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Realising the right to education with non-state actor involvement:

Is the British Council guided by a human rights-based approach to
education?

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Abstract

The right to education is a fundamentally important enabling right, a public good to be ensured and developed by the state. Education's promise can bring wide-ranging benefits to all societies. It is therefore critical to examine how education policy and practice is changing on a global scale with an increasing number of actors involved. This thesis will explore how education can both be maintained as a public good supervised by the state and improved through international collaboration with different actors. By examining the work of one non-state actor (British Council) through interviews with country teams, it will become clearer how such an actor may work with states to realise the right to education. Given the influence that education is considered to have on individuals and communities, it is important to analyse not only the multifaceted ways in which education could be affected by increasing non-state actor involvement globally, but also how non-state actors' work can be directed in a positive rights-based manner. It is emphasised throughout this thesis that bringing the principles of the right to education to the foreground of all actors' work in the field globally is vital to empowering individuals, combating social inequalities and reducing poverty.

List of Abbreviations

BC	British Council
BIA	Bridge International Academies
CADE	Convention Against Discrimination in Education
CC	Connecting Classrooms
CEDAW	Convention on Elimination of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
ComRC	Committee on the Rights of the Child
COTAE	Coalition for Transparency and Accountability in Education
CRC	Convention on the Rights of the Child
E&S	Education and Society
EU	European Union
GI-ESCR	Global Initiative for Economic, Social and Cultural Rights
HRBA-E	Human Rights-Based Approach to Education
ICESCR	International Covenant on Economic, Social and Cultural Rights
IHRL	International Human Rights Law
LEARN	Legal standards, Empowering children, Accountability, Respect for participation and Non-discrimination
LFPS	Low Fee Private Schools
OECD	Organisation for Economic Cooperation and Development
PEAS	Promoting Equality in African Schools
PPPs	Public-Private Partnerships
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UIS	UNESCO Institute for Statistics
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UPR	Universal Periodic Review

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Introduction

“Education is the most powerful weapon we can use to change the world.”¹

The right to education is a fundamentally important enabling right, a public good to be ensured and developed by the state. Education’s promise can bring wide-ranging benefits to all societies. It forms its own Sustainable Development Goal (SDG) 4 and is crucial in achieving many other SDGs.² It is therefore critical to examine how education policy and practice is changing on a global scale with more and more different actors involved. This thesis will explore how education can both be maintained as a public good supervised by the state and developed through international collaboration with different actors. The Millennium Development Goals focussed (and largely succeeded) on the important goal of widening access to education for all but failed to underline the importance of quality and inclusive education.³ This has led many in the international community to highlight an apparent learning crisis that many countries are now suffering from: learning outcomes are poor, schools are failing learners, systems are failing schools.⁴ The World Bank suggests three possible solutions to this crisis, the most relevant in this context being the need to “align actors - to make the whole system work for learning.”⁵

For this reason, one overarching research question guides the thinking behind this thesis: how can non-state actors assist states in realising the right to education? This may, at first, seem counterintuitive considering that education is a public good and that privatisation of education poses a threat to the right to education, particularly in terms of increasing societal inequalities.⁶ There is, however, also a belief that privatisation can lead to better quality education.⁷ Non-state actor (both for- and not-for-profit) involvement is to varying degrees (un)desired, (un)necessary and (un)safe in different contexts, but definitely diversifying and

¹ Nelson Mandela, *Lighting your way to a better future*, Address by Nelson Mandela at launch of Mindset Network, (Johannesburg, 2003), http://www.mandela.gov.za/mandela_speeches/2003/030716_mindset.htm, (accessed 11 July 2018).

² UNESCO, *Incheon Declaration and SDG4 – Education 2030 Framework for Action*, para. 4, <http://unesdoc.unesco.org/images/0024/002456/245656E.pdf>, (accessed 4 June 2018).

³ Nicholas Burnett & Colin Felsman, *Post-2015 Education MDGS*, <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7776.pdf>, (accessed 13 June 2018).

⁴ The World Bank, *Learning to Realize Education’s Promise*, World Development Report 2018, (Washington: The World Bank, 2018), p. 1-27.

⁵ *Ibid.*, p. 16.

⁶ See section 2.3.3.

⁷ Antoni Verger, Clara Fontdevila and Adrian Zanao, *The Privatization of Education: A Political Economy of Global Education Reform*, (New York: Teacher’s College Press, 2016), p. 3.

expanding its reach locally and internationally.⁸ It is therefore poignant to look at how non-state actors can work together with states to better realise the right to education.

Through an analysis of the right to education in international human rights law (IHRL), followed by research into the real aims of education, I will attempt to highlight some of the crucial factors that must be taken into consideration when non-state actors are involved in the privatisation of education. This will be supplemented by an overview of current trends in the privatisation of education, focussing on the rationale behind it and the forms it can take with a variety of actors. This will lead to the proposition that a human rights-based approach to education (HRBA-E) should be implemented at all levels, to ensure that any actor's involvement remains faithful to international human rights norms. Finally, in order to put this theory into practice, a second research question will be asked: is the British Council (BC) guided by a HRBA-E? Examining case studies of how the BC, as a non-state actor, works in education in two specific countries will bring to light the practicalities of a HRBA-E as well as the ways in which a non-state can (or cannot) make a positive contribution to realising the right to education.

The first part of this thesis will take the form of a comparative analysis of IHRL relating to the right to education in order to highlight its core content and state obligations, particularly when non-state actors are involved. Following this, an interdisciplinary analysis of existing theories as to the purpose of education, as well as a critical assessment of current developments in the field of privatization, will provide an insight into the ways that the right to education may be jeopardised. In terms of collecting qualitative data for my research, I created a questionnaire based on a HRBA-E and sent this out to numerous BC country teams in Sub-Saharan Africa and South Asia. A follow-up interview was conducted with BC representatives in India and Ethiopia, involved in the planning and coordination of educational programs with states, to better assess the methods and focus placed on developing the right to education in that specific context. This will allow for a critical analysis of the effectiveness and limitations of a HRBA-E, and lead to a reflection on the responsibility of this non-state actor to promote the right to education in general. Finally, recommendations for non-state actors and states themselves will be provided to guide their successful collaboration in accordance with the principles of the right to education in IHRL.

⁸ Ibid., p. 4.

When working with such a complex and diverse subject like education, it is important to note the following limitations. Firstly, there is a well-documented difficulty in measuring the quality of education or learning outcomes. For this reason, no attempt at measuring the learning outcomes of the BC's work will be made. Secondly, the focus of this thesis will be on basic education (primary and secondary education). This is due to three reasons. 1) State obligations regarding primary (and secondary to some degree) are much stronger than at other levels of education, 2) it follows that non-state actors working directly or indirectly in primary or secondary education also carry more responsibility than at other levels and 3):

“because the nature of privatization and its main drivers in these levels are very different from privatization dynamics in early childhood education, vocational training, higher education, or adult education. These other education levels also are affected strongly by privatization in many different contexts but, again, they are excluded here for the purpose of feasibility and comparability.”⁹

Furthermore, the aim of this thesis is not to deal with the intricacies of how many different stakeholders in education (parents, politicians, teachers, local civil society organisations etc) interact with one another. This thesis focuses on examining how non-state actors can work with a state and how this may influence the realisation of the right to education. Considering the power that education is considered to hold on an individual, communal and international scale, it is important to analyse not only the multifaceted ways in which it could be affected by increasing non-state actor involvement but also how non-state actors' work can be directed in a positive rights-based manner. Although by no means a simple topic, it is emphasised throughout this thesis that bringing the principles of the right to education to the foreground of all actors' work in the field globally is vital to empowering individuals, combating social inequalities and achieving a reduction in poverty. It is hoped that both state and non-state actors, as well as educational philosophers, sociologists and practitioners will find this thesis useful in their ongoing commitments to ensuring quality and inclusive education for all, in our increasingly interconnected world.

⁹ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 10.

Chapter 1: Legal/Policy framework

In order to assess to what extent non-state actors can positively assist states in realising the right to education, it is crucial to analyse how the right to education is defined in international law. To do this, the following will examine the core content of the right and the key state obligations that arise from this right as well as provide an insight into the (quasi)judicial mechanisms available for ensuring the right to education. This will shed light on the possible obstacles that hinder the realisation of the right to education, especially considering the progressive involvement of private actors in education. It will also provide the necessary information to build a framework for assessing how non-state actors can participate and what responsibility they carry when working in education. Finally, by analysing the current policy framework of the SDGs¹⁰ it will become evident how international actors guide states in their education goals - although this does not undermine a state's ultimate responsibility for ensuring the right to education. I will examine international human rights treaties, the General Comments made by the monitoring bodies (as well as statements from Concluding Observations) and other legal documents from experts in the field.

1.1 The right to education in international human rights law

The right to education is an extensively elaborated economic, social and cultural right which can be found in many international human rights documents including (but not limited to) the 1948 Universal Declaration of Human Rights (UDHR)¹¹, the 1960 Convention Against Discrimination in Education (CADE)¹², the 1966 International Covenant on Economic, Social

¹⁰ See SDG summary here: "This Agenda is a plan of action for people, planet and prosperity. It also seeks to strengthen universal peace in larger freedom. We recognise that eradicating poverty in all its forms and dimensions, including extreme poverty, is the greatest global challenge and an indispensable requirement for sustainable development. All countries and all stakeholders, acting in collaborative partnership, will implement this plan. We are resolved to free the human race from the tyranny of poverty and want and to heal and secure our planet. We are determined to take the bold and transformative steps which are urgently needed to shift the world onto a sustainable and resilient path. As we embark on this collective journey, we pledge that no one will be left behind. The 17 Sustainable Development Goals and 169 targets which we are announcing today demonstrate the scale and ambition of this new universal Agenda. They seek to build on the Millennium Development Goals and complete what these did not achieve. They seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls. They are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental." <https://sustainabledevelopment.un.org/post2015/transformingourworld>, (accessed 4 June 2018).

¹¹ UNGA, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), <http://www.refworld.org/docid/3ae6b3712c.html>, (accessed 28 March 2018).

¹² UNESCO, *Convention Against Discrimination in Education*, 14 December 1960, <http://www.refworld.org/docid/3ae6b3880.html>, (accessed 28 March 2018).

and Cultural Rights (ICESCR)¹³, the 1989 Convention on the Rights of the Child (CRC)¹⁴ and the 1979 Convention on Elimination of Discrimination Against Women (CEDAW)¹⁵. Although the content of the right to education differs slightly among these documents, one can extract certain common and fundamental aspects of the right that they share.¹⁶ This analysis focuses primarily on the right to education as defined in the ICESCR and CRC, whose Articles 28 and 29 were largely based on Articles 13 and 14 of ICESCR.¹⁷ For the purposes of this thesis and section, the distinction that the CRC makes in its division of the right to education into two articles is resorted to as it highlights two important aspects necessary to fulfil the right to education¹⁸: Article 28 focuses on (inclusive) **access to education** and Article 29 is centred on the **quality of education**.¹⁹ Maintaining a focus on these two aspects of the right to education also connects very well to SDG 4 which commits

¹³ UNGA, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, <http://www.refworld.org/docid/3ae6b36c0.html>, (accessed 28 March 2018).

¹⁴ UNGA, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, <http://www.refworld.org/docid/3ae6b38f0.html>, (accessed 4 June 2018).

¹⁵ UNGA, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, <http://www.refworld.org/docid/3ae6b3970.html>, (accessed 28 March 2018).

¹⁶ Mieke Verhedye, *Article 28: The Right to Education*, (Leiden: Martinus Nijhoff, 2006), p. 7-9.

¹⁷ Manfred Nowak, *Human Rights or Global Capitalism: The Limits of Privatization*, (Pennsylvania: University of Pennsylvania Press, 2017), p. 58.

¹⁸ Mieke Verhedye, p. 1.

¹⁹ See Article 28 and 29, CRC: “1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular: (a) Make primary education compulsory and available free to all; (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need; (c) Make higher education accessible to all on the basis of capacity by every appropriate means; (d) Make educational and vocational information and guidance available and accessible to all children; (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates. 2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention. 3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries. Article 29 1. States Parties agree that the education of the child shall be directed to: (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own; (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (e) The development of respect for the natural environment. 2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.”

states to: “Ensure inclusive and equitable quality education and promote life-long learning opportunities for all.”²⁰

When it comes to access (and availability), the overarching principle of the right to education is that everyone is entitled, on a non-discriminatory basis, including physical and economic accessibility.²¹ In fact, this principle of non-discrimination is a key element of the ICESCR as “Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights.”²² Article 2(2) of the ICESCR provides a list of the grounds on which no-one should be discriminated and these include “...race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”²³ Equal opportunity is, furthermore, highlighted in Article 28(1) of the CRC.²⁴ In practical terms of accessibility, the ICESCR (and General Comment no. 13) make it explicitly clear who is entitled to what level and type of education and whether this must be free or compulsory. “Its most basic tenets, free and compulsory primary education for all, the progressive realization of secondary and tertiary education, and the immediate non-discrimination in their application, are universally recognized.”²⁵ Aside from this, states commit to ensuring the progressive realisation of a development strategy for the school system, a fellowship system that enhances equality of educational access for individuals from disadvantaged groups and that teacher’s working conditions be continuously improved.²⁶ It is important to note that both the ICESCR and CRC highlight that vocational education should be made available to all and there is a requirement that fundamental education be available for those who were, for whatever reason, unable to complete primary education.²⁷ This complements SDG4 and the goal of access to lifelong learning for all.

²⁰ <https://sustainabledevelopment.un.org/sdg4>, (accessed 4 June 2018).

²¹ See description of the 4 As here: CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, 8 December 1999, E/C.12/1999/10, para. 6, <http://www.refworld.org/docid/4538838c22.html>, (accessed 4 June 2018).

²² CESCR, *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, para. 2, <http://www.refworld.org/docid/4a60961f2.html>, (accessed 28 March 2018).

²³ Article 2(2), ICESCR.

²⁴ For a discussion on how education can lead to more or less inequality and hence the need to emphasise the non-discrimination principle in Article 28(1) see: Mieke Verhedye, *Article 28: The Right to Education*, p. 36.

²⁵ UNGA, *Report of the Special Rapporteur on the right to education, Kishore Singh: Justiciability of the right to education*, 10 May 2013, A/HRC/23/35, para. 13, <http://undocs.org/A/HRC/23/35>, (accessed 21 June 2018).

²⁶ Article 13 2(e), ICESCR.

²⁷ Article 13 2(b, d), ICESCR and Article 1(d), CRC.

The second aspect that is protected as part of the right to education is the quality of education, this can include both how acceptable and how adaptable it is.²⁸ In order to judge how acceptable education is, there must be a clear sense of what the supposed outcome will be. Article 13(1) of the ICESCR states detailed aims of education which focus both on the individual development of the human personality but also the more community focused promotion of understanding and peace between all peoples and nations.²⁹ It was considered necessary to list the objectives in Article 13(1), “although the view was expressed that paragraph 1, mainly declaratory in character, was out of place in a legal instrument.”³⁰ If one examines Article 29 of the CRC, even more details as to the aims of education are provided as well as in the ComRC’s General Comment no. 1.³¹ The exact form of education to reach the aims set in international human rights treaties remains undefined. It is also unclear what exactly qualifies as the full development of the human personality and who judges this – it is surely heavily subjective across different cultures. In summary, there are “definite limits on types of education, but simultaneously the content of the curriculum stays very general and is left open to many alternatives, which opens the possibility for each culture to determine it in its own way.”³² It is crucial to understand the importance of the quality aspect of the right to education in order to better understand the possible effect that non-state actors’ interference can have on the realisation of the right to education. This becomes all the more relevant when you consider the globalised world we live in today, where different actors from various countries with a diaspora of values or agendas, are involved in the education sector, for better or worse outcomes.³³

When it comes to the specific obligations that states carry in respect to the right to education, it is clear in IHRL that states have “the primary responsibility to realize the right to education for all individuals in their territories and subject to their jurisdiction.”³⁴ States parties are those directly addressed by human rights treaties and those that have the duty to respect, protect and fulfil (facilitate and provide) the right to education. In the context of education, respect means that the state should not take any actions that would prevent the enjoyment of the right;

²⁸ See footnote 21.

²⁹ Manfred Nowak, *Human Rights or Global Capitalism: The Limits of Privatization*, p. 59.

³⁰ Ben Saul, David Kinley, and Jaqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights*, (Oxford: OUP, 2014), p. 1092.

³¹ See section 2.2.

³² Mieke Verhedye, *Article 28: The Right to Education*, p. 28.

³³ See section 2.3 and 3.2.

³⁴ UNGA, *Report of the Special Rapporteur on the right to education, Kishore Singh: Justiciability of the right to education*, para. 17.

protect means the state should prevent third parties from interfering with the enjoyment of the right; and fulfil means that a state should take positive measures to better realise the right to education.³⁵ Of course as we have already seen, the provision of primary education is prioritised³⁶ and: "...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 fulfil (provide) are not the same for all levels of education."³⁷ It is crucial to bear in mind that ICESCR and CRC impose different obligations on states relating to the right to education and that not all states have become parties to the various conventions (which naturally directly influences which obligations they carry).³⁸

In CESCR General Comment no. 3 and 13 it is explicitly emphasised that progressive realisation should not give states an excuse to avoid using the "maximum of their available resources" to realise the right to education. They are obliged "to move as expeditiously and effectively as possible towards that goal."³⁹ According to Article 2(1) of the ICESCR, states are expected to oversee the progressive realisation of all rights in the Covenant but there are at the same time some minimum core obligations that are of immediate effect, upon ratification:

"In the context of article 13, this core includes an obligation: to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis ; to ensure that education conforms to the objectives set out in article 13 (1); to provide primary education for all in accordance with article 13 (2) (a); to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the State or third parties, subject to conformity with "minimum educational standards" (art. 13 (3) and (4))."⁴⁰

This raises the question, already hinted at previously, as to what the exact minimum education standards should be but it is clear from the CESCR that it is the state obligation to set these

³⁵ CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, para. 50.

³⁶ *Ibid.*, para. 51.

³⁷ *Ibid.*, para 48

³⁸ See discussion on differences between ICESCR and CRC in terms of state obligations for providing free compulsory education: "At primary level, the States have under Article 13(2)(a) of the CESCR a clear and unconditional obligation to immediately ensure free and compulsory education. Article 28(1)(a) only obliges States to realise this in a progressive manner." Mieke Verhedye, *Article 28: The Right to Education*, p. 10.

³⁹ CESCR, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, para. 9, <http://www.refworld.org/docid/4538838e10.html>, (accessed 4 June 2018).

⁴⁰ CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, para. 57.

standards and to create “..a transparent and effective system to monitor such standards.”⁴¹ In this regard the burden of responsibility is laid heavily on the state and at the same time, the state is given a large margin of appreciation as to how it will implement measures to meet its obligations as ratified through the treaty.⁴² At the same time, however, it is worth highlighting Article 14 of ICESCR as it calls upon states to adopt a detailed plan within two years of ratification as to how they will introduce free, compulsory primary education, if not already provided.⁴³ This differs from many of the articles as it imposes such a “rigid” obligation, quite unlike the principle in the ICESCR of progressive implementation.⁴⁴ This special implementation article was considered necessary due to the “importance of the right to free, compulsory primary education”⁴⁵ and the importance of education as a multiplying right. Verhedye highlights that one weakness of the CRC is that it fails to include an article like 14 that ensures strong international protection of free and compulsory primary education through “...international monitoring of the implementation of the education rights and hence their realisation.”⁴⁶

So far, I have only discussed the national legal obligations a state is bound by. ICESCR Article 2(1) also highlights that the progressive realisation of rights in the Covenant should take place “individually and through international assistance and cooperation, especially economic and technical.”⁴⁷ This places a certain amount of responsibility on states to assist other states in meeting their obligations:

“The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an

⁴¹ Ibid., para. 54.

⁴² These minimum educational standards are not specified in detail but relate largely to the acceptability of education: “Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State (see art. 13 (3) and (4)).” CESCR, *General Comment No. 13*, para 6.

⁴³ CESCR, *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, 10 May 1999, E/1992/23, para. 8, <http://www.refworld.org/docid/4538838c0.html>, (accessed 4 June 2018).

⁴⁴ Ben Saul, David Kinley, and Jaqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights*, p. 1163.

⁴⁵ Ibid., p. 1174.

⁴⁶ Mieke Verhedye, *Article 28: The Right to Education*, p. 10.

⁴⁷ Article 2(1), ICESCR.

obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard.”⁴⁸

This does not diminish the primary responsibility that lies with national governments in implementing the right to education but as Koumbou Boly Barry so eloquently summaries, “...the international community must provide targeted political, financial and technical support to assist governments in implementing inclusive and equitable education policies.”⁴⁹ The importance of international cooperation (both giving and receiving) is further iterated in the ComRC’s General Comments no. 5 and 16 as a way to improve the “living conditions of children in every country, in particular in the developing countries”.⁵⁰ Verhedye argues that “Article 28(3) ... is the most comprehensive call in a binding human rights instrument addressed to the States Parties to co-operate internationally in educational matters.”⁵¹ This also has big consequences in relation to non-state actors in education as the realisation of the right to education should therefore be of “...major and equal concern to both host and home States of business enterprises.”⁵²

The most effective way of enforcing the right to education according to international human rights law is for states to give effect to these laws in their domestic legal systems – and states are in fact obliged to do so.⁵³ This gives individuals the ability to claim their rights by getting access to remedy (a court) in their nation state. Currently, “the right to education is explicitly recognised in 82 per cent of national constitutions and is a legally enforceable constitutional right in 107 States (55 per cent of States)”⁵⁴, although this does not mean necessarily that these are adequate provisions according to IHRL. However, it has even been possible in some states to enforce the right to education when not included in the constitution as it is believed

⁴⁸ CESCR, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, para. 14.

⁴⁹ UNGA, *Report of the Special Rapporteur on the right to education*, 29 September 2017, A/72/496, para. 123, <https://undocs.org/A/72/496>, (accessed 21 June 2018).

⁵⁰ ComRC, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, 17 April 2013, CRC/C/GC/16, para. 41, <http://www.refworld.org/docid/51ef9cd24.html>, (accessed 4 June 2018).

⁵¹ Mieke Verhedye, *Article 28: The Right to Education*, p. 65.

⁵² ComRC, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, para. 41.

⁵³ UNGA, *Report of the Special Rapporteur on the right to education, Kishore Singh: Justiciability of the right to education*, para. 21-28.

⁵⁴ Right to Education Project, *Paper commissioned for the 2017/8 Global Education Monitoring Report Accountability in education: Meeting our commitments*, p. 49, <http://unesdoc.unesco.org/images/0025/002595/259560e.pdf>, (accessed 4 June 2018).

to be a “multiplier” right.⁵⁵ This was evident “...when the Supreme Court of India ruled that the right to education was an integral part of the right to life, and therefore, enforceable.”⁵⁶ This is clearly a great example of how the interdependence of human rights can be crucial to ensure violations are dealt with effectively.

