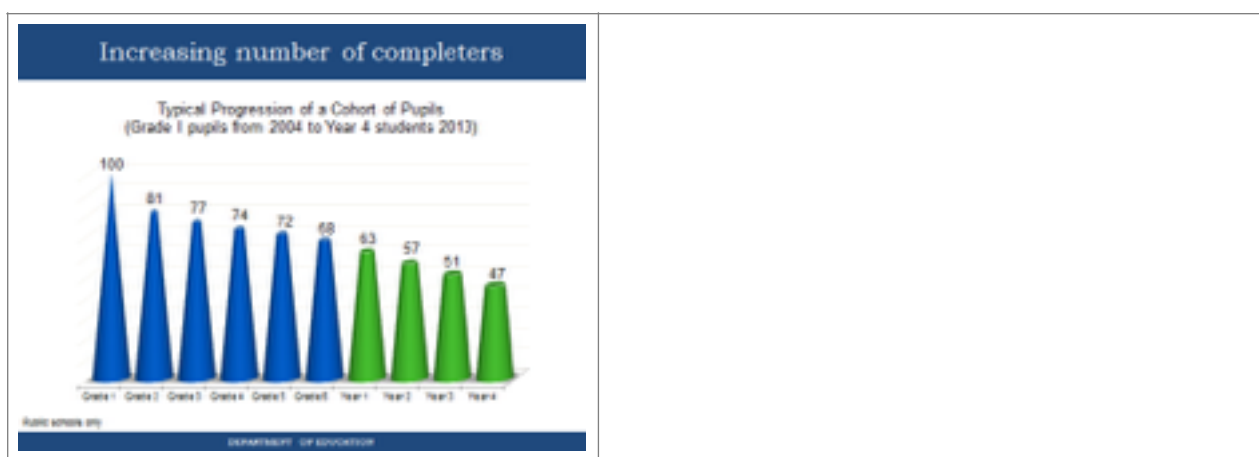
¹²National Education For All Committee. (2006). *Functionally Literate Filipinos: An Educated Nation*, (pp. 12-13). <https://depedkoronadalcity.files.wordpress.com/2012/09/efa-2015-national-action-plan-brochure.pdf>

EFA targets, with only 75% of the relevant age group completing basic education.¹³ Millions of children drop out of school every year and only 75.3% survive to complete six years of primary education.¹⁴ Some 10% or 6.9 Filipinos 10-64 years old were functionally illiterate in 2013.¹⁵

Philippines' Identified EFA Gaps	
INDICATOR	GAP (in percentage points)
<i>Grade 1 entrants with some form of early childhood care and development experience</i>	18%
<i>Kindergarten Net Enrolment Rate</i>	23%
<i>Elementary Net Enrolment Rate</i>	5%
<i>High School Net Enrolment Rate</i>	35%
<i>Completion Rate to finish basic education</i>	28%
<i>Secondary Education Completion Rate</i>	27%
<i>Eradication of basic illiteracy</i>	4%
<i>Eradication of functional illiteracy</i>	14%

Source: Department of Education. *Philippine Education for All 2015 Review*.

15. Based on reports presented by the Department of Education, a typical progression of a cohort of pupils shows that of 100 children who started Grade 1 in 2004, only 68 survived to Grade 6 and only 47 reached year 4 (or Grade 10) in 2013. The situation has stayed virtually the same compared to 2001-2010 and to the much earlier period of 1975-2004. The fallout in secondary level schooling has in fact increased with only 47 of 100 reaching year 4 in 2013 compared to the 51 who were secondary or high school graduates during the period 2001-2010.



¹³Department of Education. *Philippine Education for All 2015 Review*.

¹⁴ Ibid

¹⁵Philippine Statistics Authority. 2013 Functional Literacy, Education and Mass Media Survey (FLEMMS).

16. Old problems of underfunding, accessibility, equity and quality issues remain under the current administration. These problems need to be addressed urgently to ensure the fulfillment of the right to education.
17. The Philippines ranks high as one of the countries with a sizable number of out-of-school children. In a co-publication of the International Labour Organization (ILO) and the Asian Development Bank (ADB) released in 2014¹⁶, the Philippines ranked the highest in the number of out-of-school children in 2012 among 8 ASEAN countries. Even higher than that of Indonesia with a population double than the Philippines.

Source: UNESCO Institute for Statistics

18. The Philippine Statistics Authority (PSA) reported, in 2013, that the number of children 5-17 years old not attending school was estimated at 3.249 M.

Children 5-17 Years Old Currently Not Attending School By Age Group, Philippines (2009-2013 - In Thousands)

Age Group	2009	2010	2011	2012	2013
PHILIPPINES	4,344	4,153	3,660	3,500	3,249
5-9 years old	1,646	1,477	1,175	909	812
10-14 years old	771	763	649	688	628
15-17 years old	1,927	1,913	1,836	1,904	1,809

Source: Philippine Statistics Authority, 2013¹⁷

19. One of the main reasons for not attending school is early employment or child labor. Because of poverty, there is still a high tendency for students in the low income stratum to drop-out of school or to prefer less schooling over the need to earn money for the family's keep. PSA data showed that from 2009-2013, the number of working children, aged 5 to 17, did not go below the 2 million range.

Working Children 5-17 Years Old by Age Group - Philippines, 2009-2013 (In Thousands)

Age Group	2009	2010	2011	2012	2013
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¹⁶ International Labour Organization and Asian Development Bank. (2014). ASEAN Community 2015: Managing Integration for Better Jobs and Shared prosperity. pp. 58. Bangkok, Thailand: ILO and ADB, 2014. <http://www.adb.org/sites/default/files/publication/42818/asean-community-2015-managing-integration.pdf>

¹⁷ Philippine Statistics Authority. 2014 Yearbook of Labor Statistics (YLS)-Chapter 6- Working Children. <http://labstat.psa.gov.ph/ARCHIVES/YLS/2014%20YLS/STATISTICAL%20TABLES/PDF/CHAPTER%206/Tab6.2.pdf>

PHILIPPINES	2,199	2,095	2,482	2,273	2,076
5-9 years old					
10-14 years old	90	112	138	99	92
15-17 years old	682	630	861	704	616
	1,427	1,353	1,483	1,471	1,368

Source: Philippine Statistics Authority, 2013¹⁸

20. The 2012 Family Income and Expenditure Survey Final Results of the National Statistics Office¹⁹ also showed that for poor families, the bulk of household expenses went to food and basic necessities, with only very little money left for education. In monetary terms, the poorer 30 percent of Filipino families spent an average of around 7,400 per month (\$168) and only P148 (\$3.36) per month went to education. The huge number of out of school children is reflected in the low average expenditure of Filipino families on education.

Expenditure Pattern for the Bottom 30% and Upper 70% Per Capita Income Group, at Current Prices, Philippine

Expenditure Items	All Income Groups	Bottom 30%	Upper 70%
Total Expenditure (In Billion pesos)	4,125.0	571.0	3,555.0
Percent	100.0	100.0	100.0
Food	42.3	62.3	39.7
Alcoholic Beverages	0.6	0.9	0.6
Tobacco	0.9	1.5	0.7
Clothing and footwear	2.4	2.1	2.5
Furnishing, household equipment routine household maintenance	2.8	1.9	2.9
Health	3.7	1.8	4.0
Housing, water, electricity, gas and other fuels	20.7	15.3	21.5
Transport	7.5	4.8	7.9
Communication	2.7	1.2	3.0
Recreation and culture	1.4	0.7	1.5
Education	4.1	2.0	4.4
Accommodation services	0.2	0.1	0.2

¹⁸Philippine Statistics Authority. 2014 Yearbook of Labor Statistics (YLS) - Chapter 6 - Working Children. <http://labstat.psa.gov.ph/ARCHIVES/YLS/2014%20YLS/STATISTICAL%20TABLES/PDF/CHAPTER%206/Tab6.4.pdf>

¹⁹National Statistics Office. 2012 Family Income and Expenditure Survey Final Results. <https://psa.gov.ph/content/filipino-families-poorest-decile-earn-six-thousand-pesos-monthly-average-2012-results-2012>

Miscellaneous goods and services	6.6	4.7	6.9
Other expenditure	3.7	0.7	4.2
Note: Details may not add up total due to rounding Source: National Statistics Office, 2012 Family Income and Expenditure Survey Final Results			

21. Available figures from the Department of Education (DepEd) show that there has been no significant movement in drop-out rates among elementary and high school students in the last ten years.

