The UK's support of the growth of private education through its development aid: Questioning its responsibilities as regards its human rights extraterritorial obligations

Alternative report presented to the Committee on the Right of the Child (CRC) on the occasion of the consideration of the list of issues related to the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland (UK) during the 72nd session of the Committee

(Report submitted to the pre-sessional working group)

Submitted by

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Summary of the key issues addressed in this report

Private actors are playing an increasing role in education in a number of countries worldwide andin particular in developing countries. The growth of private schools, including the emergence and rapid expansion of so-called “low-fee” private schools that target relatively poor populations, has led to a *de facto* privatisation of education systems in these countries over the past 15 years. More recently, some school models, in particular for-profit low fee private schools are being actively supported by States.

While international human rights law recognises a role for private actors in education and the liberty of parents or guardians to choose the education of their choice for their children, this liberty should not be exercised in violation of human rights. Thus far, research on the human rights implications of the growth of private actors has demonstrated that in some instances this trend may have negative impacts on the right to education. Privatisation in education may create and further entrench inequalities to the detriment of the most marginalised groups and lead to segregation in communities while not delivering on quality education. In most cases, parents are forced to send their children to private schools due to the failure of the public education system. The United Nations (UN) Special Rapporteur on the Right to Education, UN human rights treaty bodies and the UN Human Rights Council have repeatedly raised concerns on these issues.

Against this background, the United Kingdom of Great Britain and Northern Ireland (UK) has, in recent years,supported the expansion of private actors in education in a number of developing countries, including Ghana, Uganda, and Kenya. Theseare countries where specific research has been carried out and alternative reports already submitted to the Committee on the Right of the Child, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Discriminations Against Women, as well as to the African Commission on Human and Peoples’ Rights. In this context, while the UK remains one of the most important donors contributing to the implementation of the right to education worldwide, this report highlights the country’s increased support for the development of private education. In particular, this report examines the UK’s support to for-profit low-fee private schools, such as Bridge International Academies and Omega Schools. It questions the role and responsibilities of the UK in light of its extraterritorial obligations in relation to human rights.

The report finds that the UK’s policies in support ofprivate education through its development aid are problematic and that the country could be violating its extra-territorial obligations under the Convention on the Rights of the Child in two regards:

Firstly, the UK’s support for for-profit, fee-charging private schools that do not reach the poorestis questioned in light of the UK’s obligations to fulfil the right to education, including the right to free quality education without discrimination;

Secondly, the UK’s responsibility is questioned in particular in relation to its own impact assessments that have been conducted on its policies of providing support to private schools and which have concluded that projects supporting private education providers are less likely to target the most marginalised, and that more research needs to be carried out on the impact of private schools in developing countries on, among other elements, the efficiency of “low-fee” private schools.

I. Introduction

1. This parallel report[1] was written by the Right to Education Project with the support of ActionAid, the Economic and Social Rights Centre-Hakijamii, Education International, the Ghana National Education Campaign Coalition, the Global Campaign for Education, the Global Initiative for Economic, Social and Cultural Rights, the Initiative for Economic, Social and Cultural Rights, and the Privatisation in Education Research Initiative.

2. The report is submitted to the Committee on the Right of the Child by the following organisations: ActionAid International, ActionAid UK, the Association of Teachers and Lecturers, the Center for Public Interest Law, Child Rights International Network, the East African Centre for Human Rights, the Eastern Africa Collaboration on Economic, Social and Cultural Rights, the Economic and Social Rights Centre-Hakijamii, Education International, the Federation of Education NGO's in Uganda, the Ghana National Education Campaign Coalition, the Global Campaign for Education, the Global Initiative for Economic, Social and Cultural Rights, Global Justice Now, the Human Rights Advocacy Centre, the Human Rights Network for Journalists, the Initiative for Social and Economic Rights in Uganda, the International Commission of Jurists – Kenyan Section, the Kenya National Union of Teachers, the Kenya Youth Foundation, the Mathare Association, the National Union of Teachers, the Privatisation in Education Research Initiative, the Right to Education Project, the Soweto Forum, the Uganda National Teachers' Union, the University and College Union and Women Uganda.

3. The Right to Education Project[2] (RTE) is a collaborative initiative supported by ActionAid International, the Global Campaign for Education, Amnesty International, Human Rights Watch and Save the Children. RTE promotes mobilisation and accountability on the right to education and seeks to bridge human rights, education and development disciplines. Its vision is a world in which human rights in, to and through education are realised;a world in which all people are empowered to know and claim their rights affecting education and where those with responsibility are held to account for the realisation of those rights.

4. Together with the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR),[3] the Privatisation in Education Research Initiative ,[4] and other national, regional and international partner organisations, the RTE has been conducting research on the impact of the growing involvement of private actors in education on the right to education.[5] This research has critically examined the global development of privatisation in education in the light of human rights standards. Research has been or is being conducted in Morocco, Ghana, Kenya, Uganda, Chile, Brazil, Nepal and Pakistan, and parallel reports have been presented to human rights bodies or are being produced for these countries. Hitherto, the research has demonstrated that the

[1] This report complements Bond Child Rights Working Group's report, *Alternative Report on the Implementation of the Convention on the Right of the Child*.
[2] www.right-to-education.org
[3] http://globalinitiative-escr.org
[4] http://www.periglobal.org
[5] http://privatisationeducationhumanright.ning.com/about

increased engagement of private actors in education in these countries has negatively impacted on the right to education.

5. The present alternative report analyses the policies of the United Kingdom of Great Britain and Northern Ireland (UK) pertaining to its support of the growth of private education through its development aid. Part II provides an overview of the role of private actors in education from a human rights perspective, alluding to the applicable international law (A), presenting research evidence showing the negative impacts on the right to education of the growing involvement of private actors in education, particularly in countries where the UK supports such development (B) and highlighting the concerns raised at the UN level regarding these issues (C). This background is essential for assessing, in Part III, the UK's support for private education through its development aid in light of its human rights extraterritorial obligations.

II. Private actors in education and human rights: An overview

6. Private actors in education, meaning any non-state actor, are a heterogeneous group of actorsthat includes companies, religious institutions, non-governmental organisations, trusts or private individuals. In some cases, private actors may be partially funded by the state. Examples of non-state provision of education thus include the traditional understanding of a private school (i.e. independently owned by an entrepreneur, operated and funded outside of the public infrastructure), private tuition (so-called 'shadow schooling'), public-private partnerships (such as voucher schemes, infrastructural contracts, charter and academy schools among other arrangements), philanthropic or faith-based schools (e.g. madrassas, charity schools, and not-for-profit schools), as well as community schools. Private sector involvement in education has increased in many parts of the world during the past three decades, and private education is being promoted and explored by some education stakeholders as a solution to a lack of sufficient public provision of education or underperforming public schools. However, the rapid expansion of private actors in education, particularly profit driven companies, has raised concerns about the commercialisation of education and its impact on human rights.[6]

A. Applicable international human rights law as regards the role of private actors in education

7. International human rights law recognises the liberty of parents and guardians to ensure the religious and moral education of their children in conformity with their own convictions[7], and the

[6] UN Special Rapporteur on the right to education, *Protecting the right to education against commercialisation,* A/HRC/29/30, 2015: http://bit.ly/1P9KR6Q

[7] This should however be done with respect for the child's views and in line with their evolving capacities. Article 14.2 of the Convention on the Right of the Child (CRC) specifies that "States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child." In this way, the Convention asserts children's right to choose their own religion (including in how they are taught at school), under parental direction - as opposed to control.

liberty to choose for their children schools other than those established by the State. It also recognises the liberty of any person to establish and direct educational institutions that are in conformity with minimum educational standards established by the State.[8]

8. However, this liberty is not absolute. Firstly, the exercise of this liberty should not lead to any form of discrimination or create or increase inequality. International human rights law clearly states that it should not exclude any group,[9] the State having the obligation to ensure it does not lead to extreme disparities of educational opportunity for some groups in society.[10] The Committee on the Rights of the Child (CRC) has also interpreted in its General Comment 16 that States must ensure that the provision of essential services – such as education – by private actors "*does not threaten children's access to services on the basis of discriminatory criteria*".[11]

9. Secondly, private educational institutions should exist in addition to public schools[12] and attendance in such institutions should be optional.[13] The UN Special Rapporteur on the Right to Education made this explicitly clear by emphasising that: "*governments should ensure that private providers only supplement public education, the provision of which is the Government's responsibility, rather than supplant it",* adding: "*it is important to ensure that States do not disinvest in public education by relying on private providers*".[14] Further, the Committee on Economic, Social and Cultural Rights (CESCR) stated: "*it is clear that article 13 regards States as having principal responsibility of direct provision of education in most circumstance. States parties recognise for example, that the 'development of a system of schools at all levels shall be actively pursued*'".[15] The CRC has also provided guidance on the implementation of the Convention of the Rights of the Child in the context of privatisation emphasising that: "*enabling [the] private sector to provide services, run institutions and so on does not in any way lessen the State's obligation to ensure for all children within its jurisdiction the full recognition and realisation of all rights in the Convention".*[16] This means that parents should have the liberty to choose to send their children to a private educational institution for philosophical or religious convictions, not by necessity because a public school is not available or offers low quality education.

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[8] Convention on the Rights of the Child (CRC), Article 29.2; International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 13. 3 and 13.4. See for details, Right to Education Project, *International Law – Education Freedom,* January 2014: http://ow.ly/RDU5R

[9] UNESCO Convention against Discrimination in Education, Article 2.c: http://ow.ly/RDYkF

[10] Committee on Economic, Social and Cultural Rights, *General Comment 13*, paragraph 30, 1999: http://ow.ly/RDYFy. See also Committee on Economic, Social and Cultural Rights, *General Comment 29*, paragraph 39: "*States parties must adopt an active approach to eliminating systemic discrimination and segregation in practice*".

[11] Committee on the Right of the Child, *General Comment 16: State obligations regarding the impact of the business sector on children's rights*, paragraph 34: http://ow.ly/RDZdF

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

[13] UNESCO Convention against Discrimination in Education, Article 2.b.

[14] UN Special Rapporteur on the right to education, *State responsibility in the face of the explosive growth of private education providers, from a right to education perspective*, 2014: http://ow.ly/RE06u

[15] Committee on Economic, Social and Cultural Rights, *General Comment 13*, paragraph 48, op. cit.

[16] Committee on the Rights of the Child, *General Comment 5,* paragraph 44.

10. Thirdly, private educational institutions should conform to the minimum educational standards established by the State.[17] As interpreted by the CESCR "*these minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in article 13.1*[18] – and therefore in Article 29.1 of the Convention of the Right of the Child.[19]These articles assert that private educational institutions must provide an education of good quality, with respect to school environment, education contents and methods, and teachers' status among other aspects.

