

# Private education and compliance with the **Abidjan Principles:**

A study of Malawi, Mozambique, Tanzania and Nigeria





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Cover photos: Free, quality, public education is a fundamental human right.

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# FOREWORD

ActionAid is pleased to present this multi-country report which is the outcome of a research collaboration with the Centre for Education & International Development at University College London Institute of Education.

The research, carried out with funding from the Norwegian Agency for Development Cooperation (Norad) was led by Professor Elaine Unterhalter, a renowned expert in the field of education with over 35 years' experience teaching and researching on issues related to equalities of race, gender and ethnicity in education.

We also acknowledge the contributions and insights from Delphine Dorsi at the Right to Education Initiative and Sylvain Aubry of the Global Initiative for Economic, Social and Cultural Rights who were instrumental in the development of the Abidjan Principles and helped shape the research framework.

This report consolidates findings from what is arguably one of the first studies to use the Abidjan Principles to assess the impact of private provision on the right to education and therefore constitutes a pioneering example of their practical application.

The Abidjan Principles, which were adopted on February the 13th, 2019 in Abidjan, Côte d'Ivoire by a group of leading human rights experts, unpack and compile existing provisions in international human rights law and provide guidance on how to implement them in the context of the rapid expansion of private sector involvement in education.

The Abidjan Principles underline States' responsibility for guaranteeing adequate mechanisms to ensure that they are accountable for their obligations to respect, protect and fulfil the right to education, including their obligations in the context of the involvement of private actors in education.

By using the Abidjan Principles as a framework for evaluating forms of private provision and giving attention to how this can be assessed in relation to states' obligations as regards the right to education, the report assesses the extent to which governments in Malawi, Mozambique, Nigeria and Tanzania are faring with regards the provision of free, quality, inclusive public education.

The findings show that governments in each of the 4 focus countries are not meeting their obligations to provide free quality inclusive public education which has increasingly led to a loss of trust in the public education system and an increased demand for private schools which are in many cases neither regulated nor monitored.

Moreover, despite arguments in favor of low-cost private education, given that the majority of private schools are located in urban areas, charging fees that even at the lowest end of the spectrum are unaffordable to the poor, they cannot truly be said to be offering a better alternative to state provision for the most marginalized children.

The findings from these four focus countries present a reality that is common across sub-Saharan Africa where, despite commitments, governments are still failing to invest enough to meet the growing needs in the education sector.

Even where budget allocations reach or exceed the funding benchmarks of 15-20% of the national budget or 4-6% of GDP recommended in the Education 2030 Framework for Action to meet SDG4, in real terms these amounts will still be insufficient if the size of national budgets overall do not increase.

This is unlikely to happen whilst Tax to GDP ratios remain low as is the case in most sub-Saharan African countries, which are yet to introduce fair and progressive measures to widen the tax base and raise additional, sustainable funds needed for delivering key public services such as education.

In addition, it is crucial that public sector budgets and expenditure are sensitive enough to reach those who need it most (including girls, disabled children and children in remote, in rural communities) and transparent enough to allow scrutiny from key civil society organisations whose role it is to hold governments to account for commitments to financing education that is equitable and inclusive.

Overall, in addition to providing specific analysis for Malawi, Mozambique, Nigeria and Tanzania, the report also highlights comparisons and contrasts between the four countries and provides a common set of recommendations for governments, civil society organisations, the donor community and researchers.

It is our hope that you will find this report informative and useful for advocacy work on the provision of free public education of the highest attainable quality.

A complementary study was produced by Dr Maria Ron Balsera at ActionAid, using the same research but with a focus on Ghana, Kenya and Uganda, which can be downloaded here: [https://actionaid.org/sites/default/files/publications/multi\\_country\\_research\\_on\\_private\\_education.pdf](https://actionaid.org/sites/default/files/publications/multi_country_research_on_private_education.pdf)

**Julie Juma – Education Programme Manager - ActionAid International.**

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# ABBREVIATIONS

<b>AP</b>	Abidjan Principles
<b>BIA</b>	Bridge International Academies
<b>CDSS</b>	Community Day Secondary Schools
<b>CRC</b>	Convention on the Rights of the Child
<b>CRPD</b>	Convention on the Rights of People with Disabilities
<b>CSS</b>	Conventional Secondary Schools
<b>DFID</b>	UK Department for International Development (UKAID)
<b>DHS</b>	Demographic Health Survey
<b>ECOWAS</b>	Economic Community of West African States
<b>ESDP</b>	Education Sector Development Programme Tanzania
<b>EU</b>	European Union
<b>GDP</b>	Gross Domestic Product
<b>GEC</b>	Girls' Education Challenge
<b>GER</b>	Gross Enrolment Ratio
<b>GoM</b>	Government of Malawi
<b>GPE</b>	Global Partnership for Education
<b>GPI</b>	Gender Parity Index
<b>GPIA</b>	Adjusted Gender Parity Index
<b>HDI</b>	Human Development Index
<b>ICRC</b>	Infrastructure Concession Regulatory Commission, Nigeria
<b>IMF</b>	International Monetary Fund
<b>ICT</b>	Information Communication Technologies
<b>ISAMA</b>	Independent Schools Association of Malawi
<b>INGO</b>	International Non-Governmental Organisation
<b>JSS</b>	Junior Secondary School
<b>LGEA</b>	Local Government Education Authority, Nigeria
<b>LoI</b>	Language of Instruction
<b>MoEST</b>	Ministry of Education, Science and Technology, Malawi
<b>NER</b>	Net Enrolment Rate
<b>NGO</b>	Non-Governmental Organisation
<b>PEDP</b>	Primary Education Development Plan Tanzania
<b>PRSP</b>	Poverty Reduction Strategy Paper
<b>PSLCE</b>	Primary School Leaving Certificate Examination
<b>PPP</b>	Public-private partnership
<b>RCT</b>	Randomized Control Trials
<b>SEDP</b>	Secondary Education development Plan Tanzania
<b>SACMEQ</b>	Southern and Eastern Africa Consortium for Monitoring Educational Quality
<b>SERAP</b>	Socio-Economic Rights and Accountability Project, Nigeria
<b>SSA</b>	Sub-Saharan Africa
<b>SUBEB</b>	State Universal Basic Education Board, Nigeria
<b>TEGINT</b>	Transforming Education for Girls in Nigeria and Tanzania
<b>UBE</b>	Universal Basic education
<b>UBEC</b>	Universal Basic Education Commission Nigeria
<b>UN</b>	United nations
<b>WIDE</b>	World Inequality Database on Education



Governments must provide free public education of the highest attainable quality in line with their human rights obligations.  
PHOTO: FIDELIS/ACTIONAID

## EXECUTIVE SUMMARY

**This report** analyses selected features of the private provision of schooling and its regulation in four countries – Malawi, Mozambique, Tanzania and Nigeria. It considers these against the standards laid out in the Abidjan Principles (AP),<sup>1</sup> guiding principles on the human rights obligations of States to provide public education and regulate private involvement in education. The AP were adopted on 13th February 2019 in Abidjan, Côte d'Ivoire by a group of human rights experts from around the world, following a three-year participatory consultation and drafting process. They 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. They provide a framework for evaluating forms of private provision, giving attention to how this can be assessed in relation to states' obligations as regards to the right to education. Comparisons and contrasts between the four countries are highlighted in this report.

This study uses the AP to describe and evaluate private schooling in Malawi, Mozambique, Tanzania and Nigeria. It analyses whether the approach to private education in each country is consistent with the expansion and support for public education by the State, and considers whether discrimination and segregation are outcomes associated with forms of private provision that detract from states' human rights obligations to provide free, quality public education. The study also looks at approaches to the regulation of private providers in each country and how effectively they have been implemented. As the AP give very clear guidelines regarding regulation, we use these to read and assess the forms of regulation currently in place.

The study uses the AP to analyse the landscape of private and public education in the four countries. In each, the expansion of private schools has been documented in several previous studies but the effects of this expansion on the provision of public education is not well analysed. The AP allow us to

1. [www.abidjanprinciples.org](http://www.abidjanprinciples.org)

consider this relationship, bearing in mind the human rights obligations of states regarding the provision of public education and the regulation of private involvement in education. We set out to look at this dynamic in relation to four areas – access, forms of discrimination, funding, and governance. We were particularly interested in public-private partnerships (PPPs) and forms of regulation. We made specific use of some guiding principles of the AP to formulate research questions in the four countries, thus linking the evaluatory frame of the AP with analysis of conditions on the ground. The five research questions were:

1. *Is there access to free, quality, public primary and secondary education for 9 years for all children and has the growth of the private sector contributed to limiting this provision?* This discussion focuses on Guiding Principles 1a, 17 – 21, and Principle 2a, 29 of the AP on the right to public education.
2. *Is there discrimination against groups, such as low income families, girls, children in particular locales, children with disabilities, and forms of segregation associated with the presence of private providers?* This discussion focuses on Guiding Principles 24 – 27 and 31 of the AP related to equality and non-discrimination in education.
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 Guiding Principles 29, 34-37 of the AP related to the financing of education.
4. *Do the PPP arrangements in place for schools meet the conditions laid down under the overarching Principle 5 (Guiding Principles 64 to 74) of the AP which outline requirements 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 under the overarching Principle 4?*

Data was assembled in response to all five questions for each of the four countries. We report in detail on each country in the following chapters, each of which comprises a country report and recommendations. For the selected sections and paragraphs of the AP, we look at the information currently available as to whether each country is meeting its human rights obligations in this area, and what laws, policies or current analysis indicate as to whether the state fulfils its obligations as outlined in the AP. For each country we draw a conclusion regarding whether the human rights obligations are met in the five selected areas.

The overall findings from the study conclude that all four countries have constitutional commitments and obligations under international treaties to provide for the right to education. But this has come to be interpreted as being met by *any form* of schooling being provided, neglecting states' obligations to provide a public education system that supports nine years of free quality schooling for all, without discrimination, segregation or demands on parents to pay any fees. Using the AP, our analysis reveals that these conditions are not in place and obligations are not met in any of the countries studied. In all countries there has been a largely unregulated growth of the private sector. This is particularly marked in some countries at secondary level, but in others (e.g. Some Nigerian states) this is also a feature of primary schooling. The effects of this leads to a stratified education system. Built-in penalties for the poorest are generally unacknowledged.

A study of the policy documents in each of the four countries reveals that claims are made about the efficiency of the private sector in relation to aspects of the education system, often with very little substantiation. The AP provide a guide to evaluate the policy discourse that claims privatisation will allow for delivery of education, highlighting how privatisation plans need to be read together with concerns for states' obligations to meet human rights commitments.

The AP provide an approach to evaluate several different elements associated with private provision. Across the four countries there is considerable variation as to where and how private provision has emerged.

In **Malawi** the Government has signed up to several international conventions to provide free and

compulsory public primary schooling. Since 2008, however, the private sector has been viewed as a key channel to support the expansion of primary education which the Government cannot fund. The expansion of secondary education from 2008 has not been accompanied by a commitment to make this free. The system is highly stratified, with requirements on parents to pay for quality provision. Schools which charge low fees are of extremely low quality, but it is here where a large proportion of girls from low income families are enrolled. A commitment in late 2018 to abolish all secondary school fees implies that the growth of the private sector at this level will be limited, but whether this is put into practice requires monitoring. The current disbursement of public revenues, while progressive with regard to primary schooling, are not so at secondary level and aid, which supports private schooling and PPPs, does not adequately support the building of a free, quality public education system. The size of the private sector at secondary level, enrolling nearly a quarter of all children, represents a form of discrimination linked to income and is also associated with gender inequalities, as fewer girls than boys are enrolled in private secondary schools. Children with disabilities comprise a significant proportion of out-of-school children, and the costs associated with schooling for children with disabilities, as there is limited state provision, is a key feature of this. Private provision may fill a gap, but the AP highlight the need to build a quality public education system and relying on this form of gap-filling is not a sustainable or equitable solution. Standards for regulating and evaluating public and private primary and secondary schools were introduced in 2015, but have not yet been reviewed with regard to the extent to which assessments address the effects of particular schools on quality public education at the system level. Monitoring the use of these standards drawing on the AP might be a useful path for future research and civil society activity.

**Mozambique** has honoured its human rights obligations in line with its Constitution and international conventions regarding the provision of free primary and secondary education. There is only a very small private primary sector, and a small proportion of children enrolled in private secondary schools, the largest proportion at the senior secondary level. Nonetheless, some charges for schooling are made, associated with uniforms and exams, and these do

appear to exclude some of the poorest children. There are a small number of very expensive private schools, and the interest of middle-class families in using private schooling, fragmenting a national concern for a public, quality education system, is concerning. Government limits on the introduction of private schooling echo some elements of the AP. However, evaluations of the introduction of private schools are not as rigorous as those laid down in the AP. A discourse supportive of some kinds of private schooling is articulated, with claims that PPPs will help in the expansion of secondary schooling, and particularly vocational schools.

In **Tanzania** expansion of education has long been associated with a form of partnership with the private sector, initially conceived as relationships with communities and civil society, but later changing to incorporate for-profit education organisations. This partnership model has implicitly or explicitly been used to justify the levying of fees on parents, although primary education is nominally free, and the expansion of secondary schooling linked with a mobilisation of community resources in cash or kind. Drawing on the AP we can identify when privatisation in the form of mobilisation of private/ community funding transitions into privatisation in the form of exclusionary schooling, limiting the expansion of secondary education to particular groups, curtailing the ability of some parents to keep their children in school, and directing what kinds of exam results children achieve. While the form associated with community ownership may seem laudable its effects are discriminatory, and the encouragement of PPPs and lack of progressive approach to revenues for education funding highlight these relationships.

In **Nigeria**, private provision has become a largely unregulated response to the enormous under provision of public education. This trend is particularly apparent in southern states, where lower numbers of children are out of school, but where financing of the public education system is grossly inadequate. Although private provision is not a notable feature of some northern states, these have very large proportions of children out of school. The financing of education is associated with complex federal and state level relationships. Not all of the federal resources available for education have been drawn down by states, but even were they are used, huge additional resources

are needed. The AP highlight the myriad inequalities and forms of discrimination associated with private schooling showing why it is not a solution to bring the large number of out-of-school children into quality provision.

The AP highlight that the size of the private sector indicates a failure by governments to meet human rights obligations, but also that the way in which the private sector is involved has an impact on the right to education. This research indicates that, even in countries where the private sector is not a large provider, a discourse is evident in government and donor policy documents which asserts, without question, that the private sector is a more efficient or better quality provider. The evidence on this is inconclusive. A few frequently cited randomized control trials (RCTs), do show that children from poor families in Nigeria, Ghana and Kenya have better learning outcomes if they attend private, rather than public schools.<sup>2</sup> However, these studies focus on a particular cohort of children, rather than the effects on the education system as a whole. A number of other research studies highlight how private schooling is more often found in urban areas, that the focus on learning outcomes in a small number of subjects does not allow analysis of wider learning, and that these RCTs don't tend to investigate the effects on the education system as a whole, including post-school inequalities, the attitudes of teachers, or the approach to management and inclusion. Thus, while much of the literature in this area focuses on individual children, their families, or age cohorts in particular locations, the AP suggest it is important to compare not just these groups, but across whole education systems, to uncover ways in which private provision has particular effects at a system level. The AP enjoin us to consider what some of the outcomes of private provision are for different demographics, particularly the poorest and most discriminated against in any society.

The AP allow for an analysis of rights at the level of the child and the family, and at the level of the education system. They formulate a particular approach to evaluating fairness in this relationship, based on the notion that adequate education of the highest quality

possible must be provided to *all* children through the education system. *Only if* this is secured is the state justified in making special additional provision for selected groups of children on particular grounds, for example providing for special needs or meeting the wishes of parents for particular forms of faith schooling. In contrast to this position formulated in the AP, the view advanced by many advocates of private schooling affirms the rights of an individual child or family, regardless of their relationships with others in their society and that decisions based on a single individual or a family can stand in place of decisions made for an education system. This is a category error, as an individual is not the same as a family, and a single family is not the same as the many families and relationships that are signalled by the concept of the education system. In making evaluative judgements, a commentator may consider how opportunities for an individual are shaped by resources available, and the processes that constrain and enable those opportunities, and may look at the different outcomes that result. We could make a similar form of judgement about education systems which enact the obligations of governments. But in our view, education systems need to be analysed as an aspect of the landscape of resources, or for their influence on the conversion of opportunities into outcomes. Education systems are not the same as individuals, and the moral obligations we have to individuals should not be confused with institutional relationships of equality, fairness and recognition of history that we associate with education systems. Some analysts of education systems see individuals, communities and education systems as linked through relationships of governance and accountability (World Bank, 2018). No analysts of education systems to our knowledge consider education systems, which enact the obligations of states, to be the same as individuals or groups which have rights. The AP, by focusing primarily on governments adequately meeting obligations, and considering decisions about individuals through this frame, provides a path through some of the confusion of debate on this issue.

All the countries studied have allocated inadequate financing for education, even though they may meet the

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2. Tooley, J., Dixon, P., & Stanfield, J. (2008). Impact of free primary education in Kenya: A case study of private schools in Kibera. *Educational Management Administration & Leadership*, 36(4), 449-469. Härmä, J. (2013). Access or quality? Why do families living in slums choose low-cost private schools in Lagos, Nigeria?. *Oxford Review of Education*, 39(4), 548-566. Alcott, B., & Rose, P. (2016). Does private schooling narrow wealth inequalities in learning outcomes? Evidence from East Africa. *Oxford Review of Education*, 42(5), 495-510.

benchmark for share of the budget to be allocated to education. The AP indicate that financing for education needs to be assessed at systemic level, and that addressing historic and current inequality must be a focus. This research reveals that governments are not working enough on efficiencies in revenue collection and other progressive taxation approaches. Instead a discourse has been promoted to argue that the private sector can fill gaps in the public school system, regardless of the inequities associated with this. The AP highlight how this approach falls short of international human rights commitments.

The AP set out a clear rationale for an approach to regulating private schools and evaluating Public

Private Partnerships (PPPs). This research indicates that private schools are insufficiently regulated in all four countries and PPPs are not monitored with regard to their effects on equality or the establishment of a public education system. These governance gaps contribute to insufficient assessment of the effects of privatisation in the form of PPPs on the public school system as a whole. AP 7 specifies that states must put in place adequate mechanisms to ensure that they are accountable for their obligations to respect, protect and fulfil the right to education, including their obligations in the context of the involvement of private actors in education. This has a bearing on the mechanisms to evaluate and regulate PPPs.

## Recommendations

*The recommendations arising from the study are that:*

### **Governments should:**

1. Provide free public education of the highest attainable quality, in accordance with their human rights obligations. This requires a review of education laws, policies and plans, paying attention to the system as a whole, notably funding arrangements, school provision and the knowledge, understanding and skills of teachers regarding non-discrimination. The levels of schooling and learning obtained by different demographic groups requires scrutiny, taking account of those that suffer most discrimination. The Abidjan Principles can be used to monitor and evaluate how the system is working to deliver free, quality, non-discriminatory education for all.
2. Ensure there is enough sustainable revenue to adequately finance nine years of free quality education for all children. This will require the efficient collection of progressive forms of taxation and the tackling of tax evasion and avoidance through, for example, deferred tax arrangements to large Multi-National Corporations. No harmful tax incentives should be provided until financing gaps for education are overcome.
3. Make a critical appraisal of assertions in their own policy documents and those of donors which claim that private provision or financing is cheaper, better or more efficient for the education system. The evidence for these claims needs careful examination to take account of equity and the discourses in these documents need evaluation and scrutiny. Evaluation of these documents using categories from the Abidjan Principles is recommended, and the outcome of these evaluations should guide the review of policies and plans.
4. Effectively regulate and monitor all private schools and PPPs, ensuring they comply with applicable human rights law and standards and strictly observe all substantive, procedural and operational requirements for the realisation of the right to equality in the enjoyment of the right to education (AP 23), which should guide the drafting and enforcing of regulation.

### **Civil society should:**

1. Hold governments to account to ensure that human rights obligations are met regarding the right to free public education of the highest attainable quality.
2. Work at local, regional, national and international levels to document forms of discrimination associated with private provision and its effect on the education system as a whole and the right to education, using the Abidjan Principles as a guide to monitoring and evaluation.
3. Demand progressive and efficient tax collection processes to meet obligations for financing education, as laid down in the Abidjan Principles.
4. Monitor whether the regulation of private schools and PPPs has taken place in line with the criteria laid down in the Abidjan Principles.
5. Critically review arguments made by governments advancing support for private education, using the Abidjan Principles and highlighting whether or not effects on the education system as a whole have been considered.

### **Donors should:**

1. Support public, free, quality education for all and the development of a system-oriented approach to ensuring this is provided to the highest attainable quality for all children.
2. Support governments to mobilise revenue in a progressive and sustainable way to adequately fund free, public, quality education.
3. Undertake gender, socio-economic and other equality audits of the effects of private provision and PPPs on the whole education system using evaluative frameworks suggested in the Abidjan Principles.
4. Consider critically, using clauses of the Abidjan Principles, whether their promotion of private sector engagement in the education system privileges better-off children, and undermines or contradicts the principles they proclaim to stand for and their obligations under human rights treaties.
5. Look critically at work that promotes the private sector, considering the evidence in relation to effects on the public education system as a whole, drawing on the Abidjan Principles.

### **Researchers exploring aspects of private education provision should consider:**

1. The historical, social, economic and political conditions which have generated the growth of private schooling and governments' successes and failures in meeting human rights obligations.
2. The effects of private schooling on equalities and the public education system as a whole (using some of the formulations in the AP as a guide).
3. How to document the relationship between fiscal studies and levels of education provision.
4. How or whether the regulation of private schooling and PPPs takes place.



Free, quality, publicly funded education is key to achieving gender equality. PHOTO: MAKMENDE/ACTIONAID

# INTRODUCTION

**This report** analyses selected features of the private provision of schooling and its regulation in four countries – Malawi, Mozambique, Tanzania and Nigeria. The effects are evaluated through the standards laid out in the *Abidjan Principles: guiding principles on the human rights obligations of States to provide public education and to regulate private involvement in education*.

We give particular attention to the impact of private provision on the delivery of public education, aspects of segregation and discrimination, and how PPPs operate in a range of settings – schools, households, communities and countries –with regard to the issue of equality, taking account of rights, opportunities and capabilities. We look at forms of regulation of private schools and PPPs, assessing how they might need to be strengthened in accordance with the Abidjan Principles (AP) and noting whether existing laws and policies meet the threshold for regulation laid down therein. We also look at financing and whether approaches to funding public and private education have harmful effects on the provision of free quality education.

Arising from this analysis are several recommendations for improved legislation, policy scrutiny and amendments to regulations and practices to ensure national compliance with the right to education as interpreted in the AP. The study is intended to deepen understanding of the context of private education in each of the four countries, and support advocacy for

the effective regulation of all education providers and the adequate financing of free, quality, public education.

The research is based on a desk review of published sources regarding primary and secondary schooling and some key informant discussions with staff in ActionAid country offices in Malawi, Mozambique, Tanzania and Nigeria conducted in December 2018. The report is structured as follows:

Part 1 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

Part 2 draws some comparisons and contrasts emerging from the four country studies and comments on the sources available to conduct research in this area.

Part 3 presents reports for each country 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 is provided of funding for 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, highlighting some of the key pointers in the AP.

Part 4 summarises our findings and presents some recommendations.



Different forms of privatisation in education undermine government commitments to equity, quality and inclusion.  
PHOTO: BURTON KAMOWA/ACTIONAID

# 1. OVERVIEW OF THE ABIDJAN PRINCIPLES:

## **Guiding principles on the human rights obligations of States to provide public education and to regulate private involvement in education**

These guiding principles, adopted at a conference in Abidjan in February 2019, lay out the values, vision and objectives informed by a human rights perspective to address and regulate trends in the privatisation of education in very different national contexts. In summarising the core elements of the AP, we identify five key areas used here to evaluate the form of private provision in Malawi, Mozambique, Tanzania and Nigeria.

### **1. State obligations to fulfil the rights to free quality public primary and secondary education for all.**

The AP were formulated through a consultative process with civil society organisations to guide states in their development of legislation concerning the right to education and enhance forms of regulation of private provision. The AP are intended to be used by civil society campaigners, among others, to hold states to account for ensuring that expansion of private schooling does not come at the expense of the quality of, and adequate funding for, free public

education. The scope of the AP does not limit or undermine existing human rights standards as incorporated into national legislation. The AP emphasise that everyone subject to the jurisdiction of a state has the right to available, accessible, acceptable and adaptable education at all levels. States have a core obligation to ensure the satisfaction of, at minimum, essential levels of the right to education, which entails free primary and secondary education, comprising nine years of quality schooling. States must fulfil obligations to ensure non-discrimination and equality, and these obligations cannot be abdicated in the face of private provision. States have an obligation to deliver free quality public education, good governance, transparency, accountability and absence of corruption and can be held accountable for the delivery of free quality public education. States will only be able to defend failure to provide for education in this form if they can show that every effort has been made to use all

available resources, and that there is a regular public assessment in place of how to evaluate and utilise available resources. The AP also stipulate that a national strategy should also be in place, with a timeline for how to establish free education.

**2. States to guarantee adequate financial resources to fulfil obligations on the right to free quality public education.**

The AP outline that states must allocate all available resources at their disposal to fulfil obligations associated with the right to education. Financial resources to be mobilised include fair, 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; and the management of debt. Retrogressive measures, which change these obligations, are only to be undertaken in exceptional circumstances, and will be understood to be temporary, and to have been undertaken only as a last resort, and to be implemented with appropriate care for the most vulnerable.

**3. States to impose public service obligations of non-discrimination and transparency on private actors.**

The AP stipulate that where private education exists, rigorous standards must be applied. Parents have the right to choose this form, and individuals have a right to provide these services in for-profit or not-for-profit form. But the AP require states to guarantee education as a public service and to impose public service obligations on private actors. This entails ensuring that principles of human dignity, participation and non-discrimination are observed. Transparency and accountability are required in delivery and decision-making processes related to education. States have an obligation to eliminate all forms of discrimination in public and private schools, including on the grounds of socio-economic status, gender, religion and disability, ensuring that laws, policies and levels of provision do not impose forms of discrimination. States are accountable for delivery on these rights through litigation, parliamentary committees, national human rights institutions and regional and international human rights mechanisms. Thus, states must engage in effective public monitoring of delivery of the right to education. States must monitor minimum standards in private schools,

ensuring that they do not practise forms of discrimination and that there is transparency in access to information. Staff working in private schools must meet national requirements for teacher qualifications, must be paid in line with national salary agreements and have provision made for training, adequate labour conditions and fulfilment of union rights. Children attending private schools must have access to a full and balanced curriculum. Private school buildings must be of adequate standard with sanitation and minimum standards of access for children with disabilities. Private schools that do not comply with these regulations must be given clear guidance on what to do to meet minimum requirements. The AP require states to regularly gather data on, and assess the impact of, the existence of private educational operators on the enjoyment of the right to education for all children, and to inform citizens of how they are addressing these impacts.

**4. Existence of private provision must not systemically undermine the provision of quality state education.**

The AP stipulate that in acknowledging that choices for private provision may be made by parents or providers, this must not be used by states in policy or practice to supplant or replace free quality public education. All private schools must comply with national and international human rights standards. In addition, the AP lay out that states need to monitor and regulate the effects of private schools on public provision, emphasising the importance of considering systemic impacts and reductions of opportunities for particular groups. States can impose regulations to ensure that no private educational operators are able to unduly influence the education system, for instance, where necessary, by capping the number of private educational operators.

**5. Regulation of PPPs.**

The AP lay out that states should not engage in PPPs which discriminate against any group of children, provide inadequate quality or undermine wider rights to education. If PPPs are required in exceptional circumstances, these must be 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 and their effects will be regularly monitored.

For the purposes of this report, the following research questions have been framed. They draw on relevant clauses of the AP to explore how conditions in the four countries meet the standards laid down by the AP on the ground:

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 Principle 1a, para 17 – 21, Principle 2a, para 29 of the AP on the right to public education.
2. *Is there discrimination against particular groups (low income families, girls, children in particular locales, children with disabilities, etc) and forms of segregation associated with the presence of private providers?* This discussion focuses on Principle 1b, para 24 – 27, Principle 2a, para 31 of the AP on obligations to non-discrimination.
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 PPP arrangements?* This discussion focuses on Principle 2b, para 29, 34-37 of the AP.
4. *Do the PPP arrangements in place for schools meet the conditions laid down in Principle 5, para 65 of 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 section of AP on obligations to regulate Principle 4?*



Quality education must be accessible to all. PHOTO: DIEGO SANTORI/ACTIONAID



Quality public education can be adequately financed through fair and progressive tax. PHOTO: MORDECAI SULE/ACTIONAID

## 2. USING THE ABIDJAN PRINCIPLES TO REVIEW PRIVATE EDUCATION IN MALAWI, MOZAMBIQUE, TANZANIA AND NIGERIA:

### Comparisons and contrasts

In each country chapter below, we have drawn on selected Sections and paragraphs of the AP to consider what information we currently have as to whether each country is meeting its human rights obligations in the areas of:

- i. developing a free, quality public education system,
- ii. orienting that system to address intersecting inequalities and build a quality education system concerned with equality.
- iii. Adequately funding a free, quality public education system.
- iv. Adequately regulating private provider and PPPs.

We look at whether laws, policies, or current analysis indicate that the State does or does not fulfil aspects of the AP. For each country we look at selected Sections and paragraphs of the AP together with information we currently have as to whether each country is meeting its human rights obligations in this area.

The methodological approach taken in conducting this study has entailed reviewing information on private education in all four countries using key formulations of the AP as detailed above, in order to evaluate aspects of provision and connections to wider Constitutional aspirations and obligations under international human rights law and conventions to deliver on a public education system accessible to all. The resources to work evaluatively in this way are somewhat uneven, and have comprised policy documents, academic studies and NGO reports. In all 4 countries, while government policy documents, education sector plans and Education Management Information System (EMIS) data have been relatively easy to access in researching this report, detail concerning learning outcomes for different demographics, forms of discrimination, funding, and the implementation of regulation of private schools have not been equally easy to find. However, there is considerable insight to be gained from comparative cross-country discussions. Thus, while the scholarly

literature on privatisation of education tends to be limited to single country studies, analysis of a small number of schools, or discussion at high levels of generality about trends, we think there are some very useful perceptions that emerge from looking across a number of different countries with somewhat different histories of engaging with private education (Adamson et al. 2016; Robertson et al. 2012; Menashy 2014; Unterhalter 2017; Moeller 2018).

The four countries in this study all have Constitutional obligations to deliver on rights to free and compulsory primary education for all children, and two – Tanzania and Malawi – have made policy and other forms of binding commitment on free junior secondary education. Yet they have delivered on those obligations somewhat differently. In three countries – Malawi, Mozambique and Tanzania – considerable resources from national budgets, supplemented by aid, have been allocated to providing for free and compulsory primary schooling for most children. While in each there is still a proportion of primary school aged children out of school, the private primary school sector enrolls under 5% of the cohort. The growth of the private sector, although encouraged in policy in all three countries, has not had a major impact on the establishment of a free public education sector. However, there are major concerns about quality and inequalities in education outcomes for different groups of children in the public education system. One feature of this concerns the levels of school charges made for public education, which is meant to be free. This can take the form of special additional payments demanded by schools or requirements for communities to donate land, labour or time to support the school system. In all three countries lower transition rates to secondary school, particularly for girls, and children from lower income quintiles, highlight aspects of discrimination in public schooling. Access to junior secondary school rests to a large extent on performance in public examinations at the end of the primary phase and uneven levels of quality, sometimes associated with charges for extra tuition or unaddressed forms of discrimination against some children, compromise the free quality education. The demands for these payments and the uneven quality of schooling run counter to obligations to provide free, quality schooling for all children as laid down in the AP.