On the regional/international level, there are both judicial and quasi-judicial mechanisms to deal with violations of the right to education.⁵⁷ For the purposes of this thesis, the international level is the most relevant and thanks to the UNESCO CADE (ratified by 110 Member States and which does not allow reservations⁵⁸), there is an international judicial mechanism available for abuses to the right to education. States parties to this Convention can lodge inter-state complaints at the International Court of Justice under Article 8. The ICJ’s Advisory Opinion on the construction of a wall in the Occupied Palestinian Territory highlighted the violation of the right to education as one element of Israel’s breaches of international law.⁵⁹ Furthermore, the quasi-judicial work of the international treaty monitoring bodies is highly valuable in assessing state parties’ compliance with the treaties they have ratified and creating Concluding Observations as to how the state parties should respond/act (also to private actor involvement).⁶⁰ The General Comments that CESCR and ComRC produce are crucial in guiding ongoing interpretation of the international treaties. Although the Optional Protocol to ICESCR was introduced in 2013, only 23 states have ratified it, meaning that in many states there is no communications procedure for individuals who feel their right to education has been infringed upon (in comparison there are 166 states parties to

⁵⁵ Katarina Tomaševski, *Human rights obligations: making education available, accessible, acceptable and adaptable*, p. 10, http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf, (accessed 4 June 2018).

⁵⁶ UNGA, *Report of the Special Rapporteur on the right to education, Kishore Singh: Justiciability of the right to education*, para. 28.

⁵⁷ The European Court of Human Rights has made it possible for individuals to directly access a regional court in cases of violations to their rights in accordance with the European Convention of Human Rights (right to education is covered by Article 2 of Protocol 1). Of a quasi-judicial nature is the European Committee for Social Rights (ECSR) for example along with the Inter-American Commission of Human Rights and the African Commission who receive complaints/petitions.

⁵⁸ <https://en.unesco.org/themes/right-to-education/convention-against-discrimination>, (accessed 4 June 2018).

⁵⁹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, <http://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>, (accessed 4 June 2018).

⁶⁰ GI-ESCR, *Human rights bodies statements on private education September 2014 – June 2017*, http://globalinitiative-escr.org/wp-content/uploads/2016/10/GIESCR-CRC_CESCR_CEDAW-synthesis-statements-on-private-actors-in-education.pdf, (accessed 23 June 2018).

ICESCR).⁶¹ This begs the question as to how effective such a convention can be in ensuring that an individual's right to education is enforced on an international level.

The former Special Rapporteur on the right to education, Kishore Singh - an international lawyer who interprets the customary law standard of the right to education and whose reports are often referred to by scholars like Manfred Nowak⁶² - argues that there is not a problem with the justiciability of the right to education as there are a variety of mechanisms in place. The problem is centred more on how often this right is indeed claimed. Singh suggests a key reason for this is a lack of awareness about the right to education.⁶³ Where violations do occur, they often affect the most vulnerable groups, groups that are already disadvantaged and discriminated against and who may not have access to legal assistance.⁶⁴ Many instances where a violation of the right to education has been taken to court, however, on a national, regional or international level is because of discrimination and "the right to education was justiciable through others rights."⁶⁵ With this in mind, the right to education "...is also, in many ways, a civil right and a political right, since it is central to the full and effective realization of those rights as well. In this respect, the right to education epitomizes the indivisibility and interdependence of all human rights."⁶⁶ This does, in principle, make it easier to claim your right to education no matter if violated by the state or by its inability/unwillingness to effectively protect the right from interference from other actors.

1.2 The role of non-state actors in relation to the right to education

Perhaps most importantly in the context of non-state actor involvement in education are Articles 13(3) and (4) of the CESCR. Article 13(3) recognises the freedom of parents and individuals to choose schools for their children that are not necessarily run by the state and which conform to their religious or moral convictions. Article 13(4) then highlights "the liberty of individuals and bodies to establish and direct educational institutions."⁶⁷ Crucially both of these paragraphs assert that any such institution must conform to "minimum education

⁶¹ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3-a&chapter=4&clang=en, (accessed 4 June 2018).

⁶² Manfred Nowak, *Human Rights or Global Capitalism: The Limits of Privatization*, p. 64-66.

⁶³ UNGA, *Report of the Special Rapporteur on the right to education, Kishore Singh: Justiciability of the right to education*, para. 75.

⁶⁴ *Ibid.*, para. 70.

⁶⁵ Fons Coomans, 'Justiciability of the Right to Education', *Erasmus Law Review*, Vol. 2, No. 4, (2009), p. 443, <https://ssrn.com/abstract=1542676>, (accessed 4 June 2018).

⁶⁶ CESCR, *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, para. 2.

⁶⁷ Article 13(4), ICESCR.

standards as may be laid down by the state.”⁶⁸ The CRC, the most highly ratified UN Convention, reaffirms such liberties in Article 29, indicating the importance of this aspect of the right to education.⁶⁹ As Kinley points out, it is significant that the word ‘liberty’ and not ‘right’ is used as “...the latter word might imply an obligation for the States Parties to grant material assistance to private schools.”⁷⁰ This is important when considering state obligations with regard to private actors in education.

As established above, Article 13(3) and (4) of the ICESCR recognise the freedom of parents and individuals when it comes to choosing schools for their children or establishing their own education institutions. This, therefore, proves the value given to private educational establishments in international law. Although there is not enough space to go into a history of private schools here, the establishment of private educational institutions for minorities for example goes back to “inter-war minorities treaties and in this context was affirmed by the Permanent Court of International Justice. (Minority Schools in Albania, Advisory Opinion).”⁷¹ In this case the maintenance of private schools was to ensure the ongoing education for minorities in their own language and according to their own religion. Private educational institutions whose object is not to “secure exclusion of any group but to provide educational facilities in addition to those provided by the public authorities”⁷² (and the education meets the standards laid down by the state) cannot be classified as discriminatory. According to the ICESCR there is no state obligation to fund private establishments “...however, if a State elects to make a financial contribution to private educational institutions, it must do so without discrimination on any of the prohibited grounds.”⁷³

It is necessary to examine the state’s obligations in more detail with regard to *protecting* the right to education as this is most relevant when it comes to the involvement of non-state actors in education. Following on from the obligations already mentioned, it makes sense that the state remains the primary duty-bearer for the right to education regardless of which other actors may be involved. States must protect against human rights abuses within their territory/jurisdiction by third parties because “The State is responsible for providing the right to education as the apex of its public service functions; it also remains responsible when it

⁶⁸ Articles 13(3) and 13(4), ICESCR.

⁶⁹ Article 29(2), CRC.

⁷⁰ Ben Saul, David Kinley, and Jaqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights*, p. 1151.

⁷¹ *Ibid.*, p. 1158.

⁷² Article 2, UNESCO CADE.

⁷³ CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, para. 54.

provides such services in partnership with other education providers and non-State actors.”⁷⁴ The responsibility of states is further emphasised in numerous reports from Singh who stresses that a state cannot evade its obligations regardless of whether they are privatised.⁷⁵ Moreover, as part of the UN Guiding Principles on Business and Human Rights (Ruggie Principles), it is emphasised that “Where a business enterprise is controlled by the State or where its acts can be attributed otherwise to the State, an abuse of human rights by the business enterprise may entail a violation of the State’s own international law obligations.”⁷⁶

The matter of responsibility for human rights violations by non-state actors is still highly contentious and debated among lawyers. The CESCR emphasises, however, that:

“Whereas States parties would not normally be held directly internationally responsible for a violation of economic, social and cultural rights caused by a private entity’s conduct (except in the three scenarios recalled in para. 11 of the present general comment), a State party would be in breach of its obligations under the Covenant where the violation reveals a failure by the State to take reasonable measures that could have prevented the occurrence of the event.”⁷⁷

This notion of the state’s responsibility to protect human rights from interference is reflected in pillar one of the Ruggie Principles.⁷⁸ They outline the necessary steps a state should take “to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”⁷⁹ As businesses are not State Parties to treaties they cannot carry direct obligations under international law but importantly, these Ruggie Principles highlight the responsibility that private actors also carry as businesses still have a corporate responsibility to respect human rights.⁸⁰ Although the Ruggie Principles are not an international legal instrument, they do “refer to and derive from State’s existing obligations

⁷⁴ UNGA, *Report of the Special Rapporteur on the right to education*, 26 August 2015, A/70/342, para. 78, <https://undocs.org/A/70/342>, (accessed 21 June 2018).

⁷⁵ UNHRC, *Report of the Special Rapporteur on the right to education, Kishore Singh: Protecting the right to education against commercialization*, 10 June 2015, A/HRC/29/30, para. 53, <http://undocs.org/A/HRC/29/30>, (accessed 21 June 2018).

⁷⁶ UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, (New York: UN, 2011), p. 7.

⁷⁷ CESCR, *General Comment 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, E/C.12/GC/24, 10 August 2017, para. 32, <https://bit.ly/2IGjXqC>, (accessed 21 June 2018).

⁷⁸ UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, p. 3.

⁷⁹ *Ibid.*, p. 3.

⁸⁰ *Ibid.*, p. 13.

under international law.”⁸¹ The sentiments here are supported by the CESCR’s commitment to examining, as part its monitoring duties, the “effects of the assistance provided by all actors other than States parties on the ability of States to meet their obligations under Article 13.”⁸² The ComRC has regularly referred to the risks posed by private actors in its Concluding Observations for various countries and emphasised the state’s obligations to curtail them.⁸³ It is clear that privatisation is a complex issue especially when it comes to protecting human rights.⁸⁴ It becomes perhaps even more complex when the divide between public and private is less clear as is often the case nowadays with a variety of different types of non-state actors in education.⁸⁵ What remains the same however, from the perspective of international law, is that the State is always the primary duty bearer when it comes to the fulfilment of human rights.⁸⁶

Crucially, one needs to look on the national level for jurisprudence on private actors being taken to court for violating the right to education (as non-state actors are not addressed by international law), once again reminding us of the importance of having comprehensive national legislation that conforms to IHRL.⁸⁷ If it becomes clear that a non-state actor has failed to respect the right to education and a state has failed in taking the necessary steps to protect the right to education from this actor at the national level, then there is the possibility of holding the state accountable at the regional or international level. One might also consider, however, that emphasising the responsibility of non-state actors (for human rights violations) could be seen as removing some of the obligation from the state, something that is not recommended or currently foreseeable in international law.

A further problem is the speed at which developments in the education field are taking place and that the law has not yet been able to ‘catch-up.’ The increase in the number of non-state actors involved in education globally is vast and there remains a lack of accountability for their influence on the right to education, despite the obligations of states (to respect, protect and fulfil) and the responsibility of businesses not to violate human rights. With more global

⁸¹ http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf, (accessed 4 June 2017).

⁸² CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, para. 60.

⁸³ ComRC, *Concluding observations on the combined second and third periodic reports of Haiti*, 24 February 2016, CRC/C/HTI/CO/2-3, para. 59(f), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/035/15/PDF/G1603515.pdf?OpenElement>, (accessed 21 June 2018).

⁸⁴ See discussion in: Manfred Nowak, *Human Rights or Global Capitalism: The Limits of Privatization*, p. 52.

⁸⁵ See section 3.2 or: UNGA, *Report of the Special Rapporteur on the right to education*, 26 August 2015, A/70/342, para. 39.

⁸⁶ Manfred Nowak, p. 48.

⁸⁷ See examples in: UNGA, *Report of the Special Rapporteur on the right to education*, 24 September 2014, A/69/402, para. 92, <https://undocs.org/A/69/402>, (accessed 21 June 2018).

non-state actors involved, there are concerns not only about how their activities may affect access to education in a non-discriminatory way (entitlement) but also how their influence can change the type of quality of education envisaged by international human rights documents (empowerment).⁸⁸ For these reasons there is currently much effort from civil society being put into drafting Human Rights Guiding Principles on the obligations of States with regards to private involvement in education (Draft Guiding Principles).⁸⁹ These principles aim to provide states with a holistic compilation of their **existing** international legal obligations with regard to private involvement in education. This means that, although it is hoped they may be endorsed by the UN at some point, they are already legally binding.⁹⁰ The idea is to maintain education as a public good, as it was intended, and to ensure both the “social-equality” and “freedom”⁹¹ dimensions of the right to education are protected. Right to Education and the Global Initiative for Economic, Social and Cultural Rights are leading the formation of this document and intend for it to be used “both by states when developing law and policies regarding the delivery of education, and by civil society to hold states to account.”⁹² Although the Draft Guiding Principles are still in the developmental stage, there are already five established key principles to help assess the effect of non-state actors on the right to education.

“Accordingly, the involvement of non-State actors in education is compliant with human rights standards when their existence or growth:

- Does not lead to any form of discrimination or segregation, or create or increase inequality
- Does not lead to fee-charging private schools being the only option for compulsory education
- Does not undermine the humanistic mission of education
- Conforms to minimum educational standards, being adequately regulated and monitored

⁸⁸ Ibid., para. 99.

⁸⁹ I attended the Geneva Consultation for these Guiding Principles and contributed to the lively discussions among all different types of actors involved in education: <http://www.right-to-education.org/blog/geneva-consultation-debating-human-rights-guiding-principles-state-obligations-regards-private>, (accessed 4 June 2018).

⁹⁰ <http://www.right-to-education.org/page/faqs-human-rights-guiding-principles-states-obligations-regarding-private-schools>, (accessed 4 June 2018).

⁹¹ Ibid.

⁹² Ibid.

- The role of non-State actors is publicly debated in line with the principles of transparency and participation.”⁹³

All different types of actors have been involved in the drafting process (through consultations) although it was clear that more input both from states themselves and from private actors is necessary to ensure that the principles are endorsed, valued and implemented. There is a difficult balance to be drawn between achieving consensus and maintaining the principled aims of the document.⁹⁴ These five principles will be instrumental in assessing the effects that non-state actors (British Council) are having on the right to education and, with reference to the SDG4 targets, examining how far this non-state actor aids states in the realisation of the Education 2030 Agenda in terms of access to and quality of education.

1.3 Policy framework on implementing the right to education (SDGs)

The SDGs form part of the policy framework relating to the right to education and the content aligns well with the aforementioned legal framework. The reason why education plays such an important role in the achievement of the SDGs, is its perceived enabling effect on the eradication of poverty.⁹⁵ States have made the political commitment to implement the SDGs by 2030. Although not a legally binding commitment, the Education 2030 Framework For Action includes a list of international instruments which have formed the principles upon which it is based.⁹⁶ As already stated, SDG4 relates to inclusive and quality education and targets for this goal include: “universal access to free, quality pre-primary, primary and secondary education; improving vocational skills; equal access to education; expanding education facilities, scholarships, and training of teachers.”⁹⁷ The indicators for each of the targets related to this goal involve the large scale collection of data to be managed primarily

⁹³ Delphine Dorsi, *A Framework to Assess the Role of Non-State Actors in Education against Human Rights*, <http://www.right-to-education.org/blog/framework-assess-role-non-state-actors-education-against-human-rights>, (accessed 4 June 2018).

⁹⁴ See article on principled pragmatism:

<http://www.ohchr.org/EN/NewsEvents/Pages/PrincipledpragmatismBusinessHR.aspx>, (accessed 4 June 2018).

⁹⁵ “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.” CESCR, *General Comment no. 13*, para. 1.

⁹⁶ “The principles informing this Framework are drawn from international instruments and agreements, including Article 26 of the Universal Declaration of Human Rights[viii], the Convention against Discrimination in Education[ix], the Convention on the Rights of the Child[x], the International Covenant on Economic, Social and Cultural Rights[xi], the UN Convention on the Rights of Persons with Disabilities[xii], the Convention on the Elimination of All Forms of Discrimination against Women[xiii], the Convention relating to the Status of Refugees[xiv] and the UN General Assembly Resolution on the Right to Education in Emergency Situations[xv].” UNESCO, *Incheon Declaration and SDG4 – Education 2030 Framework for Action*, para. 10.

⁹⁷ <https://sustainabledevelopment.un.org/sdg4>, (accessed 4 June 2018).

by UNESCO Institute for Statistics (UIS)⁹⁸ – for example primary and secondary completion rates for boys and girls.⁹⁹ This is a notably difficult task, considering the vast variety of different education systems in each of the 184 countries who have signed up to the SDGs.

UNESCO has emphasised that there is “renewed momentum” for the CADE, due to the focus and objectives of the Education 2030 Agenda.¹⁰⁰ Gender equality is definitely high on the SDG agenda which accurately reflects current issues and objectives in the education field globally as well as supporting the non-discrimination foundation of human rights.¹⁰¹ The CESCR specifically made note in its extensive General Comment no. 13 that Article 13 should be interpreted in light of recent declarations/international instruments, declarations that may highlight additional considerations or focus on gender or the environment for example.¹⁰² The SDGs are particularly relevant in the context of education because they influence how states and non-state actors work, what their work focuses on, and place the sustainability of their efforts in the foreground – a particular (and yet important) challenge when it comes to the long term goal of eradicating poverty through education.

1.4 Conclusion

In summary, it is apparent that the right to education is well codified in IHRL. There are clear guidelines regarding what qualifies as inclusive and quality education and how the state is the primary duty-bearer in fulfilling this right. Together with policy frameworks like the SDGs, states have the obligation to ensure that education is accessible, available, acceptable and adaptable, in cooperation with international actors if appropriate. The human rights framework is harder to apply to non-state actors (from a legal perspective) and yet it is now better understood (through the Ruggie Principles for example) that businesses have the responsibility to respect the right to education in their activities. Finally, through the creation of the Draft Guiding Principles, more attention is being drawn to the complexities of private actor involvement in education and the responsibility of the state to protect the right to education. A careful analysis is needed of how non-state actors can influence states and the

⁹⁸ <http://uis.unesco.org/en/topic/sustainable-development-goal-4>, (accessed 4 June 2018).

⁹⁹ The indicators are mostly enrolment and completion rates for girls and boys which does little to highlight the overall quality of education.

¹⁰⁰ UNESCO, *Ten Reasons Why The Convention against Discrimination in Education is highly significant in today's world*, <http://unesdoc.unesco.org/images/0015/001537/153765e.pdf>, (accessed 4 June 2018).

¹⁰¹ UNESCO, *Incheon Declaration and SDG4 – Education 2030 Framework for Action*, para. 8.

¹⁰² CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, para. 5.

implementation of the right to education locally, considering the legal content of this right and the overarching aims of education.

Chapter 2: The right to education in context

The importance of education is eloquently summarised by Amartya Sen who focuses on empowerment through education and highlights the dangerous effects of illiteracy on insecurity in many different forms.¹⁰³ Education, as an enabling right, is seen as a means to sustainable human development and is considered key to eradicating poverty and improving health and political participation (as highlighted in the SDGs).¹⁰⁴ It is easy to say what a bad education may lead to but perhaps harder to define what a good education should achieve.¹⁰⁵ It is still a highly contentious and philosophical question as to the exact aims of education. Without discussing what the intended goals are, it is difficult to assess what effect (non-state) actors may have on the right to education and how in fact they may line up with the principles of the right to education in international law. The increasing involvement of outside (non-state) influences on education raises the need to assess what effects ongoing globalisation and neoliberal thinking are having on the fundamental aims of education. This will provide a thorough context for the current debates on privatisation in education on the international level. By analysing the purpose of education as stated in IHRL and comparing this to what certain philosophers argue the aims of education ought to be, this chapter will highlight what all actors should consider to ensure that the holistic aims of education are kept in the focal point.

2.1 The purpose of education in international human rights law

As analysed in the first chapter, states have the obligation to ensure education is not only accessible and available but also adaptable and acceptable.¹⁰⁶ Article 29 of the CRC explicitly defines what education should achieve.¹⁰⁷ The aims of education are further explained in the Committee's General Comment no. 1:

“The aims are: the holistic development of the full potential of the child (29 (1) (a)), including development of respect for human rights (29 (1) (b)), an enhanced sense of

¹⁰³ Amartya Sen, ‘The importance of basic education’, *The Guardian*, 28 October 2003, <https://www.theguardian.com/education/2003/oct/28/schools.uk4>, (accessed 5 June 2018).

¹⁰⁴ UNESCO, *Incheon Declaration and SDG4 – Education 2030 Framework for Action*, para. 8.

¹⁰⁵ I refer to education in an institutional sense and do not go into the way you are educated throughout your life, outside of school.

¹⁰⁶ Katarina Tomaševski, *Human rights obligations: making education available, accessible, acceptable and adaptable*, p. 14.

¹⁰⁷ Article 29(1), CRC.

identity and affiliation (29 (1) (c)), and his or her socialization and interaction with others (29 (1) (d)) and with the environment (29 (1) (e)).”¹⁰⁸

The feasibility of such aims will be discussed in due course but an important aspect is that the ComRC highlights the dual purpose of education - for development and respect for one’s own identity contrasted with the promotion of understanding in the wider society and environment.¹⁰⁹ There is a clear emphasis on the purpose of education to result in the empowerment of “...the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence.”¹¹⁰ In Verhedye’s commentary of Article 28, the author mentions the way in which this article shifted the focus of international law regarding education onto the child’s perspective, for example, by omitting reference to the rights of parents in this article.¹¹¹ At the same time there is a clear element of community thus introducing the notion that education should help to build democratic and equal societies.¹¹² Nevertheless, much emphasis is placed on the child itself as the Committee states that “...children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another.”¹¹³ This conception that both children and education can play instrumental roles in alleviating complex social discrimination puts much responsibility on children as well as the possible effects that education can have on wider social justice issues.¹¹⁴ It does, from an international law perspective, also demonstrate the worth and importance placed on education generally.

The possibility that states can use education to indoctrinate or discriminate students is well established in history.¹¹⁵ Schools as microcosms of society, reproducing social and cultural inequalities has been debated for a long time¹¹⁶ but it is exactly this debate which produces the claim that education should contribute somehow to the reduction of inequalities. Due to the possibility that education can both improve or worsen inequalities, Verhedye argues that this is why the CRC included the phrase “on the basis of equal opportunities” in the chapeau

¹⁰⁸ ComRC, *General comment No. 1 (2001), Article 29 (1), The aims of education*, 17 April 2001, CRC/GC/2001/1, para. 1, <http://www.refworld.org/docid/4538834d2.html>, (accessed 5 June 2018).

¹⁰⁹ Ibid., para. 4.

¹¹⁰ Ibid., para. 2.

¹¹¹ Mieke Verhedye, *Article 28: The Right to Education*, p. 9.

¹¹² Article 29(1)(d), CRC.

¹¹³ ComRC, *General comment No. 1 (2001), Article 29 (1), The aims of education*, para. 4.

