

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 Economic, Social and Cultural Rights (CESCR) on the occasion of the consideration of list of issues related to the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland (UK) during the Committee 55th session

(Report submitted to the pre-sessional working group)

Submitted by

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SEPTEMBER 2015

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Summary of the key issues addressed in this report

Private actors have been playing an increasing role in a number of countries, in particular developing countries, in the last 15 years. The growth of private schools, including so-called “low-fee” private schools, that target relatively poor populations, has led to a *de facto* privatisation process of the education system in these countries.

While international human rights law recognises a role for private actors in education and the liberty given to parents to choose the education of their choice for their children, such liberty should not be exercised in violation of human rights. Yet, research on the human rights implications of this growth of private actors has demonstrated that in some instances the trend may have negative impacts on the right to education. Privatisation in education may further entrench inequalities to the detriment of the most marginalised groups and create 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 UN Special Rapporteur on the Right to Education, UN human rights treaty bodies and the Human Rights Council have repeatedly raised concerns on these issues.

Against this background, the UK has been supporting in recent years the development of private actors in education in a number of developing countries, including Ghana, Uganda, and Kenya, which are 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 particularly towards for-profit low-fee private schools such as Bridge International Academies and Omega Schools. This report questions the role and responsibilities of the UK in light of its human rights extraterritorial obligations.

The report finds that the UK’s policies with regards to private 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 of for-profit, fee-charging private schools, that do not reach the poorest, is 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 particularly questioned as its own impact assessments that have been conducted on its policies of providing support to private schools conclude 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 in regards to, among other elements, the efficiency of “low-fee” private schools.

I. Introduction

1. This parallel report¹ was prepared by the Right to Education Project with the contribution of the following organisations: ActionAid UK, the Association of Teachers and Lecturers (ATL), Global Justice Now, the National Union Teachers (NUT), the University and College Union (UCU), ActionAid International, Child Rights Information Network (CRIN), Education International (EI), the Global Campaign for Education (GCE), the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) the Ghana National Education Campaign Coalition (GNECC), the Initiative for Social and Economic Rights in Uganda (ISER-Uganda), the Kenya National Union of Teachers (KNUT) and the Privatisation in Education Research Initiative (PERI).
2. The Right to Education Project² (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, seeking to build bridges across human rights, education and development disciplines. Our 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.
3. Together with the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR),³ the Privatisation in Education Research Initiative (PERI),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 the sector 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 or are being produced for these countries. The research so far has demonstrated that the increased engagement of private actors in education in these countries has negatively impacted the right to education.
4. The present alternative report analyses the policies of the United Kingdom of Great Britain and Northern Ireland (UK) with regards 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 international law applicable as regards the role of private actors in education (A), presenting research evidence showing the negative impacts on the right to education from the growing involvement of private actors in education, particularly in countries where UK supports such development (B) and highlighting the concerns raised at UN level regarding these issues (C). This background is essential to assess the UK's support of private

¹ This report complements 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*

² <http://globalinitiative-escr.org>

³ <http://www.periglobal.org>

⁴ <http://privatisationeducationhumanright.ning.com/about>

education through its development aid in light of its human rights extraterritorial obligations (to be set forth in Part III).

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

5. Private actors in education, meaning any non-state actor, are a heterogeneous group, which includes companies, religious institutions, NGOs, trusts or private individuals. In some cases private schools 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), systems of private tuition (so-called 'shadow schooling'), public-private partnerships (such as voucher schemes, infrastructural contracts, charter and academy schools, etc.), philanthropic or faith-based schools (i.e. madrassas, charity schools, and tuition-free not-for-profit schools), as well as community schools. The role of private actors in education has grown in many parts of the world, and private education is being promoted and explored by some education stakeholders as a solution to the lack of sufficient public provision of education or underperforming public schools. However, the rapid growth 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

6. International human rights law recognises the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions⁷, and the 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
7. However, this liberty is not absolute. Firstly, the exercise of this liberty should not lead to any form of discrimination or increase inequality. International human rights law clearly states that it

⁶ UN Special Rapporteur on the right to education, *Protecting the right to education under 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 Rights 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.

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>

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

8. Secondly, private educational institutions should exist in addition to public schools¹² 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.
9. 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 13.1¹⁸ – and

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.

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

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, including in regards to school environment, educational contents and methods, as well as teachers' status.