The pattern in Nigeria is somewhat different. State commitments on free compulsory education for all children have not been honoured, despite a much

larger economy than the other three countries, and huge oil revenues. While in some Nigerian states the private sector enrolls only around 5% of the primary school cohort, in others, notably Lagos, more than 50% of primary school aged children are in private schools, largely because of grossly inadequate levels of state provision. Nigeria has the highest number of out-of-school-children in the world, official figures in 2010 estimate 8.7m (UNESCO UIS, 2010), however, other figures indicate the numbers could now be as many as 13m (Ishaku and Oraka, 2019). Although state education is free, and in some locations, and for some groups of children of adequate quality, there are too few schools, inadequate deployment of teachers, and enormous difficulties linked with complexities of local, state and federal politics in delivering on a public quality education system to meet the needs of *all* children. The barely regulated private sector is being encouraged or allowed to mop up demand, decreasing political pressures on the government for non-delivery of obligations on free primary schooling. Thus in Nigeria laws, policies, and current analysis indicate that the State does not fulfil most aspects of the right to education as interpreted by the AP, falling far short of its obligations in relation to human rights law.

The situation regarding policy on junior secondary education differs in the four countries highlighting differential engagement with the obligation to establish a system of provision of 9 years free quality public education of all children as laid down in the AP. In Tanzania a policy to roll out free junior secondary schooling has rested on communities contributing land and labour, and school development fees being charged. About a quarter of the cohort are in private schools. In Malawi a differentiated secondary education system, with very different levels of quality, has increased demand for private junior secondary schools. In Mozambique only a small proportion of the cohort transfer to secondary school and private provision accounts for a quarter of enrolments, largely concentrated in towns. In Nigeria the gross lack of provision at primary level is also apparent at secondary level and across the country about a fifth of children are enrolled in private junior secondary schools (JSS), although in some southern states this figure is even higher. For example, in Lagos state, 30% of JSS enrolments are in private schools (FME, 2017, p.20; p.33).<sup>3</sup> Therefore, the obligations to provide free quality junior secondary schooling for all children are not honoured in any of the four countries.

3. [https://www.nemis.gov.ng/downloads\\_fold/Nigeria%20Education%20Indicators%202016.pdf](https://www.nemis.gov.ng/downloads_fold/Nigeria%20Education%20Indicators%202016.pdf)

In all four countries it is difficult to make a tight causal connection between the size and shape of the private school sector and limitations on access to free, quality public education. However, some key associated features are uncovered when the AP are used to evaluate provision. Firstly, in all four countries, the existence of private schools, and associated features of privatisation, such as charging for additional teachers, tuition to pass examinations, or the existence of a stratified junior secondary school system, are conceived and presented by governments as key policies to reduce the financial burden of delivering on free and compulsory education. Thus, a key *discourse* is developed that free, quality public education is too expensive, and that the private sector is a key supplementary resource. This means that attention is not directed to the revenues lost to tax incentives that could have used to fund the education sector and other public services. The inequities associated with inefficient systems (e.g. inadequate deployment or support of teachers) or the historic inadequacies of poor schools are not highlighted. There is little comment on the gearing of education budgets so that public revenues are not proportionally or appropriately distributed across different levels of education meaning very large proportional amounts of public finance are directed to tertiary education, a level attended by a minority, with limited proportions invested in secondary schooling which all four countries are seeking to make free and available to all. The effects are to magnify already existing inequalities in the society. These features of the financing of education and the distribution of resources mean that inequalities in the society are reproduced in education. The discourse that the private sector can 'bridge this gap' diverts attention from understanding the nature of these inequalities, and how they require system level policies to address and change them, which would often entail more, rather than less resource directed to the schooling of the poorest.

The AP are a useful evaluative frame to consider the conditions which lead to arguments being made as to why human rights obligations cannot be honoured. The AP help highlight some of the steps governments should consider in order to deliver on obligations for a free, quality public education system.

In all four countries there are clear inequalities associated with income, gender, region, political-

economic and socio-cultural relationships. There are also gaps in the provision of schooling for children with disabilities, and limited information in all these areas. These inequalities have different histories. Some affect sizeable majorities, while some have impact on smaller numbers, but are still associated with sustained injustice. Evaluating the existence of private schools through the terms of the AP show how these schools exacerbate inequalities in education distribution and contribute to discrimination, primarily with regard to income levels and location. The existence of private schools is also associated with deepening inequalities based on gender, although the processes entailed are more complex, and bear on a mixture of dynamics within families, strategies around maintaining socio-economic/cultural status and gender relations within schools and work. Private provision, sometimes linked to charitable foundations, in many regions is the only form of schooling for children with disabilities. The AP highlight how inadequate in relation to human rights obligations this approach to building state public education systems is, where the private sector, which requires payments from the poor, is positioned as a safety valve to cater for children who have no other schooling. Under these conditions, as the AP highlight, inadequate attention is given to providing resources through needs-based allocation of public financing to particular populations, which face discrimination, and to developing the capacity of the education system to respond to those most in need.

While all four countries provide for the regulation of private schools, this is generally not much implemented, and the systemic features the AP indicate should characterise decisions about regulation of the private school sector are not in place. In all four countries PPPs comprise a small component of education initiatives, but in all they are increasing, sometimes linked with provision of ICT, learning resources or additional buildings. In all the forms of regulation and scrutiny of PPPs highlighted by the AP have not taken a place.

In the chapters that follow we look in detail at each of the four countries, showing some of the history associated with the development of privatisation, and highlighting how deployment of the AP helps evaluate the form and shape of the current education system, and the differential access and outcomes provided for different groups.

# 3. COUNTRY REPORTS

Girls and children from the poorest families are less likely to transition to secondary school. PHOTO: ROBERTINO JORGE/ACTIONAID



## 3.1 MALAWI

Key overview information	
Population	18, 622, 104 <sup>4</sup>
% of population under the age of 15	48% <sup>5</sup>
Proportion of adult female population who did not complete primary school	12% <sup>6</sup>
Proportion of adult male population who did not complete primary school	5%
% out of school adolescents	417,904 (2016) <sup>7</sup>
- Male	204,426
- Female	213,478
Gini coefficient	0.45 (Gini coefficient: increased from 0.39 to 0.45 between 2005 and 2014).
HDI score and rank	171 (0.477) <sup>8</sup>
Transition rate from primary to lower secondary	38.4% (2017)
GER primary	140 (2017) <sup>9</sup>
- Female	142
- Male	137
NER primary	88 <sup>10</sup>
GPI primary enrolment	1.02 <sup>11</sup>
GPI primary completion	1.16 <sup>12</sup>
GER Secondary	38.14 (2017) <sup>13</sup>
- Female	37
- Male	39.28
NER Secondary	38.14 (2017) <sup>14</sup>
- Female	30.8
- Male	32.09
GPI Secondary enrolment	0.9 <sup>15</sup>
GPI lower secondary completion	0.81 <sup>16</sup>
GPI upper secondary completion	0.66
Proportion of children in private primary schools)	2.15% <sup>17</sup>
Proportion of children in private secondary schools	21%
% total government expenditure on education (2018)	14.34%

4. <https://data.worldbank.org/country/malawi>

5. <https://dhsprogram.com/pubs/pdf/SR237/SR237.pdf>, p.2

6. <https://dhsprogram.com/pubs/pdf/SR237/SR237.pdf>, p.2

7. <http://uis.unesco.org/country/MW>

8. <http://hdr.undp.org/en/countries/profiles/MWI>

9. <http://uis.unesco.org/country/MW>

10. EMIS (unpublished), 2017/18

11. UIS database and GEMR 2017/18 Statistical tables

12. UIS database and GEMR 2017/18 Statistical tables

13. <http://uis.unesco.org/country/MW>

14. <http://uis.unesco.org/country/MW>

15. EMIS (unpublished), 2017/18

16. EMIS (unpublished), 2017/18

17. EMIS (unpublished), 2017/18

### Learning outcomes for poorest quintile (WIDE):<sup>18</sup>

Learning achievement in reading (primary) <sup>19</sup>	58%
Learning achievement in mathematics (primary) <sup>20</sup>	37%

### Key legislation for advancing the right to education

Education Act (1962)  
Constitution of the Republic of Malawi (1994 revised 1998)  
Public-Private Partnership Bill (2010 came into force in 2013)  
National Education Policy (2013)  
Education Act (2013)

**Date scheduled for next General Election:** scheduled for 2024

### International Laws on the Right to Education ratified by Malawi

Law	Date ratified
CRC - Convention on the Rights of the Child	2 Jan 1991
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	12 Mar 1987
CERD - International Convention on the Elimination of All Forms of Racial Discrimination	11 Jun 1996
ICCPR - International Covenant on Civil and Political Rights	22 Dec 1993
CRPD - Convention on the Rights of Persons with Disabilities	
ILO 138 - Minimum Age Convention	19 Nov 1999
ILO 182 - Worst Forms of Child Labour Convention	19 Nov 1999
African Charter on Human and Peoples' Rights	17 Nov 1989
African Charter on the Rights and Welfare of the Child	16 Nov 1999
African Youth Charter	13 Nov 2010

### Fertility rate, total (births per woman)<sup>21</sup>

2016	4.571
2010	5.308
2005	5.903
2000	6.149

18. [https://www.education-inequalities.org/countries/malawi/#?dimension=wealth\\_quintile&group=\[Quintile%201&year=latest](https://www.education-inequalities.org/countries/malawi/#?dimension=wealth_quintile&group=[Quintile%201&year=latest)

19. Percentage of children of primary school age taking part in a reading assessment passing four levels of increasing difficulty

20. Percentage of children of primary school age taking part in a mathematics assessment passing four levels of increasing difficulty

21. <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?end=2016&locations=MW&start=1960&view=chart>

**SDG 4 Target 4.5 Equity (Gender) in Malawi (2015)<sup>22</sup>**

GPIA in completion			GPIA in minimum proficiency				GPIA in literacy rate		GPIA in adult proficiency		GPIA in gross enrolment ratio			
			End of primary		End of lower secondary									
Primary	Lower Secondary	Upper Secondary	Reading	Mathematics	Reading	Mathematics	Youth	Adults	Literacy	Numeracy	Pre-primary	Primary	Secondary	Tertiary
1.18	0.92	0.84					1.01 (-2i)	0.79 (-2i)			1.01	1.03 (2017)	0.94	

**% Child Marriage (2015)<sup>23</sup>**

% married below 15 years 9

% married below 18 years 42

**SDG 4 Target 4.5 Equity (Location/Wealth) in Malawi (2015)<sup>24</sup>**

Disparity in primary completion				Disparity in lower secondary completion				Disparity in upper secondary completion			
Adjusted parity index		% of poorest completing		Adjusted parity index		% of poorest completing		Adjusted parity index		% of poorest completing	
Location	Wealth	M	F	Location	Wealth	M	F	Location	Wealth	M	F
0.58	0.35	22	29	0.31	0.11	7	5	0.28	0.07	4	2

22. UNESCO 2018, p.317

23. DHS 2015 <https://data.unicef.org/topic/child-protection/child-marriage/>

24. UNESCO 2018, p.317

## 1. Introduction

The ebbs and flows over twenty-five years of the Government of Malawi working to fulfil obligations around human rights and education and seeking to regulate privatisation can be interpreted as linked with developments in the political economy of a country where agriculture is the main component of GDP. Debates around privatisation in education have echoes in discussions of the nature of agricultural commercialisation, subsidy programmes, the position of elites and the engagement of the international aid community (Dionne and Horowitz, 2016; Verger, Fontdevilar and Zacaño 2018). In this chapter we consider whether the ways in which regulation of private schooling has been approached accords with obligations under the human rights treaties to which Malawi is a signatory. We also look at the ways in which the Government has or has not sought to tackle forms of discrimination within the education system that can be associated with levels of privatisation.

From the 1990s, there has been sustained policy and investment by governments, communities and donors in the expansion of public primary and secondary education (Al-Samarrai and Zaman, 2007, p.360; Verger, Fontdevila, & Zancajo, (2018). Free public primary education was introduced in 1994 and resources have been invested in schools and teachers. Schools established in the colonial period as religious schools - owned by the Church of Central Africa, the Presbyterian or the Catholic church or organized under the Association of Christian Educators - have, since independence, been under government control (Baum and De Brular, 2017, p.7). These are treated as public schools, as education is free and the Government pays teachers' salaries (Iversen and Begue, 2017). This provision has meant that currently (2019) there are only a small proportion of children in private primary schools. However, the expansion of public secondary education has not been equally well resourced. Fees are charged in public schools, and there is a sizeable private sector. In the analysis that follows, we look at the range of primary and secondary provision, drawing on the AP to consider whether the provision of free, quality public education has developed in accordance with the Government's human rights obligations, and some of the constraints faced. We also explore how the AP allows us to evaluate the ways in which private schooling has been introduced and regulated.

A range of sources were consulted for this report, including policy and legal documents (Appendix 1) available on government websites. The unpublished EMIS 2016/17 provided the most recent education statistics, and was accessed via the Civil Society Education Coalition in Malawi. A rapid literature review of published academic articles provided background and some examples based on empirical research. There is limited recent empirical literature on private primary education, and most studies of this sector look at secondary schools. Grey literature in the form of NGO, civil society and donor reports provided information on access to education, government financing and the State's obligation to provide education for all. Skype interviews to discuss key issues on private education took place in December 2018 with staff from ActionAid Malawi and the Civil Society Education Coalition (CSEC).

The discussion is organised around the five framing questions used throughout this report, set out in section 1 above.

## 2. Access to free, quality public primary and secondary education

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**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 Guiding Principles 1a, 17 – 21, and Principle 2a, 29 of the AP on the right to public education.

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The Malawi Government has sought to fulfil commitments in the Constitution and various international legal frameworks to secure and advance the right to education for all children at primary level. It has, however, used the private sector to help meet these obligations and has not paid sufficient attention to the ways in which the size and shape of the private sector has limited delivery of a free quality public education system, that is non-discriminatory as outlined in the AP.

Since the 1990s the Government has expanded provision of free public primary education but has struggled to meet these commitments regarding secondary school. The 1994 Constitution provides a broad framework relating to the right to education. All persons are entitled to at least five years of

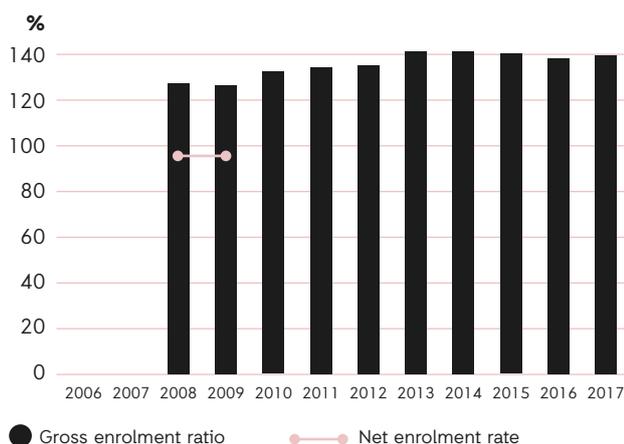
primary education. The Principles of Education Policy formulated in 2013 requires the Government to provide adequate resources to the education sector and devise programmes to eliminate illiteracy and make primary education compulsory and free to all citizens. The 2013 Education Act stipulates that the provision of primary education in government schools shall be free of tuition to all and compulsory for every child below eighteen years of age. Provision for this education is the responsibility of local government, and under the 2013 Education Act the conditions under which private providers may establish schools or receive public money are strictly regulated.

The growth of primary school enrolment when Free Primary Education was introduced in the 1990s expanded demand for secondary schooling, which the

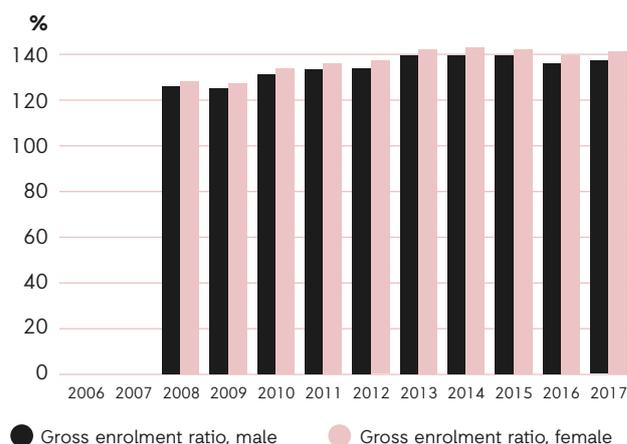
Government has not been able to satisfy adequately (Chimombo, 2009a, p.168). There is considerable drop out between primary and secondary school, particularly for girls, and this is largely associated with the lack of universal free provision of secondary education. In October 2018, the Minister of Education Bright Msaka, announced the end of secondary school tuition fees with immediate effect. The effect on enrolments in 2019 remain to be seen. The most recent data on enrolment indicate that the primary net enrolment rate (NER) in 2017 was 87% for boys and 89% for girls (MoEST, unpub, p.46) and the secondary NER was 16% for boys and 15% for girls (MoEST, unpub, p.76). The total primary education NER was 96.25% in 2009 and 26.15% at the secondary level (UNESCO, 2019). These data show how limits on free secondary education have had huge effects on enrolment rates at that level.

Figure 1: Gross and Net enrolment at Primary and Secondary level<sup>25</sup>

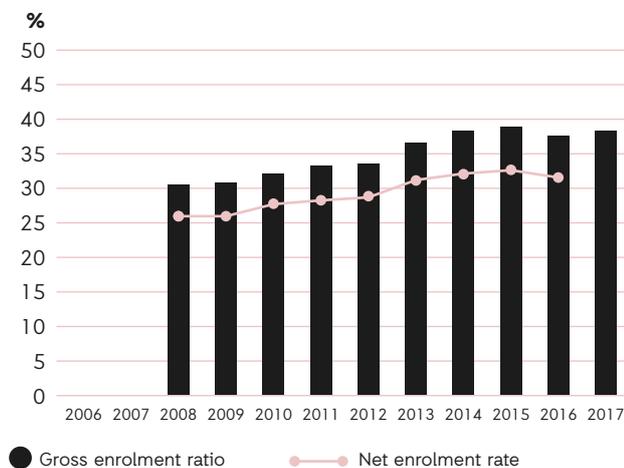
**Primary education**



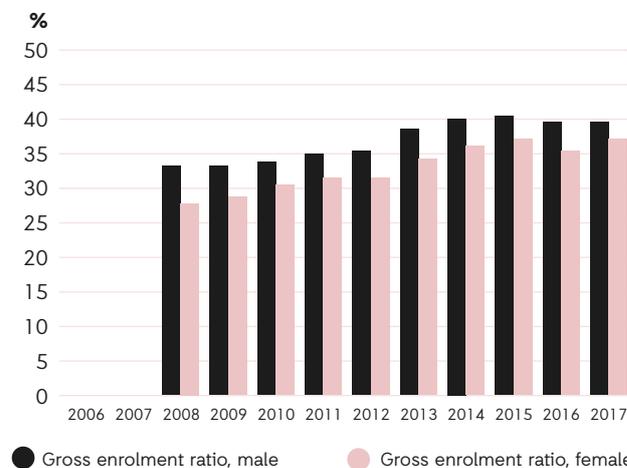
**Primary education by sex**



**Secondary education**



**Secondary education by sex**



25. UIS UNESCO statistics: <http://uis.unesco.org/country/MW>

The Constitution allows for the establishment of private schools, provided these are registered with a state department and maintained to official standards of state schools. There is a small private primary school sector, which developed alongside the growth of free primary schooling in the 1990s (Rose, 2005). The Education Sector Act (2013) allowed any citizen of Malawi to open a private school subject to Government assent, registration, inspection and provision of an approved curriculum. The 2015/16 the Education Sector Performance Report welcomes the shift in responsibility for Universal Basic Education (UBE) from Government to the private sector (GoM, 2016, p.19)

because of the additional resources it was believed the private sector would make available.

The private primary school sector is not large: between 2015/16 and 2016/17 enrolments in private primary schools increased from 87,126 to 109,247, comprising 2.15% of all primary school enrolments (MoEST, unpub, p.8). The total number of private primary schools increased from 394 in 2015/16 to 513 in 2016/17 (MoEST, unpub, p.9). Figures show that most private schools are in urban areas, and 56% of private schools are in the cities of Lilongwe and Blantyre, as illustrated in Table 1.1.<sup>26</sup>

**Table 1.1:** Allocation of private primary schools in Malawi<sup>i</sup>

	Private	Religious	Government	Total
<b>Lilongwe City</b>	182	3	54	239
<b>Blantyre City</b>	106	17	42	165
<b>All other districts</b>	225	3194	2242	5661
<b>Total</b>	513	3214	2828	6555
<b>Total as % all schools</b>	8%	49%	43%	100%

i Authors calculations based on MoEST, unpub, p.17

The increase in enrolment in private primary schools was at an average of 16.2% between 2014 and 2016, in contrast to a slower rate of increase in enrolment in public schools (an average of 2.7%) (GoM, 2016, p.22). The Government of Malawi approves this as “very encouraging as the government’s burden in providing primary education is lessening and private participation is improving” (GoM, 2016, 19). Historically, the introduction of free public education meant high levels of enrolment in primary schools, and the existence of the small private primary school sector did not appear to constrain the capacity of the State to establish free primary schools, which have enrolled most of the country’s children. However, since 2014, there has been a rapid growth in the numbers enrolled in private primary schools, and the reasons for this need investigation. The political context for Government support to the growth of private schools to ease the burden of its obligations to provide free public education also needs further research.

Varying levels of quality between schools with different resources mean that access to free secondary school is more limited, available only to high achieving pupils. To gain admission to public secondary schools, students must sit the Primary School Leaving Certificate Examination (PSLCE) at the end of eighth grade. Analysis of these results show only 90 girls for every 100 boys attained a primary school leaving certificate in 2010, 82 for every 100 made the transition to secondary school (UNESCO 2015b). Rose and Kadzamira (2019) calculate that only 15 out of every 100 of the poorest girls in rural areas enter secondary school. There are only places in secondary schools for about 40% of the students who pass the primary school leaving exam (Grant, 2017, p.70). Thus the 9th year of free public schooling outlined in the AP is not secured for all children, as there is insufficient school provision and the poorest are the most likely to be excluded from the resources that exist. The growth of a sizeable private secondary school sector and the introduction of fees at

26. Authors calculations based on MoEST, unpub, p.17

secondary level in certain schools highlight a weakening of state capacity to deliver on obligations for free quality public schooling at this level. Private secondary schools are thus a wedge, allowing for arguments that the State needs to be relieved of burdens for providing free public education to all.

In October 2018, a ministerial announcement was made abolishing secondary school fees and fees for text books in public schools.<sup>27</sup> Up to this date secondary education in Malawi had not been free. Only very high-scoring students had been given places at one of the national boarding schools, district boarding schools or district day schools (known as Conventional Secondary Schools – CSS) with fees of around \$50 per term (Grant, 2017, p.71). The most recent figures show that 19% of secondary school pupils are in CSS (ibid). Given the high levels of poverty in the country, fees placed CSS beyond the reach of those on low and middle incomes. While the ministerial announcement of 2018 indicates that these fees will no longer be charged, parents are still expected to contribute to school development funds.<sup>28</sup>

Secondary school provision is highly differentiated and fee levels are an element in different types of schools and levels of quality. 43% of secondary school pupils are enrolled in Community Day Secondary Schools (CDSS) which charge relatively low fees of around US\$7.50 per term, (Grant, 2017, p.71). These are considered by several evaluations to offer poor quality teaching, with lower learning outcomes (Grant, 2017; Zeitlyn, Lewin, Chimombo and Meke, 2015, p.110). Very few pupils from these schools qualify for university entrance (Zeitlyn, et al., 2015, p.110). Highly selective church or mission schools, which are subsidized by the Government, are only available for a tiny elite who score exceptionally highly in examinations at the end of the primary phase (Grant, 2017, p.70). Between 20 to 25% of secondary school pupils are enrolled in private schools, whose enrolments have grown from 45,860 in 2012 to 77,024 in 2017 (MoEST, unpub, p.62). These account for 21% of all secondary enrolments (MoEST, unpub, p. 63). Studies indicate that pupils enrol in private secondary schools because of the small number of places available in CSS, and concerns at the low quality in CDSS (Chimombo et al ,2014; Grant, 2017; Zeitlyn et al, 2015; ActionAid, 2017).

Private secondary schools comprise four types:

1. “Dwelling house schools” run by individual entrepreneurs in their homes. This type has been reducing in number since 2010, but were noted in some earlier literature (Lewin and Sayed, 2005);
2. “For-profit private schools” run by business entrepreneurs in purpose-built buildings of varying quality (day, boarding and mixed);
3. Mission and church owned private or grant-aided schools. These are older schools with better infrastructure;
4. International private schools of high cost and high quality, of which there are a small number (Zeitlyn et al., 2015).

Private secondary schools comprise a significant part of the education system in Malawi. After a rapid period of growth from the late 1990s to approximately 2005, the number of private secondary schools has not grown significantly in the last decade. They are lightly regulated and loosely organised with no large chains of schools. Most operate as small businesses for profit (Chimombo, Meke, Zeitlyn, & Lewin, 2014). The Government has been broadly supportive of private sector involvement in secondary education. Chimombo (2009a, p.168) notes that the 2008 National Education Strategic Plan aimed to increase private sector participation in secondary education by at least 10%. A rapid increase in enrolment in private schools was seen as essential for developing and sustaining an effective and efficient secondary education (Chimombo, 2009a, p.168). The 2008 plan (MoEST 2008) projected a rapid increase in secondary enrolment of those eligible for normal public schools, with open, distance and private learning increasing by 130% to accommodate demand. Funding per student also increased from 144.84 in 2010 to 264.4 in 2013, with total government percentage expenditure increasing from 12.52% in 2010 to 20,42% in 2013.<sup>29</sup>

The 2013 legislation strengthened the regulatory framework regarding transparency and governance of private schools. It requires local authorities to demand that a proprietor of any primary school in its

27. <https://www.nyasatimes.com/malawi-abolishes-secondary-school-tuition-fees-full-free-education-by-jan-2019/>

28. <https://malawi24.com/2019/01/02/teachers-worried-over-confusion-on-fees-abolition/>

29. <http://uis.unesco.org/country/MW>

area provide information regarding the school's staff, students, classes and equipment, the fees payable and received for tuition, boarding and otherwise, the funds available for maintenance and expansion and any other information required for development plans. Local authorities are required to inspect the buildings, furniture and equipment, as well as the records, books and accounts kept at all primary schools (public and private) in its area, and report the results of inspections and steps taken to remedy any faults found to the Minister. However, several studies show this regulation is more on paper than in practice (Chimombo, Meke, Zeitlyn, & Lewin, 2014; ActionAid, 2017).

Since 1994, the state obligation to provide free and compulsory public primary schooling has largely been honoured, although since 2013 the positioning of the private sector as a channel for primary expansion that the Government cannot fund is a matter of concern. The Education Minister's announcement in October 2018 abolishing all secondary school fees in advance of the election which took place in May 2019 highlights the political sensitivity of this issue.

The lack of adequate provision for free public secondary schooling means that about half of children in the age range do not complete a 9th year of schooling and the fees charged in government schools put this level of education beyond the reach of a sizeable proportion of the age cohort. About a quarter

of all secondary school pupils attend private schools, and pupils in state schools have been required to pay fees. This puts better resourced secondary schools beyond the budget of low-income families and means that secondary education has not been a free public system. The Government, in an election year, has concerns to change this.<sup>30</sup> Clause 41(b)ii of the AP acknowledges the State's obligations to respect the liberties of parents to choose private schools, and of private education businesses to operate, but notes that states must ensure that 'the exercise of these liberties does not create any negative systemic impact on the right to education', including by 'nullifying, impairing or creating a risk of nullifying or impairing the capacity of the State to realise the right to education. (AP, 2019).

While the Government appears to be addressing the issue of negative systemic impact of secondary school fees, the ways in which quality issues will be addressed requires close monitoring. The growth of the small private primary school sector since 2008 has been presented as relieving the State of its obligations to reach all children with good quality primary education. The sizeable private secondary school sector can be interpreted as normalising the relatively high levels of fees charged in the CSS. It therefore appears that the private sector has been an opt-in for parents with a range of school choices but has systemic influence on levels of primary and secondary provision in different ways, and that political sensitivity around the issue is acute.



All private schools and PPPs must be regulated and compliant with human rights law.  
PHOTO: SAMANTHA REINDERS/ACTIONAID

30. <https://gemreportunesco.wordpress.com/2018/10/19/who-benefits-from-abolishing-secondary-school-fees-in-malawi-and-what-are-the-costs/>

Section 3 of the AP lays out the obligations of states to provide free quality public education for all, ensuring adequate financing. States may only defend a failure to provide free quality education if they can show that every effort has been made to use all available resources for this and a regular public assessment is in place of how to evaluate and utilise available resources. In addition, the AP call for a national strategy with timeline on how to establish free education. In Malawi none of these steps have been taken regarding securing the resources for free secondary education. Instead, the private sector, although closely regulated, has been encouraged to work at the secondary level and a range of fee requirements have been levied on parents. Reflecting on the AP, while inclusion has been sought and achieved for most children for primary enrolments, forms of exclusion operate regarding completion, attainment and transition to secondary school. Private secondary schools, which enrol about a quarter of the age cohort, act as a 'safety valve' for the Government, responding to the demand for secondary schooling. The extent to which political pressure on the Government for free secondary schooling will grow in the 2019 elections, and how the Government will respond particularly taking account of the quality issues, will be interesting to track.

### 3. Discrimination

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

This discussion focuses on Principle 1b, para 24 – 27, Principle 2a, para 31 of the AP on obligations to non-discrimination.

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The AP (para 25) set out states' obligations to ensure that the existence of private schools does not entail negative systemic impact. Particular stress is placed on the need for private education institutions not to foster 'systemic disparities of educational opportunity or outcomes for some groups' (AP, 2019, para 25a) and interfere with the right to non-discrimination and equality.