¹¹⁴ See section 2.3.3.

¹¹⁵ See: Mieke Verhedye, *Article 28: The Right to Education*, p. 36 or Noam Chomsky, *The Purpose of Education*, <https://www.youtube.com/watch?v=DdNAUJWJN08>, (accessed 5 June 2018) or R. Roderick Palmer, ‘Education and Indoctrination’, *Peabody Journal of Education*, Vol. 34, No. 4 (1957), pp. 224-228.

¹¹⁶ See discussion here: Pierre Bourdieu, ‘Cultural Reproduction and Social Reproduction’, in R. Brown (ed.), *Knowledge, Education and Social Change*, (London: Taylor & Francis, 1974).

of Article 28(1), “reconfirming the general non-discrimination principle of Article 2(1).”¹¹⁷ Perhaps one reason why education is considered so instrumental in reducing inequalities lies in its status as an enabling right, necessary for the realisation of other economic, social and cultural rights.¹¹⁸ Quality education should encompass the promotion of other human rights via the values taught, teaching methods, the content of the curriculum and the environment where the education takes place.¹¹⁹ This becomes particularly relevant when considering the current educational climate where debates focus on developing knowledge economies and skills for economic growth.¹²⁰ The ComRC clearly emphasises in its General Comment no. 1 that education that is designed to simply input excessive amounts knowledge into children and leads to competition “...may seriously hamper the harmonious development of the child to the fullest potential of his or her abilities and talents.”¹²¹ The ComRC also points out that education must respect the human dignity of every child¹²² and this should be noted when looking at debates regarding the production of human capital. These wide-ranging aims of education may seem broad and vague but proponents argue that this is intentional, acknowledging that the finer details surrounding education (curriculum for example) should remain open to allow for cultural preferences among the ratifying states.¹²³

2.2 The purpose of education in philosophy

After assessing how the aims of education are stated in IHRL, it is interesting to examine some of the key themes in the highly contentious philosophical discussions on the purpose of education. These philosophical themes are important to consider because of the increasing involvement of non-state actors in education internationally, each with their own agendas, aims and philosophies on education. Furthermore, it is necessary to consider and better understand what the aims of education are (or ought to be) in order to assess whether non-state actors are positively or negatively affecting the right to education. As already extracted from the CRC, there exists a distinct dichotomy as to the aims of education between the

¹¹⁷ Mieke Verhede, *Article 28: The Right to Education*, p. 36.

¹¹⁸ UNESCO, *Education and skills for inclusive and sustainable development beyond 2015*, May 2012, http://www.un.org/millenniumgoals/pdf/Think%20Pieces/4_education.pdf, p. 3.

¹¹⁹ ComRC, *General comment No. 1 (2001), Article 29 (1), The aims of education*, para. 8 or SDG 4.7, <https://sustainabledevelopment.un.org/sdg4>, (accessed 5 June 2018).

¹²⁰ Stephen J Ball, ‘Big Policies/Small World: An Introduction to International Perspectives in Education Policy’, *Comparative Education*, Vol. 34, No. 2, (1998), p. 122, <https://doi.org/10.1080/03050069828225>, (accessed 5 June 2018).

¹²¹ ComRC, *General comment No. 1 (2001), Article 29 (1), The aims of education*, para. 12.

¹²² *Ibid.*, para 8.

¹²³ Mieke Verhede, p. 28.

development of the individual or ‘self’ and the development of the community or ‘other.’¹²⁴ Although these are separate aspects, it should not be forgotten that they are interconnected and sometimes at odds with each other. By comparing the views of some influential philosophers on the purpose of education, specifically philosophers who address these two (conflicting?) aspects, it will become clearer as to how states and non-state actors should direct their thinking to better implement an inclusive and quality education model.

On a fundamental level, Richard Pring highlights the purpose of education being to aid humans in understanding the very meaning of life, what it means to be human and providing guidance on how a person may choose to live.¹²⁵ Indeed, it seems obvious that education should make life more meaningful to the extent that it should enable people to understand the world better. Furthermore, being able to enjoy education is intrinsically meaningful.¹²⁶ This idea could, however, become problematic when you presuppose that there is some kind of standard of what it means to be human or how to live ‘correctly.’ In terms of what education can achieve for the individual, Gert Biesta raises the idea of three interrelated domains, those being: “qualification, socialisation and subjectification.”¹²⁷ Qualification comprises those skills or knowledge that one would expect to gain from education.¹²⁸ Socialisation is also to some extent an expected outcome of education – through education children become familiar with different traditions relating to religion, culture or politics for example. However, Biesta points to the need to consider the ‘hidden’ ways in which socialisation “...works behind the backs of students and teachers, for example in the ways in which education reproduces existing social structures, divisions and inequalities.”¹²⁹ While qualification deals with very practical skills that are learnt and socialisation deals with the influences of social norms on the individual, Biesta also discusses the importance of looking at how the individual child

¹²⁴ I use these two words on purpose, as they helpfully demonstrate the dichotomic aims of education. I do not, however, propose to go into any discussion of these terms in a philosophical/phenomenological sense.

¹²⁵ Michael Hand, ‘Education for Moral Seriousness’, in Michael Hand, and Richard Davies (eds), *Education, Ethics and Experience : Essays in Honour of Richard Pring*, (London: Routledge, 2015), p. 51, <https://ebookcentral-proquest-com.uaccess.univie.ac.at/lib/univie/detail.action?docID=4185831>, (5 June 2018).

¹²⁶ Anders Schinkel, Doret J De Ruyter and Aharon Aviram, ‘Education and Life’s Meaning’, *Journal of Philosophy of Education*, Vol. 50, No. 3, (2016), p. 407, <https://doi.org/10.1111/1467-9752.12146>, (accessed 5 June 2018).

¹²⁷ Gert Biesta, ‘What Is Education for? On Good Education, Teacher Judgement, and Educational Professionalism’, *European Journal of Education*, Vol. 50, No. 1, (2015), p. 77, <https://doi.org/10.1111/ejed.12109>, (accessed 5 June 2018).

¹²⁸ *Ibid.*, p. 77.

¹²⁹ *Ibid.*, p. 77.

experiences subjectification. In this domain, young people begin to take initiative and responsibility and are no longer seen as “objects of the actions of others.”¹³⁰

Of course, none of these processes occur in a vacuum free from values and, indeed, the importance of transmitting values cannot be understated. Sen sees education as the “...expansion of a child’s capability or ability” and “the expansion in opportunities that the child has.”¹³¹ Crucially, he also adds “...creating capabilities through empowerment does not involve valuing whether the outcome of the use of a given capability is good or bad.”¹³² It seems clear that values need to be taught. Pring calls this “education for moral seriousness”¹³³ and sees education as an important way for humans to learn what to value. This suggests an important consideration about education in exploring the effects of non-state actors: *who* is teaching *which* values? Education cannot be taken out of context and for this reason it is helpful to look at Biesta’s three unavoidable considerations when reflecting on education – content, purpose and relationship: “...the point of education is that students learn something, that they learn it for a reason, and that they learn it from someone.”¹³⁴ Although this is helpful in considering the different aspects of the education process, any of these considerations could be used equally by those wishing to promote very different kinds of education. These areas are all highly contentious, complex and interconnected but the multifaceted ways in which non-state actors may affect the education context must be taken into consideration.

What is crucial throughout any of these domains – qualification, socialisation and subjectification – and for education in general is the ability for children to develop critical thinking skills. Paolo Freire emphasises the importance of critical thinking for “mutual humanization”¹³⁵ as well as the need for collaboration between pupils and teachers. This allows for teachers to better respond to the needs of the pupils so that what they learn is connected to their own experiences.¹³⁶ Dialogue is necessary to avoid the imposition of views.¹³⁷ Especially in the increasingly globalised world, it is as important now as ever before

¹³⁰ Ibid., p. 77.

¹³¹ Madoka Saito, ‘Amartya Sen’s Capability Approach to Education: A Critical Exploration’, *Journal of Philosophy of Education*, Vol. 37, No. 1, (2003), p. 27, <https://doi.org/10.1111/1467-9752.3701002>, (accessed 5 June 2018).

¹³² Ibid., p. 29.

¹³³ Michael Hand, ‘Education for Moral Seriousness’, p. 60.

¹³⁴ Gert Biesta, ‘What Is Education for? On Good Education, Teacher Judgement, and Educational Professionalism’, p. 76.

¹³⁵ Paolo Freire, *Pedagogy of the Oppressed*, (New York: Continuum, 2005), p. 75, http://commons.princeton.edu/inclusivepedagogy/wp-content/uploads/sites/17/2016/07/freire_pedagogy_of_the_oppressed_ch2-3.pdf (accessed 5 June 2018).

¹³⁶ Paolo Freire worked primarily with adults and it is conceivably harder to use his methods with children.

¹³⁷ Paolo Freire, p. 94.

for young people to remain critically aware of what they experience and are taught so that they can navigate through the complex system of values, develop their identity (alongside others) and avoid deception. This is consistent with the purpose of education framed in the CRC: “Basic skills such as literacy and numeracy are without doubt foundational, however, for education to be rights-based then it must promote critical thinking, participation, understanding of human rights and skills linked to (global) citizenship.”¹³⁸ Critical thinking about oneself and one’s surroundings can make young people aware of the ‘self-’ improvements made possible by a good quality education as well as the way education can foster understanding of the community or ‘other’, no matter which actors may be influential in their educational life.¹³⁹

Both John Dewey and Freire suggest the purpose of education includes building democratic societies, although they differ in their ultimate aims; Dewey focusses on producing “citizens for democracy” whereas Freire wishes to produce “revolutionary subjects.”¹⁴⁰ Building democracy is a theme taken up by many philosophers when suggesting the wider aims of education. Martha Nussbaum goes as far as to say that: “Nothing could be more crucial to democracy than the education of its citizens.”¹⁴¹ Education is, in her opinion, so important for democracy because, when done well, it can impart three capacities that she has developed from Rabindranath Tagore’s writing. These capacities show how education is fundamental to building democratic citizens, who are able to promote friendship and understanding among all peoples:

1. “The capacity for critical examination of oneself and one’s traditions, for living what, following Socrates, we may call ‘the examined life’.”¹⁴²
2. “Citizens who cultivate their capacity for effective democratic citizenship need, further, an ability to see themselves as not simply citizens of some local region or

¹³⁸ Kate Moriarty, *Achieving SDG4 through a Human Rights Based Approach to Education*, p. 16, <https://openknowledge.worldbank.org/handle/10986/28869>, (accessed 2 June 2018).

¹³⁹ Critical thinking does not, however, encourage a person to change the unequal social structures one has learnt to analyse. See: Nicholas C. Burbules and Rupert Berk, ‘Critical Thinking and Critical Pedagogy: Relations, Differences, and Limits’, in Thomas S. Popkewitz and Lynn Fendler (eds), *Critical Theories in Education*, (NY: Routledge, 1999), <http://faculty.education.illinois.edu/burbules/papers/critical.html>, (accessed 7 June 2018).

¹⁴⁰ D. Kellner quoted in: Kelvin Stewart Beckett, ‘Paulo Freire and the Concept of Education’, *Educational Philosophy and Theory*, Vol. 45, No. 1, (2013), p. 53, <https://doi.org/10.1080/00131857.2012.715385>, (accessed 7 June 2018).

¹⁴¹ Martha C Nussbaum, ‘Education and Democratic Citizenship: Capabilities and Quality Education’, *Journal of Human Development*, Vol. 7, No. 3, (2006), p. 387, <http://www.tandfonline.com/doi/abs/10.1080/14649880600815974>, (accessed 5 June 2018).

¹⁴² *Ibid.*, p. 387.

group, but also, and above all, as human beings bound to all other human beings by ties of recognition and concern.”¹⁴³

3. “The third ability of the citizen, closely related to the first two, can be called the narrative imagination. This means the ability to think what it might be like to be in the shoes of a person different from oneself, to be an intelligent reader of that person’s story, and to understand the emotions and wishes and desires that someone so placed.”¹⁴⁴

In comparison, these points align perfectly with the aims of education listed in Article 29(1) of the CRC. Education appears to be a crucial way in which young people can learn about themselves and can learn how to respect others equally, understanding they are part of a diverse community of people. In this way, the specific aims of education regarding the individual’s absorption of certain knowledge become much less important. The educational aim becomes realising “...the equality in human dignity and personal respect.”¹⁴⁵ This type of ‘humanistic’ view of the purpose of education is without a doubt admirable and the one which UNESCO promotes wholeheartedly¹⁴⁶, moving the focus away from education for economic advancement.

As already established, the aims of education in IHRL are both individualistic and communal, thus understanding the ‘other’ plays a crucial role in achieving the aims. To reach a truly inclusive and quality educational experience all actors, working in different contexts globally, need to be more open to the ‘other.’ It is problematic to talk about education that cultivates a sense of common humanity as this fails, perhaps, to highlight the complexity and intricacies of the ‘other’. It suggests, like Pring’s assertion that education helps people understand what it is to be human, that there is one type of human we should try to be. Biesta develops this notion in detail and finds that these ideas place the “‘essence’ of the humanity of the human being...potentially already ‘inside’ the human being.”¹⁴⁷ In his view, education should focus on an individual’s uniqueness and this is only revealed in interactions with others, not by the

¹⁴³ Ibid., p. 388.

¹⁴⁴ Ibid., p. 390.

¹⁴⁵ Richard Pring, ‘Oxford Review of Education Philosophical Debates on Curriculum, Inequalities and Social Justice’, *Oxford Review of Education*, Vol. 44, No. 1, (2018), p. 13, <https://doi.org/10.1080/03054985.2018.1409963>, (accessed 5 June 2018).

¹⁴⁶ UNESCO, *Rethinking Education: Towards a Global Common Good?*, p. 37, <http://unesdoc.unesco.org/images/0023/002325/232555e.pdf>, (accessed 20 March 2018).

¹⁴⁷ Gert Biesta, ‘Cultivating Humanity or Educating the Human? Two Options for Education in the Knowledge Age’, *Asia Pacific Education Review*, Vol. 15, No. 1, (2014), p. 16, <https://doi.org/10.1007/s12564-013-9292-7>, (accessed 5 June 2018).

way in which someone is inherently different.¹⁴⁸ For this reason, the aim of education cannot be seen as producing or cultivating something “..but in keeping open the possibility of what, in a general sense, we might refer to as the ‘intervention of the other’.”¹⁴⁹ If there were more of a focus on ‘the other’ in the way that Biesta talks about, education may stand a better chance of achieving its more communal aims. Moving away from ideas of cultivation opens up the door to more freedom in education – “the freedom to reach out in the imagination, allowing another person’s experience into oneself.”¹⁵⁰ Perhaps the purpose of education can therefore be summed up as the realisation of an individual’s freedom, in the Tagorean sense of capacities¹⁵¹, for the benefit of everyone. This could be seen in opposition to the more restrictive paradigm in education prevalent across the world today, which aims at developing an individual’s competitive advantage in the market, gets imposed upon young people without their distinct participation and, as can always be asked, for the benefit of whom?

2.3 The effects of neoliberalism and globalisation on education

For the purposes of this next section, Roger Dale’s four education questions will be utilised to provide a framework for the systematic analysis of how globalisation and neoliberalism are affecting education in practice, politics and the overall outcomes.¹⁵² First, however, it is important to specify what is meant by the terms ‘globalisation’ and ‘neoliberalism’ as these are both used frequently but with a range of varying interpretations. It is appropriate to use the definition of neoliberalism that Stephen Ball adapts from Ronen Shamir (as Ball writes widely on education sociology and privatisation) whereby the market penetrates areas of society it did not used to.¹⁵³ For the concept of globalisation, Koen de Feyter’s definition is particularly

¹⁴⁸ Ibid., p. 19.

¹⁴⁹ Ibid., p. 19.

¹⁵⁰ Martha C Nussbaum, ‘Education and Democratic Citizenship: Capabilities and Quality Education’, p. 392.

¹⁵¹ Nussbaum summarises the following as Tagorean capacities: “the freedom of the child’s mind to engage critically with tradition; the freedom to imagine citizenship in both national and world terms, and to negotiate multiple allegiances with knowledge and confidence...” Ibid., p. 392.

¹⁵² “These levels are those of educational practice (‘who is taught what, by whom, etc.’); education politics (‘how and by whom are these things decided, governed, administered, managed, etc.’); the politics of education (on what bases and in whose interest are these things determined, controlled, and with what relationships between other sectors and scales, etc.’); and the level of outcomes (‘with what public, private, personal consequences, etc.’)” Roger Dale, ‘Globalisation, Knowledge Economy and Comparative Education’, *Comparative Education*, Vol. 41, No. 2, (2005), p. 141, <https://doi.org/10.1080/03050060500150906>, (accessed 5 June 2018).

¹⁵³ “A complex, often incoherent, unstable and even contradictory set of practices that are organized around a certain imagination of the ‘market’ as a basis for the universalization of social relations, with the corresponding incursion of such relations into almost every single aspect of our lives.” R. Shamir quoted in: Stephen Ball, ‘Neoliberalism: confronting the slouching beast’, *Policy Futures in Education*, Vo. 14, No. 8, (2016), p. 1047, <http://journals.sagepub.com/doi/pdf/10.1177/1478210316664259>, (accessed 5 June 2018).

accessible as it emphasises the breakdown of state borders for many reasons.¹⁵⁴ De Feyter is an expert in issues on the intersection of human rights and globalisation. As a result of these two concurrent definitions, education policy and practice is being influenced on a global scale and, broadly speaking, changing from a public good controlled by the state to a consumer product. This focus on benefitting an individual's market appeal and the economy generally often results in the detriment of the important societal gains made possible from a quality and inclusive education.¹⁵⁵ It will become clear that this commodification of education has huge consequences on the cohesion of societies and contributes to increasing inequalities.

2.3.1 Educational practice

On the level of educational practice, one of the biggest effects of neoliberal thinking is found in examining what young people are taught and how this is measured. In the curriculum at all levels, the focus is placed on skills relating to science and technology as these are seen to be the most beneficial in preparing children for those jobs that will bring about the most economic growth.¹⁵⁶ "Education for economic enrichment needs basic skills, literacy and numeracy. It also needs some people to have more advanced skills in computer science and technology."¹⁵⁷ Important to note here is the way Nussbaum highlights that only *some* people need access to certain skills, thus contributing to the way in which market-focused education leads to the further deterioration of equal societies.

The attention given to technical skills is also evident from the sort of knowledge that international organisations like OECD test through assessments like Pisa. These tests primarily focus on knowledge and skills needed for the modern world, which are often very science based.¹⁵⁸ The change in focus from a knowledge society to a "knowledge economy"¹⁵⁹ sadly creates an environment in which "...education should focus on the production of flexible lifelong learners who are able to adjust and adapt to the ever-changing

¹⁵⁴ "Globalization essentially is 'a particular way of organizing social life across existing State borders' (Sklair 2002:8). Globalization consists of the breaking down of state borders to allow the free flow of finance, trade, production and labour." Koen de Feyter, *Human Rights: Social Justice in the Age of the Market*, (London: Zed Books, 2005), p. 14.

¹⁵⁵ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 193.

¹⁵⁶ Economic growth could of course benefit both the student and society but the focus here is on what the student's education lacks as a result of a preoccupation with economic growth.

¹⁵⁷ Martha C Nussbaum, *Education for Profit Education for Freedom*, p. 5, https://auroraforum.stanford.edu/files/essays/Nussbaum_Educ_for_Profit_Freedom.pdf, (accessed 5 June 2018).

¹⁵⁸ Fazal Rizvi, *Globalization and the Neoliberal Imaginary of Educational Reform*, p. 7, <http://unesdoc.unesco.org/images/0024/002473/247328E.pdf>, (accessed 5 June 2018).

¹⁵⁹ See discussion here: Susan L Robertson, 'Re-Imagining and Rescripting the Future of Education: Global Knowledge Economy Discourses and the Challenge to Education Systems', *Comparative Education*, Vol. 41, No. 2, (2005), <https://doi.org/10.1080/03050060500150922>, (accessed 5 June 2018).

conditions of global capitalism.”¹⁶⁰ Nussbaum highlights that a lack of attention in the curriculum on the humanities and a consistent focus on education for profit in the global market can ultimately threaten the development of a democratic citizen and society.¹⁶¹ The obsession with assessment and other comparative global rankings of school systems is affecting educational practice and directly leading to a neglect in learning content related to “individual and societal development” (the humanities for example) as they are deemed to have lesser value and their ‘output’ is harder to measure.¹⁶² As a direct consequence of international standardised testing, there is a tendency for the educational culture in schools to become more stressful and achievement oriented leading to increased pressure on both young people and teachers – something explicitly advised against by the ComRC in its General Comment.¹⁶³ The purpose of education is changed by neoliberal thinking in a global world and there seems to be real confusion as to what skills should be taught and how this is measured.¹⁶⁴ Ultimately “achievement comes to denote the sort of thing that a well-planned machine can do better than a human being can, and the main effect of education, the achieving of a life of rich significance, drops by the wayside.”¹⁶⁵ The holistic aims of quality education, as described in the CRC become increasingly distant from the **educational experience** of most young people with productivity prioritised above all.¹⁶⁶

2.3.2 Education politics

On the national level, as a result of globalisation and neoliberal thinking, governments’ educational priorities/strategies are guided by economic concerns stemming from an attempt to compete with other nations. “The need for change in education is largely cast in economic terms and particularly in relation to the preparation of a workforce and competition with other countries.”¹⁶⁷ The link here between education policy on the national level and the need to win votes in elections is relevant. If more people are in school and getting jobs, this is something clearly tangible that the population can witness. The very fact that this can have

¹⁶⁰ Gert Biesta, ‘Cultivating Humanity or Educating the Human? Two Options for Education in the Knowledge Age’, p. 13.

¹⁶¹ Martha C Nussbaum, *Education for Profit Education for Freedom*, p. 23.

¹⁶² UNESCO, *Rethinking Education: Towards a Global Common Good?*, p. 80/81.

¹⁶³ ComRC, *General comment No. 1 (2001), Article 29 (1), The aims of education*, para. 12.

¹⁶⁴ Richard Pring, ‘Oxford Review of Education Philosophical Debates on Curriculum, Inequalities and Social Justice’, p. 10.

¹⁶⁵ John Dewey, *Democracy and Education*, <http://www.gutenberg.org/files/852/852-h/852-h.htm>, (accessed 5 June 2018).

¹⁶⁶ Stephen Ball, ‘Neoliberalism: confronting the slouching beast’, p. 1054.

