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United Nations Committee on the Elimination of Discrimination against
Women (CEDAW)

Half-Day General Discussion on girls'/women's right to education

7 July 2014

Privatization and its Impact on the Right to Education of Women and Girls

Written Submission by:

Ação Educativa

ActionAid

Arab Campaign for Education for All (ACEA)

Asia South Pacific Association for Basic and Adult Education (ASPBAE)

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Latin American Campaign for the Right to Education (Campaña Latinoamericana por el Derecho a la Educación)

Open Society Foundations - Education Support Programme

Right to Education Project

SECTION27

27 June 2014

Introduction

This report on ‘Privatization and its Impact on the Right to Education of Women and Girls,’ is informed by an e-consultation held via the [Right to Education Project Discussion Forum](#), as well as over Facebook and Twitter. The discussion forum is a global, multilingual online forum. The e-consultation began on 15 May 2014. In addition, this written submission was also informed by a recent two-day workshop held in Geneva, Switzerland (from 13-14 June) addressing privatization and the human right to education. The workshop brought together advocates from 12 different countries (Belgium, Brazil, Ghana, India, Kenya, Lebanon, Morocco, Philippines, Senegal, South Africa, Spain, UK, and USA), advocates representing networks from Africa, Asia-Pacific and Latin America and advocates from civil society organizations, including teachers, working at a global level. The workshop specifically addressed gender discrimination within the context of privatization of education and was used as an opportunity to gather inputs into this written submission.

Our global consultations have highlighted that privatization in and of education has specific negative consequences for women and girls. The most comprehensive and recent review of the literature on privatization in education has found that “*Girls are less likely than boys to be enrolled in private schools,*”¹ and this finding has been corroborated by other scholars who highlight that rather than fostering real choice when it comes to education, privatization reinforces social exclusion:

The proposition that ‘private schools provide real choice for parents including the disadvantaged’ ... needs serious qualification. Choice may indeed exist for the relatively affluent and mobilized but this is counterbalanced by the seeming structural exclusion by private schools of the very poor, girls and marginalized groups. In turn, private schools risk entrenching economic divisions, deepening gender discrimination and institutionalizing class inequalities.²

These are troubling trends which have specific gendered impacts, and we believe that – especially given the increasing trend towards privatization in and of education – these impacts should be addressed within the context of CEDAW’s upcoming General Recommendation on the right to education for women and girls.

This report highlights that privatization in many cases exacerbates gender discrimination in the area of education, in part because in many countries parents favor the education of boys over girls. As quality education becomes more costly, studies show that boys are often given priority over girls. This problem is also further compounded by other issues which emerge within the context of privatization, such as poor regulation and oversight of private education providers leading to, in some cases, lack of accountability for sexual assault of girls by school teachers, colleagues and administrators; promotion of gender stereotypes; and lack of access to sexual and reproductive health education, which also have disproportionate impacts on girls.

The submitting organizations conclude that in order for women and girls to be able to realize their right to education, as well as their rights to non-discrimination and equality more broadly, it is imperative that education be seen as a public good, and not as a commodity. This is in line with a human rights-based understanding of the right to education, and it also underscores not only a State’s obligation to protect, but also to fulfill the right to education. The negative consequences which are borne when education is privatized, such as systemic discrimination

¹ Laura Day Ashley, Claire Mcloughlin, Monazza Aslam, Jakob Engel, Joseph Wales, Shenila Rawal, Richard Batley, Geeta Kingdon, Susan Nicolai and Pauline Rose, ‘The Role and Impact of Private Schools in Developing Countries: A Rigorous Review of the Evidence,’ Department for International Development, 2014. The report is based on a rigorous review of evidence on the role and impact of private schools on the education of school-aged children in developing countries. It was commissioned by the Department for International Development (DFID) and produced by a multi-disciplinary team of researchers and advisers with expertise in education, economics, international development and political economy from the University of Birmingham, Institute of Education, Overseas Development Institute (ODI) and the Education For All (EFA) Global Monitoring Report.

² Emphasis added. Ian Macpherson, ‘Interrogating the Private-School “Promise” of Low-Fee Private Schools,’ Chapter 14 in *Education, Privatisation and Social Justice*, 2014.

against girls when education becomes marketized, cannot be adequately redressed through increased regulation of private actors alone. Quality free public education is the key to demolishing structural barriers to girls' access to education, so that parents are not forced to choose between their sons' and daughters' education. Thus, a renewed emphasis on a State's obligation to fulfill the right to education is needed in order for women and girls to enjoy their right to education in practice, and so that education is truly transformative as a human right.

Understanding Privatization in Education as a Global Trend

Today, the United Nations estimates that 123 million youth ages 15-24 lack basic reading and writing skills, and 61 per cent are young women and girls.³ UNESCO has stated that “*Gender-based discrimination in education is both a cause and a consequence of deep-rooted disparities in society.*”⁴ The OECD's Social Institutions and Gender Index (SIGI) similarly shows that “[w]omen's low status in the family is linked to reduced educational attainment and economic outcomes for women and girls.”⁵ Conversely, girls' education also has well known benefits – it is empowering and valuable in and of itself, and it also leads to other social gains.⁶ For example, UNFPA has highlighted that education of girls is closely related to improvements in family health and to falling fertility rates, and that girls who are educated grow up to have more healthy children themselves.⁷ Still, as the United Nations Special Rapporteur on the right to education (V. Muñoz Villalobos) has noted: “*[r]hetoric in favour of girls' rights has not prevented education from continuing to be one of the lowest budget priorities and one of the least favoured areas in public policy.*”⁸

Amidst this backdrop of continuing gender inequality, the global landscape when it comes to education is also rapidly changing. One of the most notable of these changes is the recent trend towards privatization in and of education in many countries.⁹ In general terms, privatization signifies “*a transfer of financing, management, service delivery and ownership of education facilities and other*

³ UN Department of Public Information MDGs Factsheet, ‘Goal 2 – Achieve Universal Primary Education,’ September 2013.

