



# Segregating education, discriminating against girls: privatisation and the right to education in Nepal in the context of the post-earthquake reconstruction

*Parallel Report submitted by the National Campaign for Education-Nepal, the Nepal National Teachers Association (NNTA), the Global Initiative for Economic, Social and Cultural Rights, and other partners, on the occasion of the examination of the report of Nepal during the 72<sup>nd</sup> session of the UN Committee on the Rights of the Child*

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The main organisations submitting this report are:

- **The National Campaign for Education-Nepal (NCE-Nepal)** is a national level network of 286 members working for rights to education in Nepal. Its members include I/NGOs, teacher organizations, education journalists and community based organizations. It was established as a national chapter of Global Campaign for Education Nepal (GCE Nepal) in 2003 and it was registered as National Campaign for Education Nepal in 2009. It focuses for evidence based policy advocacy to ensure the equitable quality inclusive education for all children. See more on <http://ncenepal.org.np/>.
- **The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)**, which 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. It was established and it is in consultative status with the United Nations Economic and Social Council (ECOSOC). See more on <http://bit.ly/privatisationproject>.
- **The Nepal National Teachers Association (NNTA)**

This report was also supported by the following organisations: the Nepal National Teachers Association (NNTA), Children as Zone of Peace and Protection (CZOPP), the National Child Protection Alliance (NCPA), the Consortium of organization working for Child Participation (CONSORTIUM), the Child Care Homes Network Nepal (C-Net), the National Association of Organization Working on Street Children (NAOSC), Hatemalo Sanchar, CRC Committee (HRTMCC), the National Child Protection Alliance (NAOSC), the National Alliance for Child Rights Organization, CWISH Nepal, the Asia South Pacific Association for Basic and Adult Education (ASPBAE), the Global Campaign for Education (GCE), the Right to Education Project (RTE), Education International (EI), and the Privatisation in Education Research Initiative (PERI).

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Contact information		
<b>National Campaign for Education (NCE) Nepal</b> <b>Bakhundole, Lalitpur-3</b> P.O. Box. 14421, Kathmandu, Nepal Phone: +977-1-6203009, 5526671 Raj Kumar Gandharba (President) <a href="mailto:info@ncenepal.org.np">info@ncenepal.org.np</a> Ram Gaire (Program Manager) <a href="mailto:ram@ncenepal.org.np">ram@ncenepal.org.np</a>	<b>Sylvain Aubry</b> Research and legal advisor Global Initiative on Economic, Social and Cultural Rights <a href="mailto:sylvain@globalinitiative-escr.org">sylvain@globalinitiative-escr.org</a>	<b>Lucy McKernan</b> Geneva Representative Global Initiative for Economic, Social and Cultural Rights <a href="mailto:lucy@globalinitiative-escr.org">lucy@globalinitiative-escr.org</a>

## Key points developed in the report

The constitution of Nepal envisions for free and compulsory basic education and compulsory secondary education. However, it lacks envisioning any arrangement for translating the provision of education rights in reality. The government has met the international commitment of allocating at least 4-6% education budget from GDP and 15-20% from national budget. Rather, education budget has been decreasing every year, and the government has facilitated the privatisation of the education sector, including by introducing a partnership with private sector, but failed to specify the modalities and framework.

The segregation and discrimination engendered by the privatised Nepali education system is both a human rights violation in itself and a source of other human rights breaches. It also constitutes an additional **threat to peace, in an already unstable context**.

The earthquake, beyond the tragedy, provides an opportunity to rebuild a fairer system and focus on free quality schools. However, the authorities are giving signs that they will provide support to the private education sector. Such an approach, which has already been experience in Haiti and New Orleans, would risk gravely undermining the right to education for generations to come.

## Recommendations

- a. **Take appropriate regulatory measures to ensure that private providers of education do not further threaten social cohesion, and are not a cause of segregation and discrimination, in particular by effectively regulating fees and other barriers to access, and ensure the adequate implementation of the legislation, in Institutional School's Fee Fixation Guidelines which demands two third of parents approval in fixing the schools fees and ensure child friendly school infrastructure in private schools;**
- b. **Increase its efforts, including the scaling-up of domestic resource mobilisation through an expanded domestic tax base, increase efforts to address tax avoidance, and implementing appropriate financing strategies, so as to ensure the effective and actual provision of free quality education to all without discrimination, in all parts of the country, in particular for the most marginalised;**
- c. **Ensure the realisation of the aims of education contained in article 29 of the CRC by ensuring that all private schools, both existing and new ones, are registered as trusts, so that such schools can focus on the development of the child's personality, talents and mental and physical abilities to their fullest potential rather than on making profits from pupils, including poor children, and put in place the necessary mechanisms to be able to implement strictly this requirement and guarantee that no *de jure* trust still operates *de facto* as a company by outsourcing its activities to businesses;<sup>1</sup>**
- d. **Take specific measures to ensure socio-economic and ethnic diversity in all schools, public in private, with the view to promote social cohesion and solidarity in society;**
- e. **Focus the reconstruction efforts and resources on rebuilding a public education system able to fulfil the right to education and rebalance the education system towards free quality public**

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<sup>1</sup> See the experience of Chile: UN Special Rapporteur on the right to education, 'Statement by Kishore Singh, United Nations Special Rapporteur on the right to education, at the conclusion of his visit to the Republic of Chile - 28 March to 4 April 2016', available on <http://bit.ly/1Yrb99j>.

**education, including by analysing the human rights impacts of other previous reconstruction experience such as in Haiti and New Orleans so as to not repeat policies violating the right to education;**

- f. Do not engage in public-private partnerships in education unless in exceptional circumstances as part of a plan to build a public system providing free quality education and after ensuring to first conduct a prior human rights impact assessment, demonstrate that it is justified in the light of the obligation of States to use their maximum available resources in priority to reach the poorest, have the adequate standards and monitoring mechanisms to ensure that such partnership does not undermine the right to education, take legal measures to guarantee that public private partnerships are used as a temporary stopgap measure and do not lead to privatisation of education, ensure that such potential partnerships is only made with non-profit provider established as trusts according to Nepalese law, and fulfil other human rights requirements laid out by the UN Special rapporteur on the right to education in his August 2015 report to the UN General Assembly (A/70/342); and**
- g. Take immediate steps in monitoring school safety in private schools that have been affected by the earthquake and adopt legislation to require public and private schools to take adequate measures to mitigate the risk of possible disasters.**

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## Parallel Report to the Committee on the Rights of the Child

April 2016

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### I. Introduction

1. This report shows that the growth of unregulated private education in Nepal supported by the State, is creating and entrenching **segregation in education**, threatens access to education for girls and children from socioeconomically disadvantaged backgrounds and is a cause of discrimination with regards to access to quality education. As pointed out recently by the UN Committee on the Rights of the Child (CRC), such segregation in itself constitutes a human rights violation and must be ended.<sup>2</sup> Segregation is also the source of other human rights abuses, including **discrimination on the grounds of socio-economic background, gender and caste, a limitation on the right to free quality education, and the lowering of education**

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<sup>2</sup> CRC, CRC/C/CHL/Q/4-5, para. 14.

**quality.** This situation is extremely problematic because of the injustices it generates which **threaten the fragile social cohesion and peace that exist in Nepal.** If the situation remains the same, experience shows that the education system is bound to generate instability and protests in an already unstable country that is slowly trying to recover from conflict and humanitarian disaster.

2. This report is based on a report written last year with the support of the Sciences Po Human Rights Law Clinic, and updated in 2016 as the review by the CRC has been postponed, in the light of the specific situation and concerns arising from the post-earthquake emergency situation.

## **II. Normative framework on private actors and the right to education applicable in Nepal and government support to privatisation in education**

### **A. International framework**

3. Nepal became a party to the International Convention on the Rights of the Child (ICRC) on 14 September 1990. Nepal submitted its 3rd - 5th Periodic Report in October 2012 and it will be reviewed by the Committee during its 69th session in May - June 2015.