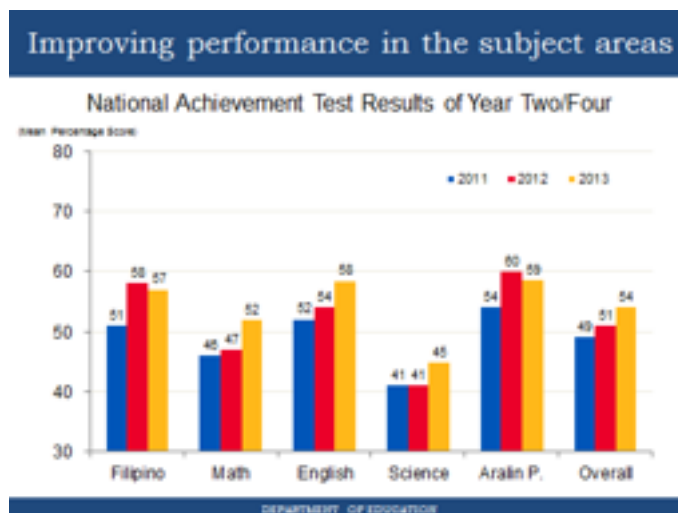
Source: Department of Education Research & Statistics Division Office of Planning Service and Department of Education Official Website, Facts and Figures

22. Drop-outs are especially high in the poorest regions. Among the country's 17 regions, the Autonomous Region in Muslim Mindanao (ARMM), with one of the highest rate of poverty incidence, also has the highest drop-out rate which increased by 76% comparing SY 2002-2003 and 2012-2013. Even in the National Capital Region (NCR), comparing the same school years, drop-out rate increased by 77%.

Drop-out rate, in elementary, by Region (SY 2002-2003 and SY 2012-2013)

Source: Department of Education (DepEd)

23. The quality of basic education, particularly at the secondary level, has remained consistently low, as reflected in the National Achievement Test (NAT) which measures student performance in the core subjects - Math, Science and Languages (Filipino and English). Overall performance in NAT shows that students are learning only about half (54% in 2013) of what they should have acquired at the appropriate level of schooling. Progress has been generally slow without any substantial improvement during the period 2011 to 2013. At this rate, it is unlikely that the target Mean Percentage Score (MPS) of 75 will not be met by 2016 as set in the Philippine Development Plan 2011-2016.



Source: Department of Education (DepEd)

III. Impact of the private actors' involvement on the right to education in The Philippines

A. General legal and policy framework applicable to the Philippines

1. Applicable legal framework under the International Covenant on Economic, Social and Cultural Rights

24. Based on the work analyzing the situation with regards to privatization in education in seven other countries, and following extensive consultation with education civil society organizations at the domestic, regional and international level, and with human rights and education academics and experts,²⁰ a group of organisations, including the Global Initiative for Economic, Social and Cultural Rights, and the Right to Education Project, have developed the following draft analysis framework, which set out how international human rights law applies to privatization in education, drawing in particular on articles 28 and 29 of the ICRC and article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This framework aims at providing an understanding of these articles, which on one hand protect the right to free quality education without discrimination (art. 13.1 and 13.2 of the IESCR, art. 28 and 29.1 of the ICRC), and on the other hand provides some liberty for parents to choose a school of their choice (art. 13.3 and 13.4 of the ICESCR, art. 29.2 or the ICRC), under some conditions.

²⁰The Global Initiative for Economic, Social and Cultural Rights. (2012). Country Research and Advocacy on the Impact of Privatisation in Education. <http://globalinitiative-escr.org/advocacy/privatization-in-education-research-initiative/international-advocacy-on-privatisation-in-education/>

Private actors in education: draft human rights analysis framework

While private providers of education are permitted, States must ensure that the involvement of private actors in the provision of education:

1. Does not lead to the creation of extreme disparities in access to quality education or discrimination of any kind, and does not lead to segregation or division in societies in general or education in particular;
2. Provides for a true alternative choice to quality free education, and does not replace the public system, as the State retains the responsibility to offer quality, free education for all;
3. Does not lead to the marketisation of education such that education is no longer directed to the full development of a child's personality, talents and mental and physical abilities, but instead only to profit-making and achieving measurable outcomes - which would be contrary to the aims of education recognised in human rights law;
4. Maintains the highest quality standards and is adequately regulated, both in law and in practice, with adequate inspection staffing, effective accountability mechanisms, and without corruption, and;
5. Is the result of a participatory policy formulation process and continues to be subject to democratic scrutiny and to the human rights principles of transparency and participation.

25. This report focuses on the first two and the fourth areas of this framework: segregation and discrimination, right to free quality education, and the lack of regulation. The applicable national and international framework underpinning these areas is detailed in the corresponding sections below.

2. How is the Philippine government privatizing education? Legal and policy framework in the Philippines and support of the State to private actors in education

26. Similarly, as in the ICESR, the rights of any individual or institutions to establish their own educational institutions (schools) is explicitly included in the Philippine Constitution in Section 4, Art. XIV, which provides that:

(1) The State recognizes the complementary roles of public and private institutions in the educational system and shall exercise reasonable supervision and regulation of all educational institutions.

(2) Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased Filipino equity participation in all educational institutions.

The control and administration of educational institutions shall be vested in citizens of the Philippines.

No educational institution shall be established exclusively for aliens and no group of aliens shall comprise more than one-third of the enrollment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.

(3) All revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. Upon the dissolution or cessation of the corporate existence of such institutions, their assets shall be disposed of in the manner provided by law.

Proprietary educational institutions, including those cooperatively owned, may likewise be entitled to such exemptions subject to the limitations provided by law including restrictions on dividends and provisions for reinvestment.

(4) Subject to conditions prescribed by law, all grants, endowments, donations, or contributions used actually, directly, and exclusively for educational purposes shall be exempt from tax.

27. The Philippine Government considers public-private partnerships (PPPs) as a cornerstone of its development strategy and has come up with clear legal provisions and policy statements promoting private sector involvement in education.

“WHEREAS, there is a need to fast-track the implementation of Public-Private Partnership (PPP) programs and projects, as a cornerstone strategy of the national development plan to accelerate the infrastructure development of the country and sustain economic growth.”(Executive Order No. 8, s. 2010)²¹

28. In the Philippine Development Plan 2011-2016, engaging the private sector at the basic education level is clearly defined as a strategy:

“In education, partnerships with the private sector, particularly with industry chambers, employers’ associations, technical panels and other relevant bodies shall be strengthened. Such partnerships shall work on developing standards and curricula, monitoring indicators and providing relevant hands-on education and training that will help close gaps in access and quality across regions. The PPP and the national-local government collaboration shall be encouraged in addressing critical and basic education inputs. These include delivery of basic education services through instructional and other management services by qualified private providers in order to improve access, efficiency and student achievement and to promote educational fiscal reforms.”