¹⁶⁷ Benjamin Levin, ‘An Epidemic of Education Policy: (What) Can We Learn from Each Other?’, *Comparative Education*, Vol. 34, No. 2, (1998), p. 131, <https://doi.org/10.1080/03050069828234>, (accessed 5 June 2018).

adverse effects on the quality of education is much harder to discern for a voter.¹⁶⁸ In the current climate, education is still seen as a key way to enhance human capital and improve economic performance leading to considerations that “...there is a direct relationship between investments in education (usually measured as years of schooling) and the productivity of workers (reflected both on the workers’ income and in their countries’ economic growth) (Schultz, 1971).”¹⁶⁹ When one examines the indicators used to measure the success of states in meeting their targets for the SDGs, it is perhaps surprising that so much emphasis is still placed on the school enrolment figures and the length of schooling in general.¹⁷⁰ While this is, undoubtedly, important data to collect, one must ask the question: is greater access to ‘bad quality’ education aimed at improving one’s economic worth in the market, really very beneficial?

At the same time as the state is attempting “to tie education more closely to national economic interests”, their other policy agenda “...involves a decoupling of education from direct state control.”¹⁷¹ This plays a particularly influential role in the rise of non-state actors in the education sector.¹⁷² What links these two seemingly contradictory policies is the apparent power of the market and the complex and competitive global position in which states find themselves. States understand how education functions as a crucial public good able to increase their GDP, for example, but in order for them to simultaneously keep up with their international competitors, they have to allow private educational institutions in to help them meet the desired economic outcomes of education. In this way, neoliberalism encourages the privatisation and commercialisation of education.¹⁷³ The very language used to talk about education has changed: “Rather, meanings of fundamental categories, such as knowledge, learning and learners, are transformed into credentials, consumption and human capital.”¹⁷⁴

¹⁶⁸ Sirianne Dahlum & Carl Henrik Knutsen, ‘Do democracies provide better education? Revisiting the democracy–human capital link’, *World Development*, Vol. 94, (2017), p. 6, <https://folk.uio.no/carlhk/publications/Democracy%20and%20education%20quality.pdf>, (accessed 5 June 2018).

¹⁶⁹ Karen Mundy, Antoni Verger, ‘The World Bank and the global governance of education in a changing world order’, *International Journal of Educational Development*, Vol. 40, No. 1, (2015), p. 11, <https://pdfs.semanticscholar.org/d7de/e21c132341da00e69adfd785dabd41707f2f.pdf>, (accessed 5 June 2018).

¹⁷⁰ <https://sustainabledevelopment.un.org/sdg4>, (accessed 5 June 2018).

¹⁷¹ Stephen J Ball, ‘Big Policies/Small World: An Introduction to International Perspectives in Education Policy’, p. 125.

¹⁷² See section 3.1.

¹⁷³ Susan L Robertson and Roger Dale, ‘The Social Justice Implications of Privatisation in Education Governance Frameworks: A Relational Account’, *Oxford Review of Education*, Vol. 39, No. 4, (2013), p. 427, <https://doi.org/10.1080/03054985.2013.820465>, (accessed 7 June 2018).

¹⁷⁴ *Ibid.*, p. 432.

Furthermore, the rise of influential international organisations (IOs) like the World Bank, OECD and UNESCO¹⁷⁵ (and other types of actors in the education sector) often contributes to the increasing privatisation of education.¹⁷⁶ Globalisation is conducive to the ways in which IOs heavily influence national education policy and as the most powerful member states of these big organisations are largely Western, neoliberal countries, it is important to assess how their (political, economic, cultural) presence is affecting education.

Rutkowski provides a clear explanation as to how these international actors influence national education policy:

“Through the construction of a multilateral space for ‘soft’ laws to be formed, construction of the means to directly implement policy through loans and grants, construction of a multilateral space to create and exchange policy knowledge, construction of the concept of being experts in measuring and evaluating educational policy.”¹⁷⁷

Barnett and Finnemore also raise the argument that these IOs directly influence how states understand educational quality or progress.¹⁷⁸ In this way, globalisation leads to convergence in educational policy, because states feel the need to compete with the global knowledge economy or to prove that they now conform to Western standards of cultural modernity.¹⁷⁹ The heavy focus of most IOs on the economic development of states once again leads to an emphasis on providing young people with technical skills for the workplace. What often unites them “...is their unrelenting critique of teachers and schools as outdated and inflexible institutions not capable of delivering the kind of learning that is regarded as necessary for the

¹⁷⁵ David J Rutkowski, ‘Converging Us Softly: How Intergovernmental Organizations Promote Neoliberal Educational Policy’, *Critical Studies in Education*, Vol. 48, No. 2, (2007), p. 230, <http://www.tandfonline.com/doi/abs/10.1080/17508480701494259>, (accessed 5 June 2018).

¹⁷⁶ See section 3.1.

¹⁷⁷ David J Rutkowski, p. 234-240.

¹⁷⁸ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 17.

¹⁷⁹ See Dale’s discussion of GSAE or CWEC although my argument is more aligned with the GSAE that Dale develops: “While both approaches recognize that their conceptualizations of the global level and its effects on education are not mutually exclusive -it is not a question of “all economics or all politics” - the most fundamental difference between them lies in the understanding of the nature of the supranational level. For CWEC, the world polity is a reflection of the Western cultural account, based around a particular set of values that penetrate every region of modern life. For GSAE, globalization is a set of political-economic arrangements for the organization of the global economy, driven by the need to maintain the capitalist system rather than by any set of values. Adherence to its principles is brought about by political economic leverage and perception of self-interest.”, Roger Dale, ‘Globalization and Education: Demonstrating a “Common World Educational Culture” or Locating a “Globally Structured Educational Agenda’’, *Educational Theory*, Vol. 50, No. 4, (2005), p. 436, <https://doi.org/10.1111/j.1741-5446.2000.00427.x>, (accessed 5 June 2018).

global knowledge economy.”¹⁸⁰ Crucially there are serious concerns about the political/legal accountability of such organisations as their “governing activities...increasingly operate above and across national territorial boundaries.”¹⁸¹ Many different actors are exercising much more power on an international scale in terms of education policy which raises questions of social justice as there is “governance without government”¹⁸². Because of the influence of OECD, World Bank and the EU, it has even been claimed that UNESCO, for example, has changed the way it collects educational statistics and created indicators that would make it easier to compare states (as opposed to assessing whether states are meeting their obligations for ensuring the human right to education).¹⁸³ It is apparent that neoliberalism and globalisation have fundamentally altered government behaviour and, in turn, the content of what is taught, the perceived purpose of this content and the relationship between all actors involved in education at different levels – national, regional or international. It is of the utmost importance to consider whose interests are being served and to remember that education is a human right, thus “...how it is funded and governed, and by whom, matters.”¹⁸⁴

2.3.3 Outcomes

The significance of how neoliberalism and globalisation currently affect education on both a private and public level warrants further clarification. The first outcome is the process of individualisation that occurs due to neoliberalism. Individualisation changes the conception of education and places the onus on how it can serve a single person as opposed to the whole society.¹⁸⁵ As part of this process, emphasis is put on what a self-interested individual can get out of education to improve his/her human capital. Education becomes synonymous with “...an individualism that is ‘competitive’, ‘possessive’ and construed often in terms of the doctrine of ‘consumer sovereignty’. It involves an emphasis on freedom over equality, where

¹⁸⁰ Susan L Robertson, ‘Re-Imagining and Rescripting the Future of Education: Global Knowledge Economy Discourses and the Challenge to Education Systems’, p. 166.

¹⁸¹ Susan L Robertson and Roger Dale, ‘The Social Justice Implications of Privatisation in Education Governance Frameworks: A Relational Account’, p. 431

¹⁸² Roger Dale, ‘Globalization and Education: Demonstrating a “Common World Educational Culture” or Locating a “Globally Structured Educational Agenda’, p. 436.

¹⁸³ Roger Dale, ‘Globalisation, Knowledge Economy and Comparative Education’, p. 119.

¹⁸⁴ Susan L Robertson and Roger Dale, p. 431.

¹⁸⁵ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 56.

freedom is construed in negative and individualistic terms.”¹⁸⁶ Of course, the focus on the individual is problematic as not every person has the same choices available or the same ability to look after themselves or compete in this kind of climate. “‘Choice’ assumes a much wider role under neoliberalism: it is not simply ‘consumer sovereignty’ but, rather, a moralisation and responsabilisation, a regulated transfer of choice-making responsibility from the state to the individual in the social market.”¹⁸⁷ This kind of educational climate fails to recognise the direct benefits education should bring to a society, aside from monetary ones. By focussing on the individual, education’s promise can only be half fulfilled and the UN’s wider goals of building tolerance and peace through education will not succeed because “Citizens are rendered as investors and consumers, and not as members of a polity who share certain common traditions, spaces and experiences.”¹⁸⁸

Individualisation does not necessarily lead to poor quality education¹⁸⁹ but it is detrimental to the goal of creating more equality in general as a good quality education becomes more accessible to only some people. It is, at first sight, somewhat ironic that in a globalised world we find ourselves in a position where peoples are emphasising their national identities more and more. This makes sense when one understands that what has been globalised, is largely a Western neoliberal way of thinking in which even education (sometimes argued as an equaliser) prioritises the ‘self’ with no importance placed on the understanding of the ‘other.’

The most extreme outcome of global education policy convergence is what Freire would call the possibility for “cultural invasion” in which “the invaders penetrate the cultural context of another group, in disrespect of the latter’s potentialities; they impose their own view of the world upon those they invade and inhibit the creativity of the invaded by curbing their expression.”¹⁹⁰ The more positive, possible eventuality is “cultural synthesis” whereby “the actors who come from “another world” ... do not come to teach or to transmit or to give anything, but rather to learn, with the people, about the peoples world.”¹⁹¹ It is necessary, at

¹⁸⁶ Michael A Peters, ‘Neoliberalism, Education and the Crisis of Western Capitalism’, *Policy Futures in Education*, Vol. 10, No. 2, (2012), p. 136, <https://doi.org/10.2304/pfie.2012.10.2.134>, (accessed 5 June 2018).

¹⁸⁷ Michael A Peters, ‘From State Responsibility for Education and Welfare to Self-Responsibilisation in the Market’, *Discourse: Studies in the Cultural Politics of Education*, Vol. 38, No. 1, (2017), p. 142, <https://doi.org/10.1080/01596306.2016.1163854>, (accessed 5 June 2018).

¹⁸⁸ Fazal Rizvi, *Privatization in Education: Trends and Consequences*, p. 5, <http://unesdoc.unesco.org/images/0024/002464/246485E.pdf>, (accessed 5 June 2018).

¹⁸⁹ It is beyond the scope of this thesis to examine the pros and cons of private schooling but it is important to note that the focus on an individual’s (educational) achievement can lead to very high quality private schools, whose goal is to meet the consumer’s desire for good grades.

¹⁹⁰ Paolo Freire, *Pedagogy of the Oppressed*, p. 152.

¹⁹¹ *Ibid.*, p. 180.

all times, to critically reflect on the possible effects of globalisation and the apparent need to compare countries with one another. Transplanting (education) systems is notoriously difficult due to the specific way in which every country has developed. The homogenization of policies (often due to policy comparison work by IOs¹⁹²) which do not take into consideration the specific local context and needs of the most vulnerable groups is a serious concern, especially with a variety of non-state actors involved. As Nowak points out with regard to those who wrote the CRC: “the drafters certainly did not have in mind education as a commodity to be sold by transnational corporations to children around the world, but a holistic public education system that varies from country to country.”¹⁹³ In their attempts to compete with the wealthiest nations, states adopt education policies that may not be tailored to their context and “What occurs in practice, both in developing and developed countries, is that the formulation of the (local) problem is aligned with the already existing (global) solution.”¹⁹⁴ Comparative education will not be discussed in detail here but it is important to remember that it is possible to learn from one another and witness that those countries “...which do best have developed training and education systems which reach the majority of the population.”¹⁹⁵

This leads us to the most worrisome effect of the globalisation/neoliberal direction in education that is, the way in which it leads to more inequality in society.¹⁹⁶ Freire sums up this idea perfectly in ‘Pedagogy of the Oppressed’, published many years before discussions on neoliberal globalisation and education had begun: “For the oppressors, what is worthwhile is to have more—always more—even at the cost of the oppressed having less or having nothing. For them, to be is to have and to be the class of the “haves.””¹⁹⁷ The ability for education to both reproduce and solve social inequalities is highly debated. “Schools have been held up as both the means of achieving equality in society but also as centrally implicated in the reproduction of inequalities.”¹⁹⁸ Pierre Bourdieu presents strong arguments

¹⁹² Fatal Rizvi, *Privatization in Education: Trends and Consequences*, p. 4.

¹⁹³ Manfred Nowak, *Human Rights or Global Capitalism: The Limits of Privatization*, p. 65.

¹⁹⁴ Gita Steiner-Khamsi, ‘Standards are good (for) business: standardised comparison and the private sector in education’, *Globalisation, Societies and Education*, Vol. 14, No. 2, (2015), p. 171, <https://doi.org/10.1080/14767724.2015.1014883>, (accessed 5 June 2018).

¹⁹⁵ David Phillips, ‘Neither a Borrower nor a Lender Be? The Problems of Cross-National Attraction in Education’, *Comparative Education*, Vol. 25, No. 3, (1989), p. 269, <https://doi.org/10.1080/0305006890250302>, (accessed 5 June 2018).

¹⁹⁶ Fazal Rizvi, Bob Lingard, ‘Globalization and Education: Complexities and Contingencies’, *Educational Theory*, Vol. 50, No. 4, (2000), p. 419, <https://doi.org/10.1111/j.1741-5446.2000.00419.x>, (accessed 5 June 2018).

¹⁹⁷ Paolo Freire, *Pedagogy of the Oppressed*, p. 57.

¹⁹⁸ Diane Reay, ‘Sociology, social class and education’, in Michael W. Apple, Stephen J. Ball

supporting the idea that education is a means of social and cultural reproduction meaning that in any educational system the culture transmitted is closer to that of the dominant class.¹⁹⁹ This suggests an inherent inequality in education. The idea of education as a free market commodity only worsens these inequalities, because if you have the economic capital (together with social and cultural capital) you can buy access to better quality education.²⁰⁰ It is pertinent to be cautious, however, that too much pressure is placed on education and what it can achieve. As Ball suggests, "...inequalities happen in a complex and dynamic interplay of structures and processes crucially involving decisions, values and priorities and the actions and interests of various parties deploying unevenly distributed capitals and resources."²⁰¹ On the one hand, it would be unfair to assume that education can make up for the inequalities already produced in a society due to socioeconomic factors. On the other hand, it would be a shame to underestimate what education can achieve if we move beyond a neoliberal perspective focussed on purely economic gains. The only way in which states can meet their international legal obligations will be to refocus their attention on the real purpose of education – “the development of the child’s personality, talents and mental and physical abilities to their fullest potential”²⁰² along with the development of respect for the wider community.

2.4 Conclusion

In conclusion, attention should be brought back to the real purpose of the international human rights framework, namely the protection of those excluded from what they are entitled to. “Inevitably, the conditions which expose people to human rights violations change. Today, one of those conditions is economic globalization.”²⁰³ While De Feyter makes a poignant point here, it is at the same time important to remember that “...human rights abuses are committed by legal entities, not by an abstract phenomenon named globalization.”²⁰⁴ In this way, it is crucial to analyse how all actors involved in education are affecting the inherent

and Luis Armando Candin (eds), *The Routledge International Handbook of the Sociology of Education*, (Oxford: Routledge, 2010), p. 396.

¹⁹⁹ Pierre Bourdieu, ‘Cultural Reproduction and Social Reproduction’, p. 57.

²⁰⁰ Stephen J. Ball, ‘New class inequalities in education: Why education policy may be looking in the wrong place! Education policy, civil society and social class’, *International Journal of Sociology and Social Policy*, Vol. 30, No. 3/4, (2010), p. 159, <https://doi.org/10.1108/01443331011033346>, (accessed 19 March 2018).

²⁰¹ *Ibid.*, p. 158.

²⁰² Article 29, CRC.

²⁰³ Koen de Feyter, *Human Rights: Social Justice in the Age of the Market*, p. 21.

²⁰⁴ Andrew Clapham, *Human Rights Obligations of Non-State Actors*, (Oxford: OUP, 2006), p. 8.

aims of quality and inclusive education. Ensuring that education is accessible, available, adaptable and acceptable becomes more complex in a globalised world but it is exactly for this reason that it is important to examine how international cooperation (which states are obliged to be involved in, both bilaterally and as members of IGOs²⁰⁵) can bring about positive changes to education, especially in terms of adaptability. States and non-state actors must, however, remain attune to the local context to ensure education programme design and implementation is culturally relevant, acceptable and inclusive of the ‘other’. Currently, UNESCO and others who are concerned about the trends in international education discourse have produced such documents as ‘Rethinking Education’. Here the focus is put on education as a global common good, not a public good, as they hope this will reaffirm “...the collective dimension of education as a shared social endeavour (shared responsibility and commitment to solidarity).”²⁰⁶ Adjusting global thinking in such a way as to encourage a critical openness to the ‘other,’ could hugely improve the quality and inclusivity of education and, in this way, contribute towards the realisation of social justice.

²⁰⁵ Mieke Verhede, *Article 28: The Right to Education*, p. 69.

²⁰⁶ UNESCO, *Rethinking Education: Towards a Global Common Good?*, p. 78.

Chapter 3: Privatisation in/of/through education

“Education privatization can be defined broadly as a process through which private organizations and individuals participate increasingly and actively in a range of education activities and responsibilities that traditionally have been the remit of the state.”²⁰⁷

“The world’s largest education multinational and largest testing company within this “industry”, Pearson, made an income of \$7 billion in 2011 and the top 20 education multinationals are worth a combined \$36 billion. This represents only a foot in the door to the larger market and there is room for vigorous growth.”²⁰⁸

After having established the legal framework behind the right to education when non-state actors are involved, as well as examining the purpose of education and how this fluctuates according to neoliberalism and globalisation, this chapter will explore what privatisation in education looks like in practice. Firstly, it is important to consider what motivates a state to privatise in the field of education, traditionally a well-recognised public good. Secondly, it will be useful to assess which type of non-state actors are involved in education and what motives they have. Finally, by looking at the highly contentious example of public-private partnerships (PPP) in developing countries, the effects of private involvement in education will be discussed. In conclusion, a human rights-based approach to education (HRBA-E) will be promoted to mitigate the foreseeable risks of non-state actors’ educational endeavours. This chapter will not deal with a comparison of public and private schools or charter schools and voucher systems – this has been extensively analysed in literature already.²⁰⁹ Instead, the increasing variety of ways non-actors are involved in education, especially in partnership with states in developing countries and how these non-state actors influence education, will be the focus of the discussion.

²⁰⁷ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 7.

²⁰⁸ UNGA, *Report of the Special Rapporteur on the right to education*, 24 September 2014, A/69/402, para. 33.

²⁰⁹ See for example: Fons Coomans & Antenor Hallo de Wolf, ‘Privatisation of education and the right to education’, in Koen De Feyter, Felipe Gomez Isa (eds), *Privatisation and Human Rights in the Age of Globalisation*, (Oxford: Intersentia, 2005).

3.1 The reasons why states may ‘choose’ to privatise education

While there is a state obligation to allow educational freedom according to IHRL, there are also legal obligations to limit the influence of non-state actors in order to protect education as a public good.²¹⁰ In the Human Rights Guiding Principles on the obligations of States with regards to private involvement in education (Draft Guiding Principles), and from the very fact they are being created, it is clear that there is increasing concern about the number of non-state actors involved in education. At the same time, however: “[i]ncreasingly, governments, international organizations (IOs), donors, and philanthropic entities are converging around the idea that the involvement of the private sector in education systems is inevitable and, to some extent, desirable.”²¹¹ This is primarily done in the name of “efficiency”, “effectiveness”, “diversification”, and “innovation”.²¹²

The reasons why states believe in these supposed benefits are complex and result from a mixture of both internal and external drivers.²¹³ It is curious, however, to consider why the education sector might be susceptible to interference from different actors which is why John Meyer and David Kamens conclude that “Education is of great value, but there is no technically known way to do it best - the situation is ideal for the operation of processes of fashion, of imitation, and thus of diffusion.”²¹⁴ One of the most obvious internal drivers for the privatisation of education is the assumed need for education reform in light of economic problems or because the state wishes “...to gain political legitimacy in the eyes of society and/or the international community (other states, IOs, and so on), but also political power.”²¹⁵ Caught in a climate where more limited government interference is the general trend and in light of the previous discussion on neoliberalism/globalisation, the importance of external drivers in guiding government behaviour in relation to privatisation and education becomes apparent.²¹⁶

Gita Steiner-Khamsi refers to a process of externalisation in education, whereby states learn or refer to policies from:

²¹⁰ See section 1.2 or Delphine Dorsi, *A Framework to Assess the Role of Non-State Actors in Education against Human Rights*, <http://www.right-to-education.org/blog/framework-assess-role-non-state-actors-education-against-human-rights>, (accessed 4 June 2018).

²¹¹ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 177.

²¹² *Ibid.*, p. 177.

²¹³ *Ibid.*, p. 19.

²¹⁴ Roger Dale, ‘Globalization and Education: Demonstrating a “Common World Educational Culture” or Locating a “Globally Structured Educational Agenda”’, p. 433.

²¹⁵ Antoni Verger, Clara Fontdevila and Adrian Zancajo, p. 22.

²¹⁶ Fatal Rizvi, *Privatization in Education: Trends and Consequences*, p. 3.

“1) other educational systems (e.g., US attraction to choice education policy in the UK), (2) other sectors in society (e.g., principle of market regulation borrowed from the economy or principle of total quality management borrowed from the health sector) or (3) broadly defined international standards or ‘best practices’...(4) non-state actors, the education-industrial complex...”²¹⁷

As demonstrated in chapter two, these different forms of externalisation are more likely to flourish in an interconnected, economically-driven world. Influential actors in education like philanthropic organisations, policy entrepreneurs, corporate advocates, the media and think tanks²¹⁸ provide tempting market-oriented solutions to problems states currently face which fit with government tendencies to see education as relegated to the production of human capital, ultimately valued according to its contribution to economic growth.²¹⁹ The size of the so-called ‘global education industry’ is highlighted by the quote at the start of this chapter and witnessed in for-profit corporations like Pearson who wield enormous influence in the industry. This is largely due to their intricately connected global network and presence in many areas of the global education industry - including being members of the forum Global Partnership for Education or as investors in low-fee private school (LFPS) chains like Omega.²²⁰

The reason why these non-state actors can play such an influential role in education is often due to their perceived political impartiality on the part of the state. “The scientific stamp of approval that marks commercial products helps to perpetuate the myth that the adoption of a reform package sold by the education industry is a rational, rather than a political, choice.”²²¹ Not only are these actors often considered to work impartially but their power is also “...legitimized through a series of claims about the altruistic, results-oriented, and neutral (not state, not commercial) nature of their activity.”²²² This does of course raise the question as to whether these different actors are working for profit or not, highlighting the present need for more research on the genuine nature of different actors’ work in education, whilst bearing in

²¹⁷ Gita Steiner-Khamsi, ‘Standards are good (for) business: standardised comparison and the private sector in education’, p. 177.

