



**Parallel Report submitted by  
the Ghana National Education Campaign Coalition and  
the Global Initiative for Economic,  
Social and Cultural Rights,**

**with the support of the Africa Network Campaign on Education For  
All, the Privatisation in Education Research Initiative, the Right to  
Education Project, the Global Campaign for Education and  
Education International**

**to the Pre-sessional Working Group of the  
Committee on the Rights of the Child  
on the occasion of the consideration of the  
List of Issues related to the  
Periodic Reports of Ghana**

**SUBMITTED AUGUST 2014**



## **I. Introduction**

1. The Ghana National Education Campaign Coalition (GNECC)<sup>1</sup> is a network of civil society organizations, professional groupings, educational/research institutions and other practitioners interested in promoting quality basic education for all. Formed in 1999, the coalition has steadily grown over the years with a current membership of over 200 organizations. GNECC envisions a society which provides quality, relevant and enjoyable basic education for all irrespective of one's age, income level, gender, physical or other disabilities, geographical location, ethnic, religious and socio-economic background.

2. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)<sup>2</sup> is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. The vision of the GI-ESCR is of a world where economic, social and cultural rights are fully respected, protected and fulfilled and on equal footing with civil and political rights, so that all people are able to live in dignity.

3. This report also received the support of the Africa Network Campaign on Education For All,<sup>3</sup> Privatisation in Education Research Initiative (PERI),<sup>4</sup> the Right to Education Project,<sup>5</sup> the Global Campaign for Education,<sup>6</sup> and Education International.<sup>7</sup>

## **II. Education Privatization in Ghana and its impact on the realization of the right to education**

4. The Ghanaian authorities have deliberately favored the development of private education in the last 50 years. The development of private schools in Ghana was first facilitated as part of the 1968 Education Act in an effort by the Government to ensure full implementation of the free and compulsory education policy under the Act.<sup>8</sup> The policy required that all school age children should be found places in primary and lower secondary schools. However, the policy was introduced without the necessary infrastructure and human resources to support the rapid increase in enrolment which followed its implementation.<sup>9</sup> The State Party reacted to this situation by allowing private individuals to operate schools in order to ensure full implementation of the policy. The 1992 Constitution tasked the Government to create a programme for the full implementation of Free

---

<sup>1</sup> <http://www.gneccgh.org/>

<sup>2</sup> <http://globalinitiative-escr.org/>

<sup>3</sup> <http://www.ancefa.org/>

<sup>4</sup> <http://www.periglobal.org/>

<sup>5</sup> <http://www.right-to-education.org/>

<sup>6</sup> <http://www.campaignforeducation.org/>

<sup>7</sup> <http://www.ei-ie.org/>

<sup>8</sup> UNESCO World Data on Education, 7<sup>th</sup> Edition 2011.

<sup>9</sup> Anamuah Mensah, Evolution Of The Educational System In Ghana Since Independence In 1957.

[www.jamensah.com/Speeches/EVOLUTION%20OF%20EDUC%20.doc](http://www.jamensah.com/Speeches/EVOLUTION%20OF%20EDUC%20.doc) Retrieved 18/8/14

Compulsory Universal Basic Education (FCUBE) within ten years after its coming into force. The constitution entered into force in 1996, but full implementation of the FCUBE policy is yet to be realized.<sup>10</sup> More recently, the 2008 Education Act (Act 778) retains preceding policies by making provision for free and compulsory basic education as well as private participation in the provision of education at all levels. It stipulates that “*a person or an institution may establish, manage or operate an educational institution in accordance with the guidelines issued, and regulations made in that behalf by the Minister in consultation with the Education Service Council and/or the National Accreditation Board*”.<sup>11</sup>

5. The Government generally considers that the quality of private schools is higher than in public schools. The Education Strategic Plan notes that most students who progress from basic schools/Junior High schools to Secondary Schools are from the private schools.<sup>12</sup> We are of the view, however, that the relationship between private schools and better quality has not been proven and is subject to many factors. Cross-country evidence has shown that private schools are not of better quality,<sup>13</sup> and it is unlikely that the situation would be any different in Ghana. For instance, the educational outcomes of urban middle class private schools may be higher than public schools due to a higher intake of pupils living in families with a high level of education, but the same cannot be said for private schools in poorer urban areas and in rural communities. This is for example reflected in the fact that, according to governmental official statistics, the percentage of trained teachers is much lower in private schools (9.2% at the primary level and 17.5% at the secondary level) than in public schools (respectively 69.4% and 83.7%).<sup>14</sup> Nevertheless, and despite these documented shortcomings, the State Party considers the private sector as a key component of strategic framework for the education sector in the next ten year i.e. 2010-2020. It aims at furthering the role of the private sector by supporting private education providers with non-salary inputs such as textbooks and in-service training under Public Private Partnership (PPP) arrangements in return for more investment in the education sector.<sup>15</sup> In addition, the Government sees the growth of the private sector as key to increasing access to education.<sup>16</sup>

6. As a result, the number of private schools has grown very rapidly in Ghana in the last decade. Private primary schools have grown by 29.5% from 4,371 in 2008/2009 to 5,742 in 2012/13. Currently about 29% of all primary schools are private.<sup>17</sup> This important space taken by the private

---

<sup>10</sup> UNESCO World Data on Education, 7<sup>th</sup> Edition 2011.

