Multi-country research on private education in compliance with the right to education:

A study of Ghana, Kenya and Uganda

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Acknowledgements

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Cover photo: Elementary school in Volta region, Ghana. © Meredith Slater.

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EXECUTIVE SUMMARY

This report assesses whether and how the development of private schools in Ghana, Kenya and Uganda is enabling or impairing the realisation of children and young people's human rights, particularly their right to education. The report makes use of the *Abidjan Principles: Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education* (AP)[1] in order to analyse national education laws and policies, together with primary and secondary data. The research questions that guided the analysis are:

1. Is there access to free quality public primary and secondary education for nine years for all children, and has the growth of the private sector contributed to limiting this provision?

2. Is there discrimination against particular groups (low-income families, girls, children in particular areas, children with disabilities, etc) and forms of segregation associated with the presence of private providers?

3. Have adequate funds been allocated to funding public education, and if not why not? Are tax incentives for the private sector limiting state provision for public education?

4. Do public-private partnership (PPP) arrangements for schools meet the conditions laid down in the AP which outline processes for these arrangements in line with respecting human rights obligations?

5. Do the arrangements in place for the regulation of private schools meet the conditions set out in the AP?

The analysis concludes that Ghana, Kenya and Uganda are not fully meeting their obligations to provide free and quality education, partly due to the underfunding of the sector in these three countries, and the private sector growing as a result. This growth of the private sector is causing and entrenching social inequalities, leading to stratification and huge disparities of education opportunities. Ghana, Kenya and Uganda must fulfil their obligations to provide free public education of the highest attainable quality using the maximum of available resources. Increasing the size, share, sensitivity and scrutiny of the budget is necessary to give the necessary resources to public schools and to adequately regulate private providers.

Following the analysis in this report, recommendations common to the three countries are to:

- **ensure** compulsory public education is available, truly free and of good quality by increasing the size, share, sensitivity and scrutiny of the education budget;

- **increase** the share of the national budget allocated to education, restoring it to higher historical levels to avoid breaching the principle of non-retrogression;

- **allocate** the maximum of available resources, particularly through increasing the size the national budget. This should be done through progressive taxation, eliminating tax evasion and avoidance, and reviewing tax incentives, so as to avoid the losses estimated to be $1.2 billion in Ghana, $1.1 billion in Kenya and $272 million in Uganda;

- **regulate** private providers following the Abidjan Principles, to avoid the current stratification and systemic discrimination;

- **eliminate** all forms of discrimination, direct and indirect, in the enjoyment of the right to education by reviewing laws, policies and practices, and by taking positive action to redress historic discrimination and inequalities;

- **prioritise** the funding and provision of free and good-quality public schools, reviewing and terminating the agreements and partnerships with private providers that do not comply with the substantive, procedural and operational requirements contained in the Abidjan Principles 64-73. This includes national and international funding;

- **improve** the regulation of private providers of education following the Abidjan Principles and take all effective measures to enforce this regulation.

1. https://www.abidjanprinciples.org/en/principles/overview

Photo of attendees for the adoption of the Abidjan Principles on the Right to Education. 13th February 2019. PHOTO: BALLET USHER & DIABATE SOMA

INTRODUCTION

This report analyses selected features of private provision of schooling and its regulation in three countries – Ghana, Kenya and Uganda – taking account of the standards laid out in the newly adopted *Abidjan Principles: Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education* (AP).[2]
We give particular attention to the delivery of public education and any impact private provision has on this, aspects of segregation and discrimination which may be associated with private provision, and how PPPs (public private partnerships) operate, particularly with regard to the issue of equalities. We look at forms of regulation of private schools and PPPs, taking account of how they might need to be strengthened in accordance with the AP, noting whether existing laws and policies meet the minimum threshold for regulation laid down in the AP. We give particular attention to financing and whether approaches to funding public and private education have harmful effects on the provision of free quality education. Arising from this analysis, a number of recommendations are made for improved legislation, and amendments to regulations and practices, to ensure national compliance with the right to education as set out in the AP. The study is intended to deepen understanding of the context of private education in each of the countries and to support advocacy for the effective regulation of all education providers and the adequate financing of free, quality, public education.

On 13 February 2019, the Abidjan Principles on the human rights obligations of states to provide public education and to regulate private involvement in education were adopted in Côte d'Ivoire, following a three-year participatory consultation and drafting process. The AP unpack and compile existing provisions in international human rights law and provide guidance on how to put them into practice in the context of the rapid expansion of private sector involvement in education. Using the AP, this research provides an

2. www.abidjanprinciples.org

innovative analysis of the effect of privatisation on the right to education in Ghana, Kenya and Uganda. Each reference made to the AP in this report is linked to states' clearly established existing obligations regarding the right to education.

The research is based on a desk review of published and unpublished sources with regard to primary and secondary schooling and some key informant discussions with staff in ActionAid country offices in Ghana, Kenya and Uganda. The report is structured as follows: it provides an overview of the Abidjan Principles and highlights key issues associated with these that have framed the analysis of the data in each country study. It then presents reports for each county which summarise the extent of private provision and the nature of this sector's inter-relationship with policies and practices associated with the provision of free quality education. The nature of regulation of private provision is outlined and analysis provided of present funding of public and private schooling and the effects of this. Each country report draws out the implications of these trends for the fulfilment of human rights, assessing them against the Abidjan Principles. The report then summarises the findings and presents some recommendations.

Overview of the Abidjan Principles

The *Abidjan Principles: Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education* (AP) were adopted in Côte d'Ivoire on 13 February 2019, following a three-year participatory consultation and drafting process. The AP unpack and compile existing provisions in international human rights law and provide guidance on how to put them into practice in the context of the rapid expansion of private sector involvement in education. The AP consist of 97 Guiding Principles, framed under ten overarching principles, which provide an overview and summary of the guiding principles.

In summarising the core elements of the AP we identify **four key areas** that will be used in the analysis that follows to evaluate the form of private provision in Ghana, Kenya and Uganda.

Four key areas

1. **States to be held accountable for establishing, protecting and advancing right to free quality public primary and secondary education for all.**

   The overarching Principle 2 affirms that "States must provide free, public education of the highest attainable quality to everyone within their jurisdiction as effectively and expeditiously as possible, to the maximum of their available resources." Hence, states have a core obligation to ensure the satisfaction of, at minimum essential levels, the right to education, and must prioritise the provision of free primary and secondary education, which should comprise nine years of compulsory schooling. States have the obligation to ensure the rights to non-discrimination and equality, and this obligation cannot be abdicated in the face of private provision. Thus, states are to be held accountable for the delivery of free quality public primary and secondary education for all and may only defend a failure to provide for education in this form if they can show that every effort has been made to mobilise and use all available resources, a regular public assessment is in place to assess and utilise available resources, and a national strategy with timeline is in place to establish free education.

2. **States to guarantee adequate financial resources to fulfil its obligation to provide free quality public education**

   The AP outlines that a state must allocate the maximum available resources at its disposal to fulfil its obligations associated with the right to education, particularly to provide free quality public education. Financial resources to be mobilised include fair and progressive taxation and other domestic income-generating mechanisms; reallocation of public expenditures; elimination of illicit financial flows and tax evasion; use of fiscal and foreign exchange reserves; the management of debt; and development of appropriate macro-economic policies. Retrogressive measures, which downgrade or limit existing levels of enjoyment of the rights to education, are only to be undertaken in exceptional circumstances, and must be understood to be temporary, to have been undertaken only as a last resort, and to be implemented with appropriate care for the most vulnerable.

3. **Existence of private provision does not systemically undermine the provision of quality state education**

Although the overarching Principle 3 reflects the liberty of parents to choose for their children private schools and for individuals to establish and direct private institutions, these must always "conform to the standards established by the State in accordance with its obligations under international human rights law". The overarching Principle 8 reinforces the need to regularly monitor compliance of public and private institutions with the right to education. Thus, the AP stipulates that in acknowledging choices for private provision that may be made by parents or providers under certain conditions, this must not, through policy or practice, supplant or replace free quality public education. All private schools must conform with standards established by the states in accordance with their obligations under international human rights law. In addition, the AP lay out that states must monitor and regulate the effects of private schools on public provision, emphasising the importance of taking account of systemic impacts and reductions of opportunities for particular groups. States can impose regulations to ensure that no private educational operators are in a position to unduly influence the education system. States may cap the share of private educational operators.

4. **Regulation of PPPs**

The AP lay out that states should not engage in PPPs that discriminate against any group of children, generate profits, are not subject to democratic control, provide inadequate quality, or undermine wider rights to education. Substantial requirements are required for PPPs in exceptional circumstances, so that they are understood as time-bound, temporary measures to address an incapacity of the state to immediately fulfil its obligation to directly provide free quality public education. PPPs must only be agreed after a fully transparent form of public consultation, and their effects must be regularly monitored. The overarching Principle 5 holds that "States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly[...], if they comply with applicable human rights law and standards and strictly observe all substantive, procedural, and operational requirements."

For the purpose of this report, the following research questions have been framed, drawing on relevant clauses of the AP to see in what ways conditions in the three countries are illuminated by the AP and in what ways there is or is not compliance:

- **i.** Is there access to free quality public primary and secondary education for nine years for all children and has the growth of the private sector contributed to limiting this provision? This discussion focuses on Principles 10, 11, 14, 17, 29, 48, 52.
- **ii.** Is there discrimination against particular groups (low-income families, girls, children in particular areas, children with disabilities, etc) and forms of segregation associated with the presence of private providers? This discussion focuses on Principles 13, 17, 23, 24, 25, 33, 55.
- **iii.** Have adequate funds been allocated to funding public education, and if not why not? Are tax incentives to the private sector limiting state provision for public education? Have donor funds gone to support private or PPP arrangements? This discussion focuses on Principles 15, 16, 18, 34, 35, 43, 45.
- **iv.** Do the PPP arrangements in place for schools meet the conditions laid down in the AP which outline processes for these arrangements in line with respecting human rights obligations? Principles 34, 50, 64, 65, 66, 67, 68, 69, 73.
- **v.** Do the arrangements in place for the regulation of private schools meet the conditions set out in the AP? The obligations to regulate: Principles 47, 48, 50, 51, 52, 53, 54, 55, 58, 60, 80, 84, 85.

Table 1: Comparing Ghana, Kenya and Uganda

Indicators for the three countries	Ghana	Kenya	Uganda
Population[3]	28,830,000 (2017)	49,700,000 (2017)	42,862,958 (2017)
Fertility rate (births per woman)[4]	4	3.9 (2017)	5.5 (2017)
% of population under the age of 15)[5]	40%	40% (2017)	48% (2017)
Out-of-school children of primary school age[6]	682,596 (2018)	1,214,199 (2012)	714,319 (2013)
Out-of-school girls of primary school age[7]	317,449 (2018)	537,736 (2012)	298,634 (2013)
Proportion of adult female population who did not complete primary school[8]	18%		
Proportion of adult male population who did not complete primary school[9]	9%		
Primary completion rate, female (% of relevant age group)[10]	95% (2018)	102% (2016)	52% (2017)
Primary completion rate, male (% of relevant age group)[11]	93% (2018)	102% (2016)	50% (2017)
Gini coefficient[12]	0.42	0.48	0.28
HDI score and rank[13]	140 (0.592)	142 (0.434)	162 (0.370)
Transition rate from primary to lower secondary[14]	93.14%	99.22% (2015)	58.95 (2016)
GER primary[15]	104.78	105.31 (2016)	99.01 (2017)
NER primary[16]	84.59	81.83 (2012)	90.85 (2013)
GPI primary enrolment[17]	1.02 (2018)	1.00 (2016)	1.03 (2017)
GPI primary completion[18]	1.02 (2018)	1.00 (2016)	1.05 (2017)
GER Lower Secondary[19]	86.29	94.78 (2016)	24 (2007)
NER Secondary[20]	59.01 (2018)	48.87 (2012)	21.65 (2008)
GPI Secondary enrolment[21]	0.99 (2018)	1.01 (2016)	0.82 (2007)
GPI lower secondary completion[22]	0.98 (2018)	0.99 (2016)	0.97 (2017)
GPI upper secondary completion[23]	0.95 (2018)	0.91 (2016)	0.73 (2016)
Proportion of children in private primary schools)[24]	28% (2018)	16% (2014)	20% (2017)
Proportion of children in private secondary schools[25]	16% (2018)	13% (2009)	45% (2004)

3. https://data.worldbank.org/indicator/SP.POP.TOTL?locations=UG
4. https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=UG
5. https://data.worldbank.org/indicator/SP.POP.0014.TO.ZS?locations=UG
6. https://data.worldbank.org/indicator/SE.PRM.UNER?end=2018&locations=KE-UG
7. https://data.worldbank.org/indicator/SE.PRM.UNER?end=2018&locations=KE-UG
8. https://data.worldbank.org/indicator/SE.PRM.CMPT.FE.ZS?end=2018&locations=KE-UG
9. https://data.worldbank.org/indicator/SE.PRM.CMPT.MA.ZS?end=2018&locations=KE-UG
10. https://data.worldbank.org/indicator/SE.PRM.CMPT.FE.ZS?end=2018&locations=KE-UG
11. https://data.worldbank.org/indicator/SE.PRM.CMPT.MA.ZS?end=2018&locations=KE-UG
12. http://hdr.undp.org/en/countries/profiles/UGA
13. HDI Human Development Index http://hdr.undp.org/en/countries/profiles/UGA
14. http://data.uis.unesco.org/index.aspx?queryid=161#
15. GER Gross Enrolment Rate http://data.uis.unesco.org/index.aspx?queryid=161#
16. NER Net Enrolment Rate http://data.uis.unesco.org/index.aspx?queryid=161#
17. GPI Gender Parity Index http://data.uis.unesco.org/index.aspx?queryid=161#
18. http://data.uis.unesco.org/index.aspx?queryid=161#
19. https://data.worldbank.org/indicator/SE.SEC.ENRR?end=2018&locations=KE-UG
20. https://data.worldbank.org/indicator/SE.SEC.NENR?end=2018&locations=KE-UG
21. https://data.worldbank.org/indicator/SE.ENR.SECO.FM.ZS?end=2018&locations=KE-UG
22. http://data.uis.unesco.org/index.aspx?queryid=161#
23. http://data.uis.unesco.org/index.aspx?queryid=161#
24. https://data.worldbank.org/indicator/SE.PRM.PRIV.ZS?locations=UG
25. https://data.worldbank.org/indicator/SE.SEC.PRIV.ZS?locations=UG

Ghana, Kenya and Uganda are signatories of the UN Convention on the Rights of the Child (UNCRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), and have also adopted legislation to eliminate school fees at primary level and to provide compulsory education for at least nine years: in Ghana through the Free Compulsory Universal Basic Education (FCUBE) 2005 and the 2008 Education Act (Act 778); in Kenya through the Basic Education Act 2013, which gives effect to Article 53 of the 2010 Constitution; and in Uganda through the Universal Primary Education (UPE) in 1997 and Article XVIII in the 1995 Constitution amended in 2005. The elimination of school fees led to a dramatic and sudden surge in enrolment as a result: in Uganda after 1996, primary school enrolment grew from 3.4 million to 5.7 million; and in Kenya in 2003, enrolment increased from 5.9 million to 7.2 million (UNICEF, 2009). The elimination of school fees, at least on paper, has led to high increases in enrolment, particularly in rural areas, and to much progress towards gender parity, especially in the three African countries.

Nevertheless, education is not adequately funded in Ghana, Kenya or Uganda and this underfunding is leading to a widening of the financing gap in meeting the needs for basic education for children. As more and more children have enrolled in schools, already constrained budgets have been stretched even thinner, with governments neglecting critical areas, such as infrastructure and teacher numbers, leading to schools having to charge levies to families in order to function, with a high percentage of education-related costs being borne by households. The decline of public education, partly due to underfunding, has also led governments to pursue a neoliberalist trend of promoting less state responsibility that legitimises new state policies of administrative decentralisation and education privatisation. Ghana, Kenya and Uganda are moving away from a system dominated by public sector delivery, towards a mixed structure of provision, combining public and private institutions, with the government abdicating its responsibility to provide free quality public education for all.

Figure 1: School enrollment in private schools as % of total primary

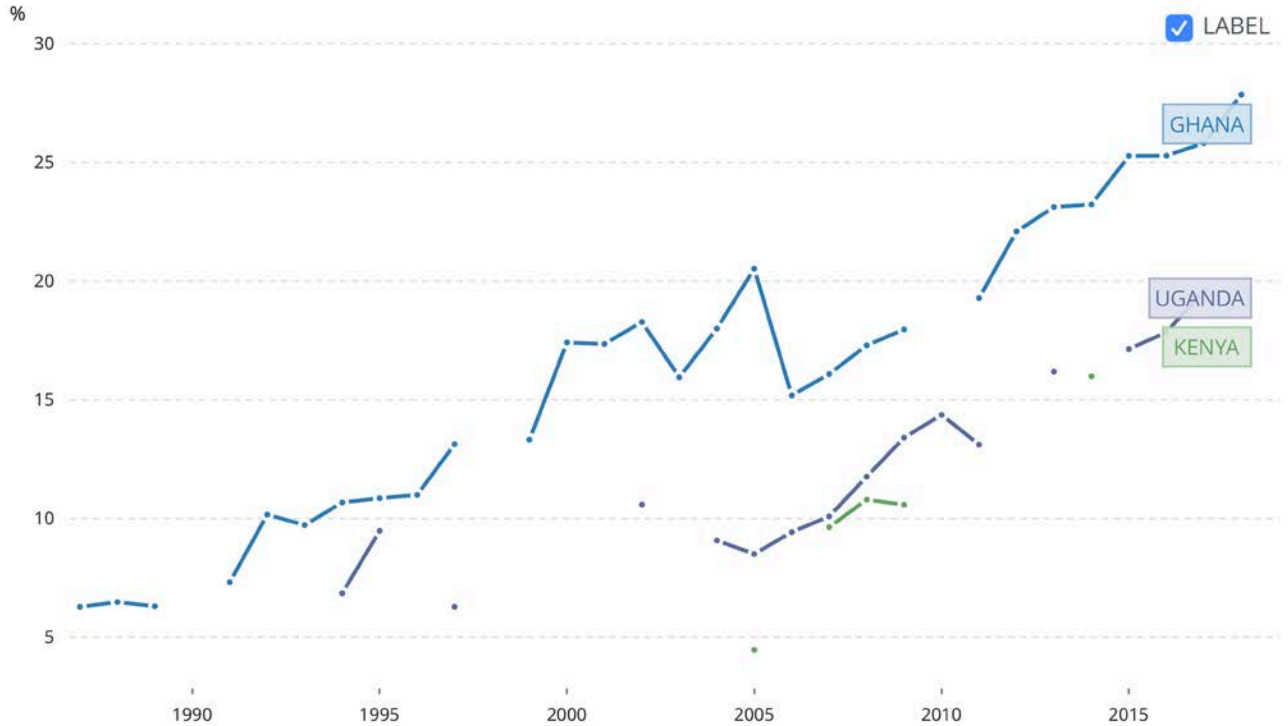


Figure 1 shows the proportion of children enrolled in private school in each of the three countries. At primary level these are 28% in Ghana, 16% in Kenya and 20% in Uganda,[26] whereas at secondary school this proportion is 16% for Ghana, 13% for Kenya and 45% for Uganda.[27] These figures show that the increasing role of private providers, evidenced in the graph below, is supplanting public education rather than providing an alternative. The number of public schools has stagnated in comparison to the growth observed in the number of private schools in these three countries. In Ghana, there were more private schools (1,317) in the Greater Accra region than public schools (800) in the 2014/2015 academic year. In certain areas, such as densely populated informal settlements in Kenya, there are hardly any public schools, so these children's only option is private schools.

Addressing the five research questions:

1. **Is there access to free quality public primary and secondary education for nine years for all children and has the growth of the private sector contributed to limiting this provision? This discussion focuses on Principles 10, 11, 14, 17, 29, 48, 52.**

The three countries have passed legislation to provide a minimum of nine years of free and compulsory education. In Ghana since the 1980s, universal basic education has been gradually extended to cover six, then nine and now 11 years including pre-primary years, six years for the primary school cycle and three years lower secondary, with the possibility of enrolling in upper secondary, which lasts a further four years. In Kenya the primary school cycle lasts six years, lower secondary two years, and upper secondary four years. In Uganda the primary school cycle lasts seven years, lower secondary four years, with the possibility of enrolling in upper secondary, which lasts a further two years.

However, despite being nominally free, there are various fees and levies attached to public education. Fees are much higher in the case of private education, even in the so-called 'low-fee' private schools. The growth of enrolments in the private sector is symptomatic of the lack of availability or quality of public schools. Yet, in these three countries the government seems to be encouraging the private sector to fill the gaps rather than fulfilling their obligations to provide free and quality public education. This can be observed in the graph above where there is an exponential growth in the proportion of children enrolled in private primary schools, with Ghana leading, followed by Uganda and then Kenya.

2. **Is there discrimination against particular groups (low-income families, girls, children in particular areas, children with disabilities, etc) and forms of segregation associated with the presence of private providers? This discussion focuses on Principles 13, 17, 23, 24, 25, 33.**

As was mentioned above, the three countries have ratified the UNCRC and ICESCR that guarantee the right to non-discrimination. Yet the three countries display high levels of inequalities in terms of school completion, evidenced by the disparities in school completion for the poorest and richest students shown in Table 2. Uganda has the highest levels of inequality taking location and wealth as variables, followed by Ghana and then Kenya. The fact that only 14% of the poorest females complete primary education, and that this number is merely 3% in the case of secondary education, highlights the great educational inequalities in the country.

There is growing evidence on the consequences of privatisation in terms of exclusion, segmentation, segregation and inequality of opportunities. These are listed as part of the limitations to the "the liberty of individuals and bodies to establish and direct educational institutions" in Principle 48 of the Abidjan Principles.

3. **Have adequate funds been allocated to funding public education, and if not why not? Are tax incentives for the private sector limiting state provision for public education? Have donor funds gone to support private or public-private partnerships (PPP) arrangements? This discussion focuses on Principles 15, 16, 18, 34, 35, 43, 45.**

States are enjoined to allocate the maximum available resources to education and not to take retrogressive steps (Principle 43). In case of failure to provide free, quality, public education, the burden of the proof lies with the state (Principle 45). Principle 15 requires states to "allocate the maximum of their available resources towards ensuring free, quality education, which must be continuously improved. The maximum available resources should not fall below the level

26. https://data.worldbank.org/indicator/SE.PRM.PRIV.ZS?locations=UG
27. https://data.worldbank.org/indicator/SE.SEC.PRIV.ZS?locations=UG

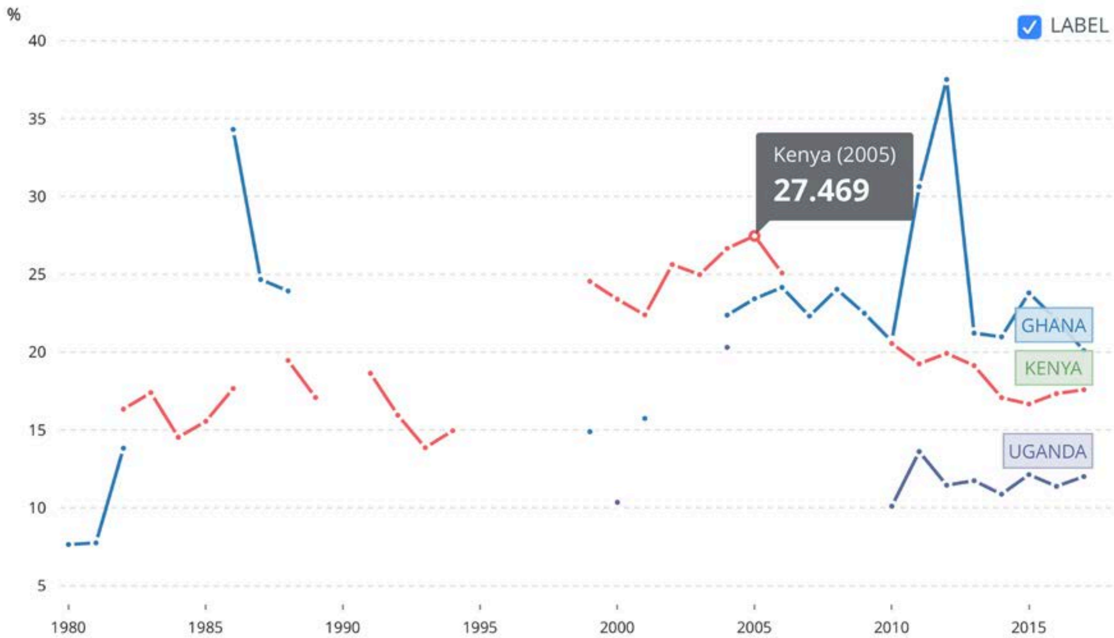
Table 2: Effect of wealth and location on education disparity

GEMR 2018[28]								
	Primary completion rate and disparity by location and wealth				**Lower secondary completion rate and disparity by location and wealth**			
	Location	Wealth	Completion rate (%) of the poorest students		Location	Wealth	Completion rate (%) of the poorest students	
	Location parity index	Wealth parity index	Poorest males	Poorest females	Location parity index	Wealth parity index	Poorest males	Poorest females
Ghana	0.75	0.51	42	43	0.61	0.36	28	26
Kenya	0.88	0.65	61	65	0.78	0.45	41	43
Uganda	0.48	0.22	15	14	0.33	0.06	3	3

required by domestic or international education funding commitments, such as the percentage of gross domestic product set in development goals". The recommendation is a minimum of 20% of the national budget and 4-6% of GDP.[29]

As can be observed in the figure 2 below, only Ghana and, occasionally Kenya, have met this benchmark. However, they have taken unjustified retrogressive steps. In 2012 Ghana allocated 27.2% of its national budget to education, but in 2015 it was reduced to 17.8% and in 2016 the allocation further declined to 13.5%. In Kenya the education budget decreased from 27.5% in 2005, to 17.21% in 2013 and to 16.5% in 2015. In Uganda, it went down from 20.3% in 2004 to 12% in 2017, where the overall share of the education sector reduced by 0.5% from 11.37% to 10.87% for FY 2018/19 (Education Budget Framework paper FY2018/19-2023).