10. Fourthly, in order to ensure that the development of education by private providers does not 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 under commercialisation”*,²⁰ which recommends that State adopt a regulatory framework for private providers setting out their responsibilities and accountability requirements. He particularly recommends them to 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
11. Fifthly, this 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, discussions of the education system, including of the development of private education, must be done in consultation and with the participation of various groups of society, including the poorest. This obligation has been particularly highlighted 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

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 under 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”.

²³ Committee on the Rights of the Child, *The Private Sector as Service Provider and its Role in Implementing*

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

12. Based on the legal analysis above and the work RTE and the GI-ESCR have done on the topic so far, particularly the analysis of the situation with regards to privatisation in education from a human rights perspective in eight countries,²⁵ RTE has developed the draft analytical framework below to assess in 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
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 quality free publicly supported education, and not replace the public system, as the State retains the responsibility to offer quality public education for all
3. Not lead to a 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 to their fullest, 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

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/REwOR>

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 development

13. Research²⁶ has shown that the growth of private actors in education undermines the right to education in many countries, including in countries such as Ghana, Kenya, and Uganda where the UK supports such development and where 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 of Discriminations Against Women, as well as to the African Commission on Human and Peoples' Rights.

1. Impact on segregation and discrimination

14. Research shows that the rapid growth of fee-charging private schools is creating segregation between households according to their socio-economic background. 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 are relegated to public schools which are under-resourced. This in turn increases inequality in accessing education and also deepens cycles of poverty and exclusion by segregating the education system according to the socio-economic backgrounds of parents and children.²⁷ Similar dynamics have been found in other countries, such as Ghana.²⁸
15. In Uganda, further increasing the number of private schools is very unlikely to ensure the enrolment of out-of-school children and may increase school dropout rates because of tuition and other fees. 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

²⁶ 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>

²⁷ 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>

²⁸ 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>

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.²⁹

16. In Ghana also, attending private schools involves huge sacrifices for families.³⁰ Primary net attendance ratio for pupils from the wealthiest households is 85 per cent, compared to 61 per cent for students coming from the poorest households.³¹
17. The development of low-fee private schools (LFPSs)³² in particular has raised specific concerns. LFPSs are independent, for-profit private schools that target low-income households and that claim to offer a quality education. The enthusiasm for so-called LFPSs is based on an assumption that because fees are relatively low in comparison to other forms of private schooling they are universally accessible. The evidence shows otherwise. Even low fees are still unaffordable for extremely poor families.³³ Furthermore, these same schools ask for numerous additional fees for school development fees, scholastic material, school uniforms, and examinations, which can cost double the tuition fees.
18. This segregation impacts in particular marginalised groups, 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 only enrol such children if they are required to by enforced regulations.³⁴
19. Research has also shown evidence of discrimination against girls. In Ghana, particularly in rural areas, there are still social and cultural barriers to girls' participation in education, including negative beliefs about girls' roles and the value of education, early marriage, pregnancy and gender-based violence.³⁵ As education is becoming more expensive and selective, households tend to give priority to boys.³⁶ In Uganda, the financial burden of education forces parents to choose which child to send to a 'better quality' school charging fees. In such contexts, they generally favour boys.³⁷

²⁹ 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>

³⁰ 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, World Bank, 2013: <http://blogs.worldbank.org/education/there-role-private-sector-education>

³¹ Ghana Statistical Service, 2011.

³² Also called low-cost private schools (LCPS).

³³ 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, paragraph 21: <http://ow.ly/REwBw>

³⁴ Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, Paragraph 51.

³⁵ ActionAid/GNECC, *The Status of Girls' Education and Violence: A Summary Report Of Baseline Survey Of Gender-Based Patterns In The Nanyumba North And South Districts Of The Northern Region Of Ghana*, 2011.

³⁶ 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>

³⁷ GI-ESCR, ISER-Uganda, *Alternative report submitted to the CESCR* in October 2014, paragraph 22.

20. Research also shows inequalities between those living in rural areas and those living in urban areas, as private schools are concentrated in urban areas while rural areas rely on often overcrowded public schools.³⁸
21. Segregation in education leads to further problems. Firstly, such segregation can affect the already fragile social cohesion in society.³⁹ Secondly, it maintains or deepens inequality, keeping the most financially disadvantaged students, who face the most challenging socio-economic learning environment, together, and without proper support. This further reinforces the initial inequality, rather than remedying it.⁴⁰ In addition, segregation also weakens 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”*.⁴¹

2. A non-choice for parents

22. Although private educational institutions should exist in addition to public schools⁴² and attendance in such institutions should be optional,⁴³ research shows that, generally, attending these schools is not a choice: parents are merely trying to avoid the poor performance of government schools, real or perceived.⁴⁴ In Uganda, research undertaken by the Initiative for Social and Economic Rights (ISER)⁴⁵ 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.⁴⁶
23. In the meantime, while the involvement of private actors in education is growing, government financing for public education is decreasing.⁴⁷ In Kenya, the research has particularly focused on the rapid increase of the number of private schools in informal urban settlements, areas where public schools are not sufficiently available or are inaccessible for most children. Research

³⁸ 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>

³⁹ Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, Paragraph 52.

