

## The UK's support to private education in developing countries, particularly for-profit, low-cost private schools, and its impact on the right to education

Written submission by 10 organisations - including British organisations, organisations based in developing countries and international organisations on the occasion of the 3<sup>rd</sup> Cycle of the Universal Periodic Review (UPR) of the United Kingdom of Great Britain and Northern Ireland (UK)

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The organisations presenting the written submission are:

- **The Right to Education Project (RTE)**, established in 2000 by the first UN Special Rapporteur on the right to education, Katarina Tomasevski. Since 2008, RTE has been a collaborative initiative supported by ActionAid International, the Global Campaign for Education, Amnesty International, Human Rights Watch and Save the Children. RTE promotes mobilisation and accountability on the right to education and seeks to bridge the human rights, education and development disciplines. Its vision is a world in which human rights in, to and through education are realised; a world in which all people are empowered to know and claim their rights affecting education and where those with responsibility are held to account for the realisation of those rights. See: [www.right-to-education.org](http://www.right-to-education.org)
- **Child Rights International Network (CRIN)**, a global research, policy and advocacy organisation. Their work is grounded in the UN Convention on the Rights of the Child. See: [www.crin.org](http://www.crin.org)
- **The East African Centre for Human Rights (EACHRights)**, a non-partisan, regional Non-Governmental Organisation that seeks to promote, protect and enhance human rights in East Africa with an emphasis on the economic and social rights of vulnerable and marginalised groups. See: <http://eachrights.or.ke>
- **The Ghana National Education Campaign Coalition**, a network of civil society organisations, including professional groupings, educational/research institutions and other practitioners working to promote quality basic education for all. Formed in 1999, the coalition has steadily grown over the years with a current membership of over 200 organisations. GNECC envisions a society that provides quality, relevant and enjoyable basic education for all irrespective of

one's age, income level, gender, physical or other disabilities, geographical location, ethnic, religious or socio-economic background.

- **The Global Campaign for Education (GCE)**, a civil society movement with a presence in over 100 countries that is working to end the global education crisis. Its mission is to make sure that States act now to deliver the right of everyone to a free, quality public education. See: <http://www.campaignforeducation.org>
- **The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)**, an international non-governmental human rights organisation which seeks to advance the realisation of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. See: <http://globalinitiative-escr.org/>
- **The Initiative for Social and Economic Rights in Uganda (ISER)**, a Ugandan not-for-profit national human rights NGO founded in 2012 to ensure the full recognition, accountability and realisation of social and economic rights primarily in Uganda, but also in the East African region. See: <http://www.iser-uganda.org/>
- **The Mathare Association**, a community organisation based in Mathare, a slum in Nairobi, Kenya. The aims of the organisation are: 1. to improve the quality of life of vulnerable children and their families; 2. to develop their capacity to become fully responsible for their own lives, and to be able to contribute to their families' development; 3. to stimulate and strengthen Mathare residents' participation in their own family development initiatives, in order to achieve sustainable development; 4. to network with other organisations which contribute to the care, development and education of children in Mathare.
- **The National Union of Teachers (NUT)**, a trade union for school teachers in England, Wales, the Channel Islands and the Isle of Man. It is a member of the Trades Union Congress. The Union currently has over 300,000 members, making it the largest teachers' union in Europe. See: [www.teachers.org.uk](http://www.teachers.org.uk)
- **The University and College Union (UCU)**, representing over 110,000 academics, lecturers, trainers, instructors, researchers, managers, administrators, computer staff, librarians and postgraduates in universities, colleges, prisons, adult education and training organisations across the UK. See: [www.ucu.org.uk](http://www.ucu.org.uk)

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## I. Introduction

1. During the 2<sup>nd</sup> cycle of the Universal Periodic Review (UPR) of the United Kingdom of Great Britain and Northern Ireland (UK), Trinidad and Tobago recommended that the UK “continue its financial commitment to international development through its overseas development assistance programmes.”<sup>1</sup>

2. As a major international donor, the UK meets this recommendation. Latest statistics show that the UK provided a total of £11,726 million in Official Development Assistance (ODA) in 2014, which represent about 0.7 per cent of GNI – an increase of 2.6 per cent from 2013.<sup>2</sup> The UK plays a crucial role in supporting the development of education around the world. In 2014, the UK Department for International Development (DFID) spent £821 million in bilateral aid on education, 12 per cent of its total bilateral aid – which represents however a decrease of 1.5 per cent (£84 million) from 2013.<sup>3</sup> DFID has also been to the forefront of aid effectiveness efforts in the field of education, playing a critical role in shaping the Global Partnership for Education<sup>4</sup> as a mechanism for coordinating aid to education in low-income countries.