Figure 2: Education budget as % of national budget



28. GERM Global Education Monitoring Report https://unesdoc.unesco.org/ark:/48223/pf0000259338
29. The Incheon Declaration recommends a minimum of 15-20% of the national budget to education, with the least developed countries having to reach or exceed 20%.

Table 3:[30] Tax incentives losses vs. education resources.

Ghana	Kenya	Uganda
$1.2 billion lost to tax incentives annually. 20% = $240 million	$1.1 billion lost to tax incentives annually. 20% = $220 million	$370 million lost to tax incentives annually. 20% = $74 million
This money could pay for: A place in a primary school for the 319,000 out-of-school children + An extra 10,000 qualified teachers + Free school meals for one year for 557,892 children	This money could pay for: A place in a primary school for the 956,000 out-of-school children + An extra 10,000 qualified teachers + Free school meals for one year for 300,999 children	This money could pay for: A place in a primary school for the 477,000 out-of-school children + An extra 20,000 qualified teachers + Free school meals for one year for 1,080,989 children

Source: Ron Balsera *et al.*, 2018

The Abidjan Principles explain that maximum available resources include, "a. primarily domestic sources, such as fair and progressive taxation and other domestic income generating mechanisms; expansion of the revenue base; reallocation of public expenditure; elimination of illicit financial flows, corruption, tax evasion, and tax avoidance; the use of fiscal and foreign exchange reserves; the management of debt by borrowing or restructuring existing debt; the development and adoption of an accommodating macroeconomic framework; or b. international assistance and co-operation" (Principle 16).

The three countries studied here have staggering losses to tax incentives. Every year Uganda is estimated to give away around $272 million (Archer, 2016); the figure for Kenya is around $1.1 billion (Archer *et al.*, 2016); and Ghana loses around $2.27 billion (Archer *et al.*, 2016) (Ron Balsera, 2018). Table 3 shows the amount of educational resources that 20% (the recommended benchmark from the national budget to be allocated to education) of this foregone revenue could have paid for in the three countries.

4. Do the PPP arrangements in place for schools meet the conditions laid down in the AP which outline processes for these arrangements in line with respecting human rights obligations? Principles 34, 50, 64, 65, 66, 67, 68, 69, 73.

Principle 64 of the AP affirms that "States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including through tax deductions, land concessions, international assistance and cooperation, or other forms of indirect support, if they comply with applicable human rights law and standards and strictly observe all the substantive, procedural, and operational requirements identified" in Principles 64, see also 65 to 73.

Ghana's education strategic plan to achieve Education for All by 2015 included the need for direct financial support to the non-state sector operating in deprived districts. The Education Sector Strategic Plan includes a table with cost-cutting strategies for ESP 2010-2020, of which point 9 is public-private partnerships (PPPs). It includes two-way support for PPPs: on the one hand, support for private kindergartens by meeting some of their teacher costs, support to primary and junior high schools by providing non-salary inputs (eg textbooks) and in-service training; on the other hand, in return for private support to technical and vocational education and training (TVET), the government would provide tax holidays, tax exemptions on imported equipment imported, etc (p.31).

In Kenya, the Alternative Provision of Basic Education and Training (APBET) sector, which was formerly known as Non-Formal Education, opens the possibility of PPPs in education, as private non-formal schools registered under the Ministry of Education can receive funding from the government. According to

30. The figures from this table were calculated by dividing 20% of the revenue lost to tax incentives in each country by the number of out-of school children (UNESCO, 2016), multiplied by the expenditure per primary school child (EFA GMR Policy Paper, 2014), then dividing the remaining by the average annual teacher salary (House of Commons, 2012); and by the average annual cost of school meals per child (Gelli and Daryanani, 2013).

the APBET guidelines,[31] "these guidelines will mainly apply to service providers who support education in the informal settlements within the cities of Nairobi, Kisumu, Mombasa and urban areas as designated by law. The guidelines will also apply to APBET Institution as well as mobile and feeder schools in the arid and semi-arid nomadic counties."

The main public-private partnership in education in Uganda is the Universal Secondary Education (USE) scheme, which was introduced in November 2005.[32] The scheme is implemented through government-aided schools and through private schools under PPPs. The justification for engaging private schools in the USE programme was that there were limited places and facilities in government secondary schools and there were 314 sub-counties with no government secondary school.[33] Out of the 1,820 schools implementing the USE scheme, 943 (52%) are government aided, while 852 (48%) are private institutions operating under PPP arrangements.[34] Since inception of the USE programme, the share of government schools has remained higher than that of private schools, but the gap has been narrowing over the years . Similarly, at the beginning of the USE programme, 25% of students were enrolled in PPP schools, but the share has increased to 45%. This shows there is less effort being made to invest in government schools and increased reliance on low-fee private schools to implement the government programme, which is leading to an abdication of the obligation to provide free quality education (AP §14, 48, 65) and an increasing commercialisation of the sector (AP §48, 65) depleting the public education budget. The lack of transparency and extortionate funds claimed by some PPPs have even been criticised by the president of Uganda, what he called the "squandering of government money" with regards to 53 billion Ugandan shillings spent to support private schools under PPPs (Parallel report, p.8). In response to the president's concern, the administration is proposing, among other things, that instead of relying on private for-profit schools to implement the USE programme, the government should encourage private not-for-profit schools to take over the PPP arrangement as a policy alternative.

Samanya Kyategeka. Students from a primary school in Eastern Uganda.
PHOTO: ACTIONAID

5. **Do the arrangements in place for the regulation of private schools meet the conditions set out in the AP? The obligations to regulate: Principles 47, 48, 50, 51, 52, 53, 54, 55, 58, 60, 80, 84, 85.**

Principle 84 of the AP "States must establish, maintain, and adequately resource effective monitoring and enforcement mechanisms, to ensure private actors involved in education comply with applicable standards and regulations, including the minimum standards set out in the Guiding Principles 54 to 57, and meet their responsibility to respect the right to education."

In Ghana, education provision in general, including private schools, operates within a well defined legal framework. The core provisions are: the 1992 Constitution, which constitutes the supreme laws of the land; the Education Act 2008 (Act 778); and the Children's Act (Act 560). The specific laws under which private schools are registered are: the Companies Code 1963 (Act 179) for Companies; the Partnerships Act 1962 (ACT 152) for Partnership; and Business Names Act 1962 (Act 151) for Sole Proprietorships.[35] However, in Ghana, private schools are poorly regulated.

31. https://doj19z5hov92o.cloudfront.net/sites/default/files/media/resource/alternative_provision_of_basic_education_and_training_apbet_option_2_cover.pdf
32. Ministry of Education and Sports Policy Guidelines for Public – Private Partnership in the Implementation of Universal Post Primary Education and Training, November 2009.
33. Ministry of Education and Sports Policy Guidelines for Public – Private Partnership in the Implementation of Universal Post Primary Education and Training, November 2009, p.2.
34. Ministry of Education and Sports USE – UPOLET Head Count Database as at 21 May 2014.
35. Ghana Companies code 1963 Act (179).

Adequate laws setting minimum standards are sometimes insufficient, and when they do exist, they are not adequately enforced, as revealed in a report by the Ghana Ministry of Education (MoE) itself.[36] The MoE is quoted in its 2002 Education Sector Review Final Team Synthesis Report as saying that: *"Not all private schools apply the agreed fees scale, in particular the best ones." "Evidence available indicates that once registration is granted, the proprietors of private schools make supervision difficult and information received from most of the schools tend to be unreliable."* The weak regulatory framework coupled with poor enforcement of existing regulations for private institutions, which is included in Section 23 of the Education Act 2008 (Act 778) means that parents are being made to pay a high cost for education without the assurance that their children are getting the quality of education they are paying for.

Kenya is a signatory to several international conventions and treaties. Article 2 (6) of the Constitution of Kenya 2010 recognises that "Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution." Article 43 of the 2013 Basic Education Act regulates private education, but many private schools in Kenya are not registered with the government. Private schools are meant to go through a process of recognition once they meet basic standards. However, research in Kenya shows that private schools may gain recognition through corruption and bribery. Delayed inspections, lost forms, postponed committee meetings, cumbersome paperwork, and complex land registration requirements, prompt many owners to pre-emptively open their schools without recognition, operate underground, or bribe officials without meeting standards.[37] This undermines the education sector as a whole and goes against Principle §51. Under the policy for Alternative Provision of Basic Education and Training (APBET), non-formal schools have less stringent requirements in terms of quality, infrastructures, teachers' conditions, etc, than public schools, both in law and as tolerated in practice. The government also recently enacted the Registration Guidelines for Alternative Provision of Basic Education and Training.[38] Yet, it is unclear how these guidelines fit within the legal framework set by the Basic Education Act – which, arguably, aimed to eliminate non-formal schools, to ensure the provision of formal, quality, public education for all.[39]

In Uganda the private sector in education is regulated by the Education (Pre-Primary, Primary and Post-Primary) Act 2008. Specifically, Part VII of the Act provides for the setting up and registration of private schools, but it was only in 2014 that the Ministry of Education issued guidelines to give effect to the Act.[40] However, gaps remain in terms of quality control and protecting families from exploitation by private schools. The above is confirmed by the 2012/2013 Education and Sports Sector Annual Report (ESSAPR), which indicates that there is no clear policy on quality assessment at all education levels, and there are inadequate school inspection services in the country.[41] The Private Schools and Institutions Department is charged with the overall coordination, regulation, policy formulation and guidance on all matters regarding private schools, but it faces serious challenges in carrying out its mandate due to limited financial and human resources. For example, every quarter, the department monitors no more than 50 schools, making it 200 per year out of the 4,000 private schools.[42] This means that, on average, a school would be monitored only once in 20 years. Existing policies and regulations on education have not been implemented and there is scepticism about the current government capacity to implement the recently passed regulations for private schools.[43] Indeed, the weak regulation and supervision of the private sector in education has been faulted for failure to ensure quality, affordable services, and accountability, with the resultant creation of categories of schools including those for the poor, middle class and the very rich.[44]

36. Ministry of Education of Ghana, Education Sector Review: Final Team Synthesis Report, 2002: http://bit.ly/1GFzajO
37. http://www.prachisrivastava.com/uploads/1/9/5/1/19518861/srivastava_2013_low_fee_private_schooling_review_chapter.pdf
38. https://doj19z5hov92o.cloudfront.net/sites/default/files/media/resource/alternative_provision_of_basic_education_and_training_apbet_option_2_cover.pdf
39. CRC parallel report.
40. See Ministry of Education and Sports, Guidelines for Establishment, Licensing, Registration and Classification of Private Schools/Institutions in Uganda (2014). http://www.education.go.ug/files/downloads/Licensing%20and%20regGuidelines%202014%20latest%20version.doc).
41. 2012/2013 Education and Sports Sector Annual Report (ESSAPR)
42. ISER Alternative report Presented to the African Commission on Human and Peoples' Rights, 56th Ordinary Session, p.11.
43. Al-Mahaddi Senkabirwa 'Can Government Enforce New Private School Rules' Article in the *Daily Monitor Newspaper*, Wednesday 3 September 2014.
44. Mubatsi 'Is Uganda Losing the Quality of Education Battle to Businessmen/Women?' Published in *Learning Our Lesson on Africa*, Uganda (12 June 2012).

Elementary school students in Volta Region, Ghana. PHOTO: MEREDITH SLATER

GHANA

Introduction

Ghana a is signatory to the UN Convention on the Rights of the Child (UNCRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which declares education as a right and states that it should be free and compulsory, at least at primary level. Ghana adopted national legislation to eliminate school fees at primary level through the Free Compulsory Universal Basic Education (FCUBE) 2005 and the 2008 Education Act (Act 778).

Since the 1980s, universal basic education has been gradually extended to cover six, then nine and now 11 years including pre-primary years. Fees were eliminated for basic level, a school grant ('capitation grant') was introduced to compensate for the fees, school feeding, public programmes for school infrastructure, textbooks, uniforms and supplements for teachers and a high-profile annual award for the best performing teachers were introduced.[45]

The education system is structured so that the primary school cycle lasts six years, lower secondary lasts three years, and upper secondary lasts four years. Ghana has a total of 6,944,000 pupils enrolled in primary and secondary education. Of these pupils, about 4,393,000 (63%) are enrolled in primary education. Approximately 7% of young people (aged 15-24) in Ghana have no formal education and 14% have attained, at most, incomplete primary education, meaning that in total 21% of 15-24-year-olds have not completed primary education in Ghana.[46] There are an estimated 319,000 out-of-school children of primary school age in the country (UNESCO, 2016).

1. **Is there access to free quality public primary and secondary education for nine years for all children and has the growth of the private sector contributed to limiting this provision? This discussion focuses on Principles 10, 11, 14, 17, 29, 48, 52.**

45. http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Country_Factsheet_Ghana_2012.pdf
46. https://www.epdc.org/sites/default/files/documents/EPDC_NEP_2018_Ghana.pdf

The 2008 Education Act (Act 778) is the current legal framework for educational policy in Ghana. The Free Compulsory Universal Basic Education (FCUBE) reforms of 1996 were designed to enforce the objective of ensuring free, compulsory basic education available to all. Since 2002, the programme has been extended to 11 years, when the government added two years of pre-primary, one of the most ambitious pre-tertiary education programmes in West Africa. In the context of flagging public expenditure on education, many schools found themselves forced to impose indirect fees, eg for registration, uniforms, textbooks, etc, a Capitation Grant Scheme to help schools make up for the missing fees was created in 2004, and has covered the whole country since 2005. The grant is given for every child in public school and is meant to cover cultural, sports and other miscellaneous fees. The Capitation Grant Scheme has reportedly led to a considerable rise in school enrolment,[47] even when it is insufficient, as will be discussed later.

However, despite its commitments, Ghana has not kept pace with the increasing enrolments and new reforms in the sector. The share of education as total government expenditure has been declining since 2012; according to government figures, it declined from 27.2% in 2012 to a projected figure of 13.5% in 2016 (Ministry of Finance). This is well below the international benchmark of 20%. This decrease goes against the ICESCR, which enjoins governments to take steps to ensure a progressively free compulsory primary education for all. It also infringes the principle of non-retrogression (AP §43).

This underfunding is leading to a widening of the financing gap in meeting the needs for basic education for children. As more and more children have enrolled in schools, already constrained budgets have been stretched even thinner, with governments neglecting critical areas such as infrastructure, leading to schools having to charge levies to families in order to function, with a high percentage of education-related costs being borne by households. The decline of public education, partly due to underfunding, has also led the government to pursue a neoliberalist trend of promoting less state responsibility that legitimises new policies of administrative decentralisation and education privatisation. Ghana is moving away from a system dominated by public sector delivery, towards a mixed structure of provision, combining public and private institutions.[48] This goes against AP Principles §14, 17, 29, 30, 48, with the government abdicating its responsibility to provide free quality public education. Principle 48 lists the limitation of the liberties to set up and choose private schools and Section A clearly states "that private educational institutions do not supplant or replace public education, but supplement it in a way conducive to the realisation of the right to education for all".

It seems that the state has become less concerned about the providers of education and is paying more attention to price, together with quality and relevance. Thus, the focus has shifted from input considerations to output. The strong demand for private education is symptomatic of the neglect of public education and has resulted in tremendous growth in the number of private schools and private universities. In turn, privatisation of education is furthering social inequalities in Ghana.

Generally, the number of schools and enrolment of all types in primary schools have seen year-on-year increases between 2001 through to 2017/18 academic year. Overall, this is about 7.3% increment in the total number of schools in the period. Private schools have seen a much higher proportionate increase over the same period compared to public primary schools. Public primary schools recorded about 22.7% overall increases between 2001 and 2018 while the private sector recorded 222% increase over the same period. The rate of increase in public primary schools dropped from 1.2% in 2015 to 1.1% in 2018. On the other hand, private schools have declined from a rate of increase of 9.6% annually in 2015 to 8.1% in 2018 (EMIS data).[49]

Generally, there are six main types of private education in Ghana:

- Religious or denominational schools represent the first category of private schools in Ghana. The traditional ones preceded public education. These are the Catholic, Protestant and Islamic schools. Today, other denominations such as Pentecostals and Charismatics have established private schools. In the mid-1980s, the government took over the running of these mission schools, but in recent times it has renewed the call to hand mission schools back to their owners, a decision that has been hailed by some religious leaders. Together

47. http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/RTE_Country_Factsheet_Ghana_2012.pdf
48. National Educational Report (NER) (2000)
49. http://www.ghanaeducationdata.com/

Low fee' private school in Western Region, Ghana. PHOTO: DIEGO SANTORI

with community schools, they are normally registered with public authorities and regulated by government legislation, and many receive government subsidies and support. This support should be assessed using Abidjan Principles §34, 50, 64, 65, 66, 67, 68, 69, 73.

- Profit-making institutions have risen as a result of increased and unmet demand for educational services. These schools have developed in urban areas, especially in the metropolitan, municipal and District capitals as well as in big towns, to serve middle- and higher-income families and in suburban areas for low-income households. This type of school promises better-quality instruction than public schools, although the quality is very mixed and normally correlated with the level of fees (both tuition and non-tuition fees). The actual amounts of fees vary considerably for low-cost profit-making schools. In an attempt to maximise profits, they normally employ non-qualified teachers, giving them a much lower salary than in the state sector (Riep, 2014). Many also skimp on infrastructure, leading to unsanitary conditions. The pedagogical approach and narrow curriculum offered in some of these schools, which contravene AP §55, have also been questioned on many occasions. The for-profit motivation of these schools undermines the aims of education guaranteed under international human rights law[50] and the nature of education as a public service (AP §8 and 19).

- Community-based/municipal or self-help schools make up, in many cases, the largest category of private schools in Ghana. Some developed from former missionary schools, but in many cases came into being when communities decided to complement the insufficient provision of public education. They are normally registered by public authorities and regulated by government legislation. Examples of such schools are local authority and district assembly schools. They often receive government subsidies and teachers' support paid

50. These are: the development of the child's personality, talents and mental and physical abilities to their fullest potential; the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own; the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and the development of respect for the natural environment. From CRC art. 29. See also UNCRC art. 31, CRC General Comment 17, para. 27,

by the government. There are various modifications and combinations, depending on the modes of financing and management (ie completely unassisted by government, community schools with government support, or government schools with some community support). Again, the financial contribution they receive from the government should conform to the AP substantive (§65), procedural (§66) and operational requirements (§67-73).

- Spontaneous or bush schools appear in specific learning conditions to meet the demands of particular groups of rural, urban poor and refugee schools which either way would have had no access to education. In most cases, they are not registered or approved by the public authorities. They are independent in funding, management and curriculum, and their quality of education is low in most cases. They also charge fees and accept contributions in kind, but at a minimum level, bearable for the local population. In terms of their number and coverage, these schools may outnumber private registered schools. Most of these schools do not meet basic standards, leading to unsafe conditions. It is the responsibility of the government to regulate these schools ensuring that they meet the AP minimum standards listed in Principle §55. Principle 52 declares "States should impose public service obligations on private actors involved in education to ensure that such private actors contribute to the realisation of the right to education in such a way that: a. at the level of the institution, education delivered in all private instructional educational institutions is consistent with applicable human rights law and standards relating to the right to education; and b. at the systemic level, there are no adverse effects of private educational institutions on the enjoyment of the right to education."

- Schools for expatriates are part of the elite profit-making private school sector. They admit pupils from the local population as well, but are generally patronised by the expatriate community. They provide a globally recognised curriculum, which is key for the children of expats.

- Private tuition by public teachers complements

'Low fee' private school in Western Region Ghana. PHOTO: DIEGO SANTORI

The class, which is intended to take less than 25 students, currently has over 60 pupils due to a lack of educational structure.

"It is very difficult to control the class and ensure that the lessons are effective and understood by all due to the large number of pupils. The large size of the class also results in a lot of the chairs and school equipment breaking or falling apart. We never have enough books or learning materials so they have to share."
Female teacher

Catholic primary school in Upper West Region, Ghana. PHOTO: DEBORAH LOMOTEY, ACTIONAID

formal public education, and is a special category created as a result of inadequate access through examinations to particular levels of education. Some of these private tuition outfits are able to expand and incorporate formal aspects of school management into their activities. Thus, students are enrolled to spend the normal three years that is spent either at the junior high school or senior high school and sit for the final examination. Again, the government must ensure they comply with the AP in Principles §51-60, and that the development of this type of school does not create disparities or segregation among groups.

Thus, in answer to the question of whether there is access to nine years of compulsory free education, the overall education statistics for Ghana seem to indicate that the state has largely delivered on obligations to ensure free primary and secondary education to all. Figures show that the general enrolment rate for primary schools in 2017 was 104.78 and for lower secondary this figure was 86.29 proportions enrolled in schools that are nominally free and compulsory. The data from our research, however, shows that these schools charge levies and fees that impair children's right to education, as many poor families cannot afford to pay these fees and these children are sent back home.[51]

Also, through its own pronouncements and policies, there are indications of an growing preference for commercial private provisioning of education.[52] The increasing pace of privatisation of education in Ghana can be seen in the numbers; between 2001 and 2014/15, private education in terms of number of schools as a ratio to public schools has grown from a rate of three times in 2001 to eight times more in 2015.[53] This trend, partly supported by the government through its support to private providers and through the reduced funding of public education, is widening the inequality gap as richer people get better access and quality education based on purchasing power.

Thus, the involvement of private educational operators has a negative systemic impact on the enjoyment of the right to education, as it leads to disparities of educational opportunity for some groups in society which interfere with the right to non-discrimination and equality[54] (AP §24 and 23). In this sense, it can be argued that the government is neglecting its responsibility to provide free state education and is using private school provision as part of its rationale for non-provision of right to quality education for all. This indicates that there is less effort being made to invest in government schools, which is leading to an abdication of the obligation to provide free quality education (AP §17) and an increasing marketisation of the sector (AP §48).

51. https://actionaid.org/publications/2017/tax-privatisation-and-right-education
52. Ghana Education Strategic Plan (2010-2020), Ghana Education Service.
53. Education Management Information System (EMIS) data, Ghana Education Service (2001-2015).
54. CESCR General Comment 13, para. 30 and 31.

2. Is there discrimination against particular groups (low-income families, girls, children in particular areas, children with disabilities, etc) and forms of segregation associated with the presence of private providers? This discussion focuses on Principles 13, 17, 23, 24, 25, 33, 55.

Principle 25 of Abidjan Principles sets out some of the state's obligations regarding discrimination: "States must ensure that their laws, policies, or practices do not directly or indirectly discriminate in education. They must also address any situation breaching the rights to equality and non- discrimination with regards to the right to education, whether or not such situation results from their acts, including: a. systemic disparities of educational opportunity or outcomes for some groups in society, including people living in poverty or in rural settings; or b. segregation in the education system that is discriminatory on any prohibited ground, in particular socio-economic disadvantage." Principle 26 goes further, referring to the state's obligation to take positive action to prevent or correct discrimination, including systemic and persistent disadvantage.

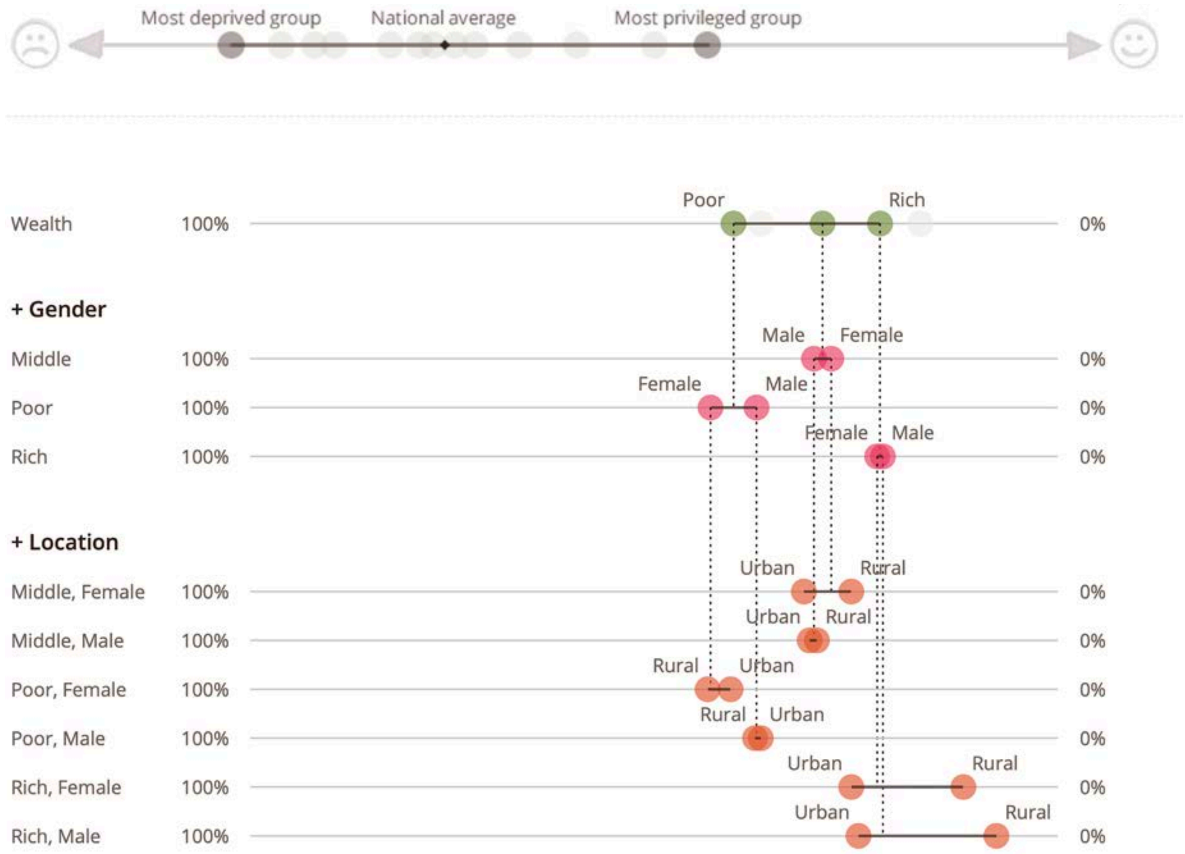
Principle 48 refers to the limitations to the liberties of setting up and choosing private schools, and section c, i, declares that private schools can exist when "c. the exercise of these liberties does not create any adverse systemic impact on the right to education, including by: i. leading to or maintaining disparities of educational opportunity or outcomes for some groups in society which nullify or impair the enjoyment of the rights to equality and non discrimination, such as a segregated education system".

