The Challenges of Public-Private Partnerships in Realising the Right to Education

Online Workshop Report

Wednesday 29 July 2015, 2pm BST

On 29 July 2015, the Oxford Human Rights Hub and the Education Support Programme of the Open Society Foundations hosted a participative and interactive online workshop exploring key challenges of public and private partnerships in realising the right to education.

Public private partnerships (PPPs) are an increasing phenomenon in the field of education. The growing influence of market models of private education, particularly in provided low-fee schools, has challenged the traditional understanding of education as a public good. This brings with it the risk that the State will abdicate its public responsibilities, and education will be viewed as a market commodity. This raises the question of how to retain the fundamental nature of the right to education as a societal or public good, rather than a private good. There has been limited public debate on the merits and demerits of PPPs and while the debate has been approached from several perspective, a solid human rights approach to PPPs is completely absent.

The aim of the online consultation was to fill this gap and to develop a human rights understanding in relation to several crucial issues raised by PPPs. UN Special Rapporteur on the right to education, Dr Kishore Singh, participated in the online workshop and used the discussions as a resource for his annual report to be submitted to the UN General Assembly in September 2015.

The online workshop investigated three key questions:

1. What is the role of the law in structuring a PPP and in conceptualising the purpose of education?
2. How can the State and private providers be held accountable for both quality in education and against corruption?
3. What enforceability measures are needed to hold actors in PPPs accountable?

The workshop was conducted online. There was a 'live base' at the Oxford Human Rights Hub in Oxford, with allocated experts from around the globe and an audience participating 'virtually' from around the globe. Participants were able to pose comments and ask questions of the experts during the question and answer sessions.

This Report is a summary of the discussion during the online workshop. It captures the key points argued by the allocated experts as well as the responses offered by the panel discussants and some of the questions raised by participants.

LIST OF SPEAKERS AND LIVE PANELLISTS

Facilitator
Professor Sandra Fredman (Faculty of Law, University of Oxford)

Special guest and live panellist
Dr Kishore Singh (UN Special Rapporteur on the Right to Education)

Live panellists
Professor Anne Davies (Dean-Elect of the Faculty of Law, University of Oxford)
Mr Jason Brickhill (Legal Resources Centre, South Africa)

Speakers
Ms Jayna Kothari (Centre for Law and Policy Research, India)
Mr Angelo Gavrielatos (Education International, Australia)
Mr Tembeka Ngcukaitobi (Advocate Group 621, South Africa)
Dr Conor O'Mahoney (University College Cork, Ireland)
Ms Salima Namusobya (Institute for Economic and Social Rights, Uganda)

OPENING REMARKS

The online workshop began with the invited human rights experts, panel discussants and virtual participants being welcomed by Sandy Fredman, Professor of Law at Oxford University and Director of the Oxford Human Rights Hub, who moderated the discussion. By way of introduction, Professor Fredman briefly explained the online workshop's purpose of bringing a human rights perspective to the issue of PPPs in education and identified the key questions to be addressed in the discussions.

Before turning to these specific questions, a short video presentation by the UN Special Rapporteur on the right to education, Dr Kishore Singh, provided a general introduction to PPPs in education. Dr Singh's opening remarks highlighted the mushrooming of privatisation in education over the last decade with scant control being exercised by the State over private providers. He pointed out that this wave of privatisation, which has covered almost all levels of education, has had a negative impact on the principles and norms of education, not least because it has led to the concept of education as a social good being sacrificed for private interests.

Dr Singh argued that the phenomenon of PPPs in education is closely linked to privatisation in that PPPs share many of the risks associated with privatisation. He focused on several of these key challenges posed by PPPs in education. Firstly, the financing of PPPs is a cause for concern. Dr Singh pointed out that voucher systems, intended to provide financial support for students who choose to attend private schools, are indirectly subsidies for these private schools. He referred to the Report by the Intergovernmental Committee of Experts on Sustainable Development Financing which

warned against the corporate financing of education in light of the risk that private interests undermine the purpose of education.

The second challenge Dr Singh mentioned was the need to ensure PPPs offer quality education. Where the State relies on private actors in the form of PPPs, it must also ensure that the provision of education – with regard to everything from infrastructure to teaching – complies with prescribed norms and standards for quality education. In particular, PPPs risk undermining the humanistic objectives of education which are laid down by international human rights conventions, as private providers may be motivated by the pursuit of material gain rather than the public interest of access to quality education.

