



Alternative Report Submitted by the Global Initiative for Social and Economic Rights and the Sciences Po law school Clinic

With the support of the the Foro por el Derecho a la Educación, the Red de Estudios para la profundización Democrática, the Latin-American Campaign for the Right to Education, the Privatisation in Education Research Initiative, the Right to Education Project, Education International, the Global Campaign for Education, and the Equal Education Law Centre.

Presented to the United Nations Committee on Economic, Social and Cultural Rights at its 54th Session for its consideration of the List of Issues for Chile

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KEY ISSUES ADDRESSED IN THE REPORT

Although privatisation in education is a growing global phenomenon threatening the right to education in many countries,¹ the Chilean experience is unique. No other country has undergone such a systematic reform (over the whole territory of the state) over such a long period of time (three decades), and examining the situation of Chile is therefore crucial to understand the effects privatisation on human rights more generally.

Chile, a country where the State traditionally was the main provider of education, with 80% of students enrolled in public schools before 1973, has undergone radical neoliberal reforms from the 1980's which have profoundly changed its education system, up to the point where **private-school enrolment now represents more than 60% of total enrolment, in just 3 decades**. Of the 65 countries tested through the Program for International Student Assessment (PISA) of the Organisation for Economic Co-operation and Development, **Chile has the highest share of private expenditure in education** on all levels of education with 40% of education expenditure coming from private sources, most of it coming from individual households.

This report focuses on analysing the impact of this massive privatisation on segregation and discrimination. A supplementary report will be published mid-2015 about the impact on other human rights dimensions.

The report finds that because, amongst other key factors, the differentiated choices made by families, school fees charged in private schools, and the practice of entry level tests, the education system is extremely segregated in Chile, thus making the system very discriminatory, in contravention with States' obligations under the International Covenant on Economic, Social and Cultural Rights:

- **Chile has the education system that is the most segregated by socio-economic status** within the 65 PISA-tested countries;
- The education system in the State Party is also segregated according to education performance;
- Disadvantaged families in the State Party are less likely to achieve high levels of performance than in any other countries tested by PISA, except 3;
- **More than 75% of the performance differences between schools which is explained by the socio-economic status of students and schools, far above the OECD average (62.8%).**

These inequalities are a direct consequence of Chile's education system and policy choices.

Although some reforms have been implemented in the last years, they have not touched the privatisation assumptions on which the State party's education system is based, and which have high discriminatory impacts. Despite, also, concerns raised by the Committee on Economic, Social and Cultural Rights in 2004 and the Committee on the Rights of the Child in 2007 about the effect of the privatised education system on inequalities, little has changed, and the education system in the Chile is still in contradiction of some of the core the obligation of the State Party under international human rights law.

Reforms were being discussed in 2014, following two major protests, and it is essential that Chile adopts and implements as a matter of priority education reforms that are able to address systemic violations of the right to education in the country.

1. Chile submitted its initial report ("State Report") on the implementation of the ICESCR on 13 August 2013. The United Nations Committee on Economic, Social and Cultural Rights ("CESCR") will consider a List of Issues for Chile (the "State Party") during its 54th session on 1 - 5 December 2014. Chile will be reviewed by the Committee in June 2015. The present report is submitted by the following organisations as part of this process.
2. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)¹ is 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. 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. The Sciences Po law school Clinic² is an educational program articulated around the mission of public interest within local, national, and global communities – in which it is inscribed in the Sciences Po Law School project. The Clinic conducts integrated scientific research, founded on a systematic documentation and on theoretical analysis. Within the Clinic, the Human rights, Economic Development and Globalization programme explores the promotion, protection and fulfilment of human rights, the responsibility of actors in globalization and economic development, and equitable and stable development.
4. The report has also received the support from the Foro por el Derecho a la Educación (FORO),³ the Red de Estudios para la profundización Democrática (RED),⁴ the Latin-American Campaign for the Right to Education (CLADE),⁵ the Privatisation in Education Research Initiative (PERI),⁶ the Right to Education Project (RTE),⁷ Education International (EI),⁸ the Global Campaign for Education (GCE)⁹, and the Equal Education Law Centre.¹⁰
5. This report is part of an 18 months research project on the impact of privatisation in education on the realisation of human rights which the organisations that support this report are involved in.¹¹

I. Education system and State support to privatisation in education in Chile

6. Under Pinochet's dictatorship, from 1973 to 1990, Chile undertook major economic reforms in the public sector. Inspired by Milton Friedman's neoliberal theories,¹² a group of Chilean economists trained at the University of Chicago – and who came to be known as the 'Chicago boys' – piloted a profound deregulation and privatisation of public services in all sectors, including in particular education.

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

² See <http://www.sciencespo.fr/ecole-de-droit/en/content/clinic>

³ See <http://www.educacionparatodos.cl/>.

⁴ See <http://redparalademocracia.cl/>.

⁵ See <http://www.campanaderechoeducacion.org/>

⁶ See <http://www.periglobal.org/>.

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

⁸ See <http://www.ei-ie.org/>.

⁹ See <http://www.campaignforeducation.org/>.

¹⁰ See <http://www.eelawcentre.org.za/>.

¹¹ See <http://privatisationeducationhumanright.ning.com/>

¹² Milton Friedman, "The Role of Government in Education," in: *Economics and the Public Interest* (1955).

7. The reforms that were taken included the drastic alteration of education financing rules and procedures. The administration of educational institutions was transferred from the Ministry of Education to the local municipalities and demand-side subsidies were allocated to schools through a system of *vouchers*: a certain amount of money is allocated by the State to schools on the basis of the number of students attending the school. This system of vouchers is still in force today. In addition, school curriculum was given more flexibility, and a system of evaluation of school performance was established in 1988: the SIMCE (*Sistema de Medición de la Calidad de la Educación*). It consists in a national standard test conducted in all schools to evaluate the quality of the education they provide and the academic level of the pupils.¹³ The objective is that parents rely on the SIMCE results when deciding what school their children should attend, allowing them to choose the schools that get the best results at the SIMCE, which is considered to reflect quality.
8. Overall, the reforms were done in the name of efficiency. The argument to privatise education was that involving the families through a “commercial” relationship with schools would be an incentive for them to control the quality of education. As a consequence, schools were supposed to have an incentive to offer the best possible education – this being supposedly reinforced by the competitions between schools. Finally, the increase of the role of the private sector was supposed to enable the State to re-allocate its subsidies where they were most needed.¹⁴ The reforms thus resulted in an overall withdrawal of the State from its responsibilities in education, putting the rhetoric of “choice” at the centre of the system.
9. These reforms played a significant role in the development of private education in the 1990s. As a result, there are nowadays different categories of schools according to the way they are funded:
 - a. **Public schools:** they are subsidised by the State and managed by the municipalities - exceptionally they can be managed by private persons. They are free for the pupils. In 2011, 40% of the pupils attended these schools.¹⁵
 - b. **State-subsidised private schools with mixed funding:** they are partially subsidised by the State and partially by private funding (mainly by students' families). Almost all of them have private owners. In 2011, 53% of the pupils attended these schools.¹⁶
 - c. **Paid schools or independent private schools:** they are entirely private and entirely paid for by the families' students. In 2011, 7% of the pupils attended these schools.¹⁷

To understand the scale of privatisation that took place in the State Party, these figures should be compared with the Organisation for Economic Co-operation and Development (OECD) average, of respectively 82%, 14% and 4% in the three types of schools.

¹³ See: <http://www.agenciaeducacion.cl/simce/que-es-el-simce/>.