However, the charging of fees in public schools, and the reliance on a sizeable private school sector that charges higher fees, constitute a failure of the state to provide free education. Fees impact particular groups and exacerbates forms of exclusion. Families on low incomes or with limited or no monetary resources cannot access school, and gender disparities in school completion and progression (shown in the figure below) suggest that families are forced to choose between children in deciding who they will go to school. Figures from the UNESCO database show that 37% of poor boys of primary school age are not in school while this figure is 43% for poor girls, in aggregate figures, 40% of the total number of out-of-school children come from poor families. In terms of primary school completion, there is a gender difference, with only 79% of girls having completed primary school compared to 82% of boys. This difference is starker when we include wealth and location, with only 52% of poor rural girls completing primary school, as opposed to 94% of rich rural girls and 97% of rich rural boys.[55] In urban areas, where we see an over-representation of private schools, there are more private basic schools (3,982) in the Greater Accra region than public schools (1,659) as at 2018. Completion rates are lower in rural areas among boys, with only 61% of the poorest completing primary, 82% of the poor urban boys, 92% of the rich and 96% of the richest urban boys.

These figures signal a stratification of education based on wealth, with 48% of the poor rural girl and 39% of poorest urban boys not being able to complete primary education. Although the reasons are not illustrated in the graphs, our research shows that the cost of the education was by far the most common factor for not attending school. Thus, the government is not fulfilling its obligation to implement the right to free[56] quality education on the basis of the rights to non-discrimination and equality by providing "available, accessible, acceptable, and adaptable education for all [...]".[57] And by allowing, even encouraging, the private sector to fill a gap in terms of availability and quality of education, it is creating and entrenching inequalities, disparities in education opportunities and segregation, against AP Principles 23, 24 and 48.

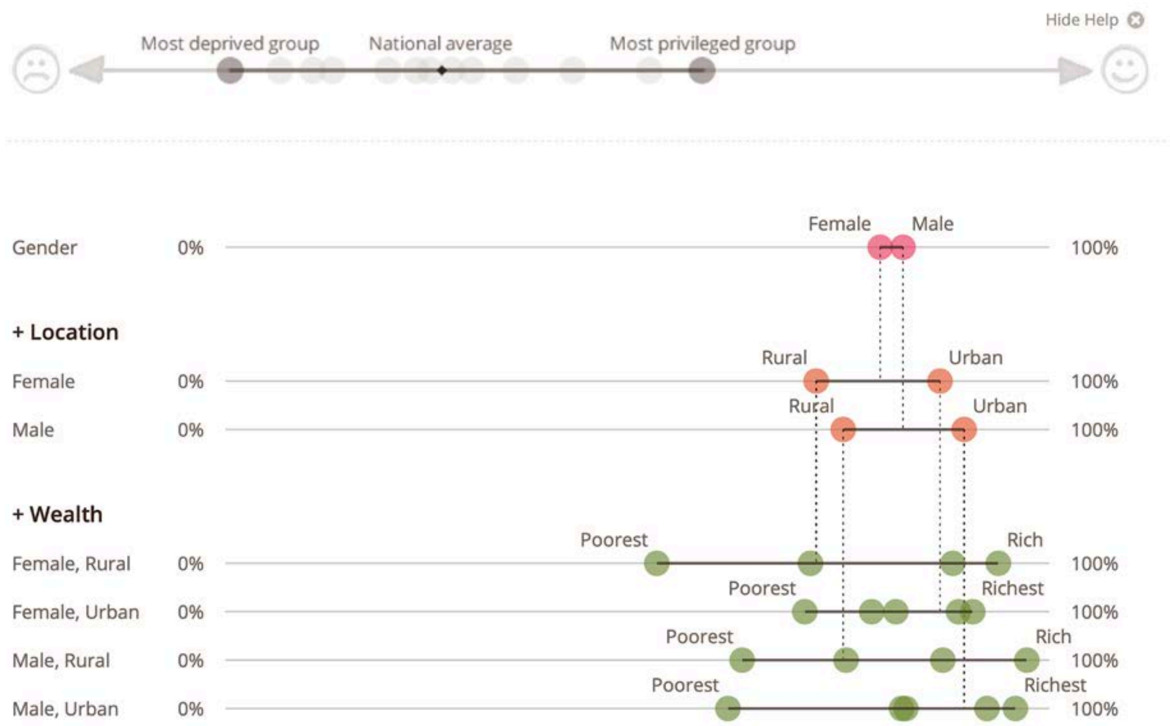
55. https://www.education-inequalities.org/countries/ghana/indicators/comp_prim_v2/sexes#?dimension=sex&group=|Female|Male&dimension2=community&group2=|Rural|Urban&dimension3=wealth_quintile&age_group=comp_prim_1524&year=2014
56. The nature of 'free' education implies an 'unequivocal' requirement to make education free of charge, which includes "indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform": CESCR General Comment 11, para. 7.
57. CESCR General Comment 13, para. 6. This includes the right to quality education.

Figure 3: Out-of-school children, wealth disparities, gender and location



Source: Worldwide Inequality Database on Education (WIDE) https://www.education-inequalities.org/

Figure 4: Primary completion rate, gender disparities, location and wealth



Source: Worldwide Inequality Database on Education (WIDE) https://www.education-inequalities.org/

Disparities in education opportunities keep increasing over time; the majority of students in the top senior secondary schools tend to be products of the private basic schools and a good number of students who gain admission to the universities in Ghana were once pupils of the so-called private preparatory schools. Children who attend public schools can hardly compete against their counterparts in private school for the few places available in public secondary schools.[58] As an academic study shows, even for those who manage to complete junior high school "students from low-performing schools may not fully understand the assignment mechanism or may lack guidance about the optimal application strategy to adopt when faced with constrained choice and uncertainty" (Ajayi, 2011:17).[59] Thus, the existence of the private schools is gradually building and perpetrating a stratified class system in the country that removes the chances of social mobility.

Evidence suggests that the perception of deteriorating quality of public education has encouraged the increase in private schooling in poor areas of many developing countries.[60] In Ghana, the results of the Criterion Referenced Test (CRT), conducted by the Ghana Education Service (GES), and of the Basic Education Certificate Examination (BECE), conducted by the West African Examinations Council (WAEC), are often cited as evidence of quality.[61] Consistently, the CRT and BECE results of private schools have been better than those of public schools.[62] Without controlling for other factors, such as socioeconomic factors, these results are used to attract new students. Families who can afford them tend to choose private schools because most private schools promise good grades for their students. Therefore, the link between private school choice and hopes for better performance on the BECE was made by most parents with varying explanation, including the pedagogical strategies employed by private schools, the use of extra classes and a more direct focus on examination preparation.[63] The existence of these private schools is therefore creating and entrenching educational disparities and social inequalities, which contravenes the Principle 48 clause on not creating adverse systemic impact leading to or maintaining disparities of educational opportunity or outcomes.

The growth of private education is worsening inequalities in the education system. Under the current situation there are high-fee good-quality private schools which are generally patronised by wealthier segments of society, who are able and willing to pay the high fees charged by such institutions, while the poorer segments of society mostly rely on public schools or low-fee private schools of variable quality for education. A recent World Bank report noted that the growth of private schools involves segregation between households according to their wealth, which generally reflects the persistent socioeconomic disparities across Ghana. Thus, the growth of private schools is creating a divide and a fragmentation within society between people who can access elite expensive private schools, and those who cannot. As noted by the Ministry of Education itself:

> *"it is also known that most of the children in private schools come from middle class homes where the environment is conducive to learning. This, rather regrettably, cannot be denied and that implies that unless drastic steps are taken to improve public basic schools that class divide will continue to be a permanent feature of Ghanaian society".*

The growth of private schools and the competition among them is leading to the commercialisation of education in Ghana, against Principle 48, c, iii. The government recognised that *"private fees paid by*

58. "Formal education in Ghana begins with two years of kindergarten, six years of primary school, and three years of junior high school. Primary and junior high school are free and enrolment rates are close to 95% in primary school and around 75% in junior high. At the end of junior high school , students take the Basic Education Certification Examination (BECE) and those with high enough grades qualify for senior high school. Passing rates are low. [...] around 70% of junior high school entrants go on to take the BECE and 60% of BECE takers pass. About 20% of those admitted do not enrol in senior high school the following year (Ajayi 2014) and many cite costs as the reason" (Duflo, Dupas, Kremer, 2017: 6). https://www.povertyactionlab.org/sites/default/files/publications/118_77_The-Impact-Of-Free-Education-Experimental-Evidence-from-Ghana_Dupas_Feb2017.pdf
59. Ajayi, K. F. (2011). School choice and educational mobility: Lessons from secondary school applications in Ghana. *University of California Berkeley Working Paper*. https://pdfs.semanticscholar.org/34a1/2a7f3c92ee1f49d046c0cdd36af6886bf9c9.pdf
60. Gulosino, C. and Tooley, J. (2002). *The Private Sector Serving the Educational Needs of the Poor: A Case Study from the Philippines*, E.G. West Centre School of Education: University of Newcastle. Also Tooley, J. (2005). 'Is Private Schooling Good for the Poor?', EG Centre for Market Solutions in Education, Newcastle: University of Newcastle.
61. Ghana Statistical Service (GSS) (2005). *Ghana Population Data Analysis Report: Socio-Economic and Demographic Trends*, Volume 1, GSS:
62. Ministry of Education, Science and Sports (MoESS) 2005, 2006, 2008, 2009, Preliminary Education Sector Performance Report, Accra.
63. Caine Rolleston and Modupe Adefeso-Olateju (2012). *De Facto Privatisation of Basic Education in Africa: A Market Response to Government Failure? A Comparative Study of the Cases of Ghana and Nigeria.* ESP Working Paper Series No. 44

families for pre-tertiary education represent 1.9% of the GDP, an exceptionally high level by international standards". Private schools are thus an urban phenomenon designed to cater for the most advantaged groups in societies – the elite and the middle class.

This is reflected in the fact that, as noted by the Ministry of Education (MoE) in its latest statistical report, "for all regions there are more public primary schools than private ones except the Greater Accra Region" (see Table 4). Therefore, the favouring of the government towards this type of institution should be seen as a support to advantaged groups, to the detriment of the most vulnerable ones, contravening Principle 25 of the AP. As a result, since the intensification of the phenomenon of privatisation in education in Ghana in the last few years, inequalities in the education system have further increased. For instance, the gap between the rural poorest lower secondary pupils and the richest urban lower secondary pupils in learning basics in mathematics has widened significantly, from eight points difference in 2003, to 21 points in 2007, reaching a record 30 points in 2011.

Table 4: Number of primary schools, 2014/15 academic year

Region	Number of primary schools – regions		Total
	Public	Private	
Ashanti	2,303	1,519	3,822
Brong Ahafo	1,675	589	2,264
Central	1,383	976	2,359
Eastern	1,770	763	2,533
Greater Accra	800	1,317	2,117
Northern	2,095	295	2,390
Upper East	714	171	885
Upper West	594	46	640
Volta	1,504	405	1,909
Western	1,567	823	2,390

Source: EMIS Data 2014/2015

Recent studies have revealed that low-income households are also beginning to patronise private schools, in so-called 'low cost' or 'low fee' private schools. Low-cost private schools are independent, for-profit private schools that target low-income households and claim to offer quality education. It is estimated that there are over 7,000 such schools in Ghana with more than 500,000 children enrolled. Attending these schools is generally not a choice. Parents are merely trying to avoid the poor performance of government schools, overcrowded classrooms, teacher absenteeism, the dilapidated infrastructure and generally deplorable conditions associated with public education. This is creating a micro-segregation and stratification which is increasing inequalities not only between groups but also within the households, forcing families to decide who can go to which school. Thus, in rural areas in Ghana, social and cultural beliefs, practices and attitudes continue to prevent girls' and women's participation in education, including beliefs about the roles of girls and women in society, negative perceptions about school, forced and early marriage, pregnancy and school-related gender-based violence.[64] Compounded by socioeconomic factors, specifically inadequacy of household income and a high cost of schooling, families tend to give priority to boys, particularly in relation to private fee-based schools.[65]

Privatisation in education is gradually creating serious segregation in society. Such segregation can affect an already fragile social cohesion and maintain or even deepen inequality by keeping the most financially disadvantaged students, who often face the most challenging socioeconomic learning environments, together and without appropriate support. This further reinforces the initial inequality rather than remedying it. In addition, segregation also weakens support for public education and for the poorest in society. A 2013 World Bank report on Ghana notes, for instance, that *"the influence of powerful interests and the exit of influential constituencies from public schools each reduce pressure on government to reform basic education and leaves poorer families worse off".*

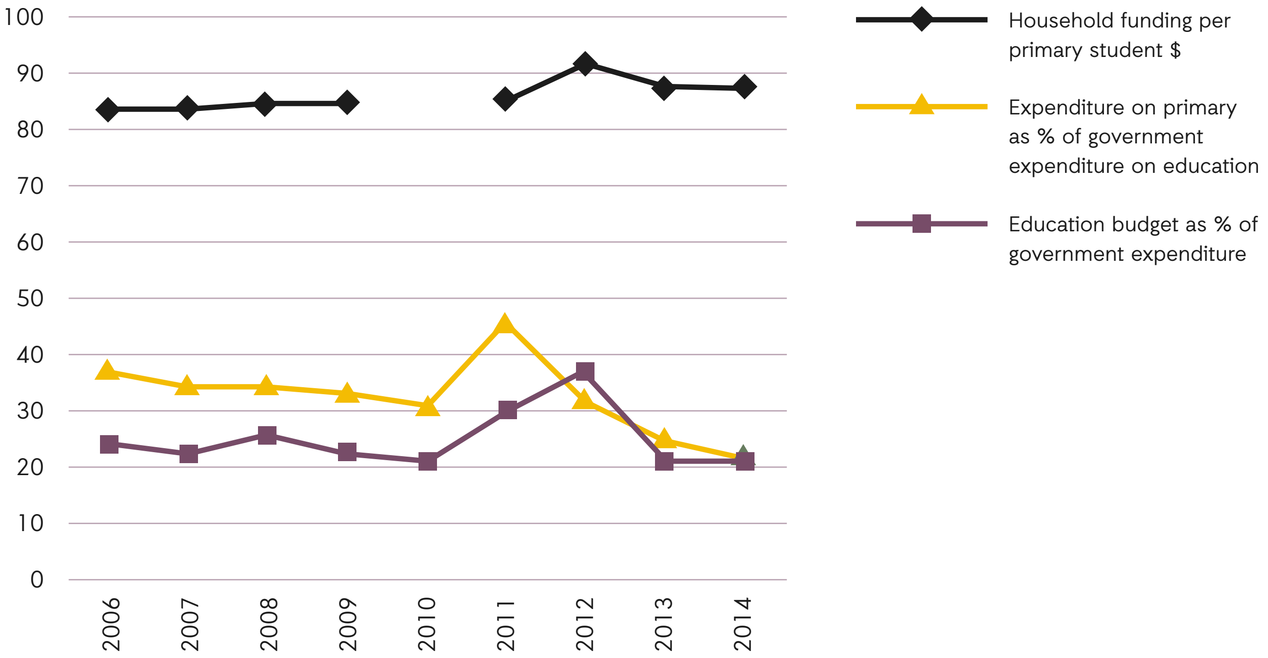
64. ActionAid/GNECC, *The Status of Girls' Education and Violence: A Summary Report of Baseline Survey of Gender-Based Patterns In the Nanumba North and South Districts of the Northern Region of Ghana*, 2011, p.16.
65. GNECC, GI-ESCR, *Parallel report on Ghana submitted to the Committee on the Elimination of all forms of Discrimination against Women*, October 2014, paragraphs 13 and 15: http://ow.ly/REzsz; Right to Education Project and twelve other, Privatization and its Impact on the Right to Education of Women and Girls, Report submitted to CEDAW, 2014, p.5: http://bit.ly/1Q1F442; The Right to Education Project, Privatisation in Education: Global Trends and Human Rights Impact, 2014: http://bit.ly/1NgWBaW

3. **Have adequate funds been allocated to funding public education, and if not why not? Are tax incentives to the private sector limiting state provision for public education? Have donor funds gone to support private or public-private partnerships (PPP) arrangements? This discussion focuses on Principles 15, 16, 18, 34, 35, 43, 45.**

Despite its commitments, Ghana has not kept pace with increasing enrolments and new reforms in the sector. The share of education as total government expenditure has been declining from 2012. According to government figures, it declined from 27.2% in 2012 to a projected figure of 13.5% in 2016 (Ministry of Finance). This is well below the international benchmark of 20%. This decrease goes against the ICESCR, which enjoins governments to take steps, including adequate budgeting, to ensure a progressively free compulsory primary and secondary education for all. It also infringes the principle of non-retrogression (AP §43), which affirms that states should never reduce the budget allocated to public education, which could constitute a retrogressive measure prohibited under international human rights law, unless on a temporary basis in exceptional circumstances they can publicly demonstrate that the reduction has been introduced after the most careful consideration of all alternatives and that it is fully justified by reference to the totality of its human rights obligations and in the context of the full use of the state's maximum available resources.[66]

Looking at Table 5, between 2012 and 2015, government funding of education decreased from 7.9% to 4.9% of GDP, leading to schools being under-resourced, with inadequate infrastructure and teaching conditions, and families having to pay fees to subsidise education costs. This infringes the Economic Social, Cultural Rights (ESCR) Covenant, as the government has not justified this reduction and it represents a retrogressive measure that contravenes Principles 43, 44 and 45. Governments must show progressive realisation of the right to education by pledging maximum financing from resources available. Any consistent reduction of spending on education as a percentage of shares of government allocations which negatively impacts the enjoyment of the right to education is a direct infringement of the Covenant, unless the government can justify it and the reduction has been made following the conditions of Principle 45 of the AP.

Figure 5: Household and government expenditure on primary education. Ghana



66. CESCR, General Comment 13, para. 45; CESCR, General Comment 3, para. 9. These measures may exceptionally be justified in case of an unforeseen large-scale event, such as a natural catastrophe, where international aid is unable to address the increased need, and where it is a temporary short-term response.

Table 5: Total expenditure (2011-2016)

	2011	2012	2013	2014	2015	2016
Tot. Edu. Expenditure	3,565,710,571	5,704,019,600	5,696,678,316	6,564,592,507	6,740,437,383	,910,633,055
GDP	57,013,000,000	71,847,000,000	93,461,000,000	113,436,000,000	135,010,800,000	157,649,600,000
Total GoG Exp.	13,837,325,330	20,944,723,341	27,463,039,403	31,962,206,271	39,152,568,262	51,125,042,600
Educ. Exp. As % of GDP	6.3	7.9	6.1	5.8	4.9	6.0

Source: Ghana National Annual Budget and Economic Policy Statements (2011-16)

Underfunding is leading to a widening of the financing gap in meeting the need for basic education for children. As more and more children have enrolled in schools, already constrained budgets have been stretched even thinner, with governments neglecting critical areas, such as infrastructure, leading to schools having to charge levies to families to be able to function.

Ghana is not using its "maximum available resources towards ensuring free, quality education, which must be continuously improved" (Principle 15), and this is affecting the state's ability to meet its obligation to provide free and quality public education. Principle 16 affirms that "Available resources include all resources at the disposal of the State, or those that may be mobilised through: a. primarily domestic sources, such as fair and progressive taxation and other domestic income generating mechanisms; expansion of the revenue base; reallocation of public expenditure; elimination of illicit financial flows, corruption, tax evasion, and tax avoidance; the use of fiscal and foreign exchange reserves; the management of debt by borrowing or restructuring existing debt; the development and adoption of an accommodating macroeconomic framework." However, the government stated in 2012 that tax expenditures (that is, revenues foregone through tax incentives and exemptions) cost about 3.28% of GDP, falling to an estimated 2.1% of GDP in 2014, which ActionAid Ghana estimated to be equivalent to about US$1.2 billion (ActionAid Ghana, 2014). However, this is a very conservative figure, and others estimate that Ghana loses around US$2.27 billion (Archer, 2016). Even taking the lower estimate, the opportunity cost of using the threshold recommended for education, ie 20% of the national budget (which would amount to $240 million), these foregone revenues could have paid for: a place in a primary school for the estimated 319,000 out-of-school children, plus the salaries of an extra 10,000 qualified teachers. It could also have funded free school meals for one year for 557,892 children.[67]

Ghana: Tax losses vs education resources

If 20% of the $1.2 billion lost to tax incentives annually was used for education, this $240 million could pay for:

67. These figures were calculated by dividing 20% of the revenue lost to tax incentives in each country ($1.2 billion in Ghana) by the number of out-of-school children (UNESCO, 2016) multiplied by the expenditure per primary school child (UNESCO 2014 EFA GMR Policy Paper 2014), then dividing the remaining by the average annual teacher salary (House of Commons, 2012) and by the average annual cost of school meals per child (Gelli and Daryanani, 2013).

Despite the Free Universal Basic Education (FCUBE) policy, a constitutional provision that guarantees free compulsory universal basic education and the right of children to education and other rights, the ratification of the ICESCR, and many other such international and regional covenants, our research shows that education is not free. In our sample, the reported average cost of sending a child to public school was 811.55 GH¢ ($185) per year, whereas sending their child to a private school amounts to 2,028.49 GH¢ ($462) per year, so two and a half times the cost of public school. According to the Ghana Living Standard Survey Round 6 (GLSS6), the annual average household income across Ghana is GH¢16,645 ($3,787), the cost of sending a child to public school would require 4.87% of the household income, whereas sending a child to private school would require 12.18%. With a fertility rate of 4.2 children (World Bank database), sending four children to school would amount to 19.48% of household income for public schools, and 48.72% for private schools. These costs have led to 18% of the 150 respondents in our survey sample reporting having children out of school, with the main reason being lack of money for school fees (63%). Even if the cost was a hindrance, education was still a priority for these families and 81.5% said they would send their children to school if there was a reduction of school costs or a bursary. The cost of education is partly behind the high dropout rates and low completion rates of 36.4% and 67.94% at senior and junior high schools respectively. But there is also a growing perception of declining quality in public schools, often expressed as "poor management" or "lack of supervision."[68]

The main reason behind FCUBE not working as it should is the lack of adequate financing, necessary infrastructure and human resources to support the rapid increase in enrolment which followed its implementation. As discussed above, the government's funding for education as a percentage of total expenditure has been dwindling, contravening the principle of non-retrogression as it limits the enjoyment of the right to education. Therefore, the government is not adequately financing free public education. Not only is it not using the maximum available resources, evidenced by the vast losses to tax incentives and illicit financial flows, but it has reduced the share of the allocation to education without justification. Also, through its own pronouncements and policies, there are indications of an increasing preference for commercial private provisioning of education, which contravenes the overarching Principle 2 of the AP that enjoins states to provide free, public education of the highest attainable quality.