⁴⁰ Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, Paragraph 53.

⁴¹ 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>

⁴² 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.

⁴³ UNESCO Convention against Discrimination in Education, Article 2.b.

⁴⁴ GNECC, GI-ESCR, *Parallel report submitted to the Committee on the Rights of the Child*, August 2014, paragraph 10: <http://bit.ly/1DIAjKX>

⁴⁵ <http://iser-uganda.org/>

⁴⁶ 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>

⁴⁷ GI-ESCR, ISER-Uganda, *Alternative report submitted to the CESCR* in October 2014, paragraph 13: <http://ow.ly/REwBw>

conducted in 2003 in Kibera, the largest informal settlement in Kenya, recorded a total of 76 private primary and secondary schools⁴⁸ compared to only five government schools, all of which are located on the peripheries of the slum. A further study of the area by the researchers four years later revealed that the number of private schools had grown substantially to 116 in 2007, an increase of 52.6 per cent.⁴⁹ During the same period, no new public schools were built in the area by the State.⁵⁰

3. Lack of regulation and low quality of private schools

24. Moreover, while international law requires States to regulate private schools, many countries face financial challenges in monitoring the role of private actors in education or even devising policies to encourage their development to a high standard. In Kenya, the NGO Hakijamii⁵¹ has reported that, even though education is now 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.⁵² To the contrary, Kenya encourages the development of private schools through the enactment of favourable policies.⁵³ 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.⁵⁴
25. As a result, concerns have also been raised about the quality of education provided in private schools. In Ghana, closer analysis shows that most LFPs are not better than public schools.⁵⁵ In Kenya, research shows that 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.⁵⁶ The same is reported in Uganda where there are poorly qualified or unqualified teachers in many private schools.⁵⁷ Research carried out with the support of the UK's Department for International Development (DFID) on *Access to Finance For Low Cost Private Schools in*

⁴⁸ James Tooley et al, *Impact of free primary education in Kenya, a case study of private schools in Kibera*, 2008: <http://ow.ly/REx7t>

⁴⁹ Pauline Dixon and James Tooley, *A case study of private schools in Kibera*, 2007: <http://ow.ly/RExxi>

⁵⁰ 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>

⁵¹ <http://www.hakijamii.com/>

⁵² Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015.

⁵³ Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, paragraph 21.

⁵⁴ GI-ESCR, ISER-Uganda, *Alternative report submitted to the CESCR* in October 2014, paragraph 24.

⁵⁵ 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, World Bank, 2013: <http://blogs.worldbank.org/education/there-role-private-sector-education>

⁵⁶ Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, Paragraphs 19 and 22.

⁵⁷ GI-ESCR, ISER-Uganda, *Alternative report submitted to CESCR*, October 2014, paragraph 24.

Pakistan⁵⁸ 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...regularly substituted with formal and poorly structure teacher facilitations by the school.”⁵⁹ 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

The negative impacts of the growing involvement of private actors in education – particularly for-profit education institutions – on the right to education (as described above) have raised concerns at UN level.

1. By UN human rights treaty bodies

26. 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. These add to more than 60 other concluding observations previously issued by these Committees on the topic.⁶⁰
27. 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.⁶¹ They also expressed concerns about the lack of regulation 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.⁶² These concluding observations reflect the trend of the growth of unregulated private providers of education that the RTE has been

⁵⁸ 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>

⁵⁹ Ibid. p. 40

⁶⁰ 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>

⁶¹ 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>

⁶² 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>

researching with other organisations.⁶³ 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 treaties⁶⁴ monitored by these Committees.