<sup>11</sup> Education Act 2008, Act 778, Section 23

<sup>12</sup> Ibid.

<sup>13</sup> Dfid, 2014: Education Rigorous Literature Review. Department for International Development. See also Global Campaign for Education, report on privatization to be published in September 2014 – see <http://www.campaignforeducation.org/en/campaigns/privatisation>; and Ian Macpherson, Susan Robertson, and Geoffrey Walford, *Education, Privatisation and Social Justice* (Symposium Book, United Kingdom:2014).

<sup>14</sup> Ghana Ministry of Education, Basic National Profile - 2012 / 2013 School Year Data, <http://www.moe.gov.gh/docs/Basic/2012-2013/Basic%20National%20Profile.pdf>

<sup>15</sup> Education Strategic Plan 2010-2020 p.31.

<sup>16</sup> Education Strategic Plan 2010-2020 p.38.

<sup>17</sup> Education Sector Performance Report, 2013 pg. 15.

educational sector in Ghana is proudly claimed by the State Party which noted in its 2010 – 2020 Education Strategic Plan that “*the private sector contribution to education is substantial. In 2008 19% of kindergarten, 17% of primary, 17% of junior high, 10% of senior high and 14% of tertiary students were educated privately.*”<sup>18</sup> These figures already demonstrate a *de facto* privatization of the education sector in Ghana. It should be noted, however, that a number of informal or so-called ‘low cost’ private schools are difficult to count, and so these figures may be underestimated.<sup>19</sup>

7. As noted in a recent World Bank report, this growth of private schools involves a segregation between households according to their wealth which generally reflects the persistent socioeconomic disparities across Ghana.<sup>20</sup> Although significant progress has been made in expanding access to basic public education in rural/deprived districts and for poor households and girls in particular in the last ten years, inequitable allocation of educational resources has meant that differences in geography, economic conditions and cultural practices are still prevalent. For example, pupil attendance at primary and secondary schools vary greatly by household wealth and urban-rural status.<sup>21</sup> Primary net attendance ratio for pupils from the wealthiest households is 85% compared to 61% for students coming from the poorest households. 15% of children from rural areas are out of school compared to 8% of children from urban areas. Also, 32% of the poorest in urban areas are out of schools compared to 28% of the poorest in rural areas depicting disparities in access to education both within and between socioeconomic groups and geographical areas.<sup>22</sup> This is no surprise as the Government recognized that “*private fees paid by families for pre-tertiary education represents 1.9 % of the GDP, an exceptionally high level by international standards*”.<sup>23</sup> Private schools are thus an urban phenomenon designed to cater for the most advantaged groups in societies – the elite and the middle class<sup>24</sup>. This is reflected in the fact that, as noted by the Ministry of education in its latest statistical report, “*for all regions there are more public primary schools than private ones except the Greater Accra Region*” (see below).<sup>25</sup> Therefore, the favoring of the government towards this type of institution should be seen as a support to advantaged groups, to the detriment of the most vulnerable ones.

---

<sup>18</sup> Education Strategic Plan 2010-2020.

<sup>19</sup> Low cost private schools is an emerging phenomenon. Even though some independent researches have been carried out on them the Governments does not capture them as part of annual M&E data.

<sup>20</sup> Darvas, Peter and David Balwanz. 2013. *Basic Education beyond the Millennium Development Goals in Ghana: How Equity in Service Delivery Affects Educational and Learning Outcomes.*

<sup>21</sup> Ghana Statistical Service, 2011.