International financial institutions and donors, such as the World Bank, have been fuelling the privatisation of the education sector in Ghana. Recently, they have supported the Ghana Partnership Schools project. The plan is that from September 2019, the government, through the Ministry of Education (MoE) and its regulator, Ghana Education Service (GES), will implement the Ghana Partnership Schools (GPS) Project. The MoE and GES were collaborating with ARK, an international consortium to implement the project. Under this project, a total of 100 selected public schools in the Ashanti, Northern, Central and Greater Accra regions would be handed over to private school operators to manage. The project is purported to run for three years, after which it may be institutionalised permanently.[69] Although this initiative is only just being developed, there are several organisations voicing their concerns about the use of public funds to finance the management of public schools by non-state actors, which should only be done if they comply with the substantive, procedural and operational requirements contained in Principles 64 to 73. They also point at the lack of capacity to adequately regulate private actors, citing weak management, supervision and lack of accountability.[70]

The UK Department for International Development (DFID) is currently funding initiatives promoting private schooling in several countries including Ghana.[71] In 2009, the IDP Foundation committed to launching IDP Rising Schools, a two-year pilot programme established through a partnership between the IDP Foundation Inc, Sinapi Aba Trust and Opportunity International US. The goal of the pilot is to boost the development of 120 existing, but very poor, private schools for

68. https://actionaid.org/sites/default/files/tax_privatisation_report_online.pdf p.30
69. https://www.ghanaweb.com/GhanaHomePage/NewsArchive/Implementation-of-Ghana-Partnership-Schools-Project-GES-must-come-again-Rev-Seth-Danquah-731815#
70. Letter from GNECC to the Ministry of Education, 13 March 2019 GNECC on the Public Private Partnerships [PPP] in the Education Sector and Matters Arising.
71. IDP Foundation, International Support to Low-Cost Private Schools, May 2013, pp.11-12.This notes four countries, to which Uganda and Ghana have been added as a result of research for this paper.

disadvantaged children throughout Ghana. IDP hopes to build a sustainable educational model that is supported through microfinance loans and capacity building, and which can be replicated throughout Ghana, sub-Saharan Africa and the developing world. The IDP Foundation is committed to implementing this model and measuring its impact through independent researchers. The IDP Rising Schools Program has five main goals: 1) increase sustainability (and profitability) of the schools; 2) achieve gender parity in the schools; 3) increase enrolment in the schools; 4) demonstrate that investing in low-cost private schools has a positive return on investment for the microfinance institution as well as social impact; and 5) improve the quality of education that school proprietors can offer their students.[72]

In September 2009, the IDP Foundation Inc, in partnership with Sinapi Aba Trust (a Ghanaian microfinance institution) created the IDP Rising Schools Program (IDPRSP). According to them, the initiative was developed in response to the market demand targeting the lowest levels of the economic pyramid. Again, according to them, school fees in these low-income private schools were on average $15 per term. The programme began with a pilot study of 105 very poor private schools with an initial enrolment of 27,000 primary-aged children. After three years, IDPRSP has transformed into a fully developed programme that is rapidly expanding throughout Ghana. The IDP Rising Schools Program is based on a profitable microfinance model that provides school proprietors with extensive training in financial literacy and school management, which will enable them to apply for a business loan.[73]

Overarching Principle 6 of the AP states that "International assistance and cooperation, where provided, must reinforce the building of free, quality, public education systems, and refrain from supporting, directly or indirectly, private educational institutions in a manner that is inconsistent with human rights." The role of DFID and the World Bank, together with other donors and financial institutions, has been criticised[74] for the preference given to private providers and PPPs, without paying heed to their role in increasing disparities of education opportunity and entrenching social segmentation.

Elementary school students in Volta Region. PHOTO: MEREDITH SLATER, ACTIONAID

72. https://www.clintonfoundation.org/clinton-global-initiative/commitments/idp-rising-schools
73. http://www.idpfoundation.org/idp-rising-schools
74. https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/GBR/INT_CESCR_ICO_GBR_21740_E.pdf

4. **Do the PPP arrangements in place for schools meet the conditions laid down in the AP which outline processes for these arrangements in line with respecting human rights obligations? Principles 34, 50, 64, 65, 66, 67, 68, 69, 73.**

"The 1992 Ghanaian constitution permits the establishment of private schools without state contribution of any kind: 'every person shall have the rights at his own expense, to establish and maintain a private school or schools at all levels and of such categories and in accordance with such conditions as may be provided by law' (Article 25(2), quoted in Ministry of Education/Ghana Education Service (MOE/GES) 2001). [... which] absolve the state from providing financial assistance to the private education sector" (Akyeampong, 2009: 139). The 1996 Free Compulsory Universal Basic Education (FCUBE) policy did not mention any direct financial assistance to the private sector either.

However, Ghana's education strategic plan to achieve Education For All by 2015 included the need for direct financial support to the non-state sector operating in deprived districts. The related policy objective in its Education Strategic Plan (ESP) emphasised the need to "increase private sector participation in the education sector" with "full enrolment of hard-to-reach and out-of-school children through complementary/alternative education programmes" (see Ghana's ESP, Ministry of Education 2003).[75] These schemes have been inadequately monitored, with the ministry admitting to difficulties monitoring and regulating private providers, and it is concerned that some may be exploiting their clients, especially the rural and urban poor (MOESS 2007)" (Akyeampong, 2009: 139). This contravenes Principle 84: "States must establish, maintain, and adequately resource effective monitoring and enforcement mechanisms, to ensure private actors involved in education comply with applicable standards and regulations, including the minimum standards set out in the Guiding Principles 54 to 57, and meet their responsibility to respect the right to education."

The Education Sector Strategic Plan includes a table with cost-cutting strategies for ESP 2010 – 2020, of which point 9 is public-private partnerships (PPPs). It includes two-way support for PPPs: on the one hand, support for private kindergartens by meeting some of their teacher costs, support to primary and junior high schools by providing non-salary inputs (eg textbooks) and in-service training; on the other hand, in return for private support to TVET, the government will provide tax holidays, tax exemptions on imported equipment imported, etc, in return for private support to increase contribution to kindergarten and tertiary (p.31). These arrangements need to comply with the overarching Principle 5 of the AP: "States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including through tax deductions, of land concessions, international assistance and cooperation, or other forms of indirect support, if they comply with applicable human rights law and standards and strictly observe all substantive, procedural, and operational requirements." These requirements are contained in Principles 64 to 73. Principle 73 deems for-profit or commercial institutions ineligible as well as those that contribute to an adverse systemic impact.

Private school in Kasoa, Central Region, Ghana. PHOTO: DIEGO SANTORI

75. http://unescoghana.org/wp-content/uploads/2017/08/Ghana-EFA-NAP-Finalised-Version.pdf

5. **Do the arrangements in place for the regulation of private schools meet the conditions set out in the AP? The obligations to regulate Principles 47, 48, 50, 51, 52, 53, 54, 55, 58, 60, 80, 84, 85.**

Education provisioning in general, including private schools, operates within a well-defined legal framework. The core provisions are the 1992 Constitution, which constitutes the supreme laws of the land; the Education Act 2008 (Act 778), and the Children's Act (Act 560). The specific laws under which private schools are registered are the Companies Code 1963 (Act 179) for Companies; the Partnerships Act 1962 (ACT 152) for Partnership; and the Business Names Act 1962 (Act 151) for Sole Proprietorships.[76]

According to Section 23 (1) of the Education Act 2008, "A person or an institution may establish, manage and operate a private educational institution in accordance with the guidelines issued and the regulations made in that behalf, by the Minister in consultation with the Education Service council or the National Accreditation Board." Private schools, like all other businesses, are required to register with the Registrar General's Department depending on the legal structure desired by the proprietor of the school. There are guidelines and regulations regarding the setting up of schools. The Ghana Education Services (GES) requirements include: at least three classroom blocks, two offices, a storeroom, reasonable number of textbooks and qualified teachers, urinal and toilet facilities, playground, first aid boxes, and adherence to programmes and curriculum. The head of a private school is required to be a professional teacher who has attained at least the rank of a principal superintendent.

Regarding supervision and coordination, private institutions are typically supervised by the Regional Director of Education. The head or the proprietor of any school is required to offer an inspector or monitoring officer any assistance that the inspector or monitoring officer may need in the discharge of their duties. The proprietor of a private school cannot close down the school without the prior approval of the Director General of the Ghana Education Service. The schools are also required to furnish the Ghana Education Service with any information and returns as will be required to ensure that they are complying with the laid down regulations.

However, in Ghana, private schools are poorly regulated. Adequate laws setting minimum standards are sometimes insufficient, and when they do exist, they are not adequately enforced, as revealed in a report by the Ghana MoE itself.[77] The MoE of Ghana is quoted in its 2002 Education Sector Review Final Team Synthesis Report as saying that *"Not all private schools apply the agreed fees scale, in particular the best ones." "Evidence available indicates that once registration is granted, the proprietors of private schools make supervision difficult and information received from most of the schools tend to be unreliable."* This contravenes Principle 84 of the AP: "States must establish, maintain, and adequately resource effective monitoring and enforcement mechanisms, to ensure private actors involved in education comply with applicable standards and regulations, including the minimum standards set out in the Guiding Principles 54 to 57, and meet their responsibility to respect the right to education."

Considering the huge number of private schools and the growth of the sector in Ghana, one would expect a strong, well staffed and resourced unit of education in charge of the sector. Yet, there is only a desk for private education that is poorly staffed and resourced from national through to district offices of the GES. It is not clear whether officers in charge of supervision in the GES consider private schools within their supervisory jurisdiction as part of their responsibility. This has led to 'cheating' by private school operators in deprived areas, as parents are charged for services not rendered. Most regulators are not as knowledgeable as the representatives of the private institutions and therefore these institutions are able to push their agenda through even when there is a regulatory board.

The weak regulatory framework, coupled with the poor enforcement of existing regulations for private institutions that is included in Section 23 of the Education Act 2008 (Act 778) means that parents are being made to pay a high cost for education without the assurance that their children are getting the quality of education they are paying for. Some low-fee private schools are located in very unsanitary environments, which is a clear violation of the law. As a result, concerns have been raised about the quality of education provided in private schools.[78] Closer analysis reveals that most low-fee private schools are

76. Ghana Company's code 1963 Act (179)
77. Ministry of Education of Ghana, Education Sector Review: Final Team Synthesis Report, 2002: http://bit.ly/1GFzajO
78. Prachi Srivastava, Low-fee private schooling: what do we really know? Prachi Srivastava responds to *The Economist*, Oxfam Blog 'From poverty to Power', August 2015: http://bit.ly/1MjqNzN

no better than public schools.[79] This contravenes not only the minimum standards stated in Principle 55, but is also a failure of the state's obligation to protect the right to education, particularly Principle 13, which affirms that "States must ensure that all educational institutions, public and private, are inclusive and are at least of adequate quality" and Principle 14 that lists the attributes of quality education following the 4As (availability, accessibility, acceptability and adaptability).

Human rights law requires that the state ensure that schools are transparent and accountable, achieved through the state ensuring that all schools (whether public or private) have effective mechanisms for encouraging and supporting parental and community participation (eg governing bodies, management committees and parents' groups). Lack of data and transparency on the fast-paced privatisation of the education system in Ghana and its impact on children's right to education, in particular with respect to low-fee private schools, is also extremely concerning. The education authorities in Ghana lack data on crucial aspects, such as fees charged by private schools, and *"even the number of private schools is uncertain, as far as some schools may find it attractive not to register their existence with public authorities".*

Table 6: Number of private schools per region, 2014/15 academic year

Region	Number of private schools		Total
	Registered	Unregistered	
Ashanti	1,321	198	1,519
Brong Ahafo	453	136	589
Central	742	234	976
Eastern	578	185	763
Greater Accra	1,123	194	1,317
Northern	100	195	295
Upper East	105	66	171
Upper West	24	22	46
Volta	254	151	405
Western	523	300	823
Total	**5,223**	**1,681**	**6,904**

Source: EMIS Data 2014/2015

Data from the GES Education Management Information System (EMIS) indicate that a large number of private schools are unregistered and scattered across the regions of the country. Table 6 below shows the number of private schools both registered and unregistered in all the regions in Ghana.

Table 6 shows that as many as 24.3% of private schools in the country were operating without registration in 2014/2015 academic year. The observations are that most of these unregistered private schools are patronised by lower-income and poor households. Regulations and supervision of these schools is the weakest and therefore the quality of education they provide, and children's safety, cannot be guaranteed. Furthermore, the majority of teachers in private schools are untrained, contrary to the legal requirement in Section 23(b) of the Education Act 2008 (Act778) that a private school shall have at least one-third of the teaching staff being persons who are professionally qualified. The main reason is that private school teachers are poorly remunerated, so the schools tend to recruit unqualified teachers. Therefore, Ghana is not fulfilling its obligation to adequately regulate private schools, particularly contravening Principle 51. "States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education where private actors are involved in the provision of education. This includes situations in which private actors conduct their activities without any State involvement or control, or when they operate informally or illegally."

The Table 7 assesses the Education Act 2008 (Act 778) against the minimum standards stated in Principle 55 of the Abidjan Principles. The number of gaps requires a revision of these this law and policy so that the regulation complies with human rights law.

79. GNECC, GI-ESCR, Parallel report submitted to the Committee on the Rights of the Child, August 2014, paragraph 11. See also: Laura Lewis, Is There a Role for The Private Sector in Education? Education for Global Development – A blog about the power of investing in people, World Bank, 2013: http://blogs.worldbank.org/education/there-role-private-sector-education

Table 7: Assessing minimum standards in Ghana's Education Law

55.AP Minimum standards	1,Education Act 2008 (Act778)
a. Governance i. registration and licensing	Some. 69 (6) The proprietor of a private educational institution in existence before the commencement of this Act shall register with a District Assembly or a Regional Co-ordinating Council as appropriate, within ninety days after the commencement of this Act.
ii. reporting requirements	Some. 69. 3f. send a copy of its annual report on its programmes and activities to the District Assembly or the Regional Co-ordinating Council as appropriate; 693g. make available to the District Assembly or Regional Coordinating Council as appropriate, any information in writing requested by the District Assembly or Regional Co-ordinating Council.
iii. participation of stakeholders	Some. 68 Functions of the School Management Committee
iv. management of resources;	Some. 68 Functions of the School Management Committee
v. level of fees	No
vi. transparency	No
vii. conditions and transparency of learners' certification.	No
b. pedagogical freedoms;	No
c. freedom of association and speech;	No
d. protection against discrimination	Some. Grievances 75. (1) A person may petition a District Assembly or a Regional Co-ordinating Council for review and action (a) if dissatisfied with the standard of teaching or learning in a private educational institution; (b) if the person has cause to suspect discrimination or apathy; or (c) for any other sufficient cause.
e. teaching qualifications and working conditions,	Yes. 69 3b be staffed with teachers who are professionally qualified and licensed under this Act;
f. pedagogical methodologies	No
g. suspension and expulsion	No
h. discipline and corporal punishment;	No
i. failure or delay in the payment of fees;	No
j. secure and safe learning environments	Some. 69 3d meet the standards on curricula and syllabi set by the Curriculum, Assessment and Reporting Council and the Ministry as regards the physical, academic and any other facilities and requirements of the private educational institution;
k. accessibility and reasonable accommodation	Some. Inclusive education 4. (1) A District Assembly shall ensure that designs for basic education schools are user-friendly for children with special education requirements. (2) Schools that deliver education to children with special needs shall improve upon the existing infrastructure and provide additional facilities where necessary. (3) A parent or guardian shall take advantage of inclusive education facilities to send a child with special needs to the appropriate education facility or make a request for the provision of an appropriate education facility which shall be provided subject to the availability of resources. (4) For the purpose of this section, "inclusive education" means the value system that holds that each person who attends an educational institution is entitled to equal access to learning, achievement and the pursuit of excellence in every aspect of education that transcends the idea of physical location but incorporates the basic values that promote participation, friendship and interaction.
l. physical and mental health	Some. Withdrawal of approval 72. (1) A District Assembly or Regional Co-ordinating Council acting in accordance with the advice of the Department of Education, Youth and Sports or the Regional Education Department, may withdraw the approval of a private educational institution on the grounds that: 55 (a) the operation of the institution is detrimental to the physical or moral welfare of students or the pupils who attend the institution; or (b) the continuing existence of the institution is against the public interest;
m. protection from threatening, shaming, and bullying	No
n. pro excessive marketing or advertising	No
o. privacy and data protection	No
p. teacher/learner ratio	No
q. other standard for the protection of human rights.	No

Recommendations

Following the analysis above we recommend that the government of Ghana should:

- **Ensure** that compulsory public education is available, truly free and of good quality by increasing the size, share, sensitivity and scrutiny of the education budget.
- **Increase** the share of the national budget allocated to education, restoring it to the levels of 2012, when it was 27.2%.
- **Allocate** the maximum available resources, increasing the size of the national budget. This should be done through progressive taxation, eliminating tax evasion and avoidance, and particularly reviewing tax incentives so as to avoid the losses estimated to be $1.2 billion.
- **Regulate** private providers following the Abidjan Principles, to avoid the current stratification and systemic discrimination.
- **Eliminate** all forms of discrimination, direct and indirect, in the enjoyment of the right to education by reviewing its laws, policies and practices, and by taking positive action to redress historic discrimination and inequalities.
- **Prioritise** the funding and provision of free and good-quality public schools, reviewing and terminating agreements and partnerships with private providers that do not comply with the substantive, procedural and operational requirements contained in the AP Principles 64-73. This includes national and international funding.
- **Improve** the regulation of private education providers following the AP guiding principles and take all effective measures to enforce this regulation, including provisions to limit the level of fees and to increase transparency in what fees are used for. There should also be adequate provisions to ensure that the conditions and transparency of learners' certification meet standards. There should be provisions to protect pedagogical freedoms and freedom of association and speech.
- **We welcome** the fact that the Ghana Education Service has banned corporal punishment in schools and produced a handbook on positive discipline. However, the education law should contain a provision to ban any form of corporal punishment or discipline, including shaming.


Students from primary School in Makueni County, Kenya. PHOTO: MARCIA CHANDRA/ACTIONAID

KENYA

Introduction

Since independence, Kenya has prioritised education as a national goal. The majority of schools are public, although private schools are on the increase, serving a significant proportion of children. Like most sub-Saharan African countries, a high proportion – 40%[80] – of Kenya's population are under 15. Kenya follows an 8-4-4 system of education, with eight years at primary school, four years secondary and four years tertiary.

In the post-independence period, successive governments devoted considerable attention to the education sector. It is noted that the Free Primary Education, introduced between 1974 and 1978, resulted in an increase in the gross enrolment rate (GER) from 50% in 1963 to 105% in 1989 (World Bank, 2009). However, cost-sharing policies introduced as part of Structural Adjustment Programmes in 1989 pushed by the World Bank, instituted requirements that communities and parents pay for school construction and non-teaching staff salaries. The cost-sharing policies led to a rise in the number of private schools. Schools, including the *Harambe* (schools run by grassroots community members), in turn introduced school levies, charging fees set by parent-teacher and school management committees ranging from $6.60 to $132 a year for a range of items, including transportation, textbooks and exam administration costs (Stern and Heyneman 2013). These measures contributed to a decline in GER to 88.2% in 2002, as 30.7% of out-of-school children reported costs as the biggest obstacle to school attendance (World Bank, 2009). The level of inequality has persisted over decades, with 45% of the country's more than 46 million people living in poverty (World Bank, 2016). Effects of increases in poverty and a decline in government spending throughout the 1990s, with fewer schools built and a freeze on the hiring of teachers in 1997, had significant impacts on learning outcomes.

80. https://data.worldbank.org/indicator/SP.POP.0014.TO.ZS?locations=KE

The introduction of free primary education (FPE) in 2003 as an attempt to reduce the decline in school enrolments, saw the GER rise from 88.2% in 2002 to 104.8% in 2004. Additional gains were seen in completion rates, textbook-pupil ratios and supplies of instructional materials, and repetition and dropout rates declined (World Bank, 2009). However, this led to pupil-teacher ratios growing from 34:1 in 2002 to 40:1 in 2003, as there was already a significant lack of teachers prior to FPE (Stern and Heyneman, 2013). Under-qualified teachers hired to mitigate large classroom sizes also exacerbated low-quality learning (World Bank, 2009). Additionally, because FPE remained only at primary school level, access to secondary schools remained limited – in 2006, only 57% of primary school students transitioned to secondary school (World Bank, 2009).

While the number of private schools increased in the 1980s and 1990s with the cost-sharing policy, the high escalation in the number of private schools has most severely been felt in informal settlements where there is exceptionally high use of private schools. Kenya's urban informal settlements experience severe shortage of basic services. There are not enough government schools, and the few available are found only at the periphery of these areas, making them inadequately available and inaccessible to most children. Failure by the government to provide sufficient number of public primary schools has led to tremendous growth of private low-cost schools, which have developed to fill in the demand gap. An increasing number of children from urban informal settlements have been attending private primary schools. In urban areas such as Nairobi, Eldoret and Mombasa, more than 50% of children attend so called 'low-fee' private schools[81] (Hakijamii 2015 Parallel report UNCRC).

Bridge International Academy in Mathare slum, Nairobi, Kenya. PHOTO: XAVIER BOURGOIS

81. APHRC, Quality and Access to Education in urban informal Settlements in Kenya, October 2013, http://aphrc.org/publications/quality-and-access-to-education-in-urban-informal-settlements-in-kenya

Table 8: Select indicators for basic education in Kenya

	Indicator	Kenya
Population	0-14 years	16,346,414
	10-18 years	8,293,207
	15-34 years	13,329,717
	% of children attending school (5-14 years)	74.9[82]
	Total fertility rate (per woman)	45.2
Poverty and household income	Percentage of individuals below poverty line[83]	45.2
	Mean household expenditure per month (in thousands) per adult equivalent	3,440
	Gini coefficient[84]	0.445
Poverty and household income	Number of centres – ECDE Early Childhood Education	40,775
	Average class size – primary	36[85]
	Number of schools – primary	21,877
	Total number of teachers	300,060
	Average school size – primary (public and private)	338
	Gross enrolment rate (GER)[86] – ECDE (public)	76.5
	Net enrolment rate (NER)[87] – ECDE (public)	74.6
	Gross enrolment rate (GER) – primary (public)	103.5
	Net enrolment rate (NER) – primary (public)	88.5
	Out of school based on primary NER – Girls	711,754
	Out of school based on primary NER – Boys	580,921[88]
	Out of school children based on primary NER	1,292,675
	Secondary gross enrolment rate	49.3
	Secondary net enrolment rate	47.4
	Pupil teacher ratio (PTR)[89] – ECDE (public)	34.5
	Pupil teacher ratio (PTR) – ECDE (public and private)	19.6
	Pupil teacher ratio (PTR) – primary (including BOM Board of Management employed)	31.3[90]
	Pupil teacher ratio (PTR) – secondary (including BOM employed)	29.8
	Pupil teacher ratio (PTR) – secondary (public)	25.2
	Pupil teacher ratio (PTR) – secondary (private)	19.5
	Textbook to pupil ratio (English)	1:01
	Textbook to pupil ratio (Mathematics)	1:01
	Textbook to pupil ratio (Science)	1:01
	Pupil toilet ratio (PToR) – primary (public) – male	34
	Pupil toilet ratio (PToR) – primary (public) – female	29
	Pupil toilet ratio (PToR) – primary (private) – male	22
	Pupil toilet ratio (PToR) – primary (private) – female	18
	Gender parity index girls/boys (ECDE)	1.05
	Gender parity index girls/boys (primary)	0.97
	Gender parity index girls/boys (secondary)	0.92

Source: State Department of Education, Nairobi, 2015; KDHS, 2014 and MoEST, 2014

82. Data from 2005, published by UNESCO Institute for Statistics, 2014.
83. The poverty line is a threshold below which people are deemed poor, the statistics above refer to the bottom of the consumption distribution (ie those that fall below the poverty line)
84. In this report, the Gini index measures the extent to which the distribution of consumption expenditure among individuals or households within an economy deviates from a perfectly equal distribution. A Gini index of '0' represents perfect equality, while an index of '1' implies perfect inequality.
85. The average class size in public primary schools was 36 while in private schools it stood at 16.
86. Total enrolment in a specific level of education, regardless of age, expressed as a percentage of the eligible official school-age population corresponding to the same level of education in a given school year.
87. Enrolment of the official age group for a given level of education expressed as a percentage of the corresponding population.
88. The calculation is based on primary NER. About 1.3 million 6-13-year-old children are just out of primary school. The total number out of school at that age group is slightly less than that number as some are in secondary.
89. Average number of pupils (students) per teacher at a specific level of education in a given school year.
90. The pupil-teacher ratio (for public schools based on Teachers Service Commission stands at 41.5 which is close to the international norm (40).

1. **Is there access to free quality public primary and secondary education for nine years for all children and has the growth of the private sector contributed to limiting this provision? This discussion focuses on Principles 10, 11, 14, 17, 29, 48, 52.**

The adoption of legislation to eliminate school fees at primary level was done through the Basic Education Act 2013.[91] The Act gives effect to Article 53 of the 2010 Constitution, which *provides that every child has the right to free and compulsory education.* The Kenya Constitution (2010) in Chapter Four (Bill of Rights) Article 43 Sec.1 (f)[92] and Article 54 Sec.1 (b) provides for basic education as a right and obligates both the state and parents to facilitate acquisition of basic quality education by all children including persons with disabilities and minorities and marginalised groups. In addition, Article 55 (a) commits the state to take measures including affirmative action to ensure citizens access relevant education and training.

The Basic Education Act (2013) stipulates penalties for parents who fail to send their children to school and prohibits schools from charging tuition fees. Free primary education is also guaranteed by Article 7.2 of the Children Act, Articles 28-29 and 32 of the Basic Education Act, and Article 53(b) of the Constitution (2010).

Kenya ratified the UN Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which declare education as a right and states that it should be free and compulsory, at least at primary level. Kenya's eliminated school fees at primary level through the Basic Education Act 2013, which gives effect to the article 53 of the 2010 Constitution. Free Primary Education[93] (FPE) and Free Day Secondary Education[94] (FDSE) were introduced and implemented by the government in 2003 and 2008, respectively, to cover all children in all public primary and day secondary schools. FPE was introduced in 2003, leading to a massive influx of students in poorly equipped schools. Access to education increased at the expense of quality due to inadequate planning and resources. This goes against the AP §13, §14 and §15, which affirm that states must ensure that public education is of adequate quality in accordance with the right to education. This requires *inter alia* that the state provide quality teacher training, adequate curriculum and pedagogical material, and a safe infrastructure and environment, and put in place a participatory school governance system – all in line with the right to education standards and principles.

The rising demand for private education is symptomatic of the lack of availability and quality in an underfunded public education (Heyneman and Stern, 2013). Private schools in Kenya have increased from 2% of all primary schools in 1998 to 30% in 2013 (Kenya economic surveys, 2002-2014), with 11% of all students currently being enrolled in private institutions. Private schools are predominantly located in urban and peri-urban areas, since it is not as profitable to invest in rural areas. In urban areas such as Nairobi, Eldoret and Mombasa, more than 50% of children attend so called 'low-fee' private schools (APHRC, 2013) such as Bridge International Academies.

