



**Parallel Report on Ghana submitted to the Committee on Elimination of
Discrimination Against Women**

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

with the support of:

**The Ghana NGO Coalition on the Rights of the Child, the Privatisation in
Education Research Initiative, the Right to Education Project, and the
Africa Network Campaign on Education For All**

SUBMITTED OCTOBER 2014



I. Introduction

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

2. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)² is an international non-governmental human rights organization 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. The vision of the GI-ESCR is of a world where economic, social and cultural rights are fully respected, protected and fulfilled and on equal footing with civil and political rights, so that all people are able to live in dignity.

3. This report also received the support of the Ghana NGO Coalition on the Rights of the Child, the Africa Network Campaign on Education For All (ANCEFA),³ the Privatisation in Education Research Initiative (PERI),⁴ Education International (EI),⁵ the Global Campaign for Education (GCE),⁶ and the Right to Education Project (RTE).⁷

II. Education Privatisation in Ghana and its impact on the realisation of the right to education for Girls

4. Ghana ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention) on 2 January 1986. The CEDAW Convention requires States parties to eliminate all forms of discrimination against women and girls with respect to, amongst other rights, the right to education (article 10). Yet, this report demonstrates that the increasing privatisation in education in Ghana, which is encouraged by the State and inadequately regulated, is having a disproportional discriminatory effect against girls.

5. The Ghanaian authorities have deliberately favoured the development of private education in the last 50 years. The development of private schools in Ghana was first facilitated as part of the 1968 Education Act in an effort by the Government to ensure full implementation of the free and compulsory education policy under the Act.⁸ The policy required that all school age children should be found places in primary and lower secondary schools (junior high schools). However, the policy was introduced without the necessary infrastructure and human resources to support the rapid increase in enrolment which followed its implementation.⁹ The

¹ The membership includes organisations such as Child Rights International, Challenging Heights, Right to Play, ActionAid and IBIS working to promote access to quality basic education for all children.

² <http://globalinitiative-esecr.org/>

³ <http://www.ancefa.org/>

⁴ <http://www.periglobal.org/>

⁵ <http://www.ei-ie.org/>

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

⁷ <http://www.right-to-education.org/>

⁸ UNESCO World Data on Education, 7th Edition 2011.

⁹ Anamuah Mensah, Evolution Of The Educational System In Ghana Since Independence In 1957. www.jamensah.com/Speeches/EVOLUTION%20OF%20EDUC%202.doc. Retrieved 18/8/14.

State party reacted to this situation by allowing private individuals to operate schools in order to ensure full implementation of the policy.¹⁰ The 1992 Constitution tasked the Government to create a programme for the full implementation of Free Compulsory Universal Basic Education (FCUBE) within ten years after its coming into force. The policy entered into force in 1996, but its full implementation is yet to be realized.¹¹ More recently, the 2008 Education Act (Act 778) retains preceding policies by making provision for free and compulsory basic education as well as private participation in the provision of education at all levels.¹²

6. The Government generally considers that the quality of private schools is higher than in public schools. The Education Strategic Plan notes that most students who progress from basic schools/junior high schools to secondary schools are from the private schools.¹³ We are of the view, however, that **the relationship between private schools and better quality has not been proven and is subject to many factors.** For instance, the educational outcomes of urban middle class private schools may be higher than public schools due to a higher intake of pupils living in families with a high level of education, but the same cannot be said for private schools in poorer urban areas and in rural communities. Cross-country evidence has shown that private schools are not necessarily of better quality,¹⁴ and the situation is not different in Ghana. This is for example reflected in the fact that, according to governmental official statistics, the percentage of trained teachers is much lower in private schools (9.2% at the primary level and 17.5% at the secondary level) than in public schools (respectively 69.4% and 83.7%).¹⁵

7. Nevertheless, and despite these documented shortcomings, **the State party considers the private sector as a key component of strategic framework for the education sector in the next ten years, i.e. 2010-2020.**¹⁶ It aims at furthering the role of the private sector by supporting private education providers with tax exemptions¹⁷ and non-salary inputs such as textbooks and in-service training under Public Private Partnership (PPP) arrangements in return for more investment in the education sector.¹⁸ The exemptions are going to well established and recognised private schools which are inaccessible to children from poor backgrounds because of the high fees they charge.¹⁹ Thus, in effect, the government is subsidising education for the relatively rich and helping private schools which are offering services for profit.

8. As a result of these policies, the number of private schools has grown very rapidly in Ghana in the last decade. Private primary schools have grown by over 110% from 2,724 in 2003/2004 to 5,742 in 2012/13 whereas public primary schools have grown by just over 18%

¹⁰ Ibid

¹¹ UNESCO World Data on Education, 7th Edition 2011.