²¹⁸ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 137.

²¹⁹ See section 2.3.2.

²²⁰ Sangeeta Kamat, Carol Anne Spreen and Indivar Jonnalagadda, *Profiting from the Poor The Emergence of Multinational Edu - Businesses in Hyderabad, India*, p. 19, https://download.ei-ie.org/Docs/WebDepot/ei-ie_edu_privatisation_final_corrected.pdf, (accessed 6 June 2018).

²²¹ Gita Steiner-Khamsi, ‘Standards are good (for) business: standardised comparison and the private sector in education’, p. 176.

²²² Antoni Verger, Clara Fontdevila and Adrian Zancajo, p. 149.

mind the immensely influential role that education plays in every society.²²³ It is also important not to underestimate the effect that (external) international political commitments can have on encouraging or even legitimising private sector participation in education. The Education 2030 Framework dealing in detail with the SDG4 targets, welcomes the private sector due to their “...experience, innovative approaches, business expertise and financial resources to strengthen public education.”²²⁴ The fact that the former Special Rapporteur then highlighted his concerns about such multi-stakeholder partnerships, for the realisation of the SDGs, reiterates the lack of clarity/agreement as to what the benefits/risks of these kinds of partnerships in education are, especially in light of previous conceptions of education as a public good.²²⁵

A relevant concern at work here is the prospect that states do not choose to privatise education but are in fact ‘coerced’ into doing so. Economic factors play a key role in situations where the state, in an increasingly demanding, competitive and neoliberal climate, is struggling to meet its obligations to provide the necessary education system, leaving opportunities open to the private sector: “In numerous low-income countries, private-sector involvement in education is growing, not because governments are actively promoting it, but because states seem to be rather passive when it comes to addressing new educational demands.”²²⁶ These states are perhaps failing to invest in education enough²²⁷ to meet their international commitments and thereby opening the door for private sector involvement often without direct state oversight, especially in developing countries.²²⁸ Another ‘forced’ instance in which a developing country may start to privatise education occurs when an international organisation like the World Bank demands that a state open itself up to private actors, in exchange for a loan.²²⁹ Dobbin et al state that a more direct form of coercion can take place on a subtler level, however, in the way that some IOs monopolise their expertise or manipulate

²²³ Ibid., p. 150.

²²⁴ UNESCO, *Incheon Declaration and SDG4 – Education 2030 Framework for Action*, para. 82.

²²⁵ UNGA, *Report of the Special Rapporteur on the right to education*, 26 August 2015, A/70/342, para. 123.

²²⁶ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 89.

²²⁷ “Governments should spend at least 4% of GDP on education, or allocate 15% of total government expenditure. But one in four countries do not reach these benchmarks.” UNESCO, *Accountability in Education: Meeting our Commitments*, Global Education Monitoring Report 2017/18, p. 262, <http://unesdoc.unesco.org/images/0025/002593/2593338e.pdf>, (accessed 6 June 2018).

²²⁸ Global Campaign for Education, *Private Profit Public Loss*, p. 4, http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/GCE_Private_Profit_Public_Loss_2016_En.pdf, (accessed 6 June 2018).

²²⁹ Karen Mundy and Antoni Verger, ‘The World Bank and the global governance of education in a changing world order’, p. 12.

information.²³⁰ In summary it can be assumed that “... policy adoption cannot be taken for granted as the result of a goal-oriented and rational choice but, rather, the result of the misleading attraction that some innovative or international ideas generate—even when not enough evidence supports them (Steiner-Khamsi, 2010).”²³¹ It remains under-researched as to what extent the selling points for externalisation/privatisation are based on actual evidence regarding their effect on educational access and quality (as defined in IHRL) or merely the (perceived) power of the actors and their ability to sell. In such a complex field like education, there is no single solution and no matter how many different indicators/statistics get produced, this does little to prove the overall effectiveness of one form of educating. Ultimately, decisions that governments make regarding education policy (and privatisation) are often based on the “...socially constructed perception of their effectiveness”²³² which leaves much room for (or even invites) non-state actor involvement in education.

3.2 A variety of actors and forms of privatisation

This section aims to emphasise the large variety of private actors and ways these actors can be involved in education policy and practice. It is assumed that the privatisation of education focuses on the private provision of education which then fails to recognise how different actors influence education policy. “Universalized ideals around educational provision moreover tend to consider private actors as a single group. But the private sector is characterized by a multitude of providers, including for-profit, non-profit or religious schools, to name but a few.”²³³ In relation to non-state actors in education, it is particularly important to establish whether the actor is working on a for-profit basis or not, as this may generally influence their motive for becoming involved. Some argue that any for-profit venture should not be allowed since education is a public good.²³⁴ There is no doubt that non-state actors may claim they are ‘investing’ in education for philanthropic reasons but ultimately there is a recognition that there is much profit to be reaped from the education sector.²³⁵ Different types

²³⁰ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 26.

²³¹ Ibid., p. 23.

²³² Ibid., p. 25.

²³³ Francine Menashy, ‘Theorizing Privatization in Education: Comparing Conceptual Frameworks and the Value of the Capability Approach’, *Current Issues in Comparative Education*, Vol. 16, No. 1, (2012), p. 19, http://www.tc.columbia.edu/cice/pdf/30408_16_1_Francine_Menashy.pdf, (accessed 6 June 2018).

²³⁴ UNGA, *Report of the Special Rapporteur on the right to education*, 26 August 2015, A/70/342, para. 46.

²³⁵ Antoni Verger, Clara Fontdevila and Adrian Zancajo, p. 97/98.

of non-state actors are increasingly involved in development cooperation²³⁶ and it is exactly this kind of aid funding that many developing countries require to achieve their education targets according to the SDGs for example.²³⁷ It is therefore prudent to assess how a non-state actor can work effectively in partnership with a state to achieve education's broad aims.

Ball and Youdell provide a useful division of the types of privatisation, firstly suggesting that privatisation **in** public education could be called “endogenous” and involves the “importing of ideas, techniques and practices from the private sector in order to make the public sector more like businesses and more business-like.”²³⁸ This largely corresponds to the process of the commodification of education resulting from an overarching focus on the market in general.²³⁹ Endogenous privatisation ultimately creates a fertile environment for “exogenous” privatisation or the privatisation **of** public education characterised as: “the opening up of public education services to private sector participation [usually] on a for-profit basis and using the private sector to design, manage or deliver aspects of public education.”²⁴⁰ A third form of privatisation has also been identified by Ball and Youdell, that is “privatisation through education policy.”²⁴¹ This is a crucial extension of the definition of privatisation as it highlights the way in which non-state actors can influence education without actually being involved in the direct provision of education:

“It is not simply education and education services that are subject to privatization tendencies, but education policy itself—through advice, consultation, research, evaluations and forms of influence—is being privatised. Private sector organizations and NGOs are increasingly involved in both policy formation and policy implementation.”²⁴²

It is interesting to consider which form of privatisation poses the greatest risk to the human right to education. Privatisation through education policy is perhaps more hidden from view

²³⁶ See discussion on private sector and public sector relations in development cooperation: Lars Engberg-Pedersen, Signe Terney Larsen and Christel Vincentz Rasmussen (DIIS), *New Partnerships and New Actors in Development Cooperation*, (Copenhagen: Eurographic Danmark, 2014), p. 15.

²³⁷ See GPE on aid shortages: <https://www.globalpartnership.org/data-and-results/education-data>, (accessed 6 June 2018).

²³⁸ Stephen Ball and Deborah Youdell, *Hidden Privatisation in Public Education*, p. 9, http://pages.ei-ie.org/quadrennialreport/2007/upload/content_trsl_images/630/Hidden_privatisation-EN.pdf, (accessed 6 June 2018).

²³⁹ See section 2.3.

²⁴⁰ Stephen Ball and Deborah Youdell, p. 9.

²⁴¹ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 137.

²⁴² Stephen Ball and Deborah Youdell, p. 10.

but ultimately has a huge impact on guiding the education agenda for governments globally. It could be argued that endogenous privatisation has already completely infiltrated the education system to the extent that it is now hard to imagine a state with no privatisation in education whatsoever.²⁴³ The most visible threat comes from exogenous privatisation by for-profit actors as this type of involvement tends to lead to the most public cases of violations of the right to education surrounding non-discriminatory access to quality education.²⁴⁴

Ball goes further to explain how private actors influence education policy in numerous, interconnected ways that could be summarised under the idea of educational consultancy, regardless of how the actor refers to itself.²⁴⁵ The first method includes "...the selling of continuing professional development (CPD), consultancy, training, support and programme services directly to schools (and colleges and universities) – that is, the selling of policy as a retail commodity."²⁴⁶ Following this, private actors may use their own research to offer solutions "... which seem almost always to privilege further privatisations or 'business-like' methods in a series of moves which are 'always meticulous, often minute' (Foucault 1979, 139)."²⁴⁷ Thirdly, and finally, Ball highlights the ultimate risk that global education business poses to education policy, while referring especially to Cambridge Education:

"These profit-seeking behaviours bring about the insertion and naturalisation of western models of organisation, education, leadership and employment, and the extension of the commodification and commercialisation of education, through forms of what Miho (2004) calls 'intellectual dumping'. In the development of basic educational provision in many developing societies, private involvement is built into the systems from the start. Here the private sector is the instrument of a form of re-colonisation."²⁴⁸

Although it is important to consider the possible re-colonising effects of non-state actors' influence on education internationally, it is crucial to examine each actor's rationale for their work in the education sector. Most non-state actors adhere to some general value regarding education and this presumably determines, in a significant way, how they work, what profit (if

²⁴³ Ibid., p. 13-14. Or see: Antoni Verger, Clara Fontdevila and Adrian Zancajo, p. 3.

²⁴⁴ See section 3.3.

²⁴⁵ Stephen J. Ball, 'Privatising education, privatising education policy, privatising educational research: network governance and the 'competition state'', *Journal of Education Policy*, Vol. 24, No. 1, (2009), p. 89, <https://doi.org/10.1080/02680930802419474>, (accessed 6 June 2018).

²⁴⁶ Ibid., p. 84.

²⁴⁷ Ibid., p. 93.

²⁴⁸ Ibid., p. 95.

any) they gain, who they work with and if their general approach respects the principles of the human right to education. Furthermore, it becomes clear despite its complexity, that there are now countless innovative ways that non-state actors work (with states) to influence education. The variety of different models and partnerships between the private and public sector relates to “... the process that Jessop (2002, 199) calls ‘destatization’, that is the ‘re-drawing of the public–private divide, reallocating tasks, and rearticulating the relationship between organizations and tasks across this divide’.”²⁴⁹ This raises the need to analyse these new dynamics/partnerships and their impact on the right to a quality and inclusive education. How can states, as the primary duty-bearers, ensure the fulfilment of the right to education? It would, however, be a naïve assumption to equate all non-state actor involvement with negative consequences regarding the realisation of the right to education.

3.3 Non-state actor involvement in education – the case of low-fee private schools

Having explored the rationale behind privatisation and the rise of new forms of privatisation, this section will focus on the very current example of LFPS in Africa run by two different non-state actors – Bridge International Academies (BIA)²⁵⁰ and Promoting Equality in African Schools (PEAS). The goal will be to assess the extent to which this type of exogenous privatisation affects the right to education and, by analysing how they work, to examine the benefits of a HRBA-E as it can ensure their involvement does not jeopardise quality or inclusive education. The presence of LFPS has received much attention in the last few years both in the media²⁵¹ but also in academic literature and the comments made by UN treaty

²⁴⁹ Ibid., p. 96.

²⁵⁰ “BIA is a large-scale network of private pre-primary and primary schools claiming to deliver “quality affordable education to underserved families and children”.viii It operates over 500 schools in India, Kenya, Liberia, Nigeria, and Uganda, with ambitions to reach 10 million pupils by 2025. ix It has received investments from major international investors including the Chan-Zuckerberg Initiative, the Omidyar Network, the United Kingdom, the United States, the World Bank, Pearson, and Bill Gates,x for a total amount estimated to be over 100 million US dollars.xi It uses what it calls a “school in a box” model, employing a highly-standardised approach to education. At BIA, every school looks the same, the material used is the same in each classroom, and most importantly, the lessons are the same across all the academies of the same country. BIA uses a system of scripted lessons, and its teachers – who are mostly secondary school leavers without formal teaching qualifications – receive lesson plans on an e-tablet, which they have to follow word by word.xii”, <http://globalinitiative-escr.org/wp-content/uploads/2017/07/Civil-society-call-on-investors-to-cease-support-to-Bridge-International-Academies.pdf>, (accessed 6 June 2018).

²⁵¹ See news articles here: <https://www.theguardian.com/global-development/2017/aug/03/uk-urged-to-stop-funding-ineffective-and-unsustainable-bridge-academies>, <https://www.devex.com/news/debate-over-for-profit-schools-in-uganda-boils-over-as-bridge-and-others-refuse-to-close-92065>, <https://www.nytimes.com/2017/06/27/magazine/can-a-tech-start-up-successfully-educate-children-in-the-developing-world.html>, (accessed 6 June 2018).

monitoring bodies.²⁵² This is because “Recently there has been a growth in the establishment of for-profit, low-fee private schools in low- and middle-income countries. As the name suggests, these schools charge a small fee, relative to traditional private schools, and target lower-income families.”²⁵³ There are also numerous legal cases currently ongoing against BIA which re-enforces the relevance of looking at this type of actor. Although both of these non-state actors run LFPS, it will become clear that the crucial difference lies in the model they use. BIA is a self-proclaimed for-profit company whereas PEAS is a not-for-profit social enterprise.²⁵⁴

Depending on the specific actor involved and the country they are working in, LFPS are often set-up through PPPs with the government. The World Bank is a known advocate of the benefits of engaging in PPPs in education²⁵⁵ – and produced a 116 page report in which, interestingly enough, the words human right to education is not used once – and they suggest that the main motivation for introducing PPPs in education is to increase “...equitable access to schooling and for improving education outcomes, especially for marginalized groups.”²⁵⁶ It is argued that PPPs ensure “...an optimal level of risk sharing between the public and private sector.”²⁵⁷ Some of the promoters of LFPS include James Tooley and their research asserts that LFPS “...are better managed than public schools, teachers in these schools are more highly committed and, more important in their argumentation, in LFPS, children would learn more than in public schools.”²⁵⁸

Verger et al do, however, go on to point out that there is much discussion and disagreement concerning the overall effect of LFPS on learning outcomes. They conclude that one should

²⁵² CRC, *Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland*, 12 July 2016, CRC/C/GBR/CO/5, para. 17, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En, (accessed 21 June 2018).

²⁵³ Global Campaign for Education, *Private Profit Public Loss*, p. 4.

²⁵⁴ See their websites: <https://www.peas.org.uk/>, <http://www.bridgeinternationalacademies.com/>, (accessed 6 June 2018).

²⁵⁵ The World Bank defines a PPP here: “Although there are many forms of PPPs, including partnerships where private organizations support the education sector through philanthropic activities and high engagement ventures, this study examines PPPs in which the government guides policy and provides financing while the private sector delivers education services to students. In particular, governments contract out private providers to supply a specified service of a defined quantity and quality at an agreed price for a specific period of time. These contracts contain rewards and sanctions for nonperformance and include situations in which the private sector shares the financial risk in the delivery of public services.” Harry Anthony Patrinos, Felipe Barrera-Osorio and Juliana Guaqueta, *The Role and Impact of Public-Private Partnerships in Education*, (Washington: The World Bank, 2009), p. 1.

²⁵⁶ *Ibid.*, p. 9.

²⁵⁷ *Ibid.*, p. 28.

²⁵⁸ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 90.

be cautious when reading reports on the advantages of LFPS in terms of affordability, quality, and their equity producing potential in developing countries.²⁵⁹ “From here we could argue those promoting low-fee places in private schools not only exploit the aspirations of the poor, whilst the entrepreneur makes a profit from a social group least able to afford to pay, but that such practices reinforce gendered divisions of labour”²⁶⁰ as families prioritise sending their son to school, as opposed to their daughter. Furthermore, the argument that poorer parents are choosing to send their children to LFPS due to the supposed higher learning outcomes²⁶¹ is equally contentious as the reasons for sending children to a specific school vary hugely from one culture/place to another.²⁶²

The dangers surrounding LFPS chain companies like BIA are clear, bearing in mind a state’s obligation to protect the right to education from other actors, a heightened obligation when free, primary education is at stake. At the moment, BIA faces much scrutiny in Uganda and Kenya “...over allegations of failing to meet the required standards of operation for institutions of basic education and failing to register legally.”²⁶³ Numerous international actors have also expressed their concerns about BIA (regarding their transparency, the quality of education and the resulting inequalities caused) including the UK Parliament International Development Committee, the UN and the African Commission on Human and Peoples’ Rights.²⁶⁴ Even in the case of Liberia, where BIA is working in partnership with the government through the Partnership Schools for Liberia (PSL) scheme, there has been much criticism from organisations like Coalition for Transparency and Accountability in Education (COTAE). They highlight problems with poor working conditions for teachers, the limitation placed on class size by BIA, resulting in overcrowded schools, a general lack of transparency about operations and a lack of openness to local civil society organisations to mention just a few.²⁶⁵

²⁵⁹ Ibid., p. 93.

²⁶⁰ Susan L Robertson and Roger Dale, ‘The Social Justice Implications of Privatisation in Education Governance Frameworks: A Relational Account’, p. 431.

²⁶¹ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 95.

²⁶² Global Campaign for Education, *Private Profit Public Loss*, p. 8.

²⁶³ EACHRights, ISER & GI-ESCR, *Information Statement on Ongoing Cases Involving Bridge International Academies Ltd.*, 21 February 2018, <http://globalinitiative-escr.org/wp-content/uploads/2017/03/170323-Update-on-legal-cases-involving-BIA-Kenya-Uganda-Final-v5.pdf>, (accessed 6 June 2018).

²⁶⁴ GI-ESCR, *Civil society call on investors to cease support to Bridge International Academies*, 1 August 2017, <http://globalinitiative-escr.org/wp-content/uploads/2017/07/Civil-society-call-on-investors-to-cease-support-to-Bridge-International-Academies.pdf>, (accessed 6 June 2018).

²⁶⁵ COTAE, *Public Private Partnership in Education Monitoring Report*, http://globalinitiative-escr.org/wp-content/uploads/2017/03/PPP_monitoring_report_COTAE_final-002.pdf, (accessed 6 June 2018).

The former Special Rapporteur on the right to education has stated his concerns on numerous occasions about private providers and PPPs and asserts that by allowing LFPS to operate, in the case of BIA running primary schools for example, states are violating their legal obligations to provide free basic education to all.²⁶⁶ Singh further explains the need to adequately assess the effect of PPPs on education. There are still many doubts as to whether these low-income countries (where LFPS are so prevalent) can “... persuade and regulate for-profit actors to work in the public interest, and to avoid PPPs generating further school segregation.”²⁶⁷ Even if a state has the recommended regulatory framework in place to monitor private actors in education, the question remains as to whether their presence leads to “...an overreliance by national governments on for-profit education providers” and how “the investment in such providers by donor countries” contributes to the ongoing commercialisation of education.²⁶⁸ Singh believes that PPPs can cause a decrease in public investment in education and is thus an example of the “abdication of State responsibility to meet its obligation to provide quality public education to all its citizens.”²⁶⁹ The reason why analysing these issues is so crucial is because phenomenon like LFPS “monetize” access to education which transforms it into a consumer good, exacerbates inequalities, thus ruining the positive effect education can have on improving social justice.²⁷⁰

On the other hand, some non-state actors running LFPS have been praised for their efforts in terms of assisting states (through a PPP) in widening access to quality education. PEAS is an example of a well-regarded non-state actor running low-fee private secondary schools in Uganda.²⁷¹ An ongoing external evaluation will look at how the “PEAS programme impacts

²⁶⁶ UNHRC, *Report of the Special Rapporteur on the right to education, Kishore Singh: Protecting the right to education against commercialization*, para. 72.

²⁶⁷ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 103.

²⁶⁸ Global Campaign for Education, *Private Profit Public Loss*, p. 41.

²⁶⁹ UNGA, *Report of the Special Rapporteur on the right to education*, 26 August 2015, A/70/342, para. 43.

²⁷⁰ UNGA, *Report of the Special Rapporteur on the right to education*, 24 September 2014, A/69/402, para. 51.

²⁷¹ “PEAS programme started in 2007 in Uganda. Their first two schools were opened in 2008 and almost 50 percent of their schools were opened after 2012, suggesting that the programme is still in infancy. PEAS aims to substantially increase the number of secondary schools in Uganda. Most schools in the PEAS programme are built in areas with the most need, especially rural areas. The PEAS schools also target vulnerable groups. For example, in 2009 about 5 percent of students in PEAS schools reported a disability, compared to a national average of 2 percent in secondary education. Approximately 19 percent of PEAS students are orphans and at least 2 percent of female students in the PEAS programme report to be mothers.i In 2010, PEAS signed a Memorandum of Understanding with the Government of Uganda (GoU) to support the USE programme under the PPP arrangement. Through this agreement, PEAS receives a termly capitation grant (Ug Shs. 47, 000 per student), which helps to part-cover school operating costs. PEAS uses a ‘SmartAid’ model, which emphasizes financial independence of its schools..” Economic Policy Research Centre (EPRC), *Evaluation of the PEAS Network under the Uganda Secondary Education (USE) Programme*, p. 5,

on the quality, access and sustainability of secondary education provision in Uganda”²⁷² and has already come up with some positive results. It continues to differentiate itself from for-profit companies running LFPS because it focuses on secondary education (often ignored but necessary considering the focus on broadening access to primary education through SDGs and the following gap in secondary education) and secondly because PEAS schools are almost free due to the funding it receives from the Ugandan government.²⁷³

The report concludes that:

“PEAS admits relatively disadvantaged students who would otherwise not have access to secondary education in non-PEAS schools. Even though PEAS students have lower prior academic attainment, they are nonetheless overtime able to catch up with their peers in non-PEAS schools in their performance in numeracy and literacy due to several unique elements of the PEAS school model. PEAS schools are the most affordable on 'total' costs to attend than non- PEAS schools.”²⁷⁴

The fact remains that some states are in urgent need of support in order to meet their obligations regarding the right to education and that non-state actors can help to strengthen education in a specific context. More than half of the world’s out of school children (around 34 out of 63 million) are from Sub-Saharan Africa.²⁷⁵ PEAS’s unique model (a mixture of public and private ownership and delivery) “... can be seen as addressing some of the contradictions attributed by critics to commercial low-fee private school chains.”²⁷⁶ Another interesting point is raised here – just because a non-state actor is not making money, they still “constitute a private sector that pursues its own interests/agenda.”²⁷⁷ This is important because many different actors involved in education (“knowledge producers, advisors, advocates, and service providers”) are closely connected but, importantly, working outside of “democratic

<https://www.eprcug.org/component/edocman/?task=document.viewdoc&id=414&Itemid=>, (accessed 6 June 2018).