3. However, our written submission highlights a worrying trend in how the UK uses its overseas development assistance to support the growth of private education in recipient countries, to the detriment of the realisation of the right to education. Although the vast majority of DFID’s education support is targeted at supporting State education provision, in recent years, DFID has increased its funding and support of the private sector, including for-profit, low-cost private schools. This represents a relatively small proportion of the UK’s development aid, however support appears to be increasing, and it is an explicit government priority,<sup>5</sup> which raises concerns from a human rights perspective.

4. For several years now, national, regional and global civil society organisations<sup>6</sup> have been conducting research on the impact of the growing involvement of private actors in education on the realisation of the right to education.<sup>7</sup> Their research reveals several serious human rights issues, such as discrimination and segregation, low quality education, and lack of regulation and monitoring in 10 countries, including in Ghana, Kenya and Uganda, where DFID supports the development of low-cost private schools.

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<sup>1</sup> A/HRC/21/9, 6 July 2012, Paragraph 110.129: <http://bit.ly/2dglyU4>

<sup>2</sup> UK Department for International Development, *Statistics on International Development 2015*, 2015: <http://bit.ly/1RaAgNK>

<sup>3</sup> DFID, *Statistics on International Development 2014*, 2014: <http://ow.ly/REntZ>

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

<sup>5</sup> For more details, see The Right to Education Project and others, *The UK’s support of the growth of private Education through its development aid: Questioning its responsibilities as regards its human rights extraterritorial obligations*, Alternative report submitted to the Committee on the Rights of the Child (CRC), October, 2015, paragraph 48: <https://shar.es/1urh7q>

<sup>6</sup> Including organisations presenting this written submission.

<sup>7</sup> See Privatisation in Education and Human Rights Project webpage: <http://bit.ly/2cgaxEQ>; RTE page on privatisation: <http://bit.ly/1S24suT>; and GI-ESCR page on Right to Education and Privatisation: <http://bit.ly/1GRTPUU>

5. Based on initial and more detailed reports submitted to the UN Committee on the Right of the Child (CRC)<sup>8</sup> and the UN Committee on Economic, Social and Cultural Rights (CESCR)<sup>9</sup> in October 2015, this joint written submission provides a human rights analysis of the UK's support to for-profit, low-cost private schools in developing countries and its impacts on the realisation of the right to education. We demonstrate how the UK fails to comply with its human rights and extra-territorial obligations when its development aid supports the growth of private schools, particularly commercialised low-cost private schools.

## II. Private actors in education and human rights

6. International human rights law recognises the liberty of private actors to establish and direct educational institutions, in connection with the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions - which includes the liberty to choose for their children schools other than public schools. However, this liberty should not be exercised to the extent that it violates the human rights of others. Private actors' involvement in education is aligned with human rights when the following criteria are met:<sup>10</sup>

- The development of private actors in education does not lead to any form of discrimination, create or increase inequality
- Fee-charging private primary schools are optional and exist only in addition to public schools
- Private education providers conform to the minimum educational standards established by the State, including on pedagogy, infrastructure and teacher qualifications
- The humanistic vision of education is preserved
- The principles of transparency and participation are respected

7. Research shows that the growth of private actors in education undermines the right to education in many developing countries,<sup>11</sup> including in Ghana<sup>12</sup>, Kenya<sup>13</sup> and Uganda<sup>14</sup> where the UK supports such development.<sup>15</sup>

8. The growth of private education can undermine the right to education of children in developing countries, including by:

- Increasing segregation and discrimination<sup>16</sup>

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<sup>8</sup> Report submitted to the CRC, October 2015: <https://shar.es/1urh7q>. See also an update submitted in April 2016: <http://bit.ly/1Thfmi4> and summary: <http://bit.ly/1UqzBoa>