Dr Singh also raised the specific challenge of meeting the rising aspirations of the youth through technical and vocational education. He emphasised that PPPs, especially in developing countries, should work towards better institutionalised collaboration between private industry and public technical and vocational schools to ensure the youth have better opportunities for skills development.

Finally, Dr Singh emphasised that the State is the guarantor of the public good of education, and bears obligations to respect, protect, promote and fulfil the right to education. This includes ensuring that all stakeholders in PPPs operate within the framework of the norms and standards laid down by international human rights treaties.

QUESTION 1
What is the role of the law in structuring a PPP and in conceptualising the purpose of education?

Speaker: ***Jayna Kothari (Centre for Law and Policy Research, India)***

The first key question of the workshop was addressed by Jayna Kothari, who drew on insights from the Indian context to consider the role of the law in structuring PPPs and in conceptualising the purpose of education.

To familiarise the global audience with the legal framework on education in India, Ms Kothari explained that Article 21A of the Indian Constitution guarantees that the State shall provide free and compulsory education for all children between the ages of 6 and 14 years in any manner that the State may, by law, determine. One of the ways in which the State has given effect to the fundamental right to education is through the Right of Children to Free and Compulsory Education Act of 2009 (RTE Act), which requires private schools to reserve 25% of places for children from weaker and disadvantaged sections, but makes provision for these schools to be compensated for students admitted under the 25% quota. The RTE Act therefore effectively subsidises private schools for those disadvantaged children admitted under the 25% quota. Importantly, the RTE Act

also prescribes certain norms and standards which all schools must comply with, such as mid-day meals and infrastructure.

Ms Kothari then discussed the benefits and disadvantages of the RTE Act. The key benefit has been that many private schools have willingly implemented the requirements of the RTE Act, thus ensuring access to quality education for disadvantaged children who would not otherwise have been granted admission as well as ensuring greater diversity in private schools. Conversely, the key disadvantage has been the opposition to the quotas shown by some private schools and parents, leading to the RTE Act being challenged in the Supreme Court. While the Supreme Court gave exemption from the 25% quota to minority private schools (such as faith-based or linguistic minority schools), this decision has led to further litigation by private schools seeking exemptions by claiming to be minority schools. Ms Kothari noted that this pattern of litigation has resulted in the 25% quota receiving considerable attention, while there has been a relative lack of focus on other aspects of the RTE Act, such as the quality of education and basic norms and standards it prescribes.

In closing, Ms Kothari identified the most pressing challenge going forward as being the need for mechanisms to monitor the implementation of norms and standards across both public and private schools.

Questions answered by Jayna Kothari

How do we ensure that the law requiring the 25% quota targets the most disadvantaged?

This is the core of the quota law – aims to ensure that the most economically and socially disadvantaged gain access to private schools. To address this issue, many governments have established regulations stipulating categories of disadvantage, covering not only economically disadvantaged children, but also forms of social disadvantage such as children with disabilities, children of single mothers, children affected by HIV/AIDS and children of migrant families. However, while the law mandates that these categories of the most disadvantaged children should be given preference under the 25% quota, the problem lies with implementation as many schools choose to admit the better off, or 'creamy layer' of disadvantaged children.

Are children who are admitted under the 25% quota subject to stigma and are there problems with segregation?

Some studies show that in some private schools that are reluctantly implementing the 25% quota, there is a stigma of being a so-called 'RTE kid' and segregation in the form of separate facilities for 'RTE kids' and other children. The silver lining, however, is that in schools that have enthusiastically implemented the 25% quota, disadvantaged children are well integrated into the school community without being subject to any stigma.

QUESTION 2
How can the State and private providers be held accountable?

2(a) How can private providers be held accountable for the quality of education delivered?