⁴ United Nations Educational, Scientific and Cultural Organization (UNESCO), ‘Education: Gender Equality in Education,’ available online at: <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/gender-and-education/> [last accessed 20 May 2014].

⁵ OECD, ‘2012 SIGI: Social Institutions and Gender Index: Understanding the drivers of gender inequality,’ 2012.

⁶ See: UNESCO, ‘Education Transforms Lives,’ 2013.

⁷ See: UNFPA, ‘Reproductive Health and Education: The Mutual Relationship,’ available online at: <http://web.unfpa.org/intercenter/cycle/education.htm> [last accessed 20 May 2014].

⁸ Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, ‘Girls’ right to education,’ UN Doc. E/CN.4/2006/45, 8 February 2006, at para. 55. The Special Rapporteur has also said that stereotyping at school and within educational curriculum is a major problem, reporting *inter alia* that: both men and women teachers have low expectations of girls’ intellectual skills, that teachers often give girls less feedback and frequently report that they enjoy teaching boys more than girls; that girls have lower and fewer expectations of themselves in and out of school and think that their future consists primarily of being wives and mothers; that low expectations are reinforced by textbooks, curricula and assessment material, in which no female figures appear; that prizes won by girls and girls’ achievements are not as widely reported or publicized as boys’; and that there is a clear tendency to use sexist language within schools and within curricula. In terms of helping to develop the content of the right to education from a gender equality perspective, the Special Rapporteur made a range of specific recommendations aimed at increasing the availability, accessibility, acceptability and adaptability of education for girls. *Ibid.*, at paras. 127-152.

⁹ Highlighting the trends, scholars have noted that:

First, that what is new about these manifestations [of privatization in/ of education] is their scale, scope and penetration into almost all aspects of the education endeavour – from the administrative apparatus to policymaking, and from formal provision in education settings, to out-of-school activities, such as private tutoring. Second, that what is particularly controversial about these current developments is how education itself is being recast; as a sector it is increasingly being opened up to profit-making and trade, and to agenda-setting by private, commercial interests. Third, that the learner is increasingly conceptualised as a consumer, and education a consumer good. These developments raise the very important question around what these developments mean for our conceptualisations of education, learning and teaching, on the one hand, and for education as a site and means for emancipation, on the other.

*assets, from public to private or non-governmental hands.*¹⁰ ‘Privatization’, however, is also used as a proxy for private (for profit) and non-state (religious, community and NGO) provision of education, even in the absence of direct or intentional ‘transfer’ by States. This, in essence, constitutes a kind of *de facto* privatization which is increasing in many developing countries. It should be noted that philanthropic schools and education programs delivered by NGOs often fulfill the immediate education needs of marginalized communities in the absence of government provision. The burden of providing education to the communities most in need are passed on to these NGOs. This comprises *de facto* privatization and the State should be called to account for abdicating its obligation to provide education to all, including to learners in difficult circumstances. For the purposes of this written submission, the term ‘privatization’ is meant to be inclusive of *de facto* privatization, as well.

There may be privatization ‘of’ education, when public sector activities related to education are outsourced to the private sector, as discussed above, but also privatization ‘in’ education. The latter refers to the many and complex ways in which the mentality of the business world is injected into education, such that it operates like a competitive market, with choice, marketing managers, branding, data on student performance as proxies of quality, etc. It also refers to the ways in which education departments and ministries operate in more corporate-like ways, with competitive units, performance targets, outputs and forms of performance management. According to some authors, this form of privatization “*represents the colonisation of the idea of education as a public service by more an economic logic that is aligned with the idea of a free market.*”¹¹

There are several different types of private school and types of arrangements that comprise ‘privatization’ trends in education. These include (but are not necessarily limited to) the following:

1. **For Profit Schools** – Schools designed to return a profit to shareholders or owners;
2. **Public Private Partnerships (PPP)** – Flexible governance and financial arrangements between governments and private sector to provide public services (*e.g.* school voucher systems);
3. **Low Fee Private Schools** – Fee-based education provided by either large or small entrepreneurs, which is either profit-making or not profit-making;
4. **Private Tutoring** – Ancillary or additional lessons privately provided outside of normal school hours;
5. **Philanthropy Schools** – Non-state initiatives that work for the public good led by communities, religious institutions or self-funded philanthropic organizations (NGOs).¹²

Privatization necessarily implies that States are no longer themselves solely providing education to the general public as the main provider, and instead allow at least part of this role to be filled by private and non-State entities and institutions. However, under the international human rights framework, States are the sole duty-bearer when it comes to respecting, protecting and fulfilling the right to education, and they must ensure that there is no retrogression when it comes to the advancement and enjoyment of this right.¹³

¹⁰ Global Campaign for Education & RESULTS Educational Fund, ‘Making it Right: Ending the Crisis in Girls’ Education,’ 2012.

¹¹ Ian Macpherson, Susan Robertson and Geoffrey Walford, ‘An Introduction to Privatisation, Education and Social Justice,’ Chapter 1 in *Education, Privatisation and Social Justice*, 2014, pp. 14-15.