²⁷² Ibid., p. v.

²⁷³ Stephen J. Ball, Carolina Junemann, Diego Santori, *Edu.net: Globalisation and Education Policy Mobility*, (New York: Routledge, 2017), p. 133-4.

²⁷⁴ EPRC, *Evaluation of the PEAS Network under the Uganda Secondary Education (USE) Programme*, p. vi.

²⁷⁵ UNESCO, *Fact Sheet No. 48*, February 2018, UIS/FS/2018/ED/48, <http://uis.unesco.org/sites/default/files/documents/fs48-one-five-children-adolescents-youth-out-school-2018-en.pdf>, (accessed 6 June 2018).

²⁷⁶ Stephen J. Ball, Carolina Junemann, Diego Santori, p. 133.

²⁷⁷ Nafsika Alexiadou, ‘Privatising Public Education Accross Europe: Shifting Boundaries and the Politics of (Re)Claiming Schools’, *Education Inquiry*, Vol. 4, No. 3, (2013), p. 416, <https://doi.org/10.3402/edui.v4i3.22610>, (accessed 6 June 2018).

control in education policymaking processes.”²⁷⁸ If, however, the focus (and aid) is directed to areas highlighted by the recipient country and, like PEAS schools, sustainable institution building is the priority, then there is no reason why their presence cannot positively assist states.

In conclusion, it is clear that there are both positive and negative effects of non-state actor involvement on the right to education, depending largely on what motivates the actor and how they work with the state. There is, however, a clear possibility for non-state actors to positively contribute to a government’s realisation of the right to education if a certain selection of criteria are met. If one analyses the PEAS strategy and the results so far, the work seems to be in line with the Human Rights Guiding Principles on the obligations of States with regards to private involvement in education (Draft Guiding Principles) previously established.²⁷⁹ This is because it is a not-for-profit social enterprise that works closely with the Ugandan government, ensuring its work conforms to minimal education standards and that there is clear accountability in place as well as long term sustainability.²⁸⁰ With the example of LFPS in developing countries the importance of guiding non-state actor’s work more explicitly, in order to complement these Draft Guiding Principles, through a HRBA-E becomes clear.

3.4 A human rights-based approach to education

Using a HRBA-E could be considered a realistic solution in addressing concerns about private actors in education whether they are operating for-profit or not. Using the HRBA rhetoric is also appropriate considering how many non-state actors are working in education internationally and implementing projects with development funding aimed at reaching

²⁷⁸ Antoni Verger, Clara Fontdevila and Adrian Zancajo, *The Privatization of Education: A Political Economy of Global Education Reform*, p. 157.

²⁷⁹ See section 1.2.

²⁸⁰ “Every PEAS secondary school is expected to run independent of external fundraising within two years of establishment. The programme ensures sustainability of its schools at three levels: Firstly, PEAS UK fundraises to launch a secondary school, allowing it to open debt free. Then through a combination of subsidies from the GoU, boarding school fees, lunch fees and operation of income generating activities (IGAs), such as school farms, schools can generate enough revenue to cover their running costs, including teacher salaries after two years. Secondly, as PEAS schools mature, they are expected to contribute a small allowance to cover the cost of the support services received from the secretariat. These include construction management, internal auditing, school inspections, teacher training, and financial training. Finally, to ensure that generations of Ugandans can continue to enjoy a quality secondary education, each school is expected to build up reserves to eventually replace its own buildings, largely through efficient school financial management, and profitable income generating activities such as the school farms.” EPRC, *Evaluation of the PEAS Network under the Uganda Secondary Education (USE) Programme*, p. 5.

SDG4. Although the HRBA was developed to better streamline human rights in to the day-to-day work of UN agencies²⁸¹, the Common Understanding has been widely used by many organisations working in development cooperation so that all activities are intended “...to contribute directly to the realisation of one or several human rights.”²⁸² In the context of education:

“A HRBA-E offers a holistic approach to operationalize the right to education, respecting normative instruments that embed the planning and delivery of education in the principals of LEARN:

Legal standards of the right to education guide implementation;

Empowering children through quality rights-based learning;

Accountability of duty-bearers to fulfil their obligations for education is upheld;

Respect for the participation of rights-holders in their own education is constant;

Non-Discrimination for all children to ensure equitable, inclusive learning is central.”²⁸³

What these LEARN principles have in common with the Draft Guiding Principles and the Ruggie principles is that they are based on IHRL which proves beneficial in order to bring “a clear and legally based framework for the assessment of the role of private providers ... especially given all countries in the world are party to one or more international treaties protecting the right to education.”²⁸⁴ If a non-state actor is successfully guided by the abovementioned LEARN principles, then their responsibility to respect human rights will be upheld and a state’s duty to protect the right to education will be fulfilled. The LEARN principles not only complement the Draft Guiding Principles and Ruggie principles but actually develop them in a more productive sense. They provide positive guidance on how non-state actors can work effectively to specifically improve quality and inclusive education whilst also ensuring the necessary accountability for these actors is maintained, considering the state carries the legal obligations in international law.

The very phrasing of the Common Understanding on a HRBA is perfectly applicable to ensuring non-state actors respond to the local education environment they are working in to

²⁸¹ <http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>, (accessed 6 June 2018).

²⁸² The World Bank and OECD, *Integrating Human Rights into Development*, (Washington: The World Bank, 2013), p. 248, <https://openknowledge.worldbank.org/bitstream/handle/10986/12800/9780821396216.pdf?sequence=1>, (accessed 6 June 2018).

²⁸³ Kate Moriarty, *Achieving SDG4 through a Human Rights Based Approach to Education*, p. 10.

²⁸⁴ *Ibid.*, p. 21.

develop the specific “...capacities of “duty-bearers” to meet their obligations and/or of “rights-holders” to claim their rights.”²⁸⁵ A HRBA-E draws attention to the empowering aspect of the right to education, in line with the child-centred approach of the CRC, and simultaneously ensures that entitlement to education for everyone (availability and accessibility) remains, in line with the overarching principle of non-discrimination. Finally, a HRBA-E, through its participatory nature, could help all actors involved provide culturally relevant, high quality education (adaptability and acceptability) that will be sustainable – the consequence of which in light of social cohesion cannot be overstated.²⁸⁶

It is of the utmost importance to guide the way in which non-state actors work and not to simply focus on an analysis of how their work is or is not compliant with the right to education, especially considering: 1) the freedom aspect of the right to education that allows for private educational institutions, 2) the duty that states carry to cooperate internationally to ensure the right to education can be fulfilled and 3) the apparent acceptance in the international community of non-state actors in education. This is not to suggest that non-state actors should at any point supplant a state in providing education but rather can effectively supplement it, if the HRBA-E is used in cooperation with the state.²⁸⁷ More research should be carried out to assess the comparative (positive?) influence for-profit actors can have on the realisation of the right to education.

3.5 Conclusion

On the one hand, the HRBA-E is appealing because it returns the focus to the already existing legal obligations for a state regarding the right to education and, on the other hand, can equally apply to the responsibility that non-state actors also carry. This approach “...can and should guide each and every step of the education process—from policy, planning, and school management, to pedagogy, learning and financing—to help address current barriers”²⁸⁸ with regard to the convergence of privatisation (in all forms) and education. The suggestion that states and non-state actors should use this same approach could corroborate concerns about giving non-state actors “inappropriate power and legitimacy” however I wholeheartedly agree with Andrew Clapham in his assertion that we should “...presume that human rights are entitlements enjoyed by everyone to be respected by everyone.”²⁸⁹ It is also relevant to consider who carries more responsibility and at which times. Robertson and Dale highlight

²⁸⁵ The World Bank and OECD, *Integrating Human Rights into Development*, p. 246.

²⁸⁶ Kate Moriarty, *Achieving SDG4 through a Human Rights Based Approach to Education*, p. 19-29.

²⁸⁷ UNGA, *Report of the Special Rapporteur on the right to education*, 24 September 2014, A/69/402, para. 38.

²⁸⁸ Kate Moriarty, p. 29.

²⁸⁹ Andrew Clapham, *Human Rights Obligations of Non-State Actors*, p. 58.

that “...those who are institutionally and materially situated in ways that enable them to have a greater effect on the poor and vulnerable have greater obligations and responsibilities”, suggesting a “social connection model” of responsibility, as proposed by Young.²⁹⁰ In practice, this means that those non-state actors who exert the most power on a global scale, carry, in virtue of this power, more responsibility “...to ensure fairness, accountability and democracy.”²⁹¹ By using a HRBA-E, the right to education will be brought to the foreground of all education cooperation initiatives which means that the SDG4 target of inclusive, equitable and quality education can be achieved and the wider consequences of this can be realised and shared in societies - leading ultimately to the reduction of poverty.²⁹²

²⁹⁰ Susan L Robertson and Roger Dale, ‘The Social Justice Implications of Privatisation in Education Governance Frameworks: A Relational Account’, p. 430.

²⁹¹ *Ibid.*, p. 430.

²⁹² “Achieving universal primary and secondary attainment in the adult population would help to lift more than 420 million out of poverty, thus reducing the number of poor worldwide by more than half (Figure 12).” UNESCO, *Fact Sheet No. 44*, June 2017, <http://unesdoc.unesco.org/images/0025/002503/250392e.pdf>, (accessed 6 June 2018).

Chapter 4: British Council case studies

Having established the importance of the way in which a non-state actor works in order to assess their impact on the right to education, it is important to look at some specific examples of this in practice. This chapter will use the British Council's work in two countries – India and Ethiopia - and analyse whether their projects are directed by a HRBA-E and therefore what effect they are having on the realisation of the right to quality and inclusive education in those states. Both the British Council (BC) and the specific countries were chosen for careful reasons which are explained in due course and through a questionnaire that was created based on the LEARN principles, followed up by interviews with the relevant BC colleagues, it will be possible to get an insight into how the human rights framework fits into their education work in these two contexts.²⁹³ The importance of assessing the multifaceted ways a non-state education actor influences education policy and practice is crucial in light of the neoliberal globalisation/privatisation trends that have been explored in this thesis thus far and the significance of education as a powerful, common good.

4.1 Introduction to British Council

The BC is the UK's international organisation for cultural relations and educational opportunities and, founded in 1934, is the oldest cultural relations organisation in the world.²⁹⁴ The scope of this thesis limits going into any detailed history of the BC, but it is important to establish the current status of the organisation and the goals set out in the Royal Charter as this highlights the importance of education in their work at home and abroad:

“The British Council was founded in 1934 and incorporated by Royal Charter in 1940. We are a public corporation, a charity and an executive non-departmental public body with operational independence from the UK government. Our Patron is HM Queen Elizabeth II and HRH The Prince of Wales is our Vice-Patron. The Royal Charter which governs our work sets out the objects for which we exist. These are:-

- '[to] advance [...] any purpose which is exclusively charitable and which shall
- (a) promote cultural relationships and the understanding of different cultures between people and peoples of the United Kingdom and other countries;

²⁹³ Factual/contextual information regarding BC India and Ethiopia's education projects in this chapter was collected from the online questionnaire (Appendix 1) and during interviews with: Gauri Puranik, Assistant Director Schools and EES, British Council India, 7 May 2018 and Netsanet Demewoz, Director Education and Team Leader, QESSP, British Council Ethiopia, 24 May 2018.

²⁹⁴ <https://www.britishcouncil.org/organisation/history>, (accessed 6 June 2018).

- (b) promote a wider knowledge of the United Kingdom;
- (c) develop a wider knowledge of the English language;
- (d) encourage cultural, scientific, technological and other educational cooperation between the United Kingdom and other countries; or
- (e) otherwise promote the advancement of education.”²⁹⁵

The large focus on promoting the UK and the English language will be important for our discussion on how this actor influences states in realising the right to education. The charitable nature of the organisation should, however, not be underestimated. The exact status of the BC in structural and financial terms is complex:

“The British Council is an executive non-departmental public body, a public corporation (in accounting terms) and a charity under registration numbers 209131 (England and Wales) and SC037733 (Scotland). Although we receive a government grant in aid, the British Council is operationally independent from the UK government and does not carry out functions on behalf of the Crown.”²⁹⁶

It is, therefore, acceptable to refer to the BC as a non-state actor, especially when looking at its work in education in developing countries. Depending on the country, the BC is often assigned a different legal status. Crucially, it operates independently from the UK government and works with a mixture of self-generated income from English teaching and administration of exams, grant in aid from the government and funding from partnerships and contracts (often with the host state).²⁹⁷

The reason why this actor was chosen is three-fold. Firstly, it is an organisation for which I worked for three years and, after commencing my formal human rights studies, it became increasingly interesting to reflect on how human rights fit into the work of organisations working internationally in different fields. Secondly, the BC represents in itself a highly complex organisation that works in many different ways, in the more than 100 countries they have some presence in. It is therefore a great example of the multifaceted and globalised educational world that has been explored in this thesis and exemplifies the variety of non-state actors that are involved in education, with or without a direct focus on human rights. Thirdly, the BC is involved in privatisation through education policy²⁹⁸ which remains to be the less

²⁹⁵ <https://www.britishcouncil.org/organisation/structure/status>, (accessed 6 June 2018).

²⁹⁶ <https://www.britishcouncil.org/organisation/structure/status>, (accessed 6 June 2018).

²⁹⁷ <https://www.britishcouncil.org/organisation/structure>, (accessed 6 June 2018).

²⁹⁸ See section 3.2.

visible way that non-state actors are influential as their work in education rarely involves direct provision. It should be noted, however, that the exact ways in which different actors are involved in privatisation does not necessarily fit into only one category in each of their ‘projects.’ There are of course concerns about remaining critical enough when there has been an intimate connection with an organisation but I would highlight that although “Such researcher-cum-employee analyses may raise concerns of bias ... they are also a good indicator of the researcher’s thorough understanding of the organization – from the inside.”²⁹⁹

The BC's work in international development for education focuses on: strengthening school leadership and management, improving teacher development, supporting education reform and developing curricula and assessment systems. The BC brings an international network of expertise that may assist states in developing countries “to improve education outcomes.”³⁰⁰ As self-proclaimed ‘Partners for Change’, the BC’s work in education for international development aims to offer a: “a global perspective in education to enable young people to develop the skills and understanding they need to achieve success at school and improve their international competitiveness in the future.”³⁰¹ In light of earlier discussions about how neoliberal education policy is affecting the aims of education, the use of the word competitiveness and focus on achievement here raises numerous questions.

The BC’s work in their Education and Society (E&S) strategic business unit varies hugely from one country to another, as one can imagine considering the different local contexts. The projects are primarily country led although there are also global programmes like Connecting Classrooms (CC), run in partnership with the Department for International Development (DFID) since 2012.³⁰² Using methods like policy dialogue, professional development support, school partnerships and international school awards, the BC aims to help support teachers in developing six core skills considered particularly relevant in the 21st century: digital literacy, critical thinking and problem solving, creativity and imagination, student leadership and personal development, communication and collaboration and finally citizenship.³⁰³ When one

²⁹⁹ Hans-Otto Sano and Tomas Max Martin, ‘Inside the organization. Methods of researching human rights and organizational dynamics’, in Bård Andreassen, Hans-Otto Sano and Siobhán McInerney-Lankford (eds), *Research Methods in Human Rights*, (Cheltenham: Elgar, 2017), p. 270.

³⁰⁰ <https://www.britishcouncil.org/sites/default/files/british-council-education.pdf>, (accessed 6 June 2018).

³⁰¹ Ibid.

³⁰² I mention this specifically because both BC India and Ethiopia run programmes under the umbrella of Connecting Classrooms.

³⁰³ British Council, *Connecting Classrooms*, p. 4-5, https://www.britishcouncil.org/sites/default/files/connecting_classrooms_concise_report.pdf, (accessed 6 June 2018) and: “Building therefore on the deep pedagogies framework 8 and UNESCO’s transversal skills, and in consultation with a wide range of stakeholders across our network, the British Council is championing the

analyses the core skills, the connection to the aims of quality education as stated in IHRL are clear, especially when discussing education for citizenship for example. There is, however, a perceptible focus on training the individual (for employability in a globalised world) as opposed to developing inclusive societies.

In order to assess the effect the BC is having on the right to education as codified in IHRL, a carefully designed questionnaire was created³⁰⁴, based on the LEARN principles.³⁰⁵ Questions were drafted to elicit a response relating to each criteria of this HRBA-E so that it would be possible to examine the ways in which this non-state actor is working. This questionnaire was sent to the BC operations in India and Ethiopia and a resulting interview was carried out with representatives from both country teams in order to gather further, important information regarding their education work. India and Ethiopia were chosen as they are particularly relevant countries when it comes to challenges in achieving SDG4 - both countries form part of the six countries globally that contain “more than one third of all children of primary age who are out of school.”³⁰⁶ In fact, it is in Sub-Saharan Africa and Southern Asia that one finds over 70 per cent of out-of-school children globally at both primary and secondary levels.³⁰⁷ There are many issues to address especially regarding gender equality in India³⁰⁸ and Ethiopia.³⁰⁹ Although these two countries undoubtedly differ hugely in many ways (particularly their status as lower/middle income countries³¹⁰) it was felt that they face some similar challenges in education. Furthermore, they were chosen as both these BC operations still receive grant-in-aid funding from the UK government and are involved in education

development of these core skills and competencies by supporting teachers to develop their pedagogy...” British Council, *Unlocking a world of potential*, p. 5, https://www.britishcouncil.sg/sites/default/files/core_skills_brochure_unlocking_a_world_of_potential.pdf, (accessed 12 June 2018).

³⁰⁴ See Appendix 1.

³⁰⁵ See section 3.4.

³⁰⁶ UNGA, *Report of the Special Rapporteur on the right to education*, 29 September 2017, A/72/496, para. 51.

³⁰⁷ ECOSOC, *Progress towards the Sustainable Development Goals: Report of the Secretary-General*, 11 May 2017, E/2017/66, para. 8, <https://unstats.un.org/sdgs/files/report/2017/secretary-general-sdg-report-2017--EN.pdf>, (accessed 6 June 2018).

³⁰⁸ “The Committee on the Elimination of Discrimination against Women expressed its concern about the low retention and completion rates of girls at the secondary level due to early marriage, harmful practices and poverty, especially in rural areas.” UNHRC, *Compilation on India - Report of the Office of the United Nations High Commissioner for Human Rights*, 22 February 2017, A/HRC/WG.6/27/IND/2, para. 50, <http://www.refworld.org/docid/591972604.html>, (accessed 6 June 2018).

³⁰⁹ “However, the Committee is concerned about...The persistent regional disparities in enrolment rates and the high number of school aged children, particularly girls, who remain out of school, as well as the high drop-out rates, the significant low enrolment rates in pre-primary education and secondary education;” ComRC, *Concluding observations on the combined fourth and fifth periodic reports of Ethiopia*, 3 June 2015, CRC/C/ETH/CO/4-5, para. 61, <http://www.refworld.org/docid/566fc30b4.html>, (accessed 6 June 2018).

³¹⁰ The World Bank classifies India as a middle-income country, whereas Ethiopia hopes to achieve lower-middle income status by 2025. See here: <http://www.worldbank.org/en/country>, (accessed 6 June 2018).

development work related to achieving SDG4. Finally, it was important to examine two countries in order to assess how the BC's approach varies depending on the local context.

4.2 British Council in India

In order to gain a brief overview of the education context in India, the most pressing concerns gleaned from the reports of UN treaty monitoring bodies will be used, primarily the 2014 Concluding Observations of the Committee on the Right of the Child and the 2017 Universal Periodic Review. Although there is a 90% net primary enrolment rate in India³¹¹, “Estimates by the United Nations suggested that 17.8 million children — including 34 per cent of children with disabilities — did not attend school.”³¹² This hints at the high drop-out rates in India's schools, which the ComRC also raises as a big issue to be addressed.³¹³ In its recommendations, the ComRC also highlights concerns about the quality of education and of the teacher training. The state needs to invest more in education as the amount of GDP spent on it is the lowest among the BRIC countries.³¹⁴ Perhaps the most serious concerns are to do with inequalities and access to education for “religious minorities, scheduled castes and scheduled tribes.”³¹⁵ Girls also face much discrimination and harmful practices including child marriage violate their right to education.³¹⁶ It is important to note that India has seen a huge increase in the number of LFPS in recent years as part of a wider trend of the privatisation (in all forms) of education and this has been shown to be a direct consequence of

³¹¹ SDSN, *SDG Index and Dashboards Report 2017*, p. 201, <http://www.sdgindex.org/assets/files/2017/2017-SDG-Index-and-Dashboards-Report--full.pdf>, (accessed 6 June 2018).

³¹² UNHRC, *Compilation on India - Report of the Office of the United Nations High Commissioner for Human Rights*, para. 48.

³¹³ “The Committee recommends that the State party: (a) Strengthen its efforts to fully implement the Right of Children to Free and Compulsory Education Act, 2009, at the federal and state levels, including by, inter alia, drawing up development plans for schools, in compliance with the Act; (b) Take the necessary measures to improve the quality of education and provide adequate training for teachers, in particular at the state level and in rural areas; (c) Introduce child-rights education in the school curricula nationwide; (d) Address various discriminatory practices in the education setting, such as forcing children in marginalized situations to sit at the back of the classroom; (e) Improve preparedness for schooling and expansion of programmes on early childhood education; (f) Further adopt specific programmes aimed at decreasing the high dropout rates and ensure that out-of-school children, child labourers, children in disadvantaged and marginalized situations, as well as girls, are supported and assisted in exercising their right to education; (g) Improve data and information systems to track out-of-school children, measure quality and learning outcomes and correlate education and child protection data for effective planning and response; (h) Take measures to increase access by adolescents to secondary education, and develop and promote quality vocational training for children who have dropped out of school to enhance the skills of children.” UNHRC, *Concluding observations on the consolidated third and fourth periodic reports of India*, 13 June 2014, CRC/C/IND/CO/3-4, para. 72, <http://www.refworld.org/docid/541bee3e4.html>, (accessed 6 June 2018).

³¹⁴ UNHRC, *Compilation on India - Report of the Office of the United Nations High Commissioner for Human Rights*, para. 48.

³¹⁵ ComRC, *Concluding observations on the consolidated third and fourth periodic reports of India*, para. 79.