The Committee on Economic, Social and Cultural Rights (CESCR) on the 4 March 2016 published Concluding Observations (OHCHR, 2016) based on the latest periodic reports submitted by the government of Kenya. Regarding the right to education, the CESCR expressed its concern that: "the State party has not dedicated sufficient resources to finance school facilities and qualified teachers, to ensure effective enjoyment of the right to free primary education for all", which goes against AP §34-37. It further took issue with the fact that "inadequacies in the public schooling

91. The Basic Education Act 2013 streamlines the provision of education, in institutions of basic education, in line with the constitution that was adopted in 2010.
92. Article 43 (f) of the constitution of Kenya recognises basic education as a human right customising International Convention on the rights to education.
93. Free Primary Education is an ongoing programme initiated in 2003 by the Kenyan government with the aim of increasing access at primary level and cushioning the poor by abolishing school fees. The government has been allocating a capitation grant of KES 1,020 per child per year.
94. Free Day Secondary Education programme is an ongoing programme initiated in 2008 by the Kenyan government targeting learners transiting from primary schools to secondary schools. The reintroduced Free Day Secondary Education (FDSE) with annual capitation grant of KES 10,265 per student as tuition, aimed at increasing access to secondary schools. In addition, parents were expected to pay charges for lunch (for day scholars only), uniform, caution money?what is caution money?, personal effects, examination fee and development projects at a maximum fee of KES 2,000 or more, subject to approval by members of the Board of Management, County Education Board (DEB) and Department of Education headquarters.

system have led to the proliferation of so-called 'low-cost private schools' and sub-standard schools funded by development aid which have led to segregation or discriminatory access to education particularly for disadvantaged and marginalised children, including children living in informal settlements and arid and semi-arid areas". Thus, the lack of availability or quality in public schools is forcing many families to resort to private education as the only acceptable option, with the government abdicating its responsibility to provide free quality public education. The government is also neglecting its responsibility to effectively regulate private education providers, many of which offer substandard services exploiting families' aspirations to give their children better opportunities in life. This is leading to the commercialisation of education (against the AP §48).

The Committee further urged the government to take all necessary measures to strengthen its public education sector. The state was advised to increase the budgetary allocation to primary education; improve facilities; build more public schools to serve informal settlements; reduce the high pupil-teacher ratio seen in most public schools by employing more teachers; take all necessary measures to improve the access to and quality of primary education for all without hidden costs; and ensure that provision of quality, universal and free education firmly remains in government control. Furthermore, the state was advised to regulate the education sector and ensure that all private education providers comply with human rights standards and the laws of the land.[95]

Thus, Kenya's Basic Education Act 2013, Part IV declares that pre-primary, primary and secondary schools are free and primary and secondary are also compulsory. Therefore, there is access to nine years of free schooling. However, there are issues of availability and also fees and levies charged in schools, which we will present in the following sections. It seems that the state is taking backward steps and neglecting its obligation to provide public education, with more and more families having to resort to private schools.

School in West Pokot, Kenya. PHOTO: ASHLEY HAMER/ACTIONAID

95. EI and KNUT (2016) *Bridge vs Reality: A Study of Bridge International Academies's for-profit schooling in Kenya.*

2. **Is there discrimination against particular groups (low-income families, girls, children in particular areas, children with disabilities, etc) and forms of segregation associated with the presence of private providers? This discussion focuses on Principles 13, 17, 23, 24, 25, 33, 55.**

According to Principle 25 "States must ensure that their laws, policies, or practices do not directly or indirectly discriminate in education. They must also address any situation breaching the rights to equality and non-discrimination with regards to the right to education, whether or not such situation results from their acts, including:

a. systemic disparities of educational opportunity or outcomes for some groups in society, including people living in poverty or in rural settings; or

b. segregation in the education system that is discriminatory on any prohibited ground, in particular socio-economic disadvantage."

However, the growing privatisation of the education sector in Kenya is creating and entrenching social segregation. As stated by the UN Special Rapporteur on the Right to Education, "privatization 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", and it "favours access to education by the privileged". High levels of privatisation in education have been shown to particularly affect marginalised and vulnerable groups, such as girls, as shown in a submission made to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). "Our global consultations have highlighted that privatization in and of education has specific negative consequences for women and girls." According to the report, "Lack of accountability of private schools and their staff is also a problem with gender specific dimensions. For example, [...]. Even in cases where there is an apparently firm government policy prohibiting the expulsion of pregnant girls, it may not extend to private schools, where oftentimes the government lacks adequate enforcement and monitoring mechanisms. In many countries [...] the government lacks the capacity and/or political power to regulate private schools, creating an education jungle in which abuses are frequently unreported. Similarly, private schools may not be held accountable when private school officials abuse girls [...] Lack of transparency and oversight might also be reflected in some private providers not having safe, clean and separate toilet facilities for girls and boys, not using gender-sensitive teaching and learning materials" (Right to Education Project *et al.*, 2014, pp.7-9).

Children with disabilities, especially those with special education needs, are at higher risk of being discriminated against by private providers. When providing infrastructure, extra teaching support or educational resources is more expensive, private schools tend to prioritise profit excluding those students. "Though evidence is scant, a study has shown for instance that in Kibera, children with disabilities constituted 11% of the school population in a primary school, while they constituted less than 1% of the children enrolled in non-formal schools in the area."[96]

The proportion of children enrolled in private primary schools has been increasing over time, from 4.46 in 2005, to 9.63 in 2007, 10.58 in 2009 and 15.99 in 2015.[97] The disparity of school completion in Kenya, although not as high as in Ghana or Uganda, is significant.

The growth of private schools in Kenya creates or deepens inequalities. The increasing marketisation of education is producing and entrenching social stratification based on purchasing power. High-income families have access to fully equipped high-quality schools that are too expensive for the rest of population to attend, thus making them more exclusive. The middle classes who live in urban settlements have access to schools of acceptable quality that most of the population still cannot afford. There are still other schools, the so-called 'low-fee' private schools that offer varying levels of quality to those willing to pay the fees. Many parents see this as the only acceptable option when public schools are not available (such as in many informal urban settlements) or are of poor

96. Parallel Report to the CRC May 2015, p.20. Allavida Kenya, *Access to and quality of basic education in Kibera, Nairobi: Study and synthesis report* (September 2012)
97. Data source: World Development Indicators https://data.worldbank.org/indicator/SE.PRM.PRIV.ZS?locations=GH

Table 9: Disparity in school completion

GEMR 2018[98]								
	Primary completion rate and disparity by location and wealth				**Lower secondary completion rate and disparity by location and wealth**			
	Location	Wealth	Completion rate (%) of the poorest students		Location	Wealth	Completion rate (%) of the poorest students	
	Location parity index	Wealth parity index	Poorest males	Poorest females	Location parity index	Wealth parity index	Poorest males	Poorest females
Ghana	0.75	0.51	42	43	0.61	0.36	28	26
Kenya	0.88	0.65	61	65	0.78	0.45	41	43
Uganda	0.48	0.22	15	14	0.33	0.06	3	3

quality. "Thus, the poorest and least educated parents tend to put their children in public schools, relatively wealthier and more educated parents are relatively more likely to put their children in low-cost or formal private schools, and the top 20% wealthiest and the most educated households living in these settlements are much more likely than the others to put their children in formal private schools. This is how a sorting between children on the basis of their socio-economic status is taking place, a micro-segregation between the poor themselves, whereby the poorest are put together in public schools, and the poor that can afford it put their children in different, private, schools, according to how much they can afford" (Hakijamii 2015, Parallel Report to CRC, 2015, p.19). This situation leaves those who cannot afford the private fees relegated to public schools of varying levels of quality, leaving some others without access to education. The growing privatisation is increasing inequality in accessing education and deepening cycles of poverty and exclusion by entrenching social classes through segregation. This goes against AP §14, §25, §48 and §33). Principle 33 affirms that: "States must take all effective measures to address the determinants of access to quality public education, to ensure that individuals have equal access to public education without discrimination or segregation."

Concerns about the potential drop in the quality of primary public education, especially among wealthier parents, has driven enrolments upwards in high-cost private academies (Oketch et al., 2010). There has also been a rise in low-cost private education, particularly in urban slum areas where public schools were already limited and FPE did not see the construction of new government facilities (Hakijamii, 2015). High potential for profits in low-fee private schooling has been recognised by corporate entities and international investment has grown in recent years, attracting one of the largest chains of low-fee private schools, Bridge International Academies (BIA), whose schools are aggressively marketed for economically disadvantaged families who can afford the fees.

Poor-quality education is also often an issue in many low-fee private schools, especially as enrolments grow. Local private investors often operate without being registered with the government, while BIA schools seek to be registered as informal schools. The variation of school accreditation and a lack of state monitoring contribute to uneven quality, with the hiring of untrained teachers and poor infrastructure (ESRC, 2015). Financial support from the Ministry of Education to low-fee private schools is often not utilised as intended, as low-fee private school owners frequently do not use government grants to purchase additional supplies and training but instead amortize the funds to existing expenses; the reduction in quality occurs while the profits of operators increase (Edwards *et al.*, 2015).

98. https://unesdoc.unesco.org/ark:/48223/pf0000259338

Figure 6: Trends in growth of public and private schools, 2000 - 2014

Table 10: Trends in growth of private schools in comparison to the public schools

Percent distribution of public and private schools, 2000-2015 disaggregated by school type, Kenya			
Year	**Number of public schools**	**Number of private schools**	**Percentage of private schools (%)**
2000	17,381	1,236	7
2001	17,544	1,357	7
2002	17,683	1,441	8
2003	17,683	5,857	25
2004	17,697	6,839	28
2005	17,807	7,547	30
2006	17,964	7,983	31
2007	18,063	8,041	31
2008	18,130	8,076	31
2009	18,543	8,124	31
2010	19,059	8,434	31
2011	19,848	8,719	31
2012	20,307	8,917	30
2013	21,205	8,824	30
2014	21,269		
2015	21,767		

Source: ESRC, Global Initiative for Economic, Social and Cultural Rights 2015

The growth (see Table 10) of low-fee private schooling in Kenya by both individual and chain operators is dotted with practices that are only exacerbating inequalities and discrimination between children in high-fee private academies, children in low-cost private academies and children in public primary schools. This is creating and exacerbating a social stratification based on families' purchasing power, exponentially increasing disparities in education opportunities.

The alleged affordability of low-fee private schools or academies has been criticised. A study refuted the claim that Bridge International Academies are affordable to poor Kenyan families because in the areas where BIA has expanded their schools, families on average spend 63% of their income on food alone: "families would have to spend between 44 per cent (for the richest quintile) and 138 per cent (for the poorest quintile) of their household income to send three children to BIA" (EI and KNUT, 2016: 50), parents face choices between education and food, rent or other necessities.

Therefore, low-fee private schools are not only creating and exacerbating inequality between groups but also within households, forcing families to prioritise some of their children over others.

The increasing privatisation of the education landscape is having a negative effect on children in public schools. It is acknowledged that with the exit of families with a higher socioeconomic background from public schooling, as private schools increase in number, there is a detrimental effect in terms of peer learning (due to the cultural capital that these children would have brought), accountability (parents with higher socioeconomic status are more confident and vocal in terms of participation and demanding accountability from schools), and school finances (fewer children mean fewer funds coming from government). Therefore, private schools are creating and exacerbating disparities in socioeconomic status, increasing segregation and stratification in Kenya.

10-year-old Furaha had to drop school to search for plastic bottle tops in the dumpsite to earn money and support her adopted relatives. Any school related cost is an unsurmountable barrier for the millions of children living in poverty. Yet, going to school is a lifeline for many of these children.

A child in a dumpsite near Mombassa, trying to find things to sell to support her family. PHOTO: KATE HOLT/ACTIONAID

3. **Have adequate funds been allocated to funding public education, and if not why not? Are tax incentives to the private sector limiting state provision for public education? Have donor funds gone to support private or public-private partnerships (PPP) arrangements? This discussion focuses on Principles 15, 16, 18, 34, 35, 43, 45.**

The responsibility for financing public education lies with the government, overarching Principle 2 affirms that "States must provide free, public education of the highest attainable quality to everyone within their jurisdiction as effectively and expeditiously as possible, to the maximum of their available resources." But, in reality, substantial contributions are also made by parents, development partners, private sector and non-state actors. Public primary schools receive support from the national government through the Ministry of Education in terms of human and physical resources and financial resources including the annual capitation grant. In addition, schools receive funding support in the form of in-kind and cash contributions paid by families and other contributors. Other sources of funding include internally generated income such as money raised in school festivals or through the sale of items produced at the school.

The public education sector also receives external funding from development partners, including USAID, DFID, UNICEF, UNESCO, SIDA, OPEC, WFP, IDA, ADB and the World Bank, among others. Local, national and international non-governmental organisations are also key actors in the financing of basic education, in both public and private education sectors. Their participation may be in the form of direct support to schools with equipment, or support to students by providing scholarships

Government financing of education in Kenya has been declining. The share of education as total government expenditure declined from 27.5% in 2005 to 17.21% in 2013[99] and 16.5% in 2015 (IUS, UNESCO). This reduction goes against the principle of non-retrogression (AP § 43, 44 and 45), as it has a negative impact on the enjoyment of the right to education. The share of the MoEST budget as percentage of gross domestic product (GDP) rose from 6% in 2001/02 to 7.8% in 2005 but declined to 5.4% in 2013 and has continued declining, even when states should never reduce the budget allocated to public education. Such decreases could constitute a retrogressive measure prohibited under international human rights law, unless it is done on a temporary basis in exceptional circumstances and the state can publicly demonstrate that the reduction has been introduced after the most careful consideration of all alternatives and is fully justified by reference to the totality of its human rights obligations and in the context of the full use of its maximum available resources.[100] In terms of the sensitivity of the budget, we can also see a decrease in the proportion of the education budget allocated to primary education from 66% in 2001 to 36.3% in 2015 (IUS, UNESCO), which raises concerns about negative effects of this budget allocation on equity, where primary education should instead be prioritised. This decrease in budget allocation can also be argued to be behind the declining quality of government schools as well as schools charging extra fees to be able to make ends meet.

Free Primary Education[101] (FPE) and Free Day Secondary Education[102] (FDSE) were introduced and implemented by the government of Kenya in 2003 and 2008, respectively, to cover all children in all public primary and day secondary schools. However, the sums of KES 1,020 ($9.84) and KES 10,265 ($99) in terms of annual capitation grant on every primary pupil and secondary student respectively amounts to less than 30% of the actual funds required to attend a public primary or secondary school system. Despite the policies on free primary and secondary education, families have remained the main financial partners

99. Expenditure for the Ministry of Education, Science and Technology for financial years 2009/10-2013/14
100. CESCR, General Comment 13, para. 45; CESCR, General Comment 3, para. 9. These measures may exceptionally be justified in case of an unforeseen largescale event, such as a natural catastrophe, where international aid is unable to address the increased need, and where it is a temporary short-term response.
101. Free Primary Education is an ongoing programme initiated in 2003 by the Kenyan government with the aim of increasing access at the primary level and cushioning the poor by abolishing school fees. The government has been allocating a capitation grant of KES 1,020 per child per year.
102. Free day Secondary Education programme is an ongoing programme initiated in 2008 by the Kenyan government targeting learners transiting from primary schools to secondary schools. The reintroduced Free Day Secondary Education (FDSE) with annual capitation grant of KES 10,265.00 per student as tuition, aimed at increasing access to secondary schools. In addition, parents were expected to pay charges for lunch (for day scholars only), uniform, caution money, personal effects, examination fee and development projects at a maximum fee of Kshs 2,000 or more, subject to approval by members of the Board of Management, County Education Board (DEB) and Department of Education headquarters.

"My family is very poor, before I joined school I was scavenging at the dump site all day. I hate the dump site, I am afraid of being cut by broken bottles and I am also afraid of the older people on the dump site who scavenge. It was my mother who brought me to school so that I can learn".

Margaret, 10 years old (Mombassa, Kenya)

Margaret at her primary school near Mombassa, Kenya. PHOTO: KATE HOLT/ACTIONAID

of government in public education financing, with KES 116.4 billion in 2010 ($1.12 billion). Because of the underfunding, households are paying various tuition fees or contributions (KES 32 billion or $308 million) to public educational institutions. They also pay boarding and user fees of KES 17 billion ($164 million) and spend KES 24 billion ($231 million) on the purchase of uniforms, school supplies, transport services or extra tuition. They have received KES 2.6 billion as scholarships from public bodies and non-governmental organisations (NGOs). The net expenditure of households amounts to KES 113.8 billion ($1 billion), 34.5% of total expenditure in secondary and primary schools (MoEST, 2015). This goes against the right to free and compulsory education (AP §29) and is reverting the gains made in terms of access to education for disadvantaged groups, including girls. Charging fees leads to the exclusion of those who cannot afford them, violating their right to education.

However, charging fees in public schools is allowed under Section 29 of the Basic Education Act, which indicates that although education is free, "other charges may be imposed at a public school with the approval of the Cabinet Secretary in consultation with the county education Board provided that no child shall be refused to attend school because of failure to pay such charges". As a result, most schools charge fees ranging from a few hundred to a few thousand Kenya shillings per term, and these fees are generally mandatory in practice, as children are expelled from schools if their parents cannot pay.[103] These charges not only mean that free education is an illusion in Kenya, they also constitute, in themselves, a form of privatisation of education in Kenya.

Our study in Kuria, Kenya, where 191 households were interviewed, painted a very similar picture, with families paying an average of Kshs 1,655 ($16) per term per child in public schools and Kshs 4,834 ($48) per term per child in private schools. According to respondents, the most common fees charged in public schools were identified as examination fees, admission and uniform, and sports fees, in this order. In private primary schools, the charges included examination fees, uniform and sports clothes, and admissions. Admission fees are compulsory according to 100% of respondents; only 78.8% reported Parent-Teacher Association (PTA) fees to be compulsory. Despite abolition of exam fees, 90.9% reported that exam fees are compulsory.

103. Preliminary parallel Report submitted by the Economic and Social Rights Centre (Hakijamii, 2015) and the Global Initiative for Economic, Social and Cultural Rights on the occasion of the examination of the report of Kenya during the 71st session of the UN Committee on the Rights of the Child Submitted May 2015. CRC Parallel report, p.11

These fees limit children's right to free basic education, as non-payment often leads to children expelled. The Basic Education Act 2013 stipulates that no tuition or admission fees may be paid, although it seems that schools avoid infringing the law by charging fees for other items not expressly forbidden by this Act, such as uniforms and sport clothes, sport fees, exam fees or PTA contributions. These costs limit access to education for economically disadvantaged families rather than improving education attainment. For example, in East Kuria constituency 24% of the population have no formal education (four points above the county average) and only 12% have a secondary level of education or above (Ngugi, 2013). Migori County in Nyanza region has a fertility rate of 4.5; moreover, those with no education have a fertility rate of 6.5. In terms of wealth, Nyanza region has 16.6% in the lowest quintile, 31.2% in the second lowest quintile, 23.8% in the third lowest quintile, 17.5% in the fourth lowest quintile and 10.9% in the highest quintile (Kenya National Bureau of Statistics, (KNBS) 2015: 18). Data from the household survey in Kenya (KNBS, 2014) shows that half of households in Kenya earn KSh 7,000 ($70) per month or less, so paying the average cost of education in public school for only one child would require 5.9% of household income, whereas it would require 17.3% of household income to send the same child to a private school. With a fertility rate between 4.5 and 6.5, sending four children to school would require 23.6% of the household income for public schools and 69.2% for private schools, forcing families to prioritise among other pressing needs and very often, among members of the family, with boys often being preferred over girls (Ashley et al., 2014). These findings reinforce the urgent need for increased allocation of adequate resources for effective implementation of free basic primary education to benefit majority of children especially from poor families.

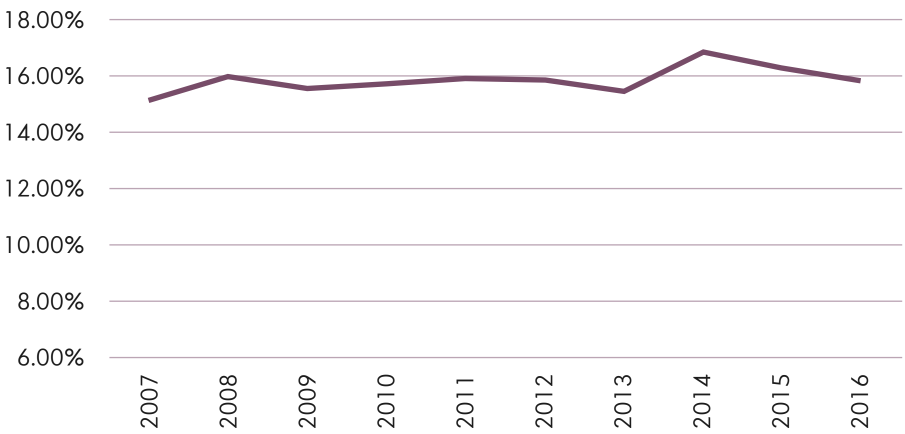
The project community partners in Kuria, supported by ActionAid Kenya, conducted a survey on the utilisation of free primary education funds in 17 primary schools in Kuria. The findings indicated that funds, as released by the national government, were insufficient in meeting the needs of the respective schools. Furthermore, funds are normally released late and therefore do not meet needs when required. In some instances, funds are utilised to solve the most pressing needs of the schools and not for the purpose for which the allocation was made. Subsequently, most heads of schools are not comfortable to share how the funds are utilised, particularly with parents, board of management or other education stakeholders.

Kenya needs to increase not only the share of the national budget allocated to education, but also the size of the national budget, by improving its domestic resource mobilisation. Kenya's tax-to-GDP ratio is at 15.88% just managing to cross the 15% minimal recommended tax-to-GDP ratio which, according to the IMF, is necessary for sustained economic growth (Gaspar et al, 2016, IMF working paper). However, it is lagging behind the mean of lower-middle-income countries[104] and is still significantly lower than the 34.3% average of OECD countries (OECD, 2018). Moreover, additional concerns are raised by the fact that a downward trend of the ratio has been observed over the last few years in Kenya, whereas in Uganda, Tanzania and Rwanda it has been increasing of late. Apart from this caveat, it is also important to acknowledge that the country has not reached (and has been moving away from) the tax-to-GDP ratio threshold of 20% which, according to the Education Commission, would allow the country to provide universal education.

Failure to reach an adequate tax-to-GDP ratio in Kenya is closely associated with ineffective taxation of multinational corporations. Tax Justice Network Africa and ActionAid published a report *Still racing toward the bottom? Corporate tax incentives in East Africa* (2012) claiming that as a consequence of 'race to the bottom'[105] and poor regional coordination, Kenya, Rwanda, Tanzania and Uganda, were losing up to $2.8 billion a year from corporate tax incentives (CTI), with *Kenya accounting for US$1.1 billion of the loss*. Similarly, a World Bank report (2017) points to inadequately high CTIs in the country. It claims that based on very conservative estimates (adjusting for CTIs granted for legitimate socioeconomic reasons) *Kenya is still losing 1.9% of GDP due to tax incentives*.

104. According to the IMF (2011) tax-to-GDP ratio in lower-middle-income countries was 17.7% in 2010.
105. 'Race to the bottom' - harmful tax competition represented by provision of tax incentives which are granted to MNCs aiming to attract more FDI. Tax Justice Network Africa and ActionAid (2012). *Still racing toward the bottom? Corporate tax incentives in East Africa* https://actionaid.org/publications/2016/still-racing-toward-bottom-corporate-tax-incentives-east-africa

Figure 7: Trends in Tax-to-GDP ratio, in Kenya



Moreover, apart from CTIs, a bulk of tax revenue is lost due to illicit financial flows that multinational corporations engage in. In particular, *Kenya was losing US$1.06 billion (KES 107.06 billion) due to cross-border tax avoidance in 2013* – significantly more than other East African Community countries (UNU-WIDER, 2017). This amount accounted for 15.18% of the total Kenya's tax revenue in 2013. The latest study findings by ActionAid indicates that Kenya is losing at least US$1.88 billion (KES 189.88 billion) each year to harmful tax incentives. These are critical resources needed for educational development programmes and shows that the government is not using the maximum available resources to provide free quality public education as stated in the AP §29 and §30.

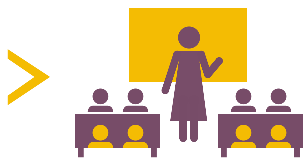
The tax incentive regime in Kenya remains non-transparent, and given that few existing incentives have been curbed and new ones have been introduced since 2008, the total cost in foregone revenues could still amount to at least US$1.1 billion and possibly more (ActionAid/Tax Justice Network Africa, 2016). The opportunity cost for this foregone revenue highlights the responsibility of the government to adequately tax companies. Using the 20% of the national budget recommended as the minimum, 20% of $1.1 billion would amount to $220 million, which could have paid for a place in a primary school for the estimated 956,000 out-of-school children, plus the salaries for an extra 10,000 qualified teachers, plus free school meals for one year for 300,999 children.[106] However, there is hope: at the Global Partnership for Education Financing Conference held in February 2018, Kenya pledged to spend KES 1,257 billion (around US$12.46 billion) on education between 2018 and 2020, an increase of 38.9% in absolute numbers compared to the previous three years.

Kenya: Tax losses vs education resources

If 20% of the $1.1 billion lost to tax incentives annually was used for education, this $220 million could pay for:

956,000 extra school places for all children out of school

10,000 additional qualified teachers



school meals for **300,892** children

106. https://actionaid.org/publications/2017/tax-privatisation-and-right-education

Private and public foreign donors also play a role in supporting the privatisation of education in Kenya. Some donors are opting for supporting private education providers rather than government schools. There has been severe criticism of the World Bank for its lack of support to the Kenyan public education sector and promotion of the private sector, specifically through funding of Bridge International Academies (BIA) through a $10 million loan from the International Finance Corporation.