11. Fourthly, in order to ensure that private providers donot create exclusion and segregation within the education system – and that these private actors respect minimum educational standards, States have the obligation to regulate and monitor them. This obligation is particularly highlighted in the last report of the UN Special Rapporteur on the Right to Education on "*Protecting the right to education against commercialisation",*[20] which recommends that State adopt a regulatory framework for private providers setting out their responsibilities and accountability requirements. In particular, the Special Rapporteur recommends that States abolish for-profit education institutions, regulate schools fees charged by private providers and strengthen the humanistic mission of education through laws and policies. General Comment 16 of the CRC on State obligations regarding the impact of the business sector on children's rights also provides that "*States must adopt specific measures that take account of the involvement of the private sector in service delivery to ensure the rights enumerated in the Convention are not compromised*."[21]

12. Fifthly, the liberty to establish and direct educational institutions should be subject to democratic scrutiny and respect the human rights principles of transparency and participation.[22] In this regard, decisions and developments in relation to the education system, including the

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[17] ICESCR, Articles 13. 3 and 13.4; CRC, Article 29.2.

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

[19] Article 29.1 of the CRC*: "1. States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment."*

[20] UN Special Rapporteur on the right to education, *Protecting the right to education against commercialisation,* A/HRC/29/30, 2015: http://bit.ly/1P9KR6Q

[21] Committee on the Rights of the Child, *General Comment 16*, paragraph 34: http://ow.ly/RDZdF

[22] Universal Declaration of Human Rights, Article 21(1) "*Everyone has the right to take part in the government of his country, directly or through freely chosen representatives*"; International Covenant on Civil and Political Rights, Article 25(a) "*Every citizen shall have the right and the opportunity…To take part in the conduct of public affairs, directly or through freely chosen representatives*"..

involvement of private education, must be done in consultation with, and the participation of, various groups of society, including the poorest. This obligation has been highlighted in particular by the CRC which recommends that "*States Parties, when considering contracting out services to a non-state provider – either for-profit or non-profit, or international or local – undertake a comprehensive and transparent assessment of the political, financial and economic implications and the possible limitation on the rights of beneficiaries in general, and children in particular*".[23] In its General Comment 1 on the aims of education, the Committee also emphasised "*the role of national-level monitoring which seeks to ensure that children, parents and teachers can have an input in decisions relevant to education*".[24]

13. Based on the legal analysis above and the work of RTE and the GI-ESCR on the topic thus far, specifically the analysis of the growth of private education from a human rights perspective in eight countries,[25] a draft analytical framework has been developed (see the box below) to assess under which circumstances the involvement of private actors in education may undermine the right to education.

Human rights draft analytical framework on the role of private actors in education

While the role of private actors in education is recognised and protected by international law, the development of private education should:

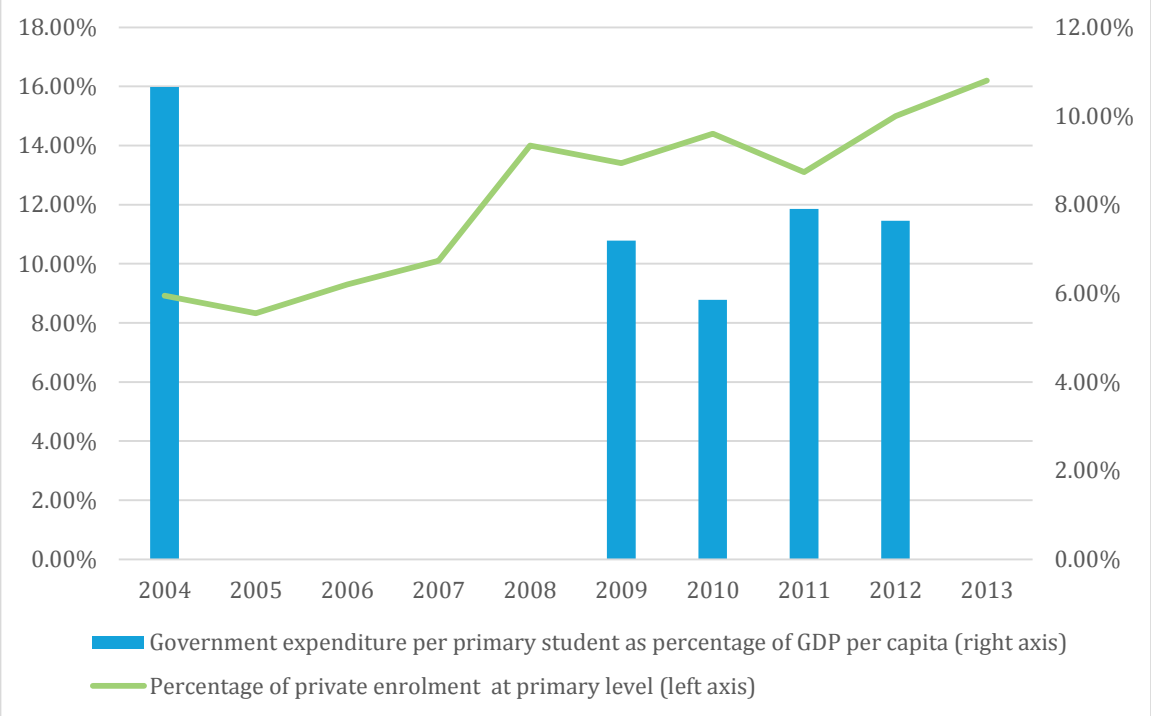
1. Not lead to the creation of extreme disparities or discrimination of any sort, or be a factor of segregation or division in societies in general and education in particular;
2. Provide for a true alternative choice to free publicly supported quality education, and not replace the public system, as the State retains the responsibility to deliver quality public education for all;
3. Not lead to the marketisation of education which would entail 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 achieving measurable outcomes, which would be contrary to the aims of education recognised in human rights law;
4. Offer quality education, which is adequately regulated, both in law and in practice, with adequate inspection staffing, effective accountability mechanisms, and without corruption;
5. Be a decision which is subject to democratic scrutiny, and open to the human rights principles of transparency and participation.

[23] Committee on the Rights of the Child, *The Private Sector as Service Provider and its Role in Implementing Child Rights,* para. 11: http://bit.ly/1KtWXKz
[24] Committee on the Rights of the Child, General Comment 1: The Aims of Education, para.22: http://bit.ly/1EDKAcB
[25] See: Country research and advocacy on the impact of privatisation in education on GI-ESCR website: http://ow.ly/REvPO and Privatisation in Education and Human Rights Project: http://ow.ly/REw0R

B. Impacts of the growth of private actors in education on the right to education: Focus on evidence in countries where the UK supports such developments

14. In a number of countries, private actors have been growing in the education sector due to the passive or active support of governments. Indeed, if the expansion of private provisions in part reflects a growing demand for education, it is also facilitated or encouraged by governments that set weak or facilitative regulatory environments, provide financial support to private actors, or fail to adequately invest in public education. Uganda is a good example of the latter case, as shown in the graph below. The UK's Department for International Development (DFID)'s funding of private education, as discussed in Part III of this report, similarly constitutes a political and financial incentive for private actors. Evidence on the impact of the growth of private education on the right to education in countries where government policies have facilitated this expansion, is thus relevant to assess the impact of the UK's support to private education.

Figure 1. Increase in private enrolement at primary level and decrease of State support to primary schools in Uganda[26]



[26] Source: government expenditure, UNESCO Institute for Statistics, October 2014; private enrolment, Education and Sports Sector Fact Sheets 2000 – 2012, 2002 -2013.

15. As detailed below, a growing body of research has shown that government-supported growth of private actors in education undermines the right to education in countries including Ghana, Kenya, and Uganda, where the UK supports such developments. These are countries for which alternative reports on this issue have previously been submitted to the Committee on the Right of the Child, the Committee on Economic, Social and Cultural Rights, and the Committee on the Elimination of Discriminations of Discriminations Against Women, as well as to the African Commission on Human and Peoples' Rights. [27]

1. Impact on segregation and discrimination

16. The rapid growth of fee-charging private schools is creating segregation between households according to their socio-economic background[28]. In Kenya, the growth of private actors in education has created a two-tier system: children from high-income families attend expensive high-quality schools which are known to perform well, while poorer children, whose parents can afford it, attend low-fee private schools. Children from the poorest and most vulnerable families, who are unable to afford private school fees, are relegated to under-resourced and lower-quality public schools. The effects of this division of education provision is increased inequality in access to education, and deepened exclusion by segregating the education system according to the socio-economic backgrounds of households and children.[29] Similar dynamics have been found in other countries, such as Ghana.[30]

17. In Uganda, a recent government study of out-of-school children pointed to financial constraints as the main reason for both non-enrolment and high drop-out rates. Approximately 81 per cent of the households sampled stated that a lack of money was the reason why their children dropped out of school, while 58 per cent claimed financial constraint was the reason their children never enrolled in school in the first place.[31] Consequently, the expansion in fee-charging

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[27] See for instance: Privatisation in Education Research Initiative: www.periglobal.org; Campaña Latinoamericana por el Derecho a la Educación, *Tendencias de la privatización de la educación en América Latina y el Caribe*, 2015: http://ow.ly/RH9XQ; DFID, University of Birmingham, Institute of Education of London, ODI, *The role and impact of private schools in developing countries: a rigorous review of the evidence,* April 2014: http://ow.ly/RF5Df; *Carol Anne Spreen, Lauren Stark and Salim Vally, Privatisation of Schools - Selling Out the Right to Quality Public Education for All*, 2015: http://ow.ly/RHerr; Ian Macpherson, Susan Robertson and Geoffrey Walford, *Education, Privatisation and Social Justice case studies from Africa, South Asia and South East Asia*, Symposium Book, 2014: http://ow.ly/RHTc9

[28] Prachi Srivastava, *Low-fee private schooling: what do we really know? Prachi Srivastava responds to The Economist*, Oxfam Blog 'From poverty to Power', August 2015: http://bit.ly/1MjqNzN; Srivastava, P. (Ed.,) *Low-fee Private Schooling: aggravating equity or mitigating disadvantage?* Oxford: Symposium Books, Oxford, 2013: http://bit.ly/1N9Xq2s MacPherson, G Walford & S Robertson (eds), *Education, Privatisation and Social Justice: Case studies from Africa, South Asia and South East Asia.* Oxford: Symposium Books, 2014: http://ow.ly/RHTc9