These principles echo national policy but place the onus on private schools and forms of evaluation and regulation. The 2013 Principles of Education Policy requires schools to offer greater access to higher learning and continuing education for all children, with quality provision for all. The 2013 Principles also affirm the importance of promoting national goals such as unity and the elimination of political, religious, racial and ethnic intolerance (Section 13 (f) of the Malawian Constitution). However, the charging of fees in secondary school, and the reliance on a sizeable private secondary school sector, indicate a failure in this responsibility. Until the October 2018 Ministerial announcement, secondary school has been neither free nor compulsory for a large proportion of children, and the implementation of free secondary education needs monitoring. To date the lack of a free compulsory quality secondary school system has had an impact on certain groups and exacerbated forms of exclusion. Families on low incomes or with limited or no monetary resources have not been able to access secondary school, and gender disparities in enrolments in secondary school suggest families are forced to choose between children in deciding who they will put through secondary school, with an evident preference for boys over girls. Figures from DHS show the net attendance ratio in secondary schools is 5% for girls and 4% for boys from the lowest income quintile (NSO and ICF, 2017, p.15) and figures from the WIDE database show that only 7% (boys and girls) from the lowest quintile complete lower secondary school and 3% (boys and girls) from the lowest quintile complete upper secondary school.<sup>31</sup>

Gender inequalities are a feature of the Malawi school system, particularly at secondary level. Boys significantly outnumber girls in secondary school. Only 75 girls for every 100 boys enrolled in secondary school complete the lower secondary phase (UNESCO 2015b). Figures from the WIDE database show that in 2015, only 14% of girls completed upper secondary school.<sup>32</sup> DHS figures show that only 1% of women from the lowest income quintile have completed secondary education or above, compared with 31% of women from the highest economic quintile (NSO and ICF 2017, p. 32). Most private schools are aimed at the top decile of income earners and have more equal gender ratios in terms of the exam candidates they enter than other types of schools, indicating that the relatively wealthy do not discriminate against their girls for schooling

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31. UNESCO, WIDE [https://www.education-inequalities.org/countries/malawi/#?dimension=wealth\\_quintile&group=IQuintile%201&year=latest](https://www.education-inequalities.org/countries/malawi/#?dimension=wealth_quintile&group=IQuintile%201&year=latest)

32. WIDE <https://www.education-inequalities.org/countries/malawi/#?dimension=sex&group=IFemale&year=latest>

(Chimombo, Meke, Zeitlyn, & Lewin, 2014). However, in a study of girls' schooling in rural Malawi, Grant (2012) notes that non-payment of fees is more likely than pregnancy to account for girls' dropout. It is evident that the existence of fees charged in state schools and the sizeable private secondary school sector are associated with the notable level of girls' non-enrolment and drop out from secondary school. 4.2% of girls dropped out of primary school in 2016/17 (MoEST, unpub, p.33).

**Table 1.2:** Girls' enrolment in first and last years of primary school by school type in 2016/17<sup>33</sup>

	Government	Religious	Private
<b>Std 1</b>	216,315	330,791	10,813
<b>Std 8</b>	47,219	78,401	3,609

**Table 1.3:** Boys' enrolment in first and last years of primary school by school type in 2016/17<sup>34</sup>

	Government	Religious	Private
<b>Std 1</b>	217,805	333,022	10,487
<b>Std 8</b>	52,848	84,622	3,546

**Table 1.4:** Girls' enrolment in first and last forms of Upper Secondary School in 2016/17<sup>35</sup>

	Total Enrolment	Dropout
<b>Form 1</b>	49,101	2947
<b>Form 4</b>	41,550	2043

**Table 1.5:** Boys' enrolment in first and last forms of Upper Secondary School in 2016/17<sup>36</sup>

	Total Enrolment	Dropout
<b>Form 1</b>	51,382	2287
<b>Form 4</b>	47,768	1550

Gender inequalities within families, communities and the wider society are clearly being reproduced here, but it is clear from the comparison between the largely free public primary education system, with large numbers of girls enrolled, and the fee charging secondary education system (public and private), where girls are not equally present, that fees constitute an enormous barrier to girls' participation. In condoning fees for secondary schooling, the State is thus contributing to a perpetuation of gender discrimination. State obligations to ensure non-discrimination and equality over a full school cycle are thus evidently not being upheld.

### Children with disabilities

Malawi has signed and ratified international conventions that enshrine the rights of children with disabilities to education, including the United Nations (UN) Convention on the Rights of the Child (CRC), which protects the right of all children to education and the UN Convention on the Rights of Persons with Disabilities (CRPD) focusing specifically on children with disabilities and obliging states to create an inclusive education system. The principles in these conventions are codified within Malawian national laws and policies. The Disability Act (2012) defines inclusive education as "a process of addressing and responding to the diversity of needs of all learners through increasing participation in learning, cultures and communities and reducing exclusion from and within education." The National Policy Guidelines on Special Needs Education (2007), the National Education Strategic Plan 2008-2017 and the National Policy on the Equalization of Opportunities for Persons' with Disabilities (2006) reaffirm, in principle at least, a commitment towards equal access and inclusion in education for children with disabilities (Banks, Zuurmond and Ngwira, 2015).

In 2001, the Education Investment Framework policy recognised the need to strengthen 'Special Needs Education' and aimed to develop and manage an inclusive primary education system, to increase the number of children with disabilities who graduate from primary school from 5% to 20% by 2012. In 2010 the Ministry of Education in Malawi estimated that between 2008 and 2010 there had been an increase

33. MoEST, unpub, p.24

34. MoEST, unpub, p.24

35. MoEST, unpub, p.63 & 67

36. MoEST, unpub, p.63 & 67

in the enrolment of children with disabilities in primary schools from 43,000 to 83,000 – a very important indication of improvement.<sup>37</sup>

Malawi has 126 resource centres<sup>38</sup> for children with disabilities, in 130 out of 447 educational zones (Banks and Zuurmond, 2015). Given the small number of resource centres, the majority of children attend mainstream schools or do not access school (Banks and Zuurmond, 2015). Participation in mainstream schools may be associated with inclusivity but if there are inadequate resources in those schools, it may

mean that they face further discrimination. Students with disabilities made up only 1.6% of total secondary school enrolment in 2016/17 (MoEST, unpub, p.64) and 2.8% at primary level (MoEST, unpub, p.29). A study conducted by Mizunoya, Mitra and Yamasaki in 2018<sup>39</sup> shows a huge variation in the rate of out-of-school children in Malawi, with approximately 68% of children with a disability out of school, compared to 22% of children without disabilities. This shows that while policy appears to be in place to address the rights to education for children with disabilities, there are still significant challenges to overcome in practice.

**Table 1.6:** Malawi Population 15-29 years who ever attended school<sup>40</sup>

Proportion of persons aged 15-29 years with a disability			Ever attended school, persons without a disability (%)			Ever attended school, persons with a disability (%)			Adjusted disability parity index		
MF	M	F	MF	M	F	MF	M	F	MF	M	F
1.6	1.8	1.4	95.6	97.2	94.2	90.0	-	-	0.94	-	-

A study by Banks and Zuurmond (2015, p.19) found that the main barrier to education for children with disabilities is financial cost, and argue that households which include children with disabilities are more vulnerable to poverty. This is related to, for example, extra costs associated with healthcare (Ibid). Although children with disabilities only need to secure a pass in the PSLCE at the end of grade 8 to enrol in secondary school, given the costs associated with secondary education and the fact that attendance at secondary schools often involves boarding, very few children with disabilities progress beyond primary education (Banks and Zuurmond, 2015, p. 20). According to a UNICEF report in 2013,<sup>41</sup> between 2010 and 2013 the Government has allocated MK132 million (US\$330,000) per year for implementation of special needs education at district level. The Directorate of

Special Needs Education in the MoEST gets about MK30 million (US\$75,000) per year, while Montfort College, a Special Needs Teacher Education Centre which also does outreach work and helps with some school evaluations, gets about MK94 million (US\$235,000). In 2012/2013 MK223 million (US\$558,000) was allocated to the Malawi Council for the Handicapped. Unless the budgetary allocation is increased, it will be difficult to meet the needs of children with disabilities.

37. Secretariat of African Decade for People with Disabilities, 2012, *Study on education for children with disabilities in Southern Africa* Pretoria: Secretariat of African Decade for People with Disabilities, 33

38. Resource centres are education units within mainstream schools providing specialised education

39. Mizunoya, S. et al. (2018) *Disability and school attendance in 15 low- and middle-income Countries*; World Development 104 (2018) 388–403; Mizunoya, S (2018) Progress in measuring global school enrolment gaps for children with disabilities, 21 March 2018. <https://blogs.unicef.org/evidence-for-action/progress-in-measuring-global-school-enrollment-gaps-for-children-with-disabilities/>

40. UNESCO GEM Report 2018, p.18

41. UNICEF (2013) From Exclusion to Inclusion. Promoting the Rights of Children with Disabilities in Malawi. [http://www.fedomamalawi.org/public/themes/Fedoma/downloads/malawi\\_cwd\\_situational\\_report\\_2013.pdf](http://www.fedomamalawi.org/public/themes/Fedoma/downloads/malawi_cwd_situational_report_2013.pdf)

## 4. Financing

**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 Principle 2b, paras 29, 34-37 of the AP.

In Malawi, 7% of GDP over the past five years has been spent on education, with primary education the largest

sub-sector accounting for 50% of recurrent expenditure on education in 2012/13 (Ravishankar et al, 2016, p.5). In its 2018 budget, the Government of Malawi (GoM) allocated 14.34% of total budgetary resources to education sector, and increase of 4% since 2010 (Ravishankar et al, 2016, p.12). In 2015/16, the Government changed its budgeting system from output-based to programme-based (the four programmes are basic, secondary, higher and management) (GoM, 2016, p.13). Basic education received the highest share, at 56% of the recurrent budget in 2015/16, with the majority going to teachers' salaries (GoM, 2016, p.13). Tertiary education received the second largest share at 24% of the budget, and secondary education received just 18% of the budget (GoM, 2016).

**Table 1.7:** Percentage of Government Expenditure on Education<sup>42</sup>

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Government expenditure on education</b>										
as % of GDP	-	-	3.54	4.15	-	5.42	4.84	5.61	4.75	4.03
as % of total government expenditure	-	-	12.52	15.1	-	20.42	16.33	21.55	17.16	14.34
<b>Government expenditure per student (in PPP\$)</b>										
Primary education	-	-	49.2	58.88	-	85.83	106.51	114.95	99.26	-
Secondary education	-	-	144.84	222.88	-	264.4	236.38	317.93	292.36	-
Tertiary education	-	-	14202.06	12060.52	-	-	-	-	-	-



Eliminating harmful tax incentives could increase the funds available to ensure the fulfilment of the right to education.

PHOTO: BURTON KAMOWA/ACTIONAID

42. <http://uis.unesco.org/country/MW>

Expanding the proportion of children in free secondary schooling would require an increase in the proportion of GDP spent on education and a review of the proportional distribution of revenues between primary, secondary and tertiary education. The level of fees charged in state secondary schools and the reliance on a large private secondary school sector indicate inadequate funds are being allocated to funding public education. More detailed analysis of how revenues are currently disbursed highlights this. At the primary level, subsidies are progressive, with 54% going to the lowest two wealth quintiles and only 9% going to the highest. However, at the secondary level, only 18% goes to the lowest two quintiles. The situation is extremely inequitable at tertiary level, where only 3% goes to the lowest two quintiles and 82% to the highest. Non-salary annual spending per pupil is only \$1.5 at the primary level and \$27 at the secondary level, while it is \$807 per student at the tertiary level, which is highly selective. Malawi's unit cost for higher education is the second highest in the region (Hall 2015; Steer & Smith 2015, p.26).

This lack of progressive revenue distribution, especially in secondary education, may partly be attributed to a low tax base, and tax incentives given to large enterprises. A review of tax incentives to private companies across Africa conducted by ActionAid found that, in 2017, an estimated \$627 million (12.9% of Malawi GDP) was lost through tax exemptions and revenue losses (ActionAid 2017; Curtis and O'Hare 2017, p.4). This revenue loss was estimated at nearly twice the education and health budgets. In the last ten years, to make up for gaps in education provision, there have been shifts to community-led, school-based decision-making and direct funding of primary schools (Ravishankar et al. 2016, p.4). This is a form of regressive, rather than progressive taxation.

Malawi is a large recipient of donor assistance. In 2017 net ODA was 1,515.5 USD million. 12% of bilateral ODA was allocated to education (36.49% went to health and population) (OECD-DAC, 2019). Table 1.8 below shows the top four donors in 2016/17. A large percentage of donor funding supports secondary education and beyond (DFID, p.6). The European Union development fund is currently running three secondary education programmes, including the Improving Secondary Education in Malawi programme (EU, 2019). Close attention is needed as to whether development partners are supporting private secondary school provision.

**Table 1.8:** Top four donors of gross ODA for Malawi, 2016/17 average in USD million<sup>43</sup>

Countries	Amount
United States	410.7
International Development Association	240.8
Global Fund	151.5
United Kingdom	128.0

**Table 1.9:** Total Aid (constant 2016 US\$ millions)<sup>44</sup>

Education	Basic Education	Secondary Education	Tertiary Education
106	64	17	26



Every girl has the right to a quality education.  
PHOTO: JENNIFER HUXTA/ACTIONAID

43. Skills development for entrepreneurship: <https://www.afdb.org/en/projects-and-operations/project-portfolio/p-mw-ia0-005/>

44. adapted from UNESCO GEM table 3 p. 346

The AP (in Principle 2) lay out a state's obligations to provide public education 'allocating their maximum available resources for education, prioritising the provision of 'public education of the highest attainable quality' (para 34). States are required to plan and adequately resource free public education and resources to be mobilised include fair, progressive taxation and other domestic income-generating mechanisms. Retrogressive measures, which suspend these obligations, 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. It is clear from the high levels of incentives given to private companies that these have been given with inadequate assessment of the impact on the funding of free public education.

Paragraph 65b of the AP specifies that public money should only be allocated to private education in exceptional circumstances, so that this 'does not create a foreseeable risk of adverse effect on or delay to the most effective and expeditious possible development of a free public education system of the highest attainable quality in accordance with States' obligations to realise the right to education to the maximum of their available resources.' However, aid allocations, such as the EU's Improving Secondary Education in Malawi programme, which continue to support the system of secondary education based on fees do not help to develop a quality public education system, but instead continue a system which supports those with some resources, rather than expanding provision to all.

## 5. Public-private partnerships

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**Do the PPP arrangements in place for schools meet the conditions laid down in Principle 5, para 65 of the AP which outline processes for these arrangements in line with respecting human rights obligations?**

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There is a lack of publicly available information on PPPs in the school sector and whether they impinge on the State fulfilling obligations regarding the right to education. In May 2011, PPC, formerly the Privatisation Commission, established a dedicated PPP policy. Key

sectors identified for PPP investment in the country are energy, telecommunications, transport, tourism, public utilities, health and education. The almost ready projects under PPP are the public university accommodation project intended to add about 10,000 units to the country's public universities. One of the key recommendations from the World Bank in 2016 to the Government of Malawi was to create suitable conditions for the development of a textbook market. This would initially be in the form of a PPP, in which textbooks are distributed to bookstores for onward sale to students (Ravishankar 2016).<sup>45</sup>

Several aid projects take the form of PPPs and there is growing interest in this type of partnership in the delivery of education services. The USAID education programme, *The Malawi Early Grade Reading Improvement Activity*, commissioned research to identify potential private sector partners in 2014 (USAID, 2015, p.6). 134 meetings were held with private organisations to establish PPPs in 2014 (USAID, 2015, p.133). This included a service agreement between Airtel and RTI International in which RTI International was awarded a 24 million USD contract in 2013 under the programme (USAID, 2015, p.40). The Girls' Education Challenge (GEC) is a £355 million DFID-funded development initiative launched in 2012 by the UK Government with the aim of providing support to up to a million of the world's most marginalised girls to improve their lives through education using a PPP model (Unterhalter, 2018). The GEC project in Malawi fell under the innovation stream, which specifically sought out new innovative partnerships. £2,138,056 was awarded to Theatre for a Change for the *Empowering Young Female Teachers to Create Inclusive Learning Environments for Marginalised Girls* project (DFID, 2014, p. 20). The project, which ran to 2018, trained young female teachers to work with adolescent girls at risk of dropping out of school or who had left school living in rural and peri-urban areas (DFID, 2014).

The PPP sector in Malawi is mainly associated with very specific development assistance programmes in primary and secondary education. AP Section 4D lays out clear evaluation criteria for assessing the impact of these programmes at project and system level, but this has not yet been done by either of the two donor governments of the GoM.

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45. Ravishankar et al.(2016) Primary Education in Malawi Expenditures, Service Delivery, and Outcomes. A World Bank Study. <https://openknowledge.worldbank.org/bitstream/handle/10986/23737/9781464807947.pdf;sequence=3> (<https://openknowledge.worldbank.org/bitstream/handle/10986/23737/9781464807947.pdf;sequence=3>).

## 6. Form and levels of regulation of private schools

### Do the arrangements in place for the regulation of private schools meet the conditions set out under the overarching Principle 4?

The AP stipulate that all private schools must be regulated to ensure that they do not combine to influence the national public education system, and ensure minimum standards of provision agreed through participatory school-based processes. Regulation goes beyond registration and requires ensuring conditions of enrolment, admission and learning are not discriminatory, that staff have equivalent training and labour rights to those in state institutions, and that a fully rounded curriculum is delivered, with adequate pupil teacher ratios. Currently the forms of regulation of private schools fall below these standards. The Local Government Act and the National Decentralization Policy of 1998 led to the creation of 34 education districts, which are divided into 10-20 zones. District Councils and Primary Education Advisors oversee quality assurance and maintenance of primary schools (Ravishankar et al, 2016, p.3). All schools are required to have school management committees, though whether or not these are established through and utilise participatory processes is not documented (Barnett, 2013, p.498).

Despite the legislative requirements there is weak regulation of private primary and secondary schools. Many private schools are unregistered, or proprietors do not respond to annual government surveys (Grant, 2017). According to a 2014 study (Chimombo, Meke, Zeitlyn, & Lewin, 2014), most private schools have no governing boards, poor infrastructure and furniture, incomplete records of attendance and achievement, and do not publish accounts. There are high proportions of unqualified teachers, and researchers found little evidence of innovative teaching methods or breadth in the curriculum. There was a stress on performance in high stakes examinations. Children who fail to pay the fees have to leave school.

In 2009, minimum standards were set by the MoEST and a national inspection of private schools was conducted. This led to the closure of a large number of private schools by the Department of Inspectorate

and Advisory Services of the MoEST (Chimombo et al, 2014, p.29). The numbers dropped from 370 to 185 in 2009, but is now back up to around 200. Some of the contributing factors to this include school closures, under-reporting and the economic situation meaning that parents cannot afford fees (Ibid, p.30). The 2013 Education Act strengthens the legislative framework around inspections.

The main private school association in Malawi is the Independent Schools Association of Malawi (ISAMA), formed in 2009 and representing 370 private primary schools and 360 private secondary schools, although a number of schools still associate with an older body, discredited through corruption scandals (Chimombo et al, 2014). ISAMA's aims include:

*“to achieve measurable change in the issues of accessibility to quality and affordable education services in Malawi through supporting, co-ordination, regulation and registration of private schools, advocacy, lobby and influencing the implementation and monitoring of appropriate government educational policies to enable member private schools to improve their operational and academic services” (ISAMA, 2011)*

These goals do not highlight a major concern with rights or equalities. The lobbying aims of this organisation require scrutiny in the light of the stipulations of the AP (para 49).

In 2015, the MoEST published the first National Education Standards for Malawi, covering both public and private primary and secondary education institutions (MoEST, 2015). The standards aim to provide a comprehensive framework for the achievement of quality education in primary and secondary schools in Malawi, covering outcomes for students, the teaching process, leadership and management. Standards are set on safety and protection, curriculum, buildings and facilities. The Standards Directorate of Inspection and Advisory Services is tasked with measuring compliance with the standards. This is an important step to providing a minimum standard. Schools are not expected to meet the minimum standards at once but are required to select a small group of specific Standards for improvement plans which focus on key aspects of students' outcomes, the teaching process and leadership and management.

*In those schools where little improvement has been achieved, action will be taken at district, divisional or, if necessary, at national level to ensure that the damage to children's education is halted and addressed.*

*The Directorate of Inspection and Advisory Services will report to the Minister of Education Science and Technology and work with partner Directorates to ensure that the necessary action is taken and that immediate improvements to children's learning and care are made and their impact observed. (p 13).*

These Standards provide a starting point for looking at the regulation of private schools in relation to aspects

of curriculum, teacher training, and support. However, while both public and private schools are subject to regulation through this process, there is no mechanism for monitoring the effects of private schools on public provision.

## Conclusion

In this chapter we have used the AP to evaluate the history, forms of provision, policy narratives and effects associated with the growth of private schools in Malawi. The AP, with their stress on human rights obligations, place a focus on the school system and we have used this framework in considering some of the effects of private schooling in Malawi. The details in the chapter show that, since 1994, the Government has worked to honour human rights obligations set out in the Constitution and several international conventions to provide free and compulsory public primary schooling. But since 2008, the private sector has been viewed as a key channel to support the expansion of primary education which the Government cannot fund. This is a matter of concern.

In addition, the expansion of secondary education from 2008 has not been accompanied by a commitment to make this free. The system is highly stratified, with requirements on parents to pay for quality provision. Schools which charge low fees are of extremely low quality, but it is here that a large proportion of girls from low income families are enrolled. A commitment in late 2018 to abolish all secondary school fees implies that the growth of the private sector at this level will be limited, but whether this is put into practice requires monitoring.

The current disbursement of public revenues, while progressive regarding primary schooling, is not so at secondary level, and aid which supports private schooling and PPPs does not adequately support the building of a free, quality public education system. The size of the private sector at secondary level, enrolling nearly a quarter of all children, represents a form of discrimination linked to income, and is also associated with gender inequalities, as fewer girls than boys are enrolled in this form of schooling. Private secondary education at system level is associated with continuing forms of gender and class discrimination. Children with disabilities comprise a significant proportion of out of school children, and the costs associated with schooling for children with disabilities, as there is limited state provision, is a key feature of this.

Private provision may fill a gap, but the AP highlight the need to build a quality public education system, and relying on this form of gap-filling is not a sustainable or equitable solution. Standards for regulating and evaluating public and private primary and secondary schools were introduced in 2015, but have not yet been reviewed with regard to the extent to which assessments include the effects of particular schools on quality public education at the system level. Monitoring the use of these standards drawing on the AP might be a useful path for future research and civil society activity.

## 3.2 MOZAMBIQUE

Key overview information	
Population	28,861,863 <sup>46</sup>
% of population under the age of 15	44.51% <sup>47</sup>
Proportion of adult female population who did not complete primary school (2014)	67.84 <sup>48</sup>
Proportion of adult male population who did not complete primary school (2014)	65.75
% out of school children (2017)	728,531 <sup>49</sup>
- Female	400,941
- Male	327,590
Gini coefficient	0.54 <sup>50</sup>
HDI score and rank	0.437 (180) <sup>51</sup>
Transition rate from primary to secondary	73.91 <sup>52</sup>
GER primary (2017)	105.01 <sup>53</sup>
- Female	101.28
- Male	108.71
NER primary (2017)	87.54 <sup>54</sup>
- Female	86.23
- Male	88.83
GPI primary enrolment	0.93
GPI primary completion	-
GER Secondary	34.92 <sup>55</sup>
- Female	33.18
- Male	36.66
NER Secondary (2015)	18.88 <sup>56</sup>
- Female	19.05
- Male	18.72
GPI Secondary enrolment	0.91 <sup>57</sup>
GPI lower secondary completion	-
GPI upper secondary completion	-
Proportion of children in private primary schools)	1.5% <sup>58</sup>
Proportion of children in private secondary schools	10% <sup>59</sup>
% Total government expenditure on education (2018)	17.2 (2018) <sup>60</sup>

46. UNESCO 2017

47. Ibid

48. <http://uis.unesco.org/country/mz>

49. Ibid

50. Baez et al 2018

51. UNDP 2018

52. <http://uis.unesco.org/country/mz>

53. <http://uis.unesco.org/country/mz>

54. Ibid

55. Ibid

56. Ibid

57. UNESCO 2018

58. ActionAid 2017c

59. Ibid

60. <https://www.unicef.org/esa/sites/unicef.org/esa/files/2019-04/UNICEF-Mozambique-2018-Education-Budget-Brief.pdf>

### Learning outcomes for poorest quintile (WIDE):<sup>61</sup>

Learning achievement in reading (primary) <sup>62</sup>	68%
Learning achievement in mathematics (primary) <sup>63</sup>	57%

### Key legislation for advancing the right to education

Republic of Mozambique (2004) Constitution of the Republic of Mozambique. Mozambique, Maputo.  
 Republic of Mozambique (1992) Law N. 6/92 National Education System Law. Mozambique, Maputo.  
 Republic of Mozambique (2008) Law 7/2008 on the Promotion and Protection of Child Rights. Mozambique, Maputo.  
 Government of Mozambique (2018) Proposal for the revision of Law N. 6/92 National Education System Law. Mozambique, Maputo.  
 Government of Mozambique (2009) Decree 8/2009 creation of the National Council for the Rights of the Child. Mozambique, Maputo.  
 Ministry of Education (2014) Ministerial Diploma n. 119/2014 Regulation of Private Education. Maputo.

Date scheduled for next General Election: October 2019

### International Laws on the Right to Education ratified by Mozambique

Law	Date ratified
CRC - Convention on the Rights of the Child	26 April 1994
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	21 April 1997
CERD - International Convention on the Elimination of All Forms of Racial Discrimination	18 April 1983
ICCPR - International Covenant on Civil and Political Rights	21 July 1993
CRPD - Convention on the Rights of Persons with Disabilities	30 January 2012
ILO 138 - Minimum Age Convention	16 June 2003
ILO 182 - Worst Forms of Child Labour Convention	
Law	Date ratified
African Charter on Human and Peoples' Rights	22 February 1989
African Charter on the Rights and Welfare of the Child	15 July 1998
African Youth Charter	29 July 2008

### % Child Marriage in Mozambique (2011)<sup>64</sup>

% married below 15 years	14
% married below 18 years	48

61. UNESCO WIDE <https://www.education-inequalities.org/countries/mozambique#?dimension=all&group=all&year=latest>

62. Percentage of children of primary school age taking part in a reading assessment passing four levels of increasing difficulty

63. Percentage of children of primary school age taking part in a mathematics assessment passing four levels of increasing difficulty

64. DHS 2011, <https://data.unicef.org/topic/child-protection/child-marriage/>

### SDG 4 Target 4.5 Equity (Gender) in Mozambique<sup>65</sup>

GPIA in completion			GPIA in minimum proficiency				GPIA in literacy rate		GPIA in adult proficiency		GPIA in gross enrolment ratio			
			End of primary		End of lower secondary									
Primary	Lower Secondary	Upper Secondary	Reading	Mathematics	Reading	Mathematics	Youth	Adults	Literacy	Numeracy	Pre-primary	Primary	Secondary	Tertiary
-	-	-	-	-	-	-	0.79	0.61	-	-	-	0.93	0.91	0.81

### SDG 4 Target 4.5 Equity (Location/Wealth) in Mozambique

Disparity in primary completion				Disparity in lower secondary completion				Disparity in upper secondary completion			
Adjusted parity index		% of poorest completing		Adjusted parity index		% of poorest completing		Adjusted parity index		% of poorest completing	
Location	Wealth	M	F	Location	Wealth	M	F	Location	Wealth	M	F
No data available											

65. UNESCO GEM 2018



A free education of good quality empowers girls to choose their future. PHOTO: MAKMENDE/ACTIONAID

## 1. Introduction

Mozambique's educational development needs to be read in the context of broader historical trends. Following independence in 1975, the country was plunged into a civil war in which 1 million people died, and a third of the population had to flee their homes, many of whom were teachers and students. The war devastated the education infrastructure (Chimbutane 2013). The 1992 peace agreement represented a turning point in national development prospects, with the establishment of a multiparty democratic system and the assumption of a period of vigorous economic growth. During that time, education was positioned as a core element of the poverty reduction strategy. Mozambican governments prioritised the expansion of basic education providing for seven years of free primary education and investing in the training of teachers and the construction of schools. As a result, since 1992, the number of primary education students has quadrupled (World Bank 2016). Still, low and uneven levels of education quality are apparent across the country. Learning outcomes appear to be declining. The Southern and Eastern Africa Consortium for Monitoring Educational Quality (SACMEQ) conducted national learning assessments in 2000 and 2007 which showed that, between the two rounds of data collection, there was a decrease in reading and mathematics performance of primary education students (Magaia et al. 2011).

A lack of free, quality public education has motivated better-off families living in urban areas to enrol their children in private schools (ActionAid 2017a). The 1992 National Education System Act - Law 6/92 - adjusted the previous system established in 1983, opening the door for private provision of education, in line with the country's adoption of a market-oriented economy. Non-state provision of primary schooling today accounts for less than 5% of total enrolment, but this proportion has been increasing (National Statistics Institute 2017). Household poverty, in a country with over half of the population living below the poverty line, constitutes a barrier to the demand for low-fee private schooling (Harma 2016a). There is, however, evidence of other forms of both endogenous and exogenous privatisation of the education sector, namely through the greater participation of non-state actors in both teacher training and textbook development. Furthermore, an increasing role of the private sector is one of the priorities set in the current sector's strategic plan, where it is envisaged that PPPs will support the provision of secondary education (Ministry of Education 2012).

Sources used for this report comprised desk-based research reviewing national legislation, policies, statistics, academic publications and research carried out by civil society and international organisations. An interview with staff from the Mozambican Ministry of Education was conducted in January 2019. Some difficulties were encountered in accessing information on education PPPs, public financing data and private schools' performance.

## 2. Access to free, quality public primary and secondary education

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**Is there access to free, quality, public primary and secondary education for 9 years for all children and has the growth of the private sector contributed to limiting this provision?** This discussion focuses on Guiding Principles 1a, 17 – 21, and Principle 2a, 29 of the AP on the right to public education.

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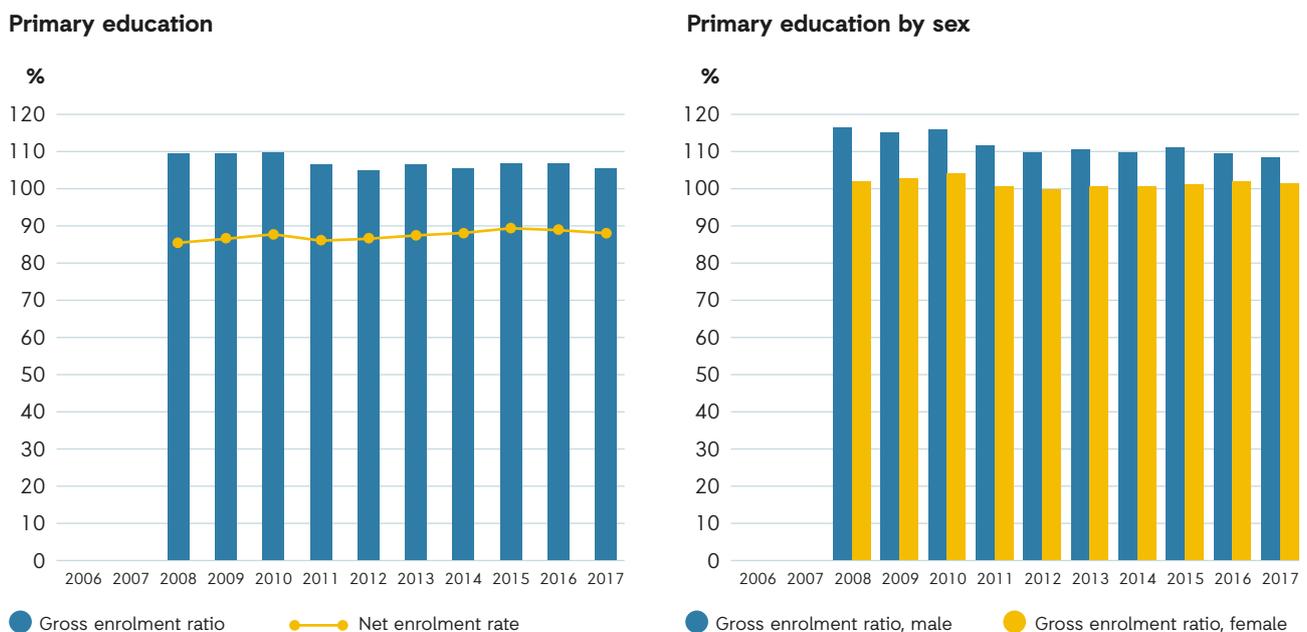
Mozambique's legislation commits to the promotion of the right to education. The Constitution states that education is a right as well as a duty and it is the State's responsibility to provide equal

educational opportunities to all citizens. Since 2004, all constitutional principles must be ‘interpreted in harmony with the Universal Declaration of Human Rights and the African Charter of Human and People’s Rights’ (Republic of Mozambique 2004: art. 43). In 2018, in response to the State’s ongoing effort to harmonise national legislation with its international human rights obligations, a decision was made to revise the 1992 National Education System Law. The new law, approved at the end of 2018, is currently pending publication to guarantee an ‘equitable, inclusive and sustainable education for all citizens’ (Government of Mozambique 2018: 2). One of the key changes introduced through this legislation is the establishment of nine years of mandatory basic schooling, including six years of free primary education. The remaining education levels are not established to be fee-free, which prevents the country from complying with Principle 1, para 17 of the AP, regarding the State’s obligation to provide ‘free, quality, public primary and secondary education for all’.