¹² For more information, please see: <http://www.periglobal.org/> See also: Stephen J. Ball and Deborah Youdell (Institute of Education, University of London), ‘Hidden Privatisation in Public Education,’ *Education International*, 2008.

¹³ Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), at para. 48.

Privatization is also increasingly promoted by International Financial Institutions (IFIs) as a requirement for receiving international aid.¹⁴ This trend is proving to have significant implications for the human right to education, both in terms of quality of education and in terms of accessibility and affordability of education. As the UN Special Rapporteur on the Right to Education (K. Singh) highlighted in a recent report: *“in many parts of the world inequalities in opportunities for education will be exacerbated by the growth of unregulated private providers of education, with wealth or economic status becoming the most important criterion to access a quality education.”*¹⁵

There is growing evidence that privatization in and of education has a range of detrimental effects on the enjoyment of the right to education, with specific negative consequences for women and girls. In addition to less access, concern has been raised that privatization in/of education can lead to *greater discrimination* and that: *“[m]arginalised groups fail to enjoy the bulk of the positive impacts and also bear the disproportionate burden of the negative impacts of privatisation [in education].”*¹⁶ The gendered nature of these negative impacts are addressed in more detail in the following section.

The Impact of Privatization on Girls’ and Women’s Right to Education

The warning signs about privatization’s impact on the right to education for women and girls are not new, and many organizations have cautioned that privatization of education has *“associated risks to gender equity.”*¹⁷ Almost ten years ago, Save the Children reported that *“Private schools often charge very high fees, isolating children, especially girls from poor families, from school. The privatisation of public services is also often undertaken without adequate consideration of issues of equitable access, affordability, coverage, quality and effects on public service provision for the poor.”*¹⁸

As noted above, what is new is the *increasing trend* towards privatization, particularly within the context of economic crisis and the move by many States to implement austerity measures and make significant cuts to social services. It is this increasing trend that makes it an opportune moment for the CEDAW Committee to offer guidance around issues of privatization in and of education, and its potentially detrimental impacts for women and girls.

The discriminatory impact of low-fee private (LFP) schools¹⁹

Education must be seen within the wider social context in which gender inequality is too often a pervasive reality permeating not only the educational sphere, but also manifesting itself as gender-based violence, inequality in the workplace and within labor markets, denial of political and civil rights, and marginalization in terms of productive resources. This broader reality underscores why it is imperative to champion the transformative nature of the right to education, because without this basic orientation educational systems can perpetuate and deepen, rather than ameliorate, patterns of gender inequality. Monetizing access to education through privatization deepens exactly these inequalities.

¹⁴ Save the Children, ‘Achieving the Gender Parity Millennium Development Goal,’ Policy Briefing, 2005. See also: Bretton Woods Project, ‘Going, going, gone?: World Bank’s funding for public education,’ 9 May 2014.

¹⁵ UN Doc. A/68/294, para. 26.

¹⁶ The Right to Education Project (RTE), ‘Privatisation in Education: Global Trends and Human Rights Impact,’ 2014.

¹⁷ Global Campaign for Education & RESULTS Educational Fund, ‘Making it Right: Ending the Crisis in Girls’ Education,’ 2012.

¹⁸ Save the Children, ‘Achieving the Gender Parity Millennium Development Goal,’ Policy Briefing, 2005.

¹⁹ Low-fee private schools have expanded in the last decade in many countries, for example in India, Pakistan, Ghana, Kenya, etc. Investment by edu-corporations in low-fee for-profit private schools is also on the rise (for example, see Pearson Affordable Learning Fund). One problem is that schools keep costs low by employing unqualified teachers on low wages, for more information please see: <http://www.educationincrisis.net/blog/item/904-whats-wrong-with-low-cost-private-schools-for-the-poor> [last accessed 26 June 2014]. Gender pay gaps have also been cited as a problem within the private education sector, see for example: http://www.ilo.org/beirut/media-centre/news/WCMS_213626/lang-en/index.htm [last accessed 26 June 2014].

Private provision usually means the introduction of school fees, and herein lies one of the most important issues from the standpoint the right to education of women and girls. As the United Nations Girls' Education Initiative (UNGEI) has highlighted, free schooling may be the “*single most important policy measure*” to ensuring that girls (as well as boys) are able to access education.²⁰ While the World Bank and others have lauded the positive effects of public-private partnerships (PPPs) in education and low-fee private schools,²¹ international education researchers and international development organizations have raised concern, especially from the standpoint of girls' education. For example, Oxfam International has highlighted that:

*In recent years, donors have also increased support to 'low-fee private education'— in other words private schools that charge fees to families — in the poorest countries. The UK Department for International Development (DFID) has invested in low-fee private schools... . User fees for education ... have a disproportionate impact on women and girls; excluding them from education... .*²²

Evidence from a range of countries shows that more boys are enrolled in schools than girls, a problem that is exacerbated in the context of privatization.²³ This is because the monetization of access to education through user fees places poor parents in the difficult position of having to choose which of their children to send to school, a decision made on the basis of what they believe will be the maximum return on their educational investment, *i.e.* what will the maximum economic benefits be to the family over the long term. Because labor markets are heavily influenced by patterns of gender inequality, parents often conclude it is better to educate their boys as they are more able to access better employment opportunities in the future. Indeed, the Right to Education Project warns that privatization of education exacerbates preferences of boys over girls in education,²⁴ evidenced by the fact that that families are often prepared to spend more on education for boys than girls.²⁵

In addition, in situations of economic instability or crisis, as households cope with declining household income and as many States take further steps to privatize their educational systems in the name of austerity, girls are more vulnerable to being pulled out of school. This is because within the context of dwindling financial resources, many households experience what is known as the “added worker effect,” and girl children experience even greater pressure to assume responsibility for a range of household chores.²⁶ In other words, the opportunity cost of having a girl in school may become prohibitive. Cultural gender roles further prejudice girls' accessing school, such as when a married girl is expected to join her husband's family, assist with household duties, and assume child bearing and rearing responsibilities.