28. The recommendations made by these UN Committees have focused on monitoring, regulating, and addressing the impacts of the role of private actors in education.⁶⁵ 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)⁶⁶
- *“Take all possible means to eliminate the disparities that exist between private and public schools.”* (Chile)⁶⁷
- *“Strengthen regulations and expand monitoring and oversight mechanisms for private education institutions.”* (Uganda)⁶⁸
- *“Ensure that teachers from the public sector contribute to the improvement of education [...] rather than being used by the private sector.”* (Morocco)⁶⁹

2. By the UN Special Rapporteur on the Right to Education

29. The UN Special Rapporteur on the Right to Education, Kishore Singh, also 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 2014⁷⁰ focusing on States’ responsibilities in this particular context, and one to the UN Human Rights Council in June 2015⁷¹ focusing on “protecting the right to education against commercialisation”.

30. In his reports, Mr Singh raises the alarm as “soon, it may not be an exaggeration to say that privatization is supplanting public education instead of supplementing it.”⁷² 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”.⁷³ Of particular relevance to the analysis of the UK’s policies, he considers that “States should put an end to market-driven education reforms that

⁶³ See Privatisation in Education and Human Rights Project: <http://privatisationeducationhumanright.ning.com/about>

⁶⁴ 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.

⁶⁵ For a summary, GI-ESCR, CRC, CESCR and CEDAW statements on private education, September 2014 – June 2015, 2015: <http://bit.ly/1TxOLb1>

⁶⁶ CRC, *Concluding observations on Ghana Report*, CRC/C/GHA/CO/3-5, June 2015, paras. 57 – 58: <http://bit.ly/1RwblzJ>

⁶⁷ CESCR, *Concluding observations on Chile Report*, E/C.12/CHL/CO/4, June 2015, para. 30: <http://bit.ly/1RwbqDx>

⁶⁸ CESCR, *Concluding observations on Uganda*, E/C.12/UGA/CO/1, June 2015, para. 36: <http://bit.ly/1BK6OrO>

⁶⁹ CRC, *Concluding Observations on Morocco*, September 2014, CRC/C/MAR/CO/3-4, paras. 60 – 61: <http://bit.ly/1fAXKvb>

⁷⁰ 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>

⁷¹ UN Special Rapporteur on the right to education, *Protecting the right to education under commercialisation*, A/HRC/29/30, 2015: <http://bit.ly/1P9KR6Q>

⁷² A/69/402, para. 38.

⁷³ Ibid., para. 48.

provide subsidies to private education”⁷⁴ and that “instead of giving subsidies to private providers, Governments should provide the maximum possible resources to public education.”⁷⁵

31. In an article published in The Guardian in April 2015⁷⁶, 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”*. *“Education is not a privilege of the rich and well-to-do”* but an *“inalienable right of every child”*, he wrote. 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. By States at the Human Rights Council

32. In July 2015, the Human Rights Council adopted a landmark resolution on the right to education,⁷⁷ 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”*.⁷⁸ 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”*.

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

33. In this context, where the rapid growth in the number of private actors in education raises concerns from a right to education perspective, questions need to be asked when the UK appears to actively support this growth through its development aid, in particular when the UK is

⁷⁴ Ibid. para. 106.

⁷⁵ Ibid., para. 112.

⁷⁶ 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>

⁷⁷ Right to Education Project and others, *Landmark UN Resolution Urges States to Monitor and Regulate Private Education Providers*: <http://bit.ly/1UFmG3T>

⁷⁸ Human Rights Council, *Resolution on the Right to Education*, A/HRC/29/L.14/Rev.1, 2015: <http://bit.ly/1Mmu15F>

supporting for-profit, fee-charging, private schools, which have been proven to raise the most serious issues with regards to their human rights implications.

34. The UK's increasing support of the development of private actors in education in developing countries has already been criticised internally by national civil society through a report published by the NGO Global Justice Now⁷⁹ and several press articles.⁸⁰ These policies are herein examined specifically in the context of the UK's human rights extraterritorial obligations (ETOs).⁸¹
35. 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.⁸² 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.⁸³
36. States' ETOs are anchored in the Charter of the United Nations⁸⁴, the Convention on the Rights of the Child⁸⁵, the International Covenant on Economic, Social and Cultural Rights⁸⁶, and various other international human rights treaties. Expert bodies and legal scholars have provided

⁷⁹ Global Justice Now, *Profiting from Poverty, again – DFID's support for privatising education and health*, April 2015:

<http://ow.ly/RFOFp>

⁸⁰ Laura McInerney, *Britain sponsors for-profit schools abroad – but not in our back yard*, The Guardian, 21 April 2015:

<http://ow.ly/RFOlX>; David Archer, *Should UK aid money be propping up private schools in developing countries?* The Guardian, 4 October 2013: <http://ow.ly/RFOQt>; Mark Anderson, *DFID accused of heightening inequality through support for private sector*, The Guardian, 24 April 2015: <http://ow.ly/RFOXc>; 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>

⁸¹ See ETO Consortium: <http://www.etoconsortium.org/en/etos/>

⁸² 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: <http://bit.ly/1Q16EOF>

⁸³ 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

⁸⁴ 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”.