¹² Education Act 2008, Act 778, Section 23

¹³ Ibid.

¹⁴ Dfid, 2014: Education Rigorous Literature Review. Department for International Development. See also Global Campaign for Education, report on privatisation to be published in September 2014 – see <http://www.campaignforeducation.org/en/campaigns/privatisation>; and Ian Macpherson, Susan Robertson, and Geoffrey Walford, *Education, Privatisation and Social Justice* (Symposium Book, United Kingdom:2014).

¹⁵ Ghana Ministry of Education, Basic National Profile - 2012 / 2013 School Year Data, <http://www.moe.gov.gh/docs/Basic/2012-2013/Basic%20National%20Profile.pdf>

¹⁶ Education Strategic Plan 2010-2020

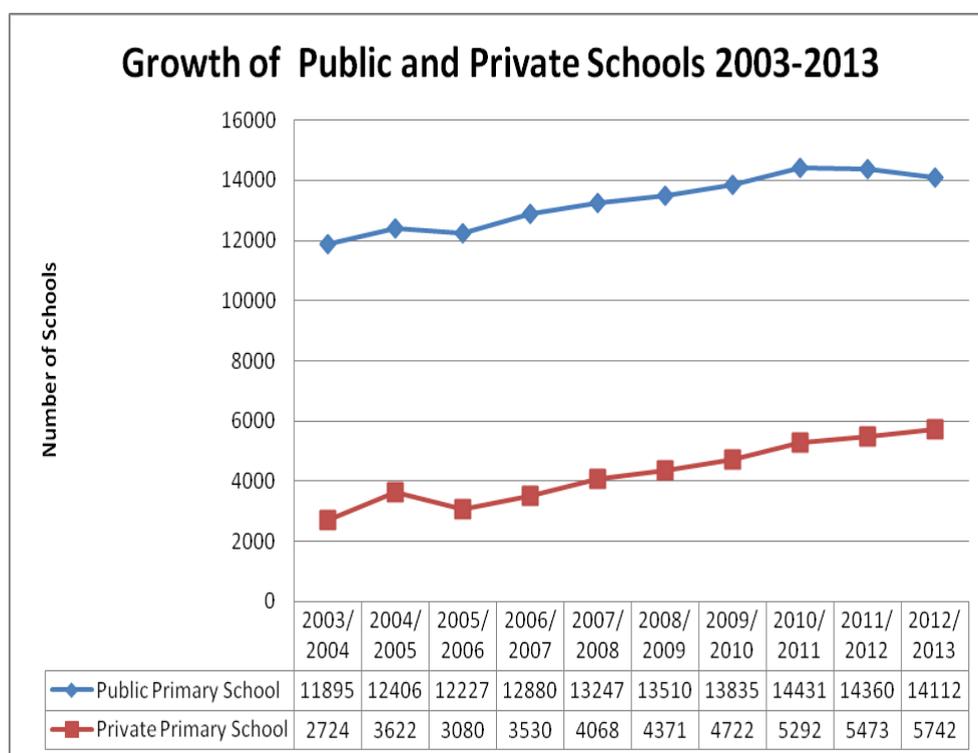
¹⁷ Education Act 2008, Act 778 Section 26

¹⁸ Education Strategic Plan 2010-2020 p.31.

¹⁹ <http://www.modernghana.com/news/139981/1/government-grants-tax-exemption-to-private-schools.html>

Retrieved 7/10/14

within the same period. Currently about 29% of all primary schools are private.²⁰ This important space taken by the private educational sector in Ghana is proudly claimed by the State Party which noted in its 2010 – 2020 Education Strategic Plan that “*the private sector contribution to education is substantial. In 2008 19% of kindergarten, 17% of primary, 17% of junior high, 10% of senior high and 14% of tertiary students were educated privately.*”²¹ These figures already demonstrate a *de facto* privatisation of the education sector in Ghana. It should be noted, however, that there exists a number of informal or so-called ‘low cost’ private schools that are difficult to count, and so these figures may be underestimated.²²



9. Although significant progress has been made in expanding access to basic public education in rural/deprived districts, for poor households, and for girls, in particular in the last ten years, inequitable allocation of educational resources has meant that differences in geography, economic conditions and cultural practices are still prevalent. For example, pupil attendance at primary and secondary schools vary greatly by household wealth and urban-rural status.²³ Primary net attendance ratio for pupils from the wealthiest households is 85% compared to 61% for students coming from the poorest households. 15% of children from rural areas are out of school compared to 8% of children from urban areas. Also, 32% of the poorest in urban areas are out of school compared to 28% of the poorest in rural areas depicting disparities in access to education both within and between socioeconomic groups and geographical areas.²⁴

²⁰ Education Sector Performance Report, 2013 pg. 15.