Country case studies reveal the realities. Oxfam highlights that in Malawi, where the majority of the population fall below the poverty line, the fees charged in so-called ‘low-fee private schools’ would cost poor families one-third of their available income. In Uttar Pradesh, India, the estimates are even higher; poor families would have to spend nearly half of their income to send all of their children to ‘low-fee schools.’ In Pakistan, the cost is about one-quarter of household income, and “*taking the average number of children per household into account, sending all children to school*

²⁰ The United Nations Girls' Education Initiative (UNGEI), ‘Global Section: The School Fee Abolition Initiative (SFAI),’ available online at: http://www.ungei.org/infobycountry/247_712.html [last accessed 20 May 2014].

²¹ See, for example: World Bank, ‘The Role and Impact of Public-Private Partnerships in Education,’ 2009.

²² Oxfam International, ‘Working For The Many: Public Services Fight Inequality,’ 2014.

²³ The United Nations Girls' Education Initiative (UNGEI), ‘Transforming Policy and Practice for Gender in Education: A Gender Review of the 2010 EFA Global Monitoring Report Using an Equity and Inclusion Lens,’ Technical Paper, United Nations Children's Fund (UNICEF): New York, 2010.

²⁴ The Right to Education Project (RTE), ‘Privatisation in Education: Global Trends and Human Rights Impact,’ 2014.

²⁵ Ibid.

²⁶ Statement by Mayra Buvinic (World Bank), ‘Emerging issue: The gender perspectives of the Financial Crisis,’ Interactive Expert Panel, Commission on the Status of Women, Fifty-third session, New York, 2-13 March 2009. See also: Report of the independent expert (Magdalena Sepúlveda Carmona) on the question of human rights and extreme poverty (on the impact of the current global financial crisis on people living in extreme poverty and the enjoyment of their human rights), UN Doc. A/64/279, 11 August 2009.

would cost 127 per cent of that household's income."²⁷ All of this leads Oxfam to conclude that "[t]he huge cost barrier confronting families inevitably leads to the exclusion of girls from formal education. These examples demonstrate clearly that low fees are unsustainable, fuel gender inequality, and take an unreasonable amount of money away from the poorest."²⁸ In short, for poor families – precisely those targeted by low-fee private schools²⁹ – fees are a massive disincentive to educating girls.³⁰

Participants who engaged in the online consultations that informed this report echoed these concerns. One respondent from Nepal highlighted that "Parents who couldn't afford equally to [sic, educate] their girl and boy child, they send daughter to community [government] schools and son to private schools. It is common in Nepal. Community schools are regarded weak in education and private schools are best ... Parents are willing to spend limited resources on educating boys. So they would send boys to private schools and girls to government (free) schools. If they think that it is unsafe environment at the school (govt./ pvt.) they will rather have the girl not go to school at all."³¹ Research from India highlights that, for similar reasons, "the poorest rural families must make hard choices about scarce resources and often choose to invest in private education for their sons over their daughters,"³² and thus "to be a girl significantly reduces the chances of attending LFP (low-fee private) schools."³³ Likewise, in Pakistan:

... boys are indeed more likely to be sent to private schools than girls within the household, so that differential school-type choice is an important channel of differential treatment against girls. Private schools are also found to be of better quality – they are more effective than government schools in imparting mathematics and literacy skills. Girls lose out *vis a vis* boys in terms not only of lower within-household educational expenditures but also in terms of the quality of schooling accessed.³⁴

In addition, the cost of private education can also have a negative impact on the enjoyment of other rights, and may affect a family's ability to meet other needs related to health, food, housing, and so forth. These related effects can more negatively affect women and girls, as research shows that women and girls inevitably suffer disproportionately when resources are scarce.

There is also evidence that LFP schools are particularly exclusionary when it comes to girls from minority backgrounds. This has been raised as an issue, for example, for indigenous girls in Thailand and the Philippines:

²⁷ Ibid. See also: Shailaja Fennell, 'Why girls' education rather than gender equality? The strange political economy of PPPs in Pakistan,' in *Public Private Partnerships in Education: New Actors and Modes of Governance in a Globalizing World*, Edward Elgar Publishing, 2012. See also: Shailaja Fennell, 'Low-fee private schools in Pakistan: a blessing or a bane?,' In, Prachi Srivastava (ed.), *Low-fee Private Schooling: Aggravating Equity or Mitigating Disadvantage?*, Oxford: Symposium Books, 2013. See also: Shailaja Fennell and Rabea Malik, 'Between a rock and a hard place: The emerging educational market for the poor in Pakistan,' *Comparative Education*, Vol. 48, No. 2, 2012, pp. 249-261.

²⁸ Oxfam International, 'Working For the Many: Public Services Fight Inequality,' 2014.

²⁹ See the range of publications by James Tooley, including 'Private Schools for the Poor,' *Education Next*, Vol. 5, No. 4, 2005, pp. 22-32.