4. Privatisation 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, Mr Kishore Singh, the UN Special Rapporteur on the right to education (SR RtE) presented a report to the UN General Assembly<sup>3</sup> which 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. He then wrote two other reports on the topic, on regulation of private providers in education,<sup>4</sup> and on public-private partnerships in education.<sup>5</sup>

5. Based on our work analysing the situation with regards to privatisation in education in seven other countries, following extensive consultation with education CSOs at the domestic, regional and international level, and with human rights and education academics and experts, we have developed the following draft principles, which set out how international human rights law applies to privatisation 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).

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<sup>3</sup> Report of the UN Special Rapporteur on the Right to Education, A/69/402 (24 September 2014).

<sup>4</sup> Report of the UN Special Rapporteur on the Right to Education, A/HRC/29/30 (10 June 2015), available on <http://bit.ly/1CsI569>.

<sup>5</sup> Report of the UN Special Rapporteur on the Right to Education, A/70/342 (26 August 2015), available on <http://bit.ly/1pJNWEA>.

### Private actors in education: draft human rights analysis framework

Noting the paragraphs 13 and 14 of article 13 of the ICESCR and paragraph 2 of article 29 of the ICRC on the liberty of education, when there are private actors providing education services, States must ensure that their involvement:

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;
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.

6. The legal justification for each of these dimensions have been detailed in previous reports, such as the parallel report on the Philippines submitted to the UN Committee on Economic, Social and Cultural Rights (CESCR): 'Privatization, Commercialization and Low Government Financing in Education: Infringing on the Right to Education of Filipinos'.<sup>6</sup> The present report deals mostly with the first dimension, non-discrimination, and while the full legal analysis can be found in the aforementioned report, some key recent elements of the normative interpretation of that dimension which are relevant to the analysis of Nepal developed in this report are mentioned below.

7. The CRC has made a number of observations on the impact of privatisation and fees on the right to education and on discrimination. The concluding observations of the last two years of UN and regional human rights bodies have been summed up in a synthesis paper.<sup>7</sup> Key recent concluding observations include the following ones. 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 right to education'.<sup>8</sup> In its concluding observations on Brazil (October 2015) and Haiti (January 2016), the Committee expressed specific concerns about 'structural discrimination', which is exacerbated by the high fees in private schools.<sup>9</sup>

8. 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

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<sup>6</sup> See on <http://bit.ly/1oFpW3V>

<sup>7</sup> Global Initiative for Economic, Social and Cultural Rights, 'Human rights bodies statements on private education September 2014 – March 2016', available on <http://bit.ly/synthesisprivatisationV5>

<sup>8</sup> CRC, Concluding Observations: Morocco, CRC/C/MAR/CO/3-4, (19 September 2014), available on <http://bit.ly/1fAXKvb>, para. 60.

<sup>9</sup> CRC, Concluding observations: Brazil, CRC/C/OPAC/BRA/CO/1, (28 October 2015), available on <http://bit.ly/1UXafTL>, para. 75.; CRC, Concluding Observations: Haiti, CRC/C/HTI/CO/2-3, (29 January 2016), available at <http://bit.ly/1T1aPTM>, para. 58.

*segregation, with good-quality education restricted to those who can pay for private, elite schooling.*<sup>10</sup> With regards to 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*’.<sup>11</sup> Still in the context of 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*’.<sup>12</sup> This approach was confirmed by the CRC in the Concluding Observations on Kenya, where the Committee was concerned about ‘*the proliferation of so-called “low-cost private schools” which has led to segregation or discriminatory access to education particularly for disadvantaged and marginalized children*’.<sup>13</sup>

9. High levels of privatisation in education have been shown to affect particularly marginalised and vulnerable groups, such as girls, noted by the CEDAW.<sup>14</sup>

10. The UN Special Rapporteur on the right to education also emphasised these aspects. He cautioned in his 2014 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*’.<sup>15</sup> He added that 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*’.<sup>16</sup> In his latest statement following his visit to Chile of April 2016, he emphasised that while ‘*market forces in education have been allowed in the name of freedom of teaching*’, ‘*freedom of teaching does not give the freedom to any provider of education to undermine education as a public good, or to make it subservient to private interests to the detriment of the social responsibility of education*’.<sup>17</sup>

11. Finally, it is important to recall that States must in particular ‘adopt an active approach to eliminating systemic discrimination and segregation in practice.’<sup>18</sup>

## B. Nepalese framework and support to privatisation in education

12. The right to education is protected by the newly-adopted Constitution of Nepal of 2015.<sup>19</sup> Article 31 of the Constitution guarantees the right to education, including that ‘Every citizen shall have the right to compulsory and free basic education, and free education up to the secondary level.’ The constitution also provides for the ‘right to equality’ at article 18, which mandates that there ‘There shall be no discrimination in the application of general laws on the grounds of origin, religion, race, caste, tribe, sex, physical conditions,

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<sup>10</sup>E/C.12/MAR/CO/4, paras. 47-48.

<sup>11</sup>E/C.12/CHL/CO/4, para. 30.

<sup>12</sup>CRC/C/CHL/CO/4-5, paras. 67 – 68.

<sup>13</sup>CESCR, Concluding Observations, E/C.12/KEN/CO/2-5, (4 March 2016), available on <http://bit.ly/1pbiMFP>, para. 57.

<sup>14</sup>CEDAW, Concluding Observations: Ghana, CEDAW/C/GHA/CO/6-7, (7 November 2014), available on <http://bit.ly/1LnbTrY>, para. 32.

<sup>15</sup> Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014), para. 48.

<sup>16</sup>*Ibid.*, para. 45.

<sup>17</sup> UN Special Rapporteur on the right to education, ‘Statement by Kishore Singh, United Nations Special Rapporteur on the right to education, at the conclusion of his visit to the Republic of Chile - 28 March to 4 April 2016’, available on <http://bit.ly/1Yrb99j>.

<sup>18</sup>CESCR, General Comment 20, para. 39.

<sup>19</sup> Available from <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/100061/119815/F-1676948026/NPL100061%20Eng.pdf>



disability, health condition, matrimonial status, pregnancy, economic condition, language or geographical region, or ideology or any other such grounds’.

13. Education is regulated by the Education Act, 2028 (1971), which has been amended seven times, with an eight amendment being currently discussed. The 1981 Education Regulation allowed for the establishment and operation of private and/or boarding schools. The recently tabled in parliament education Bill enacted in 2015 to amend Education Act (1971)<sup>20</sup> could potentially bring progress in the regulation of private schools, as it requires them to be registered as trusts or cooperatives.<sup>21</sup> This would be a positive step, as it’d ensure schools are not focused on making profits but on delivering education, moving away from considering education as a tradable good. However, this requirement only applies to new private schools. Already registered private schools will be able to choose whether to register as a trust in their wish or either remain private, or as a private company. While the requirement to register new private schools as a trust is positive, the choice left to existing schools to remain as private profit making company still leaves the possibility of abusive profit-making practices from existing providers. It also risks creating a monopoly of private schools registered as companies that is only open existing schools, thus creating a group of expensive private companies providing for-profit education with limited competition which could further entrench the existing inequalities detailed below.

14. This bill has been hotly debated in the parliament, with the major point of discussion being whether the future law should favour public or private sector arrangements in education. Yet, the private sector has been reported as being very active in lobbying against regulation of private schools,<sup>22</sup> and with ‘more than 50 cross-party lawmakers [who] have direct investment in various schools and colleges across the country’,<sup>23</sup> there are concerns that the private interests could govern the final decision, rather than a reflexion on the right to education.

15. In addition, this year’s budget speech of government of Nepal further suggested a new policy according to which ‘well facilitated’ schools operated in urban areas could manage schools in the rural areas, including by transferring the management skills.<sup>24</sup> Without any specification, this could include private schools in urban areas managing community schools in rural areas. This speech reflects the suggested provision 11R of the Eight Amendment to the Education act,<sup>25</sup> which provides that

*The Government of Nepal may arrange for the operation of schools in various forms of partnerships between community and public educational trusts, public education trusts and public educational trusts, community schools and schools under companies and community and private sector.*

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<sup>20</sup>See latest version on <http://edukhabar.com/index.php/2014-10-24-08-14-29/1267-2015-10-17-08-49-07> (April 2016).