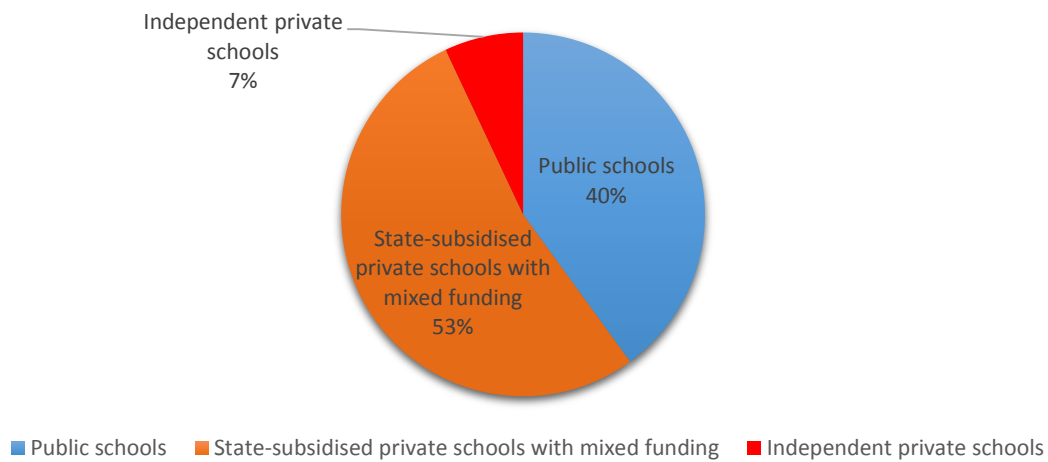
¹⁴ Javier Corvalan, “El financiamiento compartido en la educación subvencionada chilena. Apuntes a partir de los resultados de una investigación,” in: *Revista Persona y Sociedad*, volume XVII (2003).

¹⁵ OECD, *Education at a Glance 2014* (2014).

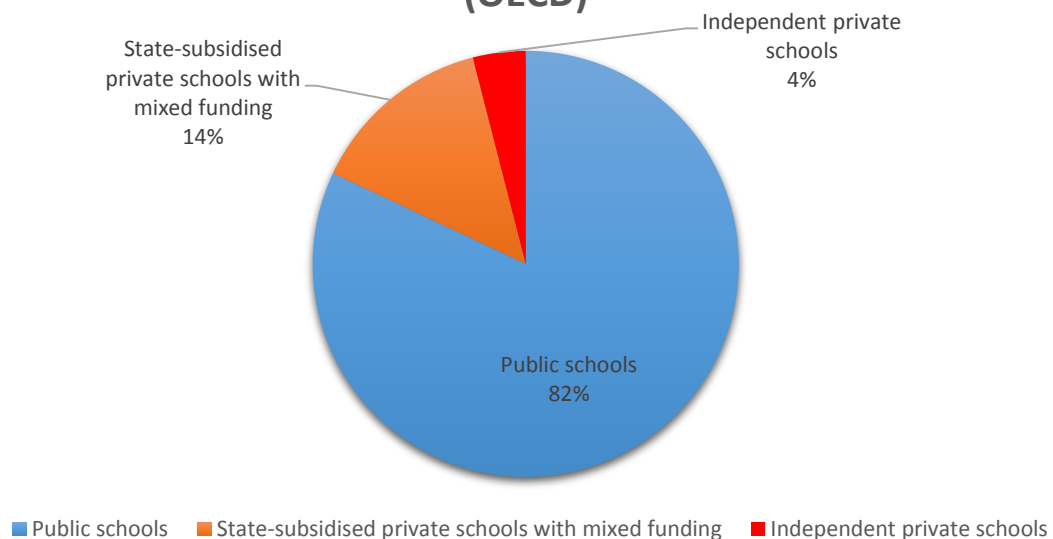
¹⁶ OECD, *Education at a Glance 2014* (2014).

¹⁷ OECD, *Education at a Glance 2014* (2014).

Share of pupils according to categories of schools (Chile)



Share of pupils according to categories of schools (OECD)



10. Until the 1990s, some guarantee of equality was provided through the regulation of State-subsidised schools prohibiting them from charging additional fees to families. However, in 1993 this prohibition was removed and public schools and State-subsidised private schools were able to charge tuition fees.¹⁸ In addition the government introduced a tax incentive to families to take part in the funding of their children’s education.¹⁹

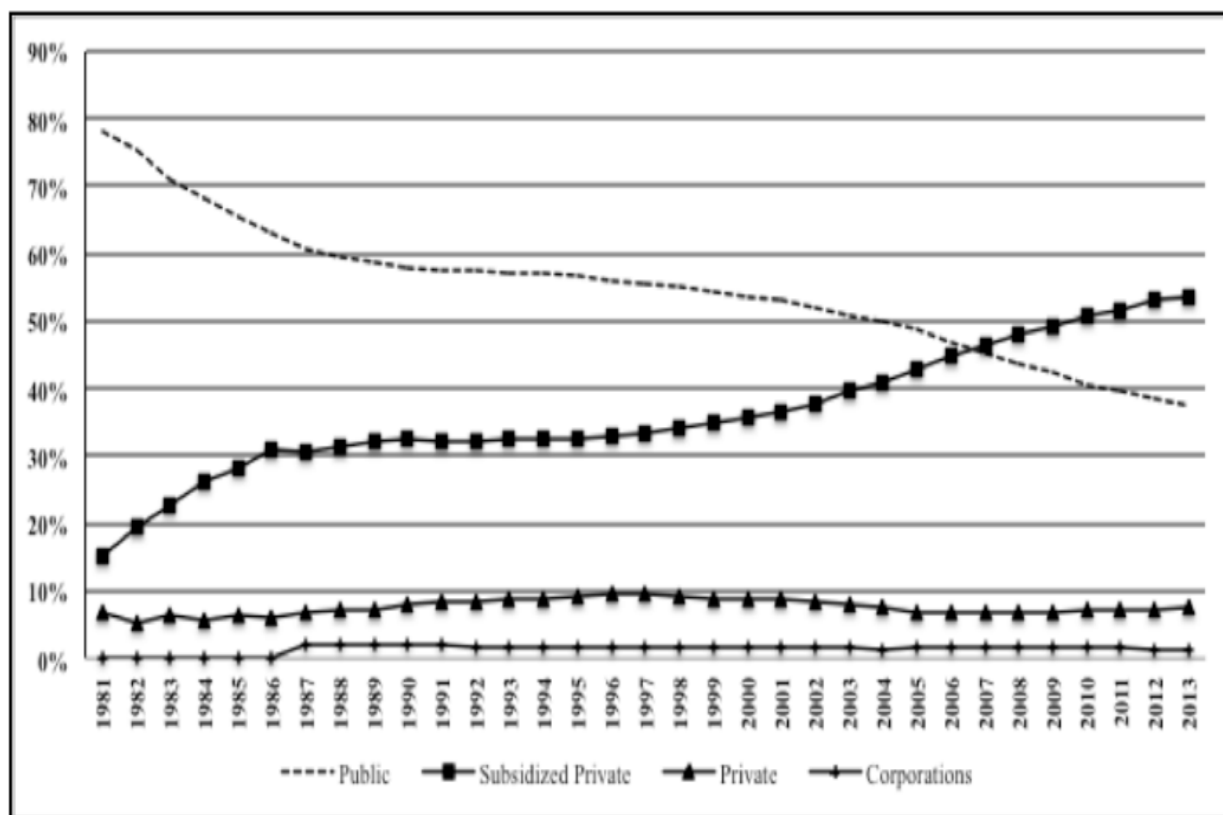
11. The privatisation reforms led to a profound change of the Chilean education system. The introduction of this privatised education system in the State Party created a dynamic educational market. The number of schools increased drastically and so did the amount of private investment in education. As a result, the number of State-subsidised private schools

¹⁸ See: the Law on Shared Financing (*Ley de Financiamiento Compartido*) No. 18.768, Article 46 (1994).

¹⁹ See: the Law on Income Tax (*Ley de Impuestos a la Renta*) No. 19.247, Article 9 (1993).

more than doubled between 1990 and 2012 whereas at the same time, the number of public schools strongly decreased.²⁰

Evolution of school enrolment in Chile by school type (%) over the years 1981-2013.²¹



Source: Verger et. al. (2014) from MINEDUC statistics.

12. Although some authors consider that privatisation and the vouchers system had an overall good impact on the quality of education,²² others have criticised the system on the basis that the State renounced its role to promote equal access to education for the whole population, without having a beneficial impact on the quality of education.²³ As this report will detail, instead of reducing the gap between privileged and disadvantaged groups, it appears that the reformed educational system has contributed to deepening social inequalities.
13. In addition privatisation through management of education, privatisation in education in the State Party can also be seen through funding. Within the 65 countries that undertake the OECD Program for International Student Assessment (PISA), **Chile has the highest share of private expenditure in education** on all levels of education with 40% of education expenditure coming from private sources, most of it coming from individual households: 20.8% of the funds came from households, which is extremely high, as compared, for

²⁰ Centro de Estudios MINEDUC, *Estadísticas de la educación* (2012), p.15.