29. The primary importance being given to PPPs, which enjoys support from and institutionalized by government policies and programs clearly indicates a general bias for the private sector. The Expanded Government Assistance to Students and

²¹Executive Order No. 8 s, 2010. <http://www.gov.ph/downloads/2010/09sep/20100909-EO-0008-BSA.pdf>

See also http://ppp.gov.ph/wp-content/uploads/2012/10/PPPBrochure_Sept2012.pdf

Teachers Private Education (E-GASTPE)²² was further expanded beginning 2010 by targeting one million student grantees to enroll in private high schools every year through the Education Service Contracting scheme (ESC) and by increasing the amount of government subsidy to ESC grantees. In 2013, the government introduced the Senior High School (SHS) Voucher Program under GASTPE.²³

“ESC is a demonstration of the government’s commitment to maintain the viability of private education as a key partner in the delivery of quality basic education to the Filipino learners.” (DepEd Secretary Armin Luistro)²⁴

30. The Education Service Contracting (ESC) under GASTPE is considered as the world’s largest and longest running PPP in education. The ESC is a scheme involving public subsidies for each student enrolled in eligible private schools. The ESC provides an annual per pupil subsidy to certified private high schools to accept public school students who cannot be accommodated in nearby congested public high schools. The ESC is not a full subsidy, rather a flat fee of 6,500 pesos (USD 151) per pupil across the country, other than in the National Capital Region, where it is 10,000 pesos (USD 232) per year. Parents are then required to pay top-up fees bridging the difference between the ESC grant and the total cost of tuition. (*World Bank, 2010*).
31. The table below shows the consolidated data on the ESC covering part of the period 2010 to 2015. The number of ESC grantees increased consistently through the years - from 598,803 in 2010 to 798,477 in 2013, or an increment of 33.3%. Likewise, the total subsidy increased by 63.8% during the same period. The data also showed that a significant number of students enrolled in eligible private schools are covered by the ESC program, with the percent coverage also increasing over time - from 58.5% of total enrolment in 2011 to 72.1% in 2013. This indicates the dependence of the private school system on the ESC subsidy, without which, most private schools will experience financial collapse. In effect, the government has been subsidizing private schools while it is under-investing in the public school system.

ESC Program - Enrolment, Subsidy and School Fees (Philippines, 2010-2015)

Year	Total Enrolment	Number of ESC Grantees	Ratio of No. of Grantees to Total Enrolment	Total Government Subsidy (In Php) and \$ equivalent	Average School Fees (In Php)\$ equivalent
2010	---	598,803	---	Php 3,087,595,000 (\$64,997,802)	Php 13,889 (\$292.40)
2011	1,093,317	639,092	58.5%	Php 3,633,263,980 (\$76,489,768)	Php 14,509 (\$305.45)

²²Passed as GASTPE Act of 1988 and later amended as EGASTPE in 1994 provides for tuition fee subsidies (by government) for students who want to pursue secondary schooling in private schools.

²³ Department of Education. (2015). DO 46, s. 2015 -Detailed Guidelines on the Implementation of the Senior High School (SHS) voucher Program. <http://www.deped.gov.ph/orders/do-46-s-2015>

²⁴Department of Education. (2014). DepEd increases educ assistance for students in private schools. <http://www.deped.gov.ph/press-releases/deped-increases-educ-assistance-students-private-schools>

2012	1,099,540	725,085	65.9%	Php 4,382,609,207 (\$92,265,457)	15,411 (\$324.44)
2013	1,107,657	798,477	72.1%	Php 5,058,349,290 (\$106,491,564)	Php 16,272 (\$342.57)
2014	1,086,164	853,624	78.6%	Php 5,852,075,335 (\$123,201,586)	Php 17,167 (\$361.41)
2015	---	910,677	---	Php 6,632,074,307 (\$139,622,617)	Php 18,525 (\$390)

32. Even without benefit of a thorough evaluation of the ESC programme given the questions raised showing its bias against the poor and the public school system, the government pursued the privatisation drive in education through the introduction of the Senior High School (SHS) Voucher Program. The program will further expand the PPP initiative to cover incoming senior high school students eligible for enrolment in private schools starting School Year 2016-2017. Conceptualized initially in 2013, DepEd issued Department Order (DO) No. 11 in April 2015 which elaborated the guidelines for the implementation of the voucher program under GASTPE.²⁵ The programme is estimated to cover around 400,000 students or approximately 40% of Grade 10 completers in the public sector who will be shifted annually to non-DepEd schools starting 2016. The beneficiaries will receive government subsidies to partly cover the cost of enrolment in eligible private schools. In its Policy Brief issued in March 2015, DepEd clarified that parents will have to shoulder the top-up fees or the balance of the school fees charged by private schools not covered by the subsidy.
33. Another step taken by DepEd that shows its undue preference for the private sector is the accommodation and support extended to corporate financed and operated schools. A Memorandum of Understanding (MOU)²⁶ between DepEd and Pearson PLC Corporation was signed in April 2013 for the operation of Affordable Private Education Centers (APEC) which was set up as a joint venture between Pearson, the largest global education conglomerate, and the Ayala Group, one of the largest corporations in the Philippines. A research commissioned by Education International (EI)²⁷ cited the MOU which states: *“With the passage of the Enhanced Basic Education Act of 2013 mandating the introduction of Grades 11 and 12, there is an urgent need to provide affordable quality education to millions of Filipino children of secondary school-age whose only option at present is to enroll in an overcrowded public school.”*²⁸ (. As articulated in the MOU, DepEd and its corporate partners have agreed *“that it is in the best interest of the Filipino children of secondary school age, particularly those from economically disadvantaged families, to roll out APEC*

²⁵ Department of Education. Policy Guidelines on the Implementation of Senior High School (SHS) Voucher Program. Department Order (DO) No. 11 (Series of 2015). April 2015.

²⁶ Department of Education & APEC. (2013, April 24). Memorandum of Understanding. Manila, Philippines.

²⁷ Education International. Corporatised education in the Philippines: Pearson, Ayala Corporation and the emergence of Affordable Private Education Centers (APEC). http://download.ei-ie.org/Docs/WebDepot/Philippine%20Study/Research_C.%20Riep_APEC%20Philippines_final.pdf

²⁸ DEPED & APEC, 2013, p.1.

schools beginning in July 2013 [...] in order to prove its viability in the Philippines.”²⁹

34. APEC schools claim to supply “affordable” private education to large numbers of “economically disadvantaged” Filipino students who are willing to pay for basic education. In reality, however, these schools are hardly affordable to lower-income learners as claimed. The lowest-income families in the Philippines (Class E) would have to expend, on average, an estimated 40% of their annual household income to send one child to an APEC school. Presently, these schools are focused on the secondary school market, taking advantage of the introduction of grades 11 and 12 and the expansionary voucher program to the national education system.³⁰

35. The share of the private sector in basic education in terms of number of schools and enrollment size has remained significant particularly at the secondary level. Official statistics from DepEd shows a total of 5,130 private secondary schools operating as of 2013 or a share of almost 40%. During the same year, there were 1,408,347 students enrolled in private secondary schools which correspond to about 20% of total enrolment at the secondary level.

36. The policies adopted and implemented by the Government over the past six years have in effect supported the viability of the private sector and pushed the privatization drive in education.

ELEMENTARY	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
SCHOOLS	44,691	44,846	45,964	46,137	46,404
Public	37,607 (84.15%)	37,762 (84.20%)	38,351 (83.44%)	38,503 (83.45%)	38,659 (83.31%)
Private	7,084 (15.85%)	7,084 (15.80%)	7,613 (16.56%)	7,634 (16.55%)	7,745 (16.69%)
ENROLMENT	13,686,643	13,934,172	14,166,066	14,436,345	14,509,690
Public	12,574,506 (91.87%)	12,799,950 (91.86%)	13,019,145 (91.90%)	13,241,213 (91.72%)	13,259,489 (91.38%)
Private	1,112,137 (8.13%)	1,134,222 (8.14%)	1,146,921 (8.10%)	1,195,132 (8.28%)	1,236,365 (8.52%)
SECONDARY SCHOOLS	10,066	10,384	12,950	12,670	12,878
Public	5,359 (53.24%)	5,677 (54.67%)	7,268 (56.12%)	7,470 (58.96%)	7,748 (60.16%)
Private	4,707 (46.76%)	4,707 (45.33%)	5,682 (43.88%)	5,200 (41.04%)	5,130 (39.84%)
ENROLMENT	6,763,858	6,806,079	6,954,946	7,049,877	7,110,944
Public	5,421,562 (80.15%)	5,465,623 (80.31%)	5,580,236 (80.23%)	5,635,664 (79.94%)	5,641,898 (79.34%)
Private	1,342,296 (19.85%)	1,340,456 (19.69%)	1,374,710 (19.77%)	1,414,213 (20.06%)	1,408,347 (19.81%)

²⁹ DepEd & APEC, 2013, p. 4

³⁰ Ibid.