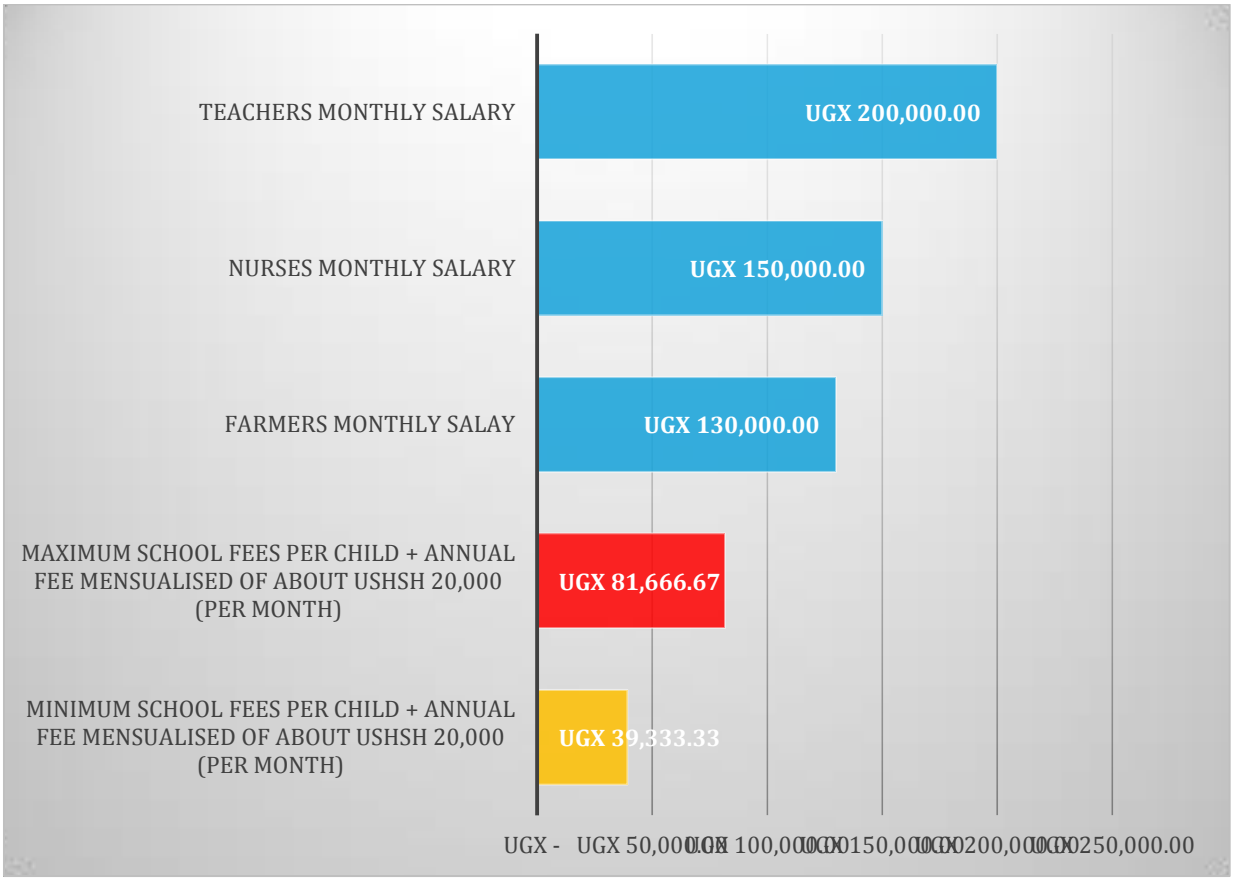
[29] Hakijamii, GI-ESCR, *Kenya's support to privatisation in education and its impact on discrimination and segregation, Alternative report submitted to the Committee on Economic, Social and Cultural Rights (CESCR)*, May 2015, Paragraphs 39 - 40: http://bit.ly/1BOL3ah

[30] Ghana National Education Campaign Coalition (GNECC), GI-ESCR, *Parallel report submitted to the Committee on the Rights of the Child*, August 2014, paragraph 9: http://ow.ly/REyoR and GNECC, GI-ESCR, *Privatisation in education affecting the rights to free education and non-discrimination in Ghana – findings from a research in two districts, Alternative report submitted to the Committee on the Rights of the Child*, May 2015, paragraph 14: http://bit.ly/1FsF5dl

[31] Ministry of Education and Sports, in collaboration with UNICEF, Eriks, Save the Children, UNHCR, and Stromme Foundation, *Out of School Children Study in Uganda*, March 2014, page 9: http://ow.ly/REyVk

private schools is unlikely to ensure the enrolment of out-of-school children and may increase school dropout rates..

Figure 2. Average school fees by term in Uganda compared to selected average salaries[32]



18. Attending schools in Ghana often involves huge sacrifices for families.[33] This is evidenced by a primary net attendance rate for pupils from the wealthiest households is 86 per cent, compared to 59 per cent for students coming from the poorest households.[34]

19. The rapid expansion of so-called "low-fee" or "low-cost" private schools (LFPSs) has, in particular, raised concerns. LFPSs are independent, private schools, set up and owned by an individual or group of individuals, that target low-income households and that claim to offer an 'affordable' quality education. These schools are often run for-profit, and these are the types of

[32] GI-ESCR, Initiative for Social and Economic Rights (ISER-Uganda), *Alternative report submitted to the Committee on Economic, Social and Cultural Rights (CESCR)* in October 2014, para. 21: http://ow.ly/REwBw
[33] GNECC, GI-ESCR, *Parallel report submitted to the Committee on the Rights of the Child*, August 2014, paragraph 11. See also: Laura Lewis, *Is There a Role for The Private Sector in Education?* Education for Global Development – A blog about the power of investing in people, Wold Bank, 2013: http://blogs.worldbank.org/education/there-role-private-sector-education
[34] UIS Statistics, 2009: http://www.uis.unesco.org/DataCentre/Pages/BrowseEducation.aspx

schools which the UK, through DFID, has been funding. The enthusiasm for LFPSs is based on an assumption that because fees are relatively low in comparison to other forms of private schooling they are affordable. The evidence has however revealed that the fees charged by LFPS are unaffordable for very poor families.[35] As a result, , the introduction of low-fee private schools creates further segregation, including amongst the poor themselves, where the poorest are forced to attend different schools from the relatively less poor who can afford low-fee private schools. Table 1 below demonstrates this effect in Kenya.

[35] Prachi Srivastava, *Low-fee private schooling: what do we really know? Prachi Srivastava responds to The Economist*, Oxfam Blog 'From poverty to Power', August 2015: http://bit.ly/1MjqNzN. GI-ESCR, Initiative for Social and Economic Rights (ISER-Uganda), *Alternative report submitted to the Committee on Economic, Social and Cultural Rights (CESCR)* in October 2014, para.21: http://ow.ly/REwBw

Table 1. Segregation in six informal settlements in Kenya

Association between background characteristics and school type attended in schools from six informal settlements (in %) – striking differences reflecting segregation circled in red.[36]

Background	School Type		
	Public	Formal Private	Low-cost
Sex of Child:			
Boy	62.2	22.2	15.6
Girl	63.9	19.4	16.8
Orphan status			
Both parents	74.6	10.4	
Single parent	71.2	14.3	14.5
None orphan	61.3	22.2	16.5
Sex of HH head			
Male	59.6	23.3	17.1
Female	71.9	14.3	13.8
HH head education			
Below secondary	64.2	16.5	19.3
Secondary or above	61.5	26.3	12.2
HH size			
1-3	57.4	24.6	18.0
4-6	63.2	21.0	15.9
7+	69.5	15.4	15.1
HH wealth status			
Bottom 40%	70.5	14.2	15.3
Middle 40%	57.9	21.0	21.2
Top 20%	52.5	39.5	8.0

[36] Adapted from APHRC, Quality and Access to Education in urban informal Settlements in Kenya (October 2013), p. 23: http://bit.ly/1G2Cpal.

20. This segregation affects marginalised groups in particular, such as children with special needs, as for-profit private schools have little interest in enrolling them because of the extra teaching support required. Private schools may only enrol children with special needs if they are required to by enforced regulations.[37]

21. Research has also shown evidence of discrimination against girls. In Ghana, particularly in rural areas, social and cultural beliefs, practices and attitudes continue to prevent girls' and women's participation in education, including beliefs about the roles of girls and women in society, negative perceptions about school, forced and early marriage, pregnancy and school related gender-based violence.[38] Compounded by socio-economic factors, specifically inadequacy of household income and a high cost of schooling, families tend to give priority to boys, particularly in relation to private fee-based schools.[39] In Uganda, the financial burden of education forces parents to choose which child to send to a 'better quality' private school. In such contexts, they generally favour boys.[40]

22. Research also reveals geographic inequalities in relation to the growth of private education; private schools tend to be concentrated in urban areas while rural areas often rely on overcrowded public schools.[41]

23. Segregation in education leads to further problems. Firstly, such segregation can affect an already fragile social cohesion in society.[42] Secondly, it maintains or deepens inequality by keeping the most financially disadvantaged students, who often face the most challenging socio-economic learning environments, together and without appropriate support. This further reinforces the initial inequality, rather than remedying it.[43] In addition, segregation also weakens

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[37] Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, Paragraph 51: http://bit.ly/1BOL3ah. Allavida Kenya, *Access to and quality of basic education in Kibera, Nairobi: Study and synthesis report*, September 2012, p. ix: http://ow.ly/REScU

[38] ActionAid/GNECC, *The Status of Girls' Education and Violence: A Summary Report Of Baseline Survey Of Gender-Based Patterns In The Nanumba North And South Districts Of The Northern Region Of Ghana*, 2011.

[39] GNECC, GI-ESCR, Parallel report on Ghana submitted to the Committee on the Elimination of all forms of Discrimination against Women, October 2014, paragraphs 13 and 15: http://ow.ly/REzsz ; Right to Education Project and twelve other, Privatization and its Impact on the Right to Education of Women and Girls, Report submitted to CEDAW, 2014, p. 5: http://bit.ly/1Q1F442; The Right to Education Project, *Privatisation in Education: Global Trends and Human Rights Impact*, 2014: http://bit.ly/1NgWBaW.

[40] Research conducted by ISER-Uganda has indicated that when pressed to make a choice, parents will more likely choose to pay school fees for a boy rather that a girl. According to the Uganda National Household Survey, 2012/13, there are 10% of girls between 6-12 years who are out of school because education is considered to be too expensive, compared to 7% of boys who are out of school for the same reasons. So an increase of the effective schools fees due to privatisation in education is likely to mostly affect girls. GI-ESCR, ISER-Uganda, *Alternative report submitted to the CESCR* in October 2014, paragraph 22: http://ow.ly/REwBw

[41] Prachi Srivastava, *Low-fee private schooling: what do we really know? Prachi Srivastava responds to The Economist*, Oxfam Blog 'From poverty to Power', August 2015: http://bit.ly/1MjqNzN; GNECC, GI-ESCR, *Privatisation in education affecting the rights to free education and non-discrimination in Ghana – findings from a research in two districts, Alternative report submitted to the Committee on the Rights of the Child*, May 2015, paragraph 14: http://bit.ly/1FsF5dl

[42] Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, Paragraph 52. See also, Conseil national d'évaluation du système scolaire, *Conférence de comparaisons internationals, Rapport CSE-CNESCO, La mixité sociale à l'école*, June 2015: http://bit.ly/1Lu8eJE; Son Thierry Ly and Arnaud Riegert, *Mixité sociale et scolaire et ségrégation inter- et intra-établissement dans les collèges et lycées français*, Conseil national d'évaluation du système scolaire, June 2015 : http://bit.ly/1K6cE3C.