In the light of these constitutional commitments, scrutiny is required as to whether in Mozambique there is access to free, quality public primary and secondary education. The effort to increase primary school participation rates over the last decade - with

net primary enrolment rates stabilising at around 90% - has not succeeded in enrolling an estimated 1.2 million children of primary and lower secondary age still out of school (UNICEF 2014). Access to secondary education is also limited, with net enrolment at 19% (UNESCO 2018c). Primary completion is below 50% - 44% for boys and 39% for girls - a rate that has partially been attributed to high rates of student and teacher absenteeism (UNESCO 2011). Gender disparities persist due to the challenges faced by girls in transiting to secondary education, and a lack of secondary provision. This is a notable feature in rural areas where poverty, early marriage and teenage pregnancy are noted (Berg et al 2017). There are concerns surrounding the ‘quality’ element in public primary education. National learning assessments reveal that learning achievement is low (World Bank 2015 and Magaia et al 2011). This is aggravated by significant regional and wealth-related disparities (UNICEF 2016 and Passos et al 2011). Primary school attendance and completion is associated with children’s household wealth. A good example is observed in the primary completion differential, with a rate of 12% for children in the lowest income quintile and 79% for children in the highest income quintile (UNESCO 2011).

**Figure 2:** Gross and Net enrolment at Primary level (%)<sup>66</sup>



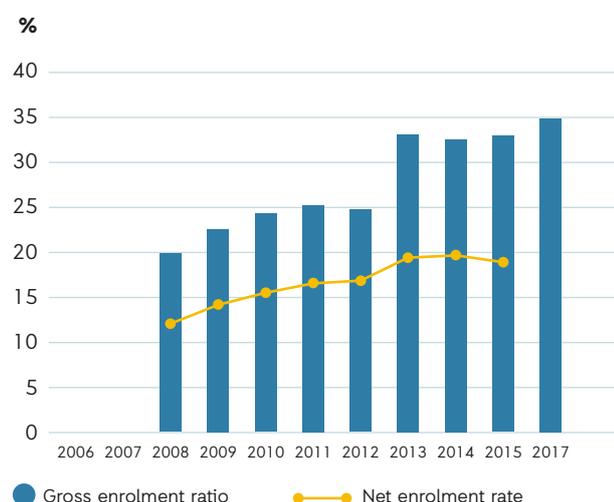
66. <http://uis.unesco.org/country/mz>

**Table 2.1:** Gross and Net enrolment at Primary level (%)

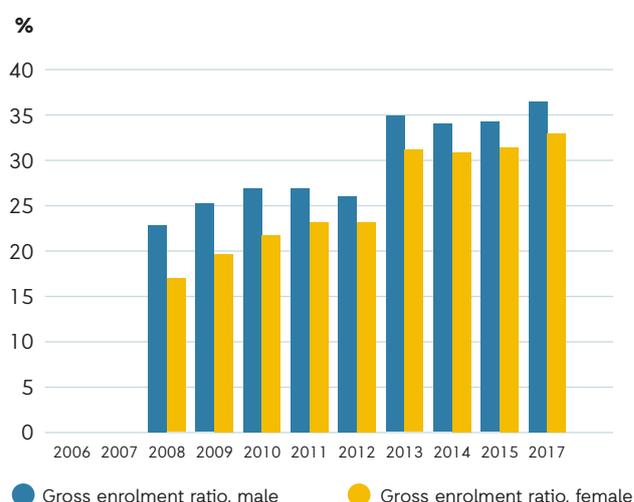
Primary education	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Gross enrolment ratio (%)</b>										
Total	109.05	109.19	110.12	106.15	104.95	105.85	105.47	106.32	106.06	105.01
Female	101.92	103.03	104.18	100.83	99.89	100.99	100.96	101.68	102.06	101.28
Male	116.19	115.35	116.05	111.45	110	110.68	109.95	110.92	110.03	108.71
<b>Net enrolment rate (%)</b>										
Total	85.24	86.44	87.91	85.81	86.14	87.23	88.13	89.57	88.61	87.54
Female	82.07	83.78	85.25	83.53	83.9	84.97	86.02	87.26	86.96	86.23
Male	88.42	89.09	90.56	88.09	88.37	89.48	90.23	91.85	90.24	88.83

**Figure 3:** Gross and Net enrolment rate at Secondary level (%)

**Secondary education**



**Secondary education by sex**



**Table 2.2:** Gross and net enrolment rate at Secondary level (%)

Secondary education	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Gross enrolment ratio (%)</b>										
Total	20.02	22.58	24.48	25.23	24.77	33.17	32.56	32.88	-	34.92
Female	17.11	19.87	21.98	23.38	23.31	31.42	30.96	31.49	-	33.18
Male	22.94	25.32	26.99	27.09	26.25	34.92	34.18	34.28	-	36.66
<b>Net enrolment rate (%)</b>										
Total	11.89	14.17	15.5	16.56	16.95	19.36	19.73	18.88	-	-
Female	10.88	13.21	14.62	15.98	16.54	18.94	19.5	19.05	-	-
Male	12.91	15.13	16.37	17.15	17.37	19.78	19.96	18.72	-	-

The Mozambican primary education system, despite being compulsory and free, is not yet capable of absorbing total demand for quality primary education, especially of children from lower-income households. This reality contrasts with the country's compliance with Principle 1, para 21 of the AP, which sets the state obligation to 'devise and adopt a detailed national education strategy'. As a matter of fact, education is one of the priority sectors identified within the country's comprehensive strategic framework, briefly described in figure 1 (right).<sup>67</sup> The Education Strategic Plan 2012-2016, recently extended until the end of 2019, builds on the strategies implemented in its two predecessors and reinforces the government commitment towards achieving quality primary education for all (Ministry of Education 2012).

After independence, the 1975 Constitution prohibited all non-state participation in education, making schooling the responsibility of Government alone. With the end of the civil war and the emergence of a pluralist political regime under a market-oriented economy, the sector was opened to private providers. Mozambique joined the IMF and World Bank in 1984, and the first structural adjustment package was introduced in 1987. An Amendment to the Constitution on 30 November 1990 formalised the multi-party system and the foundations of the market-based economy.

Currently, the policy environment encourages private sector participation in education. In the major policy framework adopted at the beginning of the new millennium *Agenda 2025*, which reflects the country's long-term vision for development, there are explicit references to private sector participation in the expansion of the education sector (Committee of Counsellors 2003). This vision is further detailed in the sector strategic plan, with targets for the private sector and the establishment of public-private partnerships aimed at ensuring the provision and funding of secondary education (Ministry of Education 2012). The legislative landscape on private education includes the National Constitution, the National Education System Law and the Diploma n. 119/2014 specifically regulating private schooling. These instruments set the legal precept for the subordination of private education providers to state supervision, but instruments to carry this out need investigation. The political context in which the Government decided to prioritise the expansion of secondary education through privatisation, and the implications that might have in easing the State's obligation to provide free public secondary education, need further research.

## Key planning documents

**2025 Agenda:** reflects the long-term vision for the Country's development.

**Government's Five-Year Plan (PQG):** presents the Government's objectives and key priorities through a five-year horizon.

**Poverty Reduction Strategy Paper (PRSP/ PARP):** presents the Government's medium-term strategy to reduce the poverty index.

**Medium Term Fiscal Framework (CFMP):** defines the limits for the medium term implementation of the PARP (three years).

**Sector and Provincial Strategic Plans:** present the Government's main objectives (in the PQG) to be achieved by the ministries and provinces in the medium-term and the specific strategies for their execution.

**Social and Economic Plan (Report) ((Bd PES):** operationalizes the general lines of the PQG and the PARP, translating sector or provincial strategies into concrete actions to be implemented in the current year. Their implementation is evaluated on a half-yearly basis through the BdPES.

**State Budget (Execution Report) (BER/(R)OE):** defines the funds made available to implementation of the actions specified in the PES. Their execution is monitored on a quarterly basis through the Budget Execution Report.

**Programme of Activities (PdA):** translates the actions identified in the PES into concrete activities linking them to the budget made available for their implementation (through the State Budget or other known contributions, but not included in the budget),

The private education sector in Mozambique is small and concentrated in urban areas, especially in the capital, Maputo. Fewer than 2% of students are enrolled in private primary schools, rising to 10% in lower

67. Ministry of Education 2012

secondary schools and up to 30% in upper secondary, where public provision is still limited (ActionAid 2017a). There is no evidence of individually-owned low-fee private schools. The country's private schools are expensive and directed to satisfy the demand of higher socio-economic status families. The fact that the market for low-fee private schools is not working in Maputo, where earnings are higher than in rural areas, suggests that this sector will not expand (Harma 2016a). Privatisation goes beyond schooling multiplying endogenous and exogenously throughout the sector. For example in the role of private actors in teacher training and curriculum and textbook development (Ministry of Education and Culture 2011).

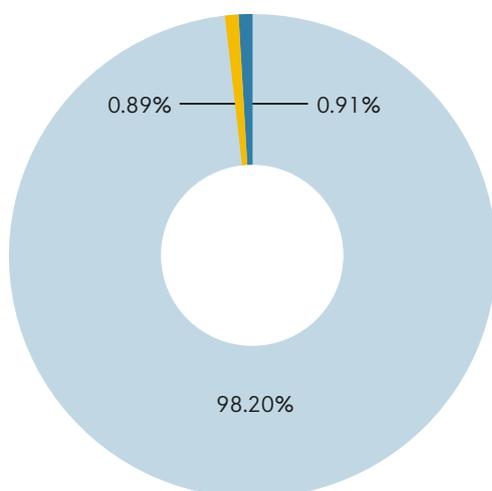
There are two main categories of private schools: for-profit private schools (*escola privada*) and community schools (*escola comunitária*). The former typically charge high fees and are exclusively affordable to a few of the wealthiest households. Community schools are not-for-profit schools, managed by the community or religious groups. Due to the support that these schools receive from the Government (in infrastructure, teachers' salaries, and learning materials), they tend to charge lower fees than the for-profit private schools (Harma 2016b). The transfer of public funds to non-state community schools raises questions on whether these resources could not have been better directed to serve free public education and ensuring that it benefits from the maximum available resources (AP 2019, Principle 2, para 29).



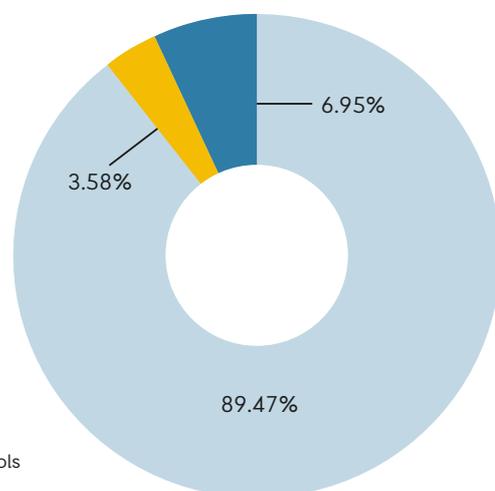
Access to free, quality public education can help reduce discrimination. PHOTO: FABIO ERDOS/ACTIONAID

**Figure 4:** Enrolment per type of private school net percentage enrolment<sup>68</sup>

**Primary enrolment per type of school Mozambique 2016**



**Lower secondary enrolment per type of school Mozambique 2016**



● Public schools  
● Private schools  
● Community schools

68. ActionAid 2017a – 2016 data

Enrolment in private schools has been increasing in recent years. Between 2012 and 2017, enrolment in private primary grew by 40% and secondary schools by 24% (National Statistics Institute 2017). There is also evidence of significant growth of the private sector at the pre-primary level, given nearly non-existent public provision (ActionAid 2017c).

**Table 2.3:** Growth in private school enrolment between 2012 and 2017<sup>69</sup>

	Primary Education	Secondary Education
2012	83,037	84,959
2013	89,982	92,827
2014	92,099	92,463
2015	96,611	104,469
2016	108,640	100,127
2017	116,312	105,395

The rising demand for private schools is mainly a response to the poor quality of public education; a fact that contradicts the State’s obligation to ensure that quality private provision ought not substitute free public education (AP 2019, Principle 2, para 29 and 30). Low achieving public schools appear to have motivated higher-income families to enrol their children in private schools, perceived to offer better learning opportunities. Some teachers, trained in the public sector, seek out jobs in this sector on top of their jobs in public schools. There is evidence (ActionAid, 2017c) that some teachers in public schools opt to increase their income by also teaching in private schools. These are the so-called ‘turbo’ teachers. Opportunities for a perceived better-quality education are not available to children from lower-income households, constituting a form of discrimination. An ActionAid report (2017a) observes the risk for ‘polarisation’ in Mozambican society, as a result of middle classes shifting towards private education and public schools increasingly catering to low-income families. This could mean the usually vocal and empowered middle-class step-up demands for more private schooling, fragmenting support for quality public schooling for all.

There are indications of a dissonant relationship between private sector growth and the provision of

quality public education. According to the AP (Principle 3), states should respect the liberty to establish private education institutions, while ensuring that such liberty does not create ‘any adverse systemic impact on the right to education’ (AP, Principle 3, para 48c). Some facts point to private sector growth representing an adverse systemic impact in public education: the disengagement of an influential segment of society in public education; the diversion of public resources to support private community schools; and the multiplication of ‘turbo’ teachers. In Mozambique, this situation exemplifies a tangible adverse systemic impact in public education, one that contributes to a high level of teacher absenteeism in public schools, estimated at the rate of %45 (ActionAid 2017c and World Bank 2015). Furthermore, the location of private schools in urban areas is a strong indication that the privatisation pattern of the education sector in Mozambique is not complementing the public education efforts to ensure the right to education where it is most needed: in remote and rural areas.

### 3. Discrimination

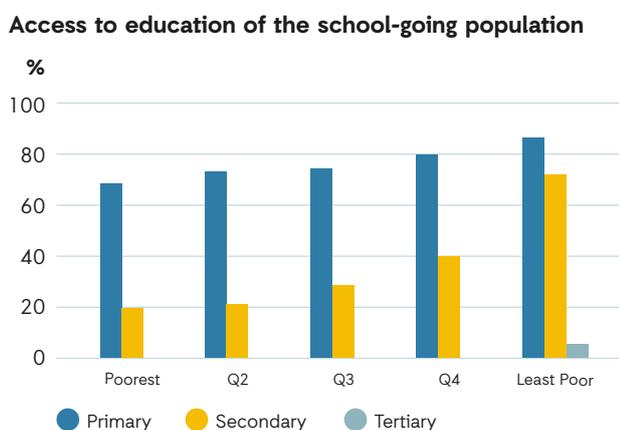
**Is there discrimination against groups, such as low income families, girls, children in particular locales, children with disabilities, and forms of segregation associated with the presence of private providers?** This discussion focuses on Guiding Principles 24 – 27 and 31 of the AP related to equality and non-discrimination in education.

Equity is a concern in the Mozambican education system and one of the priorities of both legislative and policy initiatives (de Brito et al 2014 and Fox et al 2012). There are significant disparities in terms of location, gender and wealth that affect educational processes and outcomes (Berg et al 2017). In accordance with the AP (Principle 1a, para 10), states must ensure that everyone has equal access to quality education, without discrimination on any grounds. Mozambican national legislation predicts that public and private ‘educational establishments may not refuse to admit any pupil based on his/her race, colour, religion, ethnic or social origin, as long as he/she meets the requirements demanded in the approved regulations’ (Ministry of Education 1990: art. 5).

69. National Statistics Institute 2017

Income is one of the main determinants for primary education attendance, with access increasing with income. Lower-income households register an average enrolment rate of 64%, compared with 91% for their more affluent counterparts (World Bank 2017). For the most vulnerable families, especially those living in rural areas, private schooling is not an option. There are two types of education in Mozambique, low quality for low-income families and good quality for the middle-upper class (Bonde 2016). If the Government of Mozambique is not capable of improving the quality of public education, the expansion of the private sector could create 'systemic discrimination' (AP, Principle 1a, para 25b) against lower-income families.

**Figure 5:** Access to education and income<sup>70</sup>



Evidence shows that any rise in the direct costs of education disproportionately affects girls' rate of primary school attendance (World Bank 2016). It is, at first sight, surprising to find when comparing enrolment by gender between public and private schools an imbalance in favour of girls in private schools (ActionAid 2017c). In secondary education, this imbalance is particularly evident, with a 5% difference between the share of girls in public (48.1%) and private sectors (53.3%). This gender effect can be explained by the socio-economic profile of private school intake. Wealthier families from urban areas tend not to discriminate between boys and girls when it comes to providing educational opportunities. Also, private education providers usually offer school transportation, a practice that diminishes the risk of gender-based violence on the way to and from school (ibid).

## Children with disabilities

The Government of Mozambique has shown its commitment towards establishing a legal and policy framework favourable to the rights of its citizens with disabilities, in line with the guarantee expressed in the National Constitution (Republic of Mozambique, 2004, art. 37) and the ratification of the International Convention on the Rights of Persons with disabilities. The national education policy has a principle of inclusion of children with special educational needs in regular schools and only children with very severe disabilities are to be educated in special schools (Ministry of Education 2012). A recent report by the Global Partnership for Education (GPE) points out that many special schools have been established by private providers (GPE 2018). Another essential component of the Ministry of Education strategy is the Inclusive Education Resource Centre created as a 'reference laboratory' (ibid, p.43) and covering areas from vocational training courses and production of materials to teachers' capacity building. Despite all the efforts conducted by the Mozambican Government, there are severe constraints in implementing these provisions (SIDA 2014). Moreover, there are concerns over the reliability of disability data in Mozambique. As an example, the 2007 census shows a prevalence of disability at 2% of the total population, and two other studies estimate significantly higher rates at 6% (INE et al, 2009) and 9.9% (Lang 2008).

In Mozambique, people with disabilities face many obstacles to access education. A local assessment of the cities of Maputo and Matola shows that the main barrier is economic and relates to the difficulty that people with disabilities have in coping with educational expenses, particularly at the end of free primary education. This study finds that only 27.2% of the research participants completed secondary education, a rate that is 10 percentage points lower - 16.9% - when considering people with disability (RAVIM and HI 2010). Poverty has a stark effect on children with disabilities, associated with social discrimination (UNICEF 2014). In this context, the trend for increasing numbers of private schools constitutes a real risk of further reducing the educational opportunities of one of the most vulnerable groups of Mozambican society.

In rural areas, children with disabilities are affected by distances to school, the inadequacy of school facilities and the lack of preparation of teachers to

70. World Bank 2014

accommodate their learning needs. Learning outcomes for children with disabilities are lower than those for comparison groups. Gender inequalities in education level are marked among people with disabilities 49% of men with a disability are literate, in contrast to 17 %

of women with a disability (UNESCO 2018b). Studies note that women with disabilities are subject to double discrimination, aggravated by their vulnerability to sexual abuse, undesired pregnancy and HIV/AIDS infection (DDP 2008, Save and HI 2011).

**Table 2.4:** Population 15-29 years who ever attended school<sup>71</sup>

SDG 4 Target 4.5 Equity (Location/Wealth) in Mozambique															
Country Year Source	Proportion of persons aged 15-29 years with a disability (%)			Ever attended school, total population (%)			Ever attended school, persons without a disability (%)			Ever attended school, persons with a disability (%)			Adjusted disability parity index		
	MF	M	F	MF	M	F	MF	M	F	MF	M	F	MF	M	F
Mozambique (2007, IPUMS)	1.9	2.1	1.7	70	80.8	60.7	70.2	81.1	61	56.2	66.4	45.5	0.80	0.82	0.75

Discrimination in education is evident, and is associated with poverty, location, gender and health (UNICEF 2014). Although the private school sector is small, it is a significant component of the secondary system, particularly at senior secondary level. At this level, fees charged mean that poorer families are excluded.

The AP highlight how the State’s obligations are not being fully met in ensuring that public education is of adequate quality (AP, Principle 1, para 26), and helps to reduce multidimensional poverty (AP, Principle 1, para 27).



Achieving equity remains a challenge within education systems and persistent disparities of gender, wealth and location remain.  
PHOTO: ROBERTINO JORGE/ACTIONAID

71. UNESCO GEM 2018

## 4. Financing

**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 Guiding Principles 29, 34-37 of the AP related to the financing of education.

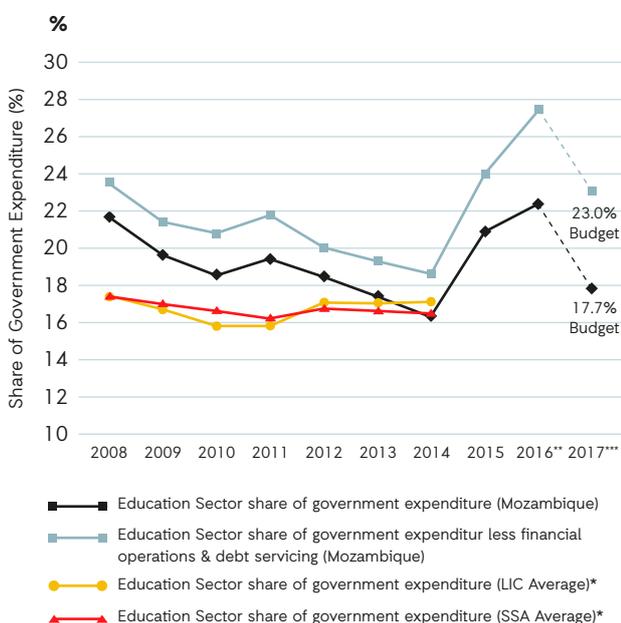
The AP highlight the State's obligation to prioritise the allocation of funds for the provision of 'free, public education of the highest attainable quality' (Principle 2b, para 34). Although Mozambique allocates more funds to education, as a share of total government expenditure and GDP, than most countries in Sub-Saharan Africa (SSA), this is not equitably distributed

and there are inequalities between regions meaning that a quality public education system is not available to all children.

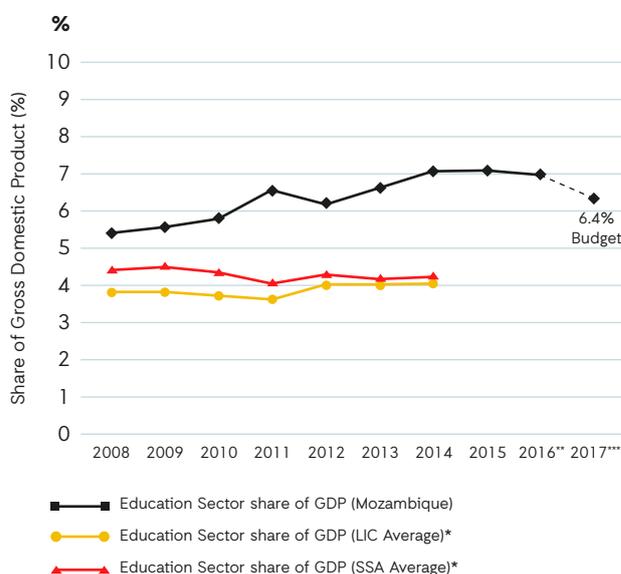
The education budget as a share of government expenditure (2008 to 2017) has averaged 19.4%, a rate that is higher than other SSA countries with an average share of 16.7% (UNICEF, 2017), but in 2018 this declined to 17.2% of the total budget (UNICEF, 2019). Primary education receives the largest share of education expenditure, followed by secondary education (UNICEF, 2019). However, the funds allocated are insufficient to ensure that all children enrol and receive education of adequate quality. According to UNICEF, the public education financing system is not equitable. For example, one of the poorest provinces in the country (Zambezia) with some of the worst education indicators, receives half of the per-student funding of the highest funded province (UNICEF, 2017).

**Figure 6:** Trends in the Education share of Government expenditure and GDP<sup>72</sup>

### Share of Government Expenditure



### Share of Gross Domestic Product

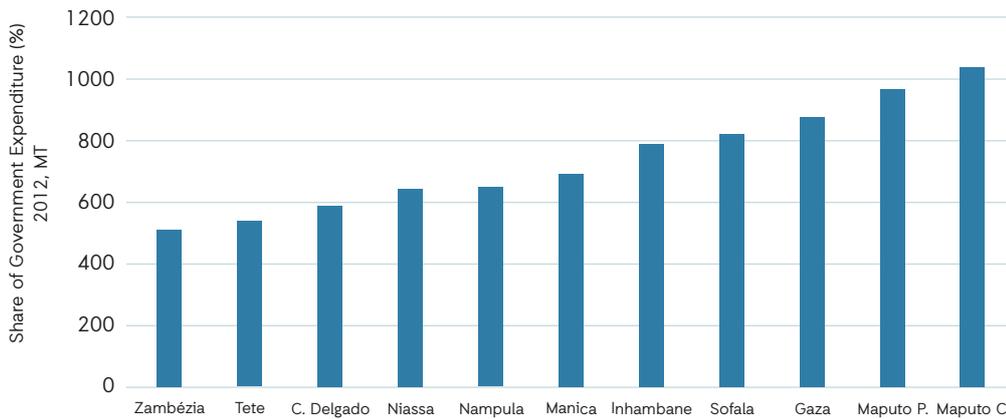


Revenues are mainly used to fund teachers' salaries, whereas donor funds finance infrastructure, learning materials and capitation grants. Dependence on

external resources has been falling, with the share of internal resources increasing from 70% to nearly 90% in less than ten years (UNICEF 2017).

72. UNICEF 2017

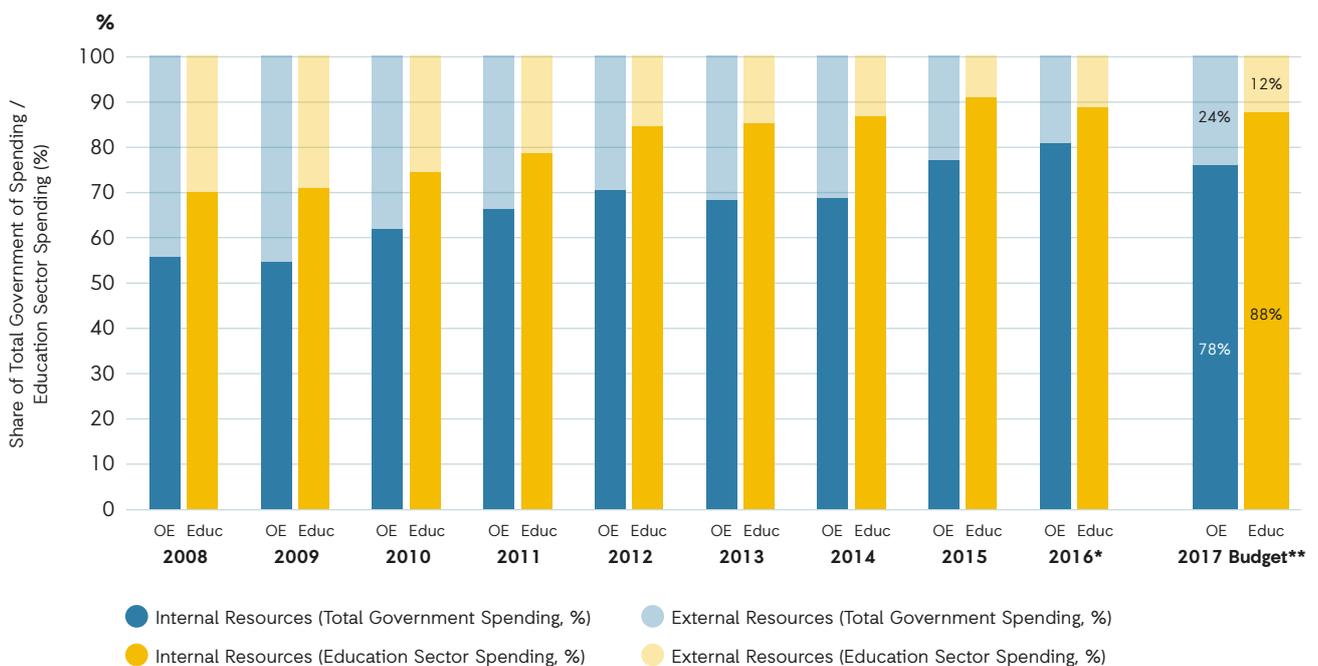
**Figure 7: Education expenditure by Province<sup>73</sup>**



The AP (Principle 5, para 65b) determine that any public funding to private providers should ‘not create a foreseeable risk of adverse effect on or delay to the most effective and expeditious possible development of a free public education system of the highest attainable quality’. Mozambique’s current legislation sets the conditions for the State’s funding of private schools, which resonate with some, but not all elements of the AP, requiring that (i) private schools are located within areas with no public supply; (b) private schools are not-for-profit; (c) private schools promote the enrolment of children with special education needs; (d) private

schools promote secondary technical-vocational education; and (e) private schools develop alternative programmes to the ones currently available in public schooling (Ministry of Education 2014, art.27). But these limits on the expansion of funding for private schooling need to be read alongside the Education Strategic Plan which anticipates ‘the expansion of private education through incentives packages’ (Ministry of Education 7 :2012). How and where private schooling is being funded, with what incentives and rationale, and whether adverse effects on the public education system are evident requires careful monitoring.

**Figure 8: Education funding: internal versus external resources<sup>74</sup>**



73. World Bank 2014

74. UNICEF 2017

The elimination of harmful tax incentives is one option to increase a state's share of available resources to ensure the fulfilment of the right to education (AP, Principle 5, Para 64). Research by ActionAid (2018) indicates that Mozambique loses USD 562.0 million each year to harmful tax incentives. That report infers that less than %25 of that amount would be enough to fund education for all 426,250 girls currently out of primary school. An estimation of losses from several potential revenue streams amounts to USD 1.75 billion

- equivalent to the annual inflow of aid received by Mozambique and the Government's annual expenditure in both the education and health sectors (Curtis and O'Hare 2017). There is a clear need to work on efficiencies in revenue collection, and other progressive taxation approaches that ensure there is enough sustainable revenue to 'realise the right to education to the maximum of their available resources' (AP, Principle 5, para 65b).

**Table 2.5:** Estimated Annual Revenue Loss – in USD<sup>75</sup>

Country	Estimated annual revenue loss	Revenue loss per capita	Revenue loss compared to aid allocated by donors	Revenue loss compared to government budgetry allocation to haelt and education sectors
Mozambique	\$1.75 billion (11.4% of GDP)	\$66	97%	Same as the combined education and health budget

## 5. Public-Private Partnerships

**Do the PPP arrangements in place for schools meet the conditions laid down under the overarching Principle 5 (Guiding Principles 64 to 74) of the AP which outline requirements for these arrangements in line with respecting human rights obligations?**

The Education Strategic Plan sets the promotion of public-private partnerships as one of its short-term priorities. The private sector is perceived to be an important service provider in post-primary education, contributing to school construction, the supply of learning materials as well as the use of information communication technologies (ICTs) within Open and Distance Learning programmes. PPPs are portrayed as key vehicles for the 'provision and funding of Secondary Education' (Ministry of Education 2012: 79). Technical Vocational and Higher Education partnerships with the private sector are justified with the need to establish linkages with the labour market and increase students' employability.