²¹ Education Strategic Plan 2010-2020.

²² Low cost private schools is an emerging phenomenon. Even though some independent researches have been carried out on them the Governments does not capture them as part of annual M&E data.

²³ Ghana Statistical Service, 2011.

²⁴ Ibid.

10. Private education is contributing to widening these disparities. As noted in a recent World Bank report, **this growth of private schools involves a segregation between households according to their wealth** which generally reflects the persistent socioeconomic disparities across Ghana.²⁵ The Government also recognized that “*private fees paid by families for pre-tertiary education represents 1.9 % of the GDP, an exceptionally high level by international standards*”.²⁶ Private schools are thus an urban phenomenon designed to cater for the most advantaged groups in societies – the elite and the middle class²⁷. This is reflected in the fact that, as noted by the Ministry of education in its latest statistical report, “*for all regions there are more public primary schools than private ones except the Greater Accra Region*” (see below).²⁸ Therefore, the favoring of the Government towards this type of institution should be seen as a support to advantaged groups, to the detriment of the most vulnerable ones.

11. In this context, it should be noted that generally, **girls are particularly vulnerable with regards to the enjoyment of the right to education**. Girls are more likely to be denied access to education due to economic crises or declining household income.²⁹ Furthermore, socio-cultural practices are often prejudiced against girls from poor homes making them vulnerable to being denied schooling or being pulled out from school to assist with household duties or get married and assume child bearing and rearing responsibilities.³⁰

12. Socio-cultural barriers to girls’ participation in education including negative beliefs towards girls’ roles and value of education, early marriage, teenage pregnancy and gender-based violence persist mostly in the rural parts of Ghana.³¹ Moreover, girls are often victims of multiple discriminations. Poverty is pervasive and restricts most rural children from remaining in school in Ghana, particularly girls.³² Even in the urban and peri-urban areas poverty is major reason why girls cannot access education.³³ In addition, in the rural areas girls are more likely to drop out as they progress to the higher classes due to socio-economic conditions, sexual harassment and poor hygienic school conditions affecting particularly girls during their menstruation, along with other school based factors.³⁴ For instance, the gender parity index drops from an average of 1.01

²⁵ Darvas, Peter and David Balwanz. 2013. Basic Education beyond the Millennium Development Goals in Ghana: How Equity in Service Delivery Affects Educational and Learning Outcomes.

²⁶ Ghana Ministry of Education, “Education Sector Review: Final Team Synthesis Report”, <http://www.moe.gov.gh/docs/ESR%20Reports/Chapter%206-9.pdf>, p. 141.

²⁷ Ibid., p. 140.

²⁸ Ghana Ministry of Education, “Report on Basic Statistics and Planning Parameters for Basic Education in Ghana 2012/2013”, <http://www.moe.gov.gh/docs/Basic/2012-2013/Basic%20Report%202012-2013%20No.1.pdf>, p. 9.

²⁹ Statement by Mayra Buvinic (World Bank), ‘Emerging issue: The gender perspectives of the Financial Crisis,’ Interactive Expert Panel, Commission on the Status of Women, Fifty-third session, New York, 2-13 March 2009. See also: Report of the independent expert (Magdalena Sepúlveda Carmona) on the question of human rights and extreme poverty (on the impact of the current global financial crisis on people living in extreme poverty and the enjoyment of their human rights), UN Doc. A/64/279, 11 August 2009.

³⁰ Ação Educativa, Asia South Pacific Association for Basic and Adult Education (ASPBAE), Equal Education Law Centre, Global Initiative for Economic Social and Cultural Rights, Latin American Campaign for the Right to Education (Campaña Latinoamericana por el Derecho a la Educación), Right to Education Project, Section 27, and others, “Privatisation and its Impact on the Right to Education of Women and Girls”, Written submission to the Half-Day General Discussion on girls’/women’s right to education, 7 July 2014.

³¹ ACTIONAID/GNECC, The Status of Girls Education and Violence: A Summary Report Of Baseline Survey Of Gender-Based Patterns In The Nandom North And South Districts Of The Northern Region Of Ghana 2011

³² MoE, Managing the Education Sector.

³³ Ghana Ministry of Education, Education Sector Performance Report p.39.

³⁴ The status of Girls Education and Violence, ActionAid/GNECC, 2011.

to 0.92 at the secondary level this means fewer number of girls progress to secondary school than boys.