The state must prioritise the provision of free, public education of the highest attainable quality (Principle 34) and development partners must support Kenya in this endeavour (Principles 38, 75 and 79). They should support the Kenyan government's commitment to the Global Partnership for Education declaration by re-directing funds allocated to the private sector, especially the BIA, to the public sector. These funds would improve the provision and quality of public education, ameliorating much of the discrimination and segregation that denies many Kenyan children their right to quality education. Donors should plan their support by following section 6 of the AP on extraterritorial obligations of states, whose overarching principles states that "International assistance and cooperation, where provided, must reinforce the building of free, quality, public education systems, and refrain from supporting, directly or indirectly, private educational institutions in a manner that is inconsistent with human rights."

4. **Do the PPP arrangements in place for schools meet the conditions laid down in the AP which outline processes for these arrangements in line with respecting human rights obligations? Principles 34, 50, 64, 65, 66, 67, 68, 69, 73.**

The Alternative Provision of Basic Education and Training (APBET) sector, which was formerly known as Non-Formal Education, opens the possibility of public-private partnerships in education, as private non-formal schools registered under the Ministry of Education can receive funding from the government. According to the APBET guidelines,[107] "these guidelines will mainly apply to service providers who support education in the informal settlements within the cities of Nairobi, Kisumu, Mombasa and urban areas as designated by law. The guidelines will also apply to APBET institutions as well as mobile and feeder schools in the arid and semi-arid nomadic counties".

Overarching Principle 5 affirms that "States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including through tax deductions, land concessions, international assistance and cooperation, or other forms of indirect support comply with applicable human rights law and standards and strictly observe all substantive, procedural, and operational requirements." Following the Abidjan Principles, PPP comply with human rights if they comply with the substantive, procedural and operational requirements stated in Principles 65-73. It is worth highlighting that commercial or discriminatory institutions are deemed ineligible according to Principle 73: "States must not fund or support, directly or indirectly, any private instructional educational institution that: a. abuses the rights to equality and non-discrimination, including by being selective; or expelling or sorting learners, whether directly or indirectly, on the basis of the socioeconomic disadvantage, whether of the learner, family, or community, gender, disability, or any other prohibited ground; b. is commercial and excessively pursues its own self-interest; c. charges fees that substantially undermine access to education; d. does not meet any minimum standard applicable to private instructional educational institutions, or any other applicable human rights law or standards, or is not of adequate quality; e. does not comply with all of its domestic or international financial obligations; or f. contributes to an adverse systemic impact on the enjoyment of the right to education or undermines the realisation of human rights in any other way."

5. **Do the arrangements in place for the regulation of private schools meet the conditions set out in the AP? The obligations to regulate: Principles 47, 48, 50, 51, 52, 53, 54, 55, 58, 60, 80, 84, 85.**

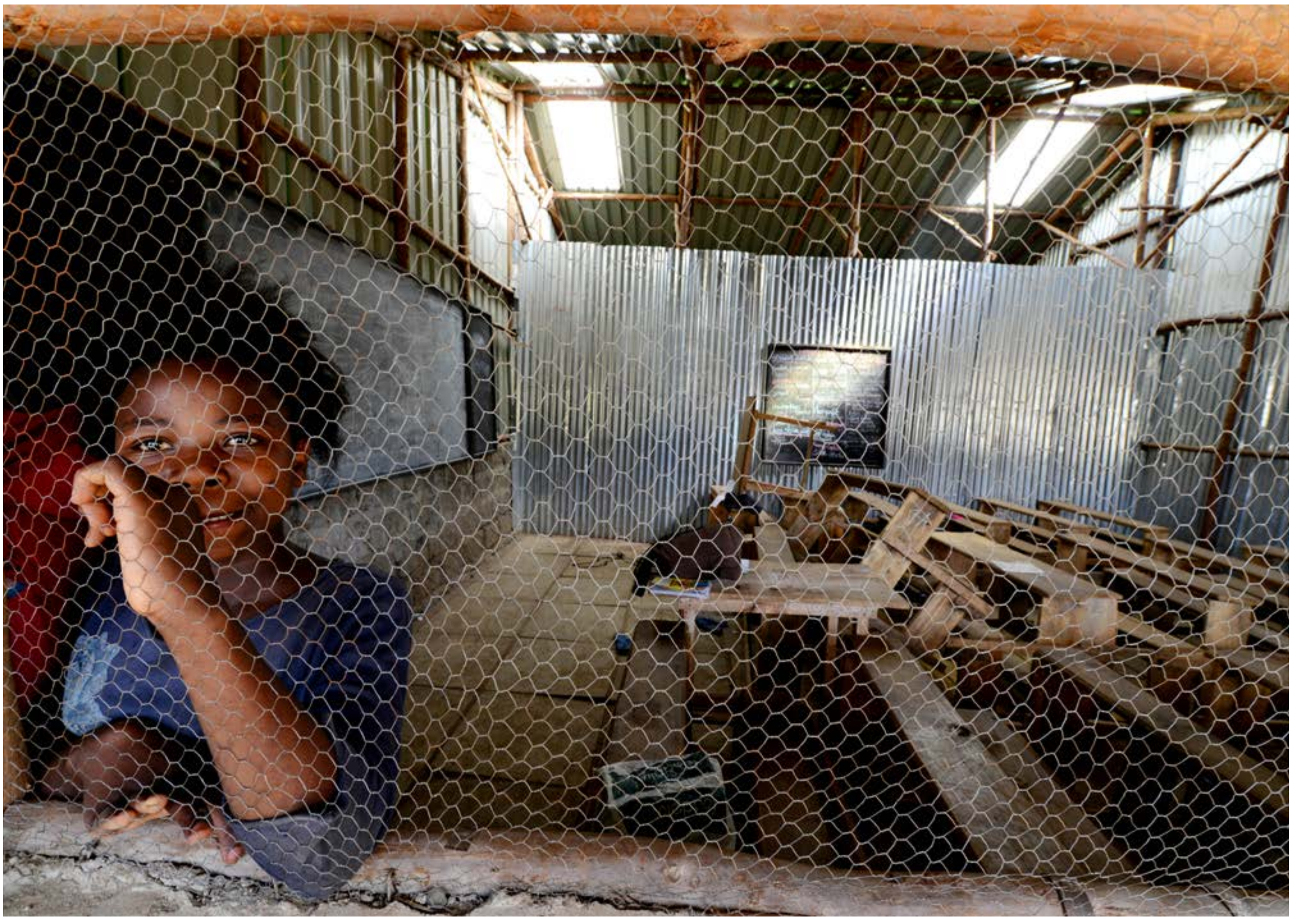
Kenya is a signatory to several international conventions and treaties. Article 2 (6) of the Constitution of Kenya 2010 recognises that "Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution." Article 43 of the 2013 Basic

107. https://doj19z5hov92o.cloudfront.net/sites/default/files/media/resource/alternative_provision_of_basic_education_and_training_apbet_option_2_cover.pdf

Education Act regulates private education, but many private schools in Kenya are not registered with the government. Private schools are meant to go through a process of recognition once they meet basic standards. However, research in Kenya shows private schools may gain recognition through corruption and bribery. Delayed inspections, lost forms, postponed committee meetings, cumbersome paperwork, and complex land registration requirements, prompt many owners to pre-emptively open their schools without recognition, operate underground, or bribe officials without meeting standards.[108] This undermines the education sector as a whole and goes against Principle §51: "States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education where private actors are involved in the provision of education. This includes situations in which private actors conduct their activities without any State involvement or control, or when they operate informally or illegally."

There are three distinct types of private education:

- *High-cost private international academies* – mostly found in the capital city and discreet serene rural areas – owned by wealthy individuals (both local and international investors) basically for children of the rich, diplomats and other high net worth individuals.
- *Mid-level cost academies* – largely run and sponsored by faith-based organisations and wealthy individuals whose clients are children of mid-level income earners (teachers and civil servants) determined to escape overcrowding and quality issues in public schools
- *Low-cost private academies* – largely operate in the rural and urban slum areas. These academies are owned and run by individuals and multinational business corporations, usually for economically disadvantaged children.



'Low fee' private school Bridge International Academy, Nairobi, Kenya. PHOTO: XAVIER BOURGOIS

108. http://www.prachisrivastava.com/uploads/1/9/5/1/19518861/srivastava_2013_low_fee_private_schooling_review_chapter.pdf

The policy for Alternative Provision of Basic Education and Training (APBET) creates another type of private school and defines non-formal schools as *"institutions that resemble formal schools in that they aim at transmitting a formalized curriculum leading to formal school examinations. They however differ in school practices, management, financing, staffing conditions, registration, operating environment and school structures."* Under this policy, non-formal schools have less stringent requirements in terms of quality, infrastructure, teachers' conditions, etc, than public schools, both in law and as is tolerated in practice. The APBET policy also creates a public-private partnership in education, as private non-formal schools registered under the Ministry of Education can receive funding from the government. The government also recently enacted the Registration Guidelines for Alternative Provision of Basic Education and Training.[109] Yet, it is unclear how these guidelines fit within the legal framework set by the Basic Education Act – which, arguably, aimed at eliminating non-formal schools, to ensure the provision of formal, quality, public education for all.[110]

While the recognition of and support to alternative private schools flows from a commendable effort by the government to include children who would otherwise not be able to attend school in the formal education system, the policy has largely been abused. In the country's major urban informal settlements where demand for basic education is high because public schools are unavailable, private individuals who are keen on making quick money from some of the country's poorest have used the policy to provide poor-quality basic education in poorly structured schools in the name of 'non-formal schools'. The vague definition of non-formal schools and tolerance from the authorities also allow for large commercial education actors to register as non-formal schools and benefit from the lower legal requirements – although it is not clear why largescale organised companies like Bridge International Academy would not rather be registered as private schools.

The regulation of private education providers is not effective and international human rights bodies have recommended the prioritisation of free primary quality education at public schools over private schools and informal low-cost schools, and regulate and monitor the quality of education provided by private informal schools (CRC/C/KEN/CO/3-5, paras. 56-57, 2 February 2016). This goes against AP §40 and §41).

Table 9 assesses the Basic Education Act 2013 and APBET against the minimum standards stated in Principle 55 of the Abidjan Principles. The number of gaps indicates that revision of this Act and APBET is necessary in order to comply with human rights law.

Rural 'low fee' private school in Nyeri county, Kenya. PHOTO: SYLVAIN AUBRY

109. https://doj19z5hov92o.cloudfront.net/sites/default/files/media/resource/alternative_provision_of_basic_education_and_training_apbet_option_2_cover.pdf
110. CRC parallel report.

Table 11: Assessing minimum standards in Kenya's Education Law

55.AP Minimum standards	2013 Basic Education Act	APBET
a. Governance i. registration and licensing	Yes. 52.	Yes. Registration procedure
ii. reporting requirements	No	No
iii. participation of stakeholders	Some. Guiding principles	No
iv. management of resources;	Some. 18. Functions of the County Education Boards	Some. 4.4 Standard Requirements for Leadership, Management and Community Involvement
v. level of fees	No	No
vi. transparency	No	No
vii. conditions and transparency of learners' certification.	No	No
b. pedagogical freedoms;	No	No
c. freedom of association and speech;	No	No
d. protection against discrimination	Some. 34. No denial of admission. section 39(c)	No
e. teaching qualifications and working conditions,	Yes. 52	Some. 4.2. All APBET teachers shall meet the minimum entry requirements in terms of teacher training for the level they will be teaching A minimum %30 of the teachers at an institution of APBET shall have obtained a relevant teacher training certificate from a recognised teacher training institution at registration. The rest must be undertaking recognised in-service training and management of the institution shall progressively ensure that all their teachers are registered with the Teachers Service Commission by the third year of registration of the institution.
f. pedagogical methodologies	No	Some. APBET institutions may adhere to the vertical teaching policy. g) APBET institutions shall embrace use of innovative teaching approaches such as multi-grade and multi-shift as needs may arise. h) APBET shall ensure effective teaching of all subjects including non-examinable subjects as per the approved curriculum.
g. suspension and expulsion	Yes. 35. Incentives and prohibition of holding back and expulsion	No
h. discipline and corporal punishment;	Yes. 36. Prohibition against physical punishment and mental harassment to the child	No
i. failure or delay in the payment of fees;	No	No
j. secure and safe learning environments	Some. 52	No
k. accessibility and reasonable accommodation	Some. PART VI – PROMOTION OF SPECIAL NEEDS EDUCATION	No
l. physical and mental health	No	No
m. protection from threatening, shaming, and bullying	Some. 52	No
n. pro excessive marketing or advertising	No	No
o. privacy and data protection	No	No
p. teacher/learner ratio	No	Yes. The Pupil Teacher Ratio (PTR) in a primary or secondary school shall not exceed 55:1 and 45:1 respectively, or as approved by the MoEST.;
q. other standard for the protection of human rights.	No	No

Recommendations

Given the analysis above, we recommend that Kenya increases its allocation to the education budget to redress the retrogression, returning to the levels of 2005, allocating 27.5% of the national budget to education. Kenya also needs to increase the size of the national budget by increasing progressive taxation, eliminating illicit financial flows, tax evasion and avoidance. Thus, the government must:

- **Ensure** adequate financing for public free and quality primary and secondary education. A minimum of 20% of the national budget, complying with the non-retrogression and holding the 27.5% in 2005. Maximum available resources must be used, and these resources must be raised through progressive taxation, including curbing tax avoidance and evasion, especially reviewing and limiting tax incentives given to corporations.

- **Ensure** that public education is really free (so schools charge no fees or levies) and of good quality, meeting minimum standards. The state should enforce the law.

- **Increase** the size, share, sensitivity and scrutiny of the education budget to eliminate all fees in compulsory education and particularly promote the progression of students from disadvantaged groups.

- **Prioritise** the building and resourcing of public schools in marginalised areas to increase the availability, accessibility, acceptability and adaptability of education.

- **Adequately** regulate private providers of education, by reviewing current legislation in light of the Abidjan Principles. Legislation then needs to be effectively enforced. These regulations should include provisions limiting the level of fees and adding transparency of the amounts charged and their use. New provisions should also ensure conditions and transparency of learners' certification, and protect pedagogical freedoms and freedom of association and speech.

- **Address** the current stratification created or reinforced by the growth of private schools, and eliminate discrimination and systemic disparities.

- **Take positive action** to eliminate and prevent all forms of discrimination and ensure equality.

Primary school children during a break, Karamoja, Uganda. PHOTO: KIBUUKA MUKISA OSCAR/ACTIONAID

UGANDA

Introduction

Uganda is a predominantly young country (60% of the total population is under the age of 18), with a population growing at a rate of 3.03% (UNESCO, 2016). Therefore, there is a need for increasing resources for the education sector.

Uganda's current formal education system is a four-tier structure modelled along a 7-4-2-3 year progression pattern: seven years of primary education, followed by four years of lower secondary or Ordinary level ('O' level), two years of upper secondary or Advanced level ('A' level); and three to five years of tertiary education. Non-formal education takes the following forms: Early Childhood Care and Education (ECCE); Supplementary Education; Complementary Education; Adult Literacy with Skills Development; Personal Development; and Professional and Vocational Training.

The Uganda government adopted a liberalisation policy in education in 1993 with the broad objective of expanding access to equitable and quality education at all levels and enhancing efficiency and effectiveness in service delivery. The idea was to harness resources from different actors such as private individuals, NGOs, civil society and faith-based organisations. The government established *Guidelines for Establishing, Licensing, Registering and Classification of Private Schools/Institutions in Uganda* managed by the Private Schools and Institutions Department. The department is charged with the overall coordination, regulation, policy formulation and guidance on all matters regarding these private early childhood education (ECD), primary, secondary, technical and vocational institutions (BTVET).

Although private education facilities have contributed to expanding access to education, they create and intensify several problems that will be outlined in this report. One of the problems is that the government continues to rely on the private sector for the provision of education. The private sector is expected to contribute UGX 2,848,920 million (17%) of the overall estimated cost of education in the next three years.

The estimated contribution to the primary sub-sector is about 10%.[111] The number of private schools continues to increase; private primary schools accounted for 10.45% enrolment in 2002, rising to 20.8% in 2016. Many private education facilities are established to generate profit, and this can have many implications for education access and quality, leading to violations of the human rights of students and teachers. Low-cost private schools tend to operate like businesses, trying to maximise profit for their owners while charging a reasonably low rate. This push for profit causes a deliberate lowering of operational costs and standards, especially for lower-income schools. They tend to be built on smaller pieces of land, have limited resources such as equipped laboratories for learning and inadequate physical infrastructure such as dormitories, toilets and even classrooms.

There are issues of transparency and affordability. Although the government reserves the right to approve fees and requires that any fee structures and increases are cleared with the MoES, it is not clear to what extent the department is monitoring fees. Many private schools charge several fees in addition to tuition, such as development fee, building fee and others.

The government is entitled to define the management structure and provide financial standards for private education institutions. This is being done with some measure of success. The start of every year and term sees institutions closed down for various reasons by the Ministry of Education and Sports. One example is the Bridge International Academies:[112] their failure to comply with requests from the Ministry to meet its legal and educational standards resulted in a decision by the High Court of Uganda to uphold the Ministry's order to close all 63 BIA schools in Uganda. Following 18 months of dialogue with the company, the government confirmed in a statement made public on 6 February 2018 that it had decided earlier in the year not to allow BIA to open for the academic year 2018 for failing to meet standards regarding the "safety and security of pupils", to meet the requirements for licensing, and to submit full documentation for licensing.[113]

1. **Is there access to free quality public primary and secondary education for nine years for all children and has the growth of the private sector contributed to limiting this provision? This discussion focuses on Principles 10, 11, 14, 17, 29, 48, 52.**

Uganda ratified the UN Convention on the Rights of the Child (UNCRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which declare education as a right and states that it should be free and compulsory, at least at primary level. Uganda adopted national legislation to eliminate school fees at primary level through the 1997 Universal Primary Education (UPE) policy and Article XVIII in the 1995 Constitution amended in 2005. The elimination of school fees led to a dramatic and sudden surge in enrolment as a result in 1996 – primary school enrolment grew from 3.4 million to 5.7 million. In Uganda, the UPE guidelines of 2008 abolished tuition fees for all children, and the government of Uganda pays capitation grants of UGX 10,000/= ($2.78) per child per year. In addition, Universal Secondary Education (USE) has been introduced in grant-aided schools and some selected private schools on a private public partnership to ensure that children access free education. However, the grants provided by government in both UPE and the USE have proved to be inadequate. These laws and policies have had positive consequences in terms of levels of enrolment, particularly increasing access to education for girls, rural children and other disadvantaged groups. However, the education budget and resources did not meet the unprecedented demand, and the levels of underfunding led to a decline in the quality of education being provided, as well as forcing schools to demand money from families to cover budget gaps.

Evidence from National Education Accounts (NEA) report (2016) reveals that the Uganda government funds only about 45% of total education spending, forcing households to contribute the other 55% at all levels of education[114] (see Figure 8). The government

111. MoES ESSP FY2017/18 - 2019/20
112. See 'Bridge Schools under fire in Kenya and Uganda', *The Observer*, at http://observer.ug/education/56059-bridge-schools-under-fire-in-kenya-and-uganda.html
113. Find the statement from the government of Uganda at: http://bit.ly/2FSjb8q and http://bit.ly/2BHyVfF, and the civil society analysis: http://bit.ly/2BLNJL2.
114. National Education Accounts Report (2016) at: http://www.uis.unesco.org/Education/Documents/nea-visual-results-report/Uganda_NEA_report-2016-en.pdf http://uis.unesco.org/sites/default/files/uganda_nea_report-2016-en.pdf

has an obligation to provide free primary education for all children, but even with UPE between financial years 2008/2009 to 2013/14, households (parents and individuals) on average contributed 65% of the total (recurrent and capital) primary education sub-sector. The same report further reveals that this household expenditure has generally been increasing over the past years due to the rising cost of living, forcing families to make huge sacrifices in terms of providing for other needs or prioritising some children over others. The underfunding goes against Principle 15 of the AP, which states that "States must allocate the maximum of their available resources towards ensuring free, quality education, which must be continuously improved." According to the NEA (2016), the bulk of household education expenditure is on fees (43%), followed by boarding expenses, pocket money, transport, uniform, textbooks, etc. Thus, the increasing household expenditure on education is related to the increasing privatisation of the sector, with the cost of private education being much higher than the cost of public education, as can be observed in Table 9. However, public schools are not free either.

Figure 8: Household expenditure by level of education, financial year 2013/14. Source: NEA data 2009/10 - 2013/14

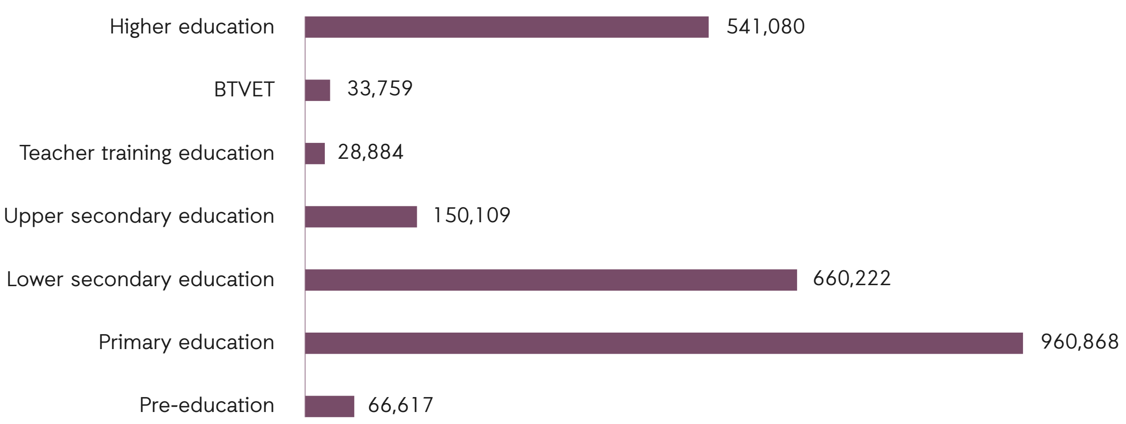


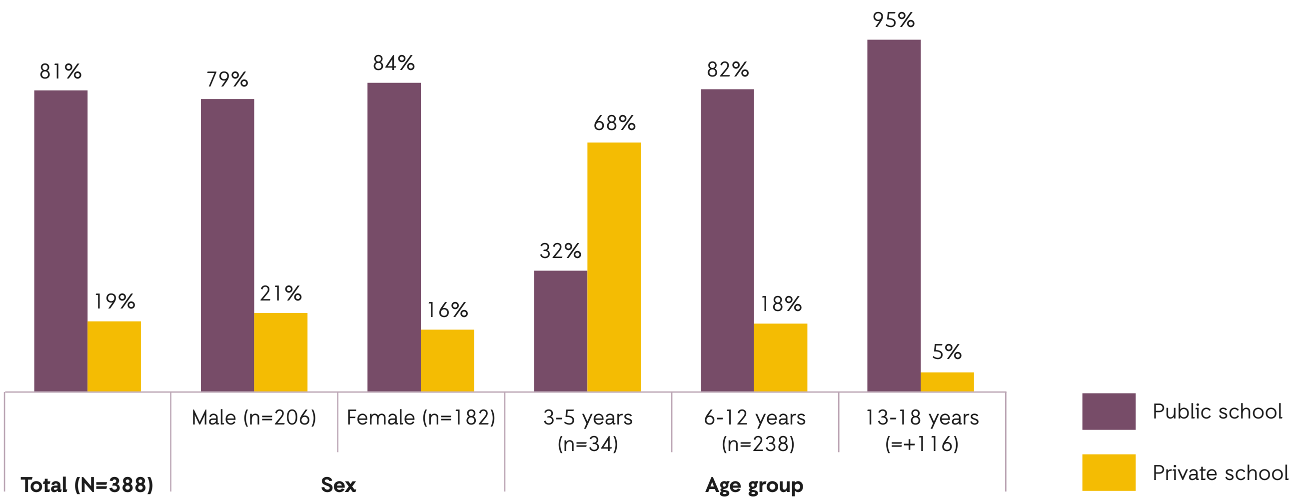
Table 12: Average household expenditure at 2010 prices per student level (public or private) financial year 2013/14 (UGX). Source: NEA data 2009/10 - 2013/14

	Public	Private
Pre-education	129,906	129,906
Primary education	92,539	525,778
Lower secondary education	452,325	1,176,895
Upper secondary education	802,367	2,127,016
Teacher training education	1,142,205	622,342
BTVET	718,228	554,015
Higher education	1,863,621	3,305,980

ActionAid[115] carried out research into the cost of education, and in our sample in Nebbi (West Nile), parents made both voluntary and compulsory payments to supplement the efforts of the government in schools through development funds and other fees averaging to a total of UGX 125,357 ($34.82) per year per child in public schools. The consequences of not making those contributions often range from children being sent back home, to not being allowed to sit for exams, confrontation and coercion of parents by the school management or PTA, thereby denying those children access to free and compulsory education. Those families who sent some of their children to private schools (with a preference over boys, as can be seen in Figure 9) had to pay UGX 643,460 ($178.74) per year, which is over five times the amount they have to pay for public schools, making them unaffordable for most families. With West Nile region having an average real income of UGX 1,860,000 ($516.69) per year (Uganda Bureau of Statistics (UBOS), 2014: 97) and a fertility rate of 6.9 (UBOS, 2014: 140), if five of their children were in school a family would have to pay UGX 626,785 ($174.2) for public schools, that is 33.7% of household income, and for private schools this amount would be UGX 3,217,300 ($894.19), representing 173% of the household income, making them completely unaffordable for the majority and only reserved to a small rural elite. According to the household survey we carried out in Nebbi (West Nile), 82% of respondents' 6-12-year-old children and 95% of those aged between 12 and 18 attend government public schools.