The AP (Principle 5, para 65) lays out a clear set of substantive requirements to ensure that PPPs do not undermine the wider right to education. A clear point is made relative to the importance of ensuring that such partnerships derive from a participatory and transparent process. A recent study (van Fleet 2015) explored the relationship between corporate participation in education PPPs and the overall educational need. It was found that countries with the greatest educational need – such as Mozambique - received comparably less support. While arguing that it is possible to match private and public interest, the study advises that the establishment of an education PPP demands an understanding of its underlying business motivations. Ignoring this could 'lead to more marginalization and inequality in the global education system' (van Fleet 2015: 179).

75. Curtis and O'Hare 2017

**Table 2.6:** Education poverty and corporations' contribution to education<sup>76</sup>

Country	Education poverty (%)	Percentage of US-based companies investing in education
Central African Republic	89.2	0
Niger	76.9	4
Burkina Faso	70.9	4
Mali	68.8	10
Chad	67.3	4
Somalia	63.5	2
Ethiopia	61.1	14
Senegal	57.4	14
Mozambique	56.5	2
Guinea	56.4	4
Sierra Leone	53.7	4
Guinea-Bissau	49.7	0
Côte d'Ivoire	49.2	4
Madagascar	48.3	6
Benin	47.8	0
Rwanda	45.3	18
Gambia	40.4	2
Morocco	37.1	16
Burundi	36.6	6
Liberia	35.7	10
Guatemala	35.6	10
Pakistan	34.5	20

Information on Mozambique's education PPPs is scarce and not easily accessible in the public domain. The publicly-financed and privately-provided early childhood development programme *Desenvolvimento Integral da Criança em Idade Pré-Escolar (Holistic Early*

*Childhood Development Programme)* is one example. Established in 2012, this PPP aimed to improve school readiness in five selected provinces (Cabo Delgado, Nampula, Tete, Gaza, and Maputo). INGOs including Aga Khan Foundation and Save the Children are responsible for service delivery. The programme encompassed 15 hours of weekly instruction, parenting and nutrition support to children aged 3 to 5. While stakeholders have claimed the programme's equity benefits, the implementation faced a series of constraints related to low levels of child participation and difficulties in managing the complex contracting mechanisms (Gustafsson-Wright et al 2017).

While no specific evidence was found relative to the implementation of secondary education PPPs, a World Bank report (2014) warns of the equity risks associated with leveraging access through non-state actors. Suggestions are made to strengthen governance and quality assurance systems as well as introducing incentives to promote equality of access for the poorest. The Education Strategic Plan (Ministry of Education 2012) builds on some of these concerns. It plans for the introduction of scholarships and fee exemptions as a means of preventing discrimination of access based on income or gender. A study conducted by a local researcher at the *Universidade Eduardo Mondlane* raises a pertinent claim over the growing demand for building the capacity of civil servants and school administration staff in PPP management (Nhampossa 2015). While PPPs are currently not a major feature of schooling in Mozambique, drawing on the AP to monitor their development is an important path to take.



No harmful tax incentives should be provided until financing gaps for education are overcome.

PHOTO: ROBERTINO JORGE/ACTIONAID

76. van Fleet 2015

## 6. Form and levels of regulation of private schools

### Do the arrangements in place for the regulation of private schools meet the conditions set out under the overarching Principle 4?

States have an obligation to monitor and regulate the effects of private schools on public provision (AP, clause 58) so that no private provider can unduly influence the education system. In Mozambique, the State establishes the criteria for the opening of private schools and for recognising the curriculum. Concerning accountability, private schools are regularly inspected by the provincial directorates, in a participatory process that involves parents and community members. However, the system lacks the ability to assess the quality of both teaching and learning to inform the introduction of quality-driven policies (Crouch 2011). No mechanism exists to monitor teacher absenteeism and ensure its link with payroll (JICA 2015). There is no evidence of private schools being monitored regarding their effects on equality.

The need to further improve the capacity to effectively monitor private operators is exemplified by recent concerns over private community schools. While these schools benefit from public resources for the payment of teachers' salaries and the provision of learning materials, there is criticism over their expensive fees, which prevent access for lower-income families. A recent report (ActionAid 2017c) suggests that these schools operate similarly to low-fee private schools, without adequate government regulation or compliance with limits on the establishment of private schools outlined in the Education Sector Plan.

According to ActionAid (ibid), the Government of Mozambique, in what seems to be an attempt to prevent the entrance of multinational education companies, approved legislation prohibiting foreign investment in private schools. This regulation appears to contradict and limit the scope of the announced government strategy of promoting 'public-private partnerships for the provision and funding of Secondary Education' (Ministry of Education 2012: 79). Whether or not this policy is picked up in the new Education Sector Plan (ESP) to be drafted in 2019 needs monitoring. While the private sector in Mozambique is not a large provider, there is a need to assess its impact on the education system.

## Conclusion

Mozambique has honoured its human rights obligations in line with its Constitution and international conventions regarding the provision of free primary and secondary education. There is only a very small private primary sector, and a small proportion of children enrolled in private secondary schools, the largest proportion at the senior secondary level. Nonetheless, some charges for schooling are made, associated with uniforms and exams, and these do appear to exclude some of the poorest children. There are a small number of very expensive private schools, and the interests of middle-class families in using private schooling, fragmenting national concern for a public, quality education system, is concerning. Government limits on the introduction of private schooling echo some elements of the AP. However, evaluations associated with the introduction of private schools are not as rigorous as those laid down in the AP.

A discourse supportive of some kinds of private schooling is being articulated, with claims that PPPs will help the expansion of secondary schooling, and particularly vocational schools. Unlike some other countries in this study, where private schooling is clearly associated with inequalities and exclusions, in Mozambique the existence of inequalities and lack of quality in public schooling may drive demand for private schools, and this relationship needs careful scrutiny using the AP guidelines with regard to funding, expanding the right to quality education and the conditions under which PPPs are agreed.

## 3.3 TANZANIA

Key overview information	
Population (2017)	57,310,019
Population under the age of 15	25,737,667 <sup>77</sup>
Proportion of adult female population who did not complete primary school	30.2% <sup>78</sup>
Proportion of adult male population who did not complete primary school	33.1% <sup>79</sup>
Number out of school children (2017)	2,207,255 <sup>80</sup>
- Female	1,012,077
- Male	1,195,178
Gini coefficient	37.8
HDI score and rank	0.538 (rank:154) <sup>81</sup>
Transition rate from primary to secondary	53% <sup>82</sup>
GER primary (2017)	85.26 <sup>83</sup>
- Female	86.18
- Male	84.34
NER primary (2017)	78.86 <sup>84</sup>
- Female	80.21
- Male	77.52
GPI primary enrolment	1.0 (2015)
GPI primary completion	1.1 (2013)
GER Secondary	25.84
- Female	25.93
- Male	25.76
NER Secondary (2017)	23.2 <sup>85</sup>
- Female	23.43
- Male	22.97
GPI Secondary enrolment (2013)	0.9
GPI lower secondary completion (2013)	0.9
GPI upper secondary completion	-
Proportion of children in private primary schools	3.8%
Proportion of children in private secondary schools	18%
% total government expenditure on education (2018)	15% <sup>86</sup>

77. <https://data.worldbank.org/indicator/SP.POP.0014.TO?locations=TZ>

78. DHS page 42 (% population with some primary education and 24.1% with no primary education)

79. DHS page 42 (% population with some primary education and 24.1% with no primary education)

80. <http://uis.unesco.org/country/tz>

81. <http://hdr.undp.org/en/countries/profiles/TZA>

82. [https://www.education-inequalities.org/countries/united-republic-of-tanzania/indicators/trans\\_prim#?dimension=all&group=all&age\\_group=|trans\\_prim&year=|2015](https://www.education-inequalities.org/countries/united-republic-of-tanzania/indicators/trans_prim#?dimension=all&group=all&age_group=|trans_prim&year=|2015)

83. <http://uis.unesco.org/country/tz>

84. Ibid

85. <http://uis.unesco.org/country/tz>

86. <https://www.unicef.org/esaro/UNICEF-Tanzania-2018-Education-Budget-Brief-Mainland.pdf>

### Learning outcomes for poorest quintile (WIDE):<sup>87</sup>

Level 1 UWEZO 2015	94%
Level 2 UWEZO 2015	91%
Level 3 UWEZO 2015	85%
Level 4 UWEZO 2015	77%

### Key legislation for advancing the right to education

Constitution of the United Republic of Tanzania  
Zanzibar Constitution  
National Education Act (1978 amended 1995 and 2002)  
Education Fund Act (2001)  
Law of the Child Act (2009)  
Tanzania National Development Vision 2025  
National Strategy for Economic Growth and Reduction of Poverty  
Big Results Now  
Education and Training Policy (1995)  
Education Sector Development Programme (2008 – 2017)  
Primary Education Development Programme (First phase: 2002 – 2006; second phase: 2007 – 2011; third phase: 2012 – 2017)  
Secondary Education Development Programme (First phase: 2004 - 2009; second phase: 2010 - 2015)

**Date scheduled for next election:** 2020

### International Laws on the Right to Education Ratified by Tanzania

Law	Date ratified
ICESCR - Convention on economic and social rights	11 June 1976
CRC - Convention on the Rights of the Child	10 June 1991
CEDAW - Convention on the Elimination of All Forms of Discrimination against Women	12 January 2006
CERD - International Convention on the Elimination of All Forms of Racial Discrimination	27 October 1972
ICCPR - International Covenant on Civil and Political Rights	11 June 1976
CRPD - Convention on the Rights of Persons with Disabilities	10 November 2009
ILO 138 - Minimum Age Convention	16 December 1998
ILO 182 - Worst Forms of Child Labour Convention	12 September 2001
Law	Date ratified
African Charter on Human and Peoples' Rights	18 February 1984
African Charter on the Rights and Welfare of the Child	16 March 2003
African Youth Charter	20 December 2012

87. <https://www.education-inequalities.org/countries/tanzania>

Fertility rate, total (births per woman) <sup>88</sup>	
2016	5.016
2010	5.427
2005	5.638
2000	5.689

% Child Marriage in Tanzania (2015) <sup>89</sup>	
% married below 15 years	5
% married below 18 years	31

SDG 4 Target 4.5 Equity (Gender) in Tanzania (2015) (From UNESCO, 2018, p.317)														
GPIA in completion			GPIA in minimum proficiency				GPIA in literacy rate		GPIA in adult proficiency		GPIA in gross enrolment ratio			
			End of primary		End of lower secondary									
Primary	Lower Secondary	Upper Secondary	Reading	Mathematics	Reading	Mathematics	Youth	Adults	Literacy	Numeracy	Pre-primary	Primary	Secondary	Tertiary
1.1	0.86	0.69					0.97	0.88			1.01 (2017)	1.02 (2017)	1.01 (2017)	0.51

SDG 4 Target 4.5 Equity (Location/Wealth) in Tanzania, 2015 <sup>90</sup>											
Disparity in primary completion				Disparity in lower secondary completion				Disparity in upper secondary completion			
Adjusted parity index		% of poorest completing		Adjusted parity index		% of poorest completing		Adjusted parity index		% of poorest completing	
Location	Wealth	M	F	Location	Wealth	M	F	Location	Wealth	M	F
0.83	0.64	54	67	0.35	0.12	9	5	0.26	0.01	0.4	

88. <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?locations=TZ>

89. DHS 2015-16, <https://data.unicef.org/topic/child-protection/child-marriage/>

90. UNESCO, 2018, p.317



The Abidjan Principles can be used as a tool to monitor and evaluate the extent to which education systems are working to deliver free, quality, non-discriminatory education for all.

PHOTO: RACHEL PALMER/ACTIONAID

## 1. Introduction

The Tanzanian Government introduced free primary education in 2002 in line with the Millennium Development Goals and Education for All. Substantial government contributions to the expansion of secondary school education were in place from 2005, although costs for buildings and out of pocket expenses still fell on communities. In December 2015, the newly elected President Magufuli announced that school fees of around \$19 (£12) would be abolished. Private providers were required to reduce their fees and submit their intended fees to a government board on an annual basis for review. This move highlights the centrality of education to national development goals in Tanzania, and how free primary education and the aspiration to expand secondary schooling has been a key thread in policy. Notwithstanding these commitments, 3.5 million children remain out of school and fail to complete nine years of primary and junior secondary school (UNICEF 2018). Although Tanzania's economy has grown at 6-7% per annum (World Bank, 2019) over the last decade, numbers of people living in poverty have not reduced due to population growth and high levels of inequality. Private provision of education plays a role in continuing aspects of poverty and inequality, but privatisation in Tanzania takes different forms and these have changed over time.

The history of education in Tanzania is tied in to the political identity of the country and the leadership of former President Julius Nyerere, who envisaged an education system based on liberation to promote self-

reliance. Campaigns for free universal public education were associated with the independence movement. The first post-colonial governments of the 1960s and 1970s nationalised all private schools, both missionary and NGO-run, establishing them as state-owned public institutions. The National Education Act 1978 made running a private school illegal (Anangisyee, W.A.L. & Mligo, A.D, 2014: 55). However, growing demands for education, at the time when international organisations providing crucial loans and aid to Tanzania began to demand deregulation, led to a crisis of leadership. Nyerere was forced to resign in 1985 and the new President Mwinyi acceded to demands of the World Bank and IMF, leading to a resumption of aid flows (Vavrus and Moshi, 2009, p.2). A new government began to deregulate and liberalise some areas of education, opening-up the sector for private providers to establish and manage schools. The Tanzania Education and Training Policy 1995 prioritised the development of partnerships between Government, NGOs and other stakeholders to provide education and training, encouraging private agencies to participate in the education sector and to establish and manage schools and other institutions. It stipulates that the Government will provide incentives to individuals, communities and NGOs to establish and develop pre-primary, secondary, vocational, teacher education, tertiary and higher education institutions (TETP 1995: 91). This policy history means that, side-by-side with the expansion of public education, seen as a feature of national identity, there is also substantial encouragement of private engagement in schooling, although the emphasis was initially on the community and NGO sector rather than for-profit. The complex relationship of private providers with the national system is examined in more detail below.

A range of sources were consulted for this report, comprising of government policy and legal documents and reports from UN organisations, international and Tanzanian NGOs. Most documents were available online, however an English version of the Education and Training Policy 2014 was sent by a civil society education coalition in Tanzania. The latest EMIS online data available is 2015. A rapid literature review of published academic articles provided the background and landscape. We found that there is only a small body of scholarly literature in the field of the privatisation of education in Tanzania and data is difficult to access. Empirical data is also patchy, and many studies are based on small qualitative explorations rather than nationwide studies. Therefore, we recommend that more research and broader investigation be undertaken.

## 2. Access to free, quality public primary and secondary education

### Is there access to free, quality, public primary and secondary education for 9 years for all children and has the growth of the private sector contributed to limiting this provision?

This discussion focuses on Guiding Principles 1a, 17 – 21, and Principle 2a, 29 of the AP on the right to public education.

The Tanzanian Government has, in large measure, delivered on obligations to ensure free primary and secondary education to all. Free primary education has been available in publicly-funded schools since 2001 and free secondary education since 2015 (RtE 2016).<sup>91</sup> Figures show that more than half of all children from the poorest quintile complete the primary cycle, and nearly two-thirds of those classified poor, but that less than ten percent from these low-income groups complete lower secondary. The introduction of free secondary education has thus not immediately been associated with an increase in participation, although the proportions passing the primary school public examination and qualifying for entry to secondary school are increasing. In total 67.8% of students passed the Primary School Leaving Examination in 2015, compared to 50.6% in 2013 (Todd and Attfield 2017, p.23).

**Table 3.1** School completion rate<sup>92</sup>

	Primary completion rate	Lower Secondary completion rate
Poorest	53%	6%
Poor	61%	7%
Male	69%	27%
Female	78%	24%

In 2018 there were about 8.5 million children of primary school age (7-13 years) in Tanzania, of whom 23.2%

were out of school. UNICEF estimates that there are 3.5 million out-of-school children between the ages of 7 and 17, about one in every four primary school-aged children and two in five of lower secondary age (UNICEF, 2018: 7). Three in every four (74.2%) lower secondary school-aged children who dropped out of school, left immediately after they completed the last grade of primary education (UNICEF, 2018: 32).<sup>93</sup> While 54% of males and 53% of females transition from primary to lower secondary, only 27% of males and 24% of females complete graduation, and only 15% of the poorest students compared to 53% of the richest students. Only 26% of both male and female students completing junior secondary transitioned to senior secondary, ranging from a 3% transition rate for the poorest students in Kaskazini Unguja in Zanzibar to 40% transition rate for the richest students in Dar es Salaam. There is also disparity between rural areas, where 15% of students transition to upper secondary school, compared to 34% in urban areas.<sup>94</sup>

The private school sector is small at the primary level, but accounts for a larger proportion of enrolments of secondary pupils. At the primary level this comprises around 3% of all students and 15% at the secondary level (World Bank, 2014, p.7).

While levels of private provision have not limited the expansion of free public primary and secondary education, they have had consequences for approaches to quality education. Public primary and secondary schools have been the focus of extensive concern because of low levels of quality (Vavrus and Moshi, 2009; Mosha, 2012). The policy frameworks for the expansion of free primary and secondary education have been associated with according a significant role to the private sector (both commercial agencies and family contributions through fees) to assist with policy delivery, or failing to comment on the relationship of public education provision and private providers. We document both these trends below in a rough chronology of education policy changes in relation to free public education and the delivery of quality.

There are clear legal underpinnings to the provision of free public education as a central strand of government policy in Tanzania. The Constitution of the United

91. <http://www.right-to-education.org/news/tanzania-implements-free-education-policy-secondary-education>

92. <https://www.education-inequalities.org/countries/tanzania>

93. [https://www.unicef.org/tanzania/Tanzania\\_Country\\_Report\\_V4.pdf](https://www.unicef.org/tanzania/Tanzania_Country_Report_V4.pdf)

94. [https://www.education-inequalities.org/countries/united-republic-of-tanzania/indicators/trans\\_lowsec#?dimension=all&group=all&age\\_group=|trans\\_lowsec&year=|2015](https://www.education-inequalities.org/countries/united-republic-of-tanzania/indicators/trans_lowsec#?dimension=all&group=all&age_group=|trans_lowsec&year=|2015).

Republic of Tanzania, adopted in 1977, recognises the right to education in Article 11 as a fundamental objective and directive principle of state policy (under Part II). But it does not recognise education as a basic right (Part III). This means that the provisions of Article 11 are not enforceable by any court. According to Article 11, every person has the right to access education and every citizen shall be free to pursue education in a field of choice according to merit and ability. Tanzania is currently (2019) reviewing its Constitution and the proposed draft Constitution (Article 41) enshrines the right to free quality primary education. If adopted, the new Constitution will substantially improve the legal protection of the right to education for Tanzanian citizens. However, the specification of these rights does not set out a clear framework requiring a free public education system.

Constitutional commitments in Zanzibar are not so robust and give explicit status the private sector. Zanzibar has a separate Constitution, which does not expressly protect the right to education. However, Chapter 2 on fundamental objectives and directive principles includes the provision to: "... direct its policy toward ensuring that every person has (...) equal opportunity to adequate education for all" (Article 10 (6)) (RTE, 2016). A revised draft Constitution for Zanzibar is under discussion which accepts as a principle that fees in private institutions should be 'less expensive'.

#### Article 41 of the draft Zanzibar Constitution

1. Every person has the right to:
  - a. education without facing any sanctions;
  - b. free quality primary education which prepares a pupil for further education or for being self-reliant;
  - c. less expensive education in private institutions; and
  - d. have equal access to higher education provided that he has the relevant qualifications for that level of education without in any way being discriminated against.
2. For the purposes of sub article (1), every person has the right to choose a profession or job he wants in accordance with his level of education or skills.

Constitutional commitments are given more specific form in legislation, policy frameworks and education sector plans, all of which either give a specific role to the private sector or fail to mention how relationships with processes of privatisation, including the levying of fees on parents, will be reviewed. The National Education Act (1978) (amended in 2002) is the single most important, specific act (other than the Constitution) governing the education sector in Tanzania, and guarantees compulsory and non-discriminatory primary education. It is pending review amid a new Education and Training Policy. The Education Fund Act (2001) describes the role of the Tanzania Education Authority, a body managing funds – governmental and donated – intended for financing of development projects in education. Other laws governing education in Tanzania include Law of the Child Act (2009) which guarantees the right to education (Art.9), University Act (2005), Vocational Education and Training Act (1994, revised in 2006), Institute of Adult Education Act (1975), and National Examinations Council of Tanzania Act (1973), The Tanzania Institute of Education Act (1963), The Higher Education Students' Loans Board Act (2004), The National Council for Technical Education Act (1997), and the Agency for the Development of Education Management Act (1997).

The most recent education policy in Tanzania is the Education and Training Policy of 2014. The policy considered the use of Swahili as an instructional language alongside English and introduced a new education structure: 11 years of compulsory basic education (one-year pre-primary, six years primary and four years secondary education). Other, overarching policies that affect education are the Tanzania National Development Vision 2025, and the National Five-Year Development Plan 2016/2017–2020/21 (UNICEF Education Brief 2018).

The Education Sector Programme (ESDP) introduced in 1997 established programmes to implement the Education and Training Policy and was the framework used to introduce first free primary, and then free secondary education. Little attention has been given to whether provision is public or private or how or whether additional demands on parents for supplementary school fees are made. The ESDP has undergone several revisions. Free primary education was introduced in 2001, partly as a feature of the Poverty Reduction Strategy Paper (PRSP) (Vavrus and Moshi, 2009), and rolled out to all districts over the subsequent decade. The focus of education sector plans has been on expanding access, quality and

management. The Primary Education Development Plan (PEDP), launched in 2001, had strategic priorities in the areas of enrolment expansion, quality improvement of teaching and learning, capacity building and optimum utilisation of human and material resources. The PEDP abolished school fees to achieve universal free and compulsory primary education, but gave little attention to the private sector and fee requirements levied at a local level. Although PEDP 1 had a strong statement that free education would be accompanied by a requirement that no additional resources would be required from parents, numerous studies at the local level showed this was not implemented (Vavrus and Moshi, 2009; TEGINT, 2011; Hartwig; Lindsjö (2018g). There is thus some disconnection between the policy text and local implementation.

The text of PEDP 1 affirmed that the 'government will eliminate school fees and all mandatory contributions contributed by parents beginning July 2001 so that there will not be any child denied his/her right to an education' (United Republic of Tanzania, 2003, p. 7; quoted in Vavrus and Moshi 2009, p.4). However, evaluations of the rollout of PEDP indicate that free education was not universally guaranteed and supported. Vavrus and Moshi (2009) interviewed a sample of parents in Northern Tanzania in 2000 and 2006 about the level of school fees paid. They found that, in 2006, most families were paying 18,000 shillings annually to cover their children's expenses, compared to 11,000 six years before, well above the reported inflation rate of 5% (Vavrus and Moshi, 2009, p.6). Although under PEDP headteachers explained that parents were charged a contribution to school buildings or teacher expenses, not a fee, in practice this worked in the same way and children were sent home if they did not pay (Vavrus and Moshi, 2009, p.9). The TEGINT study in five districts of Northern Tanzania documented similar levels of expenditure. Hartwig (2013) assessed aspects of quality in 100 primary and secondary schools in rural northern Tanzania between 2009 and 2011. Significant shortages of teachers, infrastructure and teaching resources were observed in all government schools. National test exam scores for secondary school students highlighted inequities between private and public schools, with pupils in government schools 3.5 times more likely to fail the examination at the end of the primary phase. Lindsjö (2018) interviewed primary school teachers in rural and urban settings in Iringa district about their experiences of quality. Analysis of the data highlights how urban youth perform better than their rural counterparts in exams. It shows how infrastructure and poverty -

including lack of water, electricity and poor transport networks - impact on access to school supplies for pupils, families and teachers and limit the ability of officials to carry out monitoring activities. It is thus clear that, although fee-free primary education has been in place for nearly two decades, the Government of Tanzania has not succeeded in eliminating differentials in quality education, and that features of privatisation, including fees, school contributions and requirements to pay for transport and electricity, may contribute to these inequalities.

General education policy formulations adopted from the 1990s cast the relationship of the public school system and the private sector as mutually supportive. Vision 2025, adopted in 1999, is Tanzania's long-term development vision. This envisages Tanzania's transformation from low- to middle-income country with a 'well-educated and learning society' and enjoyment of 'high quality livelihood', which requires, according to the policy framework, universal primary education, the eradication of illiteracy, quality education, gender equality and the empowerment of women, the improvement of infrastructure with an emphasis on promoting science and technology education, and an overhaul of the education system including a new curriculum (United Republic of Tanzania, 1999, p.12). The policy framework notes 'individual initiative and the private sector' as the central driving forces for building a strong, productive and renewing economy (p.16).

Education featured significantly in the Tanzanian poverty reduction strategies adopted after 2000, developed partly to access development assistance, and associated with a significant presence of large NGO programmes (Vavrus and Seghers, 2010; Todd, R. and Attfield, 2017; Selbervik, 20006). The National Strategy for Economic Growth and Reduction of Poverty MKUKUTA I (2005 - 2010) contains education goals and operational targets aimed at ensuring equitable access to primary and secondary education for boys and girls, universal literacy among women and men, and expansion of higher, technical and vocational education. Vavrus and Moshi (2009, p.4), however, highlight how the policy text notes that elimination of costs associated with schooling was not a completed project but rather an ongoing process.

A second phase of PEDP II (2007- 2011) aimed to ensure that everyone had access to free and compulsory education by 2015, including marginalised groups such as girls, people with disabilities and ethnic

minorities. PEDP III launched in 2012 with six objectives, but gives little explicit attention to the private sector, which remains small. The objectives are:

1. increase equitable access to pre-primary and primary education;
2. raise the quality of education to ensure better learning outcomes for children including improved literacy;
3. strengthen the capacity for governance and management for effective delivery of pre-primary and primary education services;
4. ensure that cross-cutting issues are addressed so that children receive a well-rounded education;
5. strengthen research and monitoring and evaluation to support evidence-based decision making; and,
6. streamline institutional arrangements and co-ordination mechanisms.<sup>95</sup>

The most recent ESDP, running from 2008 – 2017, focuses on establishing a well-functioning education system to achieve improvements in educational outcomes. It aims to address poor levels of performance across the sector, improving resource utilisation and the management and motivation of teachers, and ensure learning opportunities to out-of-school children, illiterate youth and adults. The authors of the ESP note that resources required for its full implementation are more than the Government of Tanzania can afford and advocate cost-savings and increased efficiencies and contributions from communities, students, parents, civil society, the private sector and Development Partners (p.xi). A particular role is outlined for PPPs in relation to consultations on enrolment and delivery on assessment (see below). A new ESP is currently under discussion, but there is limited information on the role being outlined for the private sector and the forms of regulation envisaged.<sup>96</sup>



Progressive and efficient taxation can help governments access additional, sustainable funds for education. PHOTO: MAKMENDE/ACTIONAID

95. For further information see: <http://www.worldbank.org/projects/P071012/primary-education-developmentprogram?lang=en>

96. <https://www.globalpartnership.org/news-and-media/news/2016-2020-education-sector-plan-development-grant-tanzania>

To fulfil Vision 2025, Big Results Now, adopted in 2013, focuses on education and five other priority areas. This policy framework is silent on the relationship of private education providers with the public education system. The implication is that enhancement of the current education provision, both public and private, is required. Nine key initiatives are set out to improve the quality of basic education, increasing the pass rates in primary and secondary schools. These include enhancing training of teachers and school heads, improving infrastructure and resources. There is no comment on the relationship of the public and private sectors in education.

Thus, largely due to a policy approach that stresses that all forms of education are valuable, private provision of schooling and its relationship with policy objectives such as free primary education for all, have not been much scrutinised or debated. This may be in part because levels of enrolment in private primary schooling are still low and contributions of households to schooling are not given prominence. In 2014, a Ministry of Education school census revealed that 3,760 (88.29%) primary schools were state public schools. The 11.71% of schools classified as private comprised 80 for-profit schools (1.88%), 27 religious schools (0.63%), 337 community schools (7.9%) and 60 undefined (1.41%) (MoEST, 2014). However, the number of private primary schools has increased since 2014. The Christian Social Services Commission reports that the religious institutions they represent own 172 primary schools (CSSC, 2019) and the Catholic Church of Tanzania is reported to own 1420 primary schools and 230 secondary schools.<sup>97</sup> These increases notwithstanding, most primary schools are in the public system, though the numbers and proportion enrolled in private primary schools have been increasing. The numbers enrolled in private primary schools in 2017 comprised 3.8% of all enrolments (EPDC, 2019).

The private sector comprises a larger component of the secondary school system. The 2014 census identified 810 public secondary schools (76.34%), and 147 private secondary schools (23.66%). There are indications that, since the 2014 census, the number of private secondary schools has

increased. A rapid review conducted for this report, based upon information on one website, indicates that approximately 340 private schools offer O-level qualifications, 290 of which are boarding schools.<sup>98</sup> The Christian Social Services Commission reports that the religious institutions they represent own 370 secondary schools (including 52 seminaries)<sup>99</sup> and the Catholic Church of Tanzania owns 150 secondary schools. The numbers enrolled in private secondary schools in 2017 comprised 18% of all enrolments (EPDC, 2019).

Analyses of the proportions of students enrolled in private schools at primary and secondary levels show an increase for private primary schools over the past fifteen years, and a decrease for private secondary schools over the same period, which corresponds with a very sustained expansion of public secondary school provision. As part of the Secondary Education Development Plan 2004-2009 (SEDP I), each ward was to have its own secondary school. Over the next four years the Government built over 3,000 secondary schools (known as 'Community Supported' government secondary schools). These were positioned in the centre of each ward to enhance accessibility, although this was sometimes controversial. Central Government provided funds to construct the classrooms and paid teachers' salaries. Education in these schools is free, but there are considerable out-of-pocket expenses associated, although since 2015 these additional contributions have been abolished (HRW 2017). Nationwide, the average out-of-pocket cost for a single child to attend a government secondary school in 2011 was \$88. For the poorest 10% of households in the country, this cost represents nearly 12% of total annual household spending (Tanzania National Bureau of Statistics, 2011). More recent assessments after the 2015 fee abolition require investigation. This is still much less than the fees charged for private schooling, which in Tanzania are high cost and aimed at the richest sector of the population.

Table 3.2 indicates that state investment in public secondary education provision was associated with a declining participation of the private sector at junior at secondary levels. However, trends regarding different school phases are complex. There has been an increasing proportion of enrolments in private primary

97. <https://mobile.thecitizen.co.tz/news/Catholic-Church-celebrates-150-of-evangelisation-in-Tanzania/2304482-4810060-format-xhtml-cbd32h/index.html>

98. <http://www.school.co.tz> accessed on 28 November 2018

99. <http://cssc.or.tz/departments/education/> accessed on 27 November 2018

provision since 2013, and a declining proportion in private junior secondary schools. However, the proportion of senior secondary school students in private schools fell in the initial phase of SEDP, and has now started to rise again.