²¹ A. Verger, X. Bonal, A. Zancajo, "What role and impact do Public-Private Partnerships have in education? A realist evaluation of the Chilean education quasi-market", Paper presented at the 2014 CIES Conference, Toronto, 10-15 March 2014, p. 13.

²² C. Sapelli and A. Torche, "The Performance of Private and Public Schools in the Chilean Voucher System," in *Cuadernos de Economía*, Vol. 39, No. 118 (2002) pp. 423-454.

²³ Ricardo D. Paredes and Juan Ignacio Pinto, "¿El Fin de la Educación Pública en Chile?," in: *Estudios de Economía*, vol. 36, No. 1 (June 2009).

instance to 8.8% in Argentina.²⁴ This situation is even more significant at the tertiary level: Chile has the smallest share of public expenditure in tertiary education of all OECD countries: the proportion of private expenditure is about three-quarters (76%), against an OECD average of less than one-third (31%). **In Chile, more than anywhere else, education is dependent upon private funding.**

14. Acknowledging the market failures in the field of education (high inequalities and insignificant improvements in overall system performance), Chile underwent a series of reforms throughout the 1990s and the 2000s. In the 1990s the central components of the system (public subsidies, parental choice, decentralisation) were left unchanged, although the first democratic government (1990-1994) highlighted the fact that education offered to and received by rich and poor was different in terms of quality.²⁵ In the early 2000s, Governments focused on quality and accountability and extended compulsory education to 12 years through the Constitutional Reform of 7 May 2003.
15. It was only during the 2006 - 2010 period that a higher importance was given to the right to quality education for all. In 2008, the Government passed a law called the Preferential School Subsidies Law (*Ley de Subvención Escolar Preferencial*)²⁶ which aims at allocating additional resources to subsidised schools in order to reduce inequalities in learning outcomes, by giving priority to students whose socioeconomic situation impacts their access to education.²⁷
16. Other significant reforms include the 2009 General Education Law (*Ley General de Educación*)²⁸ and the 2011 National System for the Guarantee of Quality of School Education law (*Ley sobre el sistema nacional de aseguramiento de la calidad de la educación*). They created different public institutions which aim at improving the quality of education and unifying the educational system. The National Council of Education (*Consejo Nacional de Educación*)²⁹ is in charge of the assessment of pre-schools, primary and secondary schools curriculum. The Quality Education Agency (*Agencia de Calidad de la Educación*)³⁰ controls the students' learning achievements and evaluate schools' realisations. The Agency conducts investigations and publishes reports on themes such as the difference in academic success in relation to the socio-economic status of the family, or to the pupils' gender. Finally, the Supervision of Education (*Superintendencia de Educación*)³¹ must make sure that schools have the required elements to guarantee an education of quality, as provided by the law.
17. However, these reforms did not address some of the central issues related to privatisation in education. In fact, they are attempts by the Government to correct market failures by creating external incentives for schools to compete and become more efficient, and thus to reinforce and save the system.³²

²⁴ OECD, Education at a glance 2014: OECD indicators (2014), p. 245.

²⁵ The new government policies gave priority to rural schools ("MULTIGRADO") and launched several programs in the nineties such as the "programme of intercultural and bilingual education" (*el programa de educación intercultural bilingüe*) and the Complete Day (*la Jornada completa*).

²⁶ Preferential School Subsidies Law ([Ley de Subvención Escolar Preferencial](#)) No. 20.248 (2008).

²⁷ Article 2.

²⁸ General Education Law ([Ley General de Educación](#)), No. 20.370 (2009).

²⁹ See: www.cned.cl

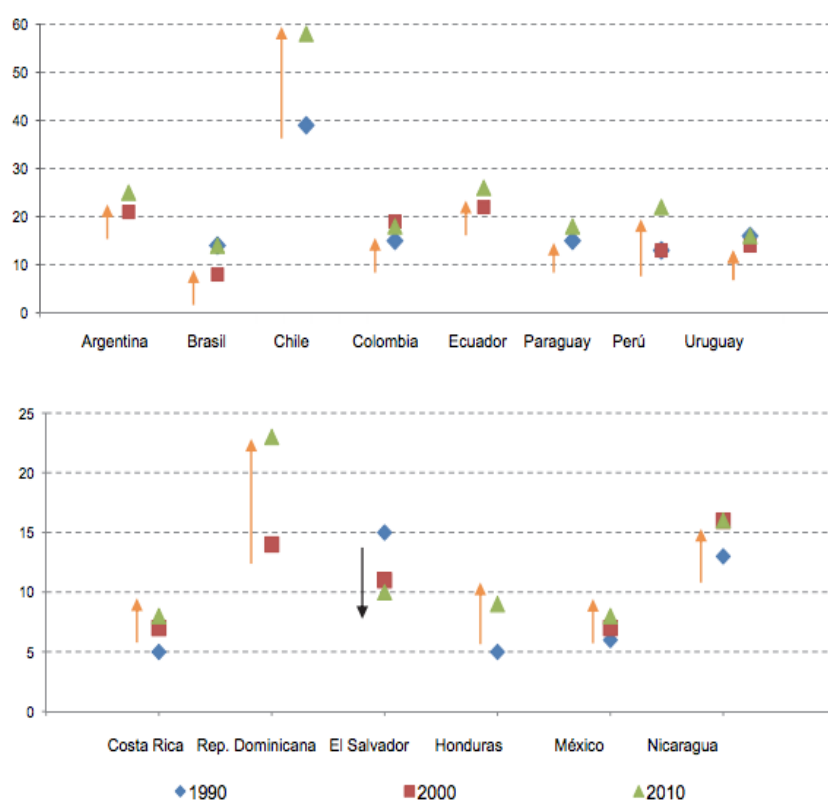
³⁰ See: <http://www.agenciaeducacion.cl>

³¹ See: <http://www.supereduc.cl>

³² Verger *et. al.* (2014), *op. cit.*, p. 28.

18. In reaction, massive students and social demonstrations took place in 2011 to denounce the inequalities created and reinforced by the education system. As a result, the new government which came to office following the election of Michelle Bachelet as President of the Republic in 2013, placed education reform at the centre of its political agenda. As part of her campaign, Ms Bachelet promised a series of transformations to the system, including a progressive of change towards a system of free education, with a strong focus on public education. The new government has started to engage in a series of reforms, which are discussed in the last part of this report.
19. Although privatisation in education is a global trend that can be observed in many countries around the world, the Chilean experience is unique. No other country has undergone such a systematic reform (over the whole territory of the state) over such a long period of time (three decades), as a comparison with the privatisation trend in other countries in the region for example shows (see below).

Evolution of enrolment in secondary private schools between years 1990 and 2010 in 14 different countries in Latin America³³



Source: M. Arcidiácono et. al. (May 2014), based on Unesco data.

20. Chile, a country where the State traditionally was the main provider of education, with 80% of students enrolled in public schools before 1973, has thus undergone radical neoliberal reforms from the 1980's which have profoundly changed its education system, up to the point where **private-school enrolment now represents more than 60% of total enrolment, in just 3 decades**. These reforms have had a major impact on the realisation of

³³ M. Arcidiácono, G. Cruces, L. Gasparini, D. Jaume, M. Serio, E. Vázquez, "La segregación escolar público-privada en América Latina," in: *CEPAL - Serie Políticas Sociales*, No. 195 (May 2014), p. 16

economic, social and cultural rights in the State Party (part III below), and the reforms that are being undertaken will be of crucial importance to respect, protect and fulfil the right to education (part IV below).