³⁰ The same was found to be true in Uganda, see: Mary Kabesiime, 'Schooling Ugandan Girls: A Policy Historiography,' *Journal for Critical Education Policy Studies*, Vol.8. No.1, August 2010.

³¹ Response from Nar Limbu, received 31 May 2014, on file with authors.

³² Martin Woodhead, Melanie Frost, and Zoe James, 'Does growth in private schooling contribute to Education for All? Evidence from a longitudinal, two cohort study in Andhra Pradesh, India,' *International Journal of Educational Development*, Vol. 33, No. 1, 2013, pp. 65–73.

³³ Joanna Härmä, 'School choice for the poor? The limits of marketisation of primary education in rural India,' Create Pathways to Access, Research Monograph No. 23, January 2010, available online at: <http://files.eric.ed.gov/fulltext/ED508748.pdf> [last accessed 19 June 2014].

³⁴ Emphasis added. Monazza Aslam (University of Oxford), 'The Relative Effectiveness of Government and Private Schools in Pakistan: Are Girls Worse Off?,' RECOUP Working Paper 4, June 2007. See also: South Asian Forum for Education Development (SAFED) and India Institute, 'Investigating Dimensions of the Privatisation of Public Education in South Asia: Case Studies from Pakistan and India,' Report submitted to PERI, 2012. See also: Shailaja Fennell, 'Why girls' education rather than gender equality? The strange political economy of PPPs in Pakistan,' in *Public Private Partnerships in Education: New Actors and Modes of Governance in a Globalizing World*, Edward Elgar Publishing, 2012.

With the promise of providing global competencies such as learning the English language, low fee private schools mostly use English as the medium of instruction alongside national language. This policy is detrimental to indigenous and ethnic girls. With their limited mobility, girls have less opportunities (sic) to learn the regional language, much more national and English languages. This adds a layer of discrimination more so for girls who have less time to catch up with studies given their multiple tasks at home. These impediments to girls' learning result to parents withdrawing girls from schools. In 2012, an estimated two-thirds of girls out of school globally belong to ethnic minorities in their countries.³⁵

Additional forms of discrimination faced by girls in the context of privatization of education

Lack of accountability of private schools and their staff is also a problem with gender specific dimensions. For example, concern has been raised that private schools discriminate against pregnant girls such as in Liberia where private schools many times expel pregnant girls³⁶. Even in cases where there is an apparently firm government policy prohibiting the expulsion of pregnant girls, it may not extend to private schools³⁷ where oftentimes the government lacks adequate enforcement and monitoring mechanisms. In many countries, as it has been documented for instance in Morocco, the government lacks the capacity and/or political power to regulate private schools, creating an education jungle in which abuses are frequently unreported.³⁸ Similarly, private schools may not be held accountable when private school officials abuse girls. Anecdotal evidence from South Africa highlights the problem of teachers found guilty of sexual or other abuse moving into the private school sector with relative impunity.³⁹ Right to education advocates from other parts of the world, for example Brazil, also highlight the sexist and homophobic character of education.⁴⁰ While not problems unique to private schools, evidence suggests that private schools are often not held accountable when it comes to their discriminatory policies and practices which impact girls.

It is also important to stress that lack of transparency with respect to the actions of private schools makes it more difficult to hold them accountable. In Mexico, for example, a recent case of sexual abuse in a private school gained visibility after the father of the victim decided to take the case to the public prosecutor's office.⁴¹ Despite the public authorities' willingness to take action under the law, resistance from the private school board to provide information has made it more difficult to access justice. Lack of transparency and oversight might also be reflected in some private providers not having safe, clean and separate toilet facilities for girls and boys, not using gender-sensitive teaching and learning materials.

³⁵ Response from ASPBAE, received 25 June 2014, on file with authors.

³⁶ Winston Daryoue, 'Liberia's Baby Blues – No Policy for Pregnant School Girls,' Inter Press Service, 5 July 2012.

³⁷ Duncan Wilson, 'Human Rights: Promoting gender equality in and through education,' 2003. In that sense, it is important to recognize recent initiatives such as the Ministerial Resolution 001/2013 [Resolución Ministerial 001/2013] in Bolivia, forbidding both public and private schools from expelling pregnant girls. Other national laws were designed in Bolivia to counter discrimination in education, such as the Ley N° 045 'Against all forms of Discrimination,' and the General Education Law, Ley N° 070 'Avelino Siñani- Elizardo Pérez,' establishing 'an education without discrimination, with equal opportunities and conditions to the exercise of human rights and the right to education for men and women.' This information was provided by the *Campaña Boliviana por el Derecho a la Educación*.

³⁸ Research currently being conducted by the Moroccan Coalition for Education for All and the Global Initiative on Economic Social and Cultural Rights, to be published in October 2014. For more information and preliminary results, see <http://globalinitiative-eser.org/?p=1321>

³⁹ Response from Section 27, received 17 June 2014, on file with authors.

⁴⁰ This is one of the conclusions presented by the *Report on Gender and Education in Brazil*, produced by *Ação Educativa*, CLADEM (*Comitê Latino-Americano e do Caribe para a Defesa dos Direitos da Mulher*), ECOS (*Comunicação e Sexualidade*) and Themis (*Assessoria Jurídica e Estudos de Gênero e Relatoria Nacional para o Direito Humano à Educação -- Plataforma DHESCA Brasil*). The report was presented during a Thematic Hearing of the Inter-American Commission on Human Rights (143^o Period of Sessions, 2011). The Report outlines six challenges and 13 recommendations about gender and education relations in Brazil, among them the great inequalities of opportunity between women on the basis on income, race, ethnicity and place of residence; homophobic, racist, sexist and discriminatory education; and teacher devaluation, over 90% composed by women. Available online at: http://www.acaoeducativa.org/images/stories/pdfs/gen_educ.pdf [last accessed 25 June 2014].