[43] Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, Paragraph 53: http://bit.ly/1BOL3ah.

support to public education and, thus, support to the poorest in society. A 2013 World Bank report on Ghana notes, for instance, that: *"the influence of powerful interests and the exit of influential constituencies from public schools each reduce pressure on government to reform basic education and leaves poorer families worse off*".[44]

2. No free quality education: a non-choice for parents

24. Although private educational institutions should exist in addition to public schools[45] and attendance in such institutions should be optional,[46] research shows that, generally, attending these schools is not a choice; in many contexts parents are merely trying to avoid the poor performance of government schools, real or perceived.[47] In Uganda, research undertaken by the Initiative for Social and Economic Rights (ISER)[48] shows that parents are often forced to resort to private schools because the Ugandan public education system is largely failing, while private schools are often perceived to be of better quality.[49]

25. In the meantime, government financing for public education is decreasing.[50] In Kenya, the rapid increase of private schools has taken place in areas where public schools are not sufficiently available or are inaccessible for most children, such as in informal urban settlements . Research conducted in 2003 in Kibera, the largest informal settlement in Kenya, recorded a total of 76 private primary and secondary schools[51] compared to only five government schools, all of which were found to be located on the peripheries of the slum. A further study of the area four years later revealed that the number of private schools had grown substantially to 116 in 2007, representing an increase of 52.6 per cent.[52] During the same period, no new public schools were built in the area by the State.[53]

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[44] Darvas, Peter and David Balwanz, *Basic Education beyond the Millennium Development Goals in Ghana: How Equity in Service Delivery Affects Educational and Learning Outcomes*, 2013: http://ow.ly/REzMu.

[45] Article 13.3 of the ICESCR recognises the liberty of parents to choose for their children schools "*other than those established by the public authorities*", thereby assuming that there is a system of public schools available, to which private educational institution provide an alternative.

[46] UNESCO Convention against Discrimination in Education, Article 2.b.

[47] GNECC, GI-ESCR, *Parallel report submitted to the Committee on the Rights of the Child*, August 2014, paragraph 10: http://bit.ly/1DIAjKX.

[48] http://iser-uganda.org/

[49] GI-ESCR, ISER-Uganda, *Alternative report submitted to the Committee on Economic, Social and Cultural Rights (CESCR)* in October 2014, paragraph 12: http://ow.ly/REwBw.

[50] In Uganda, a recent interagency report done with the Ministry of Education and Sports attributed the inadequacies in public education to low government investment in education. Trends in public financing of the education sector show that while spending on education has increased in absolute figures from UShs. 968 billion in 2003/4 - 2010/11, to UShs. 1.283billionin 2013-2014, it has decreased as a share of GDP to reach 3.3%(against 4.2% in 2003/04). GI-ESCR, ISER-Uganda, *Alternative report submitted to the CESCR* in October 2014, paragraph 13: http://ow.ly/REwBw

[51] James Tooley et al, *Impact of free primary education in Kenya, a case study of private schools in Kibera,* 2008: http://ow.ly/REx7t

[52] Pauline Dixon and James Tooley, *A case study of private schools in Kibera*, 2007: http://ow.ly/RExxi

[53] Hakijami, GI-ESCR, *Kenya's support to privatisation in education and its impact on discrimination and segregation, Alternative report submitted to the Committee on Economic, Social and Cultural Rights (CESCR)*, May 2015, paragraph 14: http://bit.ly/1BOL3ah

26. A similar situation has taken place in the Mathare Valley informal settlement, in Nairobi, Kenya. Mathare has an estimated population ofbetween 600,000 and 800,000,[54] and the population of the informal settlement alone may be around 180,000.[55] The informal settlementcounts one government school (see Figure 3 below), Kiboro primary school, which was originally a community school begun by residents, and later upgraded and taken over by the authorities. All other schools in the area, counting more than 40, are private schools. As a result, residents, in particular those living in the north and east of the area, have no choice but to send their children to a private school. Contrary to arguments sometimes put forward, private schools in settlements like Mathare Valley do not serve to fulfil the right to educational freedom by providing an alternative school option able to '*ensure [parents] the religious and moral education of their children in conformity with their own convictions*'[56]. Participation in these schools is not a choice of parents that expresses a preference for private providers, rather it is a default option, reflecting the failure of the Kenyan State to fulfil one of its core obligations with regards to the right to education.

Figure 3. Map of Mathare Slum Valley[57]

Schools in purple points, the only public school, Kiboro primary school (number 19) circled in red

[54] Dan Darkey and Angela Kariuki, "A Study on Quality of Life in Mathare, Nairobi, Kenya" J Hum Ecol, 41(3): 207-219, 2013: http://bit.ly/1ZxRWFk

[55] https://en.wikipedia.org/wiki/Mathare. See also Mathare Community Outreach Website (estimating 600,000): http://www.matharevalley.org/mvalley.html and Canada-Mathare Education Trust Website (estimating more than 600,000): http://cmetrust.org/mathare/

[56] Convention on the Rights of the Child, Article 29.2

[57] Map from Geonames, http://www.geonames.org/maps/google_-1.266_36.854.html

3. Lack of regulation and low quality of private schools

27. Notwithstanding that international law requires States to regulate private schools, many countries face financial and other challenges in monitoring the role of private actors in education or devising policies to encourage their development to a high standard. A DFID-commissioned review of evidence on private education, found that '*attempts by states to intervene in the private education sector are constrained by a lack of capacity, legitimacy and knowledge of the sector to implement effective policy frameworks*'[58]. In Kenya, the NGO Hakijamii[59] has reported that, even though education is recognised in the Constitution as a human right, the number of private actors in education is growing at an alarming rate without the corresponding monitoring and regulation by the State.[60] To the contrary, Kenya encourages the development of private schools through the enactment of favourable policies.[61] In Uganda, although there is a Private Schools and Institutions Department within the Ministry of Education in charge of the overall coordination, regulation, policy formulation, and guidance on all matters regarding private schools, the government faces serious challenges in carrying out its mandate due to limited financial and human resources.[62]

28. In Ghana, private schools are also often poorly regulated. Adequate laws setting minimum standards are sometimes insufficient, and when they exists, they are not adequately enforced, as revealed in a report by the GhanaMinistry of Education itself[63].

> *"Not all private schools apply the agreed fees scale, in particular the best ones"*
>
> *"Evidence available indicates that once registration is granted, the Proprietors of private schools make supervision difficult and information received from most of the schools tend to be unreliable"*
>
> Ministry of Education of Ghana, *Education Sector Review: Final Team Synthesis Report,* 2002.

29. As a result, concerns have also been raised about the quality of education provided in private schools.[64] In Ghana, closer analysis reveals that most LFPSs are not better than public schools.[65]

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[58] Day Ashley L, Mcloughlin C, Aslam M, Engel J, Wales J, Rawal S, Batley R, Kingdon G, Nicolai S, Rose P, *The role and impact of private schools in developing countries: a rigorous review of the evidence. Final report. Education Rigorous Literature Review.*Department for International Development, 2014*:* http://ow.ly/RF5Df

[59] http://www.hakijamii.com/

[60] Hakijamii, *GI-ESCR, Alternative report submitted to the CESCR*, May 2015: http://bit.ly/1BOL3ah

[61] Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, paragraph 21: http://bit.ly/1BOL3ah

[62] GI-ESCR, ISER-Uganda, *Alternative report submitted to the CESCR* in October 2014, paragraph 24: http://ow.ly/REwBw.

[63] Ministry of Education of Ghana, Education Sector Review: Final Team Synthesis Report, 2002: http://bit.ly/1GFzajO

[64] Prachi Srivastava, *Low-fee private schooling: what do we really know? Prachi Srivastava responds to The Economist*, Oxfam Blog 'From poverty to Power', August 2015: http://bit.ly/1MjqNzN

[65] GNECC, GI-ESCR, *Parallel report submitted to the Committee on the Rights of the Child*, August 2014, paragraph 11. See also: Laura Lewis, *Is There a Role for The Private Sector in Education?* Education for Global Development – A blog about the power of investing in people, Wold Bank, 2013: http://blogs.worldbank.org/education/there-role-private-sector-education

In Kenya, private schools deliver the national education curriculum to students using untrained teachers who are neither registered nor accredited by the National Teachers Service Commission. They also lack basic infrastructure and particular spaces required for a school.[66] The same is reported in Uganda where there are poorly qualified or unqualified teachers in many private schools.[67] Research carried out with the support of DFID on *Access to Finance For Low Cost Private Schools in Pakistan*[68]reports that "*edupreneurs direct insufficient attention to substantial improvements in the quality of education provided in their institutions, mainly because they believe that these investment are more risky, require more capital and may have a delayed payback period"*. The same study indicates that *"low-cost private schools tend to deprioritise teaching quality*", which is "*too often seen as a poor investment…and is regularly substituted with formal and poorly structured teacher facilitation by the school."*[69] Yet, not improving the quality of education, including teacher training, undermines the right to education.

C. UN statements on private actors in education and human rights

30. The negative impacts of the growing involvement of private actors in education – particularly for-profit education institutions – on the right to education have been recognised in several instances at the UN level by human rights institutions.

1. UN human rights treaty bodies on private actors in education

31. Three UN human rights treaty bodies – the Committee on the Rights of the Child (CRC), the Committee on Economic, Social and Cultural Rights (CESCR), and the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) – have addressed the role of private actors in education in four States over the last year (2014-2015), including recent concluding observations on Ghana and Uganda which confirm the analysis above (Part 1, section B). These add to more than 60 other concluding observations previously issued by these Committees on the topic.[70]

32. The Committees expressed concerns about the segregation and discrimination created by the growing development of private actors, affecting particularly children from low-income families and girls, especially in rural areas.[71] They also expressed concerns about the lack of regulation

[66] Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, Paragraphs 19 and 22: http://bit.ly/1BOL3ah
[67] GI-ESCR, ISER-Uganda, *Alternative report submitted to CESCR*, October 2014, paragraph 24: http://ow.ly/REwBw.
[68] Ilm Ideas, Socio-Economic & Business Consultants PVT Ltd (SEBCON), DFID, *Access to Finance For Low Cost Private Schools in Pakistan, 2014:* http://bit.ly/1NYSArg
[69] Ibid. p. 40
[70] Right to Education Project, *Digest of Observations and Recommendations of Treaty Bodies on the Role of Private Actors and the Right to Education (2000-2015)*, July 2015: http://ow.ly/REF2z
[71] CESCR, *Concluding observations on Chile Report*, E/C.12/CHL/CO/4, June 2015, para. 30: http://bit.ly/1RwbqDx; CEDAW, *Concluding Observations on Ghana Report*, CEDAW/C/GHA/CO/6- 7, November 2014, para. 32: http://bit.ly/1LnbTrY; CESCR, *Concluding observations on Uganda*, E/C.12/UGA/CO/1, June 2015, para. 36: http://bit.ly/1BK6OrO

and monitoring of private education providers, particularly in relation to the condition of enrolment in private schools, the quality of education provided, and the transparency and efficiency in the management of education resources.[72] These concluding observations reflect the trend of the growth of unregulated private providers of education that the RTE has been researching with other organisations.[73] It also demonstrates the growing concerns raised by human rights experts regarding the impacts this trend has on the right to education as protected under the three treaties[74] monitored by these Committees.