Families are being forced to make up for the inadequate funding provided to the UPE and USE, by being requested to pay for a myriad of fees and levies at public schools. Even more, the decreasing levels of quality that followed the understaffing, poor infrastructure and lack of materials is compelling many families to resort to private education. These families do not see private schools as an alternative but as the only choice when the public school/s they have access to is of poor quality. This poor quality of public education in Uganda has been documented in several studies such as UWEZO (2014), and the Ministry of Education and Sports, together with the Stromme Foundation, Save the Children, UNICEF and UNHCR[116] which show the low levels of literacy and numeracy among Ugandan children attending public schools. This means that for most of the population, especially those who want a higher quality education, the only option is private school. Principle 13 affirms that "States must ensure that all educational institutions, public and private, are inclusive and are at least of adequate quality." Principle 14 explains the 4As of the right to education – availability, accessibility, acceptability and adaptability – but these are not met in many schools.

Figure 9: Enrolment in public and private schools in Nebbi, Uganda



Source: Ron Balsera, 2017

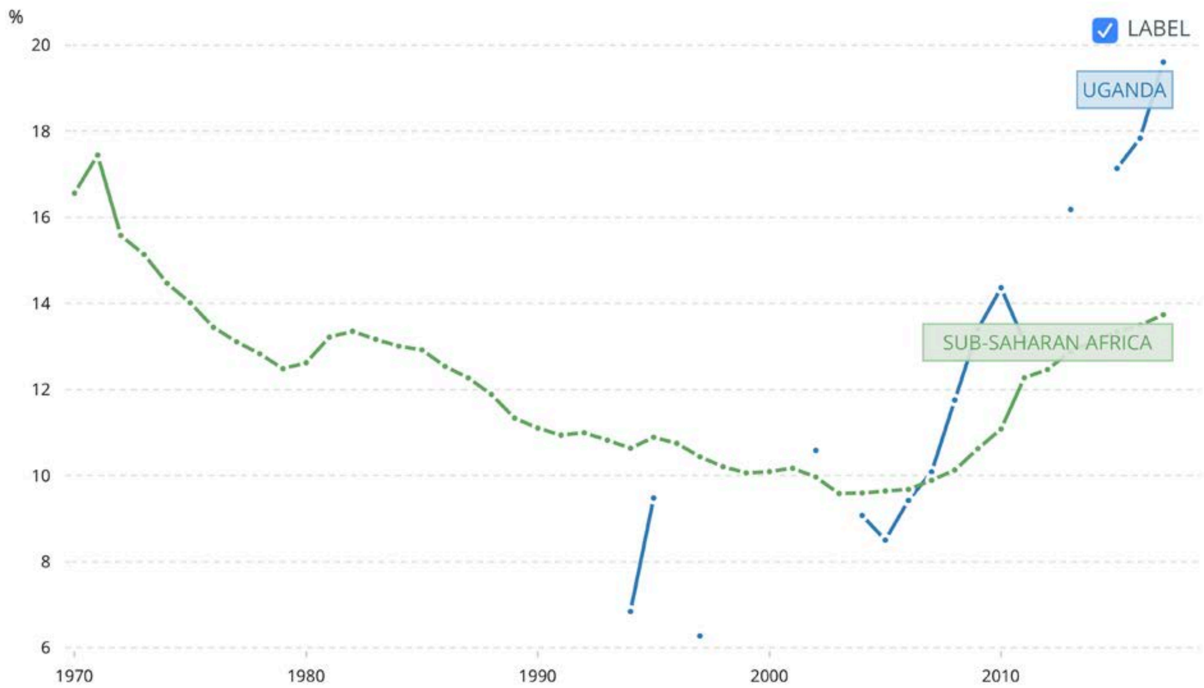
115. *Tax, Privatisation and the Right to Education: influencing education financing policy*. https://actionaid.org/publications/2018/tax-privatisation-and-right-education-project-influencing-education-financing-and
116. Ministry of Education and Sports, in collaboration with UNICEF, Eriks, Save the children, UNHCR and Stromme Foundation, 'Out of School Children Study in Uganda' (March 2014).

In Uganda, private schools vary enormously in both fees and quality. The AP highlight that private schools should be an alternative to free and good-quality public education, not the only choice in terms of access or quality. However, evidence suggests that the Uganda government's neglect of public education is leading to the private sector steadily supplanting the government in terms of providing education, as can be observed in Figure 10 showing the steady increase in the percentage of primary school students enrolled in private institutions. As was argued in the alternative report,[117] "Parents are often forced to resort to private schools because the Ugandan public education system is largely failing, while private schools have common perceptions of better quality; despite this, and although privatisation in education is growing, government financing for public education is decreasing. This is contrary to international standards that require that privatisation should only supplement public education; The State party is gradually releasing itself from its obligation to provide quality public education for all, as it is increasingly relying on private actors to provide education" (p.1).

Table 13: Uganda, School enrolment, primary, private (% of total primary)[118]

Year	% enrolled in private primary school
2005	8.50
2006	9.42
2007	10.09
2008	11.76
2009	13.40
2010	14.36
2011	13.11
2012	
2013	16.18
2014	
2015	17.14
2016	17.84
2017	19.61

Figure 10: % enrolled in private primary school



Data source: World Development Indicators

117. https://www.iser-uganda.org/images/downloads/privatisation_discrimination_and_right_to_education.pdf
118. Data source: World Development Indicators https://data.worldbank.org/indicator/SE.PRM.PRIV.ZS?locations=UG-ZG

Uganda meets the obligation stated by Principle 17 and the requirement of compulsory education for at least nine years. The education system has a structure of seven years of primary education, six years of secondary education (divided into four years of lower secondary and two years of upper secondary school), and three to five years of post-secondary education (WDE, UNESCO 2010/11). UPE and USE policies establish more than the required nine years of free public education. However, the inadequate funds dedicated to these two policies means that the demand for free education outstrips the availability of places at the free government schools.

2. **Is there discrimination against particular groups (low-income families, girls, children in particular areas, children with disabilities, etc) and forms of segregation associated with the presence of private providers? This discussion focuses on Principles 13, 17, 23, 24, 25, 33, 55.**

There is a growing divide between the richest and the poorest sectors of society in Uganda, which can be noticed between rural and urban areas. Private schools in Uganda are predominantly located in urban areas, since it is not as profitable to invest in rural areas. The percentage of students enrolled in private schools has been increasing since 2005 when this proportion represented 8.5% of the total student population, whereas this figure for 2016 is 17.84%, which is considerably higher than the figure for the aggregate sub-Saharan region, 13.30.

The increasing social stratification of education is entrenching these inequalities, depriving the poorest sectors of society of an opportunity to escape poverty, leading to violations of their right to education. For example, evidence from UNICEF shows that primary school net attendance ratio for period 2008-2012 was significantly lower, 73.2% for the 20% poorest, than their 20% richest counterparts at 86.9%[119] The GEMR figures are even more concerning, showing that only 15% of males and 14% of females of the poorest students complete primary school, with these figures being as low as 3% and 3% at secondary level. These percentages are much lower than their neighbouring country Kenya, as can be observed in Table 15. This growing social segregation has been noted by the UN Committee on Economic Social and Cultural Rights when reviewing Uganda's performance. The CESCR "expresses concern at the: (c) Widening of the gap in access to quality education resulting from the increase in the provision of private education and disproportionately affecting girls and children of low-income families". The CESCR recommended Uganda to "(b) Allocate sufficient resources to the education sector with a view to improving infrastructure of schools including sanitation, working conditions of teachers, and teaching materials; (c) Strengthen regulations and expand monitoring and oversight mechanisms for private education institutions".[120]

Table 14: School enrolment, primary, private (% of total primary)[118]

Country / Year	Ghana	Kenya	Uganda	Sub-Saharan Africa
1994	10.67		8.84	10.64
1995	10.85		9.48	10.89
1996	10.99			10.75
1997	13.13		6.27	10.44
1998				10.21
1999	13.32			10.06
2000	17.41			10.09
2001	17.35			10.17
2002	18.28		10.58	9.97
2003	15.95			9.58
2004	18.00		9.07	9.60
2005	20.52	4.46	8.50	9.64
2006	15.18		9.42	9.68
2007	16.08	9.63	10.09	9.89
2008	17.29	10.79	11.76	10.12
2009	17.96	10.58	13.40	10.63
2010			14.36	11.08
2011	19.29		13.11	12.27
2012	22.09			12.38
2013	23.12		16.18	12.69
2014	23.23	15.99		13.02
2015	25.27		17.14	13.16
2016	25.28		17.84	13.30
2017	25.81			

Data source: World Bank, World Development Indicators

119. See https://www.unicef.org/infobycountry/uganda_statistics.html
120. CESCR Concluding observations: Uganda, E/C.12/UGA/CO /1, para. 36 (24 June 2015) http://bit.ly/1BK6OrO

Table 15: Disparity in school completion

GEMR 2018[121]								
	Primary completion rate and disparity by location and wealth				**Lower secondary completion rate and disparity by location and wealth**			
	Location	Wealth	Completion rate (%) of the poorest students		Location	Wealth	Completion rate (%) of the poorest students	
	Location parity index	Wealth parity index	Poorest males	Poorest females	Location parity index	Wealth parity index	Poorest males	Poorest females
Ghana	0.75	0.51	42	43	0.61	0.36	28	26
Kenya	0.88	0.65	61	65	0.78	0.45	41	43
Uganda	0.48	0.22	15	14	0.33	0.06	3	3

The disinvestment in public education and the government's preference for private providers to fill this gap[122] are bound to result in discrimination by keeping more children out of school, particularly those from low-income households, and especially girls, as school cost is the most cited barrier to education. The number of out-of-school children of primary school age in Uganda is estimated to be 477,000; expanding privatisation at primary and secondary levels would probably increase school dropout rates because of the higher tuition and other fees associated with private schools. A recent study of out-of-school children in Uganda run by the government pointed to financial constraints as the most prominent factor explaining both non-enrolment and high dropout rates. Approximately 81% of the households sampled stated that a lack of money was the reason why their children dropped out of school, while 58% claimed financial constraints were the reason why their children never enrolled in school in the first place.[123]

In our study in Nebbi, the small percentage of families (82% of respondents' 6-12-year-old children and 95% of those aged between 12 and 18 attend government public schools (see Figure 9). Those who sent some of their children to private schools (with a preference for boys) had to pay UGX 643,460 ($178.74) per year, which is over five times the fees for public schools, making them unaffordable for most families.

Privatisation in education also has a negative impact on the education of girls. One of the most celebrated successes of the Universal Primary Education scheme in Uganda is that it significantly increased the enrolment of girls in school to a level of parity with boys at the primary level, and to 47% at secondary level. This was largely attributed to the abolition of fees that came with the UPE scheme. Uganda's state report acknowledges that before 1997 many families were inclined to enrol boys at the expense of girls, partially due to cultural stereotypes that favoured allocating family's (meagre) resources to boys.[124] Therefore it is logical that an attempt to increase privatisation would result in a reversal of the gains made in the enrolment of girls. Indeed, research conducted by ISER (Initiative for Social and Economic Rights) has indicated that when pressed to make a choice, parents will more likely choose to pay school fees for a boy rather than a girl.[125] According to the Uganda National Household Survey, 2012/13, 10% of girls between 6 and 12 years are out of school

121. https://unesdoc.unesco.org/ark:/48223/pf0000259338
122. The private sector is anticipated to contribute Ugandan Shs2,848.92 bn, which translates into about 17% of the overall estimated cost. The estimated contribution to primary sub-sector is about 10% (about Shs 1,139.03bn), 45% to secondary sub-sector (about Shs 988.09bn), 20% to BTVET (about Shs 292.14bn) and 30% to tertiary/university (about Shs 429bn). (ESSP FY 2017/18 -2019/20, p.31). http://planipolis.iiep.unesco.org/sites/planipolis/files/ressources/uganda_education_sector_strategic_plan_2017-2018_2019_2020.pdf
123. Ministry of Education and Sports, in collaboration with UNICEF, Eriks, Save the children, UNHCR and Stromme Foundation, *'Out of School Children Study in Uganda'* (March 2014) p.9.
124. 5th Periodic Report by the Government of the Republic of Uganda to the African Commission on Human and Peoples' Rights, presented at the 54th Ordinary Session held in Banjul, The Gambia (22 October – 5 November 2013), p.4. 45 Research conducted by ISER on Privatisation in Education in Uganda.
125. Research conducted by ISER on Privatisation in Education in Uganda.

because education is considered to be too expensive, compared to 7% of boys who are out of school for the same reasons.[126] So an increase of the effective schools fees due to privatisation in education is likely to mostly affect girls.

There are no disaggregated data in terms of the number of students with special needs and disabilities enrolled in public vs private institutions. The Education Sector Strategic Plan (ESSP) 2017-2020 aims to increase the percentage of students with special needs from 1.79% in 2015, to 2.06% in 2016, 2.33% in 2017, 2.60% 2018, 2.87% in 2019 and finally 3.14% in 2020[127] (p.79). Research from other sub-Saharan countries shows that children with special needs are at higher risk of never being enrolled in school, or, when they are, of dropping out. An estimated one-third of all out-of-school children at primary level have a disability (GEM 2016).[128] "Children whose parents have disabilities often face tensions between schooling and care demands at home. [...] Having a poor parent with a disability increases the likelihood of 7- to 16-year-olds never having been to school by thirteen points in Uganda – a reminder of how poverty, disability and education interact" (GMR 2010). The risk of living in poverty dramatically increases when the head of the household has a disability, "in Uganda, evidence from the 1990s found that the probability was as much as 60% higher".[129]

The higher school fees brought by the increasing presence of private schools pose an extra barrier – often unsurmountable for most disadvantaged groups, such as poor people, girls, households with disabilities, and minority groups.

Therefore, even if we cannot cite evidence of direct discrimination of disadvantaged groups by private education providers, there is sufficient evidence to argue that the presence of private providers is resulting in indirect discrimination (Principle 24) and in "systemic disparities of educational opportunity or outcomes for some groups in society, including people living in poverty or in rural settings; or b. segregation in the education system that is discriminatory on any prohibited ground, in particular socio-economic disadvantage" (Principle 25).

3. **Have adequate funds been allocated to funding public education, and if not why not? Are tax incentives to the private sector limiting state provision for public education? Have donor funds gone to support private or public-private partnership (PPP) arrangements? This discussion focuses on Principles 15, 16, 18, 34, 35, 43, 45.**

Uganda presents an example of inadequate financing of education. Even with substantial increases in nominal terms across the sector in the last two decades, financing for education in Uganda has not kept pace with the increasing enrolments and new reforms. The share of education as total government expenditure has declined from as 20.3% in 2004 to 11.7% in 2014 (IUS, UNESCO), which is a regression that goes against the principle of non-retrogression (AP § 43, 44, 45) as Uganda has not proved any exceptional circumstances that justify the retrogressive measures taken (Principle 45), and it negatively affects the enjoyment of the right to education. The decrease shows that other sectors' percentage of the total national budget was increasing at the expense of education, for which the government owes a justification. The share of public expenditure on education as a percentage of GDP, which essentially measures the share of public expenditure on education in the whole economy, from reaching 4.9% in 2004, it has since stagnated just above 2%, with 2.21% in 2014 (IUS, UNESCO), 2.46% in 2016 (ESSP 2016/17, p.32), again resulting in a retrogression difficult to justify. This performance is low by both regional and international standards, as it is recommended to be 6% of GDP. This implies that compared to its wealth capacities, Uganda could and should spend more on education services and owes an explanation for these regressive measures.

This decline can be explained by shift in priority in a context of a limited resource envelope amidst pressure from competing and emerging priorities from other sectors such as energy (hydroelectricity power generation dams), defence and infrastructure (roads) among others. However, this is not justifiable in terms

126. 46 Uganda Bureau of Statistics, Uganda National Household Survey, 2012/2013. National Education Accounts Report (2016) - http://www.uis.unesco.org/Education/Documents/nea-visual-results-report/Uganda_NEA_report-2016-en.pdf
127. http://planipolis.iiep.unesco.org/sites/planipolis/files/ressources/uganda_education_sector_strategic_plan_2017-2018_2019_2020.pdf
128. https://en.unesco.org/gem-report/sites/gem-report/files/GAW2014-Facts-Figures-gmr_0.pdf.pdf
129. https://en.unesco.org/gem-report/sites/gem-report/files/GAW2014-Facts-Figures-gmr_0.pdf.pdf

Girls in rural primary school in West Nile Uganda, where over 990 pupils compete for 7 rickety latrines. PHOTO: SAMANYA KYATEGEKA/ACTIONAID

of human rights as it is not one of the exceptions contemplated by the CESCR, GC 13, § 45; CESCR, GC 3, § 9. "These measures may exceptionally be justified in case of an unforeseen large-scale event, such as a natural catastrophe, where international aid is unable to address the increased need, and where it is a temporary short-term response." Neither does it meet the conditions stated in Principle 45 of the AP.[130] This retrogression cannot be justified using the principle of progressive realisation, as this should not be misinterpreted as depriving the obligation of all meaningful content. Progressive realisation imposes an obligation to move as expeditiously and effectively as possible towards respecting, protecting and providing the right to education using the maximum available resources.

Moreover, this retrogression is leading to a widening of the financing gap in meeting the needs for basic education for children. As more and more children have enrolled in schools, already constrained budgets have been stretched even thinner, with governments skimping on critical areas, for instance, by recruiting poorly qualified and underpaid teachers,[131] pursuing a neoliberalist trend of promoting less state responsibility that legitimises new state policies of administrative decentralisation and education privatisation. This is also resulting in overcrowded classrooms: in our sample, most rural schools we visited had more than 100 students, even more than 200 students per classroom in the lower years, which impairs learning. This goes against Principle 14 of the AP, and more specifically

130. There is a strong presumption that retrogressive measures taken in relation to the right to public education are not permissible. If, in exceptional circumstances, retrogressive measures are taken, the state has the burden of proving that any such measure is in accordance with applicable human rights law and standards. Any such measure: a. should be temporary by nature and in effect, and limited to the duration of the crisis causing the situation of fiscal constraint; b. should be necessary and proportionate, in that the adoption of any other policy alternatives or the failure to act would be more detrimental to the enjoyment of economic, social and cultural rights, with the possibility of taking any alternative measures comprehensively examined; c. should be reasonable; d. should not be directly or indirectly discriminatory; e. should accord particular attention to the rights of vulnerable, disadvantaged, and marginalised individuals and groups, including their right to free, quality, public education, and ensure that they are not disproportionately affected. Children must be the last affected by such measures; f. should identify the minimum core content of the right to public education and other affected economic, social and cultural rights, and ensure the protection of this core content at all times; g. should involve full and effective participation of affected groups, including children and other learners, in examining the proposed measures and alternatives; and h. should be subject to meaningful review procedures at the national level.

131. The ESSP admits as weakness: "i) Inability by MoES to recruit teachers and fill the staff establishment, (ii) Low teacher motivation (low salaries, shortage of accommodation), (iii) Low teacher attraction and retention in hard to reach/stay areas, (iv) High absenteeism rate leading to inadequate time-on- task" (ESSP 2016/17, p.82).

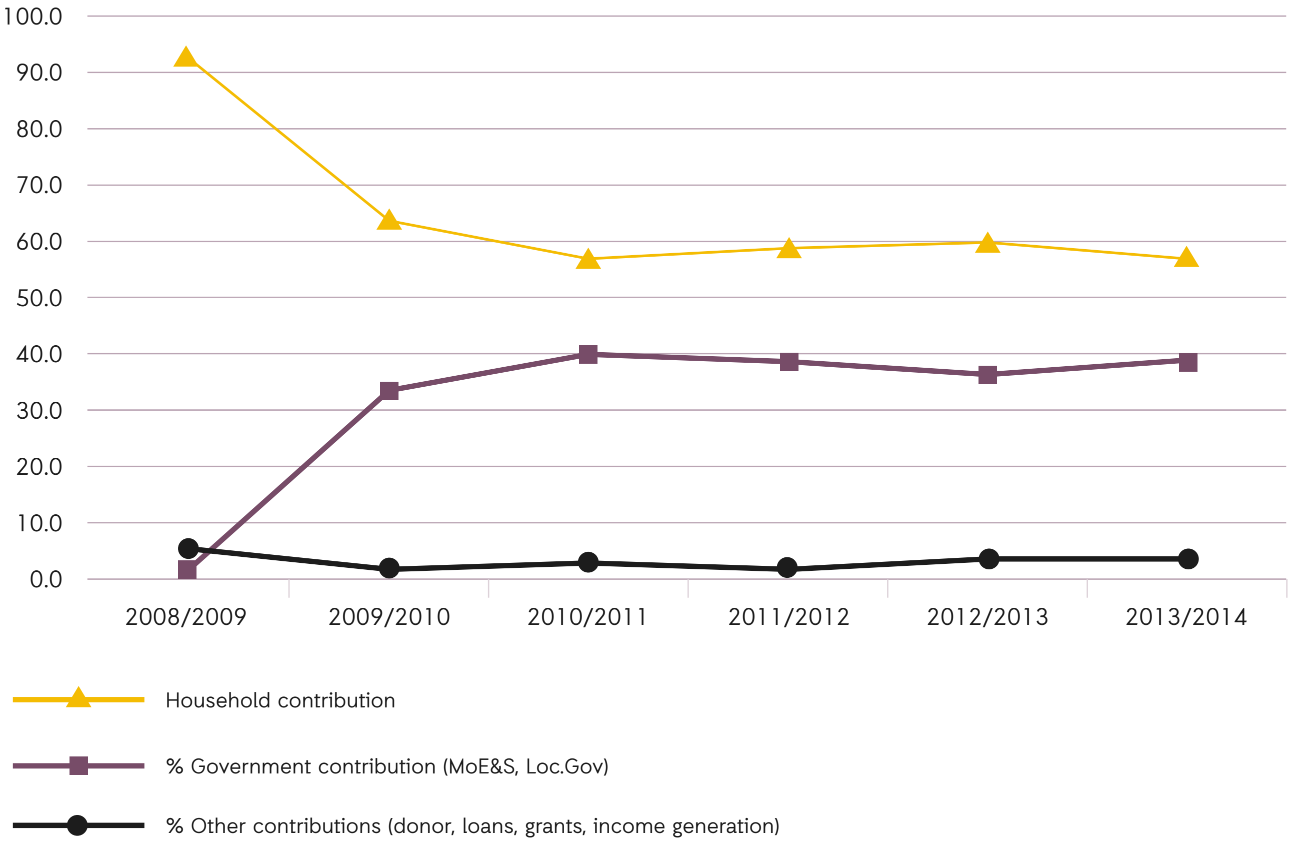
to provide an education which is available, accessible, acceptable and adaptable, particularly the obligations to provide sufficient number of schools, trained teachers, adequate facilities and infrastructure.

As mentioned earlier in this report, evidence from National Education Accounts report (2016) reveals that the Uganda government funds only about 45% of the total education spending, forcing households to contribute the other 55%, overall, even less in the case of primary schools.[132] The government has an obligation to provide free primary education for all children; but even with Universal Primary Education (UPE) between financial years 2008/2009 to 2013/14, households (parents and individuals) on average contributed 65% of the total (recurrent and capital) primary education sub-sector. The same report further reveals that this household expenditure has generally been increasing over the recent years due to increasing living costs, forcing families to make huge sacrifices in terms of providing for other needs or prioritising some children over others, which often results in discrimination of girls and children with disabilities.

In Figure 11 we can see that although there is a positive trend until 2011 in terms of government allocation to education, it then stagnates with an allocation which is not enough.

States have an obligation to allocate the maximum available resources towards ensuring free, quality education (Principle 15), including domestic resources through progressive taxation and elimination of illicit financial flows (Principle 16). However, the African Development Bank estimated in 2010 that Uganda was giving away at least 2% of its GDP in tax incentives

Figure 11: Comparison between government, donor and household budget contribution to education in Uganda



132. National Education Accounts Report (2016). http://www.uis.unesco.org/Education/Documents/nea-visual-results-report/Uganda_NEA_report-2016-en.pdf

and exemptions, then equivalent to about US$272 million. In 2016, ActionAid reported that although some tax incentives have been scaled back since then, new ones have been introduced with potentially large effects on public revenues in Uganda (Archer, 2016). Of the estimated revenue loss to tax incentives and exemptions ($370) 20% would amount to $54.4 million. This money could pay for a place in a primary school for the estimated 477,000 out-of-school children, an extra 20,000 qualified teachers to reduce the unbearably high pupil-per-teacher ratios and free school meals for one year for 412,047 children (Ron Balsera, 2017). If the government is choosing to give away these tax incentives, then it is not using the maximum available resources (AP §15, §16). “Available resources include existing resources and additional resources that may be raised for instance through fair progressive taxation and other domestic income-generating mechanisms; reallocation of public expenditures; elimination of illicit financial flows and tax evasion and avoidance; using fiscal and foreign exchange reserves; managing debt by borrowing or restructuring existing debt and adopting a more accommodative macroeconomic framework; and international co-operation” (AP § 16). Instead of raising more revenues and allocating the recommended threshold of 20% of the national budget to education, the government is seeking the support of the private sector to fill the gap. The state report indicates “Support for the establishment of private schools as one of the three measures to aid enrolment and retention of pupils in school. This support has partly been through the enactment of an enabling law and institutional restructuring to cater for the private sector (Parallel report).”[133]

A specific department in the Ministry of Education, the Private Schools and Institutions Department, was created in 2008 to support the growing private investment following the liberalisation that opened the education sector to private investors. But there is growing concern about the diversion of crucial funds from public to private schools. Principle 64 affirms that “States must prioritise the funding and provision of free, quality, public education, and may only fund eligible private instructional educational institutions, whether directly or indirectly, including through tax deductions, land concessions, international assistance and cooperation, or other forms of indirect support, if they comply with applicable human rights law and standards and strictly observe all the substantive, procedural, and operational requirements identified” in Principles 65 to 73. In December 2013, the president of Uganda complained about what he called “squandering of Government money” with regards to 53 billion Ugandan shillings spent to support private schools under PPPs (Parallel report, p.8).