II. The right to education and privatisation in education in Chile

21. The State Party ratified the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) on 10 February 1972, which protects the right to education at Article 13. Chile has also ratified other treaties guaranteeing the right to education, such as the Convention on the Rights of the Child.³⁴
22. Article 19(10) of the Constitution of the State party guarantees the right to education to all persons.³⁵ It further provides that the State has the responsibility to grant special protection to the realisation of this right, and that the State must guarantee free access to education to the population. Article 19(11) also guarantees the liberty of parents to choose for their children schools.
23. While privatisation in education is a growing global phenomenon threatening the right to education in many countries,³⁶ Chile is a striking example of this phenomenon and the harm it can create on the realisation human rights. An increasing body of research is examining the impact of these developments on human rights and social justice.³⁷ In June 2014, thirteen organisations – including some of the organisations involved in writing this report – met for three days in Geneva to discuss these issues. We held on this occasion a side event at the Human Rights Council, an expert roundtable attended by amongst others, Mr Kishore Singh, the UN Special Rapporteur on the right to education,³⁸ and a two-day workshop with national and international civil society organisations from around the world.³⁹
24. These events confirmed the scale of the phenomenon and the dangers of privatisation in education. Based on this work, and on the analysis of the situation with regards to privatisation in education in seven other countries,⁴⁰ we have developed the following draft framework, which sets out how international human rights law applies to privatisation in education, drawing in particular on article 13 of the ICESCR.

³⁴ On 13th August 1990.

³⁵ [Political Constitution of the Republic of Chile](#) (1980).

³⁶ See: <http://www.periglobal.org/>

³⁷ See generally the work engaged by a number of leading organizations working in the education fields summed up on: <http://www.right-to-education.org/issue-page/privatisation-education>. See also the project under which this report is being written <http://privatisationeducationhumanright.ning.com>.

³⁸ See the summary of the event on: <http://globalinitiative-escr.org/wp-content/uploads/2014/07/GI-ESCR-Summary-of-Privatisation-in-Education-events-Geneva-June-2014-FINAL.pdf>.

³⁹ See: <http://globalinitiative-escr.org/privatisation-in-education-advocacy-and-research-workshop-and-public-events-reports>.

⁴⁰ See: <http://globalinitiative-escr.org/advocacy/privatization-in-education-research-initiative/international-advocacy-on-privatisation-in-education> and <http://privatisationeducationhumanright.ning.com>.

Privatisation in education human rights draft analysis framework

While private providers of education should and must be allowed, the development of private education should:

1. Not lead to the creation of extreme disparities or discrimination of any sort, or be a factor of segregation or division in societies in general and education in particular;
2. Provide for a true alternative choice to quality public education, and not replace the public system, as the State retains the responsibility to offer quality public education for all;
3. Not lead to a marketization of education which would entail that education is no longer directed to the full development of a child's personality, talents and mental and physical abilities to their fullest, but instead only to achieving measurable outcomes, which would be contrary to the aims of education recognised in human rights law;
4. Offer quality education, which is adequately regulated, both in law and in practice, with adequate inspection staffing, effective accountability mechanisms, and without corruption; and
5. Be a decision which is subject to democratic scrutiny, and open to the human rights principles of transparency and participation.

25. Furthermore, a recent report published by the UN Special Rapporteur on the right to education (SR RtE) presented at the UN General Assembly examines State responsibility in the face of the explosive growth of private education providers, from a right to education perspective, and lays out some the principles applicable.⁴¹ The principles laid out by the Special Rapporteur are very similar to those we use in our analysis framework, and references are made to them in our analysis.
26. We have so far focused our research on applying the privatisation analysis framework to the situation in Chile with regards to the aforementioned principles 1 (non-discrimination). We are currently investigating impacts and collecting data on the other areas, in particular areas 2 and 3, and we will submit a supplementary report on privatisation in education prior to the review of the State Party.

III. Impact of privatisation in education on discrimination and segregation

A. Legal framework

27. Equality and non-discrimination is an immediate and crosscutting obligation in the ICESCR, which requires States parties to guarantee non-discrimination in the exercise of each of the

⁴¹ Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014).

ESCRs.⁴² International human rights bodies have strongly underscored the importance of non-discrimination.

28. General Comment 20 of the CESCR specifies that any kind of discrimination, whether direct or indirect, formal or substantive is prohibited.⁴³ The States Parties' obligations with respect to non-discrimination are immediate (as opposed to being subject to progressive realisation) and require States to pay particular attention to vulnerable or marginalised groups. Non-discrimination also applies to the distribution of government funds and resources for education.
29. Besides equality and non-discrimination, equality of opportunity in education has been clearly recognised as an overarching principle in most human rights treaties.⁴⁴ In addition to urging States to address "*multiple forms of inequality and discrimination in education through comprehensive policies*", the Human Rights Council has also urged States to "*promot[e] equality of opportunity in education in accordance with their human rights obligation*".⁴⁵ The principle of equality of opportunity is partly rooted in the aim of education laid out at article 13(1) of the ICESCR, which indicates that "*education shall be directed to the full development of the human personality*". Such full development cannot be realised if the intrinsic characteristics of learners, for instance their socio-economic background, rather than their merit and efforts, is a strong factor that determines the amount and quality of education they have access to.
30. Applying the obligation to not-discriminate, as well as the principles of equal opportunity and effective participation in society for all, the CESCR emphasised in its General Comment 13 that the State has an obligation to ensure that privatised education "*does not lead to extreme disparities of educational opportunity for some groups in society*".⁴⁶ Similarly, the Committee on the Rights of the Child has recently indicated in a General Comment that States must ensure that the provision of essential services by private actors "*does not threaten children's access to services on the basis of discriminatory criteria*".⁴⁷
31. In its concluding observations, the CESCR has highlighted the discriminatory impact of tuition fees. Despite the existence of scholarships and bursaries in Canada, the Committee expressed "*concern about the discriminatory impact of tuition fee increases on low-income persons*".⁴⁸ It connected the importance of free education for the enforcement of the right to non-discrimination, including discrimination on socio-economic grounds. In the case of Nepal, the CESCR recommended that basic education be made free and compulsory "*without discrimination on the grounds of gender, ethnicity, religion or social status*".⁴⁹
32. Furthermore, in its review of the Republic of Korea, the CESCR has clearly highlighted that access to education should not be based on financial capacity – and, for the case of higher education, solely based on ability. It expressed its concerns with the "*high associated costs of*

⁴² ICESCR, Article 2(2).

⁴³ CESCR, General Comment 20.

⁴⁴ Report of the Special Rapporteur on the right to education, "The promotion of equality of opportunity in education", A/HRC/17/29 (18 April 2011), para. 32.

⁴⁵ Human Rights Council, "The right to education: follow-up to Human Rights Council resolution 8/4", A/HRC/RES/17/3 (6 July 2011), para. 4.

⁴⁶ CESCR, General Comment 13, para. 30.

⁴⁷ CRC, General Comment 16, para. 34.

⁴⁸ CESCR, *Concluding Observations: Canada*, E/C.12/CAN/CO/4 E/C.12/CAN/CO/5 (2006), para. 31.

⁴⁹ CESCR, *Concluding Observations: Nepal*, E/C.12/1/ADD.66 (2001), para. 57; emphasis added.

education required to be paid by parents”, “the deepening inequality in education”, and “the fact that the chances of entering a high-level university for students are often determined by their parents’ ability to afford after-school tutoring or private education”. It recommended as a result recommends that the Republic of Korea “ensure that education is equally accessible to all and without discrimination, on the basis of ability, not financial capacity”.⁵⁰

33. The CRC has made similar observations on the impact privatisation and fees and on discrimination. Most recently, in the case of Morocco, the CRC was expressed concern that the quick development of private education “*has led to the reinforcement of inequalities in the enjoyment of the right to education*”.⁵¹ With regards to Colombia, it noted that the provision that allows costs to be levied upon those who can afford to pay this provision “*has created discriminatory educational system marked by arbitrary fees and social exclusion*”.⁵² It has also recommended that Lebanon place stronger emphasis on public education so as to “*prevent any risk of discrimination*”.⁵³
34. Building on these principles, the SR RtE considered in his last annual report that privatisation “*throws overboard the fundamental principle of equality of opportunity in education, which is common to almost all international human rights treaties*”.⁵⁴ Access to education based upon the capacity to pay fees, which is a consequence of privatisation, “*flies into the face of prohibited grounds of discrimination*”.⁵⁵
35. The constitution of the State Party protects equality before the laws in its article 19(2).

B. Situation in the State Party

36. Generally, as mentioned by the SR RtE, “[p]rivatization in education cripples the universality of the right to education as well as the fundamental principles of human rights law by aggravating marginalization and exclusion in education and creating inequities in society”,⁵⁶ and it “*favours access to education by the privileged*”.⁵⁷ High levels privatisation in education have been shown to affect particularly marginalised and vulnerable groups, such as girls, as shown in a recent submission made to the CEDAW.⁵⁸ Data in Chile show similar trends.

i. Causes of discrimination and segregation

37. There are several causes to the high segregation of the Chilean education system and the discrimination it generates. Three of them, directly connected to the privatisation of the education system, and which have the results of the policies of the State, play a particularly important role.