37. Likewise, higher education in the Philippines has remained largely in the domain of private institutions. An Asian Development Bank (ADB) report published in 2012 ranked the Philippines second to Indonesia as a country with an extensive private higher education sector with enrollment share at 60.9% and with the number of higher educational institutions at 72.2% of the total.³²

B. Creating societal segregation and discrimination

1. Legal framework

38. Equality and non-discrimination are immediate and crosscutting obligations in the ICRC and the ICESCR),³³ which require States parties to respect and ensure the rights set out in the ICRC without discrimination. International human rights bodies have stressed the importance of non-discrimination.

39. 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 realization) 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.

40. General Comment 20 of the CESCR also specifies that any kind of discrimination, whether direct or indirect, formal or substantive is prohibited. Applying the obligation not to discriminate, as well as the principles of equal opportunity and effective participation in society for all, the CESCR emphasized in its General Comment 13 that the State has an obligation to ensure that privatized education '*does not lead to extreme disparities of educational opportunity for some groups in society.*'³⁴

41. 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.*³⁵

³¹Mark Llego. (2015). Basic Education Statistics in the Philippines. DepEd Public Schools Enrolment SY 2015-2016. Fact Sheet as of September, 2013. <http://www.teacherph.com/basic-education-statistics-philippines/>

³² Asian Development Bank. Private Higher Education Across Asia: Expanding Access, Searching for Quality,"2012.

³³The Global Initiative for Economic, Social and Cultural Rights. (2015). pp. 16. http://globalinitiative-escr.org/wp-content/uploads/2015/05/GNECC_GI-ESCR-Second-report-to-the-CRC-research-privatisation-in-education-Ghana-May-2015.pdf

³⁴Ibid.

³⁵Ibid.

42. 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 4.³⁶

43. 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.’³⁷

44. In its concluding observations, the CESCR has 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”.³⁸ It connected the importance of free education for the enforcement 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”.³⁹

45. 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 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.’⁴⁰ The issue has also been addressed by the CRC in its concluding observations. Most recently, in the case of Morocco, the CRC expressed concern that the fast development of private education ‘has led to the reinforcement of inequalities in the enjoyment of the

³⁶Ibid.

³⁷The Global Initiative for Economic, Social and Cultural Rights. (Submitted May 2015). pp. 17. http://globalinitiative-escr.org/wp-content/uploads/2015/05/GNECC_GI-ESCR-Second-report-to-the-CRC-research-privatisation-in-education-Ghana-May-2015.pdf

³⁸CESCR, Concluding Observations: Canada, E/C.12/CAN/CO/4 E/C.12/CAN/CO/5 (2006), para. 31.

³⁹CESCR, Concluding Observations: Nepal, E/C.12/1/ADD.66 (2001), para. 57; emphasis added.

⁴⁰CESCR, Concluding Observations: Republic of Korea, E/C.12/KOR/CO/3 (2009), para. 76.

*right to education.*⁴¹ It has also recommended that Lebanon place stronger emphasis on public education so as to ‘*prevent any risk of discrimination.*’⁴²

46. Importantly, UN treaty bodies have explicitly recognized that socio-economic segregation is directly linked to discrimination and contrary to the right to education. In its concluding observations on Morocco, the CESCR indicated being concerned “*about the spread of private education, which could lead to a form of segregation, with good-quality education restricted to those who can pay for private, elite schooling.*”⁴³ In its concluding observations on Chile, the CESR “*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)*” and it recommended that Chile “*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*”.⁴⁴ Still with regards to Chile, the CRC was concerned about “*the high level of segregation in the school system*” and recommended that the State “*Promptly 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.*”⁴⁵
47. 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*’, and it ‘*favours access to education by the privileged*’. Generally, high levels of privatization in education have been shown to affect particularly marginalized and vulnerable groups, such as girls, as shown in a recent submission made to the CEDAW.⁴⁶

2. Situation in the Philippines

48. A study conducted by the World Bank in 2010 and published in 2011⁴⁷ recognizes that while the Education Service Contracting program has grown tremendously in terms of both the number of grantees and the number of participating private schools over the years, it has not been able to reach out to the poorest section of the population as was envisaged. The World Bank findings show that: 1) most ESC grantees ‘come

⁴¹CRC, Concluding Observations: Morocco, CRC/C/MAR/CO/3-4 (2009), para. 60.

⁴² CRC, Concluding Observations: Lebanon, CRC/C/15/Add.169 (2002), para. 33.

⁴³E/C.12/MAR/CO/4, paras. 47-48.

⁴⁴E/C.12/CHL/CO/4, para. 30.

⁴⁵CRC/C/CHL/CO/4-5, paras. 67 - 68.

⁴⁶United Nations Committee on the Elimination of Discrimination Against Women (CEDAW). (2014). Privatization and its Impact on the Right to Education of Women and Girls. <http://globalinitiative-escr.org/wp-content/uploads/2014/07/140627-Right-to-Education-Submission-to-CEDAW-Final-with-logos.pdf>

⁴⁷ The International Bank for Reconstruction and Development/The World Bank. (2011). Philippines Private Provision, Public Purpose. A review of the Government’s Education Service Contracting Program. Executive Summary. pp. 3. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/04/20/000333037_20110420020321/Rendered/PDF/611540WPOP10651e0Govt1s0ESCOProgram.pdf

from relatively well-off families’; 2) the added/top up fees are unaffordable to the poor; and 3) private schools also select better performing students to reflect well on their performance. These findings already suggest the segregation and discriminatory impact of the program on the basis of socio-economic status, ability to shoulder the top-up fees, differentiated capacities in school performance, and enforcement of private school criteria.

“Another issue is related to equity. Since ESC grantees have to pay out of pocket for any difference between the ESC subsidy and the fees charged by their private school, the fact that most are able to do so suggests that they do not come from poor households. However, one of the original objectives of the program was to extend financial assistance from the public budget to “poor but deserving” students. If most of the grantees come from relatively well-off households, then this objective is not being met.”⁴⁸

“No specific evidence that the ESC and EVS are helping the poor and data suggest that the grantees are probably non-poor”⁴⁹

49. The government allows private schools to charge top-up fees such as tuition fee, costs of books, and expenditure on school projects which is usually way higher than the amount of the ESC grant. The table below shows the average school fees charged by participating private schools which has been increasing at the rate of 5.5% annually. In 2013, the average school fee charged by private schools in the regions was Php 14,598. With a subsidy of Php 6,500 per grantee, parents have to shoulder Php 8,098. In the National Capital Region, the corresponding amount that parents have to shoulder was Php 20,538. Clearly, these amounts are way over the capacity of the poor to pay, indicating that most ESC grantees come from relatively well-off families. This is consistent with the findings of the World Bank discussed earlier in this section. The National Statistics Coordination Board (NSDB) estimates poverty incidence at 27.9 % of Filipinos in 2012.⁵⁰ The income level of the poorer 30% of Filipino families is estimated at Php 89,667 or \$1,887 per year. At this level of income, a family of five who spends over 80% of their income on food, housing, utilities and transportation will not be able to shoulder the additional fees required to pay private schools.⁵¹

Enrolment, Subsidy and School Fees (Regions and National Capital Region [NCR], 2013)

AREA	Total Enrolment	No. of ESC Grantees	Total Government Subsidy (In Php) and \$ equivalent	Average School Fees (In Php) and \$ equivalent	Subsidy per ESC Grantee (In Php) and \$ equivalent	Out-of-Pocket Cost (In Php) and \$ equivalent
Regions	988,251	748,596	Php 4,559,539,250 (\$95,990,300)	Php 14,598 (\$307.32)	Php 6,500 (\$136.84)	Php 8,098 (\$170.48)

⁴⁸p. 3, Executive Summary.