<sup>21</sup>Para. 4 of the amendment act. See also The Kathmandu Post, ‘Education Act: Pvt sector lobbies for favourable amendments’, 10 January 2016, available from <http://kathmandupost.ekantipur.com/printedition/news/2016-01-10/education-act-pvt-sector-lobbies-for-favourable-amendments.html>

<sup>22</sup>The Kathmandu Post, ‘Education Act: Pvt sector lobbies for favourable amendments’, 10 January 2016, available from <http://kathmandupost.ekantipur.com/printedition/news/2016-01-10/education-act-pvt-sector-lobbies-for-favourable-amendments.html>

<sup>23</sup><http://kathmandupost.ekantipur.com/news/2016-03-16/house-committee-set-to-discuss-bill.html>

<sup>24</sup>Budget Speech of Fiscal Year 2015/2016, available on

[http://mof.gov.np/uploads/document/file/Final%20Budget%20Speech%202015-16%20English\\_20150715122729.pdf](http://mof.gov.np/uploads/document/file/Final%20Budget%20Speech%202015-16%20English_20150715122729.pdf) para. 172.

<sup>25</sup>Para. 22 of the amendment act as in <http://edukhabar.com/index.php/2014-10-24-08-14-29/1267-2015-10-17-08-49-07>.

However, in the name of transferring ‘management skills’ or partnerships, this policy opens the door for potential private sector control over the education system, including by entering into rural areas.

16. The School Sector Reform Plan (SSRP) 2009-2015 articulates education policy for the given period, until July 2016. It stipulates, with regards to basic education, that ‘[l]ocal governments have the authority to encourage private providers through a contractual agreement to deliver such services by providing subsidies, scholarships, or any other appropriate support.’<sup>26</sup> Following the SSRP, a School Sector Development Plan (SSDP) 2016 - 2023<sup>27</sup> has been prepared and is at the final draft stage. It is planned to come into effect in July 2016.<sup>28</sup> It provides that private school expansion ‘can only be done based on need and demand as identified by the Government’.<sup>29</sup> However, this vague formula does not define the role of private sector, its limitations, and how it fits into the State’s plans to fulfil its obligation to realise the right to free compulsory education. It can open the door to a government to justify any expansion of the private sector without a check on children’s rights.

17. Similarly, also opens the doors for public-private partnerships with a vague wording, providing:

*Resource allocation – Different modes of financing will be explored to balance between schools’ basic requirements and their developmental needs. Differential cost sharing will be adopted (depending on local capacity). The possibility of generating funds locally and engaging in public-public and public-private partnerships will be explored.*<sup>30</sup>

If not adequately regulated and controlled, this may lead to the influence of private sectors and ultimately may lead towards privatisation in education and further the effects described in part V below. However, the document does not give any context or provide any safeguard to ensure that children’s rights are not affected.

18. This is in a context where Nepal is spending not more than \$338.5 USD per primary pupil per year *in parity of purchasing power* (as of 2014) – as compared for instance to \$435 USD in India (2012), \$1 019.7 USD in Bhutan, \$4 072.5 USD in Thailand (2012), \$1 189.1 USD in Vietnam (2012), and \$430.9 USD in Sri Lanka (2012).<sup>31</sup> Further, Nepal spends a total of 4.7% of its Gross Domestic Product (GDP) on education (as of 2014),<sup>32</sup> which is well below the 6% of GDP target set by the Global Partnership for Education.

19. Finally, following a Supreme Court decision from 23<sup>rd</sup> May 2012, the Ministry of Education enacted directives to regulate the private educational sector: the Institutional School Criteria and Operation Directives –2069 BS (2013). Besides, the government enacted in 2016 the Institutional School Fee Fixation Guidelines (2016)<sup>33</sup> which set a ceiling for tuition fees and require approval of two thirds of parent to set fees, and was strongly supported by Nepalese civil society.<sup>34</sup> However, the Private and Boarding School’s Organization Nepal

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<sup>26</sup> School Sector Reform Plan 2009-2015, p. 18.

<sup>27</sup> See <http://www.moe.gov.np/article/535/school-sector-development-plan.html>. Latest draft in English available on <http://globalinitiative-escr.org/wp-content/uploads/2016/04/SSDP-Final-Draft-April-4-2016.doc>.

<sup>28</sup> See <https://thehimalayantimes.com/kathmandu/school-sector-development-plan-on-cards/>

<sup>29</sup> <http://globalinitiative-escr.org/wp-content/uploads/2016/04/SSDP-Final-Draft-April-4-2016.doc>, p. 39.

<sup>30</sup> <http://globalinitiative-escr.org/wp-content/uploads/2016/04/SSDP-Final-Draft-April-4-2016.doc>, p. 20.

<sup>31</sup> Data from <http://data.uis.unesco.org/>.

<sup>32</sup> Data from <http://data.uis.unesco.org/>.

<sup>33</sup> <http://doe.gov.np/allcontent/Detail/427>

<sup>34</sup> See <http://epaper.thehimalayantimes.com/Details.aspx?id=8185&boxid=3252816&dat=3/16/2016>,

<http://edukhabar.com/index.php/2014-10-24-08-14-29/2692-rule;>

<http://www.sajhapost.com/2016/03/14/33705.html>

(PABSON), which is a large and influential organisation defending the interests of private schools, officially refused to implement the provisions of guidelines,<sup>35</sup> and they are charging the same fees as before.

20. Thus, while the government has made some valuable efforts in the last years to try to insert some form of basic regulation of private actors in education, it still offers an attractive legal and policy framework encouraging private actors' involvement in education, including for profit schools. It has not moved away from considering private actors as a solution to improving the education system in Nepal, and it even considers furthering private involvement by developing public-private partnerships, without any consideration for the conditions under which this could happen and the implications on children's rights. In addition, as discussed below, there are doubts about the will and the capacity of the government to adequately implement the existing legislation with the current resources available.

### III. The education system and privatisation in education in Nepal

21. According to 2014 official statistics, community (public) schools represented 84.1% of all schools, and institutional (private) schools accounted for 15.9% of the total.<sup>36</sup> This trend was stable in 2015 with 15.3% of children officially enrolled in private schools (see graph below). The majority of those private schools are registered as companies and operate through user fees.<sup>37</sup>

22. The number of private schools is however underestimated, due to the high number of unregistered private schools that are not accounted for in the official statistics. The 2010/2011 Living Standard Survey shows for instance that 27% of children attend private schools.<sup>38</sup> Overall statistics also mask high disparities between urban areas, where 56% in average, and up to 80% of children, are enrolled in private schools, and rural areas where 20% of children attend private schools.<sup>39</sup>

23. Whether taking the official statistics or the Living Standards Survey, the proportion of children enrolled in private schools has grown tremendously in the last twenty years (see Figure 1). A newspaper reported in March 2016 'a significant rise in the numbers of private schools [while] the numbers of public schools have started decreasing they are either merged or being shut without enough number of students'. It added that 'though there is no adequate research in place, the umbrella bodies of private schools claim that the private sector has made an investment of more than Rs120 billion in school-level education and it is increasing by 10 percent every year.'<sup>40</sup> The 2015 Post Disaster Needs Assessment report for Nepal similarly highlighted that there has been a dramatic increase in private education institutions in recent years'.<sup>41</sup>

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<sup>35</sup> See <https://thehimalayantimes.com/kathmandu/pabson-rejects-school-fee-fixation-criteria/>; <https://thehimalayantimes.com/kathmandu/implementation-tuition-fee-guidelines-unlikely/>

<sup>36</sup> Ministry of Education, 'Nepal Education in figures 2014 At-a-glance', 2014, available at [http://moe.gov.np/SoftAdmin/content/Nepal\\_Education\\_Figure\\_2014.pdf](http://moe.gov.np/SoftAdmin/content/Nepal_Education_Figure_2014.pdf).

<sup>37</sup> Government of Nepal National Planning Commission, 'Earthquake 2015 Post Disaster Needs Assessment. Vol. B: sector reports' (2015), available on [http://www.npc.gov.np/images/download/PDNA\\_volume\\_BFinalVersion.pdf](http://www.npc.gov.np/images/download/PDNA_volume_BFinalVersion.pdf), p. 52.

<sup>38</sup> Central Bureau of Statistics, National Planning Commission Secretariat, Government of Nepal, *Nepal Living Standards Survey 2010/11, Statistical Report, Volume one*, November 2011, p. 99.