⁵⁰ CESCR, *Concluding Observations: Republic of Korea*, E/C.12/KOR/CO/3 (2009), para. 76.

⁵¹ CRC, *Concluding Observations: Morocco*, CRC/C/MAR/CO/3-4 (2009), para. 60.

⁵² CRC, *Concluding Observations: Colombia*, CRC/C/COL/CO/3 (2009), para. 33. See also CRC, *Concluding Observations: Sri Lanka*, E/CRC/C/LKA/CO/3-4 (2010), para. 62.

⁵³ CRC, *Concluding Observations: Lebanon*, CRC/C/15/Add.169 (2002), para. 33.

⁵⁴ Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014), para. 48.

⁵⁵ *Ibid.*, para. 45.

⁵⁶ Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014), para. 41.

⁵⁷ *Ibid.*, para. 48.

⁵⁸ See: <http://www.right-to-education.org/news/report-highlights-how-privatization-education-negatively-impacts-girls-many-parts-world>

1) Role of differentiated choice

38. The Chilean educational system is based on the principle of offering increased “choice”, the idea being that parents choose the best school for their children on the grounds of quality.⁵⁹ Yet, the reality shows that this “choice” in fact benefits mostly socio-economic advantaged groups and is a cause of segregation.
39. A number studies have shown that families’ criteria to choose their children’s schools in Chile are diverse and tend to vary according to their socioeconomic status.⁶⁰ Data from the PISA, which conducted in 2012 a specific study on criteria to choose schools in Chile, show for instance that low expenses (tuition, books, etc.) and availability of financial aid (loan, scholarship, grant, etc.) is a much more important criterion of choice for poorer families than for wealthy families. Conversely, wealthy families give much more importance to the levels of achievement of students or to the atmosphere of the school than poorer families.⁶¹
40. In addition, the realisation of parents’ preferences is limited by the education supply in the area. Poor families may need to adjust their initial inclinations to the geographical limitations of their local education market.⁶² The majority of students in low-performing schools usually have no better alternatives close to their homes. Fee-paying schools won’t set up in areas where families do not have sufficient resources to afford them.
41. Poor people thus face constrained “choices” that are sources of inequalities. As concluded by the OECD, analysing the results of the PISA 2012 results:

These differences suggest that socio-economically disadvantaged parents believe that they have more limited choices of schools for their children because of financial constraints. If children from disadvantaged status cannot attend high performing schools for this reason, then even school systems that offer parents more school choice for their children will be less effective in improving the performance of all students.⁶³

Interview with a parent about their choice of school, and role of socio-economic characteristics

An interview conducted by researchers in Chile demonstrates well how the growth of private schools and “choice” can be a factor of segregation:

Interviewer: Is this the school you chose as your first option? Did you check other schools?

Father: No, I chose this one because... There's a school closer to my home but I don't like it. It's a municipal school, and I dislike the children that go there. (Subsidized medium-cost private school)

Source : Verger et. al. (2014), op. cit., p. 17

⁵⁹ Verger et. al. (2014), op. cit., p. 2.

⁶⁰ See generally Verger et. al. (2014), op. cit.

⁶¹ OECD, *PISA 2012 Results: What Makes Schools Successful? Resources, Policies and Practices (Volume IV)*, PISA, OECD Publishing (2013), p. 137.

⁶² Verger et. al. (2014), op. cit., p. 17.

⁶³ OECD, *PISA 2012 Results: What Makes Schools Successful? Resources, Policies and Practices (Volume IV)*, PISA, OECD Publishing (2013), p. 138.

42. Moreover, **families tend to join schools with similar socio-economic characteristics.** School composition is a decisive criterion during the choice process: a study has shown that 87% of Chilean families only consider schools attended by students with similar socio-economic characteristics.⁶⁴
43. Because of the way families choose schools, increased competition and “choice” policies such as those implemented in Chile is a source of segregation and discrimination. A study of the OECD analysing the results of the 2009 PISA tests in several countries, including Chile, found that that as a result of “choice” policies,

*stratification may increase over time [...] since an advantaged student body in a privately managed school attracts more advantaged students, which increases the socio-economic advantages of the privately managed school even further, so that greater numbers of advantaged students will want to attend.*⁶⁵

2) Role of school fees

44. Independent private schools have no restriction on their fees,⁶⁶ and they are largely inaccessible to most people in Chile. In 2013, tuition fees in the Colegio Cordillera⁶⁷ (the secondary school with the highest scores in Mathematics and Languages at the university selection tests) amounts to 378,256 pesos (620 USD) per month, almost twice the 2012 minimum wage, and additional registration fees were 310,435 pesos (510 USD). The Grange School⁶⁸ is the school within the Top 10 of the university selection test results with the highest tuition fees: 5,034,096 (8,240 USD) pesos per year – equivalent of 690 USD per month –, in addition to the 256,366 pesos (420 USD) of registration fees. Other fees can be charged to families, such as those related to the admission process and incorporation fees to be paid once the student enters the school.⁶⁹ **As a comparison, the monthly minimum wage was 193,000 pesos (380 USD) in 2012.**⁷⁰
45. The maximum tuition fees that schools receiving public funding can charge is determined by the State.⁷¹ Public primary schools cannot charge fees, while public secondary schools may ask for a voluntary contribution. In 2012, State-subsidised private schools were allowed to charge a maximum of 916,822.75 pesos (approximately 1,500 USD) per year, the equivalent of 76,400 pesos (125 USD) per month. Only schools which are part of the Preferential School Subsidies system must exempt priority children from paying monthly tuition fees.
46. The maximum amount set by the law hides a wide range of situations, as each State-subsidised private school can fix the monthly amount within the limit set by the law. This leads to a differentiated access between the various State-subsidised schools according to the financial resources of the families. **Stratification and separation thus occur not only**

⁶⁴ Verger *et. al.* (2014), *op. cit.*, p. 17, quoting a study by Schneider *et al.*, (2006).

⁶⁵ OECD, *Public and Private Schools: How Management and Funding Relate to their Socio-economic Profile*, OECD Publishing (2012), p. 44.

⁶⁶ See: http://www.supereduc.cl/index.php?option=com_content&view=article&id=359&Itemid=134

⁶⁷ See the school website: <http://www.colegiocordillera.cl/>

⁶⁸ See the school website: <http://www.grange.cl/>

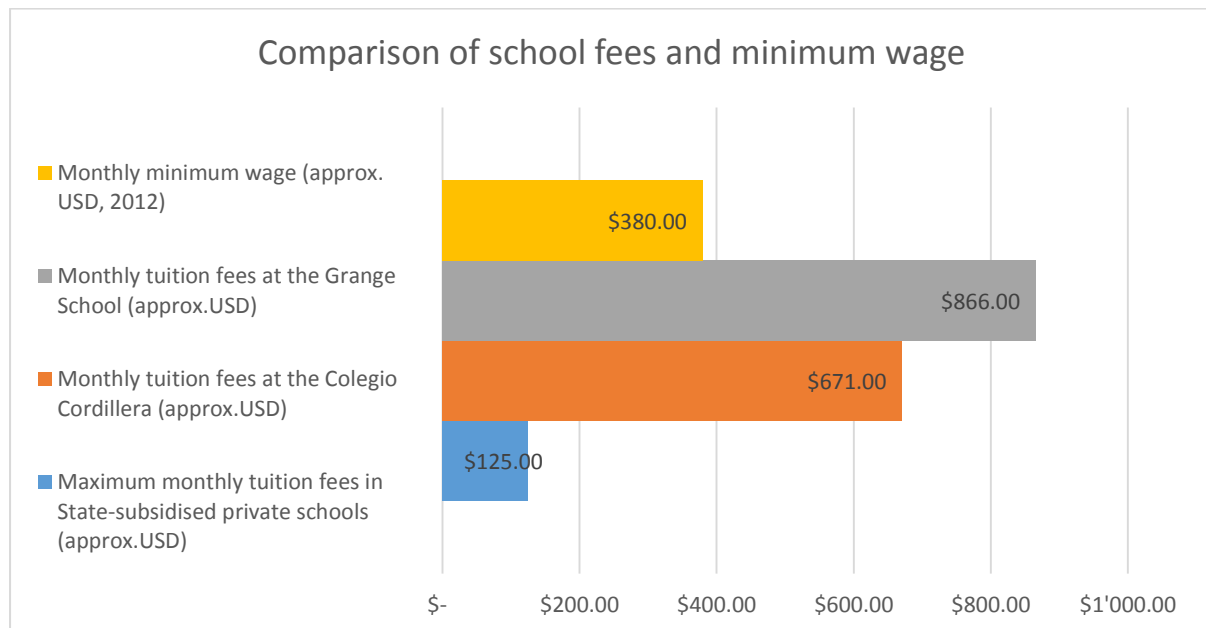
⁶⁹ Emol (2013, 31 December), “Mensualidad de colegios con los mejores puntajes PSU supera los \$250 mil,” in: *El Mercurio*. Web. Retrieved of:

