

Submission by the Global Initiative for Economic, Social and Cultural Rights to the Committee for Draft National Education Policy, India

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Introduction

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organisation that believes transformative change to end endemic problems of social and economic injustice is possible only through a human rights lens. The vision of GI-ESCR is a world where the human rights framework reflects the real-world experiences of all of us, effectively furthering social and economic justice and human dignity, and catalysing change from the local to the global, back to the local.¹
2. GI-ESCR welcomes the opportunity to provide input on the Draft National Education Policy (Draft NEP), developed by the Committee for Draft National Education Policy, constituted by the Ministry of Human Resource Development, Government of India.
3. This submission focuses on Section 8.3 of the Draft NEP which addresses the regulation, accreditation and oversight of private schools. This focus is informed by the growing, robust evidence of the risks associated with the inadequate regulation of private sector activities in education for the realisation of the right to quality education for all.²
4. This submission draws from GI-ESCR's experience in analysing the impact of private actors' involvement in social services delivery, particularly education, and unpacking the related human rights legal framework,³ including by supporting the development of the Guiding Principles on the human rights obligations of states to provide public education and to regulate private involvement in education (the Abidjan Principles).⁴

¹ <http://www.globalinitiative-escr.org/>

² <https://www.gi-escr.org/publications/human-rights-bodies-statements-on-private-education-september-2014-november-2017>

³ <https://www.gi-escr.org/private-actors-social-services/>

⁴ www.abidjanprinciples.org

5. This submission highlights the relevant contents of the Draft NEP, then addresses the obligation of the State to monitor and enforce compliance with minimum education standards, the limitations of relying on information disclosure and self-declaration as means of regulation and accountability, and includes recommendations to the Committee for the Draft National Education Policy.

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6. We commend the Government of India for maintaining their pioneering and firm stance against commercialisation of education, and for prioritising public education and acknowledging that the goals of both public and private schools is to provide quality education for all.
7. We also appreciate the importance of creating a conducive environment to safeguard the liberty of individuals to establish and operate private schools and of parents to choose non-state schools for their children. However, as indicated in the Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education (Abidjan Principles), adopted by a group of experts and endorsed by the United Nations (UN) Human Rights Council and the UN Special Rapporteur on the right to education, it is necessary to balance this with the State's obligation to prevent third parties from interfering with the right to education.⁵
8. One substantial proposal within the Draft NEP is its departure from the current 'inspectorial' approach and move towards a lighter regulatory load for the private sector. Section 8.3 of the Draft NEP proposes reducing regulations for private schools and relying more on self-declaration to ascertain compliance with minimum standards. It also proposes reliance on public disclosure of information to enable parents to make informed decisions regarding which schools to enrol their children, essentially putting the responsibility for monitoring compliance with minimum standards on the parents and trusting the private actors to self-regulate.

State obligation to monitor and enforce compliance with minimum standards

9. As a State Party to several international treaties securing the right to education, India has committed to, and is legally bound to, take steps towards the full realisation of the right to quality education for all.⁶

⁵ Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education (Abidjan Principles), 'Overarching Principle' 3, Abidjan Principles Nos 47 and 48. See also International Covenant on Economic, Social and Cultural Rights (ICESCR) [1966], article 13(3) and (4); and ICESCR General Comment No. 13, paras 46-47.

⁶ India ratified the International Covenant on Economic, Social and Cultural Rights in 1979, Convention on the Rights of the Child in 1992, Convention on the Elimination of All Forms of Discrimination against Women in 1993, among others, which all protect the right to education.

10. The full realisation of the right to education for all requires that in addition to enacting laws and regulations, States also monitor compliance with the regulations and standards in both public and private schools. Effective, adequately resourced monitoring and enforcement mechanisms should be in place to ensure compliance with minimum standards.⁷ This monitoring by the State should involve regular, participatory assessments, and the findings should be made public,⁸ and inform policies and regulations governing private schools.⁹
11. Further, under ‘Overarching Principle’ 9 of the Abidjan Principles, where a private actor is found to have abused human rights, including the right to education, the Government is obliged to ensure access to effective remedies, including grievance and redress mechanisms by both the private actor and the State. Where the private actor has contributed to the violation they should contribute to the reparations.¹⁰ This reiterates the need for Government involvement in the regulation and monitoring of private actor activities in education, beyond what is currently proposed in the Draft National Education Policy.
12. The importance of State monitoring and enforcement of regulations has been reiterated in various interpretations of international human rights law.¹¹ The UN Committee on the Rights of Persons with Disabilities acknowledges that in many countries private education provision is on the rise and it is important to protect the right to education through monitoring, oversight and enforcement of laws and regulations by the State.¹² The UN Human Rights Council also highlights the importance of States monitoring the activities of private actors and ‘*holding accountable those whose practices have a negative impact on the enjoyment of the right to education*’.¹³
13. While public disclosure is important and indeed a requirement under the law, more is required for the effective regulation of private sector in education. As acknowledged in the introduction to Chapter 8 of the Draft NEP, the power asymmetry limits how far parents can effectively regulate and even make informed choices regarding their child’s school. Evaluations of the effectiveness of public disclosure as an accountability method found that access to information may facilitate choice but is insufficient for accountability.¹⁴ Similarly, self-reporting as an accountability method has been found

⁷ Abidjan Principles, ‘Overarching Principle’ 8, Abidjan Principles 81, 84.

⁸ Ibid, Abidjan Principle 86.

⁹ Ibid, Abidjan Principle 87.

¹⁰ Ibid, Abidjan Principles 88 – 90.

¹¹ CESCR Concluding observations on Uganda, E/C.12/UGA/C O/1, 24 June 2015, at para. 36; CRC Concluding observations on Chile, CRC/C/CHL/C O/4-5, 15 October 2015, at para 68.

¹² CRPD General Comment No. 4, at para 76.

¹³ UN Human Rights Council Resolution on the right to education A/HRC/29/L.14/Rev.1 (2015) (http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.14/Rev.1), at para 2

¹⁴ UNESCO (2018), Global Education Monitoring Report 2017/8: Accountability in education: Meeting our Commitments, p 50.

to work for narrow/particular themes only, such as monitoring inclusive education, and used concurrently with other measures including external inspections.¹⁵

Recommendations

14. In light of the above, we recommend that, in addition to requiring disclosure of information, the Committee for the Draft National Education Policy:
 - a. Incorporate a requirement within the Draft NEP for the Government of India to proactively and regularly monitor compliance of both public and private schools with minimum standards, including by extending the mandate of the State School Regulatory Authority (SSRA) and ensuring it is adequately resourced to carry out this function.
 - b. Incorporate a process for participatory development of enforcement mechanisms to build trust and ensure private sector compliance with minimum education and human rights standards.
 - c. Utilise the Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education ([Abidjan Principles](#)) to draw more detailed guidance on how the Government of India can effectively provide public education and regulate private actors towards the full realisation of the right to education.

¹⁵ Ibid.