EDUCATION GENDER PARITY WEALTH INDEX QUINTILE ³⁵		
	Gender parity index (GPI) for primary school (adjusted Net Attendance Ratio)	Gender parity index (GPI) for secondary school (adjusted Net Attendance Ratio)
LOWER 60%	1.03	0.89
UPPER 40%	0.98	0.96

13. Thus, although Ghana has made good progress in bridging the gender gap in access to education, **privatisation in education is having and is likely to have a greater impact on girls than boys, as they are more vulnerable, and to stall progress or lead to regressions in gender equality.** As education is getting more expensive and selective, households tend to give priority to boys. Evidence from a range of countries shows that more boys are enrolled in schools than girls, a problem that is exacerbated in the context of privatisation.³⁶ In a submission made to this Committee by thirteen organisations working on the right to education, including the ones submitting this report, we indicated:

‘This is because the monetization of access to education through user fees places poor parents in the difficult position of having to choose which of their children to send to school, a decision made on the basis of what they believe will be the maximum return on their educational investment, i.e. what will the maximum economic benefits be to the family over the long term. Because labor markets are heavily influenced by patterns of gender inequality, parents often conclude it is better to educate their boys as they are more able to access better employment opportunities in the future.’³⁷

14. In addition to this phenomenon, recent studies have revealed that low income households are also beginning to patronize private schools, in so-called “low cost” or “low fee” private schools,³⁸ which further adds to the challenges with regards to girls’ access to education mentioned above to poorer, even more vulnerable, groups in society. Low cost private schools (LCPS) are independent, for-profit private schools that target low-income households and that claim to offer a quality education. It is estimated that there are over 7,000 such schools in Ghana with more than 500,000 children enrolled.³⁹ Attending these schools is generally not a choice:

³⁵ MICS 2011 p.87

³⁶ The United Nations Girls’ Education Initiative (UNGEI), ‘Transforming Policy and Practice for Gender in Education: A Gender Review of the 2010 EFA Global Monitoring Report Using an Equity and Inclusion Lens,’ Technical Paper, United Nations Children’s Fund (UNICEF): New York, 2010.

³⁷ Ação Educativa, Asia South Pacific Association for Basic and Adult Education (ASPBAE), Equal Education Law Centre, Global Initiative for Economic Social and Cultural Rights, Latin American Campaign for the Right to Education (Campaña Latinoamericana por el Derecho a la Educación), Right to Education Project, Section27, and others, ‘Privatisation and its Impact on the Right to Education of Women and Girls’, Written submission to the Half-Day General Discussion on girls’/women’s right to education, 7 July 2014.

³⁸ Darvas, Peter and David Balwanz. 2013. Basic Education beyond the Millennium Development Goals in Ghana: How Equity in Service Delivery Affects Educational and Learning Outcomes.

³⁹ <http://www.idpfoundation.org/wp-content/uploads/2012/06/Low-Cost-Private-Education-Sector-Paper.pdf>
Retrieved 11/8/14

parents are merely trying to avoid the poor performance of government schools, over-crowded classrooms, teacher absenteeism, the dilapidated infrastructure and generally deplorable conditions associated public education.⁴⁰ Closer analysis shows that private schools might not be affordable to the poorest people in Ghana, and that rather, attending private schools involves making huge sacrifices for families.⁴¹ As it has been well documented in a recent academic study, when low-income households have to spend up of 40% of their earnings to send one child to a school, such schools cannot be described as affordable.⁴² It has been calculated that:

Currently, the 20 Omega Schools [a chain of low fee private schools supported by a UK-based company] operating in Ghana are clustered in peri-urban localities in the Greater Accra and Central regions. The Greater Accra region has the highest annual household income in the country with an average of 1529 Cedis while the Central region has the third highest average of 1310 Cedis (GSS, 2008). The poorest 5% in Greater Accra and the poorest 7% in Ghana's Central region earn, on average, an annual household income of 728 Cedis (GSS, 2008). If we were to take an annual household income of 728 Cedis in relation to school costs of 1.50 Cedis per day \times 210 schools days in a year, it would cost 315 Cedis or 43% of a family's annual household income to send one child to an Omega School for one year. If we were to make a similar calculation using the average annual household income in all of Ghana (which is 1217 Cedis), families would have to spend 26% of their household income on education expenditures for one child. Most families in Ghana have more than one child. Low-income households in Ghana cannot afford to pay upwards of 40% of their earnings on educational expenditures for only one child, while other basic necessities such as food, health and shelter must also be met.⁴³

15. **Ghana is one of the 'guinea pig' countries for such LCPS, as a number of new models of private schools are being tested in the country.** It is for instance in Ghana that the 'school in a box' private schools chain called 'Omega Schools' was created and is being tested. Some of these LCPS, including schools backed by Europe-based companies or development agencies, like Omega Schools, have adopted a new approach by taking a daily payment system, whereby parents pay fees on a day-by-day basis. Research has shown that daily payments brings a wealth of issues with regards to the access to education, in particular for families that are able to pay the school fees one day, and unable to pay another day.⁴⁴ The pressure to pay daily fees being the major reason for absenteeism in these schools, girls are again the most vulnerable, as exemplified by the example of a girl who sells water on the streets one day, so that she can go to school the next, given in a study on those schools.⁴⁵

16. **Girls also tend to be more exposed to sexual violence in school than boys especially girls from poor homes and girls who live in rural areas,⁴⁶ and privatisation brings**

⁴⁰ Based on interviews conducted with parents who can be described as low-income earners but have sent their children to private schools.