<sup>9</sup> Report submitted to the CESCR, October 2015: <http://bit.ly/29fSRJm>

<sup>10</sup> The Right to Education Project and the Global Initiative for Economic, Social and Cultural Rights developed these criteria based on an analysis of international human rights law. For more details, read Delphine Dors's blog, *A Framework to Assess the Role of Non-State Actors in Education against Human Rights*, 2016: <http://bit.ly/295bOy5>

<sup>11</sup> See for instance: Campanha Nacional pelo Direito à Educação and Ação Educativa, *Privatisation and the rights violations in Brazil: notes for the CRC*, 2014: <http://bit.ly/1N4VEOR>; GI-ESCR, *Report to the CESCR on the Consequences of Privatisation in Chile*, 2014: <http://bit.ly/1pZKyoL>; GI-ESCR and others, *Parallel Report to the CESCR about Education in Morocco*, 2015: <http://bit.ly/1W5iM6R>; GI-ESCR and GNECC, *Parallel Report to the Committee on Elimination of Discrimination Against Women about Privatisation in Education in Ghana*, 2014: <http://bit.ly/2358icN>

<sup>12</sup> See for instance: GI-ESCR and GNECC, *Report to the Committee on the Rights of the Child on Privatisation in Education in Ghana*, 2014: <http://bit.ly/1W5gx3s>

<sup>13</sup> See for instance: Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015: <http://bit.ly/1BOL3ah>

<sup>14</sup> See for instance: ISER-Uganda and GI-ESCR, *Alternative Report to the CRC*, 2014: <http://bit.ly/1RXd2vZ>;

<sup>15</sup> For more details, see our report submitted to the CRC in October 2015, paragraphs 14 to 29: <https://shar.es/1urh7q>

- Being a “non-choice” for parents to send their children to private schools because of the failure of the State to provide free quality education<sup>17</sup>
- Not providing quality education. This is especially the case with ‘low-fee’ private schools<sup>18</sup>
- Not respecting regulation at the national level (if it even exists)

### III. The UK’s support of private education in developing countries, particularly for-profit, low-fee private schools

9. The UK, through DFID, is currently funding initiatives promoting private schooling in several countries including Pakistan, Nigeria, Ghana, Kenya, Uganda, Ethiopia, India,<sup>19</sup> and Burma.<sup>20</sup> In Kenya, Ghana, and Uganda, the UK supports or has supported the development of low-fee, for-profit private schools operated by corporations, such as the Bridge International Academies<sup>21</sup> and Omega Schools<sup>22</sup> chains.<sup>23</sup>

10. DFID is also funding other low-fee private schools through other projects. For example, it supports the Kenya Essential Education Programme (KEEP), a two-year £25 million programme managed by a British pro-private education consultancy (Adam Smith International),<sup>24</sup> aiming to enrol 50,000 more children into Kenyan private schools by the end of 2015.<sup>25</sup>

### IV. The UK’s failure to comply with its overseas human rights obligations and its impacts on the realisation of the right to education

#### A. The UK’s human rights obligation to contribute to the full realisation of the right to education through its development aid

11. Under international law, the UK has extra-territorial obligations<sup>26</sup> to: desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially;<sup>27</sup> contribute through international cooperation to the global

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<sup>16</sup> For more details, see p.10 to 19 of our report: <https://shar.es/1urh7q>. See also Srivastava, P. (Ed.), *Low-fee Private Schooling: aggravating equity or mitigating disadvantage?*, Oxford: Symposium Books, Oxford, 2013 : <http://bit.ly/1N9Xq2s>

<sup>17</sup> For more details, see p.16 to 18 of our report submitted to the CRC: <https://shar.es/1urh7q>

<sup>18</sup> GNECC, GI-ESCR, *Parallel report submitted to the CRC*, August 2014, para.11. See also: Laura Lewis, *Is There a Role for The Private Sector in Education? Education for Global Development – A blog about the power of investing in people*, Wold Bank, 2013: <http://bit.ly/18PPcvQ>; Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, Para. 19,22;