⁴¹ For information on this case, please see: <http://www.debate.com.mx/eldebate/noticias/default.asp?IdArt=13779636&IdCat=12302> [last accessed 24 June 2014].

These issues highlight a problem of inadequate State regulation and oversight of, and enforcement against, private education providers and institutions which is exacerbated by the lack of transparency in many private educational institutions and in the government policies supporting these privatized models. These problems are not only a consequence of weak rule of law or inadequate government resources, as can be seen from the examples in developed countries where horrific sexual abuse of children in private educational institutions went unreported and covered-up for many years, despite strong criminal laws and relatively well resourced enforcement agencies.

The role of International Financial Institutions (IFIs) in the privatization of education

Some IFIs actively promote privatization in and of education, including the World Bank.⁴² This is despite the fact that empirical evidence illustrates that school fees, introduced as a part of structural adjustment programs in the 1990s, greatly reduce the enrolment of girls more than boys.⁴³ The Bretton Woods Project recently highlighted that the World Bank's increased backing of private education in developing countries is reinforcing gender inequalities:⁴⁴

*First, the [World] Bank relies heavily on market-based approaches to improve educational efficiency, which are not consistently designed to ensure that vulnerable groups, including girls, are benefiting from education investments. By promoting privatization and decentralization as core strategies to expand education, the Bank risks exacerbating gender inequities in accessing education in situations where girls' expressed demand for education is low. Secondly, the inconsistent application of gender safeguards, decreasing number of projects with gender equity objectives and insufficient use of demand-side support for girls' education in countries where gender disparities remain severe. Finally, the Bank's new education strategy poses new challenges to the integration of gender in Bank supported projects, and will further complicate efforts to ensure that girls from the most deprived backgrounds are not left behind between 2010 and 2020.*⁴⁵

Other researchers similarly highlight: *"The types of partnership [n.b. education Public Private Partnerships] that are currently being put forward by international agencies and donor agencies do not show evidence of a gendered understanding of community perceptions regarding the acquisition and outcomes of schooling and therefore are not well-placed to make an impact on gendered norms, far less on improving gender equality in the provision of schooling by new providers."*⁴⁶

In a many instances, IFIs have also laid the ground for privatization by pushing for Structural Adjustment Programs which have discredited public action, including public education. For example, the adjustment programs implemented in Morocco in the 1980s have led to a sharp decrease of the expenditure in education, which is considered by several observers as being one of the key causes for the growing public perception that public education is 'failing' and increased preference for fee-paying for-profit private education, despite the lack of evidence.⁴⁷ It is important to iterate that IFIs, as part of the international system and as comprised of States with human rights obligations (both within their borders as well as extraterritorially), must abide by international human rights law and standards. In particular, as a Specialized Agency of the United Nations, the World Bank is obligated not only to not defeat the purposes of the Charter

⁴² See, for example: World Bank, 'The Role and Impact of Public-Private Partnerships in Education,' 2009.

⁴³ Jane Arnold Lincove, 'Efficiency, Equity and Girls' Education,' *Public Administration and Development*, Vol. 26, 2006, pp. 339–357.

⁴⁴ Bretton Woods Project, 'Going, going, gone? World Bank's funding for public education,' 9 May 2014, available online at: <http://www.brettonwoodsproject.org/2014/05/world-banks-funding-public-education-going-going-gone/> [last accessed 20 May 2014].

⁴⁵ Ibid.

⁴⁶ Shailaja Fennell, 'Why girls' education rather than gender equality? The strange political economy of PPPs in Pakistan,' in *Public Private Partnerships in Education: New Actors and Modes of Governance in a Globalizing World*, Edward Elgar Publishing, 2012.

⁴⁷ Research currently being conducted by the Moroccan Coalition for Education for All and the Global Initiative on Economic Social and Cultural Rights, to be published in October 2014. For more information and preliminary results, see <http://globalinitiative-eser.org/?p=1321>

of the United Nations, but to further its objectives.⁴⁸ This requirement is laid out in Article 59 of the Charter, which mandates that “*the creation of any new specialized agencies require[s] accomplishment of the purposes set forth in Article 55.*”⁴⁹ The purposes and objectives articulated in Article 55 include, *inter alia*, the promotion of “*universal respect for, and observance of, human rights and fundamental freedoms for all.*”⁵⁰ However, contrary to these obligations, the evidence clearly suggests that IFIs and the World Bank in particular are at risk of not respecting or observing girls’/women’s right to education when they support privatization in and of education.

Clarifying State Obligations in the Context of Privatization: Existing Standards Related to the Right to Education for Women and Girls

While it may not seem *prima facie* discriminatory, privatization of education disproportionately affects the poorest and most vulnerable, including women and girls. Indeed, in its Concluding Observations, the CEDAW Committee has already raised concern about the possible negative impact of privatization of education on the rights of women and girls.⁵¹ It has also been highlighted as an issue of concern in NGO reports to the CEDAW Committee.⁵² It should also be noted that the CEDAW Committee has also expressed concern over privatization’s impact on other economic and social rights, for example the right to health, as in its Concluding Observations on Austria, where the Committee expressed concern about “*the risk that privatization may downgrade the quality of health services accessible to women.*”⁵³

Under the CEDAW Convention, States parties are obligated to improve the *de facto* position of women and girls through concrete and effective policies and programs, rectifying prevailing patterns of gender inequality and the persistence of gender-based stereotypes, including through the use of temporary special measures.⁵⁴ Each of these obligations intersects with, and is relevant to, the right to education within the context of privatization, in particular when States abdicate their responsibilities in the area of education, leaving private and non-state actors to fill the gap.