⁴¹ <http://blogs.worldbank.org/education/there-role-private-sector-education>. Retrieved 11/8/14.

⁴² Curtis B. Reip, Omega Schools Franchise in Ghana: 'affordable' private education for the poor or for-profitteering? 2013, p. 271-272.

⁴³ Ibid.

⁴⁴ Curtis B. Reip, "Omega Schools Franchise in Ghana: 'affordable' private education for the poor or for-profitteering?" PERI, 2013. Pg 274. See generally UNESCO, "Education for All Global Monitoring Report 2013/214", p. 272 – 274, e.g.: "Teachers in low fee private schools are often recruited on temporary contracts and receive very low wages, sometimes below the minimum wage."

⁴⁵ Ibid.

⁴⁶ The status of Girls Education and violence, ACTIONAID/GNECC/ MICS 2011 p.94
<https://docs.google.com/file/d/0B1hdwhM8PwWKA2Rab1FoYnJGakE/edit?pli=1>

additional risks. Anecdotal evidence suggests that teachers who perpetrate such acts often get away with it. The situation where supervision of schools by government is weak makes it easy for girls to be abused. A few years ago there was an incident where the proprietor of a well-known private school was reported to have impregnated his female student during an illicit sexual affair while she was a student in his school.⁴⁷ This proprietor took advantage of the girl's economic situation to sexually abuse the student which eventually resulted in pregnancy.⁴⁸ Even though the issue was taken to court by the state, eventually the court agreed to allow the issue to be settled. Such incidents underline the particular risk borne by girls due to weak government oversight and the commodification of education, where the relationship between the learner and the school becomes a financial one, and thus further put girls at risks of being sexually abused and/or exploited. This confirms similar observations from other countries.⁴⁹

17. In addition to this, **there is a consistent gender gap in the in the performance of girls and boys, and this gap has increased over the years.** As the graphs below show, the gap between boys and girls with regards to basic measurable learning outcomes – in this case, basics in mathematics – has continually increased from a 3 points difference in 2000, to 5 points in 2007, and 7 points in 2011. As the gap between urban areas and rural areas, and between the poorest and the richest, has also shot up in the same period, girls that are at the intersection of various marginalised groups are, *de facto*, being further marginalised. The period where this phenomenon has taken place is also the time where private schools have mushroomed.⁵⁰

⁴⁷ <http://www.modernghana.com/blogs/246549/31/lamptey-mills-case-matters-arising.html>. Retrieved 24/9/14.

⁴⁸ Ibid

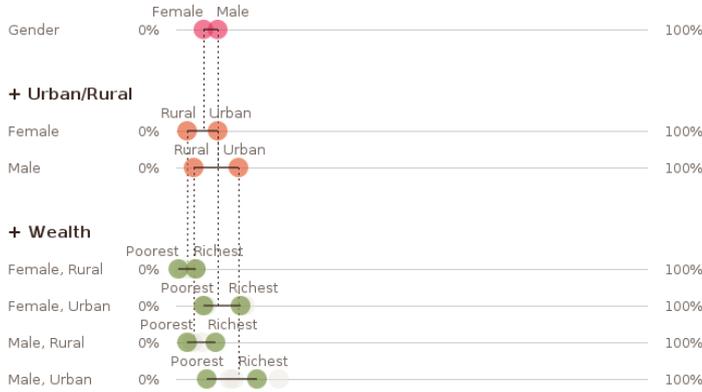
⁴⁹ Ação Educativa, Asia South Pacific Association for Basic and Adult Education (ASPBAE), Equal Education Law Centre, Global Initiative for Economic Social and Cultural Rights, Latin American Campaign for the Right to Education (Campaña Latinoamericana por el Derecho a la Educación), Right to Education Project, Section 27, and others, "Privatisation and its Impact on the Right to Education of Women and Girls", Written submission to the Half-Day General Discussion on girls'/women's right to education, 7 July 2014.

⁵⁰ <http://moe.gov.gh/site/resources/emis.php>

Ghana

Learned basics in mathematics

Gender Disparities



© UNESCO. All rights reserved.