33. The recommendations made by these UN Committees have focused on monitoring, regulating, and addressing the impacts of the role of private actors in education.[75] They recommend States to:

- "*Assess and address the consequences of the rapid development of private education in the State party and its impact on the full realization of children's right to education*" (Ghana)[76];
- "*Take all possible means to eliminate the disparities that exist between private and public schools*" (Chile)[77];
- "*Strengthen regulations and expand monitoring and oversight mechanisms for private education institutions*" (Uganda)[78];
- "*Ensure that teachers from the public sector contribute to the improvement of education [...] rather than being used by the private sector*" (Morocco).[79]

2. The UN Special Rapporteur on the Right to Education on private actors in education

34. The UN Special Rapporteur on the right to education, Kishore Singh, has raised concerns about the growth of private actors in education with respect to the right to education in two reports: one to the UN General Assembly in September 2014[80] focusing on States' responsibilities in this particular context, and one to the UN Human Rights Council in June 2015[81] focusing on "protecting the right to education against commercialisation".

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[72] CRC, *Concluding observations on Ghana Report*, CRC/C/GHA/CO/3-5, June 2015, paras. 57 – 58: http://bit.ly/1RwblzJ; CRC, *Concluding Observations on Morocco*, September 2014, CRC/C/MAR/CO/3-4, paras. 60 – 61: http://bit.ly/1fAXKvb
[73] See Privatisation in Education and Human Rights Project: http://privatisationeducationhumanright.ning.com/about
[74] Convention on the Rights of the Child, International Covenant on Economic, Social and Cultural Rights and Convention on the Elimination of all forms of Discrimination Against Women.
[75] For a summary, GI-ESCR, *CRC, CESCR and CEDAW statements on private education, September 2014 – June 2015*, 2015: http://bit.ly/1TxOLb1
[76] CRC, *Concluding observations on Ghana Report*, CRC/C/GHA/CO/3-5, June 2015, paras. 57 – 58: http://bit.ly/1RwblzJ
[77] CESCR, *Concluding observations on Chile Report*, E/C.12/CHL/CO/4, June 2015, para. 30: http://bit.ly/1RwbqDx
[78] CESCR, *Concluding observations on Uganda*, E/C.12/UGA/CO/1, June 2015, para. 36: http://bit.ly/1BK6OrO
[79] CRC, *Concluding Observations on Morocco*, September 2014, CRC/C/MAR/CO/3-4, paras. 60 – 61: http://bit.ly/1fAXKvb
[80] The UN Special Rapporteur on the right to education, *State responsibility in the face of the explosive growth of private education providers, from a right to education perspective*, A/69/402, 2014: http://www.right-to-education.org/node/371
[81] UN Special Rapporteur on the right to education, *Protecting the right to education against commercialisation,* A/HRC/29/30, 2015: http://bit.ly/1P9KR6Q

35. In his reports, Mr Singh notes that "*soon, it may not be an exaggeration to say that privatization is supplanting public education instead of supplementing it.*"[82] Yet, "*inequalities in opportunities for education will be exacerbated by the growth of unregulated private providers of education, with economic condition, wealth or property becoming the most important criterion for gaining access to education*".[83] Of particular relevance to the analysis of the UK's policies in support of private education, he recommends that "*States should put an end to market-driven education reforms that provide subsidies to private education*"[84] *and that "instead of giving subsidies to private providers, Governments should provide the maximum possible resources to public education*."[85]

36. In an article published in *The Guardian* in April 2015[86], Mr Singh further explains that he sees the growth of private actors in education, "*not as progress, but as an indictment of governments that have failed to meet their obligation to provide universal, free and high-quality education for all*". Further, "*education is not a privilege of the rich and well-to-do*" but an "*inalienable right of every child*". In his view, "*privatisation cripples the notion of education as a universal human right and – by aggravating marginalisation and exclusion – runs counter to the fundamental principles of human rights law*". He emphasises the importance of the need to "*constantly remind states of their obligation under human rights law to establish conditions and standards for private education providers, and of the need to maintain a transparent and effective system to monitor these standards, with sanctions for abusive practices*".

3. The UN Human Rights Council on private education providers and the right to education

37. In July 2015, the Human Rights Council adopted a landmark resolution on the right to education,[87] supported by the UK, urging States to regulate and monitor private education providers and recognising the potential "*wide-ranging impact of the commercialization of education on the enjoyment of the right to education*". [88] The resolution emphasises the importance of "*expanding educational opportunities for all without discrimination, paying particular attention to girls, marginalized children and persons with disabilities, by, inter alia, recognizing the significant importance of public investment in education, to the maximum of available resources, and strengthening the engagement with communities, local actors and civil society to contribute to education as a public good*".

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[82] A/69/402, para. 38.
[83] Ibid., para. 48.
[84] Ibid. para. 106.
[85] Ibid., para. 112.
[86] Kishore Singh, *Education is a basic human right – which is why private schools must be resisted,* The Guardian, 23 April 2015: http://ow.ly/REFhq
[87] Right to Education Project and others, *Landmark UN Resolution Urges States to Monitor and Regulate Private Education Providers*: http://bit.ly/1UFmG3T
[88] Human Rights Council, *Resolution on the Right to Education,* A/HRC/29/L.14/Rev.1, 2015: http://bit.ly/1Mmu15F

III. Assessment of the UK's support of private education through its development aid in light of its human rights extraterritorial obligations

38. In this context, where the rapid growth of private actors in education raises concerns from a right to education perspective, and where State's support of or passive response to this phenomenon has been considered by various bodies to be breaching international human rights law, the UK's active support of this expansion is problematic. This is especially true in the case of the UK support to for-profit, fee-charging, private schools, which have raised the most serious concerns with regards to their human rights implications.

39. The UK's support of private actors in education in developing countries has already been criticised by national civil society in a report published by the NGO Global Justice Now[89] and in several press articles.[90] This report will examine this support specifically in the context of the UK's human rights extraterritorial obligations (ETOs).[91]

40. International human rights law requires that States not only fulfil the obligations to protect, respect, and fulfil human rights within their territory, but also abroad.[92] Indeed, the universality of human rights would be meaningless if States' obligations did not apply outside of their borders. ETOs are therefore crucial to safeguard human rights worldwide.[93]

41. States' ETOs are anchored in the Charter of the United Nations[94], the Convention on the Rights of the Child[95], the International Covenant on Economic, Social and Cultural Rights[96], and various

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[89] Global Justice Now, *Profiting from Poverty, again – DFID's support for privatising education and health*, April 2015: http://ow.ly/RF0Fp

[90] Laura McInerney, *Britain sponsors for-profit schools abroad – but not in our back yard*, The Guardian, 21 April 2015: http://ow.ly/RF0Lx; David Archer, *Should UK aid money be propping up private schools in developing countries?* The Guardian, 4 October 2013: http://ow.ly/RF0Qt; Mark Anderson, *DFID accused of heightening inequality through support for private sector,* The Guardian, 24 April 2015: http://ow.ly/RF0Xc; Claire Provost, *Aid watchdog lambasts UK focus on 'miracle' private sector*, The Guardian, 15 May 2014: http://ow.ly/RF16N; Warwick Mansell, *Should Pearson, a giant multinational, be influencing our education policy?* The Guardian, 16 July 2012: http://ow.ly/RF1iv

[91] See ETO Consortium: http://www.etoconsortium.org/en/etos/

[92] See GI-ESCR, *Parallel Report submitted to the Committee on Economic, Social and Cultural Rights on the occasion of the consideration of List of Issues related to the Sixth Periodic Report of the UK during the Committee's 55th Session*, August 2015.

[93] Claudio Schuftan, *Why it is crucial to strengthen extraterritorial human rights obligations in order to address the challenge of globalisation*, The Social Medicine Portal, February 2015: http://ow.ly/RF1Ac; CESR and Third World Network, *Universal rights, differentiated responsibilities: safeguarding human rights beyond borders to achieve the Sustainable Development goals*, April 2015: http://www.cesr.org/downloads/CESR_TWN_ETOs_briefing.pdf

[94] Article 55 of the Charter states that "*with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of people, the United Nations shall promote: 3. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex or religion". In addition, Article 56 requires that "all members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set in Article 55*".

[95] Article 4 of the Convention on the Rights of the Child states: "*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their*

other international human rights treaties. Expert bodies and legal scholars have provided authoritative interpretations of extraterritorial human rights duties. In particular, the *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights* (hereafter Maastricht Principles)[97] provide the most comprehensive articulation of these duties drawing on legally binding sources, and authoritative interpretations of these sources by human rights treaty bodies.[98] On the basis of this international legal framework, the UK has the obligation to cooperate internationally for the full realisation of the right to education, which includes the obligation to respect principles and priorities within the framework of its development aid and the obligation to assess its impact on the enjoyment of the right to education. The UK's current policies which support private education in developing countries, in particular for-profit low-fee private schools, raise concerns regarding these extraterritorial obligations.

A. The UK's obligations through international cooperation to contribute to the full realisation of the right to education

42. Under international law, the UK has the extra-territorial obligation to cooperate internationally to realise the right to education as stipulated in Article 4 of the Convention on the Rights of the Child.[99] General Comment 5 of the Committee on the Right of the Child[100] is explicit: "*When States ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global*

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available resources and, where needed, within the framework of international co-operation." Paragraph 39 of the General Comment 16 of the Committee on the Rights of the Child also provides that "*Under the Convention, States have the obligation to respect and ensure children's rights within their jurisdiction. The Convention does not limit a State's jurisdiction to 'territory'. In accordance with international Law, the Committee has previously urged States to protect the rights of children who may be beyond their territorial borders*."

[96] Article 2.1 of the International Covenant on Economic, Social and Cultural Rights states: "*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means*".