States parties are also obligated to ensure that there is no direct or indirect gender discrimination in their laws, policies and practices, ensuring that women and girls are protected against discrimination — including by private actors. This raises the question of due diligence which is important when looking at the impact of privatization on the enjoyment of the right to education by women and girls. In particular, the CEDAW Committee’s General Recommendation 28 (at para. 13) highlights that:

Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States parties. Article 2 also imposes a due diligence obligation on States parties to prevent discrimination by private actors. In some cases, a private actor’s acts or omission of acts may be attributed to the State under international law. States parties are thus obliged to ensure that private

⁴⁸ See, e.g., Mac Darrow, *Between Light and Shadow: The World Bank, The International Monetary Fund and International Human Rights Law*, Oxford: Hart Publishing, 2003, pp. 127-133.

⁴⁹ Ibid.

⁵⁰ Charter of the United Nations, Art. 55(c), adopted 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force 24 October 1945. Other human rights obligations are enshrined in Article 1 and Article 56 of the UN Charter, and these too are binding upon all Member States of the United Nations. Article 1(3) states that the “purposes and principles” of the United Nations is “to achieve international co-operation in ... promoting and encouraging respect for human rights and for fundamental freedoms for all...” Article 56 states that “all Members pledge themselves to take joint and separate action ... for the achievement of the purposes set forth in Article 55.”

⁵¹ See, for example, CEDAW’s Concluding Observations on Hungary (2013); Cameroon (2000); Uganda (1995).

⁵² See, for example, NGO PRESENTATION CEDAW: INDIA, available online at: <http://www.iwraw.org/resources/pdf/India%20Oral%20statement.pdf> [last accessed 5 June 2014]. See also: ‘INDIA: Shadow Report: PART 2 –APPENDICES,’ submitted to the UN Committee on the Rights of the Child for the review of India’s Third and Fourth Combined Reports, by CRC 20 BS Collective, July 2012.

⁵³ CEDAW Concluding Observations on Austria (2013).

⁵⁴ As laid out in: CEDAW General Recommendation No. 25 on article 4, paragraph 1, on temporary special measures. Reprinted in Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004).

*actors do not engage in discrimination against women as defined in the Convention. The appropriate measures that States parties are obliged to take include the regulation of the activities of private actors with regard to education, employment and health policies and practices, working conditions and work standards, and other areas in which private actors provide services or facilities.*⁵⁵

When States fail to provide quality education to all, or when they otherwise fail in their due diligence obligation, States are short-changing girls in terms of access to quality education and in terms of ensuring equal educational outcomes for both girls and boys.⁵⁶ Under the CEDAW Convention, a State's obligation to respect, protect and fulfill the right to education can be thought to encompass the following key elements:

- To provide a free and accessible public education system of good quality, which is non-discriminatory and which promotes gender equality;
- To eliminate structural discrimination by ensuring all have access to free quality education, so that parents are not forced to choose between their sons' and daughters' education;
- To properly regulate any private educational institutions and monitor and enforce compliance, and to exercise due diligence in cases where private educational actors act in such a way as to deny girls'/women's rights;
- To ensure that curricula and educational systems (including private and public offerings) foster equality and tackle negative gender stereotypes.

Because the CEDAW Committee is in the process of articulating its own General Recommendation on the right to education for women and girls, it may be especially helpful to note that the Committee on Economic, Social and Cultural Rights has adopted two General Comments addressing the right to education, and these standards can help to inform CEDAW's General Discussion on girls'/women's right to education. These are General Comment No. 11 (addressing plans of action for primary education, adopted in 1999) and General Comment No. 13 (addressing the right to education, also adopted in 1999). In addition, the Committee on the Rights of the Child also adopted its General Comment No. 1 in 2001, which addresses aims of education.

General Comment No. 13 is especially helpful, and in it the Committee on Economic, Social and Cultural Rights highlights that: *"Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women..."*⁵⁷ The notion of education being understood as *"an empowerment right"* is critical from the standpoint of gender equality. From an early age, girls may face discrimination and inequality in the arena of education which negatively impacts their ability to succeed and enjoy the full range of their human rights throughout the whole of their lives. A girl's inability to access quality free education is a prime example of how discrimination and inequality can take root; effective denial of quality free education has long-lasting affects on the girl as well as on her society.

In addition, General Comment No. 13 notes that the State has *"principal responsibility for the direct provision of education in most circumstances,"* and that *"States parties have an enhanced obligation to fulfil*

⁵⁵ Committee on the Elimination of Discrimination against Women, General Recommendation 28, The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (Forty-seventh session, 2010), U.N. Doc. CEDAW/C/GC/28 (2010).

⁵⁶ Committee on Economic, Social and Cultural Rights, General Comment 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights (Thirty-fourth session, 2005), U.N. Doc. E/C.12/2005/3 (2005), at para. 30. The General Comment states that "States parties should ensure, in particular through information and awareness raising campaigns, that families desist from giving preferential treatment to boys in sending their children to school, and that curricula promote equality and non-discrimination. States parties must create favourable conditions to ensure the safety of children, in particular girls, on their way to and from school."