³¹⁶ See footnote 308.

a lack of government funding of public education.³¹⁷ The concerns around LFPS have already been discussed but it is worth noting that in the context of India, “... an estimated 37 per cent of the country’s population live below the poverty line and cannot afford even the LFPS that are the cheapest private schools available (Government of India, 2009; Tilak, 2009; Nambissan, 2012).”³¹⁸ These children are then left only with the option of attending a poorly funded public school where they struggle to receive a quality education. There was, however, a very important court case *Society for Unaided Private Schools vs. India* (2012) in which:

“...the Supreme Court of India held that the authority of the State to fulfil its obligations under the right to education can be extended to private, non-State actors. The Indian government can therefore require all schools, both state-funded and private, to accept 25% intake of children from disadvantaged groups.”³¹⁹

On the one hand, it is argued that this judgement has inadvertently led to the exemption of private minority schools from the Right to Education Act which is troubling for the principle of free, compulsory education for all.³²⁰ On the other hand, this ruling is an excellent example of how a state can fulfil its duty to ensure access to education remains, protecting the principles of the right to education for all, even in the presence of for-profit actors.

The purpose of British Council India’s (BC India) work in education is primarily focussed on bringing about sustainable systemic change and capacity building of (state) education institutions and of teachers. They work with the government or the relevant local state education department with a clear goal to improve delivery of English language teaching and learning across the education sector, as part of the wider CC core skills already mentioned. BC India also runs stakeholder meetings, bringing UK education experts to India to meet Ministry delegations for example. BC India is divided into two separate entities: a private limited company which runs the English and examinations business (for-profit) and the British Council Division which is part of the High Commission (not-for-profit) which runs the

³¹⁷ Sangeeta Kamat, Carol Anne Spreen and Indivar Jonnalagadda, *Profiting from the Poor The Emergence of Multinational Edu - Businesses in Hyderabad, India*, p. 15-16.

³¹⁸ *Ibid.*, p. 18.

³¹⁹ *Society for Unaided Private Schools of Rajasthan vs Union of India & Another* (2012) 6 SCC; Writ Petition (C) No. 95 of 2010, <http://www.right-to-education.org/resource/society-unaided-private-schools-v-india-supreme-court-india-2012>, (accessed 6 June 2018).

³²⁰ Jayna Kothari & Aparna Ravi, ‘A battle of rights: the right to education of children versus rights of minority schools’, *Oxford University Commonwealth Law Journal*, Vol. 16, No. 2, (2016), p. 196, <https://doi.org/10.1080/14729342.2017.1285103>, (accessed 12 June 2018).

E&S projects using their own grant or in some cases on a full cost recovery basis. BC India relies on funding from donors to carry out most projects and bids for/receives grants from organisations like DFID, World Bank and the EU often. In this context, a detailed analysis of two BC education projects in India, a project focussing on English teacher training, as well as one project aiming to develop the digital skills of rural girls (EDGE) will follow.

In the case of capacity building of teachers in Maharashtra, the government entered into a form of PPP with BC India and contracted them to run the teacher trainings and funding therefore came from them. BC India noted that the government had to justify why they chose the BC and not an Indian organisation for example, but it is known for its expertise in the field of English and teacher training and is therefore a respected ‘knowledge partner.’ Although the project started as a typical form of cascade training (whereby one teacher per school in each of the districts was trained by BC India which resulted in 70 000 primary school teachers being trained in total), the project has resulted in more systemic change and the implementation of communities of practice for the provision of continuous professional development (CPD) of English teachers. EDGE focusses on building the capacity of girls in poor and rural communities in India and has been run in partnership with two local charities since 2012 and partly funded using BC India grant money.³²¹ By assessing to what degree these projects align with the aforementioned LEARN principles, it will possible to see if BC India is guided by a HRBA-E.

4.2.1 Legal standards of the right to education guide implementation³²²

When questioned about what international human rights documents are referenced in BC India policies and proposals, it was interesting to hear that usually the SDGs are referred to while discussing projects internally and form part of BC India’s own vision and goals. It was noted that they could be more integrated into formal proposals with partners and are, indeed, a useful tool to align BC India work with government education policy. It seems that the SDGs are not the only motivation for specific projects but are compatible with them. This is visible when looking at other projects that the BC explores globally, as part of its contribution to SDG4, as they often began before the new Education 2030 Agenda had been agreed upon.³²³ Retrospectively, it is possible to see the clear link between the BC’s work and the principles of inclusivity and quality found in the right to education, however this does not seem to be the guiding factor at all stages of programming. Of course, when one bears in mind the fact that

³²¹ https://www.britishcouncil.in/sites/default/files/edge_-_programme_brochure.pdf, (accessed 6 June 2018).

³²² See section 3.4.

³²³ <https://www.britishcouncil.org/sustainable-development-goals/our-support>, (accessed 6 June 2018).

BC India is working in partnership with the government, then it is notably the state guiding the focus of the work, based on its international human rights obligations. Working so closely with the state, at the state's initiation, also ensures that BC India meets the minimum education standards.

4.2.2 Empowering children through quality rights-based learning

The training in Maharashtra focussed largely on developing learner centred approaches that are more inclusive (of girls and those with special needs for example). Through training 1000 so-called Master Trainers, BC India made a strong effort for a more sustainable type of training that could be cascaded down to lots more teachers. BC India commented that this new training brought about positive changes in the culture of teachers and they became more independent and enthusiastic about their CPD. Teachers were also encouraged to use platforms like WhatsApp and Facebook for sharing their ideas and best practice. These developments can be seen to directly improve the acceptability and adaptability of education, leading to quality and inclusive education that equips students with very relevant skills. Through more widespread, carefully planned and quality training of teachers, leading to more inclusive education, BC has successfully built the capacity of rights-holders to claim their rights respectively.³²⁴ There is, however, no particular focus on rights-based education. The only place where explicit mention was made of human rights was in the EDGE project. Through after-school sessions in safe spaces, EDGE removes barriers to girls' education and enhances "participants' English proficiency, digital skills and awareness of social issues."³²⁵ This therefore supposedly improves their education and employment opportunities and empowers them to get to know and claim their rights.

4.2.3 Accountability of duty-bearers to fulfil their obligations for education is upheld

In the case of a partnership with the government, the accountability of the state and BC India is maintained, highlighting the affirmation of the World Bank that the risk sharing nature of PPPs is a positive aspect.³²⁶ There is a fixed contract with targets and indicators agreed among the stakeholders before the start of any project. Reports are sent to the government (or funders have their own template to be completed) and BC India shares the impact of its work according to internal reporting standards, both enabling a transparent process. They also develop advocacy plans if the donors agree, to promote the project more widely to the public.

³²⁴ BC India argues that it improved the quality of the teacher training as, in the past, there were problems with the sanitation and food at training seminars.

³²⁵ <https://www.britishcouncil.in/english-and-digital-girls-education-india>, (accessed 13 June 2018).

³²⁶ See section 3.3.

The project in Maharashtra directly improves the capacity of duty-bearers to fulfil their obligations on various levels: the state ultimately by assisting them in providing quality teacher training, but teachers themselves too (are also often considered accountable for quality education) and improving their pedagogical approaches matches the recommendations that the ComRC made in its concluding observations. Through the collection of feedback forms after teacher trainings for example, it is possible to assess the impact of the projects and ensure BC India and the state remain accountable.

4.2.4 Respect for the participation of rights-holders in their own education is constant

BC India confirmed that a needs analysis is conducted for every project – and that has been the case since 2009. Involving learners in their own education is also factored into monitoring and evaluation plans of projects. BC India observes trainings and Master Trainers as well as running focus groups with a sample of children in different districts to assess the impact of their projects. In EDGE, local girls from the communities are also trained to be Peer Group Leaders (PGLs) who can then develop their confidence in leading classes. Most projects run over 2-3 years which allows enough time for systemic change.³²⁷ There seems to be little other direct involvement of children in BC India's projects from the start, although as already highlighted, their work focuses largely on developing the capacity of professionals at policy or teaching levels. The aim is to improve learning outcomes and yet measuring quality education is notoriously hard. Perhaps a more child-centred approach would enable BC India to better allow for participation of children and to then examine the effects of their work in education on them.

4.2.5 Non-discrimination for all children to ensure equitable, inclusive learning is central

The desired outcomes and impact to be achieved are set-out with partners at the start of programmes so, in the case of the teacher training project, the Ministry of Education (MoE) suggested schools that represent the disadvantaged communities. This helps to ensure BC work is directed to the most marginalised. Another interesting point is that BC India became aware that the female Master Trainers were not coming to the training events even though there are more of them than men. To address this issue, Master Trainings were organised at more locations within a state so that there was less distance to travel. This increased the number of female trainers which is an important part of creating more inclusive classrooms. Furthermore, improving the accessibility of (non-formal) education is a key aim of the EDGE

³²⁷ British Council uses a Theory of Change model to try and link its specific activities more closely to the goals desired. See here for examples of Theory of Change models used by Amnesty International: <https://www.amnesty.org/en/documents/pol10/3165/2016/en/>, (accessed 6 June 2018).

project and aligns with the ComRC concerns around the low levels of girls in education. Creating inclusive classrooms through improved pedagogical methods is also at the core of the BC's teacher development programmes and links directly to ComRC recommendations. In these ways, it is visible that BC India is invested in ensuring non-discrimination is a priority in their work.

4.2.6 Conclusion

Evidently, BC India's education projects discussed above are complementary to the LEARN principles. The desire to raise educational standards (in terms of accessibility, availability, adaptability and acceptability) in cooperation with the state or local organisations, through training teachers to improve their pedagogical approaches for example, is in line with the values found in the human right to education. It is, however, also clear that BC India is not always directly influencing the focus of its work (and how it works as it is in cooperation with states) or addressing the larger issue of very high drop-out rates or children who are out of school due to various discriminatory reasons. In order to see whether the BC does more systematically incorporate a HRBA-E into their work, it is important to look at their work in another context – Ethiopia.

4.3 British Council in Ethiopia

Ethiopia has seen huge progress in its education sector in terms of enrolment – rising from three million to 18 million since 1996, including over 100% of students into Grade 1 (technically impossible but due to problems with birth registration figures for example).³²⁸ This should not be underestimated considering its unique geographical nature “with only an estimated 19% of its population living in urban areas”³²⁹ which leads to concerns about the distance travelled to school and arising dangers from that. According to the 2014 UPR and 2015 ComRC recommendations, the biggest concern about education in Ethiopia is the lack of implementation of free and compulsory education for all without discrimination.³³⁰

³²⁸ Federal Ministry of Education, *Education Sector Development Programme V (ESDP V)*, p. 15, http://planipolis.iiep.unesco.org/sites/planipolis/files/ressources/ethiopia_esdp_v.pdf, (accessed 6 June 2018).

³²⁹ Ibid., p. 11.

³³⁰ “The Committee recommends that the State party take all appropriate legal and policy measures in order to: (a) Guarantee access to free and quality education for all children without discrimination on any ground, including by adopting a law on free and compulsory education; (b) Address the barriers of out-of-school children, particularly the direct and indirect costs of education, violence against children and gender-based violence, harmful traditional practices and negative attitudes towards children in vulnerable situations, including children with disabilities, children in street situations, refugee children, and children belonging to minority and indigenous groups; (c) Raise awareness about secondary education and to provide all appropriate means, including financial incentives, in order to encourage primary education graduates to advance to the secondary

Furthermore, Ethiopia is home to many refugees who find themselves in particularly vulnerable situations and who do not all receive equal access to quality education, leading to the UPR recommendation that education provision in refugee camps should be increased.³³¹ Ethiopia faces many challenges due to very high drop-out rates (which explains the low 2.6 years of expected schooling³³²) and out-of-school children, for many reasons relating to (but not exclusively):

“the direct and indirect costs of education, violence against children and gender-based violence, harmful traditional practices and negative attitudes towards children in vulnerable situations, including children with disabilities, children in street situations, refugee children, and children belonging to minority and indigenous groups.”³³³

The problems surrounding the quality of education are of huge concern to the government and they attribute this to low-skilled teachers leading to inadequate teaching and poor educational materials.³³⁴ The literacy rate of 15-24 year olds is only 69% which is particularly worrying when one considers that the population under 14 makes up 41% of the population.³³⁵ It has been argued that there is a real crisis in education in Ethiopia which BC Ethiopia confirmed to some extent. The government appears to be working in the right direction but people question the value of schooling, which is understandable perhaps, if achievement is so low despite large expenditure by the Ethiopian government.³³⁶

Many forms of privatisation of education have been discussed in the literature especially regarding the different types of private schools present in Sub-Saharan Africa from:

education; (d) Eliminate regional disparities in terms of attendance and enrolment rates, by paying particular attention to the pre-primary school level, and expand the school feeding programs; (e) Enhance the quality of the Alternative Basic Education (ABE) programmes, and facilitate the transition from the ABE centres to the formal education; (f) Provide guarantees that the school remains a safe and secure environment for the educational and personal development of every child, where freedom of expression is safeguarded, by prosecuting sexual abuse of children, eliminating harassment and intimidation of teachers and prohibiting campaigns of political indoctrination; and (f) Develop and promote high-quality vocational training programmes for all children and adolescents, and particularly for children and adolescents who drop out of school, and strengthen the training programmes for teachers, particularly in and for rural and remote areas.” ComRC, *Concluding observations on the combined fourth and fifth periodic reports of Ethiopia*, para. 62.

³³¹ UNHRC, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21*, 12 February 2014, A/HRC/WG.6/19/ETH/2, para. 76, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/109/38/PDF/G1410938.pdf?OpenElement>, (accessed 6 June 2018).

³³² SDSN, *SDG Index and Dashboards Report 2017*, p. 335, <http://www.sdgindex.org/assets/files/2017/2017-SDG-Index-and-Dashboards-Report--full.pdf>, (accessed 6 June 2018).

³³³ ComRC, *Concluding observations on the combined fourth and fifth periodic reports of Ethiopia*, para. 61.

³³⁴ Federal Ministry of Education, *Education Sector Development Programme V (ESDP V)*, p. 19.

³³⁵ <http://uis.unesco.org/country/ET>, (accessed 6 June 2018).

³³⁶ 4.5% GDP or 27% total government expenditure, <http://uis.unesco.org/country/ET>, (accessed 6 June 2018).

For the expected expenditure advised by UNESCO see section 3.1.

“community, religious, spontaneous (bush), profit-making and expatriate private schools.”³³⁷ It is perhaps important to note that traditionally, before the 20th century and Western influence in Ethiopia, “The traditional school was the purview of the Church and the Mosque. Literature shows that in traditional schools, most people paid for their education in kind (grains), in labor, and sometimes in cash.”³³⁸ As is the case in many developing countries nowadays, the for-profit private sector has infiltrated the market and in Addis Ababa this type of actor now runs 65% of the primary education schools.³³⁹

In recent years, the government has put much effort into increasing access to education. In 1994, they abolished all school fees.³⁴⁰ Since 2006, the Ministry of Education has also introduced the Alternative Basic Education (ABE) programme which established ABE schools to try and reach the out-of-school children, resulting in around 4000 ABECs by 2015.³⁴¹ “The national ABE Strategy provides guidance for the establishment of new ABE centers (ABECs) and in parallel the extension and transformation of ABECs into formal primary schools.” Until now ABE ran outside the formal education system. This programme helps to bring disadvantaged children into school, those who were previously not able to access primary education.

The priority areas for British Council Ethiopia (BC Ethiopia) in education focus on capacity development and policy dialogue. Connecting Classrooms is run by BC Ethiopia but it was emphasised that the scope of this project is relatively small, considering the size of Ethiopia.³⁴² They also play a role in generating evidence through the creation of studies, at the request of the Ministry of Education of Ethiopia (MoE). As teacher education is currently a big reform area³⁴³, BC Ethiopia was commissioned to do a number of studies including one on teacher supply and demand in Ethiopia, highlighting the gaps and reasons for it. The main focus in this section will be on the DFID funded Quality Education Strategic Support Programme (QESSP) which BC Ethiopia runs as a contract service provider to the MoE and

³³⁷ Teshome Nekatibeb Begna, ‘Public Schools and Private Schools in Ethiopia: Partners in National Development?’, *IJHSSE*, Vol. 4, No. 2, (2017), p. 102, <https://www.arcjournals.org/pdfs/ijhsse/v4-i2/10.pdf>, (accessed 6 June 2018).

³³⁸ The World Bank and UNICEF, *Abolishing School Fees in Africa*, (Washington: The World Bank, 2009), p. 49.

³³⁹ Interview with Netsanet Demewoz, Director Education and Team Leader, QESSP, British Council Ethiopia, (Skype, 24 May 2018).

³⁴⁰ UNICEF Ethiopia, *An Impact Evaluation of Alternative Basic Education in Ethiopia*, p. 8, https://www.unicef.org/evaldatabase/files/Ethiopia_ABE_Final_Report_22.09.pdf, (accessed 6 June 2018).

³⁴¹ *Ibid.*, p. 9.

³⁴² Netsanet Demewoz explained that they work with between 300-500 schools through CC which is a fraction of the 30 000 schools country-wide.

³⁴³ Federal Ministry of Education, *Education Sector Development Programme V (ESDP V)*, p. 19.

the studies are funded by this programme. BC Ethiopia had to compete with other educational actors to be the managing agent for QESSP. The project is demand driven by the MoE – meaning that every year the MoE will ask for expertise in certain areas and BC Ethiopia will then prioritise this need. The overarching goal of QESSP is to improve learning outcomes because, as we have seen, there is a very high enrolment rate but also high drop-out rate and low literacy rate, which can all be attributed to poor quality education. BC Ethiopia highlighted the five key intervention areas for QESSP: teacher education, school leadership, inclusive education, curriculum and system strengthening. The system strengthening component focusses largely on developing the skills of policy implementers in the Regional Education Bureaus (REBs) through long term advisory staff seconded to the MoE.

During the Skype discussion, it was confirmed that BC Ethiopia will start a new study soon commissioned by the MoE. This will be funded by QESSP and the aim is to assess the possible advantages of PPPs in the education system, largely in response to the education financing problem there. BC Ethiopia will assess the current developments with regard to private providers, look at the legal framework behind such moves and what potential there is for the government to guide private providers to further the advancement of quality education. It is therefore highly relevant to question the exact motives behind such developments and to remind all actors involved (including the duty-bearing state) to carefully assess whether non-state actors are using a HRBA-E and what effect they are having on the fulfilment of the right to quality and inclusive education.

4.3.1 Legal standards of the right to education guide implementation

BC Ethiopia emphasised that the SDGs and other relevant international laws and conventions pertaining to people with special needs are referenced in their proposals. No further comment was made regarding whether this is done to improve their legitimacy in front of the government, as was the case in India. From a legal perspective it is clear, through the very nature of the QESSP project and close cooperation with the MoE, that BC Ethiopia is indeed complying with minimum education standards (much like BC India) but this does not mean that these legal standards are guiding their education projects per se. The focus of their work aligns with the government's priorities surrounding improving the quality of education, which compliments the issues highlighted by the treaty monitoring bodies and demonstrates that that BC Ethiopia is primarily relying on the state to guide their work in education - not necessarily the legal standards of the right to education – although these two motivators should of course be complimentary.

4.3.2 Empowering children through quality rights-based learning

With QESSP funding and oversight from BC Ethiopia, 300 ABE facilitators were trained in the Afar region in a project run by the REB with initial support from Save the Children. The aim was to train young facilitators from within the rural communities, to improve the quality of education at ABECs – a recommendation from ComRC. Due to language and cultural differences, it was important to recruit local teachers who could then adapt their teaching to ensure it remained relevant and accessible to children. As BC Ethiopia is not influencing the curriculum directly at this stage, little can be said as to whether human rights education is addressed. The BC's expertise and work on teacher training contributes to ensuring teachers become better at teaching in an inclusive fashion and remain motivated to do so - BC Ethiopia emphasised the challenges around teacher motivation.³⁴⁴ As mentioned above, teacher development is also a sustainable type of assistance as teachers can use these skills to deliver high quality education and pass these skills on to the next generation of teachers as well.

4.3.3 Accountability of duty-bearers to fulfil their obligations for education is upheld

Accountability and transparency are ensured through a variety of monitoring mechanisms. As part of QESSP, BC Ethiopia are required to report both to the MoE and DFID according to an agreed set of indicators, largely focussing on capacity building as this is the priority (measuring number of teachers/policy implementers trained for example). The MoE can then apply this new capacity to improve education as desired. At the highest policy level, there are steering meetings between the MoE and donors. For a specific teacher training programme, feedback forms are used according to the BC monitoring and evaluation procedure. Through BC Ethiopia's professional consultancy, the local staff are trained to better fulfil their obligations: producing manuals to assist in developing plans to meet the diverse educational needs of children with learning difficulties or creating materials for the purpose of developing school leadership skills. These are often produced by BC and adapted as appropriate to the local context, sometimes with the help of external, but national, consultants.

4.3.4 Respect for the participation of rights-holders in their own education is constant

BC Ethiopia is fully reliant on the MoE and local education authorities having already carried out appropriate research and welcoming participation of children in matters regarding their own education. Available data from the MoE including the Education Statistics Annual Abstract are used to lead project plans. Apart from getting feedback from students, in QESSP,

³⁴⁴ This claim is supported here: Tom Gardner, 'Ethiopia's remarkable education statistics mask a system in crisis', *Quartz Africa*, 28 December 2017, <https://qz.com/1163797/ethiopias-remarkable-education-statistics-mask-a-system-in-crisis/>, (accessed 6 June 2018).

BC Ethiopia is not in direct contact with children. This is, however, the nature of this specific project focussing on capacity building of the government. In the ABEC project, BC Ethiopia conducted follow-up interviews with the newly trained facilitators, district education officers as well as a sample of children from the local communities to assess what improvements had been made. It was noted that assessing the quality of education is always challenging. Reports from these interviews were, however, positive. More cooperation with local NGOs could be encouraged from a HRBA-E perspective but within the scope of QESSP, this is not feasible as only the MoE and REBs have access to the funds. In other work, it would, however be very positive to see the participation of local actors and children themselves in expressing their thoughts on the development of their own education system.

4.3.5 Non-discrimination for all children to ensure equitable, inclusive learning is central

Non-discrimination is a top priority of the Ethiopian government, as part of their inclusive, quality education plan. “With regard to primary education only 4% of the estimated children with special needs are enrolled, which is a barrier to the achievement of universal primary education.”³⁴⁵ There is an admitted: “lack of knowledge, skills and commitment to implement activities to support SNE, which is true from the federal to the school level.”³⁴⁶ For exactly this reason, BC Ethiopia is working on building the expertise at central levels - of policy makers and implementers - so that they can make more effective and inclusive plans to address the needs of children with any special needs, particularly less ‘visible’ ones like learning difficulties. Much like in the case of BC India, however, BC Ethiopia is not in a position to guide the priorities of a state regarding the huge challenges surrounding discrimination leading to out-of-school children for example. It is a complicated but important matter to consider whether they could or should use their own initiative more to direct a state’s education priorities.