<sup>19</sup> See for instance, DFID, *Gyan Shala: A study into its long-term viability and expansion through private sector investment*, 2013: <http://r4d.dfid.gov.uk/Output/193794/>

<sup>20</sup> IDP Foundation, *International Support to Low-Cost Private Schools*, May 2013, pp.11-12. Department for International Development (DFID), *Education Position Paper: Improving learning, expanding opportunities*, DFID, 2013: <http://bit.ly/1hD6aCY>

<sup>21</sup> Bridge International Academies, *Investors*: <http://www.bridgeinternationalacademies.com/company/investors/>

<sup>22</sup> In August 2013, DFID awarded a grant to Omega to pilot a chain of Girls High Schools in Ghana. See: OMEGA, *History*: <http://www.omega-schools.com/history.php>. However, DFID informed us in October 2015 that Omega schools in Ghana withdrew from their Girls Education Challenge contract in 2013.

<sup>23</sup> For more details see our report submitted to the CRC, paragraph 48 to 53: <https://shar.es/1urh7q>

<sup>24</sup> Adam Smith international, *Improving educational access, quality and equity for Kenya’s most disadvantaged people*: <http://ow.ly/REUa3>

<sup>25</sup> DFID, *Annual Review: Kenya Essential Education Programme (KEEP)*: <http://ow.ly/REUip>

<sup>26</sup> For more details see our report submitted to the CRC, paragraphs 38 to 41: <https://shar.es/1urh7q>

<sup>27</sup> Principle 13 of the *Maastricht Principles*: <http://bit.ly/1VA6gNm>

realisation of the right to education;<sup>28</sup> provide assistance to contribute to its full realisation in other States;<sup>29</sup> and refrain from any conduct which can impair the ability of another State to comply with its obligations regarding the right to education.<sup>30</sup> In supporting low-cost, low-fee private schools, the UK fails to take its overseas human rights obligations seriously, which negatively impacts the realisation of the right to education.

#### **B. The UK's failure to prioritise development aid to the realisation of the right to free education**<sup>31</sup>

12. The right to free education should be realised immediately at the primary level and progressively at secondary and higher levels.<sup>32</sup> It is an essential element of the right to education<sup>33</sup> and the only way to reach the most marginalised groups.<sup>34</sup> Therefore the UK must prioritise the realisation of free education for all through its development aid, supporting developing countries that face challenges in implementing this right, instead of supporting low-fee schools which go against this essential element of the right to education.

13. In addition, the UK should refrain from supporting commercial low-fee private schools because they are modelled to make profit and not to support the realisation of the right to free education. For instance, in a study involving DFID on *Access to Finance For Low Cost Private Schools in Pakistan*, it is reported that: "low-cost private schools are profitable at all levels, with an average 51% net profit margin."<sup>35</sup> The same study indicates that: "profit[s] are retained in the enterprise to finance minor investments – less to achieve quality improvements or even vertical expansion, but in a horizontal expansion of the existing franchise of low cost primary schools positioned to be at best marginally better than the public schools in the same catchment area."<sup>36</sup> The CRC and the CESCR have raised particular concerns regarding DFID's support to for-profit, low-fee private schools.<sup>37</sup> This support can also be questioned in relation to the UK's domestic prohibition of public funding in support of for-profit schools.<sup>38</sup>

#### **C. The UK's failure to support the realisation of the right to quality education**

14. The right to education is not only the right to access free education but also the right to receive an education of good quality.<sup>39</sup> According to international law, education must be acceptable

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<sup>28</sup> CRC, Article 4; Committee on the Right of the Child, *General Comment 5*, Para.6

<sup>29</sup> CRC, Article 28.3; CRC, *General Comment 5*, Para.6; Principle 33 of the *Maastricht Principles*: <http://bit.ly/1VA6gNm>

<sup>30</sup> Principle 21 of the *Maastricht Principles*: <http://bit.ly/1VA6gNm>

<sup>31</sup> Principle 32 of the *Maastricht Principles*: <http://bit.ly/1VA6gNm> and CESCR, *General Comment 3*, Para.10.