Age groups

- Lower Secondary

Years

- 2003

Options

Gender

- Gender



- Urban/Rural

- Wealth

- Speaks Language at H

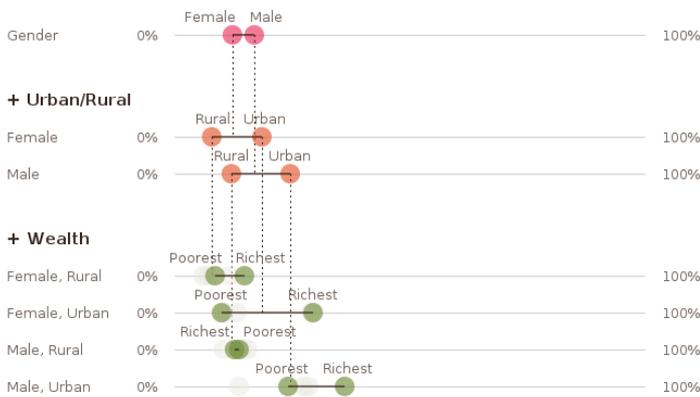


- Wealth

Ghana

Learned basics in mathematics

Gender Disparities



© UNESCO. All rights reserved.

Age groups

- Lower Secondary

Years

- 2007

Options

Gender

- Gender



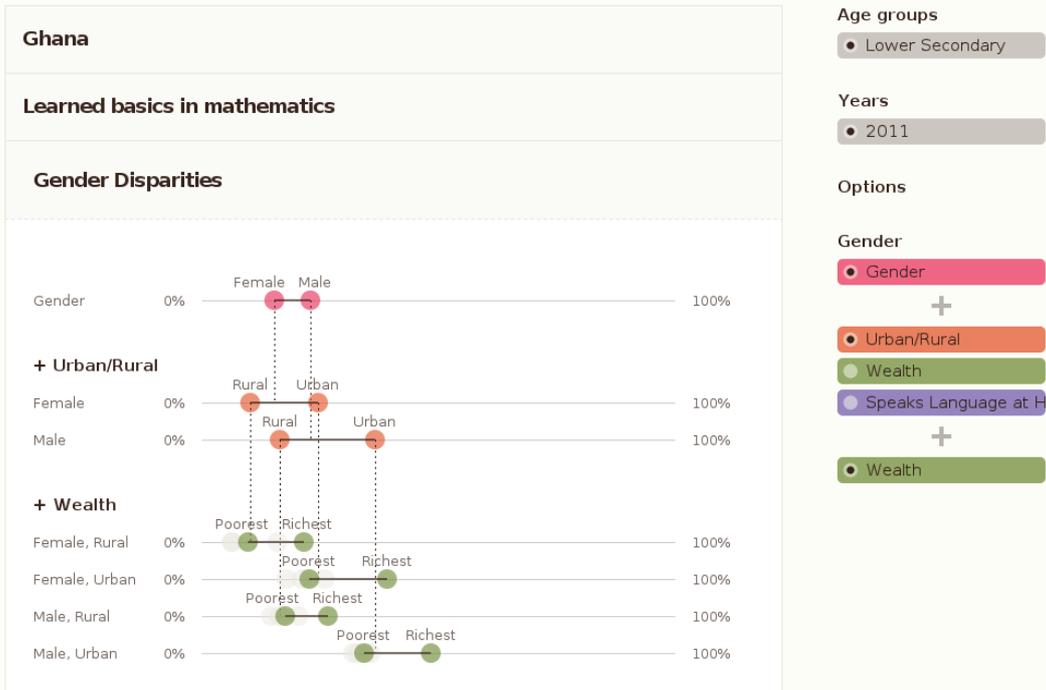
- Urban/Rural

- Wealth

- Speaks Language at H



- Wealth



51

18. Finally, **lack of data and transparency** on the fast-paced privatisation of the education system in Ghana and its impact on children's right to education, in particular with respect to low fee private schools, is also extremely concerning. It is crucial to have more comprehensive data on types of private schools, particularly in poor urban/peri-urban areas and rural areas, who is accessing them, the fees charged by schools and their impact, and discrimination and/or segregation between different groups in society, including between boys and girls. The Ministry of Education recognised itself that it lacks data on crucial aspects from a human rights perspective, such as fees charged by private schools,⁵² and it indicated that *"even the number of private schools is uncertain, as far as some schools may find attractive not to register their existence with public authorities"*.⁵³

19. Therefore, we are extremely concerned that this situation -- where the opportunity to access good quality education depends on parents' ability to pay the rather high fees charged by the private schools -- will worsen the plight of girls, in particular girls from poor families. Private schools are generally patronized by wealthier segments of society who are able and willing to pay the fees charged by such institutions whilst the poorest segments of society mostly rely on public schools for education.⁵⁴ Thus, the growth of private schools is creating a divide and a

⁵¹ Data and graph from UNESCO: <http://www.education-inequalities.org/>

⁵² Ibid., p. 140.