<sup>39</sup>*Ibid.*

<sup>40</sup> Binod Ghimire, 'Private sector leads school education', *The Kathmandu Post*, 18 March 2016, available on <http://kathmandupost.ekantipur.com/news/2016-03-18/private-sector-leads-school-education.html>.

<sup>41</sup> Government of Nepal National Planning Commission, 'Earthquake 2015 Post Disaster Needs Assessment. Vol. B: sector reports' (2015), available on [http://www.npc.gov.np/images/download/PDNA\\_volume\\_BFinalVersion.pdf](http://www.npc.gov.np/images/download/PDNA_volume_BFinalVersion.pdf), p. 51 – 52.



**Figure 1 - Percentage of children attending private school, both sex, according to official statistics (UNESCO, primary level) and the Living Standard Survey (all levels)**

Source: Central Bureau of Statistics, National Planning Commission Secretariat, Government of Nepal, Nepal Living Standards Survey 2010/11, Statistical Report, Volume one, November 2011, p. 84, and <http://data.uis.unesco.org/><sup>42</sup>

24. The gap between the figures from the Living Standards Survey and official statistics also tends to increase over time, which suggests that a large part of the recently created private schools are unregistered, casting issues with regards to the regulation of private schools in the country.

25. The growth of private schools is due partly to the policies supporting private schools mentioned above, as well as to the failure of the public education system combined with a lack of monitoring and information on what constitutes education quality. Thus, as reported in a newspaper, ‘SLC [School Leaving Certificate] results are taken as the only indicator to analyse the quality of education. This has remained to be the pull factor for both parents and students to join private schools.’<sup>43</sup>

26. Privatisation is also reinforced by the response to the earthquake, with the risk that the theory of ‘disaster capitalist’, whereby a disaster opens a field to dismantle social protection, be applied in this case. This aspect is discussed more in details in section VI below.

#### IV. Segregating effect of privatisation in education in Nepal

27. According to the Education Rules, 2059: ‘An institutional school shall determine the fees that is permitted to be collected from its students, only after the approval of the prescribed authority. In the course of giving an approval in respect of the determination of the fees, the prescribed authority shall give approval on the basis of the facilities provided by such school to the students.’<sup>44</sup>

<sup>42</sup> Figures from the Living Standards Survey actually cover two years (e.g. 1995/96), and these figures been approximated to correspond to the second applicable year in this graph.

<sup>43</sup> Binod Ghimire, ‘Private sector leads school education’, The Kathmandu Post, 18 March 2016, available on <http://kathmandupost.ekantipur.com/news/2016-03-18/private-sector-leads-school-education.html>.

<sup>44</sup> Para. 16D (5).

28. In law, the maximum fees private schools are allowed to charge is determined by the State, and depends on the category a given school belongs to, which is determined by criteria such as physical facilities, responsibility and transparency, performance and results. In Kathmandu, ‘C’ schools are authorised to charge a maximum of 1,100 Rupees (Rs) at the primary level, Rs 1,250 at the lower secondary level and Rs 1,700 at the higher secondary level. ‘B’ schools can charge up to Rs. 1,375 at the primary level, and ‘A’ schools up to Rs 1,600.

29. However, many private schools charge much more than the State-determined fees and not penalised, due to poor monitoring and regulation of the State<sup>45</sup> – a situation that has been described as ‘*tolerated illegality*’.<sup>46</sup> This situation led the Nepali Supreme Court to issue an 11-point verdict on 23 May 2012 ordering private schools to not increase their fees for three years and to not charge any fees without the approval of the government agencies concerned.<sup>47</sup> It also demanded that educational authorities devise reform programmes to better regulate the private school sector. The court considered that the ‘lack of government control over the education sector has raised serious questions concerning the public’s right to education, employment, social security and the right against exploitation’.<sup>48</sup> Following the 2012 court order, the Ministry of Education enacted in 2013 the Institutional School Criteria and Operation Directives to enforce the court order. However, the Private and Boarding Schools’ Organisation of Nepal announced that it would not obey the guidelines,<sup>49</sup> leading to another court case.<sup>50</sup> In 2016, the government enacted the Institutional School’s Fee Fixation Guidelines 2016, but as of the previous years, PABSON has officially declared not to be bind by the guidelines.

30. These measures have not prevented private schools from raising fees illegally.<sup>51</sup> As the Nepali National Planning Commission recognised itself, one of the major problems in the education system in Nepal is the ‘ineffective regulation of institutional (private) schools’.<sup>52</sup> As a result, private schools’ fees can be very high. Thus, observers have noted that ‘the past decade has witnessed significant increment in costs of attending schools’ and that ‘education, one of the most basic and essential necessities, has become very expensive’ – the situation having worsened with ‘private schools now seem to be more profit oriented now’.<sup>53</sup>

31. For instance, at Little Angels’, an average private school in Kathmandu, the costs for two months’ attendance for a primary level pupil amounts to Rs 7,417 (see Figure 2), equal to approximately Rs 3,700 (approx. \$370 USD) per month – without taking into account the inscription and other annual fixed fees. These figures are common for this type of school. PABSON indicated that private schools charge around Rs 25,000 to Rs 30,000 (approx. \$250 to \$300 USD) and some of the schools having foreign associates have been charging

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<sup>45</sup> Subedi, Govinda, Shrestha, Mandan Gopal, Suvedi, Mukti, *op. cit.*, p. 132.

<sup>46</sup> Chandra Sharma Poudyal, ‘Nepali private schools and tolerated Illegality’, *Setopati*, available on <http://setopati.net/opinion/1792/>.

<sup>47</sup> <http://www.openequalfree.org/archives/ed-news/nepali-private-schools-banned-from-raising-fees>.

<sup>48</sup> Nabin Khatiwada, ‘SC stays school fee hike’, *Republica*, 19 March 2014, available on [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=71280](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=71280).

<sup>49</sup> See e.g. ‘Under fire PABSON defies MoE guidelines’, *Republica*, 12 March 2013, available on <http://www.educatenepal.com/news/detail/under-fire-pabson-defies-moe-guidelines>; ‘Private school operators defend tuition fee hike’, *The Kathmandu Post*, 10 May 2014, available on <http://www.educatenepal.com/news/detail/private-school-operators-defend-tuition-fee-hike>.

<sup>50</sup> ‘PIL filed at SC to stop school fee hike’, *Republica*, 17 March 2014, available on [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=71167](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=71167).

<sup>51</sup> Subedi, Govinda, Shrestha, Mandan Gopal, Suvedi, Mukti, *op. cit.*

<sup>52</sup> Government of Nepal National Planning Commission, ‘An approach paper to the thirteenth plan (FY 2013/14 – 2015/16) - (unofficial translation)’, July 2013, available on <http://www.npc.gov.np/web/new/uploadedFiles/allFiles/typeng13.pdf>, p. 74.

<sup>53</sup> Binod Ghimire, ‘Private sector leads school education’, *The Kathmandu Post*, 18 March 2016, available on <http://kathmandupost.ekantipur.com/news/2016-03-18/private-sector-leads-school-education.html>.

up to Rs 60,000 (approx.. \$60 USD) a month for school level.<sup>54</sup>As a comparison, the monthly minimum wage in Nepal, which is 'barely sufficient to meet subsistence needs' is Rs 8,000 (approx. \$80 USD).<sup>55</sup>

S.No.	Fee Descriptions	Non Taxable Fee	Taxable Fee	Total Fee
1	TUITION		6,750.00	6,750.00
2	COMPUTER	300.00		300.00
3	EXAMINATION (FINAL TERM)	300.00		300.00
<b>TOTAL</b>				
		Educational Service Tax @ 1%	690.00	6,750.00
<b>NET AMOUNT</b>				67.50
<b>NET AMOUNT</b>		67.50	67.50	7,417.50

Figure 2 – A two-months bill at a middle-fee private schools, 8 February 2015

32. In addition to tuition fees, households have to cover other expenses, such as transportation, lunch or uniforms, which are also considerably higher in private schools as compared to public schools. These costs are essential to take into account as:

*Private schools hide the true cost of education by lowering tuition fees but increasing other fees like admission fees. They force parents to buy expensive books and uniforms for which the school gets a commission.*<sup>56</sup>

33. Thus, household expenditure is eight times higher for those attending private primary schools compared to public primary schools (respectively Rs 11,164 and 1,332 per year).<sup>57</sup>

<sup>54</sup>Binod Ghimire, 'Private sector leads school education', The Kathmandu Post, 18 March 2016, available on <http://kathmandupost.ekantipur.com/news/2016-03-18/private-sector-leads-school-education.html>.