Speaker: ***Angelo Gavrielatos (Education International, Australia)***

Mr Gavrielatos prefaced his answer to the question of accountability for the quality of education provided through PPPs with a couple of opening observations. Firstly, he noted that the fundamental right to education for every child can only be realised through the provision of quality and free public education for all. He therefore expressed concern that governments have been abrogating their obligation to provide education by outsourcing the provision of education to private actors. Secondly, Mr Gavrielatos drew attention to the fact that there is now a substantial body of research showing that the application of market principles in the provision of education does not improve educational outcomes. On the contrary, research shows that privatisation only contributes to a deepening inequality in education. Mr Gavrielatos considered it regrettable that governments have been ignoring this body of research in their pursuit of an ideological position that promotes privatisation in education, including privatisation in the form of PPPs.

Moving on to answer the discrete question of accountability for the quality of education delivered through PPPs, Mr Gavrielatos identified three issues that a legislative framework should regulate to ensure PPPs provide quality education.

Firstly, there need to be legislative guarantees requiring minimum qualifications for teachers and the delivery of curriculum in schools. Mr Gavrielatos argued that in far too many cases, private companies hire under-qualified teachers to cut costs, given that teacher salaries constitute the biggest expense in schools. A legislative framework should therefore prevent this profit-making drive from undermining the quality of teaching provided in schools. Secondly, Mr Gavrielatos argued that a legislative framework should ensure consistency in the delivery of a high quality, rigorous and rewarding curriculum in all schools. Thirdly, he pointed out that there should be minimum requirements with respect to facilities in schools.

In closing, Mr Gavrielatos drew on the Australian experience to argue that any non-State actor that provides schooling and is in receipt of any government funding, whether directly or indirectly, domestically or extra-territorially, should be non-commercial in nature. A regulatory framework should be premised on the position that the profit motive has no place in realising the fundamental right to education.

Response by Professor Anne Davies (Dean-Elect of the Faculty of Law, University of Oxford)

Professor Anne Davies took up the final comment by Mr Gavrielatos as her starting point for discussion, namely the foundational claim that the profit motive has no place in the provision of public services. She identified the core issue for exploration as being what justification there might be for States turning to private providers, and raised three key questions regarding accountability:

1. How are private providers held accountable to the government?
2. How are private providers held accountable to the children and parents in their schools?
3. How is the State accountable to its citizens for the actions of private providers?

Questions answered by Mr Gavrielatos

If governments have not been able to ensure quality education in public schools, how can they ensure that quality education is provided through PPPs?

There are indeed many examples where governments are unable to adequately support public schools, yet there is an assumption that they will be able to regulate the proliferation of private providers of education. This raises the question as to what kind of regulatory framework governments can enforce on for-profit schools. To illustrate this concern, Mr Gavrielatos referred to the recent complaint by the low-fee, for-profit chain, Bridge International Academies, about the Kenyan government's new requirement that at least half of private providers' personnel be qualified teachers. This example exposes how the profit motive in education provision undermines the right to quality education.

How should quality be measured? Can you determine measures of quality which apply both in the public and private sector?

Although measuring quality in education has long been a highly contested issue, Mr Gavrielatos argued that there are methods of sample testing that are sensitive to socio-economic background which allow for genuine comparisons across education systems.

2(b) How do current accountability mechanisms address the issue of corruption within the public-private relationship?

Speaker: *Tembeka Ngcukaitobi (Advocate Group 621, South Africa)*

Mr Ngcukaitobi used two landmark cases to illustrate how the South African Constitutional Court has managed the tension between public and private sector interests in the provision of public services, and the impact of corrupt tenders on the realisation of rights in particular.

In the specific context of education, Mr Ngcukaitobi discussed the Constitutional Court's decision in *Governing Body of the Juma Masjid Primary School v Essay* CCT 29/10 (2011), where it was held that the private party was not entitled to evict the school from its premises due to the negative constitutional obligation on the private party not to impair the learners' right to education. The Constitutional Court relied on the doctrine of reasonableness to determine that the private actor may not interfere with existing access to education without adequate justification and without taking reasonable steps where such rights may be affected.

Mr Ngcukaitobi then considered the innovative judgment in *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No 2)* [2014] ZACC 12. Although this case concerned the wide-scale outsourcing of social security payments, the principles the Constitutional Court established regarding irregular or corrupt tendering processes hold implications for the private provision of other public services, including education. The Constitutional Court held that because the tender required the private provider to perform a crucial public function, it retained a constitutional obligation to ensure a workable payment system for social grants was in place even after the tender was invalidated due to procedural irregularity, to protect rights until a new system could be effected. Mr Ngcukaitobi pointed out how the Court's broad remedial discretion to grant any just and equitable relief enables the court to protect rights while also addressing corruption in tendering processes.