⁵³ Ibid., p. 131.

⁵⁴ Ministry of Education of Ghana, "Education Sector Review: Final Team Synthesis Report", <http://www.moe.gov.gh/docs/ESR%20Reports/Chapter%206-9.pdf>

fragmentation within the society between people who can access elite expensive private schools, and those who cannot,⁵⁵ and increasingly, between boys and girls.

III. Legal framework applicable under the CEDAW Convention

20. We made a legal analysis of the legal framework applicable to privatisation in education under the CEDAW Convention in our submission to the Committee for the half-Day General Discussion on girls'/women's right to education.⁵⁶ The following are relevant extracts from that submission.

21. While it may not seem *prima facie* discriminatory, the CEDAW Committee has recognised that that privatisation in education may negatively affect the poorest and most vulnerable disproportionately, including women and girls, in violation of the CEDAW Convention. Indeed, in its Concluding Observations, the CEDAW Committee has already raised concern about the possible negative impact of privatisation of education on the rights of women and girls.⁵⁷ It has also been highlighted as an issue of concern in NGO reports to the CEDAW Committee.⁵⁸ It should also be noted that the CEDAW Committee has also expressed concern over privatisation's impact on other economic and social rights, for example the right to health, as in its Concluding Observations on Austria, where the Committee expressed concern about "*the risk that privatisation may downgrade the quality of health services accessible to women.*"⁵⁹

22. Under the CEDAW Convention, States parties are obligated to improve the *de facto* position of women and girls through concrete and effective policies and programs, rectifying prevailing patterns of gender inequality and the persistence of gender-based stereotypes, including through the use of temporary special measures.⁶⁰ Each of these obligations intersects with, and is relevant to, the right to education within the context of privatisation, in particular when States abdicate their responsibilities in the area of education, leaving private and non-state actors to fill the gap.

23. States parties are also obligated to ensure that there is no direct or indirect gender discrimination in their laws, policies and practices, ensuring that women and girls are protected against discrimination — including by private actors. This raises the question of due diligence which is important when looking at the impact of privatisation on the enjoyment of the right to

⁵⁵ These are the Coalition's observation of what happens on the ground. Further research will be done in the coming months to further document the situation.

⁵⁶ Ação Educativa, Asia South Pacific Association for Basic and Adult Education (ASPBAE), Equal Education Law Centre, Global Initiative for Economic Social and Cultural Rights, Latin American Campaign for the Right to Education (Campaña Latinoamericana por el Derecho a la Educación), Right to Education Project, Section 27, and others, "Privatisation and its Impact on the Right to Education of Women and Girls", Written submission to the Half-Day General Discussion on girls'/women's right to education, 7 July 2014.

⁵⁷ See, for example, CEDAW's Concluding Observations on Hungary (2013); Cameroon (2000); Uganda (1995).

⁵⁸ See, for example, NGO PRESENTATION CEDAW: INDIA, available online at: <http://www.iwraw-ap.org/resources/pdf/India%20oral%20statement.pdf> [last accessed 5 June 2014]. See also: 'INDIA: Shadow Report: PART 2 –APPENDICES,' submitted to the UN Committee on the Rights of the Child for the review of India's Third and Fourth Combined Reports, by CRC 20 BS Collective, July 2012.

⁵⁹ CEDAW Concluding Observations on Austria (2013).

⁶⁰ As laid out in: CEDAW General Recommendation No. 25 on article 4, paragraph 1, on temporary special measures. Reprinted in Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.7 at 282 (2004).

education by women and girls. In particular, the CEDAW Committee's General Recommendation 28 (at para. 13) highlights that:

Article 2 is not limited to the prohibition of discrimination against women caused directly or indirectly by States parties. Article 2 also imposes a due diligence obligation on States parties to prevent discrimination by private actors. In some cases, a private actor's acts or omission of acts may be attributed to the State under international law. States parties are thus obliged to ensure that private actors do not engage in discrimination against women as defined in the Convention. The appropriate measures that States parties are obliged to take include the regulation of the activities of private actors with regard to education, employment and health policies and practices, working conditions and work standards, and other areas in which private actors provide services or facilities.⁶¹

24. When States fail to provide quality education to all, or when they otherwise fail in their due diligence obligation, States are short-changing girls in terms of access to quality education and in terms of ensuring equal educational outcomes for both girls and boys.⁶² Under the CEDAW Convention, a State's obligation to respect, protect and fulfill the right to education can be thought to encompass the following key elements:

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

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

⁶¹ Committee on the Elimination of Discrimination against Women, General Recommendation 28, The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (Forty-seventh session, 2010), U.N. Doc. CEDAW/C/GC/28 (2010).