<sup>55</sup> US Department of State, 'Country Reports on Human Rights Practices for 2013 - Nepal', available on <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220400>

<sup>56</sup>Dr Anandjha, 'At what cost?- Regulating Private Schools', Republica, 31 march 2013, available on [http://www.educatenepal.com/education\\_issues/display/at-what-cost--regulating-private-schools](http://www.educatenepal.com/education_issues/display/at-what-cost--regulating-private-schools)

<sup>57</sup> Subedi, Govinda, Shrestha, Mandan Gopal, Suvedi, Mukti, *op. cit.*, p. 127-128.

Description	Primary		Lower secondary		Secondary	
	Public	Private	Public	Private	Public	Private
Monthly fee	116	4,841	235	7,985	554	10,640
Exam and admission fees	119	1,469	324	2,369	795	4,901
Uniform	342	936	546	1,135	675	1,131
Textbooks and other	379	1,704	766	2,346	1,424	2,582
Transportation	7	371	7	611	28	1,008
Tuition/coaching	84	367	152	756	882	2,353
Tiffin	286	1,477	475	2,065	1,029	2,521
Total	1,332	11,164	2,504	17,267	5,387	25,134
Percentage higher for private schools compared to public schools		8.4		6.9		4.7

**Figure 3 - Per capita annual education expenditure by level of education, Nepal (in Nepali rupees).<sup>58</sup>**

34. A specific aspect that filters access to private schools is admission fees. Admission fees are important because they are a one-off expense that can deter poor parents from accessing certain schools. They therefore play a critical role in barring access to private schools for select socio-economic groups. However, whilst the Supreme Court put a legal cap on the admission fee of Rs 100 and for admission forms at Rs 25 in its 23 May 2012 ruling, it is not enforced in practice. For instance, *The Himalayan Times* reported:

*Many schools under the Private and Boarding Schools Organisations Nepal (PABSON) have been charging around Rs 500 for entrance tests, especially for the primary level. Among them are the Hattiban-based Little Angels' School, Dhapakhel-based GEMS School, Lalitpur-based Subhatara School and the Thapagaun-based Pathshala.<sup>59</sup>*

35. Therefore, as a number of studies have shown, 'private schooling costs are prohibitive for most of the poor' in Nepal.<sup>60</sup> In addition to the cost, other non-financial barriers prevent children from low-income households from attending certain schools. This includes in particular entry processes, which may include parent interviews. In a context where social prestige, closely tied to socio-economic background, plays an influential role in the choice of school, these types of entrance requirements create barriers to access particularly for socio-economically and other disadvantaged households.<sup>61</sup>

36. The result of this organisation of the education system is a highly segregated society according to socio-economic background. In Nepal, children generally attend different types of schools, according to their socio-economic background (see Table 1). Almost half of the pupils enrolled in private schools belong to the 20%

<sup>58</sup> Source: raw data from the Nepal Living Standards Survey 2010/11, quoted in G. Subedi, M.G. Shrestha, M. Suvedi, 'Dimensions and implications of Privatisation of Education in Nepal: the case of primary and secondary schools', in Ian Macpherson, Susan Robertson and Geoffrey Walford (eds.), *Education, Privatisation and Social Justice: Case studies from Africa, South Asia and South East Asia* (Symposium Books, Oxford, 2014) 113, p. 127.

<sup>59</sup> 'Private schools fleecing with impunity', *The Himalayan Times*, 16 March 2013, available on <http://www.educatenepal.com/news/detail/private-schools-fleecing-with-impunity>

<sup>60</sup> Priyadarshani Joshi, 'Experiencing Private Sector Competition: The Case of Nepal's Public Schools', *op. cit.*, p. 9.

<sup>61</sup> Priyadarshani Joshi, 'Parent decision-making when selecting schools: The case of Nepal' Prospects' (2014), available at: <http://works.bepress.com/pjoshi/6>.

richest quintile of the population, while 50% of the pupils enrolled in government schools belong to the two poorest quintile of the population.

Consumption Quintile	Community/ Government School/ College	Institutional/ Private School/ College	Other School/ Colleges
Poorest 20%	92.7	6.4	0.9
Second	86.5	11.2	2.3
Third	79.1	19.8	1.1
Fourth	64.3	34.7	1.0
Richest 20%	39.0	60.1	0.9
Average	71.9	26.8	1.2

**Table 1 - Type of school attended by individuals currently in school according to their income quintile (figure in red when above the average)<sup>62</sup>**

37. Such levels of segregation appear to be even higher than that in other highly segregated education systems, such as in Chile (see Table 2), which is the most segregated by socio-economic status amongst the 65 countries assessed by the Organisation for Economic Co-operation and Development (OECD) through the Program for International Student Assessment (PISA), and was considered by both the CRC and CESCR to contradict the right to education.<sup>63</sup> This is not surprising as similar mechanisms are at play in both countries, and researchers have noted that the findings in Nepal *'are consistent with the evidence from Chile [...] and New Zealand [...] which suggest that a predominant effect of long-term, unregulated school choice is the stratification of the system'*.<sup>64</sup>

**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

**Table 2 - Segregation by socio-economic status according to types of schools in Chile<sup>65</sup>**

<sup>62</sup> Source: Central Bureau of Statistics, National Planning Commission Secretariat, Government of Nepal, Nepal Living Standards Survey 2010/11, Statistical Report, Volume one, November 2011, p. 99.

<sup>63</sup> See above para. 8.

<sup>64</sup> Priyadarshani Joshi, 'Competitive Effects (Quality and Sorting) of private competition on public school outcomes' The Selected Works of Priyadarshani Joshi (2014), available at: <http://works.bepress.com/pjoshi/5>, p. 21.

<sup>65</sup> Source: Drago J.L. and Paredes R.D., 'The quality gap in Chile education system', in Cepal Review No. 104 (2011), on the basis of the 2006 National Characterisation Socio-Economic Survey (CASEN) database. See more at: <http://bit.ly/ChileCESCR>



38. Moreover, the fees and cost of education can vary widely from one school to another, partly reflecting different levels of quality between schools. According to parents, fees in private schools vary widely, from Rs 2,500 to Rs 4,500 per month for average schools, with high-profile schools charging Rs 7,000 to Rs 20,000 per month.<sup>66</sup>

39. Adding to that, while public education is supposed to be free, 'public schools typically charge parents an annual fee to supplement inadequate government funding' and 'better functioning public schools also charge a quality premium'.<sup>67</sup> Therefore, the Nepali education system creates not only segregation between socio-economic groups, but also segregation within those socio-economic groups that can afford to send their children to fee-paying schools.

## V. Effects of segregation on the realisation of human rights

40. In Nepal, instead of being positively supported, the most disadvantaged and vulnerable pupils, including girls and marginalised ethnic groups, are segregated together in different schools from the most advantaged pupils. The high level of segregation is itself a human rights violation,<sup>68</sup> but it also has secondary impacts which are contrary to human rights standards in several regards.

### (1) DISCRIMINATES AGAINST PARENTS FROM MARGINALISED SOCIO-ECONOMIC GROUPS WITH REGARDS TO EDUCATIONAL OPPORTUNITIES

41. Segregation reinforces inequalities and is a source of discrimination, as children with less social capital are segregated together, and this further negatively affects their chances of fulfilling their aspirations – which is guaranteed as a right by the ICRC.<sup>69</sup> In Nepal, irrespective of the inherent quality of different schools, '*the existence of a de facto multi-tiered education system [...] means it is not sufficient to be educated – students have to be educated in the right place.*'<sup>70</sup> Parents try to find their way out of their position in a highly stratified society by making important financial sacrifices,<sup>71</sup> often by purchasing what is perceived as the 'the right place' of education – i.e. private schools. Yet, to the disillusion of many, sending a child to a private school is not enough.