<sup>32</sup> On the right to free education, see: <http://www.right-to-education.org/issue-page/free-education>

<sup>33</sup> CESCR, *General Comment 13*, Para.51

<sup>34</sup> See for instance: Sonia Bhalotra, Kenneth Harttgen and Stephan Klasen, UNESCO and Education for All, *The impact of school fees on educational attainment and the intergenerational transmission of education*, 2014: <http://bit.ly/1JQAQeU>

and EFA Global Monitoring Report, *Education For All 2000-2015: Achievements and challenges*, 2015: <http://bit.ly/1GR1d2q>

<sup>35</sup> Ilm Ideas, Socio-Economic & Business Consultants PVT Ltd (SEBCON), DFID, *Access to Finance For Low Cost Private Schools in Pakistan*, 2014, p.39: <http://bit.ly/1NYSArg>

<sup>36</sup> Ibid. p.40

<sup>37</sup> CRC/C/GBR/CO/5, 3 June 2016, Para.16: <http://bit.ly/1VOrXZO> and E/C.12/GBR/CO/6, 24 June 2016, Para.14: <http://bit.ly/2cpilFw>

<sup>38</sup> The Andrew Marr Show, television interview, BBC, London, 17 May 2015, available at: <http://bbc.in/1ESJItO>

<sup>39</sup> For more details, see our page on the right to quality education: <http://bit.ly/1NuMdgg>

(relevant, culturally appropriate, and meet the required educational objectives)<sup>40</sup> and adaptable (flexible so it can adapt to the needs of changing societies and communities, and respond to the needs of students within their diverse social and cultural settings).<sup>41</sup> Evidence does not support the claim that low-fee schools always provide good quality education.<sup>42</sup> To reduce costs, low-cost private schools frequently employ low-paid, poorly trained or unqualified teachers.<sup>43</sup> They often have poor infrastructure and, in the case of chain schools, provide standardised education.

15. For instance, BIA, a commercial chain of low-cost private schools receiving DFID support,<sup>44</sup> operates a ‘school in a box’ model that seeks to guarantee uniform practices and outcomes across schools, and to reduce per-unit production costs and facilitate scalability. This model is achieved through the standardisation of the curriculum, management, instruction and assessment of schools, and appoints low-paid, poorly trained teachers and reduces the space for personal development.<sup>45</sup> On 9 August 2016, the Ugandan minister of education and sports formally announced the government’s plan to close all 63 of BIA operated nursery and primary schools in the country, referring to technical reports from the ministry that revealed that the schools did not conform to national standards, in particular that “material used could not promote teacher pupil interaction” and that “poor hygiene and sanitation [...] put the life and safety of the school children in danger”.<sup>46</sup>

#### **D. The UK’s failure to prioritise the rights of disadvantaged, marginalised and vulnerable groups**

16. The UK must respect certain principles and priorities within the framework of its development aid, for example it must prioritise the rights of disadvantaged, marginalised, and vulnerable groups.<sup>47</sup> Yet research shows that the development of private schools, particularly low-fee schools, reinforces segregation and inequity, especially for low-income families.<sup>48</sup> These schools are unaffordable for very poor families. In Kenya, for instance, the ‘low fees’ charged by BIA represent 18-30% of a very poor family’s monthly income.<sup>49</sup> Whilst fees at low-cost schools purport to be low, ancillary or indirect costs, such as uniforms and books can double the actual cost. Poor families with multiple children are hit particularly hard and find it impossible to pay the costs of educating all of their

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<sup>40</sup> Article 13.1 of the *International Covenant on Economic, Social and Cultural Rights*

<sup>41</sup> Ibid 16, Para.6

<sup>42</sup> GNECC, GI-ESCR, *Parallel report submitted to the CRC*, August 2014, Para.11. See also: Laura Lewis, *Is There a Role for The Private Sector in Education? Education for Global Development – A blog about the power of investing in people*, World Bank, 2013: <http://bit.ly/18PPcvQ>; ibid 16, Paras.19 and 22

<sup>43</sup> See for instance, GI-ESCR, ISER-Uganda, *Alternative report submitted to CESCR*, October 2014, Para.24: <http://ow.ly/REwBw>.