Response by Mr Jason Brickhill (Legal Resources Centre, South Africa)

Mr Brickhill emphasised the need to tease out the respective obligations on the State and private providers in the context of PPPs in education. It is important to clarify that the State retains its obligation to realise the right to education when it partners with private providers, but that the private provider also assumes constitutional obligations when they provide a public service as part of a PPP. Tenders for the provision of public services are not only subject to contractual arrangements and commercial law, as both the State and private providers also bear human rights obligations.

Questions answered by Mr Ngcukaitobi

Is corruption primarily a problem in PPPs? What about corruption which occurs exclusively in the public sector?

Corruption is neither a uniquely private nor public problem, but pervasive corruption in the provision of public services in South Africa usually implicates a private actor. Efforts to counter corruption should consider the corrupt relationship holistically as a joint criminal activity. Furthermore, the focus should be on protecting rights from the negative effects of corruption in PPPs.

Who bears the final responsibility to realise the right to education in the context of PPPs?

The duty to respect, protect, promote and fulfil the right to education ultimately rests on the State, but where the State relies on a private provider to perform a public function, that private provider also assumes the obligation to realise the right to education.

QUESTION 3
What enforceability measures are needed to hold actors in PPPs accountable?

Speaker: *Conor O'Mahoney (University College Cork, Ireland)*

Dr O'Mahoney considered the State's accountability for violations of the human rights of children in the context of education. This question of accountability is complicated where the relationship between the State as duty bearer and children as rights holders is interposed by a private provider of education, and where the human rights violation in question was the result of the actions of that private provider rather than the State directly.

Dr O'Mahoney discussed this question through the lens of the ground-breaking decision by the Grand Chamber of the European Court of Human Rights in *O'Keeffe v Ireland* (2014) 59 EHRR 15. Although the case concerned the State's liability for the sexual abuse suffered by the applicant, Louise O'Keeffe, while she was a pupil at an Irish primary school, the case has much broader application. Indeed, the Grand Chamber laid down key principles which speak to the accountability of the State for violations of human rights, whatever human right that may happen to be, where the violation occurs at the hands of a private actor in a private institution.

In the Irish educational context, primary schools are privately owned and managed but publicly funded and regulated. The question in *O'Keeffe* was therefore whether the State was accountable, over and above the liability of the private provider, for the violation of Louise O'Keeffe's rights. In determining the State's liability for the violation of O'Keeffe's rights, the Grand Chamber relied on the well-established doctrine of positive obligations under the European Convention on Human Rights, in terms of which States bear a positive obligation to ensure that the rights guaranteed in the Convention are actually enjoyed by individuals in their jurisdiction. The Grand Chamber therefore held that States had a positive obligation under Article 3 of the Convention (prohibition of torture and inhuman or degrading treatment or punishment) read together with Article 1 of the Convention (doctrine of positive obligations), to ensure that children in schools were protected from sexual abuse. Accordingly, Ireland's failure to protect O'Keeffe's rights at the hands of a private provider of education was held to be a violation of Article 3. Dr O'Mahoney noted that the key message of the *O'Keeffe* case is that the State continues to have an obligation to ensure all the rights of children are realised in both public and private schools.

Dr O'Mahoney also drew attention to a strategic aspect of the *O'Keeffe* case, namely that while domestic courts may have difficulty forcing the government to take positive steps to ensure the rights of children are protected in private schools, due to the separation of powers, the doctrine of positive obligations in the context of the European Convention on Human Rights is a useful tool in the Court's arsenal for requiring States to enact legislation to protect children's rights.

Response by Professor Anne Davies (Dean-Elect of the Faculty of Law, University of Oxford)

Professor Davies emphasised the very important principle of State accountability that Dr O'Mahoney discussed in relation to the *O'Keeffe* case. This principle is that the State can contract out the provision of public services, but not their human rights obligations, with the result that the State remains responsible for breaches of human rights by private actors. Because the State remains liable, it has a strong incentive to regulate private schools, either through some kind of inspection regime or through the PPP itself by means of contractual techniques, to ensure private providers are meeting the prescribed norms and standards and respecting the human rights of children.