*Despite this investment, students' aspirations are, in the main, not met. Budget private schools, with poor facilities, unqualified and underpaid teachers, are unlikely to provide education which will open the livelihood choices that the marketing efforts of their Principals suggest. The dream of being a doctor or engineer can only be realized by a select few.*<sup>72</sup>

42. On the other hand, those parents who can afford high-quality, expensive, private schooling, are able to buy their children, amongst other things, good English proficiency, which is considered '*simultaneously the key to a better future, an index of social capital, and part of the purchase price for a ticket out of Nepal.*'<sup>73</sup>

43. This situation is exemplified, for instance, by the respective share spent on survival – represented by food – and improving one's future – which education is a proxy for (see Table 3). The system in Nepal is such

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<sup>66</sup>Nirjana Sharma, 'Sway of private schools hard to break', *Republica*, 23 March 2013, available on <https://nirjanasharma.wordpress.com/tag/education-in-nepal/>.

<sup>67</sup>Priyadarshani Joshi. 'Parent decision-making when selecting schools: The case of Nepal' op. cit., p. 11.

<sup>68</sup> See above para. 8.

<sup>69</sup> See in particular article 29 of the Convention on the Rights of the Child.

<sup>70</sup> Martha Caddell, 'Private Schools and Political Conflict in Nepal' in Prachi Srivastava and Geoffrey Walford, (eds.), *Private Schooling in Less Economically Developed Countries: Asian and African Perspectives* (Oxford Studies in Comparative Education. Didcot, UK: Symposium, 2007), pp. 187–207.

<sup>71</sup> See e.g. Mallika Aryal, 'Nepal Scores Low on Quality Education', Inter Press Service, 9 July 2013, available on <http://www.ipsnews.net/2013/07/nepal-scores-low-on-quality-education/>.

<sup>72</sup> Martha Caddell, op. cit..

<sup>73</sup> M. Liechty, *Suitably Modern: Making Middle Class Culture in a New Consumer Society*, 2003, (Princeton, N.J., Princeton University Press), p. 213.

that the poorest households have to spend more than 70% of their income on survival (food) and only 3% on improving their situation (through education), while the richest 20% of the population is able to spend less than 50% of their income on food, and more than 7% on ensuring their children receive an opportunity at a good life.

Consumption Quintile	Share of income spent on Food	Share of income spent on education
Poorest	71.6	3.4
Second	70.2	3.9
Third	66.6	4.6
Fourth	61.3	5.7
Richest	45.8	7.6

**Table 3 - Share of the distribution of household income on food and education**<sup>74</sup>

### (2) DISCRIMINATES ON THE GROUNDS OF GENDER AND OCCUPATION AND DESCENT

44. Segregation is also a cause for **discrimination on the basis of caste**. 41% of children enrolled in private schools are Brahmin / Chhetri, the most advantaged ethnic group.<sup>75</sup>

45. Additionally, the Nepali educational system is also **discriminatory against girls**. At the primary and secondary levels, private schools have 57% boys, against 43% girls, whereas public schools have 52% of girls and 48% of boys,<sup>76</sup> and it seems to be worsening.<sup>77</sup> This is largely due to the fact that because of private schools' cost, many families can only send one or some of their children to a private school, and tend to prefer sending their son(s) rather than their daughter(s). This reflects stereotypical social values that place greater importance on investing in boys' than girls' education.<sup>78</sup> For instance, as explained by one parent who chose a private school for their daughter:

*My daughter said, 'Put me in a boarding school'. I had to explain to her, 'What can we do, daughter, this is the difficulty we face. If we had the money, we would put you in a boarding school'. When we explained all this to her, she said ok. She understood.*<sup>79</sup>

### (3) UNDERMINES THE RIGHT TO FREE COMPULSORY EDUCATION

46. The growth of privatisation in education weakens the public sector, and thus the possibility for a quality, free public system. As the most advantaged parents gravitate to private schools, *'public school officials have to work with an increasing concentration of highly disadvantaged and vulnerable populations that are not*

<sup>74</sup> Source: Central Bureau of Statistics, National Planning Commission Secretariat, Government of Nepal, Nepal Living Standards Survey 2010/11, Statistical Report, Volume one, November 2011, p. 36.

<sup>75</sup> Subedi, Govinda, Shrestha, Mandan Gopal, Suvedi, Mukti, *ibid.*, p. 132.

<sup>76</sup> Ministry of Education, 'Nepal Education in figures 2014 At-a-glance', 2014, p. 7. See also study on a few schools: Pramod Bhatta, 'Public Desire for Private Schooling in Nepal' in Ian Macpherson, Susan Robertson and Geoffrey Walford (eds), *Education, Privatisation and Social Justice: Case studies from Africa, South Asia and South East Asia* (Symposium Books, Oxford, 2014) 113, p. 127.

<sup>77</sup> See the *Kantipur Daily* of 16 March 2015 which reports that the number of girls in private schools decreased this year by 3% as compared to last year.

<sup>78</sup> E.g. Priyadarshani Joshi. 'Parent decision-making when selecting schools: The case of Nepal' *op. cit.*; Subedi, Govinda, Shrestha, Mandan Gopal, Suvedi, Mukti, *op. cit.*, p. 132.

<sup>79</sup> Priyadarshani Joshi. 'Parent decision-making when selecting schools: The case of Nepal', *op. cit.*, p. 16.

able to dedicate as much effort to schooling.<sup>80</sup> As public schools have to educate the most disadvantaged children, they also become 'stigmatised'.<sup>81</sup> Over time, many private school parents believe public schools' lack of user fees automatically devalues them in comparison to private schools.<sup>82</sup> As a parent explained:

*We feel embarrassed to send them to the government school... let's say things as they are... people who are of lower status than us—even poor people—are going hungry and sending their children to private schooling.*<sup>83</sup>

47. It is important to note that public schools in Nepal face 'a serious perception problem that is not entirely based on the academic merits or efforts of individual schools'.<sup>84</sup> The relative quality of public and private schools is a complex and nuanced debate, as there are both good and bad private and public schools. The effect of segregation, however, is to create a dynamic that goes beyond an assessment based on relative merit. It does not take into account, for instance, that the share of fully trained teachers is considerably lower in the private (75%) than in the public sector (84%),<sup>85</sup> while on the other hand, results at national exams only give a very imperfect proxy for quality: 'private schools deserve no praise even if 50 percent of their students get first divisions; they have taught their students to do no more than remember'.<sup>86</sup> In a highly segregated education system such as in Nepal, social prestige or the socio-economic composition of children attending a school has become a more important criterion of choice than academic achievements.<sup>87</sup>

#### (4) LOWERS THE QUALITY OF THE OVERALL EDUCATION SYSTEM

48. Segregation lowers the general quality of education. On one hand, it affects privileged children, who miss on an important part of a quality education. As the Kothari Education Commission in India put it, such segregation

*is bad not only for the children of the poor but also for the children of the rich and the privileged groups [...] By segregating their children, such privileged parents prevent them from sharing the life and experiences of the children of the poor and coming into contact with the realities of life [...] [and also] render the education of their own children anaemic and incomplete.*<sup>88</sup>

49. In addition, as shown by the OECD, segregation also has a negative impact on the overall quality of an education system. The highest performing education systems across OECD countries are those that combine quality with equity.<sup>89</sup>

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<sup>80</sup> Priyadarshani Joshi. 2014. 'Competitive Effects (Quality and Sorting) of private competition on public school outcomes', *op. cit.*

<sup>81</sup> Using the expression from Priyadarshani Joshi. 'Parent decision-making when selecting schools: The case of Nepal' *op. cit.*, p. 18.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*, p. 20.

<sup>85</sup> Ministry of Education, 'Nepal Education in figures 2014 At-a-glance', 2014, p. 10.

<sup>86</sup> Sakar Pudasaini&Dipeshwor Man Shrestha, 'Assaying the Iron Gate', *eKantipur.com*, 27 March 2015, available on <http://www.ekantipur.com/2015/03/27/opinion/assaying-the-iron-gate/403309.html>.