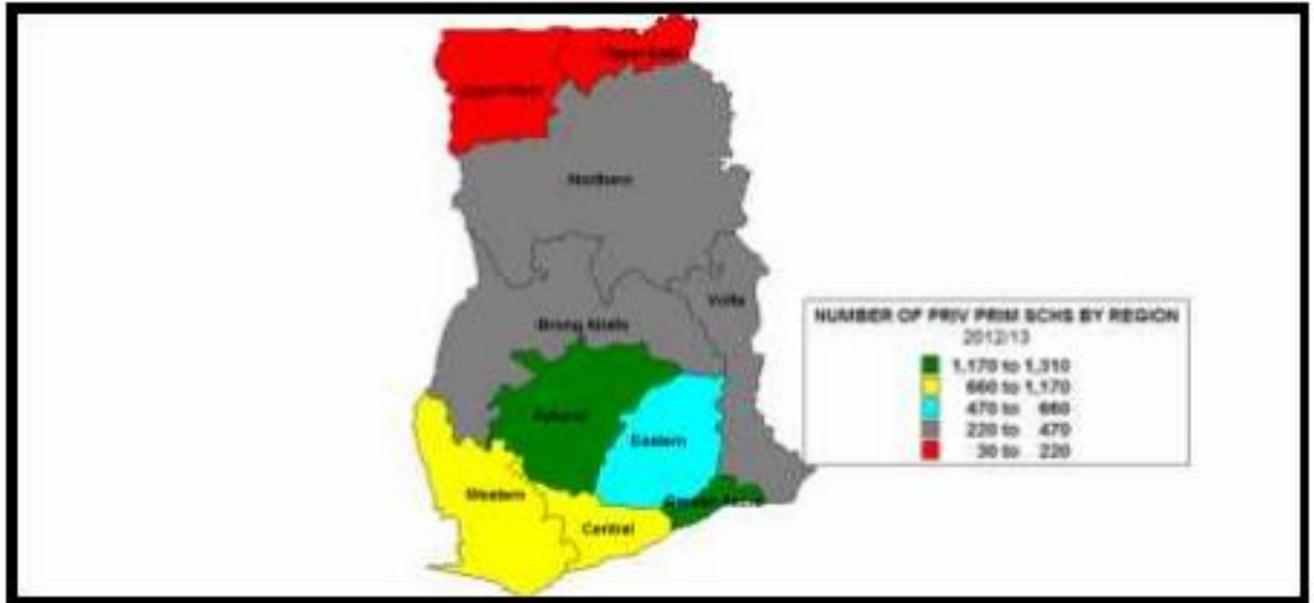
<sup>22</sup> Ibid.

<sup>23</sup> Ghana Ministry of Education, “Education Sector Review: Final Team Synthesis Report”, <http://www.moe.gov.gh/docs/ESR%20Reports/Chapter%206-9.pdf>, p. 141.

<sup>24</sup> Ibid., p. 140.

<sup>25</sup> Ghana Ministry of Education, “Report on Basic Statistics and Planning Parameters for Basic Education in Ghana 2012/2013”, <http://www.moe.gov.gh/docs/Basic/2012-2013/Basic%20Report%202012-2013%20No.1.pdf>, p. 9.

## MAP 3.2.1b: NUMBER OF PRIVATE PRIMARY SCHOOLS BY REGION, 2012/2013



26

8. As a result, since the intensification of the phenomenon of privatization in education in Ghana in the last years, inequalities in the education system have further increased.<sup>27</sup> For instance, the gap between the rural poorest lower secondary pupils and the richest urban lower secondary pupils in learning basics in mathematics has significantly increased, from 8 points difference in 2003, to 21 points in 2007, reaching a record 30 points in 2011 (see graphs below showing the evolution for the three selected years).

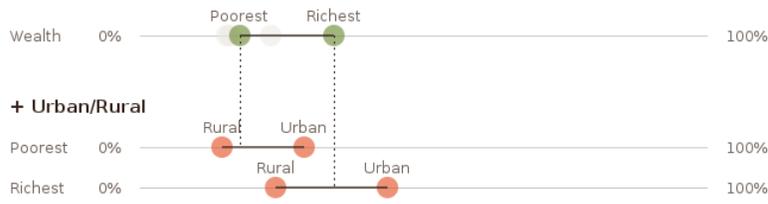
<sup>26</sup> Extracted from *ibid.*, available at <http://www.moe.gov.gh/docs/Basic/2012-2013/Basic%20Report%202012-2013%20No.2.pdf>.

<sup>27</sup> Djangmah J.S 2011 *Inequitable Access to Basic Education in Ghana: The Way Forward for Free Compulsory Universal Basic Education (FCUBE)*.

Ghana

Learned basics in mathematics

Wealth Disparities



© UNESCO. All rights reserved.

Age groups

- Lower Secondary

Years

- 2011

Options

Wealth

- Wealth

+

- Gender

- Urban/Rural

- Speaks Language at H

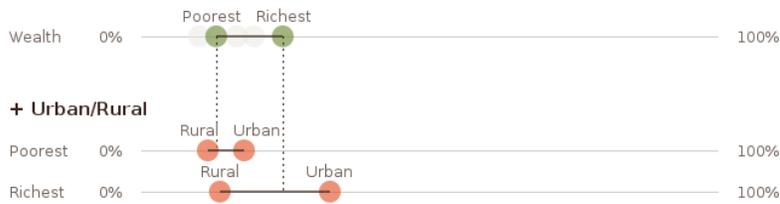
+

- Gender

Ghana

Learned basics in mathematics

Wealth Disparities



© UNESCO. All rights reserved.