⁸⁵ 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 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.”

⁸⁶ 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”.

authoritative interpretation 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)⁸⁷ provide the most comprehensive articulation of these duties drawing on legally binding sources, and authoritative interpretations of these sources by human rights treaty bodies.⁸⁸ 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, particularly 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

37. Under international law, the UK has the extra-territorial obligation to cooperate as stipulated in Article 2.1 of the International Covenant on Economic, Social and Cultural Rights.⁸⁹ General Comment 3 of the Committee on Economic, Social and Cultural Rights is explicitly clear: *"international cooperation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard."*⁹⁰
38. The CESCR emphasises: *"in the absence of an active programme of international assistance and cooperation on the part of all those States that are in a position to undertake one, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries."*⁹¹
39. Principle 33 of the Maastricht Principles reiterates this principle enshrined in the CESCR, 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"*

⁸⁷ The Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural 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/>

⁸⁸ 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>

⁸⁹ According to Article 2.1: *"Each State Party to ... 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, including particularly the adoption of legislative measures."*

⁹⁰ Committee on Economic, Social and Cultural Rights, *General Comment 3: The nature of States parties' obligations*, para. 14: <http://bit.ly/1NfsGOV>

⁹¹ Ibid.

40. However, and most importantly, development aid must be in a manner consistent with human rights law. 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 Covenant⁹², the UK – and other donor States – must:

- *“a) prioritize the realisation of the rights of disadvantaged, marginalized and vulnerable groups⁹³;*
- *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 rights⁹⁴;*
- *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.”⁹⁵*

41. 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”.

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

42. The UK’s Department for International Development (DFID)⁹⁶ 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.⁹⁷ 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 Education⁹⁸ as a mechanism for coordinating aid to education in low-income countries.

⁹² 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>

⁹³ CESCR, General Comment 3: the nature of States parties obligations, para. 12: <http://bit.ly/1NfsGOV>

⁹⁴ CESCR, General Comment 3, para. 10

⁹⁵ CESCR, General Comment 3, para. 9

⁹⁶ <https://www.gov.uk/government/organisations/department-for-international-development>

⁹⁷ DFID, *Statistics on International Development 2014*, p.35: <http://ow.ly/REntZ>

⁹⁸ <http://www.globalpartnership.org>

43. However, in recent years, DFID has been increasing its funding and support of the private sector.⁹⁹ Even though 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. The 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*".¹⁰⁰ 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*".¹⁰¹ DFID's Education Position Paper of July 2013 calls for "*developing new partnerships across the public-private spectrum*" and commits the DFID to promoting low-fee private schools "*in at least four countries*".¹⁰² The DFID is currently funding initiatives promoting private schooling in several countries including Pakistan, Nigeria, Ghana, Kenya, Uganda, Ethiopia, India¹⁰³, and Burma.¹⁰⁴ In Kenya, Ghana, and Uganda, the UK supports the development of low-fee, for-profit, private schools such as the Bridge International Academy¹⁰⁵ and Omega Schools¹⁰⁶ chains. However, as demonstrated above, evidence shows that the development of such schools has a negative impact on the right to education.
44. **Bridge International Academies (BIA)** is a 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".¹⁰⁷ 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".¹⁰⁸ However, it has been suggested that the minimum amount may be closer to \$17.¹⁰⁹ 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.¹¹⁰ Families usually

⁹⁹ DFID, *Helping developing countries to improve their provision of basic services*, May 2015, <http://bit.ly/1NuLNIJ>

¹⁰⁰ FID, *Operational Plan 2011-15: DFID Private Sector Department*, June 2012, p.2: <http://bit.ly/1NuMRGi>

¹⁰¹ DFID, *Operational Plan 2011-15: DFID Private Sector Department*, June 2012, p.2: <http://bit.ly/1NuMRGi>

¹⁰² DFID, *Education Position Paper: Improving learning, expanding opportunities*, July 2013, p.19: <http://bit.ly/1DQ8EZi>