<sup>87</sup> See e.g. Subedi, Govinda, Shrestha, Mandan Gopal, Suvedi, Mukti, *op. cit.*, p. 126; Martha Caddell, *op. cit.*

<sup>88</sup> India Education Commission, 'Education and national development: Report of the education commission, 1964-66 – Volume I', India ministry of education, National Council of Educational Research and Training (1966), para. 1.37.

<sup>89</sup> OECD, *Equity and Quality in Education: Supporting Disadvantaged Students and Schools*, OECD Publishing (2012).

## (5) WEAKENS SOCIAL COHESION

50. High social segregation risks creating and entrenching prejudices, stereotypes, and defiance between different groups in society. For instance, in a household survey, 59% of parents believed that the dual schooling system in Nepal was not conducive to the social cohesion of the country.<sup>90</sup> As summed by a commentator:

*The present system therefore produces two classes of citizen who are schooled and prepared very differently and who would perhaps never meet in their youth anywhere except, after their graduation, in the work place. The failure of the public education system may have a negative impact on the creation of a national culture and a cohesive society, among other things, which is so important in post-conflict Nepal. It [...] frustrates government plans for social integration and the empowerment of women, Dalits and ethnic groups.<sup>91</sup>*

## VI. The impact of the earthquake in furthering privatisation and affecting the right to education

51. Nepal experienced a devastating earthquake in April 2015 which caused unprecedented destruction about 9,000 casualties, over 22,000 injuries. This includes the death of 584 students and 49 teachers. Further 8,242 community (public) schools have been affected by the earthquake: 25,134 classrooms were fully destroyed and another 22,097 were partially damaged. Institutional (private) schools also experienced significant infrastructure damage: 956 classrooms were fully destroyed and 3,983 classrooms were partially damaged. In addition, 4,416 toilets, and water, sanitation and hygiene (WASH) facilities, and 1,791 compound walls were damaged. The damage to ECD centres, furniture, libraries and laboratories, computers and other equipment was proportional to the damage faced by the schools. The total needs for recovery and reconstruction is estimated at NPR 39,705.8 million (US\$ 397.1 million).<sup>92</sup>

52. The Post Disaster Needs Assessment reports notes that ‘overall, the public sector suffered more in terms of damages and losses when compared to private sector. Of the total effect, 92% accrues to the public sector and only 8% to the private sector’<sup>93</sup> (see Table 4). However, the private schools may have under-reported damage<sup>94</sup> to remain open and keep their ‘clients’.

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<sup>90</sup> Subedi, Govinda, Shrestha, Mandan Gopal, Suvedi, Mukti, *op. cit.*, p. 129.

<sup>91</sup> Kedar Bhakta Mathema, ‘Crisis in Education and Future Challenges for Nepal’, *European Bulletin of Himalayan Research* 31: 46-46 (2007), p. 65.

<sup>92</sup> Government of Nepal National Planning Commission, ‘Earthquake 2015 Post Disaster Needs Assessment. Vol. B: sector reports’ (2015), available on [http://www.npc.gov.np/images/download/PDNA\\_volume\\_BFinalVersion.pdf](http://www.npc.gov.np/images/download/PDNA_volume_BFinalVersion.pdf).

<sup>93</sup> Government of Nepal National Planning Commission, ‘Earthquake 2015 Post Disaster Needs Assessment. Vol. B: sector reports’ (2015), available on [http://www.npc.gov.np/images/download/PDNA\\_volume\\_BFinalVersion.pdf](http://www.npc.gov.np/images/download/PDNA_volume_BFinalVersion.pdf), p. 51.

<sup>94</sup> *Ibid.*, p. 64.

Subsector components	Disaster effect			Distribution by ownership	
	Damages	Losses	Total	Public	Private
ECD	401.8	11.8	413.5	111.6	301.9
School (1-12 grades)	24,642.1	3,190.7	27,832.8	26,670.6	1,162.2
TVET	487.3	6.7	494.0	483.9	10.1
Higher education	2,430.4	42.2	2,472.6	1,581.8	890.8
NFE/LLL	22.8	0.7	23.4	23.4	-
Administrative buildings (including libraries)	79.4	2.2	81.6	81.6	-
<b>Total (in million NPR)</b>	<b>28,063.8</b>	<b>3,254.3</b>	<b>31,317.9</b>	<b>28,952.9</b>	<b>2,365.0</b>
<b>Total (in million US\$)</b>	<b>280.6</b>	<b>32.5</b>	<b>313.2</b>	<b>289.5</b>	<b>23.7</b>

**Table 4. Damages and losses to the education sector<sup>95</sup>**

53. The earthquake revealed again the difficulty for the government to monitor and regulate private schools effectively. After the catastrophe, the education sector was severely affected and the government closed all schools for one month. Once the government decided to re-open schools, private school owners refused to reopen their schools,<sup>96</sup> because of their inability or lack of willingness to spend money to establish Temporary Learning Centres. PABSON put pressure requested for more time to re-open and put pressure on its members to not immediately do so, excluding 20 schools from their membership for having reopen schools.<sup>97</sup>

54. Furthermore, considering the urgency and sensitivity of the situation, the government required not to charge any kind of fees for the period of school closure. However, private schools rejected the government decision and still charged fees, including the two months where the schools were closed.<sup>98</sup>In addition to this, they charged additional fees like building construction, as shown in the example below.

<sup>95</sup> Copied from: Government of Nepal National Planning Commission, 'Earthquake 2015 Post Disaster Needs Assessment. Vol. B: sector reports' (2015), available on [http://www.npc.gov.np/images/download/PDNA\\_volume\\_BFinalVersion.pdf](http://www.npc.gov.np/images/download/PDNA_volume_BFinalVersion.pdf), p. 57.

<sup>96</sup><http://kathmandupost.ekantipur.com/news/2015-04-30/over-400000-leave-valley-after-quake.html>

<sup>97</sup><http://www.sajhapos.com/2015/05/28/9337.html#sthash.1vANNMr0.dpuf>

<sup>98</sup><http://kathmandupost.ekantipur.com/printedition/news/2015-06-14/pvt-schools-to-waive-50-pc-fees-for-quake-holidays.html>

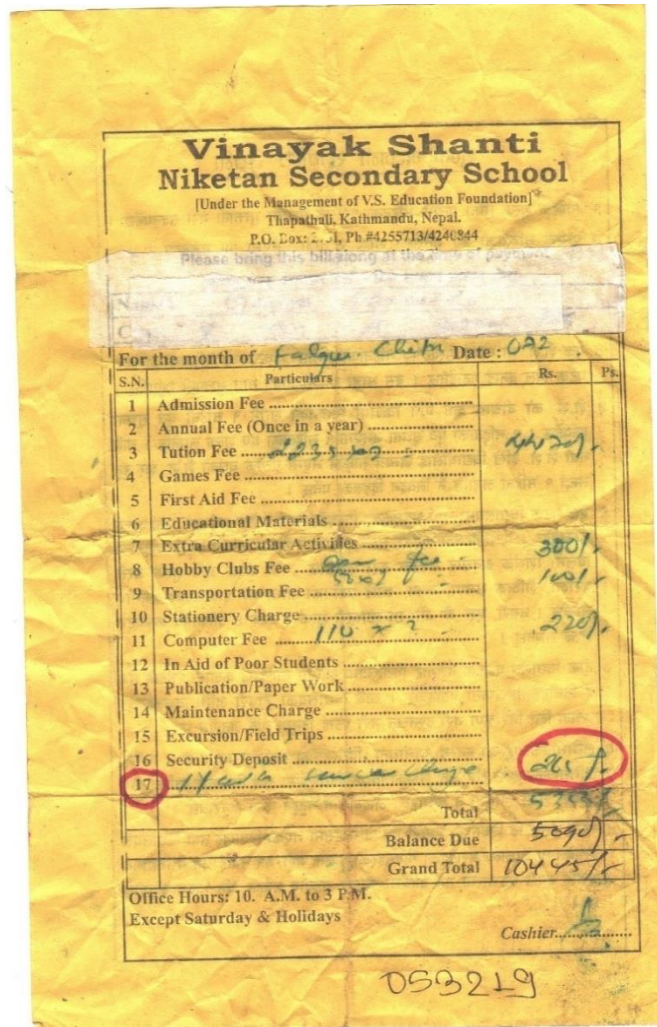


Figure 4 – a bill in a school including fee for building reconstruction (Item 17)