Age groups

- Lower Secondary

Years

- 2007

Options

Wealth

- Wealth

+

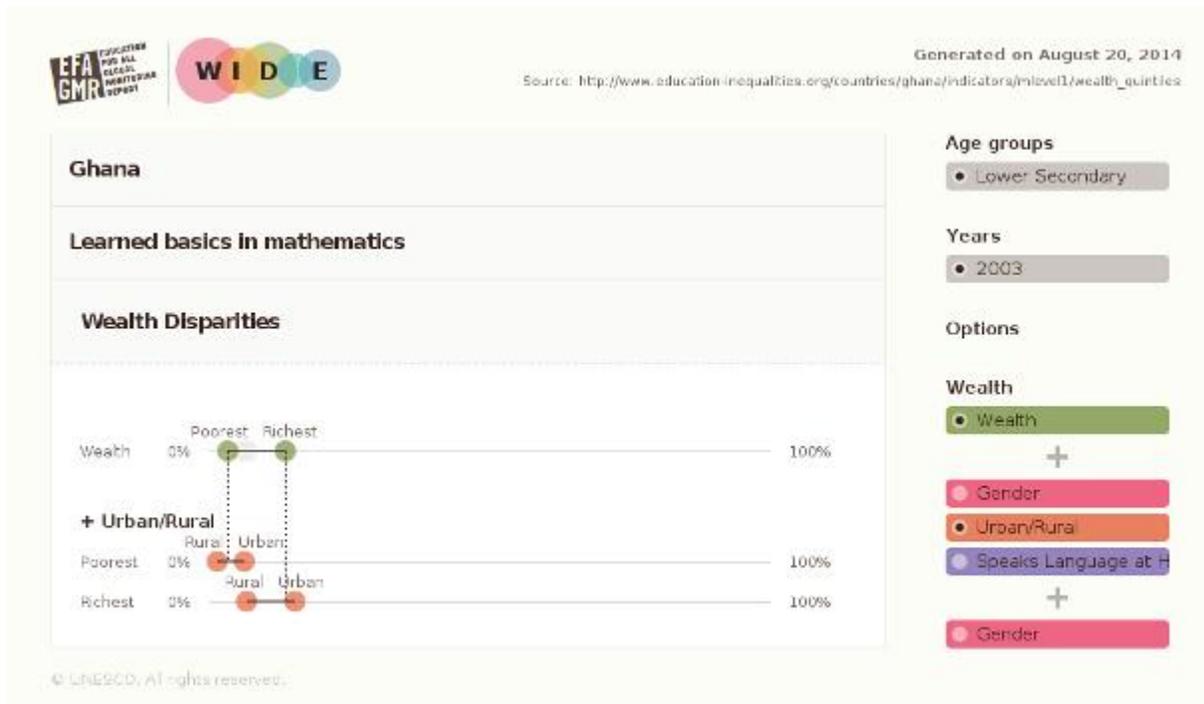
- Gender

- Urban/Rural

- Speaks Language at H

+

- Gender



9. We are therefore extremely concerned that the Government’s support for the growth of private education is worsening inequalities in the education system. Under the current situation we have high fee paying good quality private schools which are generally patronized by wealthier segments of society who are able and willing to pay the high fees charged by such institutions whilst the poorer segments of society mostly rely on public schools for education.<sup>28</sup> Thus, the growth of private schools is creating a divide and a fragmentation within the society between people who can access elite expensive private schools, and those who cannot.<sup>29</sup> As noted by the ministry of education itself:

*it is also known that most of the children in private schools come from middle class homes where the environment is conducive to learning. This, rather regrettably, cannot be denied and that implies that unless drastic steps are taken to improve public basic schools that class divide will continue to be a permanent feature of Ghanaian society.<sup>30</sup>*

This is the case in Ghana, as it is the case in many other countries, such as the recently documented case of Morocco, which was brought before the CRC.<sup>31</sup> We are also extremely concerned that this situation is not going to change, as those who are negatively affected by these policies, including

<sup>28</sup>Ministry of Education of Ghana, “Education Sector Review: Final Team Synthesis Report”, <http://www.moe.gov.gh/docs/ESR%20Reports/Chapter%206-9.pdf>

<sup>29</sup> These are the Coalition’s observation of what happens on the ground. Further research will be done in the coming months to further document the situation.