Questions answered by Dr O'Mahoney

The O'Keeffe case concerned a violation of Article 3 of the European Convention on Human Rights. To what extent would the positive obligation on the State extend to other rights in the Convention, especially those rights which might often be justifiably limited within the Convention?

While we will have to wait and see how the European Court of Human Rights applies the doctrine of positive obligations to other rights in the Convention, it is clear from key passages in the *O'Keeffe* case that the principle of State accountability laid down is not unique to the Article 3 context but could potentially apply more broadly to other rights too. The basic principle remains: the State is obliged to provide a framework to protect rights where it relies on a private provider to deliver a public service, and where the actions of that private provider cause the breach of a right the State is accountable and must provide a remedy.

Should there be mechanisms to ensure that not just the State is responsible for violations, but also much stronger provisions for keeping the private provider directly accountable? To what extent should the private provider have to provide remedies in its own right?

A robust regulatory framework is precisely the mechanism through which the State fulfils its positive obligation: the State takes positive steps to protect rights when it provides a legal framework that will hold private providers to account when they violate the rights of children in education and that ensures an effective remedy is available in such cases.

Speaker: ***Salima Namusobya (Institute for Economic and Social Rights, Uganda)***

Ms Namusobya focused her presentation on the need for national, regional and international enforceability measures to hold actors in PPPs accountable. She observed by way of introduction that PPPs change the dynamic of public accountability because they bring private actors into decision-making and the delivery of public services. Holding these private actors accountable, however, is a challenge because international human rights law largely characterises States as the primary duty bearers that are responsible for compliance with human rights. In view of this, Ms Namusobya argued that ensuring accountability in the context of PPPs in education requires careful consideration and innovation to ensure there are safeguards protecting the human rights of children. She noted that enforceability mechanisms should be multi-faceted to cover actors in all spheres – national, regional and international.

Using the Ugandan context as an illustration, Ms Namusobya discussed the various aspects of a domestic regulatory framework for enforcing rights in the context of PPPs. Firstly, she highlighted the importance of entrenched rights to education, equality, participation and access to information as the foundation of a legal framework. This legal basis should ensure that rights are justiciable and that there is access to effective remedies where the private provider breaches a right in the educational context. Ideally a legal framework should be in place before PPPs are formed, although this has not been the case in Uganda, where the Public-Private Partnerships Bill in Uganda has followed in response to the rapid proliferation of PPPs. Other laws in Uganda enhance accountability indirectly, such as the Education Act (which regulates both public and private actors in education), the Anti-Corruption Act, the Access to Information Act and the Whistle-blowers Act.

Apart from a robust legal framework regulating PPPs, Ms Namusobya argued that there needs to be an independent institutional framework to ensure the enforcement of the law. By performing a public service, private providers open themselves up to scrutiny. Enforcement mechanisms would not only include the judiciary, but also quasi-judicial bodies such as national human rights institutions, the Equal Opportunities Commission and the Inspectorate of Government in Uganda. More informally, social accountability mechanisms could include schools management committees and audits of financial arrangements in PPPs.

Ms Namusobya then discussed the existing regulatory framework at the regional and international levels. She remarked it would be ideal to have a legally binding instrument that holds private actors accountable for compliance with human rights in the context of PPPs, but argued that until we have such an instrument, international and regional mechanisms should emphasise that the State is ultimately responsible for ensuring human rights are realised through PPPs. One way of doing this, she suggested, is to consolidate the principle of extra-territorial obligations, as many private providers in education are multi-national organisations that operate across national borders.

Ms Namusobya also recommended that the existing UN treaty bodies instituted under UN human rights instruments should be better utilised to hold private actors accountable through, for example, individual complaints mechanisms and the State's reporting obligations. She further noted that the Committee on the Rights of the Child, the Committee on Economic Social and Cultural Rights, and Committee on the Elimination of Discrimination Against Women have recommended in their concluding observations that States put in place better enforceability mechanisms to regulate private providers. Finally, Ms Namusobya argued that regional bodies, such as the East African Community, could be very effective in bringing together regional neighbours who share similar experiences with PPPs in education and might be more willing to cooperate with recommendations made regarding the regulation of private providers.