<http://www.emol.com/noticias/nacional/2013/12/30/637336/mensualidad-en-colegios-top-10-en-la-psu-supera-los-250-mil.html>

⁷⁰ See: http://www.leychile.cl/Consulta/listado_n_sel?grupo_aporte&sub=807&agr=2&comp

⁷¹ http://www.supereduc.cl/index.php?option=com_content&view=article&id=359&Itemid=134

between different types of schools, but also within the heterogeneous category of State-subsidised private schools.



47. Schools can use the fees they charge to attract a certain population and/or, as analysed by a group of academics, “*price can effectively be used by schools to exclude certain undesired students*”.⁷² This is thus a key way through which the education system is segregated and becomes discriminatory.

3) Role of entry tests

48. In addition to the natural selection operated by school fees, direct selection of students by private schools is a common practice.⁷³ While public schools have, in theory, the obligation to accept all children, independent private schools do not have legal restriction vis-à-vis the selection of students. Since 2009, the General Education Law prohibits schools receiving public funds from selecting children based on previous academic results and socioeconomic information, in preschool and primary education.⁷⁴ However, these schools are still allowed to select pupils at the secondary level. Besides, even at the lower levels, the law allows to make selections based on criteria others than those expressly provided for in the law – academic results and socioeconomic information.

49. Traditionally, the most common requirements that was tested, at least until the 2009 LGE came into force, concerns students’ abilities, such as entrance examination, grades previously obtained by the student, etc. They allow schools to evaluate the students’ potential academic performance. Nevertheless, as pointed out by an author,⁷⁵ private schools also select according to psychological and behavioural tests. Such selection tests

⁷² Verger *et. al.* (2014), *op. cit.*, p. 21.

⁷³ Verger *et. al.* (2014), *op. cit.*, p. 13.

⁷⁴ See: *Ley General de Educacion*, Articles 12 (“[...] *en ningún caso se podrá considerar [...] el rendimiento escolar pasado o potencial del postulante. Asimismo, en dichos procesos no será requisito la presentación de antecedentes socioeconómicos de la familia del postulante.*”), 13 and 14.

⁷⁵ Almonacid Claudio, “Un cuasimercado educacional: La escuela privada subvencionada en Chile,” in: *Revista de Educación*, No. 333 (January-April 2004).

offer an open ground discrimination since it is easy to practice a subjective selection on such criteria.

50. Thus, in practice, as the table bellows shows, many schools do practice a form of selection of children at the different levels of education. **At the primary level, 32% of public schools, 54% of State-subsidised private schools and 90% of independent private schools ask for this kind of requirements to enter 1st grade.**⁷⁶ At the secondary level, the selection based academic criteria is widespread among the three types of school.

School enrolment requirements according to parents (% of parents responding each requirement).

	Public	Subsidized Private	Private
Evaluation of preschool education	24.2	37.2	47.3
Certificate of grades at the previous school	35.5	42.6	33.9
Certificate of baptism or religious marriage	0.6	13.7	31.1
Certificate of salaries	2.6	7.4	4.8
Interview with parents	16.8	40.3	79.8
The student must attend a game session	1.6	7	33.1
The student must make a written exam or entrance test	8.5	45	58.8

Source: Source: Verger *et. al.* (2014), from statistics from the SIMCE.

51. In addition, other application requirements such as application fees, interviews with families, civil marriage certificate, etc. inform the schools on the socio-cultural capital as well as the socio-economic level of the students and their families. Such kind of information is required by 41% of municipal schools, 71% of State-subsidised private schools and 94% of independent private schools at the primary level.⁷⁷
52. Some schools also require information linked to religious characteristics of the students and their families, though it is less common. 22% of independent private schools and 5% of State-subsidised private schools ask for religious information.⁷⁸
53. State-subsidised private schools and independent private schools ask for more requirements than public schools. Therefore, in addition to naturally selecting pupils that come from privileged backgrounds – families that can pay for fees, that are based in more affluent neighbourhood, of whose social capital allows them to make better informed choices –, **the structure of the system and loopholes in the law allow private schools to select the best and/or most advantaged children.** In fact, not only does the legal framework, as revised in 2009, in fact perpetuates the selection system, but it also legitimises it.

⁷⁶ F. Godoy, F. Salazar, E. Trevino, “Practicas de selección en el sistema escolar chileno: requisitos de postulación y vacíos legales,” in: *Informes para la Política Educativa*, No. 1 (May 2014), p. 4.

⁷⁷ F. Godoy *et. al.* (May 2014), *op. cit.*, p.5.

⁷⁸ F. Godoy *et. al.* (May 2014), *op. cit.*, p.6.

ii. Impact: discrimination and segregation in education in the State Party

54. **This selection process leads to high segregation in education, where social classes do not mix.** According to Drago and Paredes, “the consensus view is that these three types of schools [public schools, State-subsidised private schools and independent private schools] are serving sharply stratified socio-economic groups”.⁷⁹ The table below shows that 70% of students in public school are from the lower-income households (quintiles I and II) whereas 75% of students in private schools are from the higher-income quintile.⁸⁰ 1993 reform led to an exodus of middle-class students from public schools to State-subsidised private ones.

Segregation by socio-economic status according to types of schools

Enrolment, by type of school
(Percentages)

Type of school	Income quintile				
	I	II	III	IV	V
Municipal	42.39	27.60	16.06	10.66	4.24
Private (subsidized)	22.34	22.63	21.26	20.59	13.37
Private (fee-paying)	4.64	4.64	4.49	12.37	75.26

Source: Drago and Paredes (2011) on the basis of the 2006 National Characterisation Socio-Economic Survey (CASEN) database.

55. As a result, **the State Party has the system that is the most segregated by socio-economic status within the 65 countries tested through the PISA.** The degree of socioeconomic integration, which measures the socio-economically diversity of the population within schools, is less than 50% in Chile, while OECD member countries have, on average, 74%, and figures peak at over 89% in Finland and Norway.
56. The stratification and segregation is reflected in standardised test results. Learning tests results only give limited information about the quality of education, because “quality” of education as understood in article 13 of the ICESCR is much broader than what measurable learning outcomes can indicate,⁸¹ but they can give some indications about disparities in education.

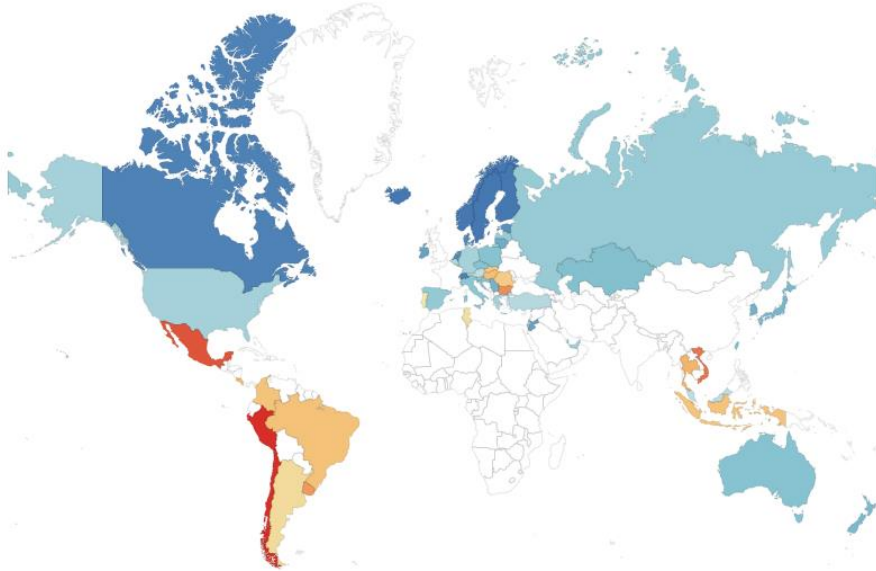
⁷⁹ Drago and Paredes (2011), *op. cit.*, p.164.