<sup>30</sup> Ministry of Education of Ghana, “Education Sector Review: Final Team Synthesis Report”, <http://www.moe.gov.gh/docs/ESR%20Reports/Chapter%206-9.pdf>, p. 124.

<sup>31</sup> See <http://globalinitiative-esr.org/advocacy/privatization-in-education-research-initiative/research-project-on-the-impact-of-the-development-of-private-education-in-morocco/>

the most vulnerable, are not in a position to influence the political decisions supporting education privatization. As noted in a World Bank report:

*as more families enter the middle class and urbanize, many pupils are exiting the public system and paying for elite private schools. 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. This dynamic presents important public policy choices: Do the people of Ghana want to support strong public basic schools or will the education landscape in Ghana continue to follow the current trajectory of a highly unequal two tiered system?*<sup>32</sup>

10. In addition to this trend, recent studies have revealed that low income households are also beginning to patronize private schools, in so-called “low cost” or “low fee” private schools.<sup>33</sup> Low cost private schools (LCPS) are independent, for-profit private schools that target low-income households and that claim to offer a quality education. It is estimated that there are over 7,000 such schools in Ghana with more than 500,000 children enrolled.<sup>34</sup> Attending these schools is generally not a choice: parents are merely trying to avoid the poor performance of government schools, overcrowded classrooms, teacher absenteeism, the dilapidated infrastructure and generally deplorable conditions associated public education. Closer analysis shows that private schools might not be affordable to the poorest people in Ghana, and that rather, attending private schools involves making huge sacrifices for families.<sup>35</sup> As it has been well documented in a recent academic study, when low-income households have to spend up of 40% of their earnings to send one child to a school, such schools cannot be described as affordable.<sup>36</sup> It has been calculated that:

*Currently, the 20 Omega Schools [a chain of low fee private schools supported by a UK-based company] operating in Ghana are clustered in peri-urban localities in the Greater Accra and Central regions. The Greater Accra region has the highest annual household income in the country with an average of 1529 Cedis while the Central region has the third highest average of 1310 Cedis (GSS, 2008). The poorest 5% in Greater Accra and the poorest 7% in Ghana’s Central region earn, on average, an annual household income of 728 Cedis (GSS, 2008). If we were to take an annual household income of 728 Cedis in relation to school costs of 1.50 Cedis per day x 210 schools days in a year, it would cost 315 Cedis or 43% of a family’s annual household income to send one child to an Omega School for one year. If we were to make a similar calculation*

---

<sup>32</sup> Darvas, Peter and David Balwanz. 2013. *Basic Education beyond the Millennium Development Goals in Ghana: How Equity in Service Delivery Affects Educational and Learning Outcomes.*

<sup>33</sup> Darvas, Peter and David Balwanz. 2013. *Basic Education beyond the Millennium Development Goals in Ghana: How Equity in Service Delivery Affects Educational and Learning Outcomes.*

<sup>34</sup> <http://www.idpfoundation.org/wp-content/uploads/2012/06/Low-Cost-Private-Education-Sector-Paper.pdf>  
Retrieved 11/8/14

<sup>35</sup> <http://blogs.worldbank.org/education/there-role-private-sector-education> Retrieved 11/8/14

<sup>36</sup> Curtis B. Reip, *Omega Schools Franchise in Ghana: ‘affordable’ private education for the poor or for-profitteering?* 2013. Pg 271-272

*using the average annual household income in all of Ghana (which is 1217 Cedis), families would have to spend 26% of their household income on education expenditures for one child. Most families in Ghana have more than one child. Low-income households in Ghana cannot afford to pay upwards of 40% of their earnings on educational expenditures for only one child, while other basic necessities such as food, health and shelter must also be met.*<sup>37</sup>

Some of these LCPS, including schools backed by Europe-based companies or development agencies, have adopted an innovative approach by taking a daily payment system, whereby parents pay fees on a day-by-day basis. Research has also shown that daily payments brings a wealth of issues with regards to the access to education, in particular for families that are able to pay the school fees one day, and unable to pay another day. To keep operational costs at a minimum these schools have also resorted to the use of untrained high-school graduates as teachers and have higher pupil to teacher ratio.<sup>38</sup>

11. Thus, the quality of LCPS, which are generally seldom monitored and inspected by the authorities, is often poor<sup>39</sup> and parents have to make huge sacrifices to be able to pay the fees to send their children to these schools. This impinges on other rights protected by the Convention of the Rights of the Child, such as the rights to food or health. The State Party has partly recognised this situation, noting in the 2012 Education Sector Performance Report that “*many small towns and villages have some form of private education, and even though the quality may not be the best, it may be preferred to the public schools*”.<sup>40</sup>

12. In addition, the poor enforcement of the regulatory framework for private institutions which is included in Section 23 of the Education Act 2008, Act 778 means that parents are being made to pay a high cost for education without even getting the assurance that their children are getting the quality of education they are paying for.<sup>41</sup> For example, some LCPS are located in very unsanitary environments which is a clear violation of the law.<sup>42</sup> The Private School Desk within Ghana Education Service (GES) and Districts Education Offices, which have the mandate to supervise

---

<sup>37</sup> Ibid.