No questions were answered by Ms Namusobya as she was unfortunately unable to join us for the live discussion.

Response by Dr Kishore Singh

Dr Kishore Singh made several observations in response to Ms Namusobya's presentation. First, he highlighted the need to acknowledge that the right to education is a justiciable right, and that public interest litigation should be promoted as one way of holding private providers accountable. Secondly, he emphasised the crucial role that national regulatory frameworks play in holding private providers accountable for their provision of public services. Thirdly, he argued that a regulatory framework should include close monitoring of the private providers, such as scrutiny of their financial operations. In this regard, he recommended UNESCO's study 'Corrupt Schools, Corrupt Universities: What to do?' as a helpful resource.

Furthermore, Dr Singh suggested that a legal framework should incorporate three kinds of regulations:

(1) *prescriptive regulations* that set minimum standards and specify the responsibilities of private providers, including reporting requirements
(2) *prohibitive regulations* aimed to counter the commercialisation of education and practices that entrench social and economic inequality
(3) *punitive regulations* that provide for sanctions against private providers that engage in fraudulent, corrupt and abusive practices

Finally, Dr Singh reiterated the role that regional and international level enforcement mechanisms and treaties can play in ensuring accountability in PPPs, such as the current debates about business and human rights.

OPEN DISCUSSION

Questions answered by Jayna Kothari

How does India regulate private providers of schools?

If private schools do not comply with the requirements of the RTE Act, the government can withdraw or cancel their licence to operate as a school. In spite of this strong regulatory mechanism, however, private providers whose licence the government has threatened to cancel will often approach the court for a stay order. In such cases, the court is often quite sympathetic due to the reality that children would be left without a school if the private provider's licence were cancelled.

On what basis did the Indian Supreme Court grant minority schools exemption from the 25% quota under the RTE Act?

When the RTE Act was challenged in the Supreme Court, exemption from the 25% quota was granted to minority schools on the basis of the fundamental rights guaranteed under Article 29 and Article 30 of the Indian Constitution. These Articles grant religious and linguistic minorities the right to establish and administer their own institutions. The Supreme Court interpreted the 25% quota as an interference with this right of minority schools, thus necessitating their exemption from the quota rule.

Questions answered by Mr Gavrielatos

Are there examples of successful PPPs, and are there good examples of robust regulatory frameworks that ensure accountability in PPPs?

This is a difficult question to answer, due to the diversity of kinds of public-private arrangements, but Mr Gavrielatos argued that regulatory frameworks should primarily be concerned with strengthening the public provision of education.

If State funding of private providers is conditional, for instance on the private provider being a not-for-profit school, is there a risk that private providers may opt out of State funding altogether?

The State funding of private providers comes from public money, and it is only reasonable that taxpayers' money should used to support the enterprises of corporate profiteers. The use of state funds should be consistent with regulatory frameworks aimed at realising the right to education for all.

Going to school in the Philippines often involves a long walk to school. Is there a way that regulatory frameworks could address these kinds of challenges?

These challenges illustrate that we still have a long way to go before the right to free, quality public education is realised. Governments at the local and national level have the obligation to ensure public schooling is accessible, which includes removing obstacles to access such as long walks to school.

Questions answered by Mr Ngcukaitobi

When using strategic litigation to enforce the right to education in the face of corruption, should the action be brought against the State or the private provider?

The current legislative framework, at least in South Africa, still places the primary obligation for education on the State, so it is unlikely that legal action exclusively aimed at the private provider would be successful. In the *AllPay* case, for example, the Constitutional Court had to first classify the private provider as an organ of State to hold it accountable for the implementation of a constitutional right. Mr Ngcukaitobi therefore argued that litigation should primarily be directed at the State rather than the private provider.

Should the rise of PPPs prompt us to fundamentally rethink the difference between public and private in the first place?

The distinction between public and private bodies has become increasingly blurred, both in terms of substance and in terms of the obligations they bear, due to the increasing reliance on private actors for the provision of public services. As the relationship between the public and private sectors becomes more difficult to discern, we will need to rethink their respective obligations.

Questions answered by Dr O'Mahoney

Do you think that PPPs are set up as a transitional measure, that is, to give governments time to develop the resources to provide public services, or is it a move towards permanent privatisation?