⁴⁹ p.76, Findings and Recommendations

⁵⁰ National Statistics Coordination Board (NSDB). <http://nscb.gov.ph/poverty/defaultnew.asp>

⁵¹ Philippine Statistics Authority (PSA). <https://psa.gov.ph/content/2012-fies-statistical-tables>

NCR	119,406	49,881	Php 498,809,993 (\$10,501,263)	Php 30,538 (\$642.90)	Php 10,000 (\$210.53)	20,538 (\$432.38)
Total	1,107,657	798,477	Php 5,058,349,243 (\$106,491,564)	Php 16,272 (\$342.57)		

Source: Basic Data from Fund for Assistance to Private Education (FAPE); computation of summaries done by E-Net, Philippines

50. Findings from a study done by Education Network Philippines (E-Net, Phils.) in 2012 and published by the Privatisation in Education Research Initiative (PERI) in 2013⁵² reinforce the findings that this scheme is engendering segregation and discrimination, and reveal that the poorest of the poor are unable to participate in the program. Respondents in Masbate, Compostela Valley and Maguindanao said that the fees exert pressure on the children and the parents:

The nature of the program has kept the poorest of the poor from participating, and it has also prevented those who have limited financial means from accessing scholarships. Parents must pay the differential between the ESC grant and the school tuition, books that are otherwise free in public schools and many miscellaneous costs related to student projects and contributions to schools. As reflected in the socioeconomic status of the grantees, there are current grantees who may not be necessarily poor.⁵³

51. The identification of “deserving” students as a criterion for selection also adds as basis for segregation and exclusion. Section 3 of the Government Assistance to Students and Teachers in Private Education or GASTPE stipulates that:

The programs for assistance shall be based on a set of criteria which shall include, among others, tuition fees charged by the schools, the socio-economic needs of each region, overall performance of the schools, the academic qualifications and the financial needs of the students, as well as the geographic spread and size of student population.⁵⁴

52. The stipulation on the academic qualification of students has been retained in the expanded GASTPE and its implementing rules. Targeting ESC beneficiaries on the basis of academic performance as one of the criteria for assistance immediately discriminates a certain group of individuals from accessing the program. This implies that the underprivileged and poor performing students are left with no other option but to enroll in congested and poorly funded public schools.

53. The SHS Voucher Program as explained in the previous section creates similar issues as the ESC scheme, the main one being access to schools beyond the financial reach of the poor. This scheme will further privatize the education system and discriminate

⁵² Civil Society Network for Education Reforms. (2013). Education Service Contracting in the Philippines - Assessing Public-Private Partnership in Education from the Perspective of the Marginalized Sectors, ESP Working Paper Series N° 47, PERI, 2012. <http://www.periglobal.org/role-state/document/education-service-contracting-philippines-assessing-public-private-partnership-e>

⁵³ Ibid.

⁵⁴ Republic Act No. 6728. An Act Providing Government Assistance To Students And Teachers In Private Education, And Appropriating Funds Therefor, June 10, 1989.

against the poor due to top-up fees to cover the full cost of private education. Without covering the full cost of private schooling and without clear guarantees on admission, the program systematically discriminates against the poorer, the lower performing and the rural-based students.

C. The right to free quality education facing low Government spending

1. Legal framework

54. According to the Committee on Economic, Social and Cultural Rights (CESCR), interpreting article 13 of the ICESCR:

First, it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances; States parties recognize, for example, that the “development of a system of schools at all levels shall be actively pursued” (art. 13 (2) (e)). Secondly, given the differential wording of article 13 (2) in relation to primary, secondary, higher and fundamental education, the parameters of a State party’s obligation to fulfill (provide) are not the same for all levels of education. Accordingly, in light of the text of the Covenant, States parties have an enhanced obligation to fulfill (provide) regarding the right to education, but the extent of this obligation is not uniform for all levels of education. The Committee observes that this interpretation of the obligation to fulfill (provide) in relation to article 13 coincides with the law and practice of numerous States parties.⁵⁵

55. It should also be noted that Article 13 (3) of the ICESCR protects the liberty of parents and legal guardians 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 schools provide an alternative too in order to ensure parents can offer ‘*the religious and moral education of their children in conformity with their own convictions*’. The SR RtE made it explicitly clear by emphasizing that:

Education must be safeguarded as a public good. Drawing upon the adverse impact of privatization in education and the consequent growing disparities in education, Governments should ensure that private providers only supplement public education, the provision of which is the Government’s responsibility, rather than supplant it. [...] It is important to ensure that States do not disinvest in public education by relying on private providers.

56. Article 28 of the ICRC requires States parties to ‘*make primary education compulsory and available free to all*’ and to progressively introduce free secondary education.

57. The Committee on the Rights of the Child has also provided guidance on the implementation of the ICRC in the context of privatization in General Comment No. 5:

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

⁵⁵CESCR, General Comment 13, para. 48 - emphasis added.

*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)).*⁵⁶

58. The CRC additionally addressed the issue of privatization 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 recommendations including:

*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.*⁵⁷

59. UN treaty bodies, including the CRC, have made a number of observations on the impact of privatisation and fees on the realisation right to education, with a direct link between the right to free education and the right to non-discrimination. For instance, 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

60. 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’.⁵⁹ 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’.⁶⁰

61. Similarly the CESCR’s concluding observations have highlighted the negative and discriminatory impact of tuition fees. For instance, in the case of Nepal, the CESCR was concerned that ‘in practice primary education is not completely free due to various fees charged to parents, such as for school supplies and uniforms’.⁶¹

62. In relation to primary education, the CESCR in General Comment 13 says that the State’s obligation to fulfill the right to education amounts to an obligation to *directly provide* education in most circumstances and suggests that its obligations in relation to primary education may be of a higher order and entails more immediate obligations.⁶² General Comment 13 states:

“First, it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances;

⁵⁶UNICEF. (2003). Committee on the Rights of the Child. Thirty fourth session. para 44. http://www.unicef-irc.org/portfolios/general_comments/GC5_en.doc.html

⁵⁷*Op. cit.* paragraph 23.

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.

⁵⁹Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014), para. 48.

⁶⁰*Ibid.*, para. 45.

⁶¹ CESCR, Concluding Observations: Nepal, E/C.12/1/ADD.66 (2001), para. 57.

⁶² CESCR, General Comment 13, paragraphs 48, 51 and 52.

States parties recognize, for example, that the “development of a system of schools at all levels shall be actively pursued” (art. 13 (2) (e)).”⁶³

63. While the CRC permits (as does the ICESCR⁶⁴) the provision of education (to unspecified levels) by non-State providers, as provided in Article 29(2), the liberty to establish educational institutions is constructed negatively, as something that should not be affected by the fulfilment of the right to education. The responsibility is thus on the State to fulfill the right to education. The UNESCO Convention against Discrimination in Education takes a similar approach in its Article 2 which provides that the establishment or maintenance of private educational institutions does not constitute discrimination when it is to provide educational facilities *in addition to those* provided by the public authorities.⁶⁵ It should also be noted that in its indicators on the right to education, the OHCHR suggests measuring child enrolments in *public* education institutions as an indicator of compliance with human rights standards.⁶⁶

64. A former Special Rapporteur on the Right to Education, the late Katarina Tomaševski, emphasized that:

“[i]nternational human rights law defines free and compulsory education as a government obligation, thus implying that it should be a free public service, while permitting private education for those parents who desire and can afford it, bearing in mind most private schools charge for their services.”⁶⁷

65. Thus, it is permissible and even required to allow the development of private education, but the State retains the positive obligation to fulfill the right to education, and the obligation to provide primary education for all is an immediate duty of States.⁶⁸

66. In order to ensure the fulfillment of the right to free compulsory education, whatever system they choose to do so, States have to provide adequate resources. According to article 2.1 of the ICESCR in combination with article 13, States have an obligation to ensure that the maximum available resources are devoted to achieving education outcomes. They must both use adequate resources, and use these resources in the most efficient way possible for the realization of the right to education. Therefore, should they wish to use some of these resources to support private providers through public private partnerships, they also bear the burden of demonstrating that any State resources diverted to private providers of education

⁶³*Emphasis added.* CESCR, General Comment 13, paragraph 48.