<sup>38</sup> Curtis B. Reip, “Omega Schools Franchise in Ghana: ‘affordable’ private education for the poor or for-profitteering?” PERI, 2013. Pg 274. See generally UNESCO, “Education for All Global Monitoring Report 2013/214”, p. 272 – 274, e.g.: “Teachers in low fee private schools are often recruited on temporary contracts and receive very low wages, sometimes below the minimum wage.”

<sup>39</sup> E.g. UNESCO, “Education for All Global Monitoring Report 2013/214”, p. 273 – 274: “*In addition, low fee private schools often have fewer trained teachers. In Ghana, less than 10% of teachers in private schools in economically disadvantaged districts were trained, while nearly half the government teachers in schools serving the same area were trained (Akaguri, 2011).*” (GMR 2013/4, p. 273). See also generally Global Campaign for Education, report on privatization to be published in September 2014 – see <http://www.campaignforeducation.org/en/campaigns/privatisation>.

<sup>40</sup> <http://thechronicle.com.gh/private-schools-gain-90-of-nation%E2%80%99s-best-schools/> 11/814

<sup>41</sup> Education Act 2008, Section 23

<sup>42</sup> <https://dfid.blog.gov.uk/2013/05/21/ghanapherson-families-pay-for-a-private-education/> Retrieved 13/8/14

such schools, are understaffed and under-resourced rendering them ineffective in undertaking their responsibilities.<sup>43</sup> LCPS are profit-making enterprises targeted at the poor, and it is therefore imperative that the Government takes the initiative to ensure that their rights, in particular their right to education, are protected, as they are extremely vulnerable to enterprises seeking to make profits at all costs and selling low-quality products in an appealing package.

13. Although there is formally a complaint procedure, most parents who patronize private education do not know about the existence of this procedure established in the Education Act 2008, which enables parents dissatisfied with the inferior standards of teaching or learning in a private institution to complain.<sup>44</sup> This is particularly regrettable because private schools are not cooperative with the government. For instance, although the fees paid by families for private schools are supposed to be determined each year by a committee, in which both the MOE and the Ghanaian Association of private schools are represented, the Government has noted that “*not all private schools apply the agreed fees scale, in particular the best ones*”.<sup>45</sup> Thus, while it is therefore no surprise that the Government notes that “*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*”,<sup>46</sup> it appears inconceivable that no effective accountability mechanism was put in place to address this issue, and that instead, the State Party as well as international donors keep on supporting private schools.

14. Finally, lack of data and transparency on the fast-paced privatization of the education system in Ghana and its impact on children’s right to education, in particular with respect to low fee private schools, is also extremely concerning. It is crucial to have more comprehensive data on types/grades of private schools, particularly in poor urban/peri-urban areas and rural areas, who is accessing them, the fees charged by schools and their impact on access and quality of education delivery to enhance monitoring and regulation of the sector. . The ministry of education recognized itself that it lacks data on crucial aspects from a human rights perspective, such as fees charged by private schools,<sup>47</sup> and it indicated that “*even the number of private schools is uncertain, as far as some schools may find attractive not to register their existence with public authorities*”.<sup>48</sup>

### **III. The Right to Education under the Convention on the Rights of the Child as it relates to privatization in education**

12. The Convention on the Rights of the Child (CRC) states that States Parties have an obligation to recognize every child’s right to education. This involves an obligation to make

---

<sup>43</sup> Based on discussion with an officer at Private Schools Unit.

<sup>44</sup> Education Act 2008

<sup>45</sup> Ministry of Education of Ghana, “Education Sector Review: Final Team Synthesis Report”, <http://www.moe.gov.gh/docs/ESR%20Reports/Chapter%206-9.pdf>, p. 140.

<sup>46</sup> *Ibid.*, p. 124

<sup>47</sup> *Ibid.*, p. 140.