⁸⁰ Drago and Paredes (2011), *op. cit.*, p.164.

⁸¹ See Right to Education Project, « Learning Outcomes Assessments: A Human Rights Perspective », on http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Learning_Outcomes_Assessments_HR_perspective_2013.pdf

Social inclusion in PISA-tested countries

The more intense red the country, the less the social inclusion; the more intense blue, the more social inclusion.



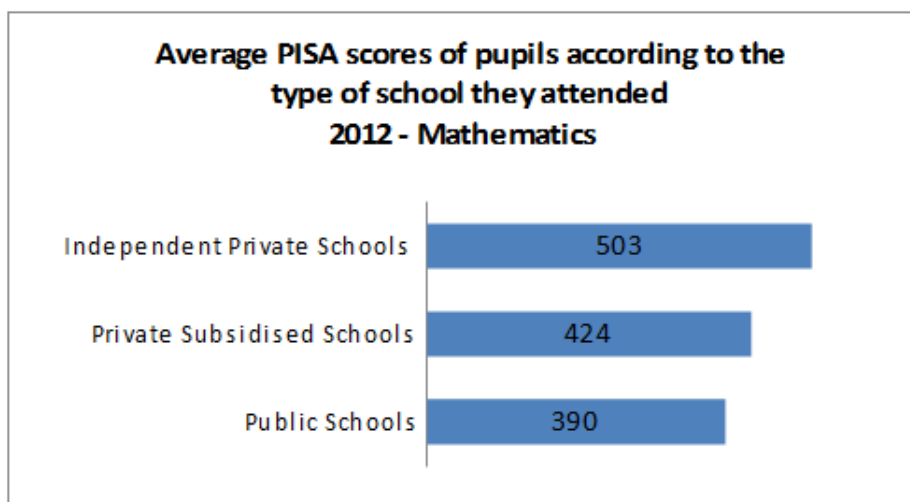
Source : OECD Pisa 2012, available at <http://gpseducation.oecd.org/revieweducationpolicies/#!node=41746&filter=all>

57. Students from public secondary schools performed less well in the latest PISA 2012 mathematics tests (mean score: 390) than students from State-subsidised private schools (424), and to a greater extent than students from independent private schools (503).⁸² Similarly, using the national System of quality measurement tests “SIMCE”, which evaluates learning at different grades,⁸³ the scores are much higher in fee-paying private schools than they are in the other two types of schools.⁸⁴

⁸² OECD, *Education at a glance 2014: OECD indicators* (2014), p. 417. See also Agencia de la Calidad de la Educación, *Análisis de los resultados de la Prueba PISA 2012*, No. 15 (June 2014), p. 7.

⁸³ See: <http://www.agenciaeducacion.cl/simce/que-es-el-simce/>

⁸⁴ Drago J.L. and Paredes R.D., “The quality gap in Chile education system,” in: *Cepal Review* No. 104 (2011), p.164.



Source: OECD, Education at a glance 2014: OECD indicators (2014)

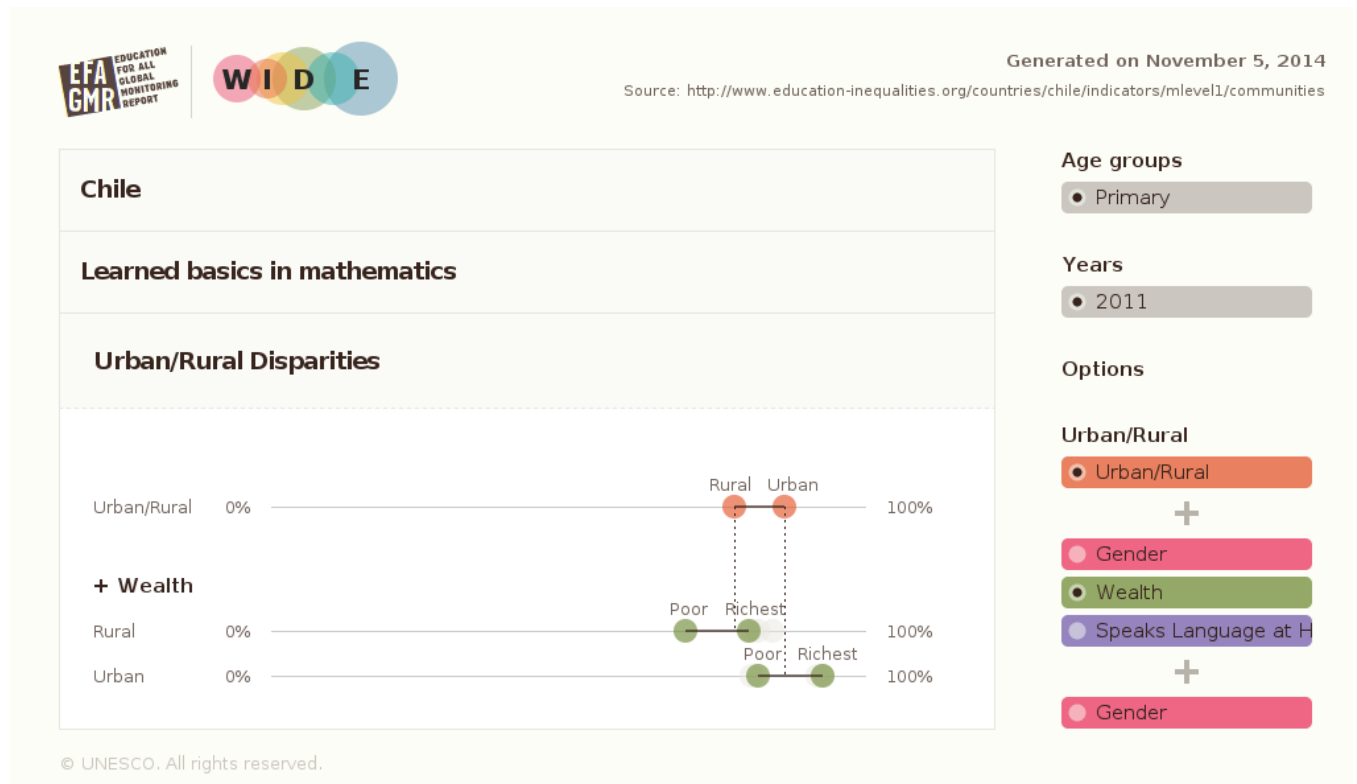
58. This difference between schools can be almost entirely attributed to students' and schools' economic and social background. After accounting for social background of students and schools, the advantage of private schools diminishes to a statistically non-significant figure,⁸⁵ which means that private schools are not necessarily much better with respect to preparing to tests.
59. These results reflect two points. **Firstly, the education system in the State Party is segregated according to education performance.** The more expensive and the less regulated the schools are, the more they take children from advantaged socio-economic backgrounds, who perform better in tests, leading to a very stratified situation where not only children with similar backgrounds are together in similar schools, but also best performing pupils study together in similar, usually fee-paying, schools, while lowest performing are separated in publicly funded, cheaper or free, schools.
60. Secondly, **the education system in the State party is very inequitable.** Disadvantaged families in the State Party are less likely to achieve high levels of performance than in most other countries tested by PISA. 23.1% of the difference in pupils' performance in mathematics in the State Party can be attributed to students' socio-economic status, which is much higher than the average across OECD countries (14.8%).⁸⁶ Amongst the 66 countries tested by PISA, **Chile is the third most unequal country on this basis**, after the Slovak Republic and Peru, and far above comparable countries in the region such as Argentina (15.5%) or Colombia (15.4%). In countries where this proportion is large, students from disadvantaged families are less likely to achieve high levels of performance. Taking into account the differences between the socio-economic levels of schools, as well of students, it is **more than 75% of the performance differences between schools which is explained by the socio-economic status of students and schools, far above the OECD average (62.8%).**⁸⁷

⁸⁵ OECD, *Chile – Country Note – Education at a Glance 2014: OECD Indicators* (2014), available on <http://www.oecd.org/edu/Chile-EAG2014-Country-Note.pdf>.