⁶⁴See also ICESCR, Article 13(4) and CESCR General Comment 13, paragraph 59.

⁶⁵UNESCO Convention against Discrimination in Education, 1960. It can also be noted that in Africa, the African Commission on Human and Peoples' Rights also considers the African Charter on Human and Peoples' Rights to require States 'to respect the liberty of parents and guardians to establish and choose for their children schools, *other than those established by the public authorities*', clearly emphasizing the primacy of public schools.

⁶⁶ United Nations Human Rights Office of the Commissioner. (2012). Human Rights Indicators. A Guide to Measurement and Implementation. http://www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf

⁶⁷ Katarina Tomaševski. (2004). *Manual on rights-based education*. Global Human rights Requirements Made Simple. pp. 55. UNESCO Bangkok. <http://unesdoc.unesco.org/images/0013/001351/135168e.pdf>

⁶⁸CESCR, General Comment 13, para. 51.

cannot be better utilized by allocating them to the direct provision of public education.

67. Section 5 (5), Article XIV of the Philippine Constitution reinforces this obligation on the State to fulfill the right to education to the maximum of its available resources by providing that *“The State shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment.”*

68. In the Dakar Framework for Action “Education for All 2015” in which the Philippines is a signatory, it was declared, as a strategic objective, that governments must continue to increase the absolute and relative size of their budgets devoted to basic education (without sacrificing needed resources for higher levels of education).⁶⁹ Also, as a UNESCO member, the Philippine State has a political obligation to undertake increasing investment in education which are implicit in a number of instruments adopted by UNESCO in the field of education such as Recommendations of the High Level Group on EFA on the need for raising resources for EFA and allocating a certain percentage of national budget (15 to 20 percent) or share of GDP (4 to 6 percent) to education, of national budget as a matter of norm.⁷⁰

2. Situation in the Philippines

69. Financing remains a critical issue that accounts for the poor quality of education and the huge number of out-of-school children and youth, as well as supports fee-charging private actors’ development in education.

70. A key challenge that the education sector has faced is the decades of underfunding which has resulted to problems of shortages and lack of necessary resources i.e. classrooms and school buildings, teachers, textbooks and learning materials, chairs, etc. - all relevant to the delivery of quality education. Government spending in education still falls behind the UNESCO benchmark of 20% of the total national budget and the EFA recommended six percent GDP ratio for total education expenditure as the graph below shows.

71. Budget allocation is still below the UNESCO and EFA mandated benchmark. For the past 20 years, the budget of the Department of Education as a percentage of GDP never went beyond the level of 2% of GDP, way below the 6% benchmark.⁷¹ The

⁶⁹ UNESCO (2000). The Dakar Framework for Action. Education for All: Meeting our Collective Commitments. http://www.unesco.at/bildung/basisdokumente/dakar_aktionsplan.pdf

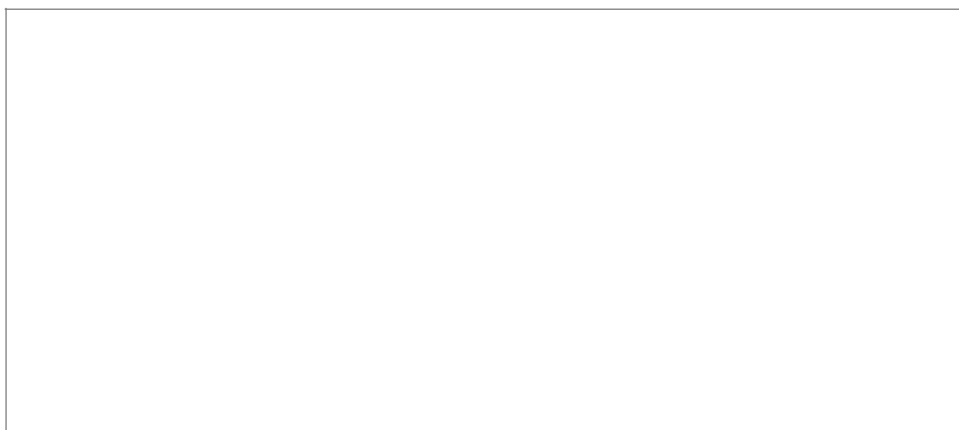
⁷⁰ UNESCO (2005). Fifth Meeting of the High-Level Group on Education for All, November 28-30, 2005 Beijing, China.

⁷¹ DepEd Sec. Armin Luistro PPT Presentation on The State of Philippine Education, Philippine Business for Education (PBED) Annual Membership Meeting, March 28, 2012; <http://www.slideshare.net/arangkadaph/state-of-education-in-the-philippines-2012>

corresponding figures for the period 2012-2014 are 2.4%, 2.8% and 2.6% respectively.⁷²

Source: Dr. R. Manasan, The State of Basic Education: Gaining Ground
(Presented at the Tower Club, Makati City, March 28, 2012)

72. Compared with other ASEAN countries, the Philippine government spends the least per student with only a 9.3% average per pupil spending as a percent of GDP per capita.⁷³



73. What is particularly distressing is that the budget allocation for programs that cater to marginalized and disadvantaged groups including Indigenous Peoples, Muslims, and the out-of-school add up to a meager less than 1% of the total budget for basic education.⁷⁴

Source: Basic Data from Department of Budget and Management (DBM);
Computation by Alternative Budget Initiative (ABI), Social Watch Philippines

⁷² Department of Education. Powerpoint Presentation on “EFA Progress Going Beyond the Basics,” 2015.

⁷³ Retrieved from <http://www.investphilippines.info/arangkada/climate/education/>

⁷⁴ Source: Basic data from the General Appropriations Act (GAA), DepEd Budget, 2014, Department of Budget Management (DBM); computation done by the Education Cluster of the Alternative Budget Initiative (ABI), Social Watch Philippines.

74. On the other hand, the State has consistently increased the allocation for subsidies to private schools under the ESC scheme. The government's annual budget reveals that public spending for subsidizing private schools under GASTPE has doubled during the reporting period 2009 to 2013 - from Php 2,568 million (\$54,063,000) to Php 4,271 million (\$89,915,000). The annual budget allocation for Alternative Learning System (ALS), the program that caters mostly to the poor out of school youth, has remained much smaller and has consistently decreased since 2010.

**Budget Comparison of DepEd Allocations (Php In million pesos, 000,000)⁷⁵
with \$ equivalent (Current Foreign Exchange Rate)**

Item	2009	2010	2011	2012	2013
Department of Education (DepEd)	Php171,220 (\$3,604,631,578)	Php174,750 (\$3,678,947,368)	Php207,050 (\$4,358,947,368)	Php238,440 (\$5,019,789,473)	Php292,200 (\$6,151,578,947)
GASTPE	Php2,568 (\$54,063,000) (1.50%)	Php2,737 (\$57,621,000) (1.57%) (6.58%) increase from previous year	Php3,087 (\$64,989,000) (1.49%) (12.79%) increase from previous year	Php3,626 (\$76,336,000) (1.52%) (17.46%) increase from previous year	Php4,271 (\$89,915,000) (1.46%) (17.79%) increase from previous year
ALS	Php343,509 (\$7,231,000) (0.20%)	Php410,915 (\$8,650,000) (0.24%)	Php387,827 (\$8,164,000) (0.19%)	Php393,505 (\$8,284,000) (0.17%)	Php411,247 (\$8,657,000) (0.14%)