<sup>48</sup> *Ibid.*, p. 131.

primary education compulsory and available free to all.<sup>49</sup> Useful guidance on the right to education is found in the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>50</sup> and the Committee on Economic, Social and Cultural Rights (CESCR) General Comment 13.<sup>51</sup>

13. In relation to primary education, the CESCR in General Comment 13 says that the State's obligation to fulfill the right to education amounts to an obligation to *directly provide* education in most circumstances and suggests that its obligations in relation to primary education may be of a higher order and entails more immediate obligations.<sup>52</sup> General Comment 13 states:

*First, it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances; States parties recognize, for example, that the "development of a system of schools at all levels shall be actively pursued" (art. 13 (2) (e)). Secondly, given the differential wording of article 13 (2) in relation to primary, secondary, higher and fundamental education, the parameters of a State party's obligation to fulfill (provide) are not the same for all levels of education. Accordingly, in light of the text of the Covenant, States parties have an enhanced obligation to fulfill (provide) regarding the right to education, but the extent of this obligation is not uniform for all levels of education.*<sup>53</sup>

13. While the CRC permits (as does the ICESCR<sup>54</sup>) the provision of education (to unspecified levels) by non-State providers, as provided in article 29(2), the liberty to establish educational institutions is constructed negatively, as something that should not be affected by the fulfillment of the right to education. The responsibility is thus on the State to fulfill the right to education. The UNESCO Convention against Discrimination in Education takes a similar approach in its article 2 which provides that the establishment or maintenance of private educational institutions does not constitute discrimination when it is to provide educational facilities *in addition to those* provided by the public authorities.<sup>55</sup> It should also be noted that in its indicators on the right to education, the OHCHR suggests to measure child enrolments in *public* education institutions as an indicator of compliance with human rights standards.<sup>56</sup>

---

<sup>49</sup> Convention on the Rights of the Child, 1989, Articles 28(1) and (1)(a)

<sup>50</sup> International Covenant on Economic, Social and Cultural Rights, 1966, Article 13

<sup>51</sup> CESCR General Comment 13, The right to education (Article 13): 08/12/1999, E/C.12/1999/10

<sup>52</sup> CESCR, General Comment 13, paragraphs 48, 51, 52.

<sup>53</sup> *Emphasis added.* CESCR, General Comment 13, paragraph 48.

<sup>54</sup> See also ICESCR, Article 13(4) and CESCR General Comment 13, paragraph 59.

<sup>55</sup> UNESCO Convention against Discrimination in Education, 1960. It can also be noted that in Africa, the African Commission on Human and Peoples' Rights also considers the African Charter on Human and People's Rights to require States 'to respect the liberty of parents and guardians to establish and choose for their children schools, *other than those established by the public authorities*', clearly emphasizing the primacy of public schools.<sup>55</sup>

<sup>56</sup> OHCHR, *Human Rights Indicators: A Guide to Measurement and Implementation* (2012).

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

*[i]nternational human rights law defines free and compulsory education as a government obligation, thus implying that it should be a free public service, while permitting private education for those parents who desire and can afford it, bearing in mind most private schools charge for their services.<sup>57</sup>*

15. Thus, it is permissible and even required, to allow the development of private education, but the State retains the positive obligation to fulfill the right to education, and the obligation to provide primary education for all is an immediate duty of States.<sup>58</sup> Following this line, the South African Constitutional Court recently found that the primary positive obligation with respect to the right to education rests on the State and that there is no primary positive obligation on private actors to provide basic education, but instead, a negative obligation not to infringe the students' right to education.<sup>59</sup>

16. CESCR General Comment 20 specifies that any kind of discrimination, whether direct or indirect, formal or substantive is prohibited.<sup>60</sup> The States Parties' obligations with respect to non-discrimination are immediate (as opposed to being subject to progressive realization) and require States to pay particular attention to vulnerable or marginalized groups and to prioritize the realization of their rights, including groups based on economic and social situation. Non-discrimination also applies to the distribution of government funds and resources for education.

17. States Parties are required to ensure that private entities providing education are doing so in a manner that is consistent with the CRC, including the principle of non-discrimination. According to the CESCR, the State has an obligation to ensure that privatized education '*does not lead to extreme disparities of educational opportunity for some groups in society*'.<sup>61</sup> Similarly, the Committee on the Rights of the Child has recently noted that States must ensure that the provision of essential services by private actors '*does not threaten children's access to services on the basis of discriminatory criteria*'.<sup>62</sup>

18. These obligations entail States regulating private providers, monitoring and evaluating their compliance and educational outcomes and enforcing compliance where necessary. The CRC indicated that States have '*an obligation to set standards in conformity with the Convention and*

---

<sup>57</sup> Katarina Tomaševski, *Manual on rights-based education*, UNESCO (2004), p. 55.

<sup>58</sup> CESCR, General Comment 13, para. 51.

<sup>59</sup> Constitutional Court of South Africa, *Governing Body of the Juma Masjid Primary School & Others v Essay N.O. and Others*, Case CCT 29/10 (2011), especially para 57.

<sup>60</sup> CESCR, General Comment 20.

<sup>61</sup> CESCR, General Comment 13, para. 51.