¹⁰³ 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/>

¹⁰⁴ 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>

¹⁰⁵ Bridge International Academies, *Investors*, <http://www.bridgeinternationalacademies.com/company/investors/>

¹⁰⁶ See for instance, OMEGA, *History*: <http://www.omega-schools.com/history.php>

¹⁰⁷ Bridge International Academies, *About*, <http://www.bridgeinternationalacademies.com/company/about/>

¹⁰⁸ 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>

¹⁰⁹ 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>

¹¹⁰ Ibid.

send an average of three children to school and therefore have to sacrifice other essential survival rights such as food and water.¹¹¹

45. BIA uses the method of ‘school in a box’ with poorly trained teachers (often with only a few weeks of training), who teach a standardised curriculum directly from a tablet.¹¹² Justified on the basis of standardisation to ensure equal education between schools, this approach appears to be more motivated by the need to reduce costs, and closes off any 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 creating discrimination between children, it is likely to lower the general quality of education, while questioning the “humanistic nature” of education that is protected under human rights law (see part II.A).¹¹³
46. Started in Kenya, BIA has expanded in Uganda and has recently announced that the chain will expand in Nigeria and India, capitalising on a range of transnational investors, including the DFID.¹¹⁴ 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 institution¹¹⁵ – was a £15 million investment in the venture fund, Novastar¹¹⁶ to support the latter’s investment in BIA.¹¹⁷ According to the 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*”.¹¹⁸ 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 million children over the next decade.¹¹⁹ Other entrepreneurs including Pierre Omidyar (founder of eBay), Mark Zuckerberg (founder of Facebook), and Bill Gates (founder of Microsoft) have also invested in BIA.
47. **Omega Schools**, based in Ghana, describes itself as “*a social enterprise on a mission to deliver quality education at the lowest cost on a grand scale*”, with “38 schools educating over 20,000 students and seeking to double that number in a year”.¹²⁰ They employ *economies of scale* to

¹¹¹ 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>

Allavida Kenya, *Access to and quality of basic education in Kibera, Nairobi: Study and synthesis report*, op. cit.

¹¹³ Allavida Kenya, *Access to and quality of basic education in Kibera, Nairobi: Study and synthesis report*, op. cit.

¹¹⁴ 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.

¹¹⁵ 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>

¹¹⁶ DFID Impact Fund: <http://ow.ly/RESL6>

¹¹⁷ DFID, *JPMorgan Chase, DFID and CDC announce \$20 million combined investment in Novastar Ventures*, 8 April 2014: <http://ow.ly/RET3W>

¹¹⁸ DFID Impact Fund: <http://ow.ly/RESL6>

¹¹⁹ CDC, *CDC supports expansion of Bridge International Academies with US\$6 million investment*, 21 January 2014: <http://ow.ly/RETIT>

¹²⁰ Omega Schools, *Overview and Mission*, <http://www.omega-schools.com/overview.php>

ensure low-operating costs, which in principle translate to low tuition fees collected on a daily basis.¹²¹ However, fees are unaffordable for the poorest as evidence shows they constitute approximately 25-40 per cent of household income for some families.¹²² 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 role of the teacher is hampered by a standardised curriculum.¹²³ 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 relevant and culturally appropriate¹²⁴.

48. DFID project documents envisage contracting for-profit education providers such as Omega 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”.¹²⁵ 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”.¹²⁶ 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”.¹²⁷
49. Apart from BIA and Omega Schools, DFID is also funding other “low-fee” private schools through other projects. For example, it is supporting the **Kenya Essential Education Programme (KEEP)**, a two-year £25 million programme managed by a British pro-privatisation consultancy (Adam Smith International)¹²⁸, aiming to enrol 50,000 more children into Kenyan private schools by the end of 2015.¹²⁹
50. 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

¹²¹ ‘The Education Business,’ *The Bottom Line*, BBC Radio 4, 30 March 2013, [podcast]: <http://ow.ly/RETAm>

¹²² C.B.Riep, *Omega Schools Franchise in Ghana: A case of “low-fee” private education for the poor or for-profitteering?* 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>

¹²³ *Ibid.*

¹²⁴ 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>

¹²⁵ DFID, *Business Case and Intervention Summary: Title: Developing Effective Private Education - Nigeria (DEEPEN)*: <http://devtracker.dfid.gov.uk/projects/GB-1-202678/documents/>

¹²⁶ DFID, *Business Case and Intervention Summary: Title: Developing Effective Private Education - Nigeria (DEEPEN)*: <http://devtracker.dfid.gov.uk/projects/GB-1-202678/documents/>

¹²⁷ DFID, *Business Case and Intervention Summary: Title: Developing Effective Private Education - Nigeria (DEEPEN)*: <http://devtracker.dfid.gov.uk/projects/GB-1-202678/documents/>

¹²⁸ Adam Smith international, *Improving educational access, quality and equity for Kenya’s most disadvantaged people*: <http://ow.ly/REUa3>

¹²⁹ DFID, *Annual Review: Kenya Essential Education Programme (KEEP)*: <http://ow.ly/REUip>

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.