55. Furthermore, many private schools didn't establish temporary learning centres but instead conducted classes in red stickered buildings – which are buildings marked as unsafe. Some private schools also changed the red stickers to green (safe), and run the classes in those buildings.<sup>99</sup>

56. The 2015 Post Disaster Need Assessment report published by the Government of Nepal National Planning Commission suggests that the Government providers 'soft loans' (below the market rate) to private education institutions in the reconstruction process.<sup>100</sup> This may lead to provide further funding for private schools, in a system where private schools are already dominant and causing segregation and inequalities, as shown above. Besides, should private schools receive public funding for their reconstruction, there is also a

<sup>99</sup><http://thehimalayantimes.com/kathmandu/most-valley-school-buildings-still-unsafe-reveals-study/>

<sup>100</sup> Government of Nepal National Planning Commission, 'Earthquake 2015 Post Disaster Needs Assessment. Vol. B: sector reports' (2015), available on [http://www.npc.gov.np/images/download/PDNA volume BFinalVersion.pdf](http://www.npc.gov.np/images/download/PDNA_volume_BFinalVersion.pdf), p. 51.

<sup>100</sup> Ibid., p. 58.

risk that private schools receive funds and support both from parents, from whom they are charging tuition and reconstruction fees, and the government, potentially making a profit on it.

57. Similarly, CSOs are concerned that the requirements in the SSDP to ensure ‘that all learning facilities – institutional, private, religious, non-formal education and other types of facilities are disaster-resilient and provide safe learning spaces for children to receive a quality education’<sup>101</sup> entails the diversion of public funding towards private institutions.

58. Whereas the earthquake could be the occasion to re-build an education afresh where the right to education is at the centre of the considerations, organisations in Nepal are concerned that it could instead become a field to increase private sector involvement, in line with the previous cases documented by Naomi Klein in *The Shock Doctrine*.<sup>102</sup> The application of this approach to education was most famously implemented in the case of New Orleans, in the USA, after Hurricane Katrina. A brief from the Stanford Center for Opportunity Policy in Education has documented how this catastrophe has been used as a basis to implement a set of policy reforms massively privatising the management of private schools through charter schools. These policies have created a set of schools that are highly stratified by caste, class, and educational advantage, operating in a hierarchy that provides very different types of schools and to different types of children.<sup>103</sup> Similar concerns have been raised in the case of the reconstruction after the earthquake of Haiti, where the government and international donors have massively funded private schools in an already highly imbalanced system (nearly 90% of primary schools are private in Haiti), further endangering the realisation of the right to education in the country.<sup>104</sup>

## VII. Conclusion and recommendations for action by the State

59. The constitution of Nepal envisions for free and compulsory basic education and compulsory secondary education. However, it lacks envisioning any arrangement for translating the provision of education rights in reality. The government has met the international commitment of allocating at least 4-6% education budget from GDP and 15-20% from national budget. Rather, education budget has been decreasing every year. The School Sector Development Plan will guide the education sector for the coming seven years. The government has introduced the partnership with private sector but failed to specify the modalities and framework. This is another entry door to facilitate privatisation in education in the country. In addition to this, the Bill to amend Education Act 1971 has left the room to private schools to remain as in the previous form. This also may promote privatization in education in Nepal.

23. The segregation and discrimination engendered by the privatised Nepali education system is both a human rights violation in itself and a source of other human rights breaches. It also constitutes an additional **threat to peace, in an already unstable context**. This should be taken seriously, in a country where the history of schooling provision [...] since the 1950s ‘is one of ongoing tensions and continual reinterpretation of the relative significance of state and non-state actors as education providers’, and ‘a story of educational

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<sup>101</sup> <http://globalinitiative-esr.org/wp-content/uploads/2016/04/SSDP-Final-Draft-April-4-2016.doc>, p. 66 – 67.

<sup>102</sup> Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism*, Paperback (2008). See also <http://www.naomiklein.org/shock-doctrine>.

<sup>103</sup> Adamson, F., Cook-Harvey, C., & Darling-Hammond, L., ‘Whose choice?: Student experiences and outcomes in the New Orleans school marketplace’, Stanford Center for Opportunity Policy in Education (Stanford, 2015), available on <https://edpolicy.stanford.edu/sites/default/files/publications/scope-report-student-experiences-new-orleans.pdf>.

<sup>104</sup> Submission of 10 organisations to the Universal Periodic Review of Haiti, April 2016, on file with the authors. Contact [sylvain@globalinitiative-esr.org](mailto:sylvain@globalinitiative-esr.org) for a copy.

aspirations and the shifting nature of the divide between those able to pursue their schooling dreams and those who are thwarted in their efforts'.<sup>105</sup> As the Chilean experience has shown,<sup>106</sup> an education system built on a deep sense of injustice and frustration with regards to legitimate aspirations for a better life is bound to lead to protests, revolts, and instability.

24. The earthquake, beyond the tragedy, provides an opportunity to rebuild a fairer system and focus on free quality schools. However, the authorities are giving signs that they will provide support to the private education sector. Such an approach, which has already been experience in Haiti and New Orleans, would risk gravely undermining the right to education for generations to come.

25. Therefore, the State Party should:

- h. Take appropriate regulatory measures to ensure that private providers of education do not further threaten social cohesion, and are not a cause of segregation and discrimination, in particular by effectively regulating fees and other barriers to access, and ensure the adequate implementation of the legislation, in Institutional School's Fee Fixation Guidelines which demands two third of parents approval in fixing the schools fees and ensure child friendly school infrastructure in private schools;**
- i. Increase its efforts, including the scaling-up of domestic resource mobilisation through an expanded domestic tax base, increase efforts to address tax avoidance, and implementing appropriate financing strategies, so as to ensure the effective and actual provision of free quality education to all without discrimination, in all parts of the country, in particular for the most marginalised;**
- j. Ensure the realisation of the aims of education contained in article 29 of the CRC by ensuring that all private schools, both existing and new ones, are registered as trusts, so that such schools can focus on the development of the child's personality, talents and mental and physical abilities to their fullest potential rather than on making profits from pupils, including poor children, and put in place the necessary mechanisms to be able to implement strictly this requirement and guarantee that no *de jure* trust still operates *de facto* as a company by outsourcing its activities to businesses;<sup>107</sup>**
- k. Take specific measures to ensure socio-economic and ethnic diversity in all schools, public in private, with the view to promote social cohesion and solidarity in society;**
- l. Focus the reconstruction efforts and resources on rebuilding a public education system able to fulfil the right to education and rebalance the education system towards free quality public education, including by analysing the human rights impacts of other previous reconstruction experience such as in Haiti and New Orleans so as to not repeat policies violating the right to education;**
- m. Do not engage in a public-private partnerships in education unless in exceptional circumstances as part of a plan to build a public system providing free quality education and after ensuring to first conduct a prior human rights impact assessment, demonstrate that it is justified in the light of the obligation of States to use their maximum available resources in**

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<sup>105</sup> Martha Caddell (2007), op. cit.

<sup>106</sup> See generally <http://bit.ly/1vIXmR8>

<sup>107</sup> See the experience of Chile: UN Special Rapporteur on the right to education, 'Statement by Kishore Singh, United Nations Special Rapporteur on the right to education, at the conclusion of his visit to the Republic of Chile - 28 March to 4 April 2016', available on <http://bit.ly/1Yrb99j>.



**priority to reach the poorest, have the adequate standards and monitoring mechanisms to ensure that such partnership does not undermine the right to education, take legal measures to guarantee that public private partnerships are used as a temporary stopgap measure and do not lead to privatisation of education, ensure that such potential partnerships is only made with non-profit provider established as trusts according to Nepalese law, and fulfil other human rights requirements laid out by the UN Special rapporteur on the right to education in his August 2015 report to the UN General Assembly (A/70/342); and**

- n. Take immediate steps in monitoring school safety in private schools that have been affected by the earthquake and adopt legislation to require public and private schools to take adequate measures to mitigate the risk of possible disasters.**