<sup>44</sup> BIA investors: <http://www.bridgeinternationalacademies.com/company/investors/>

<sup>45</sup> Allavida Kenya, *Access to and quality of basic education in Kibera, Nairobi: Study and synthesis report*, September 2012, p.ix, Para.54: <http://ow.ly/REScU>

<sup>46</sup> Right to Education Project, *Uganda to Close the Largest Chain of Commercial Private Schools over Non-Respect of Basic Education Standards*, 12 August, 2016 <http://bit.ly/2bmvoGY>, see also GI-ESCR, *Commercialised schools and the right to education*: <http://bit.ly/2cectO7>

<sup>47</sup> Principle 32 of the *Maastricht Principles*: <http://bit.ly/1VA6gNm>

<sup>48</sup> Prachi Srivastava, *Low-fee private schooling: what do we really know? Prachi Srivastava responds to The Economist*, Oxfam Blog “From Poverty to Power”, August 2015: <http://bit.ly/1MjqNzN>; Srivastava, P. (Ed.), *Low-fee Private Schooling: aggravating equity or mitigating disadvantage?*, Oxford: Symposium Books, Oxford, 2013 : <http://bit.ly/1N9Xq2s>

<sup>49</sup> See the statement “Just” \$6 a month?: *The World Bank will not end poverty by promoting fee-charging, for-profit schools in Kenya and Uganda – Response to President Jim Kim’s speech from concerned communities and organisations in Kenya and Uganda*, March 2015: <http://bit.ly/statementWBprivatisation>

children, often leading to the prioritisation of boys over girls and disabled children.<sup>50</sup> Moreover, for-profit schools have little interest in enrolling children from marginalised groups, such as children with disabilities, because they require extra support.<sup>51</sup>

17. In some cases, this is openly acknowledged by the UK. For example, DFID's *Business Case for the DEEPEN project in Nigeria* claims that: "almost 1.5 million girls and boys will benefit" but recognises that only 450,000 of these will be from low-income backgrounds.<sup>52</sup> The Independent Commission for Aid Impact (ICAI) reports: "businesses are less likely to target the most remote, marginalised people".<sup>53</sup> In the guidance note *Engaging the Low Cost Private Schools in Basic Education Issues*, DFID recognises that: "disadvantaged groups such as girls/women in some contexts, or the very poor still require specific, targeted demand side support as they cannot be reached by low cost private schools that charge the relatively high fees needed to operate their school."<sup>54</sup>

18. A recent report published by Global Justice Now in April 2016 highlights: "DFID is too often entering into partnership with business and funding private sector development projects with questionable benefits for poor communities.<sup>55</sup> The report refers to the hundreds of millions of pounds spent to pay a British pro-private education consultancy, Adam Smith International (ASI)<sup>56</sup> for a variety of projects being carried out in the developing world,<sup>57</sup> noting that ASI were given more funds than DFID spent on human rights and women's equality organisations.

#### **E. DFID's failure to conduct impact assessments of its projects supporting low-fee private schools on the right to education**

19. According to international law, the UK must conduct a *prior* assessment of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights, including the right to education.<sup>58</sup>

20. However, evidence shows that DFID has not conducted any proper impact assessment *prior* to deciding to invest in private education in developing countries. It has conducted some *ex post facto* assessments<sup>59</sup> having already provided financial support to a number of private actors, without assessing in detail key projects such as the funding of BIA.

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<sup>50</sup> Oliver Balch, *UN criticises UK for spending aid money on for-profit private schools*, The Guardian, 14 June 2016:

<http://bit.ly/2czxXSz>

<sup>51</sup> See for instance, Hakijamii, GI-ESCR, *Alternative report submitted to the CESCR*, May 2015, Para.51: <http://bit.ly/1BOL3ah>. Allavida Kenya, *Access to and quality of basic education in Kibera, Nairobi: Study and synthesis report*, September 2012, p.ix: <http://ow.ly/REScU>

<sup>52</sup> DFID, *Business Case and Intervention Summary: Title: Developing Effective Private Education - Nigeria (DEEPEN)*:

<http://devtracker.dfid.gov.uk/projects/GB-1-202678/documents/>

<sup>53</sup> ICAI, *Business in Development*, May 2015: <http://icai.independent.gov.uk/reports/business-in-development/>