**Table 3.2:** Percentage enrolled pupils by school phase in private provision 2004-2017<sup>100</sup>

	Primary	Junior secondary	Senior secondary
2004	0.6	38	49
2009	1.5	11	32
2013	1.8	18	27
2017	3.8	16.9	32

SEDP expansion was achieved at the same time that policy frameworks became particularly accommodating to private provision. The Education and Training Policy (2014) provided guidelines for the increased involvement of the private sector in education. This sector was seen to be able to contribute “to improve the quality of education and training and put in place structures and procedures that will enable the country to get educated Tanzanians who are yearning to continue learning.” (ETP 2014).

The second phase of the Secondary Education Development Programme (SEDP II), launched in 2010, put emphasis on improving quality, enhancing access, enhancing teacher training, management and good governance, but gave little attention to the relationship with the private school sector. Private provision has been associated with non-state actors, who are expected to: contribute to expanding access and improving quality and equity in secondary education, in line with national policies and programmes, collaborate with government departments to achieve national targets for SEDP II; and participate in review processes and education sector dialogue (SEDP 2010, p.51).

The legislation and policy frameworks in Tanzania provide for free public primary and secondary education, but there are considerable variations in quality, evidenced by results in learning assessments

and public examinations and in differences in confidence and knowledge between urban and rural schools, and schools with particular histories and locations, or access to particular levels of resources (Vavrus and Moshi, 2009; Unterhalter and Heslop, 2012 and TEGINT, 2011; Dejaeghere, 2015). WIDE data assembled by the UNESCO Institute of Statistics, and citizen learning assessments conducted by UWEZO as detailed in the table below, show that children in rural areas of Tanzania score on average 5% less than children in Dar-es-Salaam (UNESCO) and that learning outcomes vary according to district and schools.

**Table 3.3:** Average regional level scores in 2015 tests by learning outcome level, 2015<sup>101</sup>

	Katavi	Kagera	Rural	Dar-Es-Salaam
Level 1 UWEZO 2015	93%	97%	95%	99%
Level 2 UWEZO 2015	85%	94%	93%	98%
Level 3 UWEZO 2015	71%	93%	88%	94%
Level 4 UWEZO 2015	62%	87%	81%	87%

Not all data suggests that the existence of a very small private primary school sector is a factor in differences of quality, but questions around whether the state’s obligation to provide public education of adequate quality (AP Principle 1a, para 14; Principle 2a, para 29 and 30) have been met do need to be asked, considering the wide range of studies pointing to large quality differentials. Paragraph 37 of the AP notes that, under conditions of limited resources, states must protect the provision of public education. In Tanzania, it appears that under conditions of limited resources for expanding primary and secondary education, quality has been neglected, particularly for certain groups, and the private sector has been positioned as a source of expertise and valuable additional resources. Under these circumstances, there is a danger of nullifying the capacity of the State to provide an excellent public education system as indicated in AP (Principle 4, para 59) through commodifying key services associated with high quality education, such as the production of learning resources and teacher training packages.

100. UNESCO and MOECT, 2012; MOEVT, 2014a; EPDC: [https://www.epdc.org/advanced/search?countries=529&school\\_level=81-49-47-151-82-53-59-113-50-48-118-122&indicators=817&year\\_from=2009&year\\_to=2019](https://www.epdc.org/advanced/search?countries=529&school_level=81-49-47-151-82-53-59-113-50-48-118-122&indicators=817&year_from=2009&year_to=2019)

101. <https://www.education-inequalities.org/countries/united-republic-of-tanzania/#?dimension=region&group=all&year=latest>

### 3. Discrimination

#### Is there discrimination against groups, such as low income families, girls, children in particular locales, children with disabilities, and forms of segregation associated with the presence of private providers?

This discussion focuses on Guiding Principles 24 – 27 and 31 of the AP related to equality and non-discrimination in education.

There are marked differences in quality between schools in different locales and catering for different socio- economic groups. Figures show that only three-quarters of children from the poorest quintile achieve learning outcomes at level 4, compared to 87% of children from the richest quintile. There are

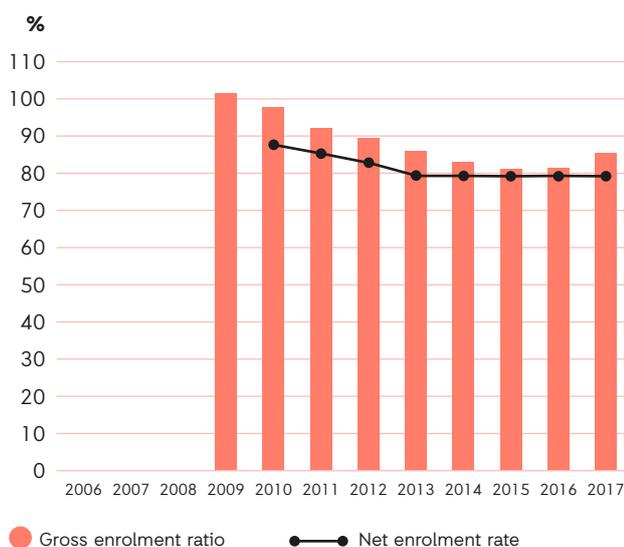
also differences in learning outcomes for rural and urban children, but less marked and not so evident at lower levels. A relationship between different levels of learning outcomes and the small private education sector is difficult to establish.

**Table 3.4:** Percentage completion of education levels according to income and location<sup>102</sup>

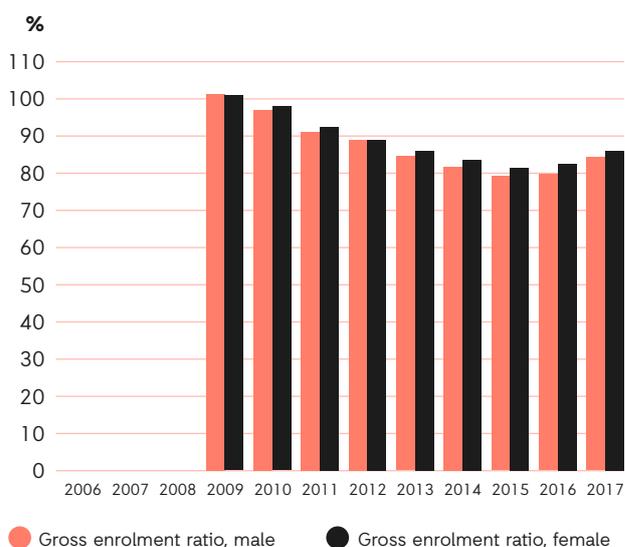
	Poorest	Richest	Rural	Dar-Es-Salaam
Level 1 UWEZO 2015	94%	98%	95%	99%
Level 2 UWEZO 2015	91%	97%	93%	98%
Level 3 UWEZO 2015	85%	94%	88%	94%
Level 4 UWEZO 2015	77%	87%	81%	87%

**Figure 9:** Gross and Net enrolment at Primary level (%)

#### Primary education



#### Primary education by sex



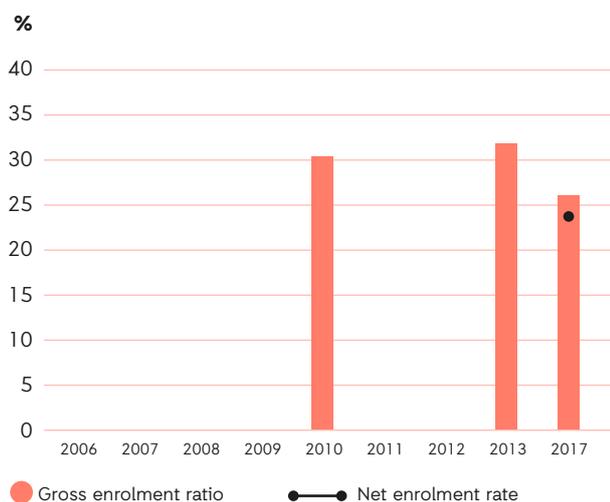
102. <http://uis.unesco.org/country/TZ>

**Table 3.5:** Gross and Net enrolment at Primary level (%)

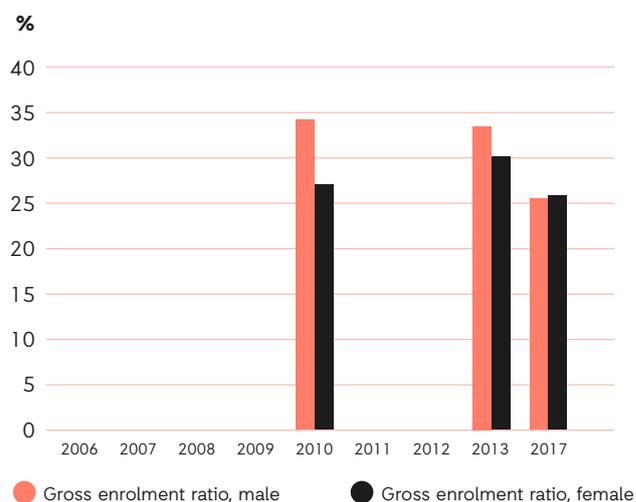
Primary education	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Gross enrolment ratio (%)</b>										
Total	-	101.7	97.4	92.02	89.27	85.54	82.62	80.74	81.51	85.26
Female	-	100.91	97.73	92.71	89.2	86.16	83.58	81.96	82.64	86.18
Male	-	101.43	97.07	91.32	89.34	84.92	81.66	79.52	80.39	84.34
<b>Net enrolment rate (%)</b>										
Total	-	-	87.32	-	82.94	79.76	79.32	-	79.8	78.86
Female	-	-	87.62	-	83.16	80.03	80.23	-	80.86	80.21
Male	-	-	87.02	-	82.73	79.48	78.41	-	78.74	77.52

Net enrolment at Secondary level (%)

**Secondary education**



**Secondary education by sex**



**Table 3.6:** Gross and Net enrolment at Secondary level (%)

Secondary education	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Gross enrolment ratio (%)</b>										
Total	-	-	30.64	-	-	31.67	-	-	-	25.84
Female	-	-	27.1	-	-	30.27	-	-	-	25.93
Male	-	-	34.26	-	-	33.07	-	-	-	25.76
<b>Net enrolment rate (%)</b>										
Total	-	-	-	-	-	-	-	-	-	23.2
Female	-	-	-	-	-	-	-	-	-	23.43
Male	-	-	-	-	-	-	-	-	-	22.97

Some authors comment that primary and secondary education, although nominally free, come associated with many charges that are passed on to parents (Vavrus and Moshi, 2009; TEGINT, 2012; HRW, 2017). For poorer families not able to pay for additional tuition, exam entry, uniforms or travel, these charges are a hidden form of school fees and constitute a form of discrimination. These inequalities are highlighted when the terms of the AP are considered, to explore whether discrimination is a feature of the presence of private providers.

Quality differentials stand in contrast to general formulations of rights in the Tanzanian Constitution. According to Article 13 of the Tanzanian Constitution of 1977, the right to equality and non-discrimination in education are guaranteed. The National Education Act of 1978 Article 56.2 contains a non-discrimination clause providing that “no person may ... be denied opportunity to obtain any category, nature or level of national education for the reason only of his race, religion or political or ideological beliefs. Provided that any school may, in its admission procedures, afford preference to citizens of the United Republic.” Furthermore, Article 8 of The Law of the Child Act of 2009 prohibits discrimination against children (Article 5) and requires opportunities for education to be provided for children with disabilities.

Addressing these inequalities was a concern of PEDP II (2007- 2011), which aimed to ensure that everyone, including marginalised groups such as girls, persons with disabilities and ethnic minorities, had access to free and compulsory education by 2015. A school environment free from violence and gender discrimination was another key aim. Concern with equity also features in the Medium-Term Strategic Plan of the Ministry of Education and Vocation Training linked to Vision 2025 (MOEST, 2016). However little attention is given in these policy texts to forms of inequality that might derive from differential treatment of children in public and private schools, despite evidence of very different experiences of quality (Hartwig, 2013).

Some private provision is explicitly aimed at elites and has less impact on the general public education system. These high-end schools are enormously expensive with fees out of the reach of most Tanzanians. Fees for the 10 most expensive private schools in Tanzania range from around Tsh15m (US\$6,500) a year at

primary level to Tsh65m (US\$28,150) a year to attend the International School of Tanganyika (IST) in Dar es Salaam (The Citizen, 2017). These are English medium schools offering the International Baccalaureate.

Although the proportion of students enrolled in private primary schools is less than 5 percent, their proportion as top performing schools is very high. In the 2014 Primary School Leaving Examination (PSLE) ranking, the top 15 schools were all private schools (Hakielimu, 2014, p.15). Of the top 50 primary schools in the PSLE ranking, only 5 were public schools (Hakielimu, 2014, p.15). In 2014, of the 4,753 secondary schools in Tanzania, 1,061 were private. Of the top 50 secondary schools based on exam results, only one, ranked 35, was a public school. Generally, well-performing students from private schools have the opportunity to go on to university, while the majority of students from poorly performing public schools do not (Hakielimu, 2014, p.16). Education and employment opportunities are related, and it is clear that students who have a poor understanding of basic subjects will subsequently struggle to enter the job market (Hakielimu, 2014, pp.14-15).

Until 2016, the language of instruction in the public education system was Kiswahili at primary school with a change to English at secondary school. In 2016 Kiswahili was introduced as the language of instruction (LOI) at all levels. In most private schools, the LOI is English at primary and secondary school to prepare pupils for university and work, and language differentials may be a further area associated with discrimination.

Tanzania has a National Strategy on Inclusive Education (2009-2017) which aims to enhance educational services for children with special needs, and other vulnerable populations. Funding is set aside within the capitation grants to provide double the allocation for students with disabilities. However, only approximately 0.5% of enrolled students have a disability, with large differences across regions. Government data shows that, in 2012, only 5,495 students with disabilities were enrolled in secondary schools and in 2013 enrolment decreased to 5,328. In both years, there were significantly fewer female students with disabilities enrolled in secondary education than male. The most recent government data, from 2016, shows that there are 37,209 students with disabilities in primary schools (data is disaggregated regionally and by disability)<sup>103</sup> which drops significantly to 6,773 students

103. <http://opendata.go.tz/dataset/idadi-ya-wanafunzi-wenye-ulemavu-katika-shule-ya-msingi>

with disabilities in secondary schools,<sup>104</sup> although an increase since 2013.<sup>105</sup> Research suggests that having a disability increases the probability of never attending school by a factor of two (World Bank, 2017). The number of teacher trainees obtaining the certificate of special education is inadequate and there are very limited incentives for schools or teachers to work in this area (Muyungu, 2015).

The proportion of students with disabilities at secondary school is tiny and, even when in mainstream settings, the data does not indicate whether these children are educated in an inclusive manner, with meaningful choices and able to learn alongside their mainstream peers (Human Rights Watch, 2017: 95).

**Table 3.7:** Tanzania Population 15-29 years who ever attended school<sup>106</sup>

Proportion of persons aged 15-29 years with a disability (%)			Ever attended school, persons without a disability (%)			Ever attended school, persons with a disability (%)			Adjusted disability parity index		
MF	M	F	MF	M	F	MF	M	F	MF	M	F
3.2	1.8	4.6	97.7	97.1	98.3	91.5	-	-	0.94	-	-

Inequalities are a feature of the education system in Tanzania, affecting progression to secondary schooling, inclusion for children with disabilities and learning outcomes. With a relatively small private primary sector, and neither a large private secondary school sector, the most striking features of discrimination and segregation associated with privatisation are its association with higher achievements in school examinations, and how the many charges levied by schools exclude poor children from completing their education. The AP, which stress the need to develop quality public education for all, and not make use of discourses of partnership with community or for-profit private providers, suggest benchmarks against which these features of discrimination can be assessed.



Inequalities and discrimination continue to prevent millions of children from enjoying their right to education.

PHOTO: MAKMENDE/ACTIONAID

## 4. Financing

**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 Guiding Principles 29, 34-37 of the AP related to the financing of education.

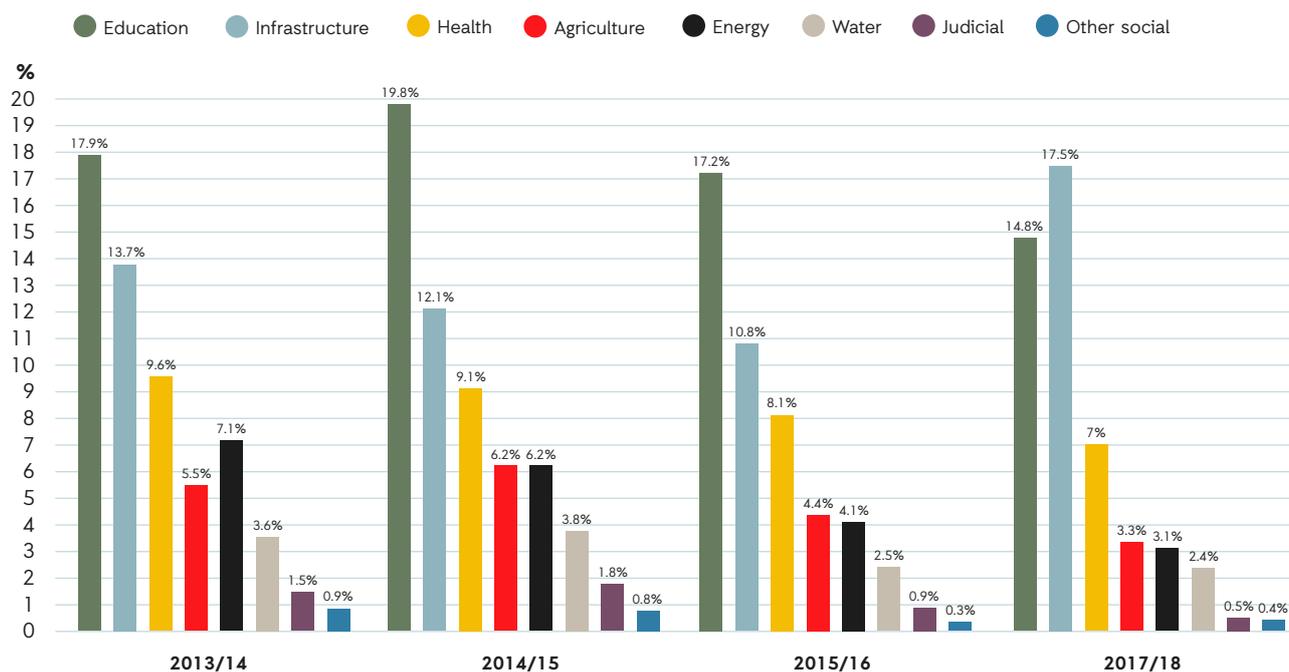
The education sector was allocated 4.71 trillion Tanzanian shillings (TSh4.71 trillion) in 2017/2018. This marks a decline of TSh63.99 billion (1.3 %) compared to 2016/2017. Table 3.7 shows that the education sector accounts for 14.8% of the total budget and 3.9% of GDP, a rate close to neighbours Kenya (16.5 %) and Uganda (11.1 %). This falls short of the GPE target, which encourages countries to commit at least 20% of their national budget to education (UNICEF Education Budget Brief 2018).

104. <http://opendata.go.tz/dataset/idadi-ya-wanafunzi-wa-shule-za-sekondari-wenye-ulemavu-kwa-mikoa/resource/b75b7ce7-7775-486e-b46f-2089b28f84bc>

105. Calculated by author based on figures from <http://opendata.go.tz/dataset/idadi-ya-wanafunzi-wa-shule-za-sekondari-wenye-ulemavu-kwa-mikoa/resource/b75b7ce7-7775-486e-b46f-2089b28f84bc>

106. UNESCO 2018, p.18

**Figure 11:** Allocation of Funds by Sector, 2013-2018<sup>107</sup>



Source: Ministry of Finance and Planning (MoFP) Integrated Financial Management Information System (IFMIS) 'preliminary outturns' budget estimates.

Figures published by UNESCO show that, in 2014, the Government was spending 17.4% of expenditure on education. The figures also indicate that the greatest expenditure per student was on tertiary education. A Rapid Budget Assessment for Tanzania in 2012 also showed that primary education was allocated 47.3% of the education sector budget, with tertiary and higher education allocated 24.9%, secondary education 7.5%

and teacher education 1.7% (BEST, 2012). While only a minority of children from middle- and low-income families access higher education, this sector received the second-largest share of public resources. The proportion allocated to the primary sector has been falling over the period that free primary education has been rolled out.

**Table 3.8:** Mean costs to families in public and private schools<sup>108</sup>

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Government expenditure on education</b>										
as % of GDP	4.25	4.04	4.62	-	-	-	3.48	-	-	-
as % of total government expenditure	18.78	17.41	19.65	-	-	-	17.3	-	-	-
<b>Government expenditure per student (in PPP\$)</b>										
Primary education	-	161.02	-	-	-	-	245.26	-	-	-
Secondary education	-	-	244.16	-	-	-	-	-	-	-
Tertiary education	-	-	13088.82	-	-	-	-	-	-	-

107. (UNICEF 2018a)

108. (<http://uis.unesco.org/country/TZ>)

The expansion of free secondary education was carried out partly through community mobilisation. These schools require investment from local communities, both in terms of physical capital and labour (Languille, 2014). While schooling is claimed to be free, community and district level authorities had to provide resources and facilities including water, electricity, teacher accommodation, science labs, libraries and books, furniture, secure roofing and fencing (Baines, 2013). Thus, many schools have very basic infrastructure. The shortfall is raised through inputs from non-state organisations or passed on to parents in the form of fees. Tuition fees for government schools are lower than those charged by private providers, but the expansion of the secondary school system has been largely dependent on private household investment. It is estimated that community contributions to the construction of classrooms and teachers' houses presently account for 20% of total costs of the ESDP. Policy seeks to increase the level of support, through local labour and sometimes land, from school committees which are required to develop plans for the provision of sufficient classrooms and teacher housing over a set period (ESDP 2016/17-2020/21).

In 2011, the Government of Tanzania was paying just over half (\$96) of the total per-student cost of government secondary education delivery (\$182). Households were required to cover 47% of total government secondary school operating costs. At the same time, 19% of students in private and religious secondary schools were paying total annual fees below this government unit cost level (\$182). Nationwide, the average out-of-pocket cost for a single child to attend a government secondary school in 2011 was \$88. For the poorest 10% of households in the country, this cost represents nearly 12% of total annual household spending (Tanzania National Bureau of Statistics, 2011).

Non-government secondary schools are on average four times more expensive than government schools, though costs are much more variable across non-government than government secondary schools. Baum and Cilliers (2018) note that, in the private sector, school fees exhibit regional variation due to factors such as the average household wealth of the ward, the geographic location of the school, the boarding status of the school and the type of school ownership. For example, a private urban boarding school located in one of the wealthiest 10% of wards in the country was charged annual per-student fees of \$577 in

2011. In contrast, a private rural day school located in a ward with median household wealth costs nearly half, with average student fees of \$317. On average, attending a boarding school adds an estimated \$157 to the annual household cost of secondary school attendance. Attending a private or religious school in an urban location adds an estimated \$29 per year. Additionally, for each unit increase in the ward income decile, non-government school costs increase by \$15. They conclude from the data that, although the average household cost of attending a non-government school is higher than that of a government school, there is large degree of variation in private school costs and there are a sizable number of private schools operating at, or below, the unit cost of public school provision. Baum and Cilliers (2018) argue that, in terms of cost, the private sector appears to offer some potential for affordable delivery of services as students from poorer households participate in secondary education at much lower rates than students from wealthier households (8% vs 50%) (World Bank, 2017). But this raises questions as to whether the schooling is of lower quality.



Governments must invest more to ensure all children receive a good quality education. PHOTO: PAULINA TEVELI/ACTIONAID

**Table 3.9:** Cost of schooling according to fees and implications on households<sup>109</sup>

School sector	School ownership	Share of total secondary enrollment (%)	Mean annual tuition fees*	Mean annual non-tuition fees*	Mean total annual fees*	Mean per-student fees as share of household consumption* (%)	Mean consumption of household by child enrollment
Public	Central government	18.5	34,527	118,233	152,761	4.2	4,515,241
	Local government	58.3	26,861	96,333	123,194	3.7	4,302,629
Private	Religious organization	6.4	393,529	225,617	619,147	10.3	6,910,785
	Private organization	10.1	457,814	208,940	666,755	10.2	7,386,687
	Out-of-school children						3,499,203

Notes: \*Tuition fees in Tanzanian Shillings (2011). These figures are based solely upon those students enrolled in each type of school. For example, on average, 10.3 percent of household consumption (per child) goes toward school fees households with a child in a religious secondary school.

Source: Tanzania National Bureau of Statistics (2011)

This regressive model of funding education needs to be read together with assessments of the tax privileges and Value-Added Tax exemptions in place to encourage increased private investment in education.

The education development (capital) budget is very low, compared to the recurrent budget, and highly dependent on donor funding. In 2015/16, recurrent expenditures comprised 84% of the budget, and development expenditures only 16%. Some 40-60% of development expenditures are financed by donors (Hakielimu, 2014, p.2; Hakielimu, 2015).

The Government of Tanzania provides a wide range of tax incentives to businesses to attract greater levels of foreign direct investment into the country. A study by the Tax Justice Network (2012) shows that tax incentives are leading to very large revenue losses and may not be needed to attract and retain foreign investment. They estimate that revenue losses from all tax exemptions and incentives may have been as high as TShs 1.8 trillion (US\$ 1.23 billion) in 2008 and that the minimum revenue loss from tax incentives granted to companies was around TShs 381 billion (\$174 million) a year (for 2008/09 – 2009/10). Calculations suggest that, for 2011/12, exemptions amounted to TShs.1,016,320,300,000, about 18% of total tax collections (Curtis & O'Hare, 2017; Uwazi, 2010, p.24; ActionAid, 2017).

Foreign aid is an important component of education spending. In the 2017/2018 budget, 29% of development funds came from foreign donors

compared to 44% of all funds the previous year. This meant a combined contribution to the overall education budget of around 6%. (UNICEF, 2018).

Inadequate funds have been allocated for free primary education, evidenced by differences in quality between regions and demographic groups. When PEDP and free primary education was planned, it was recognised that it would cost far more than the Government of Tanzania could afford. In order to roll out the policy, MKUKUTA made provision for:<sup>110</sup>

- i. Cost-savings and increased efficiencies to be applied over a 10-year period from 2008 - 2017; and
- ii. Contributions from communities, students, parents, the private sector and development partners

It appears that AP recommendations regarding the expansion of free education are being implemented, but at the expense of the poorest who are the least able to pay for education. The expansion of secondary education assumes some contribution from families and communities, even though they may not have these resources available. Levels of provision in rural schools or for poorer socio-economic groups have not compensated for their lack of resources, which means that they are often forced to ask for fees from parents, putting unnecessary pressure on the guardians of students to make difficult decisions about which children they can afford to send to school, if any.

109. Baum, D.R & Cilliers, J (2018) pp.1307-1318

110. MKUKUTA II, 2010/11 – 2014/15, P.39

## 5. Public-private partnerships

**Do the PPP arrangements in place for schools meet the conditions laid down under the overarching Principle 5 (Guiding Principles 64 to 74) of the AP which outline requirements for these arrangements in line with respecting human rights obligations?**

While PPP arrangements in Tanzania are small, they have become a notable feature of expanding secondary provision. PPPs have been implemented in Tanzania in the form of concession agreements for running existing enterprises with limited provisions for rehabilitation and securing new investments. Following the adoption of liberalization policies, there has been increased involvement of the private sector in investment and provision of services which were previously provided by the Government. PPPs have been implemented successfully by faith-based organizations in the education, health and water sectors for many years (UNESCO, 2015, p.51).<sup>111</sup> The EDSP (2016/17 to 2020/21) makes provision to support privately-owned Vocational Training Centres at district level through PPPs, and also outlined a key strategic role for PPPs in consultations for increasing enrolment and expanding access.<sup>112</sup>

More recently, alternative models of PPPs have emerged, and development assistance has been associated with supporting PPP arrangements. For

example, in February 2013, Camfed was awarded a major grant through the UK Department for International Development's Girls' Education Challenge Fund, to achieve a substantial increase in school retention and learning outcomes for marginalised girls. Sixty thousand marginalised girls who had either dropped out from school or were at risk from doing so received support to attend secondary school. In this programme, Camfed partnered with Pearson to develop a series of secondary school study guides for Forms 1-4 in maths, science and English, as well as a training programme for teaching assistants in rural secondary schools (CAMFED Annual Report 2013).

Another example of increasing private sector development is the involvement of Pearson in the development of the 'My Better World' curriculum and workbook and development of a BTEC qualification in 2014. This use of aid money has been directed much less at supporting systemic issue of expanding free secondary education but rather to help a private sector company in research and development for learning resources and a new qualification. Whether or not Pearson is paying tax on its operations in Tanzania needs investigation. Researchers note that Pearson's group structure includes 90 subsidiaries in recognised tax havens (Global Justice Now 2015; Anderson 2015).

The changing nature of private sector investment and PPPs shows that a rigorous assessment of existing PPPs in education using the AP needs to be conducted.



Girls, the poorest children and those with disability remain the least likely to go to school. PHOTO: PAULINA TEVELI/ACTIONAID

111. See National Public Private Partnership (PPP) Policy, November 2009. [https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/Tanzania\\_PPP%20Policy.pdf](https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/Tanzania_PPP%20Policy.pdf)

112. See Dejaeghere's (2018) study which outlines some of the ways in which involvement in these programmes is seen by young participants.

## 6. Form and levels of regulation of private schools

### Do the arrangements in place for the regulation of private schools meet the conditions set out under the overarching Principle 4?

The Government allows for a variety of private provision, including community, faith-based, non-profit and for-profit. Criteria for registering a private school in Tanzania relate to the safety and suitability of buildings, facilities and equipment; teacher qualifications and conditions of work; and the gap that the proposed school will fill in educational services. The National Education Act 1978 stipulates: “no person shall establish a non-government school unless it is intended to provide education in accordance with the national education policy” (Article 23), but detailed policies in relation to the curriculum, teacher training and support for teacher union membership in those schools, as set out in the AP, are not elaborated. The National Education Act (1978) states “no fees, subscriptions or contributions shall be charged, levied or collected as a condition of admission into or attendance at any private school except with the approval of the Commissioner” (Article 57), but no further guidelines have since been set. A private school applicant needs to indicate ownership of buildings and land in the registration form. There are 14 criteria upon which a school can be denied registration, including that it would not be in the public interest, it is not to be used

mainly for technical education or that the premises are unsuitable for a school. No criteria are linked to educational outcomes.

Schools set their own registration fees, but they are also subject to review from the Government. For example, in 2016 the Government announced that private schools must submit their fees for review and that they should be reduced (Daily Nation, 2015). School fees are subject to approval by the Government (World Bank SABER Report, 2015, p.17). According to the World Bank SABER report, non-government schools are required to pay an inspection fee of 5,000 Tanzanian Shilling (\$9USD) for each student in a grade where standardised exams are administered (World Bank SABER Report, 2015, p.17). The Government also introduced an income tax and skills development levy for all private schools.

The 1978 Education Act No. 25, amended by Education Act No.10 of 1995, outlines the roles of different education actors, including school inspectors. All schools were to be inspected at least once a year by the school Inspectorate, which was required to evaluate the relevance and use of instructional materials and make recommendations on registration. In practice, the division faced resource constraints, and nearly half of schools were not inspected at all in 2013 (MoEVT, 2014a). The approach to inspection was thoroughly amended in the 2018 School Quality Assurance Model, which provides for supervision of schools at local community, ward and system levels (Lukopela, 2019), but how this works in practice requires close monitoring.