Uganda: Tax losses vs education resources

If 20% of the $370 million lost to tax incentives annually was used for education, this $74 million could pay for:

477,000 extra school places for all children out of school

20,000 additional qualified teachers

school meals for **412,047** children

The government also supported the establishment of private schools through the provision of tax exemptions on profits made by private education providers under the Income Tax Act.[134] There are other tax exemptions specifically or indirectly targeted at the education sector. All approved educational articles and materials as specified in the Florence Agreement are tax exempt under the fifth schedule of the East African Community Customs Management Act.[135] The following specific exemptions for education and sports expenditure exist within current tax regimes:

133. https://www.iser-uganda.org/images/downloads/privatisation_discrimination_and_right_to_education.pdf
134. See Income Tax Act, 1997, Cap. 340, section 19 read together with the Second Schedule.
135. Uganda Revenue Authority, 2017. *A Tax Incentives Guide for Investors in Uganda.*

- education services are not subject to VAT. Pre-primary to tertiary level, adult education institutions, TVET, and any education or training of physically or mentally handicapped persons
- educational materials are zero-rated, meaning investors in education can claim for a refund of any VAT paid on inputs (items purchased as education materials).
- solar and wind energy systems and inputs are tax exempt
- water and treatment effluent plant and plastic bag biogas digesters.

Therefore, it seems clear that adequate funds have not been allocated to funding public education. The government is not meeting the 20% of the national budget threshold, and of more concern, this percentage has decreased rather than increased over the years, leading to an unjustifiable non-retrogression (AP §43). In addition, as shown with the example of the estimated loss to tax incentives and exemptions, the government is not using the maximum available resources to fund free quality public education (AP §15, 16). Furthermore, the government is diverting some crucial funds to the private sector, further depleting the public education budget, impairing the development of free quality public education and leading to marketisation of the sector (AP §64, 65).

4. Do the public-private partnerships arrangements in place for schools meet the conditions laid down in Section IV of the AP on financing which outline processes for these arrangements in line with respecting human rights obligations? Principles 34, 50, 64, 65, 66, 67, 68, 69, 73

Uganda liberalised the education sector in 1993 to allow for private actors to supplement government efforts in providing education, in line with the government White Paper on Education (1992) that encouraged the strengthening of partnerships in education. This was part of the wider Structural Adjustment Programmes (SAPs), which introduced privatisation, deregulation and emphasis on the market economy for various economic and social sectors. Since then, the national government has actively supported the establishment of private schools.

One of the objectives of the Education *(Pre-Primary, Primary and Post-Primary) Act* of 2008 is "to promote partnerships with the various stakeholders in providing education services". Section 6 of the Act lists the categories of recognised education institutions and includes profit-making and non-profit-making private institutions, while Part VII has provisions relating to private schools. This Act should be reformed in order to protect the right to education, by including the conditions referred to in Principles 64 to 73 of the AP, particularly respecting the condition of being short-term, not leading to direct or indirect discrimination or commercialisation, carried out following a transparent and participatory process, and being regularly monitored and re-assessed.

The main public-private partnership (PPP) in education in Uganda is the Universal Secondary Education (USE) scheme introduced in November 2005.[136] The scheme started in 2006, and is implemented through government-aided schools, and with private schools under PPPs. The justification for engaging private schools in the USE programme was that there were limited places and facilities in government secondary schools and there were 314 sub-counties with no

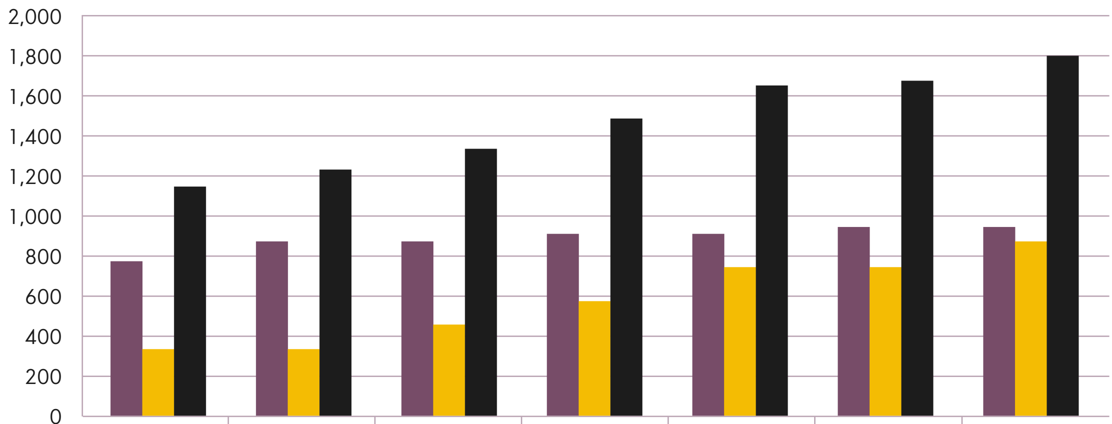
Private school in Mukono District, Uganda. PHOTO: JOSHUA KISAWUZI

136. Ministry of Education and Sports, Policy Guidelines for Public – *Private Partnership in the Implementation of Universal Post Primary Education and Training,* November 2009.

government secondary school.[137] Out of the 1,820 schools implementing the USE scheme, 943 (52%) are government aided, while 852 (48%) are private institutions operating under PPP arrangements.[138] Since inception of the USE programme, the share of government schools has remained higher than that of private schools, but the gap has been narrowing over the years as shown in Table 14. Similarly, at the beginning of the USE programme, 25% of students were enrolled in PPP schools, but that has increased to 45%, as shown below. This indicates that there is less effort in investing in government schools and increased reliance on low-fee private schools to implement the government programme, which is leading to an abdication of the obligation to provide free quality education (AP §14, 48, 65) and an increasing commercialisation of the sector (AP §48, 65), depleting the public education budget. The lack of transparency and extortionate funds claimed by some PPPs has even been criticised by the president of Uganda, as mentioned above.

Similarly at the beginning of the USE programme, 25% of the students were enrolled in PPP schools, but the share has increased to 45% as indicated below.

Figure 12: USE schools by ownership in Uganda



	2007	2008	2009	2010	2011	2012	2013
Government Aided	791	877	884	899	910	933	942
Public Private Partnership	364	352	461	585	739	747	872
Total	1,155	1,229	1,345	1,484	1,649	1,680	1,814

Source: Ministry of Education and Sports USE - UPOLET Headcount, May 2014

Table 16: USE enrolment by school ownership[139]

Year	2007	2008	2009	2010	2011	2012	2013	2014
Government aided	106,582	232,170	313,653	407,953	449,585	462,878	471,726	478,554
Public-private partnerships	54,972	84,482	137,534	192,375	239,956	291,139	335,266	394,922
Total	161,554	316,652	451,187	600,328	689,541	754,017	806,992	873,476
% PPPs share	25%	27%	30%	32%	35%	39%	42%	45%

137. Ministry of Education and Sports, *Policy Guidelines for Public – Private Partnership in the Implementation of Universal Post Primary Education and Training*, November 2009, p.2.
138. Ministry of Education and Sports, USE - UPOLET Head Count Database as at 21 May 2014.
139. Source: Ministry of Education and Sports USE - UPOLET Headcount, May 2014

Yet, stakeholders have raised concerns about the quality of education and value for money in schools under PPPs. In December 2013 the president of Uganda complained about what he called *"squandering of Government money"* with regard to 53 billion Ugandan shillings spent to support private schools under PPPs. He argued that this money could be saved to build secondary schools in the 243 remaining sub-counties without a government secondary school in about three years at a rate of 88 schools per annum. He therefore proposed a class-by-class phase-out of schools under PPPs.[140]

ISER's[141] inquiry about the PPP Scheme in Uganda equally revealed that they PPP schools charge fees, which, as any fees are not affordable to the poorest families. The amount of the fee charged varied across operators, some being cheaper than others, and even cheaper than public schools. However, whilst government secondary schools also charge fees, the PPP scheme did not address the issue of fee, and depending on the fee charged by the operator, may even have entrenched the exclusion of disadvantaged sectors of society, which goes against Principle 73 of the AP.[142] There were thus questions in this context as to whether there was any justification to divert public funds, which could have helped making public schools free, to private schools under a PPP scheme, where the PPP schools were, among other issues, not free either and sometimes on the high-fee side.

Some operators like PEAS acknowledged the challenges of the Universal Secondary Education PPP programme. Interestingly, PEAS made a suggestion for an completely new PPP model, which would be strictly not-for-profit, and where government capitation grants to not-for-profit providers would be used to remove fees altogether so that secondary education is free and access to disadvantaged children can increase. Such a proposal would have been closer to meet the Principles, although it would still have to be seen whether it for instance, was justifiable under the Guiding Principles 65.a (e.g. perhaps to increase access on the short-term (principle 65.a.i)?), and whether the Government was ready to meet the procedural (e.g. was the Ugandan Government in capacity to monitor the new PPP better than it did for the old one?) and operational (e.g. would the new PPP guarantee the equal protection of workers' rights as in Government schools, as in the Guiding Principle 67?).

5. **Do the arrangements in place for the regulation of private schools meet the conditions set out in the AP? The obligations to regulate: Principles 47, 48, 50, 51, 52, 53, 54, 55, 58, 60, 80, 84, 85.**

Uganda has ratified the main international and regional human rights law protecting the right to education and its Constitution affirms that the country's foreign policy shall be based on the principles of respect for international law and treaty obligations, incorporating them into Uganda's own domestic law.[143] However, as stated in the alternative report presented to the African Commission on Human and Peoples' Rights: "The growing private sector in education has not been matched by appropriate regulatory, supervision and monitoring frameworks, resulting in many concerning issues in private schools." [144] According to an official from the Ministry of Education, the private sector has grown much faster than anticipated and is driven by market forces, and it is only now that the government is trying to catch up with this expansion of the private sector.

Currently, the private sector in education is regulated by the *Education (Pre-Primary, Primary and Post-Primary) Act* of 2008. Specifically, Part VII of the Act provides for setting up and registration of private schools, but it was only in 2014 that the Ministry of Education issued guidelines to give effect to the Act.[145] However,

140. Ministry of Education and Sports Presentation, An Appraisal of the Possible Implications of the Policy Reversal on Public Private Partnership for USE/UPOLET, July 2014.
141. Initiative for Social and Economic Rights. https://www.iser-uganda.org/
142. 73. "States must not fund or support, directly or indirectly, any private instructional educational institution that: a. abuses the rights to equality and non-discrimination, including by being selective; or expelling or sorting learners, whether directly or indirectly, on the basis of the socio-economic disadvantage, whether of the learner, family, or community, gender, disability, or any other prohibited ground; b. is commercial and excessively pursues its own self-interest; c. charges fees that substantially undermine access to education; d. does not meet any minimum standard applicable to private instructional educational institutions, or any other applicable human rights law or standards, or is not of adequate quality; e. does not comply with all of its domestic or international financial obligations; or f. contributes to an adverse systemic impact on the enjoyment of the right to education or undermines the realisation of human rights in any other way".
143. https://ulii.org/ug/legislation/consolidated-act/0
144. https://www.iser-uganda.org/images/downloads/privatisation_discrimination_and_right_to_education.pdf
145. See Ministry of Education and Sports, Guidelines for Establishment, Licensing, Registration and Classification of Private Schools/Institutions in Uganda (2014). http://www.education.go.ug/files/downloads/Licensing%20and%20regGuidelines%202014%20latest%20version.doc).

gaps remain in terms of quality control and protecting families from exploitation by private schools. The above is confirmed by the 2012/2013 Education and Sports Sector Annual Report (ESSAPR), which indicates that there is no clear policy on quality assessment at all education levels, and there are inadequate school inspection services in the country.[146] The Private Schools and Institutions Department is charged with the overall coordination, regulation, policy formulation and guidance on all matters regarding private schools, but it faces serious challenges in carrying out its mandate due to limited financial and human resources. For example, every quarter the department monitors not more than 50 schools making it 200 per year out of the 4,000 private schools.[147] Existing policies and regulations on education have not been implemented and there is scepticism about the current government capacity to implement the recently passed regulations for private schools.[148] Indeed the weak regulation and supervision of the private sector in education has been criticised for failure to ensure quality, affordable services, and accountability, with the resultant creation of categories of schools including those for the poor, middle class and the very rich.[149]

The Table 15 assesses Guidelines for Establishing, Licensing, Registering and Classification of Private Schools/Institutions in Uganda and Education Act 13 (Pre-Primary, Primary and Post-Primary) Act 2008 Part VII against the minimum standards stated in Principle 55 of the Abidjan Principles. The number of gaps requires a revision of these this law and policy so the regulation complies with human rights law.

Despite, or perhaps because of, this lack of effective regulation, the number of private schools and the percentage of private enrolment continues to increase, as the tables below show. At secondary level the number of students enrolled in private schools surpasses the number in public schools in the latest figures.

Informal school offering the equivalent to Primary 1, 2 and 3 in a formal School. Common characteristics of Informal Education in Uganda;

1. Community owned, they mobilize resources to put up makeshift structures. If they are lucky, eventually NGOs come in to support and lobby government to support them. The government pledged to have at least 1 school per parish/sub country, so this is in their interest.

2. Not coded by government, hence they do not get direct government support like capitation grants nor teachers on the government payroll

3. Have no centre numbers to allow them to register pupils to seat for formal exams such as PLE. In order to take exams pupils need to register in a nearby formal school.

Informal school in Karamoja, Eastern Uganda. PHOTO: MICHEAL SSENOGA.

146. 2012/2013 Education and Sports Sector Annual Report (ESSAPR)
147. ISER Alternative report Presented to the African Commission on Human and Peoples' Rights, 56th Ordinary Session, p.11.
148. Al-Mahaddi Senkabirwa 'Can Government Enforce New Private School Rules' Article in the *Daily Monitor Newspaper*, Wednesday 3 September 2014.
149. Mubatsi 'Is Uganda Losing the Quality of Education Battle to Businessmen/Women?' in *Learning Our Lesson on Africa*, Uganda (12 June 2012).

Table 17: Assessing minimum standards in Uganda's Education Law

55.AP Minimum standards Checklist	Guidelines for establishing, licensing, registering and classification of private schools/institutions in Uganda	Education. Act 13. (Pre-Primary, Primary and Post-Primary) Act. 2008 Part VII
a. Governance i. registration and licensing	Yes. H.THE PROCEDURE FOR APPLYING FOR REGISTRATION OF A PRIVATE SCHOOL/ INSTITUTION	Yes. Part VII 31. Requirements for establishing a private school.
ii. reporting requirements	Yes. District Inspector of schools' report; District Health Inspector's report;	Yes.
iii. participation of stakeholders	No	
iv. management of resources;	Some. BOG's and/or Management Committee	Some. 29. Accounts. 31. Collection of moneys by or on behalf of the board.
v. level of fees	Some. Fees to be declared in the registration form and verified during inspection	
vi. transparency	No	Some. 30. Audit.
vii. conditions and transparency of learners' certification.	No	No
b. pedagogical freedoms;	No	No
c. freedom of association and speech;	No	No
d. protection against discrimination	No	Some. (f) undertake that the school will not refuse admission to any pupil on any discriminatory grounds;
e. teaching qualifications and working conditions,	J, K. Primary and Secondary: All teachers registered and / or licensed with Ministry of Education and Sports Disciplinary measures if: Failure to give staff contracts and appointment letters, Non-payment of staff salaries	
f. pedagogical methodologies	No	No
g. suspension and expulsion		15.2. (e) in the case of expulsion of a pupil from the school, submit a full report of the school disciplinary committee to the management committee which shall, after considering the report, decide whether or not the pupil shall be expelled from the school, and in the case of expulsion, if the pupil is aggrieved by the decision of the management committee, such pupil may appeal to the education officer in-charge of education in the local government;
h. discipline and corporal punishment;	No	No
i. failure or delay in the payment of fees;	No	No

j. secure and safe learning environments	Primary: Proper security arrangement (in accordance with the Basic Requirements and Minimum Standards stipulated in the disaster reduction and risk management guidelines by Directorate of Education Standards, Ministry of Education and Sports). Appropriate sitting facilities for the learners. Provision of safe drinking water. One pit latrine stance or toilet (squatting/Asian type preferred) for every 40 pupils by sex. Secondary. K Toilet facilities (squatting/Asian type preferred) for 40 students and sanitary facilities (washing and changing) for girl child. 10. Proper security arrangement (in accordance with the Basic Requirements and Minimum Standards stipulated in the safety and health guidelines by the Ministry of Education and Sports). Inspector General of Police guidelines.	Some. (e) ensure that the physical, health and moral welfare of the pupils are or will be adequately provided for;
k. accessibility and reasonable accommodation		Some. (g) ensure that school environment is conducive for pupils with special needs;
l. physical and mental health	Some. Mention to misconduct	
m. protection from threatening, shaming, and bullying	No	
n. pro excessive marketing or advertising	No	No
o. privacy and data protection	No	No
p. teacher/learner ratio	J. Primary: An enrolment of not more than 40 pupils per class per teacher. K. Secondary: A minimum enrolment of 45 students per class per teacher, excluding international schools and not more than 60 per class.	
q. other standard for the protection of human rights.	No	No

Table 18: Percentages of private to total enrolment in primary and secondary schools in Uganda 2000-2013[150]

Year	Percentage of private enrolment at primary level	Percentage of private enrolment at secondary level
2003	10.21	50.80
2004	8.92	46.57
2005	8.33	43.98
2006	9.3	39.61
2007	10.1	41
2008	14	52.8
2009	13.4	54
2010	14.4	52.2
2011	13.1	46.7
2012	15	47.4
2013	16.2	51.0

The uncontrolled expansion and lack of effective regulation of the private sector is contrary to what is stipulated in the Abidjan Principles 51 to 60, with its overarching Principle 4: "States must take all effective measures, including particularly the adoption and enforcement of effective regulatory measures, to ensure the realisation of the right to education where private actors are involved in the provision of education." The government is enjoined to redress the systemic impact that the increasing privatisation of education in Uganda is having in terms of creating and increasing disparities of educational opportunity, leading to discrimination,[151] risking nullifying or impairing the capacity of the state to provide free quality education for all due to the diversion of funds to support the private sector through PPP and exemptions, as well as ultimately resulting in the commercialisation[152] of education, which undermines the aims of education guaranteed under international human rights law[153] and the nature of education as a public service (AP § 8, 9 and 19).

150. Source: Education and Sports Sector Fact Sheets 2000-2012, 2002-2013
151. CESCR General Comment 13, para. 30 and 31.
152. See CRC, Concluding observations: Haiti, CRC/C/HTI/CO/2-3, 29 January 2016, http://bit.ly/1TIaPTM, para 59(f); CRC, Concluding observations: Brazil, CRC/C/OPAC/BRA/CO/1, paras. 75-76, 28 October 2015, http://bit.ly/2lV3jcb; CRC General Comment 16, para. 59; CRC General Comment 17, paras. 36, 47 reports of the UN Special Rapporteur on the right to education, Kishore Singh (2014, 2015); Report of the Special Rapporteur in the field of cultural rights, A/69/286 (2014).
153. These are: the development of the child's personality, talents and mental and physical abilities to their fullest potential; the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations; the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own; the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; and the development of respect for the natural environment. From CRC art. 29. See also CRC art. 31, CRC General Comment 17, para. 27,

Recommendations

In light of the discussion above, we propose the following recommendations to Uganda:

- **Put in place a plan** of action for improving the quality of public education in Uganda by, among other things, immediately increasing financial investment in the public education sector, and match as a minimum the international target of 6% of GDP or 20% of the budget to be dedicated to education. This should be done by increasing the size of the national budget through progressive taxation, putting an end to tax evasion and avoidance. The funds should be allocated to public schools following an equity criteria prioritising disadvantaged groups (girls, rural areas, etc). These funds need to be adequate, disbursed in a timely manner and regularly audited.

- **Assess** the direct and indirect impacts of the implementation of the National Education Policy and the 2008 Education Act and the development of private education in the last two decades, in light of its obligations to ensure that private education supplements but does not supplant public education and does not foster discrimination. The government of Uganda must fulfil its obligation to provide public free quality education, making it available, accessible, acceptable and adaptable.

- **Revise** the 2014 Guidelines for establishing private schools in accordance to the Abidjan Principles, particularly focusing on the minimum standards contained in Principle 55, including provisions to ensure the conditions and transparency of learners' certification and to protect pedagogical freedoms and freedom of association and speech. Regularly collect and make publicly available data on private school fees and social diversity among pupils (including disability, gender, parents' socio-economic status) attending private and public schools, so as to be able to transparently identify and understand inequalities.

- **Take all necessary** measures, to avoid any direct or indirect harmful impact of the private educational sector and to ensure that the private sector contributes to the fulfilment of the right to education for all in Uganda, and review and amend if necessary its laws and policies governing private education providers to ensure the enjoyment of the right to education without any discrimination. This includes ensuring that places in secondary and tertiary education are easily accessible for students coming from public schools and that they proportionately reflect the socio-economic diversity of Uganda, fostering social mobility.

- **Review** the Income tax Act (cap 340.) to ensure that private schools are taxed as any other profit-making entity in the country, in line with the current Bill under discussion.

- **Ensure** that the government has the necessary human and regulatory capacities to ensure effective implementation of the existing regulations with regard to provision of education by private providers, and halt further development of private education until the state has developed more comprehensive regulations and human capacities to adequately monitor private schools.

- **Review** its current public-private partnership policy in the education sector, and redistribute funds to develop free quality public education as a matter of priority.

CONCLUSIONS AND RECOMMENDATIONS

The analysis concludes that Ghana, Kenya and Uganda are not fully meeting their obligations to provide free and quality public education, partly due to the underfunding of the sector, and as a result the private sector in these three countries is growing. This growth of the private sector is causing and entrenching social inequalities, leading to stratification and huge disparities of education opportunities. Ghana, Kenya and Uganda must fulfil their obligations to provide free, public education of the highest attainable quality to the maximum of its available resources. Increasing the size, share, sensitivity and scrutiny of the budget is necessary to give the necessary resources to public schools and to adequately regulate private providers. Following the analysis above the common recommendations to the three countries are:

Governments should:

- use the newly adopted Abidjan Principles as a guide to review their education law and policies in accordance with the right to education, particularly as regards private involvement in education.

More specifically, they should:

- ensure compulsory public education is available, truly free and of good quality by increasing the size, share, sensitivity and scrutiny of the education budget
- increase the share of the national budget allocated to education, restoring it to higher historical levels to avoid breaching the principle of non-retrogression
- allocate the maximum available resources, increasing the size the national budget. This should be done through progressive taxation, eliminating tax evasion and avoidance, particularly reviewing tax incentives so as to avoid the losses estimated to be $1.2 billion in Ghana, $1.1 billion in Kenya and $370 million in Uganda
- regulate private providers following the Abidjan Principles to avoid the current stratification and systemic discrimination
- eliminate all forms of discrimination, direct and indirect, in the enjoyment of the right to education by reviewing laws, policies and practices, and by taking positive action to redress historic discrimination and inequalities
- prioritise the funding and provision of free and good-quality public schools, reviewing and terminating the agreements and partnerships with private providers that do not comply with the substantive, procedural and operational requirements contained in the AP Principles 64-73. This includes national and international funding
- improve the regulation of private education providers following the AP guiding principles and take all effective measures to enforce this regulation.

Civil society organisations should:

- use the Abidjan Principles to hold government to account on the provision of free and good-quality public education and the regulation of private providers of education
- hold governments to account regarding their obligation to provide free public education to the highest attainable quality, by raising awareness among stakeholders, advocating for improvements and collecting data to monitor and evaluate this provision
- track government allocation to education to ensure there is an increase in the size, share, sensitivity and scrutiny of the budget and to ensure that the budget is allocated to public education and that there are no unjustified retrogressions
- monitor any direct or indirect financial support to private providers so that it meets with the substantive, procedural and operational requirements contained in the AP Principles 64-73
- ensure that private education providers are adequately regulated, by raising awareness among stakeholders, advocating for improvements in the

legislation and enforcement and collecting data to monitor and evaluate this regulation
- unveil instances of direct and indirect discrimination in the laws, policies or practices, including instances of systemic disparities of educational opportunity, segregation or stratification
- raise awareness of the importance of ensuring the right to education for all, which benefits the whole of society, helping to make it more inclusive, peaceful and stable.

Donors and financial institutions should:
- reinforce the building of free, quality, public education systems, and refrain from supporting, directly or indirectly, private educational institutions in a manner that is inconsistent with human rights (overarching Principle 6)
- remedy situations where they have previously encouraged, contributed to, or coerced a recipient state to act inconsistently with that state's human rights obligations, including to take impermissible steps, such as the introduction or raising of fees or defunding of public or free education; they should seek to remedy this situation in the shortest possible time (AP 78)
- ensure they do not support commercial or for-profit education or any type of education that infringes the rights to equality and non-discrimination
- support states to develop, restore or improve access to free, quality, public education as effectively and expeditiously as possible in the recipient state, while supporting that state to enforce standards and regulations related to private involvement in education which are in accordance with applicable human rights law and standards (AP 79)
- support states to develop, restore or improve progressive taxation to ensure sustainable financing of education, including the elimination of tax evasion, avoidance and other illicit financial flows
- support states to develop or improve effective regulation to private providers of education following the Abidjan Principles.

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