[97] The Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural (The Maastricht Principles) were adopted in 2001 by international human rights experts and provide a concise restatement of existing customary and conventional international law as regards States' ETOs: http://www.etoconsortium.org/en/library/maastricht-principles/

[98] See CESCR and Third World Network, *Universal rights, differentiated responsibilities: safeguarding human rights beyond borders to achieve the Sustainable Development Goals*, April 2015: http://ow.ly/RF2Kr

[99] According to Article 4: "*States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.*"

[100] Committee on the Rights of the Child, *General Comment 5*: *General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6),* CRC/GC/2003/5, November 2003: http://tinyurl.com/pfdlj3y

implementation."[101] The obligation related to international cooperation is also highlighted in Article 28.3 related to the right to education.[102]

43. The CRC emphasises that achieving universal access to basic social services of good quality on a sustainable basis is a shared responsibility of developing and donor States. It notes that "*many States are going to have difficulty meeting fundamental economic and social rights unless additional resources are allocated and efficiency in resource allocation is increased*".[103]

44. Principle 33 of the Maastricht Principles reiterates this principle enshrined in the CRC, and indicates that States "that are in a position to do so" – which arguably includes the UK - "*must provide international assistance to contribute to the fulfilment of economic, social and cultural rights in other States*".[104]

45. However, and most importantly, development aid must be in a manner consistent with human rights law. The CRC "*advises States parties that the Convention should form the framework for international development assistance related directly or indirectly to children and that programmes of donor States should be rights-based*.[105] In addition, following principle 32 of the Maastricht principles, which draws on the views of the Committee on Economic, Social and Cultural Rights and the principles and priorities that should guide the States in fulfilling their obligation under the Covenant[106], the UK – and other donor States – must:

- *"a) prioritize the realisation of the rights of disadvantaged, marginalized and vulnerable groups[107];*
- *b) prioritize core obligations to realize minimum essential levels of economic, social and cultural rights, and move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights[108];*
- *c) observe international human rights standards, including the right to self-determination and the right to participate in decision-making, as well as the principles of non-discrimination and equality, including gender equality, transparency, and accountability; and*
- *d) avoid any retrogressive measures or else discharge their burden to demonstrate that such measures are duly justified by reference to the full range of human rights obligations, and are only taken after a comprehensive examination of alternatives."[109]*

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[101] Committee on the Rights of the Child, *General Comment 5*: *General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6),* CRC/GC/2003/5, November 2003, para. 7: http://tinyurl.com/pfdlj3y
[102] Article 28.3 of the Convention on the Rights of the Child states: "*States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries*."
[103] Committee on the Rights of the Child, *General Comment 5,* op. cit., para. 62.
[104] The Maastricht Principles, Principle 33: http://www.etoconsortium.org/en/library/maastricht-principles/
[105] Committee on the Rights of the Child, *General Comment 5*: *General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6),* CRC/GC/2003/5, November 2003, para. 61: http://tinyurl.com/pfdlj3y
[106] Olivier De Schutter, Asbjorn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon and Ian Seiderman, *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights,* Human Rights Quarterly, vol. 34, No 4, November 2012: http://www.lse.ac.uk/humanRights/documents/2012/HRQMaastricht.pdf
[107] CESCR, General Comment 3: the nature of States parties obligations, para. 12: http://bit.ly/1NfsG0V
[108] CESCR, General Comment 3, para. 10.

46. Furthermore, principle 21 emphasises that "*States must refrain from any conduct which impairs the ability of another State … to comply with its obligations as regards economic, social and cultural rights or aids, assists, directs, controls or coerces another State to breach its obligations as regards economic, social and cultural rights with the knowledge of the circumstances of the act*"[110].

B. DFID's support of private education, particularly of for-profit low-fee private schools

47. The UK's Department for International Development (DFID) plays a crucial role in supporting quality public education around the world. It is one of the most important and influential bilateral donors to basic education. In 2013, DFID spent £905 million in bilateral aid on education, 13.5 per cent of its total bilateral aid.[111] DFID has also been to the forefront of aid effectiveness efforts in the field of education, playing a critical role in shaping the Global Partnership for Education[112] as a mechanism for coordinating aid to education in low-income countries. In its report submitted to the Committee on the Rights of the Child,[113] the UK reports that its aid programme has supported children overseas, including measures around children's right to education.[114]

48. However, even though the vast majority of DFID's education support is targeted at supporting State provision, in recent years, DFID has increased its funding and support of the private sector.[115] Although this is presently a relatively small part of the UK's development aid, it appears to be increasing, and it is an explicit government priority. DFID's Private Sector Department Operational Plan, drawn up in 2012, states that "*private enterprise is not just a generator of wealth but also a provider of critical basic services".*[116] It adds that DFID's work with the private sector is focused on "*delivering better and more affordable basic services",* which will be achieved partly by *"engaging private enterprise directly in shaping and implementing development programmes and policy"*.[117] DFID's Education Position Paper of July 2013 calls for "*developing new partnerships across the public-private spectrum"* and commits DFID to

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[109] CESCR, General Comment 3, para. 9.
[110] The Maastricht Principles, Principle 21: http://www.etoconsortium.org/en/library/maastricht-principles/
[111] DFID, *Statistics on International Development 2014*, p.35: http://ow.ly/RENtZ
[112] http://www.globalpartnership.org
[113] *The Fifth Periodic Report to the UN Committee on the Rights of the Child*, UK, May 2014, CRC/C/GBR/5/6747: http://bit.ly/ZgAt9E
[114] Funding that has benefitted children in particular includes: a pledge to support nine million children in primary education and two million children in secondary education around the world by 2015; and to help train 190,000 teachers to improve the quality of learning; Stg£9.75 million for a five-year programme from 2013-17 to help prevent trafficking of women and girls from South Asia, including specific support to 9,000 girls under 16 who will be supported to stay in school so that they are not compelled to migrate for domestic work.
[115] DFID, *Helping developing countries to improve their provision of basic services*, May 2015, http://bit.ly/1NuLNlJ
[116] FID, *Operational Plan 2011-15: DFID Private Sector Department*, June 2012, p.2: http://bit.ly/1NuMRGi
[117] DFID, *Operational Plan 2011-15: DFID Private Sector Department*, June 2012, p.2: http://bit.ly/1NuMRGi

promoting low-fee private schools *"in at least four countries"*.[118] DFID is currently funding initiatives promoting private schooling in several countries including Pakistan, Nigeria, Ghana, Kenya, Uganda, Ethiopia, India[119], and Burma.[120] In Kenya, Ghana, and Uganda, the UK supports or has been supported the development of low-fee, for-profit, private schools operated by corporations such as the Bridge International Academy[121] and Omega Schools[122] chains. However, as demonstrated above, evidence shows that the development of such schools has a negative impact on the right to education.

Figure 4. Listed investors in Bridge International Academies, including DFID and CDC Group plc, the UK development finance institution
screenshot from Bridge's website on 8 October 2015

[118] DFID, *Education Position Paper: Improving learning, expanding opportunities*, July 2013, p.19: http://bit.ly/1DQ8EZi
[119] See for instance, DFID, *Gyan Shala: A study into its long-term viability and expansion through private sector investment*, 2013: http://r4d.dfid.gov.uk/Output/193794/
[120] IDP Foundation, *International Support to Low-Cost Private Schools*, May 2013, pp.11-12. Department for International Development (DFID), *Education Position Paper: Improving learning, expanding opportunities*, DFID, 2013: http://bit.ly/1hD6aCY
[121] Bridge International Academies, *Investors*, http://www.bridgeinternationalacademies.com/company/investors/
[122] In August 2013, DFID awarded a grant to Omega to pilot a chain of Girls High Schools in Ghana. See: OMEGA, *History: http://www.omega-schools.com/history.php*.However, DFID informed us in October 2015 that Omega schools in Ghana withdrew from their Girls Education Challenge contract in 2013.

49. **Bridge International Academies (BIA)** is a corporate backed chain of for-profit, low-fee private schools describing themselves as "*the world's largest chain of primary and pre-primary schools bringing world-class education to the poorest of the poor, democratising the right to succeed*".[123] According to the company, BIA charges a minimum of US$6 a month in school fees to its pupils and "*manages every step in the process of delivering high-quality education, from how to build an academy to how to teach inside the classroom*".[124] However, it has been suggested that the minimum cost of attending BIA may be closer to $17.[125] At this price, BIA claim to provide education for children from poor households who may otherwise not have access to education or just access to education of low quality. However, research conducted in Kenya shows that for very poor families, the low-fee charged by BIA represents between 18-30 per cent of their monthly income.[126] Families with an average of three children school-age children, therefore may sacrifice other essential survival rights such as food and water in order to send their children to school.[127]

50. Similar to other LFPS chains, BIA operates a 'school in a box' model that seeks to guarantee uniform practices and outcomes across schools, and to reduce per-units production costs and facilitate scalability. This is achieved through the standardisation of curriculum, management, instruction and assessment of schools. In practice, this model appoints low-paid, poorly trained teachers, often with only a few weeks of training, who teach a scripted and controlled curriculum directly from a tablet.[128] This approach reduces the space for personal development facilitated by the teacher and changes the nature of the classroom from a holistic place of learning to a laboratory for achieving test results. Consequently, in addition to discriminating against children from poorer households , LFPS chains lower the general quality of education, while questioning the "humanistic nature" of education that is protected under human rights law (see part II.A).[129]

[123] Bridge International Academies, *About*, http://www.bridgeinternationalacademies.com/company/about/
[124] Global Impact Investing Network (GIIN), *Impact Investment Profile,* http://ow.ly/RERiy; CDC, *CDC supports expansion of Bridge International Academies with US$6 million investment*, 21 January 2014: http://ow.ly/RERsT
[125] See the statement ""Just" $6 a month?: The World Bank will not end poverty by promoting fee-charging, for-profit schools in Kenya and Uganda - Response to President Jim Kim's speech from concerned communities and organisations in Kenya and Uganda", March 2015, http://bit.ly/statementWBprivatisation
[126] Ibid.
[127] Allavida Kenya, *Access to and quality of basic education in Kibera, Nairobi: Study and synthesis report*, September 2012, p. ix, Paragraph 54: http://ow.ly/REScU
[128] Allavida Kenya, *Access to and quality of basic education in Kibera, Nairobi: Study and synthesis report*, *op. cit*.
[129] Allavida Kenya, *Access to and quality of basic education in Kibera, Nairobi: Study and synthesis report*, *op. cit*.

Does the UK fulfil its promise to only fund schools accessible to children with disabilities?

In September 2013, speaking at the High Level Meeting on Development and Disability at the United Nations General Assembly (UNGA) in New York, the UK International Development Minister, Lynne Featherstone, announced that with immediate effect, children with disabilities in the developing countries will be able to access and use all schools built with direct UK funding. She declared: "*from this day forward, all schools built with the direct support of British taxpayers will be designed to allow disability access*."

Measures announced include: "*Ensuring all school construction the UK directly supports in the developing world is designed to allow disability access. New schools will be built using 'universal design', with easily accessible entry points and toilets, wide entry doors, wide aisles, ramps with railings and handles, and water points with easy-access levers*."