## Conclusion

This overview highlights how the expansion of education in Tanzania has long been associated with a form of partnership with the private sector, initially conceived as a set of relationships with communities and civil society, and later changing to incorporate for-profit education organisations. This form of partnership model has implicitly or explicitly been used to justify the levying of fees on parents, although primary education is nominally free, and the expansion of secondary schooling linked with a mobilisation of community resources in cash or kind. Drawing on the AP, we can identify when one form of privatisation (mobilisation of private or community funding) changes into, or comes to be associated with, another form in terms of exclusionary schooling, which limits the expansion of secondary education to particular groups, curtailing whether some parents can keep their children in school, and directing what kinds of exam results children achieve. While privatisation in the form of community ownership may appear laudable, its effects are discriminatory, and the encouragement of PPPs and lack of progressive approach to funding education highlight these relationships.

## 3.4 NIGERIA

### Key overview information

<b>Population (in thousands)</b>	185,990
<b>Population aged 14 years and younger (in thousands)</b>	81,999
<b>Proportion of adult female population who did not complete primary school</b>	19.2% with some primary and 40.4% with no primary (DHS, p.24)
<b>Proportion of adult male population who did not complete primary school</b>	20.9% with some primary and 29.5% with no education (p.25)
<b>% out of school children</b>	
- Female	
- Male	
<b>Gini coefficient (2010-2017)<sup>113</sup></b>	43.0
<b>HDI score and rank<sup>114</sup></b>	157 (Index: 0.532)
<b>Transition rate from primary to secondary % (2009)<sup>115</sup></b>	60.37
<b>GER primary (2016)<sup>116</sup></b>	84.7
- Female	82.18
- Male	87.13
<b>NER primary (2010)<sup>117</sup></b>	64.1
- Female	58.07
- Male	69.92
<b>GPI primary enrolment (2013)<sup>118</sup></b>	0.975
<b>GPI primary completion<sup>119</sup></b>	0.9 (2010)
<b>GER Secondary (2016)<sup>120</sup></b>	41.98
- Female	39.8
- Male	44.08
<b>NER Secondary</b>	Figures not available
<b>GPI Secondary enrolment (2013)<sup>121</sup></b>	0.91
<b>GPI lower secondary completion<sup>122</sup></b>	0.9 (2010)
<b>GPI upper secondary completion</b>	Figures not available
<b>Proportion of children in private primary schools (2016)<sup>123</sup></b>	12.6%
<b>Proportion of children in private junior secondary schools (2016)<sup>124</sup></b>	19%

113. <http://hdr.undp.org/en/indicators/67106>

114. <http://hdr.undp.org/en/countries/profiles/NGA>

115. <http://uis.unesco.org/country/NG>

116. <http://uis.unesco.org/country/NG>

117. <http://uis.unesco.org/country/NG>

118. <https://data.worldbank.org/country/nigeria>

119. <https://databank.worldbank.org/data/reports.aspx?source=1159&series=UIS.AIR.1.Glast.GPI>

120. <http://uis.unesco.org/country/NG>

121. <https://data.worldbank.org/indicator/SE.ENR.SECO.FM.ZS?locations=NG>

122. <https://databank.worldbank.org/data/reports.aspx?source=1159&series=UIS.AIR.2.GPV.GLAST.GPI>

123. <https://data.worldbank.org/indicator/SE.PRM.PRIV.ZS?locations=NG>

124. <https://data.worldbank.org/indicator/SE.SEC.PRIV.ZS?locations=NG>

## Learning outcomes for poorest quintile (WIDE):<sup>125</sup>

Youth literacy rate 22%

## Key legislation for advancing the right to education

Child Rights Act 2003  
 Constitution  
 Universal Basic Education Policy  
 Early Childcare and Education Policy  
 Nigerian Education Policy  
 National Teacher Education Policy  
 National Policy on Gender in Basic Education  
 National Policy on Special Needs in Education in Nigeria

**Date scheduled for next election:** scheduled for 2023

## International Laws on the Right to Education Ratified by Nigeria

Law	Date ratified
<b>CRC</b> - Convention on the Rights of the Child	19 April 1991 <sup>126</sup>
<b>CEDAW</b> - Convention on the Elimination of All Forms of Discrimination against Women	23 April 1984 <sup>127</sup>
<b>CERD</b> - International Convention on the Elimination of All Forms of Racial Discrimination	16 October 1967 <sup>128</sup>
<b>ICCPR</b> - International Covenant on Civil and Political Rights	29 July 1993 <sup>129</sup>
<b>ICESCR</b> - International Covenant on Economic, Social and Cultural Rights	29 July 1993 <sup>130</sup>
<b>CRPD</b> - Convention on the Rights of Persons with Disabilities	29 July 1993 <sup>131</sup>
<b>ILO 138</b> - Minimum Age Convention	2 October 2002 <sup>132</sup>
<b>ILO 182</b> - Worst Forms of Child Labour Convention	2 October 2002 <sup>133</sup>
<b>African Charter on Human and Peoples' Rights</b>	22 June 1983 <sup>134</sup>
<b>African Charter on the Rights and Welfare of the Child</b>	23 July 2001 <sup>135</sup>
<b>African Youth Charter</b>	21 April 2009 <sup>136</sup>

125. <https://www.education-inequalities.org/countries/nigeria/#?dimension=all&group=all&year=latest>

126. [https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC\\_NGA\\_UPR\\_S4\\_2009anx\\_RatifiedHumanRightsInstruments.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC_NGA_UPR_S4_2009anx_RatifiedHumanRightsInstruments.pdf)

127. [https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC\\_NGA\\_UPR\\_S4\\_2009anx\\_RatifiedHumanRightsInstruments.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC_NGA_UPR_S4_2009anx_RatifiedHumanRightsInstruments.pdf)

128. [https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC\\_NGA\\_UPR\\_S4\\_2009anx\\_RatifiedHumanRightsInstruments.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC_NGA_UPR_S4_2009anx_RatifiedHumanRightsInstruments.pdf)

129. [https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC\\_NGA\\_UPR\\_S4\\_2009anx\\_RatifiedHumanRightsInstruments.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC_NGA_UPR_S4_2009anx_RatifiedHumanRightsInstruments.pdf)

130. [https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC\\_NGA\\_UPR\\_S4\\_2009anx\\_RatifiedHumanRightsInstruments.pdf](https://lib.ohchr.org/HRBodies/UPR/Documents/Session4/NG/NHRC_NGA_UPR_S4_2009anx_RatifiedHumanRightsInstruments.pdf)

131. [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=\\_en&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=_en&clang=_en)

132. [http://www.ilo.org/ipecc/Regionsandcountries/Africa/nigeria/WCMS\\_202285/lang--en/index.htm](http://www.ilo.org/ipecc/Regionsandcountries/Africa/nigeria/WCMS_202285/lang--en/index.htm)

133. [http://www.ilo.org/ipecc/Regionsandcountries/Africa/nigeria/WCMS\\_202285/lang--en/index.htm](http://www.ilo.org/ipecc/Regionsandcountries/Africa/nigeria/WCMS_202285/lang--en/index.htm)

134. <http://www.achpr.org/instruments/achpr/ratification/>

135. <http://www.achpr.org/instruments/child/ratification/>

136. [https://au.int/sites/default/files/treaties/7789-sl-african\\_youth\\_charter\\_1.pdf](https://au.int/sites/default/files/treaties/7789-sl-african_youth_charter_1.pdf)

Fertility rate, total (births per woman) <sup>137</sup>	
2016	5.526
2017	5.839
2005	5.985
2000	6.106

% Child Marriage in Nigeria (2016 - 2017) <sup>138</sup>	
% married below 15 years	18
% married below 18 years	44

SDG 4 Target 4.5 Equity (Gender) in Nigeria (2013) (From UNESCO, 2018, p.316)														
GPIA in completion			GPIA in minimum proficiency				GPIA in literacy rate		GPIA in adult proficiency		GPIA in gross enrolment ratio			
			End of primary		End of lower secondary									
Primary	Lower Secondary	Upper Secondary	Reading	Mathematics	Reading	Mathematics	Youth	Adults	Literacy	Numeracy	Pre-primary	Primary	Secondary	Tertiary
			0.93	0.75	0.75									

SDG 4 Target 4.5 Equity (Location/Wealth) in Nigeria (2013) (From UNESCO, 2018, p.317)											
Disparity in primary completion				Disparity in lower secondary completion				Disparity in upper secondary completion			
Adjusted parity index		% of poorest completing		Adjusted parity index		% of poorest completing		Adjusted parity index		% of poorest completing	
Location	Wealth	M	F	Location	Wealth	M	F	Location	Wealth	M	F
0.62	0.22	27	14	0.49	0.12	18	4	0.48	0.09	14	2

137. <https://data.worldbank.org/indicator/SP.DYN.TFRT.IN?end=2016&locations=NG&start=1960&view=chart>

138. MICS 2016-2017, <https://data.unicef.org/topic/child-protection/child-marriage/>



Quality education is a fundamental human right not a profit-making opportunity. PHOTO: TOM SAATER/ACTIONAID

## 1. Introduction

Nigeria has one of the largest economies in Africa, and education is a major political issue, yet large numbers of children are not in school or fail to complete more than a few years of schooling. State commitment to delivering universal primary education dates back to 1976 (Imam, 2012, p.188). The 1979 Constitution provided the initial legal foundation for this, making primary education both free and compulsory (Imam, 2012, p.191).<sup>139</sup> The federal structure of Nigeria means that obligations to the right to education are tracked at both federal and state levels, with considerable authority over education legislation, budgets and accountability processes resting at state level. Despite this well-established commitment, universal primary education is yet to be achieved and free primary schooling has not been provided for all children.

Access and enrolment vary greatly by location. Overall, there is higher provision of both public and private education in southern states compared to northern states. In south-west Nigeria the primary net intake rate is 56.3% compared with just 32.5% in north-west Nigeria and 27.2% in north-east Nigeria (NBS and UNICEF, 2017, p.199). In Lagos state, 57% of primary school enrolments are in private schools compared to just 3% in Sokoto state (FMoE, 2017, p.33; p. 42). Since the 1990s there has been a sizeable expansion in private sector participation in education in some states of Nigeria, but this is most pronounced in the southern states, notably Lagos. Given this diversity, this report

focuses on national level, drawing examples from the states of Lagos and Sokoto.

Lagos state is one of the most densely populated and urbanised in Nigeria, with a high degree of private sector participation in education. In contrast, Sokoto in the north-west is sparsely populated and has a small private primary and secondary school sector. These two states exemplify some of the north-south divisions in the country. In the analysis that follows we look at the range of primary and secondary school provision, drawing on the AP to consider how the provision of free, quality public education has developed and what some of the constraints have been.

A range of sources were consulted. This included policy and legal documents available on government websites and inter-governmental websites (see Appendix 1). A rapid literature review of published academic articles provided background for the report. Grey literature in the form of NGO, civil society and donor reports provided information on access to education, government financing and the state's obligation to provide education for all. A large proportion of research on private education in Nigeria has focused on Lagos state. Accessing documents on education financing proved difficult given the lack of publicly available information. Skype interviews with staff from ActionAid Nigeria took place in December 2018. This provided information on some of the key issues facing the education system in Nigeria, particularly in relation to the private sector.

139. During the 1980s and early 1990s user fees were re-introduced, however the Universal Basic Education programme implemented in 1999 reversed this (Imam, 2012, p.192).

## 2. Access to free, quality public primary and secondary education

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**Is there access to free, quality, public primary and secondary education for 9 years for all children and has the growth of the private sector contributed to limiting this provision?** This discussion focuses on Guiding Principles 1a, 17 – 21, and Principle 2a, 29 of the AP on the right to public education.

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Nigeria is signatory to a number of international legal frameworks that secure and advance the right to education for all children at primary level. At national level the Constitution (1999), enacted at the end of a long stretch of military rule, provides the legal framework for this. All persons have the right to free, compulsory and universal primary education (Section 18 (3)(a)). The Free Universal Basic Education (UBE) Act (2004) has made this an enforceable right. Under the UBE Act (2004) “every government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary school age” (Part 1 (2)(1)) and “the services provided in public primary and junior secondary schools shall be free of charge” (Part 1 (3)(1)). This covers grades 1-9. Under the Act (2004) the Federal Government is responsible for financing (not less than 2% of Consolidated Revenue Fund) UBE, alongside local and international donors (Part 3 (11 (1))). The Universal Basic Education Commission (UBEC) was created to carry out this mandate.

The Nigerian State has failed to adequately fund basic education (Obire, 2018, p.204). Inadequate resources are allocated at both federal and state levels. The education sector is characterised by low learning outcomes and systemic inequalities (World Bank, 2015, p. ix). Further, the most recent figures show that the number of out-of-school children has been increasing (UNESCO, 2019).

Despite Constitutional rights to free education, attempts to use the courts to secure these, and a huge economy generating significant government revenues - most notably from oil - successive governments have failed to deliver on a free quality, basic education system.

In 2009, Trustees of the Socio-Economic Rights and Accountability Project (SERAP) filed a legal case against

the Federal Government of Nigeria and UBEC at the Economic Community of West African States (ECOWAS) Community Court of Justice (SERAP v Nigeria). SERAP claimed that the Nigerian state had violated the right to quality basic education, guaranteed by Article 4(g) of the 1993 Revised Treaty of ECOWAS and Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples’ Rights (Isokpan and Durojaye, 2018). Key to the case were claims that funds allocated for basic education had been mismanaged, and the failure of the Federal Government to address allegations of corruption at the highest levels (Isokpan and Durojaye, 2018). In a landmark ruling, the ECOWAS court ruled in favour of SERAP - that the right to education is justiciable under the African Charter on Human and Peoples’ Rights and that UBEC has a responsibility to ensure that distributed funds are used appropriately (Mumuni, 2014).

In 2017, a second legal case was brought against the Federal Ministry of Education and the Attorney General of the Federation by the Legal Defence and Assistance Project, this time to the Federal High Court in Abuja, for failing to provide free primary and junior secondary education for all (Premium Times, 2014). The judge ruled that Federal and State Government had constitutional duties to provide adequate funds for primary and secondary education. These legal rulings confirm demands articulated by social campaigners, political activists, aid organisations and academics. However, complex issues of local politics, particularly with regard to budgets, and deep socio-economic divisions continue to characterise the lack of provision for education. The ECOWAS judgement has not been implemented, socio-economic rights in Nigeria are not yet justiciable and enforcement mechanisms remain weak when infringements occur (Mumuni, 2014; Isokpan and Durojaye, 2018).

As a core public service, education plays a key role during elections at both national and state levels. In the lead up to the 2019 general elections, a state of emergency in the education system was declared in all 36 states after recommendations by the National Economic Council (Vanguard, 2018).<sup>140</sup> At the time, opposition leader Atiku Abubakar pledged to allocate 21% of the federal budget to education if elected (All Africa, 2018),<sup>141</sup> while President Buhari pledged to renovate 10,000 public schools annually if re-elected (Premium Times, 2018).<sup>142</sup> Despite the widespread

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140. Vanguard. 2018. NEC direct govts to declare state of emergency on education <https://www.vanguardngr.com/2018/10/nec-direct-govts-to-declare-state-of-emergency-on-education/>

141. AllAfrica. 2018. Nigeria: What I Will Do to Education When I Become President Next Year <https://allafrica.com/stories/201808050012.html>

142. Premium Times. 2018. 2019 Buhari pledges to renovate 10,000 schools annually if re-elected <https://www.premiumtimesng.com/news/headlines/296394-2019-buhari-pledges-to-renovate-10000-schools-annually-if-re-elected.html>

attention paid to education during the election campaign by candidates at all levels of the political system, it is yet to be seen whether any tangible changes will result.

In March 2019, in the wake of the re-election of President Buhari, four human rights groups issued the Girls' Education Charter, and called on the new President to commit to: (Sahara Reporters, 2019).<sup>143</sup>

- increase the education allocation to at least 20% of the national budget and 6% of GDP, ensuring planning, budgeting and the Medium-Term Sector Strategies;
- increase the UBE Fund to ensure that all states can offer free primary and junior secondary schooling, ensuring parents do not carry the burden of hidden costs;
- commit to halving the number of out-of-school children by 2030; and
- improve water, sanitation and inspection of schools.

It is striking that, though there were few demands for increases in private funding or privatisation, budgetary provision for the 2019 fiscal year did not clearly show where resources for this expenditure would come from. The N620 billion provided for education represented 7.02% of the entire budget of N8.83 trillion. The average provision in the last two and a half decades has been about 8%, lower than the UNESCO recommended range of 15% – 20% (Business Day, 2019).<sup>144</sup> Of the proposed N620 billion for education, the largest proportion (N539 billion) is for payments to teachers, managers, administrators and cleaners, N33 billion is for overheads and only N47.29 billion (7.6%) for capital expenditure and expansion of the system. While the private sector does not feature in these calculations, the under-costing of education provision appears to maintain the continuation of private funding as a key element. Evaluating the budget and education election promises through the AP highlights how much more attention is needed to the costing of expanded education provision, which is called for by civil society organisations, and a minimum requirement of a quality public education system for all.

The private sector has grown, in part, as a market response to the lack of quality public education and the failure of the Government to provide quality primary

and secondary education (Rose and Adelabu, 20017; Unterhalter, Robinson and Ibrahim, 2018, Urwick, 2002). Studies have found that, in Lagos state, some private schools serving low- and middle-income families have smaller class sizes, better facilities and better discipline than public schools (Tooley, Dixon and Olanrewaju, 2005; Lipcan, Crawford and Law, 2018; Tooley and Dixon, 2005). The surveys and interviews that underpin these works indicated that parents consider private schools to provide better quality education than public schools. However, a number of other studies raise questions about approaches to teaching and learning in private schools (Härmä, 2017; Unterhalter, Robinson and Ibrahim, 2018).

Private sector intervention in education in Nigeria is diverse, and private schools come in a variety of forms of ownership and fee structure (Härmä, 2016). The main forms are:

- 1. Individually-owned and run by local entrepreneurs (low-, high- and medium-cost):** A particular feature of the private school sector in Nigeria, most notably in Lagos state, is the large low-cost private school sector. Low-cost private schools in Nigeria have been defined as those directed at households in the bottom two income quintiles. According to Tooley (2013): "if a family on the poverty line can afford to send all its school-aged children to these schools without needing to excessively restrict spending in other essential areas" this school can be termed 'low cost'".
- 2. Religious/faith-based schools:** These take many forms, from elite schools through to those aimed at middle- and low-income members of faith communities. Religious schools represent about 4% of enrolment and tend to be located in the northern states (World Bank, 2015). In many northern Nigerian states, where the majority of the population are Muslim, some public funding is provided for children in Islamic schools. Christian schools, owned by local churches, are growing in number in major urban centres.<sup>145</sup>
- 3. Community-owned or -funded schools:** which may or may not receive additional government support.
- 4. For-profit international school chains:** This type of school is often associated with highly

143. (<http://saharareporters.com/2019/03/15/over-2500-nigerians-ask-buhari-increase-budgetary-allocation-education>)

144. Business day, 2019; <https://businessday.ng/opinion/article/education-and-the-2019-federal-government-budget-proposal/>)

145. Conversation with ActionAid Nigeria staff in June 2019

elite private schools in state capitals and highly urbanised areas. In cities like Lagos, with a large low-cost private school sector, a second type of international school chain has emerged serving low-income communities. An example of this is Bridge International Academies (BIA) which aims to “To serve the “bottom of the pyramid” with a quality product at a price point that is feasible for poor communities” (Kwauk and Perlman Robinson, 2016).

### 5. National for-profit school chains.

Private schools comprise a significant part of the education system in Nigeria, particularly in southern states. In 2016, 3.2 million, 1 million and 911,561 pupils were enrolled in private primary, junior secondary and senior secondary schools respectively (FMoE, 2017). As a share of total enrolments this was 12.5% at primary level, 18% at junior secondary level, and 20% at senior secondary (FMoE, 2017). After a period of rapid growth in the 2000s, the percentage of primary enrolments in the private sector did not increase between 2012 and 2013 (14.8%).<sup>146</sup> The picture is similar for private secondary schools, where there was no increase in the proportion of enrolments between 2012 and 2013 (18.7%).<sup>147</sup>

Aggregate national figures mask significant regional differences, and in some geopolitical zones, private enrolments account for more than half of all children in schools (see table 4.1). In Lagos state, 57% of children are enrolled in private primary schools and Lagos has the smallest supply of public school services of any state in Nigeria (Abdul-Hamid, Baum, Lusk-Stover and Wesley, 2015; FMoE, 2017). By contrast, in Sokoto State just 3% of primary school enrolments are in private schools (FMoE, 2017). Table 4.1 below shows that the majority of private schools are located in urban areas and in the Southern states of Nigeria.

As the below tables illustrate, the distribution of private schools and the relationship with the proportion of out-of-school children varies geographically. There is a larger proportion of children out of primary and junior secondary schools in rural areas of Nigeria, where there is also a smaller proportion of private schools. Rural areas and small towns are not considered commercially viable for private school proprietors (Härmä, 2016). This distribution suggests that private provision cannot compensate for lack of public schooling, as private schools do not tend to operate where large proportions of children are out of school. This pattern can also be

seen across geopolitical zones. In southern states, where the smallest proportions of children are out of school, there are the largest proportions of private schools. In two northern zones, with the largest need for schools to serve out-of-school children, there are very few private schools. The north-central zone is an outlier, however, and needs further investigation.

**Table 4.1:** Distribution of Primary Pupils by School Type in Nigeria (adapted from: National Population Commission and RTI, 2016, A25) & NBS and UNICEF (2017, p.201)

	Government (%)	Private (%)	Out of school (%)
Urban	64.5	35.3	14.0
Rural	85.9	13.8	33.0
North Central	73.7	26.2	23.8
North East	93.7	6.2	39.8
North West	92.5	7.4	29.9
South East	72.3	27.5	11.3
South	67.3	31.9	13.3
South West	59.8	40.1	14.6

**Table 4.2:** Distribution of JSS Students by School Type in Nigeria (adapted from: National Population Commission and RTI, 2016, A25) & NBS and UNICEF (2017, p.205) (Secondary)

	Government (%)	Private (%)	Out of school (%)
Urban	70.2	29.6	12.6
Rural	80.3	19.1	33.0
North Central	74.2	25.6	20.7
North East	89.7	10.2	37.3
North West	88.1	11.9	33.5
South East	68.3	31.7	7.7
South	64.1	34.6	8.5
South West	74.3	25.6	11.7

146. <https://data.worldbank.org/indicator/SE.PRM.PRIV.ZS?locations=NG>

147. <https://data.worldbank.org/indicator/SE.SEC.PRIV.ZS?locations=NG>

At national level, the transition rate from primary to JSS was 68.59% in 2016 (FMoE, 2017). This rate was much higher than the national average in both Lagos and Sokoto at 97.06% and 91.02%, whereas in Kogi State it was just 15.3% (FMoE, 2017).

The Lagos state government has attempted to regulate private school provision and improve quality in government schools, which are free. However, the private sector is now enormous in the state and huge investments would be needed to provide free public schooling for all children (Unterhalter, Robinson and Ibrahim, 2018). Increased public spending on education, particularly in relation to the labour market, was a key election demand (Odigie, 2018). Private education is considered a useful addition in some northern states. One of the policy targets in the Sokoto Education Sector Plan is to increase private sector involvement in education by 40% (SMoE, 2010). An UBEC impact assessment concluded that there should be an 'expanded role for private schools' (UBEC, 2012a).

Since the 1970s, successive Nigerian governments at federal and state levels have affirmed commitments to provide universal primary education. However, there has been a failure to honour this with adequate

political and economic resources. The lack of school provision has been associated with the emergence of a diverse private school sector, which is poorly regulated. In states such as Lagos, private schools aimed at every income group provide more education than government schools, although the latter are free.

Clause 41 b ii of the AP acknowledges the state's obligations to respect the liberties of parents to choose private schools, and private education businesses to operate, but notes that states must ensure that 'the exercise of these liberties does not create any negative systemic impact on the right to education', including by: 'nullifying, impairing or creating a risk of nullifying or impairing the capacity of the State to realise [the enjoyment of] the right to the highest possible quality of free public education' (AP, 2019). It is evident that there has been a failure to allocate adequate resources to establish free, quality schools for all children in both northern and southern states. In Lagos, the extensive, largely unregulated growth of the private education system is a response to the lack of adequate state provision. In Sokoto, the difficulties of providing schooling to a largely rural population require considerable investment, and the private sector is seen to compensate for the lack of public resources.



Governments should critically assess assertions which claim that private provision or financing is cheaper, better or more efficient for the education system. PHOTO: TOM SAATER/ACTIONAID

### 3. Discrimination

#### Is there discrimination against groups, such as low income families, girls, children in particular locales, children with disabilities, and forms of segregation associated with the presence of private providers?

This discussion focuses on Guiding Principles 24 – 27 and 31 of the AP related to equality and non-discrimination in education.

The AP (para 41) set out the State’s obligation to ensure that the existence of private schools does not entail negative systemic impact, particularly education institutions which result in ‘disparities of educational opportunity for some groups’ (AP, 2019, para 41, bi)

and interfere with the right to non-discrimination and equality.

Despite a commitment to free public education by federal and state governments in Nigeria, parents are still expected to contribute a sizable amount through fees, even when children attend government schools. Mean per-pupil household expenditure on *public* primary schooling in Nigeria is N15,519.1 compared to N54,226.7 spent on private primary schooling (based on figures below and including boarding fees). Given that over half of the Nigerian population live below the poverty line, any additional costs associated with public schooling places an extreme burden on average households and private schooling is out of reach for the majority (World Bank, 2019).

**Table 4.3:** Mean per-pupil household expenditure on public and private primary schooling (adapted from National Population Commission and RTI, 2016)

	Government (US \$)	Government (NGN)	Private (US\$)	Private (NGN)
School Levies	1.47	527.9	43.81	15772.0
School Development Levy	0.4	144.6	1.16	415.9
PTA Fees	0.94	339.1	2.5	900.9
Exam Fees	0.72	206.8	2.23	803.2
Boarding Fees	4.43	1596.6	18.97	6830.0
Uniform and clothing	4.15	1495.0	8.26	2975.1
Books and supplies	5.18	1865.6	15.95	5741.4
Transport	8.22	2958.9	18.72	6739.8
Food	4.44	1599.0	8.54	3075.9
Extra Lessons	7.44	2678.7	15.83	5700.2
Other Fees	5.7	2053.5	14.65	5272.5
<b>Total</b>	<b>43.09</b>	<b>15519.7</b>	<b>150.62</b>	<b>54226.9</b>

Despite the growing number of low-cost private schools in urban centres in Southern states, such schools are still out of reach for the poorest (UNESCO, 2013). In 2015, one of the top reasons given for never having attended school was related to monetary cost (18% of respondents) (National Population Commission and RTI International, 2016). In literature on private schools in Nigeria, concerns are raised about the proportion of income families spend on schooling. A 2013 study found that poor families use a large percentage of their income on education (Härmä, 2013). Based on a

minimum wage of N18,787 (US\$52.19) per month, the total cost would be 9.1% of total household income per year per child for unapproved private schools and 18.3% for approved private schools (Härmä and Adefisayo, 2013). In Lagos, even low-cost schools charging N19,500 per annum are out of reach for those earning the minimum wage (Härmä and Adefisayo, 2013). Härmä (2013, p.550) argues that “allowing this situation to continue is manifestly against the interest of working towards a more equal and just society”.

**Table 4.4:** Top reasons for dropping out of school (%) (Adapted from National Population Commission and RTI, 2016, p.29)

	Government	Private
Monetary Cost	23	49
Labour Needed	15	11
Poor Quality	15	2

Table 4.5 below shows the percentage of children who walk to primary school. In all regions, a much larger percentage of children walk to public primary schools than to private schools. This highlights the way in which private schools in Nigeria reinforce existing socio-economic inequalities.

**Table 4.5:** % of pupils who walk to primary school (Adapted from National Population Commission and RTI, 2016, p.21)

	Private Schools	Government Schools
North Central	23	69
North East	4	89
North West	6	89
South East	24	65
South	25	57
South West	31	50

Gender inequalities remain a feature of all levels of the Nigerian school system, but are more apparent at higher levels. In 2016, 11.5 million boys enrolled in public primary schools compared with only 10.5 million girls, and 48.09% of pupils at primary level are female (National Population Commission and RTI International, 2016). At senior secondary level, 1.9 million boys enrolled in 2016 compared to 1.6 million girls (FMOE, 2017). In 2017 only 75 females completed upper secondary for every 100 males (UNESCO, 2018). Figures from the WIDE database show a 92% transition rate to lower secondary school for boys compared with 88% for girls.<sup>148</sup> 70% of the poorest girls have never been

to school and 84% of the poorest young women have not completed primary education (UNESCO, 2013). Transition rates from primary to secondary school in public schools are much lower for girls than boys in the North of Nigeria, although this is reversed in the southern states (Humphreys and Crawford, 2014). Transition rates within the private sector have not been much studied.

**Table 4.6:** Transition rates (%) from public primary schools to public junior secondary school<sup>149</sup>

	F	M
North West	41	52
North East	34	39
North Central	45	53
South West	83	85
South	69	47
South East	56	52

A study for ActionAid on Bridge International Academies found that the majority of children attending this type of low-cost chain school are from middle-class or non-poor families, and that when parents are unable to pay school fees, their children are sent home until fees are paid (Härmä, 2017). Similar findings were reported in a comparative study of public and low-cost private schools for Education International (Unterhalter, Robinson and Ibrahim, 2018). In the study, teachers reported stopping children from sitting exams and not issuing report cards when fees are unpaid. The humiliation of being sent home from school or separated from classmates may have lasting effects on wellbeing and mental health. Such practices present a clear example of discrimination against children from low-income families unable to pay fees.

## Disabilities

Nigeria is a signatory to the UN Convention on the Rights of Persons with Disabilities, which includes Article 24 on the right to education. Further, the 2015 National Policy on Special Needs Education in Nigeria aims: "To ensure inclusion of Persons with Special Needs, provide equal opportunity, equity and access

148. [https://www.education-inequalities.org/countries/nigeria#?dimension=sex&group=\[Female|Male\]&year=latest](https://www.education-inequalities.org/countries/nigeria#?dimension=sex&group=[Female|Male]&year=latest)

149. Humphreys and Crawford, 2014, p.17

in a barrier free environment” (FMoE, 2015). Despite these commitments, the Government has failed to deliver inclusive education for all children (Brydges and Mkandawire, 2018). Historically, there has been a lack of funding for children with disabilities leading to inadequate services, and it is estimated that between 5 and 7 million children with disabilities are out of school, though the exact number is still unknown (Eskay, Eskay and Uma, 2012).

In recent years, there has been a move to make mainstream public schools inclusive for all children. However, studies have found that children with disabilities in inclusive schools face a number of challenges and are often subject to bullying and discrimination as a result of their disability (Brydges and Mkandawire, 2018). Teachers have been found to have inadequate training on how to create an inclusive environment in classrooms (Fakolade, Adeniyi and Tella, 2009). Such studies point to the need for more targeted funding to support children with disabilities, as well as better training for teachers, although there is limited comment on the implications of funding from public or private sources.

There is a dearth of information on children with disabilities at all levels of the education system. The National Policy does note this absence and draws attention to issues of non-recognition and stigma attached to children with special needs (FMoE, 2015, p.7). The private sector is noted as one channel for the delivery of education for children with disabilities (FMoE, 2015). However, there is a clear lack of information on how well private schools serve children with disabilities (Abdul-Hamid, Baum, Lusk-Stover and Wesley, 2015).

## 4. Financing

**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 Guiding Principles 29, 34-37 of the AP related to the financing of education.