<sup>62</sup> CRC General Comment 16, paragraph 34.

*closely monitor them*'.<sup>63</sup> Failure to do so amounts to a violation of the Convention<sup>64</sup> and the privatization of State services has repeatedly been struck down or limited by courts on the ground of violation of CESC. <sup>65</sup>

19. Finally, States have an obligation to ensure that the maximum available resources are devoted to achieving education outcomes, and thus have the burden of demonstrating that any State resources diverted to private providers of education cannot be better utilized by allocating them to the direct provision of public education.

20. Privatization in education is a growing global phenomenon threatening the right to education in many countries, and Ghana is a striking example of this emerging threat for the right to education.<sup>66</sup> Privatization affects particularly vulnerable groups, such as girls, as shown in a recent submission made to the CEDAW.<sup>67</sup> An increasing body of research is examining the impact of these developments on human rights and social justice.<sup>68</sup> In June 2014, thirteen organisations – including the organisations involved in writing this report – met for three days in Geneva to discuss these issues. We held on this occasion a side event at the Human Rights Council as well as an expert roundtable attended by Mr. Singh, the Special UN Rapporteur on the right to education, who reemphasised that according to human rights standards, private education should only supplement that of the State, which should remain the primary provider of education services.<sup>69</sup> These events confirmed the scale of the phenomenon and the dangers of privatisation in education.<sup>70</sup>

#### **IV. Recommendations for the List of Issues**

We suggest that the Committee on the Rights of the Child could raise the following issues with the State Party in order to gain clarification on the privatization in education and its impact in Ghana:

- Has the State Party assessed whether its policy of privatizing education in Ghana is the most effective in terms of realizing the right to education under the Convention and in

---

<sup>63</sup> CRC General Comment 16, paragraph 34.

<sup>64</sup> Ibid., CESC. General Comment 13, paragraph 59 which states that failure to maintain a transparent and effective system to monitor conformity with ICESCR Article 13(1) is a violation of Article 13.

<sup>65</sup> Argentina, *Aquino, Isacio vs. Cargo Servicios Industriales S. A. s/accidentes ley 9688* (2004); South Africa, *Nkonkobe Municipality v Water Services South Africa (PTY) Ltd & Others* (2001); Argentina, *Defensora del Pueblo de la Ciudad de Buenos Aires y otro c. Instituto Nacional de Servicios Sociales para Jubilados y Pensionados* (1999).

<sup>66</sup> See generally <http://www.periglobal.org/>

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

<sup>68</sup> See generally the work engaged by a number of leading organizations working in the education fields summed up on <http://www.right-to-education.org/issue-page/privatisation-education>

<sup>69</sup> See the summary of the event on <http://globalinitiative-escr.org/wp-content/uploads/2014/07/GI-ESCR-Summary-of-Privatisation-in-Education-events-Geneva-June-2014-FINAL.pdf>

<sup>70</sup> See <http://globalinitiative-escr.org/privatisation-in-education-advocacy-and-research-workshop-and-public-events-reports/>

terms of use of available resources, in particular in order to address discrimination and how has it done so?

- How does the State Party regulate, monitor and practically enforce the provision of education by private providers in Ghana to ensure that it is consistent with Convention rights?
- As a number of international donors, including the World Bank and DFID, are supporting the development of private schools – and in particular low fee private schools – in Ghana, has the State Party engaged with these actors to:
  - monitor and address the impact that their support to private schools has on the right to education; and
  - re-direct these resources towards supporting the public education system so as to fulfill the State Party’s core minimum obligations under the Convention, including the obligations to not discriminate and to prioritize disadvantaged groups, in accordance with the international donors’ human rights obligations?<sup>71</sup>

**Contact information:**

**Sylvain Aubry**  
Right to education  
consultant, Global  
Initiative on Economic,  
Social And Cultural  
Rights  
[sylvain@globalinitiative-  
escr.org](mailto:sylvain@globalinitiative-escr.org)

**Bret Thiele**  
Co-Executive Director  
Global Initiative for  
Economic, Social and  
Cultural Rights  
[bret@globalinitiative-  
escr.org](mailto:bret@globalinitiative-escr.org)

**Leslie Tettey**  
National Coordinator  
Ghana National Education  
Campaign Coalition  
(GNECC)  
[niofosu2000@yahoo.com](mailto:niofosu2000@yahoo.com)

---

<sup>71</sup> See for instance the Maastricht Principles on Extraterritorial Obligation of States in the area of Economic, Social and Cultural Rights, [http://www.etoconsortium.org/nc/en/library/maastricht-principles/?tx\\_drblob\\_pi1%5BdownloadUid%5D=23](http://www.etoconsortium.org/nc/en/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23)