⁸⁶ OECD, *Education at a glance 2014: OECD indicators* (2014), p. 194.

⁸⁷ OECD, *PISA 2012 Results: Excellence Through Equity: Giving Every Student the Chance to Succeed (Volume II)* (2012), PISA, OECD Publishing, p. 49.

61. The education system in the State Party is also marked by inequalities on many other grounds, that the privatised system has not been able to address, or has worsened. For instance, Chile also recorded the largest difference in mathematics performance between boys and girls in PISA 2012, with a difference of 25 score points. Inequalities in mathematics test results between rural and urban areas are also still very high.



62. This high level of segregation, inequity and inequality cannot be justified by performance, as **the State Party is both one of the least equitable countries and one of the least performing at PISA mathematics tests**. In fact, the PISA results of several countries demonstrate that high average performance and equity are not mutually exclusive,⁸⁸ and in fact that the highest performing education systems across OECD countries are those that combine quality with equity.⁸⁹

63. The inequities and stratification in education in the State Party are a direct consequence of its education system and its policy choices. As noted by the OECD:

Large differences in performance associated with the background of students and schools – whether socio-economic status, immigrant or language background – signal that learning opportunities are not equitably distributed throughout a school system or that not all students have access to the high-

⁸⁸ OECD, *PISA 2012 Results in Focus: What 15-year-olds know and what they can do with what they know* (2014), p. 14.

⁸⁹ OECD, *Equity and Quality in Education: Supporting Disadvantaged Students and Schools*, OECD Publishing (2012).

*quality instruction and material, financial and human resources that could help them succeed in school and beyond.*⁹⁰

64. The growth or high level of fee-paying private schools are a strong factor of segregation and inequalities. Generally, PISA results and other research show that school choice – and, by extension, school competition – is related to greater levels of segregation in the school system, which may have adverse consequences for equity in learning opportunities and outcomes.⁹¹
65. This effect has also been seen in other countries, such as Morocco, for which we submitted other parallel reports, and where the CRC and the UN Special Rapporteur on the right to education recognised growing inequalities due to privatisation.⁹² In addition, a large body of research shows that vouchers, in particular universal vouchers as they exist in Chile, promote group differentiation.⁹³

IV. Recent reforms and way forward

66. Thousands of pupils enrolled in secondary schools and students from University filled the streets of Chile for seven months in 2011. They were demanding reforms and major changes to the educational system that is deepening the State Party's social and economic inequalities.⁹⁴ Five years earlier, the 2006 "Penguin Revolution" took place for similar reasons, as students demanded better public education and more social justice in education.
67. These movements criticised the Chilean privatised education model, and compelled the authorities to put the issue of education at the centre of national debate. As a result, presidential election candidate Michelle Bachelet made educational reform one of the pillars of her campaign of 2013, and was elected largely on the promise of taking forward reform the education system.
68. Some reforms have been put in place, but they are however not sufficient, and are still not in line with the obligations of the State party's obligations to respect, protect and fulfil the rights under the ICESCR. These changes have not changed the overall privatised structure of the system which is causing segregation and discrimination in violation of the ICESCR. As mentioned above, the laws that were passed after the 2006 protests did not touch the assumptions on which the State party's education system is based, and which have high discriminatory impacts: public subvention (voucher system), parental choice, shared payment, selection, etc.

⁹⁰ OECD, *PISA 2012 Results: Excellence Through Equity: Giving Every Student the Chance to Succeed (Volume II)* (2012), PISA, OECD Publishing, p. 34.

⁹¹ OECD, *PISA 2012 Results in Focus: What 15-year-olds know and what they can do with what they know* (2014), p. 54.

⁹² See e.g. the press release on <http://bit.ly/1CmTZzK> and Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014), para. 46.

⁹³ See e.g. OECD, *Public and Private Schools: How Management and Funding Relate to their Socio-economic Profile*, OECD Publishing (2012); Macpherson, "Interrogating the private-school 'promise' of low-fee private schools" in *Education, Privatization and Social Justice: Case Studies from Africa, South Asia and South East Asia*, Ian Macpherson, Susan Robertson and Geoffrey Walford, eds. (Oxford, Symposium Books, 2014); Emma Seery, *Working for the Many: Public Services Fight Inequality*, OXFAM Briefing Paper No. 182 (Oxford, Oxfam, 2014); Report of the Special Rapporteur on the right to education, A/69/402 (24 September 2014).

⁹⁴ See generally the video <http://www.periglobal.org/role-state/video/video-privatised-education-chile-legacy-and-protest>

69. Nevertheless, following the 2011 protests and the 2013 elections, new policies have been promised. The 2014 draft education reform law “*Reforma educacional*”⁹⁵ could address some of the issues raised in this report. The main axes of this reform are:
- a. The banning of for-profit education
 - b. The establishment of a new institutional framework for the public offering of general education
 - c. The progressive elimination of shared payment (by reducing the maximum amount of shared payment permitted every year while increasing the state’s subvention of schools)
 - d. The banning of economic, social, academic and behavioral selection at all levels of general education
70. Given the extent to which the current education system in the State Party is affecting the realisation of the right to education without discrimination, and the extent to which the State Party has been failing to fulfil its obligations under the ICESCR, it is urgent that reforms in the line of the 2014 *Reforma educacional* be adopted and implemented as a matter of priority.

V. Suggestions for the list of issues to the State Party

71. In 2003, in the process of reviewing the State Party, the CESCR already asked, in its list of issues, “*how does the State party guarantee the principle of universal free primary education, especially for children from low-income families?*”⁹⁶ Following the review of the State Party, the CESCR expressed its concern “*at the disparity in the quality of education offered in municipal and private schools*”.⁹⁷
72. In 2007, the CRC also considered that “*the educational system and its reform, including equal access to education by all children and efforts to improve quality of education*” was a major issue.⁹⁸ Following the review of the State Party, the CRC expressed its strong concerns with regards to discrimination in education:
- The Committee [...] remains concerned that certain vulnerable groups, including indigenous, migrant and refugee children, children with disabilities, as well as children from disadvantaged socio-economic backgrounds and those living in rural areas, continue to be victims of discrimination, particularly in their reduced access to education.*⁹⁹
73. In 2014, although reforms are being discussed, following two major protests, little has changed, and the education system in the Chile is still in contradiction of some of the core the obligation of the State Party under international human rights law. Accordingly, we suggest that the CESCR raises the following issues with the State Party.

⁹⁵Nicolás Eyzaguirre, Ministro de Educación de Chile, *Reforma Educacional - Proyecto de ley de fin al lucro, la selección y el copago (2014) and Mapa de la reforma educacional (2014)*

⁹⁶ CESCR, *List of Issues: Chile*, E/C.12/Q/CHL/1 (18 December 2003), para. 32.

⁹⁷ CESCR, *Concluding Observations: Chile*, E/C.12/1/Add.105 (1 December 2004), para. 29.

⁹⁸ CRC, *List of Issues: Chile*, CRC/C/CHL/Q/3 (16 October 2006), part. 4.

⁹⁹ CRC, *Concluding Observations: Chile*, CRC/C/CHL/CO/3 (23 April 2007), para. 29.

Suggestions for the list of issues

- a. Is the State party planning on moving to rebuild a public system of quality schools, in line with its obligations under the ICESCR? Is the State Party considering moving away from the voucher system in a near future?
- b. Given that previous reforms have failed to guarantee the realisation of the right to education without discrimination, can the State Party give the timeline within which it is planning to effectively address segregation and discrimination in the education system as a matter of priority?
- c. How will the government concretely ensure that schools receiving public funds do not practice any form of entrance selection and do not charge additional fees?
- d. By when will the State party plane to have effective and totally abolish the system of shared payment?

Contact information

Sylvain Aubry

Right to education researcher
Global Initiative on Economic, Social And Cultural
Rights

sylvain@globalinitiative-escr.org

Lucy McKernan

UN Liaison
Global Initiative for Economic, Social and Cultural
Rights

lucy@globalinitiative-escr.org