<sup>54</sup> DFID, *Guidance Note, Engaging the Low Cost Private Schools in Basic Education Issues, Challenges and Opportunities*, 2013: <http://bit.ly/1UxmR4I>

<sup>55</sup> One World, *UK urged to stop 'the scandal or privatised aid'*, 1 April 2016: <http://bit.ly/21VXF6p>

<sup>56</sup> Adam Smith International, *Improving educational access, quality and equity for Kenya's most disadvantaged people*: <http://ow.ly/REUa3>

<sup>57</sup> Global Justice Now, *The Privatisation of UK aid: how Adam Smith International is profiting from the aid budget*, Claire Provost, April 2016: <http://bit.ly/1RQMf4h>

<sup>58</sup> Principles 13 and 14 of the *Maastricht Principles*. For more details, see p.33 of the report

<sup>59</sup> See for instance DFID, University of Birmingham, Institute of Education of London, ODI, *The role and impact of private schools in developing countries: a rigorous review of the evidence*, April 2014: <http://ow.ly/RF5Df>



21. In addition, assessments made by DFID show that it is aware of the potential negative impacts on the right to education and has doubts about the efficacy of the development of low-fee private schools in ensuring the fulfilment of the right to education,<sup>60</sup> and yet it has not taken its own concerns into account.

22. ICAI has also assessed how DFID is working with and through businesses to achieve a range of development objectives that are meant to benefit the poor.<sup>61</sup> Its report indicates that: “in many cases it is too early to show impact on the poor” and: “Clearly there may sometimes be a risk that working directly with businesses to deliver benefits could undermine government efforts”.

## V. Human rights experts have expressed concerns regarding DFID’s support to commercialised low-fee private schools

23. UN treaty bodies have repeatedly expressed concerns about the negative impacts of the development of low-fee private schools on the right to education, particularly in countries where the UK supports the development of private education, including for-profit schools.<sup>62</sup>

24. In February 2016, reviewing Kenya, the CRC went further and explicitly mentioned foreign development aid. In its concluding observations, the CRC expressed concerns about “the low quality of education and rapid increase of private and informal schools, including those funded by foreign development aids, providing sub-standard education and deepening inequalities.”<sup>63</sup> In a press release following these concluding observations, Abraham Ochieng, from the East African Centre for Human Rights, stated: “the mentioning of schools funded by foreign development aids offering substandard education in the CRC Concluding Observations demonstrates once again that achieving free quality education is a huge issue, in a context where some international donors such as the World Bank and the British development agency fund private fee-charging schools in Kenya.”<sup>64</sup>

25. In June 2016, when reviewing the UK, the CRC expressed concern about DFID’s “funding of low-fee, private and informal schools run by for-profit business enterprises in recipient States”, warning that the “rapid increase in the number of such schools may contribute to sub-standard education, less investment in free and quality public schools, and deepened inequalities in the recipient countries, leaving behind children who cannot afford even low-fee schools.”<sup>65</sup> The same month, the CESCR stated: “While welcoming that the State party has attained the international target of

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<sup>60</sup> See for instance : DFID, Education Position Paper: *Improving learning, expanding opportunities*, July 2013, p.30; Nicole Goldstein, *Ghanaian families pay for a private education*, 21 May 2013: <http://ow.ly/RF5Om>; DFID, *The Engine of Development: The private sector and prosperity for poor people*, May 2011, p.17: <http://ow.ly/RF5X5>; DFID, *Business Case: Education Fund for Sindh*, January 2012: <http://ow.ly/RF5kc>

<sup>61</sup> Ibid 46 .