Federal, state and local governments share responsibility for education in Nigeria (World Bank, 2015). Under the 2004 Universal Basic Education Act,

State Universal Basic Education Boards are responsible for all aspects of basic education, whereas senior secondary education is the responsibility of State education ministries (World Bank, 2015). This is legally enshrined in the 1999 Constitution, which also ensures that a share of the federal budget is transferred to state and local governments.

The UBE Act of 2004 outlines the institutional framework for basic education at each level of government in the following way:

- Universal Basic Education Commission (UBEC) at federal level,
- the State Universal Basic Education Board (SUBEB) at state level and,
- the Local Government Education Authority (LGEA) at local level.

In practice, no single tier of government has full responsibility for education, including financing. Table 4.7 shows that the federal government is responsible for the guidelines for minimum education standards at all levels, and that state and local governments are responsible for primary, adult and vocational education. State governors have substantial control over education financing, and this plays a major role in elections (Financial Times; Premium Times, 2019).<sup>150</sup> In the 2019 general elections, a number of governors focused on this issue and civil society organisations stressed the enormous needs (Financial Times; Premium Times, 2019). Links were drawn between levels of unrest and lack of education in Niger Delta and north east Nigeria. But with more than 50% of Nigerian revenues being used to service debt, the resources to address education needs are hard to identify (Adibe, 2019).



More funding is required to support the inclusion of children with disabilities in mainstream education. PHOTO: TOM SAATER/ACTIONAID

150. (<https://www.ft.com/content/dec709ec-c7f2-11e8-86e6-19f5b7134d1c>; <https://www.premiumtimesng.com/news/headlines/309303-nigeria-must-invest-in-education-or-prepare-to-invest-in-prisons-cemeteries-governor.html>).

**Table 4.7:** Expenditure Assignments (Zamba and Oboh, 2013)

Tier of Government	Expenditure category
Federal	Defence; shipping; federal inter-state roads; aviation; railways; postal, telegraphs and telephone services; police and other security services; regulation of labour, interstate commerce, telecommunications; mines and minerals; social security; insurance; national statistical system; national parks; <b>guidelines for minimum education standards at all levels</b> ; water resources affecting more than one state.
Federal-state (shared)	Antiquities and monuments; electricity; industrial, commercial and agricultural development; scientific and technological research; statistics and surveys; <b>university, technological and post-primary education</b> ; health and social welfare.
State-local (shared)	<b>Primary, adult and vocational education</b> ; health services; development of agriculture and nonmineral natural resources.
Local	Economic planning and development; cemeteries, burial grounds; homes for the destitute and infirm; markets; sewage and refuse disposal; roads, streets, street lighting, drains, other public facilities.

One of the key issues around the financing of education in Nigeria relates to governance. A number of studies highlight the high levels of corruption and political patronage within the Nigerian political system, linked to high levels of poverty and poor service delivery in education (Obanya, 2011). Local governments often do not have autonomy over resources or the decision-making power to enact changes within the education sector at the local level (Makinde, Hassan and Taiwo, 2016). This is often further exacerbated by strained relations between UBEC and SUBEBs, with detrimental effects on the delivery of education (Freinkman, 2007). The very low uptake of the UBEC fund - a conditional matching grant arrangement for the funding of primary education - is a symptom of this, and it remains largely underutilised despite providing an important source of funds (Adekunle, 2019). Only 13 states accessed the 2018 Matching Grant and were provided approximately N1.3 billion each (Premium Times, 2018).<sup>151</sup> Around N29.5 billion was left over at the end of 2018, meaning that over 20 states missed out on this source of funds. Given that some of the wealthiest states in Nigeria, including Edo and Ogun, did not access the fund it seems unlikely that poor uptake is related to the matching criteria of the grant. It is more plausible that it is connected to political factors, and further research in this area is needed, particularly given the importance of this fund as an additional source of revenue.

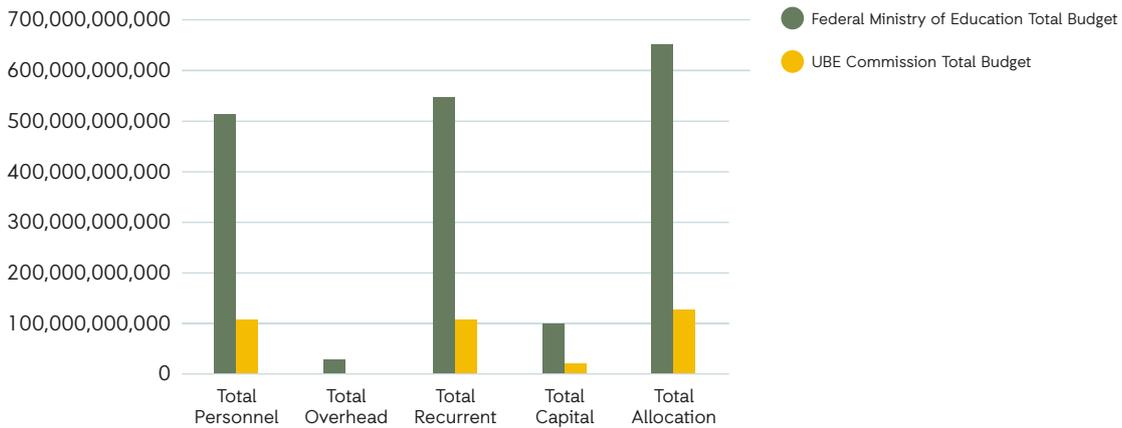
Public spending on education in Nigeria as a share of the total national budget remains low. Available figures from the World Bank show a drop in the share of the total national budget between 2012 and 2013, from 8.5% to 7.9% (Abdul-Hamid, Baum, Lusk-Stover and Wesley, 2015). And as a share of GDP, education funding did not increase between 2009 and 2013, remaining around 1.7% (World Bank, 2015). In 2018, N651 billion (US\$1.8bn) was allocated to the Federal Ministry of Education by the federal government, which includes funds to UBEC (Udoma, 2018).<sup>152</sup> However, as figure 8 below shows, total UBEC personnel and total recurrent expenditure is almost ten times higher than total capital expenditure (which includes the UBEC fund).<sup>153</sup> Given the chronic underfunding of public education, and the key role played by local and state governments in Nigeria, this is highly problematic as it suggests that the vast majority of funding is not reaching local governments and schools.

151. <https://www.premiumtimesng.com/news/headlines/292790-while-nigerian-schools-face-poor-funding-24-states-fail-to-access-n29-billion-ubec-grant.html>

152. <http://budgetoffice.gov.ng/index.php/hmbnp-2018-approved-budget-breakdown-presentation-final-draft-iii?task=document.viewdoc&id=679>

153. <https://budgetoffice.gov.ng/index.php/2018-approved-budget-details?task=document.viewdoc&id=681>

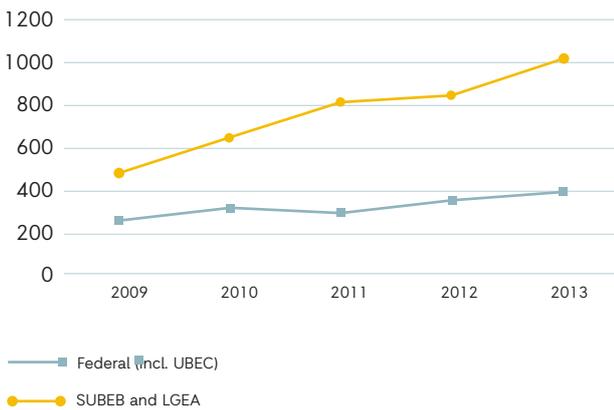
**Figure 12:** Federal Ministry of Education Budget 2018 (Naira)



A World Bank study found that, in 2013, 40% of the N2,329.4 billion total cost of education was funded by private household out-of-pocket expenses, and 25% by local government authorities (World Bank, 2015). Figure 9 shows that the majority of public spending on education is at state and local levels through the SUBEB and LGEA. The highest share of recurrent spending by local governments is on teacher’s salaries. The Sokoto Education Sector Plan (2011-2020) states that, in 2010,

education received 21% of the State’s budget (2010, p. 13). However, the lack of available and accurate information on education financing in Nigeria is a major issue. The limited data is difficult to access and there is no single up-to-date plan for education spending at federal and state levels (Humphreys and Crawford, 2014). Recent figures are unavailable on the UNESCO portal and an analysis of state-specific planning and implementation of education is much needed.

**Figure 13:** Trends in Public Spending on Education (Naira Billions)



Education policies must be gender responsive and address all forms of discrimination. PHOTO: FIDELIS/ACTIONAID NIGERIA

## The UBE Act of 2004 (taken from World Bank, 2015, p.p. 17-18)

1. The services provided in public primary and junior secondary schools shall be free of charge. A person who receives or obtains any fee contrary to the provisions of the Act commits an offence and is liable on conviction to a fine not exceeding N10,000 or imprisonment for a term of three months or both.
2. Every government in Nigeria (i.e. each tier of the Nigerian Government, federal, state and local) shall provide free, compulsory and universal basic education for every child of primary and junior secondary school-age. The federal Government shall provide assistance to the States and Local Governments in Nigeria for the purpose of uniform and qualitative (sic) basic education throughout Nigeria.
3. The implementation of Universal Basic Education shall be financed from a Federal government block grant of no less than 2% of its Consolidated Revenue Fund; funds or contributions in the form of Federal guaranteed credits; and local and international donor grants.
4. A Universal Basic Education Commission is established at federal level to formulate the policy guidelines for the successful operation of the universal basic education programme in the Federation; receive block grants from the Federal Government which it allocates to the States and Local Governments and other relevant agencies implementing the Universal Basic Education in accordance with an approved formula; prescribe the minimum standards for basic education, etc.
5. Transition from Primary to Junior Secondary School should be automatic (which entails the phasing out of examination at the end of primary).
6. Junior secondary schools should be separated from senior secondary schools.

In each state, a State Universal Basic Education Board is established, its structure and functions being determined by state level legislation and in each Local Government area, a Local Government Education Authority is established. The UBE Act also mandates every parent to ensure that his/her child or ward attends and completes primary and junior secondary education and punishes those who do not enrol or who withdraw their child/ ward from school with imprisonment on second conviction.

A 2016 ActionAid report found that Nigeria loses \$3.3b in tax revenue from oil, less than the federal government allocation to the education sector in 2018 (ActionAid, 2016). This is the result of tax breaks given to leading oil companies, particularly NLNG, a joint venture between NNPC (Nigeria), Royal Dutch Shell (Netherlands & Britain), Total (France) and Eni (Italy) (ActionAid, 2016, p.7). An Act was passed in 1990 exempting NLNG from all corporate tax payments for ten years and permanently from a number of other taxes, including the education tax. The report calculated that the education sector has lost \$141 million to this tax break: *“After the tax exemption period, companies with a pioneer status have to pay 2% of their profits in education tax. The same arrangement is made in the NLNG Act. Lost tax revenue: US\$141 million”*.

Given the high level of private household out of pocket expenses in the financing of education, the failure to increase education spending as a share of GDP, and the huge loss in taxable revenue, there is a clear failure to fulfil paragraphs 3b and 57c of the AP: “States must devise and adopt a national education strategy to ensure fulfilment of the enjoyment of the right to education at all levels. This obligation is of immediate effect. As a minimum the national education strategy should include targets and benchmarks, identify those responsible for implementation, a time-frame for their achievement, be fully-costed and funded.”<sup>154</sup> The targets and benchmarks must be consistent with states’ obligations with regards to the maximum use of their available resources and their other human rights obligations, and, where applicable, they should be, as a minimum, consistent with their international commitments.<sup>155</sup> The national education

154. Vienna Declaration and Programme of Action.

155. Such as the SDGs.

strategy should be developed in a transparent and participatory manner,<sup>156</sup> with active participation of all stakeholders,<sup>157</sup> including children. It must give special priority to assess and address the level of enjoyment of the right to education by vulnerable, marginalised and disadvantaged groups within society.

## 5. Public-private partnerships

**Do the PPP arrangements in place for schools meet the conditions laid down under the overarching Principle 5 (Guiding Principles 64 to 74) of the AP which outline requirements for these arrangements in line with respecting human rights obligations?**

The Federal Government of Nigeria established the Infrastructure Concession Regulatory Commission (ICRC) in 2008 to regulate PPPs in Nigeria. Projects under development and procurement are listed in the following table (ICRC, 2019a and Published PPP Project Pipeline 2016/17 ICRC, 2019b), showing that all education PPP projects are in the pipeline, covering all levels of education, but largely focused on the higher education sector, and represent a mechanism for funding teacher education institutions.

**Table 4.8:** Education PPP projects under development and procurement (ICRC, 2019b)

Government Agency	PPP
<b>Federal Ministry of Education / Federal University Gusau</b>	<ul style="list-style-type: none"> <li>i. Proposed construction of students hostel, 500-units of staff housing, roads &amp; drainages, shopping mall, staff/students cafeteria, bio-gas electricity power plant and poultry farm.</li> <li>ii. Online application system for e-registration platform, computation / compilation of students' results, e-learning and web portal development.</li> <li>iii. Proposed construction of Vice-Chancellor's Lodge, Pro-Chancellor's lodge, Principal Officers' quarters, senior staff housing, junior staff housing, external electrification, borehole &amp; overhead tanks, etc</li> </ul>
<b>Federal Ministry of Health \ Federal College of Education (Technical) Bichi, Kano State.</b>	<ul style="list-style-type: none"> <li>i. Development of hostel facilities and supermarket.</li> <li>ii. FCE Bichi (Technical) seeks guidance to develop hostel accommodation.</li> </ul>
<b>Federal Ministry of Education / Federal College of Education, Ogun State</b>	<ul style="list-style-type: none"> <li>i. Development of student hostels at Federal College of Education Abeokuta, Ogun State.</li> <li>ii. Develop hostel accommodation for Federal College of Education Abeokuta.</li> </ul>
<b>Federal Ministry of Education</b>	<ul style="list-style-type: none"> <li>i. Upgrade the ICT laboratories/business centres in federal schools</li> <li>ii. Upgrade existing libraries</li> <li>iii. Upgrade vocational schools</li> </ul>
<b>Federal Ministry of Education National Mathematical Centre</b>	<ul style="list-style-type: none"> <li>i. Development of an International Conference Centre</li> <li>ii. Construction of National Mathematical Centre - International Science Academy</li> </ul>
<b>Federal Ministry of Environment</b>	<ul style="list-style-type: none"> <li>i. Establishment of Federal Ministry of Environment's Clean and Green Campaign to end open defecation in public areas by 2019 by providing public toilets nationwide. Pilots to be in FCT public schools, motor parks and market places; and extended to 36 States.</li> <li>ii. Framework for Plastic Industry and other private sector companies to take plastic waste off streets by 2019</li> </ul>
<b>Federal Ministry of Education / FUG</b>	<ul style="list-style-type: none"> <li>i. On-line application System for E-registration platform, Computation / compilation of Students results, E-Learning and web portal development</li> </ul>

156. For details, see in particular CRC General Comments.

157. CESCR General Comment 11, para. 8. Articles 2(2) and 13 of the ICESCR, together combine to provide a specific right to education free from discrimination.

In recent years, a number of charitable foundations have been partnering with state and local governments with the aim of improving access to basic education. The Oanda Foundation's "Adopt-A-School" initiative was established in 2012 and works with schools in around 18 states by investing in infrastructure, teacher training and ICT (Oando Foundation, 2017).<sup>158</sup> Similarly, the mobile telecommunications company MTN has been supporting public secondary schools through its Basic Education Programme. This has involved equipping schools with science and technology laboratories and providing basic infrastructure such as desks and chairs (Center for Education Innovations, 2015).<sup>159</sup>

PPPs have characterised some aid funded projects. In recent years, the World Bank has been a major proponent of PPPs across the globe and recommended the following in the Nigerian context : "Enhance public-private partnerships (PPP) within a coherent policy and regulatory framework. Given their apparent cost-effectiveness, and their ability to increase access to schooling, there are clear benefits from extending private participation in the northern states where the out-of-school issue is critical. This can be done, for example, by providing grants to private schools to enrol children from poor households." (World Bank, 2015 p.xvi).

The UK's Department for International Development (DFID), also a major PPP proponent, has specifically sought out partnerships with the private sector in a number of Nigerian states. Through the Girls' Education Programme, DFID engaged in partnerships with the private sector to combine social and business approaches to girls' education (Griffiths and Batra, 2017). In Nigeria, DFID partnered with both Coca-Cola and the Discovery Channel in four states (Kano, Kaduna, FCT and Lagos) (see table 4.9). The Coca-Cola project, Educating Nigerian Girls in New Enterprises (ENGINE), established learning spaces for girls and young women to meet for academic support and training sessions on entrepreneurial skills (DFID, 2014). Out-of-school girls received business and employment training and were given the opportunity to start their own businesses as micro-retailers of Coca-Cola products (DFID, 2014). However, the final project evaluation found that the project may have created disincentives for girls to return to school due to the sole focus on financial literacy and employment opportunities in Coca-Cola's value chain (Griffiths and Batra, 2017). An ICAI

evaluation of DFID's work on girls' education highlighted how projects like this PPP in Nigeria failed to connect with developing systemic change for gender equality.

**Table 4.9:** DFID GEC Nigeria<sup>160</sup>

Government Agency	PPP	Coca-Cola
<b>States</b>	Kano	Kano, Kaduna, FCT, Lagos
<b>Girls Age/ Grades</b>	Primary	Secondary (16-19)
<b>Number of intervention beneficiaries</b>	302,350 in-school girls	21,162 girls (14,034 out of school girls, 7,128 in-school girls)
<b>Total budget (of which DFID matched funding)</b>	£23,957,922 £12,287,098	£6,884,901 £3,164,120
<b>Project timeframe</b>	Sep 2013-March 2017	Oct 2013-March 2017
<b>Consortium members</b>	Discovery Learning, Alliance	Mercy Corps, d.light Solar Designs

In 2013, DFID launched a five-year programme supporting the development of private schools in Lagos state. The Developing Effective Private Education in Nigeria (DEEPEN) programme aimed to improve learning outcomes in Lagos private schools using a market-based approach which included assisting and strengthening the private school sector. In October 2014, DFID provided a grant of £3.45 million to Bridge International Academies, as part of the DEEPEN programme. Further, the UK government has made significant contributions to Bridge International Academies via a number of different channels. As can be seen from the table below, this has not always been direct, but through intermediary channels such as the IFC and Novastar Ventures (IFC, 2016).<sup>161</sup>

158. <http://www.oandofoundation.org/EducationProgram.html#exec>

159. <https://educationinnovations.org/program/mtn-foundation-basic-education-program>

160. Adapted from Griffiths and Batra, 2017, p.13

161. [https://www.ifc.org/wps/wcm/connect/7ca2037c-4d36-4019-8bda-93a997e179eb/Built+for+Change\\_FINAL\\_low+res++edited+0926.pdf?MOD=AJPERES&CVID=ItE4zIR](https://www.ifc.org/wps/wcm/connect/7ca2037c-4d36-4019-8bda-93a997e179eb/Built+for+Change_FINAL_low+res++edited+0926.pdf?MOD=AJPERES&CVID=ItE4zIR)

**Table 4.10:** Amount of development funding received by Bridge International Academies (US\$)<sup>162</sup>

Source	Amount
CDC	\$6 million (Jan 2014)
International Finance Corporation (UK holds shares)	\$10 million (2014)
DFID's Impact Investment Fund (managed by CDC)	\$15 million (April 2014) investment in Novastar Ventures (Bridge investor)
DFID's DEEPEN Innovation Fund	£3.45 million (Oct 2014) start up grant for entry into the Lagos market

The Lagos state government has recently partnered with Bridge International Academies on a new education technology initiative, CodeLagos, which aims to equip one million young people with coding skills. Twenty-three BIA schools have been included in this initiative, with BIA serving as training centres (BIA, 2018).<sup>163</sup> A number of other private sector partners are also involved. The Government of Edo has also partnered with Bridge International Academies on the EdoBest Programme.<sup>164</sup>

Two studies question whether children supported with aid money in BIA schools in Lagos are from the poorest communities, and some of the effects on strategies for equality and free public education (Harma, 2017; Unterhalter, Robinson and Ibrahim, 2018). Many civil society organisations have raised concerns about the impact of BIA on education in Nigeria. In August 2017, 174 civil society organisations from 50 countries called on investors and donors to fully discharge their legal due diligence obligations and cease support for BIA (GI-ESCR, 2017).<sup>165</sup> Nigerian signatories included the Civil Society Action on Education for All; the Labour, Health and Human Rights Development Centre; and the Sustaining Continuity in Education Foundation.

AP, Principle 5, para 73 states that states must not fund or support directly or indirectly,<sup>166</sup> any private educational operator that either:

- 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.



Donors should support governments to mobilise revenue in a progressive and sustainable way to adequately fund free, public, quality education.

PHOTO: ANDREW ESIEBO/SHOOT THE EARTH/ACTIONAID

162. <https://publications.parliament.uk/pa/cm201719/cmselect/cmintdev/367/367.pdf>

163. BIA. 2018. *Bridge opens 14 new schools and joins partnership with the Nigerian Government* [online]. Available at: <<https://www.bridgeinternationalacademies.com/bridge-opens-14-new-schools-and-joins-new-partnership-with-nigerian-government/>>

164. <https://www.bridgeinternationalacademies.com/government-of-edo-state-in-nigeria-partners-with-bridge-to-improve-public-schools/>

165. Global Initiative for Economic, Social and Cultural Rights (GI-ESCR). 2017. *Civil society call on investors to cease support to Bridge International Academies* [online]. Available at: <<http://globalinitiative-escr.org/wp-content/uploads/2017/07/Civil-society-call-on-investors-to-cease-support-to-Bridge-International-Academies.pdf>>

166. Including depending on the situation, may be through tax deductions, land concessions and other forms of indirect support.

## 6. Form and levels of regulation of private schools

### Do the arrangements in place for the regulation of private schools meet the conditions set out under the overarching Principle 4?

The AP stipulate that all private schools must be regulated to ensure that they do not combine to influence the national public education system, and ensure minimum standards of provision, agreed through participatory school-based processes. Regulation goes beyond registration and requires ensuring conditions of enrolment, admission and learning are not discriminatory, that staff have equivalent training and labour rights to those in state institutions, and that a fully rounded curriculum is delivered, with adequate pupil teacher ratios.

The National Policy of Education (2004) gives federal government the responsibility for prescribing minimum standards of education at all levels (para. 108-119). The responsibility for monitoring and maintenance of minimum standards is given to Inspectorates of federal,

state and local government authorities (Para. 115 and 116). The National Policy of Education (2013) states that: "Government welcomes the contributions of voluntary agencies, communities and private individuals in the establishment and management of primary schools alongside those provided by the state and local governments, as long as they meet the minimum standards laid down by the Federal Government."

In 2014, the Federal Ministry of Education published the National Education Quality Assurance Policy. In principle, this strengthens the regulatory framework by outlining key areas for evaluation and the responsibilities of each party involved. A National Education Quality Assurance body is to be established to oversee the system. State governments are expected to have quality assurance agencies which oversee quality assurance and the Universal Basic Education Commission, alongside SUBEBs, are expected to carry out annual school evaluations, and school self-evaluations should be "regularly" carried out. The guiding principles of the education quality assurance include the promotion of the inclusion of all learners (p.7). The National Education Quality Assurance Handbook for Basic and Secondary Education in Nigeria (2016) includes the following:

### Selected Guidelines from the National Education Quality Assurance Handbook for Basic and Secondary Education in Nigeria (2016)

Every class, up to Junior Secondary level, is to be taught by a qualified and competent teacher with a minimum of Nigeria Certificate in Education, and a minimum of bachelor's degree in education or equivalent, or a first degree in relevant subject(s) and a professional certificate in education in the Senior Secondary School;

- i. nursery class (no larger than 25)
- ii. primary (no larger than 35)
- iii. secondary (not larger than 40)
- iv. Minimum 180 days schooling per year.
- v. Every learner should be able to participate fully in class activities with the support of the teacher.
- vi. All learners with special needs should have appropriate provision to enhance learning.

School should provide:

- i. Safe working and learning environment for learners and teachers;
- ii. Adequate indoor and outdoor sports/games for learners, especially for the ECCD;
- iii. Perimeter fencing with a school gate manned by security personnel;
- iv. Adequate provision for learners with special needs; and
- v. Adequate infrastructure and facilities for learners' development.

Despite this strong regulatory framework, there is weak regulation in practice. A number of studies question the effectiveness of this model (Härmä, 2016; Härmä and Siddhu, 2017; Rosales-Rogge, Kadiri and Hinton, 2014). Schools are often in buildings of poor quality (e.g. semi-built houses, sheds next to homes), do not have trained teachers and lack learning materials (Härmä and Siddhu, 2017; Rose and Adelabu, 2007). Further, states such as Lagos have established their own regulatory framework. The Guidelines for public and private schools in Lagos State (2016) include the following section:

*“Community/Low Income Private Schools are special schools that provide teaching and learning activities in areas where Government public schools are inadequate. They shall be owned by the community/individuals/groups with a view to providing access to education for children living within the community and children of low-income earners. The conditions of approval as stated inter alia may be relaxed to give opportunity to children within the area of operation for easy access to education. However, the classroom must be spacious and not inimical to total growth and development of the learner. Basic amenities such as good source of water and hygienic faecal disposal facilities must be in place.”*

This effectively undermines the National Education Quality Assurance Policy, leaving the regulatory framework open to local interpretation. Further, a large number of private schools, particularly those associated with low costs, are unregistered. Furthermore, academic fraud tends to be associated with private school providers in Nigeria due, in part, to the lack of quality assurance standards (World Bank, 2015).

The failure of local government to implement policies on the ground is linked to wider issues of state capacity and corruption (Baum, Cooper, and Lusk-Stover, 2018). A lack of political will can be seen in the under-funded, understaffed and under-resourced government inspectorates which lack the capacity to effectively regulate the rapidly growing private school sector in Nigeria (Härmä, 2019). Officials routinely extort bribes from private school providers failing to meet regulations – regulations that are often almost impossible for small, low-cost private providers to meet (Härmä, 2019; Härmä and Adefisayo, 2013). Further, the recent entrance into local private school markets by international private providers claiming to provide education at a low cost has further constrained the ability of local governments to effectively regulate

the sector, due in large part to the huge imbalance in capital and access to international networks characteristic of these large international actors (Srivastava, 2016). Taken together, these factors have led to a largely unregulated private education sector in Nigeria.

## Conclusion

The detail with regard to access, discrimination, funding and regulation in Nigeria indicate how private provision has become a largely unregulated response to the enormous under-provision of public education. The lack of resources on an enormous scale, and the huge revenues the State has to collect in order to fund the level of education expansion needed, show that the AP need to be used at federal and state levels, and primarily in relation to evaluating funding regimes and the lack of adequate public provision for education, which underpin all the myriad inequalities and forms of discrimination associated with private schooling.



Free, quality, inclusive education can be financed through fair and progressive tax. PHOTO: TOM SAATER/ACTIONAID

# Conclusions

This report has used the AP to evaluate the education systems in four countries - Malawi, Mozambique, Tanzania and Nigeria - considering the ways in which private provision is associated with barriers to access to free, quality education and forms of discrimination and segregation associated with private providers. It also looked at whether adequate funds have been allocated for financing public education, and, if not, why not. It asked, are tax incentives provided to the private sector limiting state provision for public education? Have donor funds gone to support private or PPP arrangements? Do the arrangements in place for the regulation of private schools meet the conditions set out in the AP?

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 operate, particularly with regard to the issue of equality, in a range of settings which bear on the delivery of education: schools, households, communities and countries. We take account in these settings of obligations to protect and advance rights and consider equality and consider how the AP can guide analysis, approaches to research and monitoring and new forms of action in campaigns or interventions.

Comparisons and contrasts between the four countries emerge, when evaluated against the AP, and these can best be presented as a continuum. We see that the forms of private provision are different, with somewhat different effects on the core concern of the AP with the quality of the public education system. At one end of the continuum we position Mozambique, where private actors are only involved in private education provision for primary schooling aimed at the elite. While the numbers of places in private secondary schools are growing, and this is expanding to notable levels for senior secondary school, the ESP has an approach to evaluating and taking decisions about whether, and under what conditions, private education might be supported. While this is not as demanding as the AP requires, it is in the same direction of travel. There are inequalities in the Mozambican education system to do with unequal funding between regions, children out of school and quality of provision, but for now the somewhat watchful approach to private provision suggests that Government and civil society are mindful of these inequalities when considering arguments for the expansion of private schooling, and the AP can add emphasis to this.

In the middle of the continuum stand Malawi and Tanzania, which have both developed policy and practice to meet human rights obligations with regard to free primary education, although both have challenges with regard to enrolling children with disabilities, and with ensuring that primary education is free and schools do not impose additional charges. Malawi faces additional challenges regarding retaining girls from the poorest regions and households in school to the end of the primary phase, and Tanzania with ensuring transition to junior secondary level for the poorest children. Both have expanded secondary provision, relying in different ways on private actors. In Malawi the expansion of secondary school has entailed the growth of for-profit and not-for-profit schools, and a discourse has been advanced that without the private sector, secondary school roll-out would be impossible. In Tanzania, the expansion of secondary schooling has relied on community contributions of land, labour and facilities, and this has entrenched divisions between schools, with children from the poorest regions and communities having the poorest schools. In both the commercial and the partnership model of engagement with private actors, fees are charged, and the result is to exclude children from poor and very poor households. The AP provide a yardstick to see the ways these processes undermine the central human rights obligations to provide free primary and secondary schooling and show how assessments can be made of the funding arrangements, engagement with PPPs and weak regulation of the private school sector in both countries. The AP provide an alternative discourse to that which says that the private sector is essential to bridge a gap in funding for the expansion of schooling and help to show how this discourse which constructs a rationale for funding by the private sector has little concern with building equality into the education system.

At the end of the continuum stands Nigeria, where so little money has been allocated to schooling over the past 30 years that the President and many major civil society organisations have declared an education state of emergency with enormous needs to be met in terms of raising revenues, building schools, employing teachers, giving children free primary and secondary schooling and bringing the many millions of children out of school into the system. The AP highlight how far the system is from the ideal of quality public education aspired to in political speeches, promises, legislation and human rights obligations. While private actors make arguments that they are bridging a gap, the presence of private actors removes demands on the Government to meet their human right commitments, and important decisions are needed about tactics in campaigning to address this situation.

This report has employed some novel methods. Many studies of privatisation in education explore the level of the school, district or, sometimes, country and assemble empirical data which can be reviewed for their rigour of collection and analysis. But the implications of the effects of private actors' engagement is rarely evaluated across countries or in relation to human rights obligations. This study has drawn on a legal framework, engaging with human rights obligation, and has analysed historical, political, social and economic data to consider whether, and in what form, human rights commitments are being realised. There are some important methodological issues to be explored about how this cross-disciplinary approach expands insight and suggests a range of new theoretical and empirical research questions that can be examined.

Across all four countries, inequality in education provision is evident, and there is injustice in keeping large numbers of the poorest children and groups most subject to discrimination out of school. The AP highlight valuable ways to assess whether the engagement of private actors in the education system exacerbates these problems. All four governments have signed up to a range of human rights instruments based on equity, quality and inclusion as central goals for education system. This study, drawing on the AP, shows how the different forms of privatisation in the four countries all undermine rather than support these values. There are valuable lessons here for governments, civil society, donors and the academic community. Scepticism with regard to what private actors can offer an education system appears a wise move when equity is important. The AP are a most useful guide for this form of critical evaluation.



Increasing the size of the national budget through fair tax can help finance the recruitment, training and deployment of additional teachers needed to deliver quality, inclusive education. PHOTO: TOM SAATER/ACTIONAID

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