51. DFID itself has conducted research 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.¹³⁰ This assessment finds that *“much of the evidence reviewed indicates that private school teachers are often less formally qualified, have low salaries and weak job security”*.¹³¹ In relation to the quality of education and learning outcomes, 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”*. This 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”*. This, of course, would have a very negative effect on the right to education of the children involved.

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

52. 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 LFPs, reinforces segregation and inequity, especially for low-income families. In some cases, this is openly acknowledged by the UK. For example, the 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.¹³² The ICAI, the UK Independent Commission for Aid Impact, reports that *“businesses are less likely to target the most remote, marginalised people”*.¹³³ 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*

¹³⁰ 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>

¹³¹ See also: IIm 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>

¹³² DFID, *Business Case and Intervention Summary: Title: Developing Effective Private Education - Nigeria (DEEPEN)*: <http://devtracker.dfid.gov.uk/projects/GB-1-202678/documents/>

¹³³ ICAI, *Business in Development*, May 2015: <http://icai.independent.gov.uk/reports/business-in-development/>

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.”¹³⁴ In another document, assessing the barriers to investment in low-fee education market in India, DFID notes that “all funds...expect a minimum return on investment of 15% or so. This cannot be realised below a certain fee level. To generate adequate returns schools will need to raise fees thus no longer targeting the poorest students.”¹³⁵

53. Secondly, the UK is obliged to prioritise the realisation of the minimum essential levels of economic, social, and cultural rights and 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 education¹³⁶ and the only way to reach the most marginalised groups.¹³⁷ Therefore, instead of supporting for-profit education companies that charge fees, the UK should prioritise its support to free quality education. Indeed, in these countries, governments lack the financial resources to implement the right to free quality education for all. Therefore, it is legitimate to question the UK’s choice to invest millions in companies that are already making profits, when this funding could have been used to support the realisation of the right to free education. We can also question the UK’s responsibility in supporting the development of for-profit private schools abroad when such interventions, using public funding, are not allowed domestically.¹³⁸
54. 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.”¹³⁹ 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”, adding that “horizontal growth is the strategy of a rational economic actor”.¹⁴⁰ Therefore, it is legitimate to question the aim and priorities of the UK in supporting such for-profit companies rather than supporting the State to ensure a free good quality education for all. This could be further questioned when DFID’s close relationship with for-profit education companies is considered. For instance, in Pakistan, a country where DFID promote the role of private actors in education, the

¹³⁴ DFID, Guidance Note, *Engaging the Low Cost Private Schools in Basic Education Issues, Challenges and Opportunities*, 2013: <http://bit.ly/1UxmR4I>

¹³⁵ DFID, *Gyan Shala: A study into its long-term viability and expansion through private sector investment*, 2013, p. 5: <http://r4d.dfid.gov.uk/Output/193794/>

¹³⁶ CESCR, General Comment 13, para. 51.

¹³⁷ 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>

¹³⁸ *The Andrew Marr Show*, Television Interview, BBC, London, 17 May 2015, available at: <http://www.bbc.co.uk/programmes/p02rkrsj>

¹³⁹ 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>

¹⁴⁰ Ibid. p. 40

Chief Education Representative¹⁴¹(Sir Michael Barber¹⁴²) is also Chief Education Advisor at Pearson¹⁴³, bygone of the largest learning companies in the world¹⁴⁴ with sales in 2013 of £5.2 billion and a profit before tax of £382 million.¹⁴⁵ Barber's biography at Pearson states that he 'plays a particular role in Pearson's strategy for education in the developing world'.¹⁴⁶ DFID's flagship education project in Pakistan, launched in 2011, is the Punjab Road Map, to which DFID is providing £350 million between 2012/13 and 2017/18.¹⁴⁷ The project aims among other things at expanding low-cost private schooling, and is headed by Barber.¹⁴⁸

55. 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.
56. Fourthly, policies of privatisation in education in developing countries are likely to constitute a retrogressive measure towards the achievements of quality, free education without discrimination.
57. 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 it 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 2 of the International Covenant on Economic, Social and Cultural Rights.