Yet, on-site visits from researchers and preliminary feedback from communities report that schools supported by the UK, such as Bridge International Academies, are not designed and easily accessible to persons with disabilities. Is the UK be breaching its promise to the UN?

See DFID, Press Release, *UK pledge to help tackle the 'great neglect' of disability,* 23 September 2013: http://bit.ly/1Mvy4O3

51. Started in Kenya in 2009[130] BIA has expanded to Uganda and Nigeria in 2015 and has recently announced that the chain will expand in India, capitalising on a range of transnational investors, including DFID.[131] The first investment of DFID's new Impact Fund - a 13-year programme worth £75 million being managed by the Commonwealth Development Corporation (CDC), the UK's development finance institution[132] – was a £15 million investment in the venture fund, Novastar[133] to support the latter's investment in BIA.[134] According to DFID, "*Novastar seeks to develop fully commercial businesses that adapt and deploy innovative business models to profitably serve proven demand for basic goods and services*".[135] In January 2014, it was announced that the CDC will invest US$6 million in equity in BIA alongside the International Finance Corporation, the World Bank's private sector arm. The CDC noted that its investment will support BIA's plans to expand to more countries in Africa, and reach its goal of educating 10

[130] In 2014, BIA opened 146 new academies in Kenya, making for a total of 359 academies and over 100,000 pupils. See BIA's Website: http://www.bridgeinternationalacademies.com/company/history/
[131] See DFID, *The Impact Programme's Annual Report 2013 as an example of diversion of funding to private corporations*, 2014: http://www.theimpactprogramme.org.uk/wp-content/uploads/2014/04/Impact_AR.pdf.
[132] The Impact Fund involves DFID investing 'long term, "patient" capital in impact investment Funds that invest in enterprises which serve the poor as consumers, producers, suppliers or employees'. DFID Impact Fund: http://ow.ly/RESL6
[133] DFID Impact Fund: http://ow.ly/RESL6
[134] DFID, *JPMorgan Chase, DFID and CDC announce $20 million combined investment in Novastar Ventures*, 8 April 2014: http://ow.ly/RET3W
[135] DFID Impact Fund: hhttp://ow.ly/RESL6

million children over the next decade.[136] Other entrepreneurs that have also invested in BIA include Pierre Omidiyar (founder of eBay), Mark Zuckerberg (founder of Facebook), and Bill Gates (founder of Microsoft).

52. **The Omega Schools Franchise**, a corporate-backed for-profit low-fee private school chain based in Ghana, describes itself as "*a social enterprise on a mission to deliver quality education at the lowest cost on a grand scale*". In 2014, the chain counted "38 schools educating over 20,000 students and seeking to double that number in a year".[137] They employ *economies of scale* to ensure low-operating costs, which in practice translate to low tuition fees collected on a daily basis.[138] However, evidence reveals that in reality fees constitute approximately 25-40 per cent of household income for the poorest families.[139] Quality is also in question as teachers only receive two weeks preparation and are paid very low wages; class sizes are significantly larger than in public school (50 children in a class compared to 25-35 in a public school); and the pedagogical autonomy of the teacher is hampered by a highly standardised curriculum.[140] This curriculum is rigid and easily replicated, as Omega Schools seeks to internationalise and open identical schools in various contexts across Africa. This calls into question whether children will receive an education that is contextually relevant[141].

53. DFID project documents envisage contracting for-profit education providers such as Omega Schools and BIA in its **Developing Effective Private Education (DEEPEN) project in Nigeria**. This project, worth £18.5 million during 2013-2018, aims to support pupils in Lagos in low-fee private schools and "*will be highly innovative and experimental, applying a market systems approach to improving education quality for the first time*".[142] According to DFID, contracts will be made "*with for-profit companies interested in developing and introducing an innovative business model for low-cost private education to the Lagos market*".[143] The document adds that "*Omega Schools Ghana will adapt their lesson plans, workbooks and assessment exercises for the Nigerian curriculum and to licence these resources plus with their teacher training and management tools as a complete 'learning system' to existing low-cost schools in Lagos*".[144]

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[136] CDC, *CDC supports expansion of Bridge International Academies with US$6 million investment*, 21 January 2014: http://ow.ly/RETIT

[137] Omega Schools, *Overview and Mission*, http://www.omega-schools.com/overview.php

[138] 'The Education Business,' *The Bottom Line, BBC Radio 4*, *30 March 2013,* [podcast]: http://ow.ly/RETAm

[139] C.B.Riep, *Omega Schools Franchise in Ghana: A case of "low-fee" private education for the poor or for-profiteering?* Open Society Foundations, 2015: http://ow.ly/RETIN. See also, GNECC, GI-ESCR, *Parallel report submitted to the Committee on the Rights of the Child*, August 2014, paragraph 10: http://bit.ly/1DIAjKX

[140] *Ibid.*

[141] According to international human rights law, "*education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings*". See *General Comment 13 of the CESCR*, paragraph 6.b: http://ow.ly/RHze0

[142] DFID, *Business Case and Intervention Summary: Title: Developing Effective Private Education - Nigeria (DEEPEN)*: http://devtracker.dfid.gov.uk/projects/GB-1-202678/documents/

[143] DFID, *Business Case and Intervention Summary: Title: Developing Effective Private Education - Nigeria (DEEPEN)*: http://devtracker.dfid.gov.uk/projects/GB-1-202678/documents/

[144] DFID, *Business Case and Intervention Summary: Title: Developing Effective Private Education - Nigeria (DEEPEN)*: http://devtracker.dfid.gov.uk/projects/GB-1-202678/documents/

54. In addition to for-profit low fee private schools chains such as BIA and Omega Schools, DFID is also funding other "low-fee" private schools through other projects. For example, it supports the **Kenya Essential Education Programme (KEEP)**, a two-year £25 million programme managed by a British pro-private education consultancy (Adam Smith International)[145], aiming to enrol 50,000 more children into Kenyan private schools by the end of 2015.[146]

55. DFID's support to for-profit private providers, particularly in Ghana, Uganda and Kenya, raises questions about its actions concerning its obligation to cooperate for the full realisation of the right to education in developing countries. Indeed, as discussed above, the growth of private education in the countries studied, including in particular Ghana, Kenya and Uganda, has negative impacts on the right to education.

56. DFID has itself commissioned a review of evidence on the role and impact of private schools in developing countries with a particular focus on the delivery of education to the poor, including through low-fee private schools.[147] While the review found strong evidence that teacher presence and activity is generally higher in private schools than in state schools, "*much of the evidence reviewed indicates that private school teachers are often less formally qualified, have low salaries and weak job security".*[148] The review also cites moderate evidence that students demonstrate better learning outcomes relative to public schools, however, it finds that '*many children may not be achieving basic competences even in private schools'*[149]. Moreover, the research emphasises that "*it is important to note that most studies do not adequately account for social background differences of pupils making it difficult to ascertain to what extent the achievement advantage may be attributed to the school or the social background of pupils"*[150]*.* On several dimensions, including access, affordability and sustainability of private schools, the evidence is weak and inconclusive. Specifically, the assessment is "*ambiguous about whether private schools geographically reach the poor*" and *"whether the poor are able to pay private school fees".* Perhaps most importantly, this research review confirms that "*girls are less likely to access private schools than boys".* It also observes that "*a body of evidence indicates that private schools (particularly low-fee private schools) may be vulnerable to closing down after a short period of time".* Combined, the evidence reveals a clear negative effect on the right to education of the children involved.

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[145] Adam Smith international, *Improving educational access, quality and equity for Kenya's most disadvantaged peopl*e: http://ow.ly/REUa3

[146] DFID, *Annual Review: Kenya Essential Education Programme (KEEP)*: http://ow.ly/REUip

[147] Day Ashley L, Mcloughlin C, Aslam M, Engel J, Wales J, Rawal S, Batley R, Kingdon G,Nicolai S, Rose P, *The role and impact of private schools in developing countries: a rigorous review of the evidence. Final report*, Education Rigorous Literature Review, Department for International Development, 2014*:* http://ow.ly/RF5Df

[148] See also: Ilm Ideas, Socio-Economic & Business Consultants PVT Ltd (SEBCON), DFID, *Access to Finance For Low Cost Private Schools in Pakistan, 2014*, p. 38*:* http://bit.ly/1NYSArg

[149] Ibid.

[150] Ibid.

C. Concerns regarding the UK's obligation to respect human rights principles and priorities within the framework of its development aid

57. As mentioned above and outlined in principle 32 of the Maastricht Principles, the UK must respect principles and priorities within the framework of its development aid. Firstly, the UK must prioritise the rights of disadvantaged, marginalised, and vulnerable groups. However, as demonstrated in section II, it appears that the development of private schools, particularly LFPSs, reinforces segregation and inequity, especially for low-income families. In some cases, this is openly acknowledged by the UK. For example, DFID's Business Case for the DEEPEN project in Nigeria claims that "*almost 1.5 million girls and boys will benefit*" but recognises that only 450,000 of these will be from low-income backgrounds.[151] The ICAI, the UK Independent Commission for Aid Impact, reports that "*businesses are less likely to target the most remote, marginalised people*".[152] In a guidance note on *Engaging the Low Cost Private Schools in Basic Education Issues*, DFID recognises that "*disadvantaged groups such as girls/women in some contexts, or the very poor still require specific, targeted demand side support as they cannot be reached by low cost private schools that charge the relatively high fees needed to operate their school*."[153]

58. Secondly, the UK is obliged to prioritise the realisation of the minimum essential levels of economic, social, and cultural rights and to move as expeditiously and effectively as possible towards their full realisation. This means that the UK has the obligation to prioritise the realisation of free education for all, which is an essential element of the right to education[154] and the only way to reach the most marginalised groups.[155] Therefore, instead of supporting for-profit education companies that charge fees, the UK should prioritise its support to free quality education. Indeed, in the countries where the UK provides support to the education sector, governments may lack the financial resources to implement the right to free quality education for all. it is therefore legitimate to question the UK's choice to invest in companies that are modelled to make profits, when this funding could have been used to support the realisation of the right to free education. The UK's responsibility in supporting the development of for-profit private schools abroad can also be question in relation to the domestic prohibition of public funding in support of for-profit private schools.[156]

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[151] DFID, *Business Case and Intervention Summary: Title: Developing Effective Private Education - Nigeria (DEEPEN)*: http://devtracker.dfid.gov.uk/projects/GB-1-202678/documents/
[152] ICAI, *Business in Development*, May 2015: http://icai.independent.gov.uk/reports/business-in-development/
[153] DFID, Guidance Note, *Engaging the Low Cost Private Schools in Basic Education Issues, Challenges and Opportunities*, 2013: http://bit.ly/1UxmR4I
[154] CESCR, General Comment 13, para. 51.
[155] See for instance: Sonia Bhalotra, Kenneth Harttgen and Stephan Klasen, *UNESCO and Education for All, 'The impact of school fees on educational attainment and the intergenerational transmission of education*, 2014: http://bit.ly/1JQAQeU and EFA Global Monitoring Report, *Education For All 2000-2015: Achievements and challenges*, 2015: http://bit.ly/1GR1d2q
[156] *The Andrew Marr Show*, Television Interview, BBC, London, 17 May 2015, available at: http://www.bbc.co.uk/programmes/p02rkrsj