In many cases, PPPs in education give effect to the right of parents to direct the education of their children so, in this sense, PPPs play an important role in ensuring diversity of educational opportunities and enhancing freedom of choice while removing some of the expense associated with private schools.

What are the social or democratic accountability mechanisms in Ireland outside of the judiciary?

One important mechanism of social accountability in Ireland is the board of management that every school must have, as these boards include representatives of the local community and parents. Education and training boards at secondary level also

compromise community representatives. There is, however, scope for greater participation by local communities.

In closing, Dr O'Mahoney suggested that Ireland does represent a good example of successful PPPs in education. As he mentioned in his discussion on the *O'Keeffe* case, primary education is delivered entirely through the medium of privately owned but publicly funded schools. He argued that this PPP model has worked reasonably well, although not perfectly, for Ireland over the last 150 years.

Closing remarks by Mr Jason Brickhill

PPPs cover a diversity of educational arrangements, from local faith-based schools to profit-making enterprises with global presence, but common to all these contexts is the tripartite relationship between the State, the individual rights holder, and the private provider delivering education.

With PPPs becoming an increasing phenomenon, we need remind ourselves of certain fundamental principles. Education is a public good and its delivery should be driven by the humanistic mission of education. The starting point for any discussion about the regulation of PPPs should be the rights holder, with education conceptualised as a justiciable human right. Although the State is the primary duty bearer in respect of education, there are exciting prospects for public interest litigation and law reform regarding the extent to which private providers bear directly enforceable obligations.

Closing remarks by Professor Anne Davies

Professor Davies emphasised the importance of distinguishing PPPs from privatisation, as PPPs are characterised by a partnership where the State retains responsibility for the provision of the public service through that partnership. The State's role ought to include monitoring the private provider's performance and putting in place legal mechanisms for citizens to hold the private provider to account for its respect for fundamental rights, such as the right to education.

PPPs can be valuable as a way for the State to deliver a service where it may not have the capacity to that directly itself. But governments should not think PPPs are a cheaper option for service provision, because there are significant costs involved in monitoring the performance of the private provider.

Closing remarks by Dr Kishore Singh

Dr Singh remarked on the importance of the workshop's human rights based approach for our discussion on PPPs. Many key issues were covered in the discussion during the workshop, including the financing of PPPs, the challenge of providing quality education through PPPs, and the impact of PPPs on the conceptualisation of education as a public

good. The exchange of views regarding a diversity of contexts across the world has been instructive.

One key issue Dr Singh identified coming out of the discussion is the pressing need for a justiciable regulatory framework to hold both private providers and the State accountable for compliance with human rights. There are many facets of accountability, but one important dimension is the challenge of countering corruption in PPPs. It is also important to distinguish participation by private providers in delivering education and private provision as a profit-making enterprise. In this regard, Dr Singh drew attention to the UN General Assembly Resolution towards global partnerships, adopted in February 2014, which underlines the importance of 'responsible business practices'. The priority of regulating PPPs through effective enforcement mechanisms reflects this resolution for responsible business practices.

Finally, Dr Singh identified the challenge of skills development and the role of technical and vocational schools as a topic for further exploration in our discussion on PPPs in education.

FURTHER QUESTIONS FOR CONSIDERATION

The following questions were asked through our live chat function during the online workshop but we did not have enough time for them to be put to our panellists and speakers.

'Do you regard charter schools in the United States as a successful model of a PPP?'

'What would be the incentive for quality education institutes to come in as Management Organizations without profit in mind?'

'Do we have examples of strong/successful PPPs?'

'What should the role of the judiciary be in all this?'

'What can be done to enhance the framework of action/implementation in case Compulsory Education Act exists but no implementation? Any example from Uganda or elsewhere around the globe?'

'It seems that any PPP arrangement for education needs to take into consideration a very serious and comprehensive assessment of risk allocation. What risks are better managed by each partner?'

'Would such a demand not drive the investors out? Will this not lead to some people setting up schools mainly to receive the funds but then have no capacity to ensure quality?'

‘How do current accountability mechanisms address the issue of corruption within the public and private relationship?’

‘Instead of unrealistically removing profit altogether, can we balance public and private interests that allows for some profit for sustainability?’