<sup>62</sup> See Right to Education Project, *Digest of Observations and Recommendations of Treaty Bodies on the Role of Private Actors and the Right to Education (2000-2015)*, July 2015: <http://ow.ly/REF2z> and GI-ESCR, CRC, CESCR and CEDAW statements on private education, September 2014 – March 2016, 2016: <http://bit.ly/1SP0Ckr>

<sup>63</sup> CRC, *Concluding Observations on Kenya Report*, CRC/C/KEN/CO/3-5, 21 March 2016, Para.57: <http://bit.ly/1UCZu9a>

<sup>64</sup> *Civil Society Organisations in Kenya Release Statement on the Lack of Regulation in the Education Sector and Sub-Standard Schools Funded by Development Aid in Kenya*, 9 February 2016: <http://bit.ly/23gHVxe>

<sup>65</sup> CRC/C/GBR/CO/5, 3 June 2016, Para.16: <http://bit.ly/1VOrXZQ>

allocating 0.7 per cent of gross national product for official development assistance in the framework of international cooperation, the Committee is concerned that in some cases the assistance provided has reportedly been used for activities in contravention of economic, social and cultural rights in the receiving countries. The Committee is particularly concerned about the financial support provided by the State party to private actors for low-cost and private education projects in developing countries, which may have contributed to undermine the quality of free public education and created segregation and discrimination among pupils and students.”<sup>66</sup>

26. The UN Special Rapporteur on the right to education, Kishore Singh, has also raised general concerns about the growth of private actors in education with respect to the right to education in three reports.<sup>67</sup> In his reports, Mr Singh notes that: “*inequalities in opportunities for education will be exacerbated by the growth of unregulated private providers of education, with economic condition, wealth or property becoming the most important criterion for gaining access to education*”.<sup>68</sup> Of particular relevance to the analysis of the UK’s policies in support of private education, he recommends that: “*States should put an end to market-driven education reforms that provide subsidies to private education*”<sup>69</sup> and that “*instead of giving subsidies to private providers, Governments should provide the maximum possible resources to public education.*”<sup>70</sup>

## VI. Recommendations

27. In order to contribute to the realisation of the right to education worldwide and in line with its human rights obligations, the UK should:

- (i) Support the realisation of the right to *free* compulsory primary education for all by:<sup>71</sup>
  - Prioritising free and quality primary education in public schools
  - Refraining from funding for-profit private schools<sup>72</sup>
  - Facilitating the registration and regulation of private schools<sup>73</sup>
  
- (ii) Adopt a human rights-based approach within the framework of its development aid to education by:<sup>74</sup>

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<sup>66</sup> E/C.12/GBR/CO/6, 24 June 2016, Para.14: <http://bit.ly/2cpilFw>

<sup>67</sup> UN Special Rapporteur on the right to education, *State responsibility in the face of the explosive growth of private education providers, from a right to education perspective*, 2014: <http://ow.ly/RE06u>; UN Special Rapporteur on the right to education, *Protecting the right to education against commercialization*, 2015: <http://bit.ly/1PTZFoE>; UN Special Rapporteur on the right to education, *Public-Private Partnerships in Education and the Right to Education*, A/70/342: <http://bit.ly/23KgOfi>

<sup>68</sup> A/69/402 para. 48.

<sup>69</sup> *Ibid.*, para. 106.

<sup>70</sup> *Ibid.*, para. 112.

<sup>71</sup> As recommended by the CRC. See CRC/C/GBR/CO/5, 3 June 2016, Para.17: <http://bit.ly/1VOrXZO>

<sup>72</sup> A recent Resolution of the Human Rights Council (A/HRC/32/L.33) also urges the States to “address any negative impacts of the commercialisation of education”, in particular by putting in place a regulatory framework to regulate and monitor education providers, holding to account providers that negatively impact the right to education, and supporting research. See *Historic UN Resolution Urges States to Regulate Education Providers and Support Public Education*, 11 July 2016: <http://bit.ly/29COvem>

<sup>73</sup> The 2015 Human Rights Council Resolution on the Right to Education also urges States to regulate and monitor private actors. See *Landmark UN Resolution Urges States to Monitor and Regulate Private Education Providers*: <http://bit.ly/1UFmG3T>

<sup>74</sup> As recommended by the CESCR. E/C.12/GBR/CO/6, 24 June 2016, Para.15: <http://bit.ly/2cpilFw>

- Undertaking systematic and independent human rights impact assessments prior to decision-making on education projects
- Establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries and to take remedial measures when required
- Ensuring that there is an accessible and effective complaint mechanism for violations of economic, social and cultural rights in the receiving countries committed in the framework of its education projects

(iii) Take steps to adequately regulate British education companies or companies involved in education to ensure that their activities are in line with human rights standards