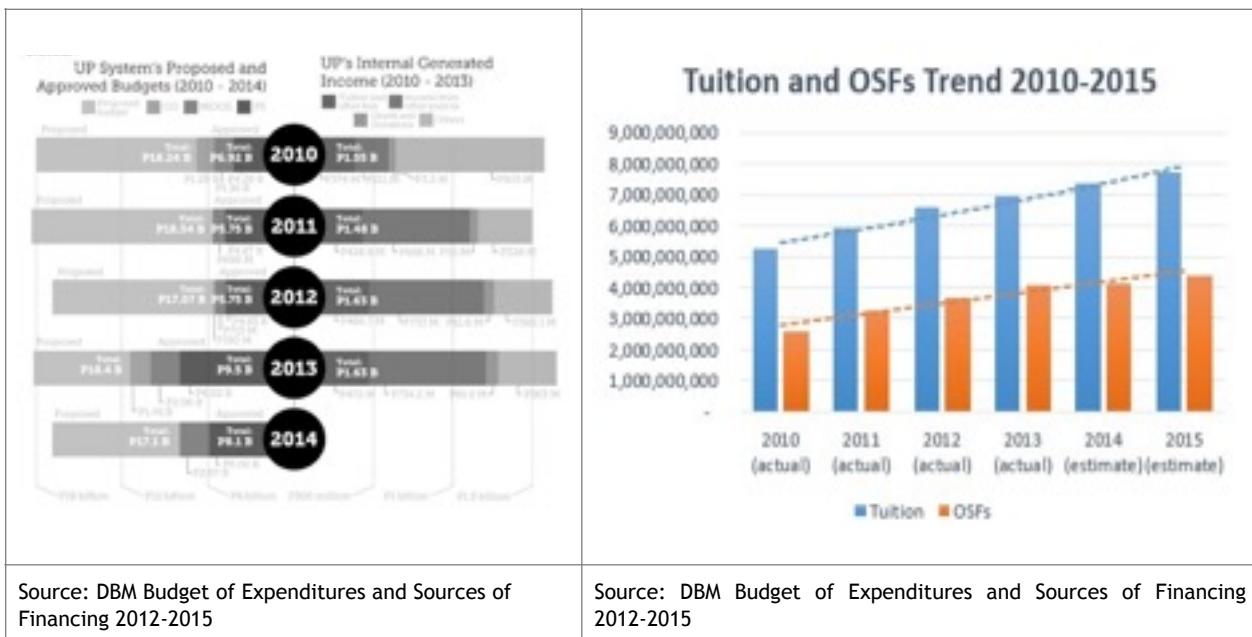
75. The ESC subsidy per grantee in the National Capital Region has increased by nearly 500% in 17 years - from Php1,700 (\$35.79) in SY 1996-1997 to Php10,000 (\$210.53) in SY 2013-2014. In comparison, the ALS program has been consistently underfunded. Available data, for example, revealed that the ESC subsidy per grantee was Php 4,000 (\$84.21) for SY 2006-2007, while, each ALS learner received only Php 2,843 (\$59.85).⁷⁶

76. The lack of public financing is felt more strongly in higher education which is heavily dominated by private educational institutions. The annual budget cuts have taken its toll on State Universities and Colleges (SUCs), many of which were forced to privatize certain aspects of their operation, raise tuition fees, and impose other school fees (OSFs) to generate income as shown in the proposed and approved budgets of the University of the Philippines for the period 2010 to 2013.

77. Ultimately, the financial burden is passed on to public tertiary students who have shelled out a total of P38.3 billion in tuition and other school fees in the past four years.

⁷⁵ Source: DBM Website, Annual General Appropriations Act (GAA)

⁷⁶ Emanuella di Gropello, with Hong Tan and Prateek Tandon, (2010). Skills for the Labor Market in The Philippines. <https://openknowledge.worldbank.org/bitstream/handle/10986/2514/578730PUB0Skil101Public10BOX353782B.pdf?sequence=1>



78. To elevate the quality levels of public schools and students, government will need to invest more in the public school system - hire more and better teachers with better compensation; provide more schools and programs that are accessible and cater to the poor and marginalized; invest in teacher training and development; and ensure adequate provisions of textbooks, teaching materials, educational equipment and technology to achieve quality education for all.

D. Lack of regulation of the private education sectors in the Philippines

1. Legal Framework

79. Article 13 of the ICESCR, as does article 29 of the ICRC, emphasizes that private educational institutions should be allowed, but these institutions must be:

“... subject always to the observance of the principle set forth in paragraph 1 of the present article [on the aim of education] and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State”.

80. In its General Comment 16, the CRC clearly emphasized that *“legislation and regulation are essential instruments for ensuring that the activities and operations of business enterprises do not adversely impact on or violate the rights of the child”*.⁷⁷ It also highlighted the obligation to protect as it relates to the role of businesses:

It means that States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children’s rights. Such measures can encompass the passing of law

⁷⁷ CRC, General Comment 16, para. 53.

*and regulation, their monitoring and enforcement, and policy adoption that frame how business enterprises can impact on children's rights.*⁷⁸

81. Moreover, it is suggested that

*Agencies with oversight powers relevant to children's rights, including labour, education and health and safety inspectorates, environmental tribunals, taxation authorities, national human rights institutions and bodies focusing on equality in the business sector can also play a role in the provision of remedies. These agencies can proactively investigate and monitor abuses and may also have regulatory powers allowing them to impose administrative sanctions on businesses which infringe on children's rights.*⁷⁹

82. The CRC has further emphasized in its General Comment 5 the importance of an adequate regulatory body to ensure the respect of the Convention:

*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.*⁸⁰

83. 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 recommendations including:

*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.*⁸¹

84. Importantly, the CRC has recognised that "*it is the lack of implementation or the poor enforcement of laws regulating business that pose the most critical problems for children*", and it has made a number of recommendations to ensure adequate enforcement of laws and policies.⁸²

85. These obligations entail States regulating private providers, monitoring and evaluating their compliance and educational outcomes and enforcing compliance where necessary. The CRC indicated that States have "*an obligation to set standards in conformity with the Convention and closely monitor them*".⁸³ Failure to do so amounts to a violation of the Convention.⁸⁴

⁷⁸ CRC, General Comment 16, para. 28.

⁷⁹ CRC, General Comment 16, para. 30.

⁸⁰ Committee on the Rights of the Child, General Comment 5, CRC/GC/2003/5, para 44.

⁸¹ *Op cit.* paragraph 8.

⁸² CRC, General Comment 16, para. 61.

⁸³ CRC General Comment 16, paragraph 34.

⁸⁴ *Ibid.*, CESCR General Comment 13, paragraph 59 which states that failure to maintain a transparent and effective system to monitor conformity with ICESCR Article 13(1) is a violation of Article 13.

86. The Philippine constitution takes a similar perspective as it specifies that while it recognizes in Section 4(1), Article XIII, the role of private educational institutions, it “shall exercise reasonable supervision and regulation of all educational institutions”.

2. Situation in the Philippines

87. The education service contracting also raised issue on budget efficiency, fiscal transparency and accountability. As cited in the World Bank study:

There are also some shortcomings in the regulatory framework of the ESC program. The ESC contract with FAPE takes the form of an annual agreement or Memorandum of Agreement (MOA). One basic problem that afflicts the agreement has to do with the fact that the DepED Secretary is also the ex-officio chair of the Private Education Assistance Committee (PEAC), FAPE’s Board of Trustees, so that in effect the Secretary is contracting the services of a private organization whose board of trustees he or she heads...Nevertheless, it can be argued that DepED is left open to regulatory capture by FAPE through the Secretary. There are other limitations. For example, nowhere in the MOA or elsewhere is DepED’s responsibility for overseeing FAPE’s implementation of the ESC program specified or recognized. Consequently, no one in DepED has been appointed to fill this role, thus limiting ownership of the program within DepED. The functions that DepED has been given in relation to the ESC program are not specifically funded, which limits DepED’s ability to carry out its responsibilities. Because there is no office within DepED that is tasked with overseeing FAPE’s implementation of the program, it is not clear to both DepED and FAPE to which DepED officials FAPE staff should report.⁸⁵

88. The introduction of SHS Voucher Program also encouraged the emergence of low-cost private schools, such as the commercial chain of secondary schools called the Affordable Private Education Centers (see box below), but without the necessary regulatory framework.