⁵⁷ Emphasis added. Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), at para. 48.

(provide) regarding the right to education.” Crucially, it also highlights with regards to the liberty to establish private educational institutions set out in article 13 (4) of the International Covenant on Economic, Social and Cultural Rights that: “*Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13 (4) does not lead to extreme disparities of educational opportunity for some groups in society.*”⁵⁸ These obligations are critical, and also underscore the key point that the negative consequences which are borne by women and girls when education is privatized cannot be adequately redressed through increased regulation of private actors alone. Rather, a renewed emphasis on a State’s obligation to fulfil the right to education is needed in order for women and girls to enjoy their right to education in practice, and so that education is truly transformative as a human right.

General Comment No. 13 also outlines the ‘essential features’ of the right to education, which include availability, accessibility, acceptability and adaptability.⁵⁹ Each of these essential features must be seen through a gendered lens, so that each is understood from a substantive equality perspective. That is to say, in order for women and girls to realize their right to education, education must be made fully available and accessible to them, and it must be acceptable and adaptable from the standpoint of furthering gender equality and the empowerment of women and girls. Privatization in and of education can affect all of these essential features.

The Committee on the Rights of the Child has also observed that “*gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls’ participation.*”⁶⁰ Similarly, the Committee on Economic, Social and Cultural Rights has also specifically observed that States “*... are obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.*”⁶¹

Conclusions and Recommendations

Privatization in and of education in many instances runs counter to the goal of human rights-based, inclusive education. Already marginalized and vulnerable groups, including women and girls, are more disadvantaged by private education provision because they are least able to pay for services and because the monetization of access reinforces a pro-male bias. The reality is that privatization leads in many cases to a multi-tiered educational system with girls and women more likely to occupy the bottom of that system. This reinforces and deepens rather than remedies entrenched patterns of gendered inequality and exclusion.

Education plays an essential role in tackling gender stereotypes and in addressing the structural and systemic causes of gender inequality. It serves as a vital foundation on which, at the individual level, women and girls are able to realize their rights and their aspirations. Collectively, education serves as a vehicle to further awareness of human rights principles, including gender equality and the dignity of the person. However, not all educational approaches have equal outcomes when it comes to women and girls, and not all approaches embrace inclusion and equality. The evidence suggests that any system that increasingly relies on private provision to fulfill the right to education, by reinforcing gender inequalities, creates a cycle wherein women and girls have diminishing access to quality education. To redress this structural discrimination, States must provide quality, accessible, free public schooling so parents are not forced to choose between their daughters and sons. Even in cases where women and girls are able to access private

⁵⁸ Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), at para. 30.

⁵⁹ Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), at para. 6.

⁶⁰ Committee on the Rights of the Child, General Comment No. 1, The Aims of Education, U.N. Doc. CRC/GC/2001/1 (2001).

⁶¹ Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 70 (2003).

education, they may face other forms of gender discrimination, which must be addressed by the State. Such situations violate not only their right to education, but other rights as well, as denial of quality education will invariably have other negative ramifications for women across the life span.

Rather than attempting to transfer or deflect their responsibility to fulfill the right to education through privatization, States must take the opposite approach, meeting their obligation to fulfill and making a free quality education available and accessible to all.

In light of the evidence above, we believe that the General Recommendation on girls'/women's right to education is an important opportunity for the CEDAW Committee to:

- **Reaffirm** the transformative and empowering role of education in fostering societal values of human rights and gender equality. Specifically, the General Recommendation should highlight that in order for women and girls to be able to realize their right to education, as well as their rights to non-discrimination and equality more broadly, it is imperative that education be seen as a public good, and not as a commodity.
- **Reaffirm** that user fees actively entrench gender inequalities that are profoundly socio-cultural and economic in nature. Fees deepen the human capital approach to education whereby parents seek to maximize the return on their educational investment, which almost invariably favors the education of boys. Addressing gender inequities in education must go hand in hand with addressing similar inequalities in civil and political rights as well as economic, social and cultural rights.
- **Reaffirm** that the negative consequences which are borne by women and girls when education is privatized cannot be adequately redressed through increased regulation of private actors alone. Rather, a renewed emphasis on a State's obligation to fulfil the right to education is needed in order for women and girls to enjoy their right to education in practice, and so that education is truly transformative as a human right.
- **Reaffirm** the fundamental obligation of State parties to provide access to quality free education for women and girls, on an equal footing and without discrimination, and the related obligation of States parties to ensure equal education outcomes for girls and boys/ women and men.
- **Underscore** that privatization in and of education raises serious concerns in relation to gender equality both in terms of access and outcomes, and that States parties have a fundamental obligation 1) to ensure that the education system does not create structural barriers to girls accessing education (*i.e.* for-profit fee-based schooling and a lack of free quality public schooling) and 2) to fully undertake their due diligence responsibility, such that private educational institutions and actors are not permitted to discriminate in any way against women and girls and are held accountable for their actions.
- **Reaffirm** that States, including as Member States of inter-governmental organizations such as IFIs, must abide fully by their respective human rights obligations, including extra-territorial obligations, and ensure that bilateral and multilateral development cooperation furthers the rights of woman and girls to equality in all aspects of education. This includes obligations to undertake human rights due diligence by investigating and monitor adverse human rights impacts of their policies and programs, including their impact on women and girls, and focus on providing development aid in order to reinforce the public education system rather than supporting private educational establishments.