4.4 Conclusion

After analysing various projects run by BC India and Ethiopia, it is clear that they are not explicitly using a HRBA-E. Although much of their work, discussed in part here, does correlate to the LEARN principles - improving access to and quality of education in line with the right to education in international human rights law - human rights is not the overarching aim or guiding principle throughout their work or, if it is, this is not explicitly stated. If a HRBA-E is not mentioned, can their approach still be classified as this?

³⁴⁵ Federal Ministry of Education, *Education Sector Development Programme V (ESDP V)*, p. 26.

³⁴⁶ *Ibid.*, p. 26.

There is no mention of directly tackling the reasons for the huge numbers of out-of-school children which is a big challenge in South Asia and Sub-Saharan Africa. Setting an education priority to ensure the right to education is, however, the state's responsibility as reiterated numerous times in this thesis. Furthermore, the changes needed to address serious issues, like drop-out rates, are on a structural level and would need large policy changes – changes that the BC, as a charitable non-state actor, does not have the intention, influence or finances to undertake. They are largely working in the education sector in partnership with governments and donors, meaning that they are reliant on their partners' priorities and guidelines. The BC uses the funding they have access to in creative ways to bring about the most impact possible and this is usually accomplished at policy level and through teacher training. They are no doubt a trusted and highly competent educational actor but this does not imply that they are the only capable partner for MoEs to cooperate with.³⁴⁷

What is apparent is that there seems to be little risk of a violation of the right to education when a state works with a non-state actor in the ways mentioned here, especially regarding access to education, as the accountability remains very much with the state AND the non-state actor is a charitable organisation, not involved in the direct provision of education. The threat to the right to education, when a non-state actor like the BC is involved, is centred more around the idea of privatisation through education policy, of globalisation, the appeal of 'international standards' and the thereby transmitted "de-territorialised educational values."³⁴⁸ There is a certain amount of Western, neoliberal ideas regarding education policy and practice being diffused (perhaps unconsciously) through the BC's work in both India and Ethiopia, whether requested by the host state or not.³⁴⁹

The BC's very mandate is centred on promoting UK values and English abroad, something that may be beneficial to the host state to greater or lesser extents depending on the context.³⁵⁰

“Consistent within the neoliberal imaginary is the importance attached to learning English:

³⁴⁷ The scope of this thesis does not allow me to go into more detail about the advantages of local/national actors cooperating with states in education, as opposed to international actors. These sorts of considerations are, however, crucial when considering sustainable educational development. For current debates on decentralisation in education see: UNHRC, *Report of the Special Rapporteur on the right to education: Governance and the right to education*, 18 June 2018, A/HRC/38/32, para. 70, http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/A_HRC_38_32.pdf, (accessed 2 July 2018).

³⁴⁸ Gita Steiner-Khamsi, 'Standards are good (for) business: standardised comparison and the private sector in education', p. 168.

³⁴⁹ I refer here to the focus on 21st Century Skills (section 4.1). I do not suggest that these skills are not highly valuable but wish to emphasise it is highly challenging to escape the inherent Western values/bias in such programmes.

³⁵⁰ It is debatable whether developing a poor girl's English and digital skills (EDGE project) is the most effective way of improving her standard of living in the local context.

not because it is good to learn languages, but because it has become the language of global trade, and therefore useful in commercial exchange (Crystal, 1997).”³⁵¹ From a more sceptical perspective, it could be argued that the BC is motivated by indirect financial gains, made possible by their work and connections in promoting English, the UK and (dominant) Western educational theory abroad. This could contribute to the ongoing individualisation, commercialisation and homogenization of education in general, leading to culturally less relevant and possibly more exclusive education in a particular state. Even without the possibility of profit, a non-state actor like the BC is, to some extent, transmitting their own values when working in a different cultural context and this can lead to allegations of cultural imperialism.³⁵²

From the case studies here, however, I argue that this charge of cultural imperialism would be an oversimplification and reductive injustice to the common good brought about by the BC’s work supporting states in education for development. As a cultural relations organisation, the BC fosters international connections and this reminds us of the possibility to learn from one another, while remaining aware of specific country needs. The BC, unlike many non-state (and for profit) actors, has large local networks and long-term relationships with the countries they work in and this helps ensure that their work is guided by national priorities and is sustainable in terms of building institutional capacity. The BC operates with an awareness of or sensitivity to human rights norms which reinforces the claim that non-state actors can make a positive contribution to the realisation of the right to education.

³⁵¹ Fazal Rizvi, *Globalization and the Neoliberal Imaginary of Educational Reform*, p. 7.

³⁵² See section 2.3.3.

Concluding remarks

The analysis of BC work in India and Ethiopia has raised various highly interesting questions:

1) Should the BC implement a HRBA-E more explicitly? 2) Does the BC have the responsibility to promote the right to education? 3) What are the upcoming challenges for states in respecting, protecting and fulfilling the right to education in light of all forms of privatisation?

Despite ongoing opposition to privatisation and education from a human rights perspective, neoliberalism and globalisation have set the stage for increased privatisation **in** education, **of** education and **through** education policy. Regardless of how education is privatised, or what kind of non-state actors are involved, there are associated risks involved that states must consider:

“The ensemble for innovations, organisational changes and new relationships and social partnerships involved play their part in the re-working of education as a legitimate object of profit and into a form which is contractable and saleable. Thus, privatisation plays its part in a process of the ‘commodification’ of education whereby it becomes regarded solely in terms of its exchange-value rather than its intrinsic worth, or social purposes [or use-value].”³⁵³

There is, however, little reason to assume that private involvement is going to decrease in the current climate - especially when powerful financiers like World Bank are promoting PPPs or directly investing in for-profit companies like BIA.³⁵⁴ Some governments are either not willing or unable to fulfil the right to education in their states and at the same time, even if able and willing, may feel pressure to privatise in some form or other to improve the quality of education (to meet international standards perhaps). More research and efforts that remain faithful to the noble aims of education in IHRL are currently needed to develop/spread a HRBA-E so that non-state actors can meet their responsibility to respect human rights and states can adequately control the non-state actors in education, thereby ensuring they meet their legal obligations. The Draft Guiding Principles are an important tool to focus attention on the dangers of privatisation to the public good of education, but more focus should be placed not only on states’ obligations but on non-state actors’ too. This does, of course, also

³⁵³ Stephen Ball and Deborah Youdell, *Hidden Privatisation in Public Education*, p. 58.

³⁵⁴ Some hope is offered by the recent acceptance of a complaint to the Compliance Advisor Ombudsman at International Finance Corporation regarding BIA schools in Kenya: EACHRights, *CAO Complaint Letter*, <http://eachrights.or.ke/wp-content/uploads/2018/04/CAO-Complaint-EACHRights-16-April-18-Public.pdf>, (accessed 13 June 2018).

lead to the question about their legal responsibility, which as we have seen is difficult to enforce on an international scale. It is, however, increasingly acknowledged that all actors should respect human rights (in the Ruggie Principles for example).³⁵⁵ It is definitely possible that a non-state actor not only respect but actively contribute to the realisation of the right to education³⁵⁶, if the principles behind a HRBA-E are used (implicitly or explicitly).

This raises the question as to whether the BC (and other non-state actors working in the education sector) should then implement a HRBA-E more explicitly. What are the real aims guiding their education work – is it social change? Would it require significant organisational change to implement a HRBA-E and will this then bring about the required social change?³⁵⁷ In the specific case of the BC, there does not seem to be many challenges in their self-identifying with a relevant legal norm that they would also tie into their education work – that being the right to education in IHRL.³⁵⁸ Furthermore, they have just signed the UN Global Compact which commits them to following ten principles³⁵⁹, which they will have to make clear to stakeholders and the public as well as integrate into operations:

“One of the main functions of the Global Compact is about setting standards for business: companies participating in the initiative commit themselves to the application of ten principles in business strategy and operations concerning human rights, labour, the environment and opposition to corruption.”³⁶⁰

One might ask the question as to why the BC would sign up to this, when the struggle for the realisation of human rights does not seem to overtly guide their work. This UN Global Compact offers business legitimacy, networking opportunities and a closer connection to the credible UN ethical norms surrounding business operations.³⁶¹ The BC’s acceptance of these principles suggest that there is a certain amount of ‘buy-in’ at the most senior levels for a stronger connection to human rights. As we have seen from their work in India and Ethiopia, the BC is already working on principles of participation, accountability, non-discrimination

³⁵⁵ See also national jurisprudence relating to privatisation of education here: <http://www.right-to-education.org/issue-page/privatisation-education>, (accessed 13 June 2018).

³⁵⁶ See section 3.1.

³⁵⁷ See discussion on organisation change regarding HRBA-D: Wouter Vandenhoe and Paul Gready, ‘Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective’, *Nordic Journal of Human Rights*, Vol. 32, No. 4, (2014), p. 307-310, <https://doi.org/10.1080/18918131.2015.957458>, (accessed 7 May 2018).

³⁵⁸ *Ibid.*, p. 303.

³⁵⁹ See Appendix 2.

³⁶⁰ Lars Engberg-Pedersen, Signe Terney Larsen and Christel Vincentz Rasmussen (DIIS), *New Partnerships and New Actors in Development Cooperation*, p. 46.

³⁶¹ *Ibid.*, p. 49.

and empowerment, although the human rights legal framework behind this is not made obvious. The BC has made its commitment clear, and as in EDGE for example, should perhaps use the human right to education aims and rhetoric to strengthen (not fundamentally change) its work.

Including human rights discourse into BC projects/the organisation in general could, however, be problematic. Through the interviews conducted, it became clear that there is a legitimate concern about using the HRBA-E. Firstly, this is perhaps due to the political association that human rights carry and the resulting reluctance from many non-state actors (especially NGOs) to use this rhetoric. The BC affirms that it is apolitical, cooperates with states as a sort of consultant and is in this way more of a development actor. There is a feeling that taking on the rhetoric of human rights (even just linguistically) could be seen as “adversarial” when working with states.³⁶² Secondly, there is a noticeable concern about the ability of the human rights framework to deal with huge inequalities in all societies (also in Western countries who purport to champion human rights so vehemently).³⁶³ The term social justice seems to more accurately reflect the BC’s modus operandi and ultimate goals, as a cultural relations organisation, and is arguably less polarising. Furthermore, in many states there is a so-called shrinking space for civil society and often those charities or NGOs stating that they are involved in human rights related issues must be registered locally and receive 90% of their funding from within the country.³⁶⁴ These kinds of apprehensions must be taken seriously by the human rights world as they present important limitations to the possible realisation of human rights through international cooperation.

Paradoxically, however, there is also a certain tendency “of the shrinking, or ‘hollowed out’ state”³⁶⁵ which encourages non-state actors to get involved in many sectors previously dominated by states. Non-state actors find themselves in a precarious situation where their exact role is unclear, especially when it comes to their potential role in human rights-based public goods like education. “For example, should NGOs only deliver services when also building the capacity of the state to assume its responsibilities?”³⁶⁶ The way that the BC

³⁶² Wouter Vandenhoe and Paul Gready, ‘Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective’, p. 295.

³⁶³ See discussion here: Pankaj Mishra, ‘The Mask It Wears’, *London Review of Books*, Vol. 40, No. 12, (2018), <https://www.lrb.co.uk/v40/n12/pankaj-mishra/the-mask-it-wears>, (accessed 5 July 2018).

³⁶⁴ This was mentioned in the case of BC Ethiopia for example: <https://chilot.files.wordpress.com/2011/08/ngo-law-monitor-ethiopia.pdf>, (accessed 7 June 2018).

³⁶⁵ Paul Gready, *Theories of change for human rights and for development*, p. 49, <http://sas-space.sas.ac.uk/6206/1/07gready.pdf>, (accessed 7 June 2018).

³⁶⁶ *Ibid.*, p. 49.

defines its own role – being primarily a capacity builder for states and teachers – highlights the way in which they try to guide relationships with the host state in a manner of cooperation, not confrontation.³⁶⁷ If a non-state actor like the BC, not traditionally associated with human rights but working in line with the aims of education in IHRL, were to incorporate a more explicit HRBA-E into its work with states, it could be a great contribution to showing that human rights can be unified with apolitical, partnership based work. In turn, the BC can make use of the human rights discourse to add more value or power to its work – benefitting perhaps from instrumentalising a “human rights-framed approach”.³⁶⁸ Crucially in any of these scenarios, promoting a more explicit (and apolitical?) HRBA-E for all actors involved internationally, is the only way that the SDG goals of more inclusivity and quality education can be realised, benefitting both individuals and the wider society.³⁶⁹

This brings us to our final discussion point: what is needed to ensure that states can meet their current obligations to respect, protect and fulfil the right to education? Firstly, states need to adhere to their (core) legal obligations and commitments - in this context, crucially, by adopting national legislation conforming to IHRL and investing in education to safeguard it as a common good. In the current climate, and with the nearly complete acceptance of private involvement, this also means adequately not just monitoring but guiding the presence of non-state actors in education to areas where it is most appropriate³⁷⁰, especially those working on a for-profit basis. I would argue that non-state actors should only be involved in privatisation of education (in any form) in cooperation with the host state and where they are improving the capacity of that state. In this way, their efforts would supplement but not supplant the state’s role as primary duty-bearer and democratic accountability remains in place. There seems to be room for non-state actors to make a real contribution to a state’s realisation of the right to education, sharing knowledge and expertise in a spirit of international collaboration. Sole

³⁶⁷ Wouter Vandenhole and Paul Gready, ‘Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective’, p. 295.

³⁶⁸ Hannah Miller, ‘Rejecting “rights-based approaches” to development: Alternative engagements with human rights’, *Journal of Human Rights*, Vol. 16, No. 1, (2017), p. 74-75, <https://doi.org/10.1080/14754835.2015.1103161>, (accessed 7 June 2018).

³⁶⁹ The importance of a HRBA-E in terms of education governance has recently been highlighted by the Special Rapporteur on the right to education. See: UNHRC, *Report of the Special Rapporteur on the right to education: Governance and the right to education*, 18 June 2018, A/HRC/38/32, para. 111.

³⁷⁰ “There are a number of functions in the area of education, which in our view, cannot be privatised, as they require a single institution to set uniform standards and monitoring procedures in a neutral and objective way... These functions relate to the recognition of diplomas, determining and approving the essentials of the curriculum of schools, the recognition of non-public schools, determining and supervising the qualifications of teachers, the monitoring and enforcement of compulsory schooling and the inspection of the quality level of education at individual schools.” Fons Coomans, Antenor Hallo de Wolf, ‘Privatisation of education and the right to education’, p. 256.

delivery of education, however, by a non-state actor must be rejected as it can bring about a violation of a state's obligation to ensure the right to education.

Secondly, non-state actors must also embrace education as a common good and accept their responsibility to protect and promote human rights, using a HRBA-E. It is contestable whether this is feasible with for-profit actors.³⁷¹ Although it is, in theory, possible that for-profit actors also work cooperatively with a state, their financial motivations lead more often to a “divergence of interest” in any partnership when it comes to the right to education normative framework.³⁷²

Thirdly, to ensure the right to education is adequately protected, states must analyse all the ways in which non-state actors may influence education relating to accessibility, availability, adaptability and acceptability. They need to put:

“...in place a regulatory framework for education providers, including those operating independently or in partnership with States, guided by international human rights obligations, that establishes, at the appropriate level, inter alia, minimum norms and standards for the creation and operation of educational services, addresses any negative impact of the commercialization of education and strengthens access to appropriate remedies and reparation for victims of violations of the right to education;”³⁷³

Only this kind of holistic monitoring approach will allow all possible influences to be seen, including more hidden forms of privatisation that may reveal a non-state actor's real agenda or influence on the quality of education. The relevance of *who* is teaching *what* values, should be taken into consideration here. It is important to remember that any non-state actor is promoting their own values, expertise and beliefs as to how/what someone should be taught. They are rarely as impartial as they may seem and, importantly, do not carry democratic accountability. This puts much responsibility on states themselves and their assumed competency – but this is the only way forward and their wholehearted investment is necessary

³⁷¹ It will be interesting to follow developments in Liberia where BIA is in a PPP with the government. Current reports assert that BIA are not adhering to minimum educational standards. This shows perhaps that if the non-state actor only has its own interests at heart and is not adequately monitored, then there will be violations of the right to education, regardless of the partnership model. See: http://globalinitiative-escr.org/wp-content/uploads/2017/03/PPP_monitoring_report_COTAE_final-002.pdf, (accessed 6 June 2018).

³⁷² UNGA, *Report of the Special Rapporteur on the right to education*, 26 August 2015, A/70/342, para. 46.

³⁷³ UNGA, *The right to education: follow-up to Human Rights Council Resolution 8/4, 16 June 2017*, A/HRC/35/L.2, http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/HRC_Resolution_Right_to_Education_2017.pdf, (accessed 13 June 2018).

considering the power that education holds and the state's obligations concerning it according to IHRL.

Finally, there is a need for all actors to simultaneously reflect more thoroughly on, and become more aware of, human rights in general (through human rights education for example) AND the real aims of education (both individual and collective). The international human rights framework can be highly useful in directing this thinking, in collaboration with potentially conflicting academic - philosophical or sociological - research on the matter. There needs to be a realisation of the power of education in creating more equitable societies as it is commonly argued that schools/education cannot change society.³⁷⁴ Indeed, too much responsibility on the education system alone would be an error, especially its capacity to improve economic inequalities.³⁷⁵ However, as a site where identities are formed and what is considered as “legitimate knowledge”³⁷⁶ is built and maintained, it is crucial to remain optimistic and use a “language of possibility”³⁷⁷ when it comes to education - because “education has been and is a truly powerful arena for building coalitions and movements, one whose social effects can echo throughout the society.”³⁷⁸ More interdisciplinarity between academics/experts would encourage criticality³⁷⁹ and further what should be a shared human rights endeavour to achieve social justice by protecting and advancing quality, rights-based learning. Precisely because more and more actors are involved, it is crucial that all think critically (and ambitiously) about education from an individual, communal and international perspective to ensure that quality education, involving an inclusion of the ‘other’, can be achieved and the multifaceted, empowering benefits of education may be realised.³⁸⁰

³⁷⁴ Michael W Apple, ‘Reframing the Question of Whether Education Can Change Society’, *Educational Theory*, Vol. 65, No. 3, (2015), p. 310, <https://onlinelibrary-wiley-com.uaccess.univie.ac.at/doi/epdf/10.1111/edth.12114>, (accessed 7 June 2018).

³⁷⁵ *Ibid.*, p. 310.

³⁷⁶ Michael W Apple, ‘Reframing the Question of Whether Education Can Change Society’, p. 307.

³⁷⁷ Henry Giroux quoted in: Nicholas C. Burbules and Rupert Berk, ‘Critical Thinking and Critical Pedagogy: Relations, Differences, and Limits’, in Thomas S. Popkewitz and Lynn Fendler (eds), *Critical Theories in Education*, (NY: Routledge, 1999), <http://faculty.education.illinois.edu/burbules/papers/critical.html>, (accessed 7 June 2018).

³⁷⁸ Michael W Apple, ‘Reframing the Question of Whether Education Can Change Society’, p. 307.

³⁷⁹ “The perspective of viewing criticality as a practice helps us to see that criticality is a way of being as well as a way of thinking, a relation to others as well as an intellectual capacity.” It requires that “one be moved to do something.” Nicholas C. Burbules and Rupert Berk, ‘Critical Thinking and Critical Pedagogy: Relations, Differences, and Limits.’

³⁸⁰ “This sort of critical reflection is quite difficult to exercise entirely on one’s own; we are enabled to do it through our conversations with others, especially others not like us.” *Ibid.*

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Herbert, Mark, Portfolio Lead, Schools and Skills, British Council, (Skype, 28 March 2018).

Puranik, Gauri, Assistant Director Schools and EES, British Council India, (Skype, 7 May 2018).

Appendix 1

Right to education - Thesis Questionnaire

Dear British Council team,

As a former British Council employee and current MA student in Human Rights, I am researching how non-State actors can assist states in better realising the right to education – both access to and the quality of it. I would really appreciate your answers to the following questions by 7th May. I will analyse the information collected to assess how using a human rights based approach can help achieve the promise of education and the SDG4 goals for example. British Council has not commissioned this work but I have talked to Jo Beall who is supportive of it. It will be made clear that all views expressed are my own and I will of course be happy to share the final piece with you. There are currently no plans for the publication of this thesis.

Do not hesitate to contact me, should you require any further clarification: jennifergraceroberts@gmail.com.

Many thanks!

Jennifer Roberts

* Required

1. Would you prefer to fill this out in discussion with me on Skype? *

Mark only one oval.

- Yes (please then email me with a date/time) After the last question in this section, stop filling out this form.
No

2. What is the purpose of British Council’s work in education in your country? *

Five horizontal lines for text input.

3. What international human rights documents are referenced in your policies/proposals? (For example SDGs...) *

Five horizontal lines for text input.

4. Briefly describe 2(?) of your current projects in education. Does the work focus on improving: Accessibility, Availability, Adaptability, or Acceptability of education? For more info, see here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement> *

5. Who funds these projects and are they 'for profit'? *

6. What partnership models are used and what is British Council's role? *

7. How do you assess the local education context prior to a proposed business activity? *

8. How do you ensure your work meets the minimum education standards as set out by the state? *

9. Can you explain how you make a deliberate effort to facilitate the inclusion of vulnerable and marginalised groups (e.g. girls, ethnic minorities, people with disabilities etc.)? *

10. Is there a process/forum for people to express their view on the project's impact on their education? *

11. How do you measure the impact of your work on the quality of or access to education? Which indicators do you use? *

12. Do you have to communicate the impact you have had on education in your country and to whom and in what form? *

13. Would you be available for a follow-up phone call? *

Mark only one oval.

Yes

No

Appendix 2



Sir Clarán Devane
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H.E. António Guterres
Secretary-General
United Nations
New York,
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USA

10 January 2018

Dear Mr. Secretary-General,

Participation in the UN Global Compact

I am pleased to confirm that the British Council supports the ten principles of the UN Global Compact with respect to human rights, labour, environment and anti-corruption. With this commitment, we express our intent to support the Global Compact advancing these principles, and will make a clear statement of this commitment to our stakeholders and the general public.

We also pledge to participate in and engage with the UN Global Compact in the following way(s):

- Implement the UN Global Compact's Ten Principles through the British Council's strategy and operations.
- Encourage our partners to participate in the UN Global Compact.

We recognise that a key requirement for participation in the Global Compact is the submission of a Communication on Engagement (COE) that describes our organisation's efforts to support the implementation of the ten principles and to engage with the Global Compact. We support public accountability and transparency, and therefore commit to report on progress within two years of joining the Global Compact and every two years thereafter according to the Global Compact COE policy.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Clarán Devane".

Sir Clarán Devane