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

58. 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

¹⁴¹ International Development Committee, Tenth Report: Pakistan, March 2013, para. 71: <http://bit.ly/1LkmDnq>

¹⁴² Pearson, Office of the Chief Education Advisor, <http://www.pearson.com/michael-barber.html>

¹⁴³ Pearson, *Sir Michael Barber to join Pearson as Chief Education Advisor*, 2011: <http://bit.ly/1LURLpM>

¹⁴⁴ Pearson, *Pearson at a glance*, <http://www.pearson.com/about-us/pearson-at-a-glance.html>

¹⁴⁵ 'Financial highlights', <https://www.pearson.com/investors/financial-information/financial-highlights.html>

¹⁴⁶ 'Office of the Chief Education Advisor', <http://www.pearson.com/michael-barber.html>

¹⁴⁷ 'Punjab Education Sector Programme 2 (PESP 2) - 2013-2018,

Business Case', November 2012, <http://devtracker.dfid.gov.uk/projects/GB-1-202697/documents/>

¹⁴⁸ International Development Committee, Tenth Report: Pakistan, March 2013, para. 71: <http://bit.ly/1LkmDnq>

of their conduct.¹⁴⁹ 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,¹⁵⁰ 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*".¹⁵¹

59. However, DFID does not seem to have conducted any proper impact assessment prior to deciding to invest in private education in developing countries. Still, as mentioned above, research highlights 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.
60. DFID did conduct an assessment, but *ex-post*, after it had already provided money to a number of private actors. 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*."¹⁵² It was particularly highlighted that "*no research was found on the effect of international companies or chains of private schools*".
61. Other assessments made by the 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 ensuring the fulfilment of the right to education. For instance, DFID's 2013 Education Position Paper notes that, while the DFID will support low-fee private schools, "*empirical findings remain inconclusive*" as to whether low-fee private provision increases learning outcomes.¹⁵³ Nicole Goldstein, an Education Advisor at DFID Ghana, has blogged that "*the evidence base on*

¹⁴⁹ Principle 13 of the Maastricht Principles stipulates: "*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.

¹⁵⁰ Olivier De Schutter and others, *Commentary to the Maastricht Principles*, op. cit.

¹⁵¹ Olivier De Schutter and others, *Commentary to the Maastricht Principles*, op. cit.

¹⁵² 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>

¹⁵³ DFID, *Education Position Paper: Improving learning, expanding opportunities*, July 2013, p.30.

low-fee private schools is still weak, and there are more questions than answers".¹⁵⁴ Similarly, a DFID policy paper notes the *"strong sensitivities over private involvement in public service provision and that the evidence base is variable"*.¹⁵⁵ 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"*.¹⁵⁶

62. 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.¹⁵⁷ Its report indicates that *"in many cases it is too early to show impact on the poor"* and explicitly states: *"Clearly there may sometimes be a risk that working directly with businesses to deliver benefits could undermine government efforts"*.
63. Thus, it appears that not only could and should DFID be aware of the risks of supporting private schools for the right to education, and it is now also clearly informed of the way in which its interventions are highly likely to undermine 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

64. The UK's increasing support for the development of private education, particularly for for-profit education companies, raises concerns in a context where research shows that privatisation has a negative impact on the right to education. The UK has extraterritorial obligations and has to ensure that its development aid policies do not undermine the right to education abroad. The UK should continue to carry out research into the role and impact of private schools in developing countries as suggested by its own reports, but also take action accordingly to ensure that its development aid policies do not undermine the realisation of human rights.

¹⁵⁴ Nicole Goldstein, *Ghanaian families pay for a private education*, 21 May 2013: <http://ow.ly/RF5Om>

¹⁵⁵ DFID, *The Engine of Development: The private sector and prosperity for poor people*, May 2011, p.17: <http://ow.ly/RF5X5>

¹⁵⁶ DFID, *Business Case: Education Fund for Sindh*, January 2012: <http://ow.ly/RF5kc>

¹⁵⁷ ICAI, *Business in Development*, May 2015: <http://icai.independent.gov.uk/reports/business-in-development/>

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

1. What justifies the UK's support of for-profit education abroad whereas it is forbidden domestically, and how is it justified with regards to the principle of the use of maximum available resources to?
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?

VI. Contacts

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