89. The education service contracting also raised issue on budget efficiency, fiscal transparency and accountability. As cited in the World Bank Study:

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⁸⁵ p. 3, Executive Summary.

it is not clear to both DepED and FAPE to which DepED officials FAPE staff should report.⁸⁶

90. The introduction of SHS Voucher Program also encouraged the emergence of low-cost private schools, such as the commercial chain of secondary schools “Affordable Private Education Centers”, but without the necessary regulatory framework.

91. The private education industry has become one of the most lucrative industries in the Philippines in terms of revenue to cost ratio. The 2010 Annual Survey on Philippine Business and Industry (ASPBI) showed that: “Revenue per peso cost computed as the ratio of total revenue to total cost for all establishments was computed at 1.34 in 2010... (The) top three major industries for this indicator were Administrative Scope and service activities, 2.62; Education, 2.52; and Entertainment and Recreation, 2.06.” This means that Php2.52 was realized as revenue for every peso spent by private education establishments in 2010. This is more profitable than the more established and bigger industries such as Manufacturing, Construction, Transport and Information and Communications. The high margin of profit is not only true for higher education, but for all levels of education. In fact, secondary education has the highest revenue to cost ratio at 2.81 followed by pre-primary/pre-school education at 2.59.⁸⁷

Selected Indicators for Education Establishments for All Employment Sizes by Industry Group: Philippines, 2010

2009 PSIC Code	Industry Description	Average Number of Workers per Establishment	Average Annual Compensation per Worker (Php)	Revenue per Cost	Value Added per Worker
		(6)	(7)	(8)	(9)
	Philippines	32	195,662	2.52	297,520
P851	Pre-primary/pre-school education	10	97,708	2.59	127,548
P852	Primary/elementary education	18	127,926	2.36	181,306
P853	Secondary/high school education	33	172,449	2.81	230,132
P854	Higher Education	65	230,864	2.52	366,267
P855	Other Education Services	11	188,647	1.95	393,736

Source: Philippine Statistics Authority. 2010 Annual Survey on Philippine Business and Industry - Economy-Wide for All Establishments: Final Results.

92. The Philippine government has opted to accommodate the operation of low fee corporate chain schools indicating a clear bias towards the unregulated commercialization of basic education. In relation to APEC schools, the Department of Education has relaxed a number of regulations to allow these chain schools to operate with limited government restriction. These include permission for APEC schools to operate in unused or vacant commercial buildings which APEC could lease,

⁸⁶ p. 3, Executive Summary.

⁸⁷2010 Annual Survey on Philippine Business and Industry - Economy-Wide for All Establishments: Final Results; Reference Number: 2013-37, Release Date: Wednesday, March 27, 2013

instead of purchasing land and constructing proper school facilities.⁸⁸ The DepEd's Manual of Regulations for Private Schools in Basic Education clearly states: *"Unless exempted by the Secretary, each private school shall own its site, or shall have a definite and feasible program for ultimate ownership thereof within a reasonable period, which should be adequate and suitable for the buildings and activities of the school."*⁸⁹

93. APEC started with a chain of 12 schools in the first year of regular operation and planned to expand with 50 schools in the succeeding years. The EI study noted that in an effort to minimise the cost of schooling to attract more students while increasing profit margins, APEC has implemented a number of cost-cutting techniques but at the expense of students who attend classes in cramped and poorly ventilated rooms in rented commercial buildings without campuses and without proper facilities and equipment. Teachers hired by APEC are also typically unlicensed and, therefore, paid lower wages and without benefits comparable to those of regular public school teachers. In ten years' time, APEC plans to capture a significant share of the market by setting up 500 schools with 500 students each. With 250,000 students - each paying more than US\$500 per year - APEC is set to become a highly lucrative venture.⁹⁰

IV. Conclusion and recommendations for the List of Issues

94. Given the Philippine education performance and financing situation, the policies recently adopted by the government, and the actual experiences with education privatization including PPP initiatives such as the Education Service Contracting scheme and the Senior High School Voucher Program, it is clear that the government-supported growth and expanding role of private actors in education is not resulting to improved access to and better quality education. On the contrary, such policies and programs lead to further commercialization of education services that are beyond the reach of the poorest in the Philippines in violation with the rights protected under the ICESCR, in particular, the right to education.

95. As more funds transfer from the public to the private sector, the public school system is further weakened and its role in delivering education significantly diminished. Privatisation of education services undermines the right to free quality education, produces social inequalities, undercuts the working conditions of teachers, and erodes democratic decision-making and public accountability in education. The proliferation of private, for-profit basic education must be addressed in order to safeguard education as a human right and a societal good.

⁸⁸ Education International. Corporatised education in the Philippines: Pearson, Ayala Corporation and the emergence of Affordable Private Education Centers (APEC). http://download.ei-ie.org/Docs/WebDepot/Philippine%20Study/Research_C.%20Riep_APEC%20Philippines_final.pdf

⁸⁹ Department of Education. 2010 Revised Manual of Regulations for Private Schools in Basic Education. DO 28, s. 2010, June 24, 2010.

⁹⁰ Education International. Corporatised education in the Philippines: Pearson, Ayala Corporation and the emergence of Affordable Private Education Centers (APEC). http://download.ei-ie.org/Docs/WebDepot/Philippine%20Study/Research_C.%20Riep_APEC%20Philippines_final.pdf

96. In view of these, we suggest to ask the State Party the following questions:

- What concrete steps are being taken to ensure free public primary and secondary education as guaranteed by the Philippine Constitution and in line with the Sustainable Development Goals on Education 2030?
- What steps are being taken by the Philippine Government to increase the education budget to be at par with international benchmarks? What will it take for the government to utilize available resources to finance and strengthen public education to reach the unreached and the most excluded, and to guarantee the right to education for all?
- How is the government identifying the key problems that account for the large number of out-of-school children and youth which has persisted and remained unresolved for several decades now, and what steps is it taking to address that?
- What are the financing plans of the government to allocate sufficient resources for the implementation of the Enhanced Basic Education Program, otherwise known as the K-12 program?
- What are the State's plan regarding the development of its partnerships with actors such as Pearson and APEC schools, and how is it ensuring that this partnership participate to fulfil rather than undermine the right to education? Has the government done any human rights impact assessment of such partnership, or does it plan to do one?
- How does the State monitor, regulate and evaluate the operation of private actors in education to ensure compliance with national laws and international treaties, and to ensure the right to education for all without discrimination?

97. Given the foregoing analysis and questions above, we suggest the following recommendations to the Philippines:

- To substantially increase the education budget consistent with the international benchmark of at least 6% of country GDP as recommended by UNESCO and, thus, address the education gaps that infringes on the right to education especially of the poor and disadvantaged children, youth and adults. In particular, we ask for substantial budget increase and expansion of education programs that reach the unreached.
- To regulate and monitor private education providers in view of the potential wide-ranging impact of the commercialization of education on the enjoyment of the right to education. The Philippines should adopt a regulatory framework to strengthen state monitoring and establish minimum norms and standards for private education providers with sufficient accountability mechanisms.
- To regularly collect and make public available data on the admission policy, facilities, performance and fees charged by private schools.
- To immediately conduct a transparent review of the Education Service Contracting scheme, the Senior High School (SHS) Voucher Program, and the operation of the APEC schools, and to take all necessary measures, including the amendment of relevant laws and policies governing private

education providers if warranted, to ensure equal access and equity, and the fulfillment of the right to education without any discrimination.

- To review, in particular, the SHS Voucher Program and amend the relevant provisions to eliminate top-up fees, guarantee equitable access without discrimination on the basis of economic status, ethnicity, religion, gender, location, and academic standing, and to ensure that the program gives priority to the most excluded, including Indigenous Peoples (IPs), Muslims, persons with disabilities, and those living in disaster, conflict, and hard-to-reach areas.