⁶² Committee on Economic, Social and Cultural Rights, General Comment 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights (Thirty-fourth session, 2005), U.N. Doc. E/C.12/2005/3 (2005), at para. 30. The General Comment states that "States parties should ensure, in particular through information and awareness raising campaigns, that families desist from giving preferential treatment to boys in sending their children to school, and that curricula promote equality and non-discrimination. States parties must create favourable conditions to ensure the safety of children, in particular girls, on their way to and from school."

26. In interpreting article 10 of the CEDAW, it is relevant to take into account General Comment No. 13 adopted by the Committee on Economic, Social and Cultural Rights as regards the right to education⁶³. The Committee highlights that: “Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women...”⁶⁴ The notion of education being understood as “an empowerment right” is critical from the standpoint of gender equality. From an early age, girls face discrimination and inequality in the arena of education which negatively impacts their ability to succeed and enjoy the full range of their human rights throughout the whole of their lives. A girl’s inability to access quality education is a prime example of how discrimination and inequality can take root; effective denial of quality education has long-lasting affects on the girl as well as on her society.

27. In addition, General Comment No. 13 notes that the State has “principal responsibility for the direct provision of education in most circumstances,” and that “States parties have an enhanced obligation to fulfil (provide) regarding the right to education.” Crucially, it also highlights with regards to the liberty to establish private educational institutions set out in article 13 (4) of the International Covenant on Economic, Social and Cultural Rights that: “Given the principles of non-discrimination, equal opportunity and effective participation in society for all, the State has an obligation to ensure that the liberty set out in article 13 (4) does not lead to extreme disparities of educational opportunity for some groups in society.”⁶⁵ These obligations are critical, and also underscore the key point that the negative consequences which are borne by women and girls when education is privatized cannot be adequately redressed through increased regulation of private actors alone. Rather, a renewed emphasis on a State’s obligation to fulfil the right to education is needed in order for women and girls to enjoy their right to education in practice, and so that education is truly transformative as a human right.

28. General Comment No. 13 also outlines the ‘essential features’ of the right to education, which include availability, accessibility, acceptability and adaptability.⁶⁶ Each of these essential features must be seen through a gendered lens, so that each is understood from a substantive equality perspective. That is to say, in order for women and girls to realize their right to education, education must be made fully available and accessible to them, and it must be acceptable and adaptable from the standpoint of furthering gender equality and the empowerment of women and girls. Privatisation in and of education can affect all of these essential features.

29. The Committee on the Rights of the Child has also observed that “gender discrimination can be reinforced by practices such as a curriculum which is inconsistent with the principles of gender equality, by arrangements which limit the benefits girls can obtain from the educational opportunities offered, and by unsafe or unfriendly environments which discourage girls’

⁶³ The preamble to CEDAW refers to the other international conventions concluded under the auspices of the United Nations

⁶⁴ Emphasis added. Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), at para. 48.

⁶⁵ Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), at para. 30.

⁶⁶ Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), at para. 6.

participation.”⁶⁷ Similarly, the Committee on Economic, Social and Cultural Rights has also specifically observed that States “... are obliged to remove gender and other stereotyping which impedes the educational access of girls, women and other disadvantaged groups.”⁶⁸

IV. Recommendations

30. In light of the discussion above, we recommend that the State Party:

- a) Transparently collect adequately disaggregated data on private education institutions operating within the country so as to be able to assess the impact of privatisation in education on the enjoyment of the right to education on vulnerable groups, including girls.
- b) Use these data to take concrete steps to protect the right of girls to access quality education at all levels, in particular, ensuring that girls from poor backgrounds are not denied quality basic education due to inability to pay the high cost for private education.
- c) Take all appropriate means, including adequate human and financial resources, to effectively enforce existing regulations for establishing and operating private schools, so as to ensure that private schools meet the minimum national standards – such as having adequate and separate sanitation facilities for girls –, and are publicly accountable.
- d) Review the existing tax legislation applicable to private schools to ensure that those private schools that charge fees and are for-profit are taxed as any other profit-making entity in the country, so that the State is able to raise adequate resources to develop a public education system for all as matter of priority.
- e) Review its current public-private partnership policy in the education sector so as to ensure that funds are allocated as a matter of priority to develop free quality public education.
- f) Increase investment and better target public resources to public schools, especially to poor communities in rural areas, and ensure that priority is given to improving the quality of education in public schools for all children in the country, irrespective of socio-economic background, location or gender.

⁶⁷ Committee on the Rights of the Child, General Comment No. 1, The Aims of Education, U.N. Doc. CRC/GC/2001/1 (2001).

⁶⁸ Committee on Economic, Social and Cultural Rights, General Comment 13, The right to education (Twenty-first session, 1999), U.N. Doc. E/C.12/1999/10 (1999), reprinted in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 70 (2003).