59. In a study involving DFID on *Access to Finance For Low Cost Private Schools in Pakistan*, it is reported that "*low-cost private schools are profitable at all levels, with an average 51% net profit margin.*" [157] The same study indicates that "*profit[s] are retained in the enterprise to finance minor investments –less to achieve quality improvements or even vertical expansion, but in an horizontal expansion of the existing franchise of low cost primary schools positioned to be at best marginally better than the public schools in the same catchment area*".[158] Therefore, it is legitimate to question the policies and priorities of the UK in support of for-profit companies, such as Bridge International Academies and Omega Schools, rather than support to the State to ensure free quality education. This could be further questioned in light of DFID's relationship with other for-profit education companies. For instance, in Pakistan, a country where DFID promotes the involvement of private actors in education, DFID's Special Representative for Education in Pakistan[159](Sir Michael Barber[160]) is also the Chief Education Advisor at Pearson,[161] the largest learning company in the world[162] with sales in 2013 of £5.2 billion and a profit before tax of £382 million.[163] Pearson's Affordable Learning Fund invests in several private education providers in developing countries, including Bridge International Academies and Omega Schools, both of which are also supported by DFID.
60. Thirdly, States must observe international human rights standards, including the principles of non-discrimination and equality. The responsibility of the UK's actions in relation to this obligation could be questioned when the evidence shows that it supports the development of LFPSs, which has been proven to entrench inequalities and create segregation, in breaches of these principles.

61. Fourthly, polices of privatisation in education in developing countries are likely to constitute a retrogressive measure towards the achievements of quality, free education without discrimination.

62. Therefore, if the development of private education in developing countries does not prioritise and/or undermines the education of disadvantaged, marginalised and vulnerable groups; undermines the realisation of core obligations (which includes the obligation to free primary education) as well as the principles of non-discrimination and equality; and is retrogressive, the UK's support to such development would appear to be contrary to the Maastricht Principle 32, and to principle 21 to the extent where would indirectly impair the abilities of these developing countries to comply with their obligation as regards the right to education. It would thus be contrary to international human rights law, including Article 4 of the Convention on the Rights of the Child.

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[157] Ilm Ideas, Socio-Economic & Business Consultants PVT Ltd (SEBCON), DFID, *Access to Finance For Low Cost Private Schools in Pakistan, 2014*, p. 39*:* http://bit.ly/1NYSArg
[158] Ibid. p. 40
[159] International Development Committee, Tenth Report: Pakistan, March 2013, para 71: http://bit.ly/1LkmDnq
[160] Pearson, Office of the Chief Education Advisor, http://www.pearson.com/michael-barber.html
[161] Pearson, *Sir Michael Barber to join Pearson as Chief Education Advisor,* 2011: http://bit.ly/1LURlpM
[162] Pearson, *Pearson at a glance*: http://www.pearson.com/about-us/pearson-at-a-glance.html
[163] Pearson, *Financial highlights*: https://www.pearson.com/investors/financial-information/financial-highlights.html

D. The UK's obligation to assess the impact of development aid on the enjoyment of the right to education abroad

63. As outlined in the Maastricht Principles, States are required to make a prior assessment of the impact of their policy choices on the enjoyment of economic, social, and cultural rights abroad, and their responsibility is engaged when a negative human rights impact is a foreseeable result of their conduct.[164] On this basis, the UK should avoid acting if there are risks of undermining or threatening the right to education. As the commentary on the Principles highlights,[165] States' responsibility may be engaged not only if its authorities are aware or were made aware of the risks to economic, social, and cultural rights, but also if their authorities *should have* been aware and failed to seek the information that would have allowed them to make a better assessment of the risk. It states: "*Where there are threats or potential threats of serious economic, social, or cultural impact, lack of full certainty about those threats should not be used as a reason for approving the planned intervention, nor for requiring the implementation of preventative measures and effective remedies*".[166]

64. However, DFID does not appear to have conducted any proper impact assessment prior to deciding to invest in private education in developing countries. Yet, as discussed above, a growing body of evidence has revealed how the growth of private actors in education threatens the right to education, particularly the right to free, quality education for all, and should have alerted the UK not to invest in such developments.

65. DFID did conduct an assessment, *ex-post*, after it had already provided financial support to a number of private actors, including BIA. However, as mentioned above, this assessment itself highlights a number of negative potential consequences of the growth of private education on the right to education. Moreover, one of the key findings of DFID's review of the research was "*the need for more targeted research to fill the gaps in [their] understanding of the role and impact of private schools in developing countries*."[167] It was particularly highlighted that "*no research was found on the effect of international companies or chains of private schools".*

66. Other assessments made by DFID also show the Department is aware of the impacts on the right to education or has doubts about the efficiency of the development of low-fee private schools in

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[164] Principle 13 of the Maastricht Principles stipulates that "*States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct*." Principle 14 adds: "*States must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights. The results of the assessment must be made public.* The *assessment must also be undertaken to inform the measures that States must adopt to prevent violations or ensure their cessation as well as to ensure effective remedies*." The Commentary on Maastricht Principles insists on the fact that States have to assess the impact of their conduct and implement preventative measures and provide effective remedies. It also explains that Principle 14 is linked with Principle 13 in articulating ways in which states can give effect to their obligation to desist from conduct that creates real risks on economic, social, and cultural rights.

[165] Olivier De Schutter and others, *Commentary to the Maastricht Principles*, op. cit.

[166] Olivier De Schutter and others, *Commentary to the Maastricht Principles*, op. cit.

[167] See DFID, University of Birmingham, Institute of Education of London, ODI, *The role and impact of private schools in developing countries: a rigorous review of the evidence,* Evidence Brief, Avril 2014*:* http://ow.ly/RF5Hh

ensuring the fulfilment of the right to education. For instance, DFID's 2013 Education Position Paper notes that, while DFID will support low-fee private schools, "*empirical findings remain inconclusive*" as to whether low-fee private provision increases learning outcomes.[168] Nicole Goldstein, an Education Advisor at DFID Ghana, has blogged that "*the evidence base on low-fee private schools is still weak, and there are more questions than answers*".[169] Similarly, a DFID policy paper notes the "*strong sensitivities over private involvement in public service provision and that the evidence base is variable*".[170] DFID's Business Case for its Education for Sindh project in Pakistan recognises that "*the rapid growth of low-cost private schools is a reflection of the failure of the government system to offer children a decent education*". It adds that, while private schools can now be found in the poorest communities, "*they remain out of reach of the very poorest families*".[171]

67. The Independent Commission for Aid Impact (ICAI), a body that scrutinises UK aid spending and reports to the Parliament, has also assessed how DFID is working with and through businesses to achieve a range of development objectives that are meant to benefit the poor.[172] Its report indicates that "*in many cases it is too early to show impact on the poor*" and explicitly states: "C*learly there may sometimes be a risk that working directly with businesses to deliver benefits could undermine government efforts".*

68. DFID's research revealed several areas of concern about LFPSs and there is a weak evidence base in some areas questioning DFID'sinterventions as potentially undermining the right to education. However, the results of these assessments have neither informed the measures it is taking nor led DFID to take remedial measures.

IV. Conclusion and recommendations

69. The UK's increasing support for the development of private education, particularly through for-profit education companies, raises concerns in a context where it has been shown and recognised by human rights institutions that the growth of private actors in education (including countries where the UK supports such schools) has a negative impact on the right to education. Indeed some of the specific private schools supported by DFID have been shown to have an negative impact on the realisation of the right to education. The UK has an obligation to ensure that its development aid policies do not undermine the right to education abroad. The support by DFID to a model that has been recognised by human rights institutions to be in breach of international human rights law, including by creating or entrenching segregation and discrimination or by affecting the right to free primary education, seems to run contrary to the UK's extraterritorial obligations. Furthermore, the UK also has an obligation to prioritise its

[168] DFID, *Education Position Paper: Improving learning, expanding opportunities*, July 2013, p.30.
[169] Nicole Goldstein, *Ghanaian families pay for a private education*, 21 May 2013: http://ow.ly/RF5Om
[170] DFID, The Engine of Development: The private sector and prosperity for poor people, May 2011, p.17: http://ow.ly/RF5X5
[171] DFID, *Business Case: Education Fund for Sindh*, January 2012: http://ow.ly/RF5kc
[172] ICAI, *Business in Development*, May 2015: http://icai.independent.gov.uk/reports/business-in-development/

development cooperation towards helping the most vulnerable. The research discussed in section 2 is reinforced by UN human rights bodies' observations which concur that establishing private education, including low-fee private schools, does not benefit the most vulnerable and marginalised groups. UK government support to such schools would therefore appear to not adhere with the UK's human rights obligations. Finally, the UK does not appear to have complied with its procedural obligations under international human rights law - to conduct ex-ante and ex-post human rights impact assessment for its projects, and to take the results of these assessments into account to inform its policies and ensure they are line with human rights requirements.

70. **Therefore, the UK government must:**

- **Recommit itself explicitly to support and promote education provision that is free at the point of use, in line with the new SDG framework and its human rights obligations.**
- **Immediately cease all support – financial, political, or other – to commercial chains of for-profit providers of education, given the risk that support to such schools is breaching human rights law. The UK government has an obligations to use its maximum available resources towards the realisation of human rights rather than supporting the profit-making of companies.**
- **Conduct systematic prior and post-project human rights impact assessments in the context of its development cooperation, in particular when there are high risks for human rights violations. The resulting evidence should inform its policies in order to ensure that it is not violating human rights standards.**
- **Take steps to adequately regulate British education companies or companies involved in education to ensure that their activities are in line with human rights standards;**
- **Support developing countries' governments to develop suitable public sector capacity to monitor and regulate private providers, ensuring full compliance with human rights obligations.**

71. **The International Development Committee should:**

- **Conduct an urgent inquiry into DFID's support for private sector engagement in education, looking at the appropriateness of these actions in the light of the new SDG framework and human rights obligations**

Suggestions for the list of issues and questions to the UK

We suggest the following questions be raised with the UK government:

1. How is the UK's support of for-profit education abroad where it is forbidden domestically, and how is it justified with regards to the principle of the use of maximum available resources to the full realisation of the right to education, domestically and internationally?
2. Why does the UK provide development aid to private education businesses which do not reach the most marginalised groups and lead to discrimination or segregation, and has the UK taken any step to address this issue?
3. What impact assessments has the UK conducted regarding its support of private education, and how have the outcomes of the assessments informed its policies?
4. Has the UK taken steps to ensure that British education companies operating abroad do not undermine the right to education?