

The impact of privatisation on the fulfilment of the Right to Education in 7 African countries: **what do the Abidjan Principles tell us?**

Policy Brief

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Nigeria. PHOTO: ACTIONAID

SUMMARY

In early 2019, ActionAid and the Centre for Education & International Development at University College London with input from the Right to Education Initiative and the Global Initiative for Economic, Social and Cultural Rights collaborated to conduct a multi-country study using the Abidjan Principles to assess the impact of private provision on the right to education. The Abidjan Principles unpack and compile existing provisions in international human rights law and provide guidance on how to put them into practice in the context of the rapid expansion of private sector involvement in education.

The research focusses on Ghana, Kenya, Malawi, Mozambique, Nigeria, Tanzania and Uganda. It looks at aspects of segregation and discrimination which may be associated with private provision and how Public Private Partnerships (PPPs) operate in each country, particularly regarding equality in a range of settings which bear on the delivery of education – schools, households, communities and countries. The research takes into account obligations to protect and advance rights and consider equality. It looks at how the Abidjan Principles can guide analysis, research, monitoring as well as advocacy and campaign interventions.

On the basis of document reviews and interviews conducted for these studies, the analysis concludes that Ghana, Kenya, Malawi, Mozambique, Nigeria, Tanzania and Uganda are not fully meeting their obligations to provide free, quality public education, partly due to the underfunding of the education sector in these countries. The private sector is consequently on the increase, entrenching social inequalities, leading to stratification and huge disparities in education opportunities.

The governments of Ghana, Kenya, Malawi, Mozambique, Nigeria, Tanzania and Uganda must fulfil their obligations to provide free public education of the highest attainable quality using the maximum of available resources. Increasing the size, share, sensitivity and scrutiny of the budget is necessary to ensure the necessary resources are allocated to the public education system and that private education providers are adequately regulated.

Recommendations

Governments should:

1. Ensure they 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 particular attention to the system as a whole, funding arrangements, school provision, and the knowledge, understanding and skills of teachers with regard to non-discrimination. The levels of schooling and learning obtained by different demographic groups, requires scrutiny taking account of those that suffer the 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 a minimum of 9 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.
3. Make a critical appraisal of assertions in their own policy documents and those from donors which claim private provision or private financing is cheaper/better/more efficient for the education system. The evidence for these claims needs careful examination to take account of equity. The discourses in these documents need evaluation and careful scrutiny. An evaluation of these documents using categories from the Abidjan Principles is recommended, as is using the outcome of these evaluations to guide revision 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. The realisation of the right to equality in the enjoyment of the right to education (AP 23), should guide the drafting and enforcing of regulation.

Civil society should:

1. Hold government to account to ensure human rights obligations are met with regard to 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 governments implement 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 the arguments made by governments advancing support for private education, using the Abidjan Principles and highlighting whether or not the effects on the education system as a whole has been considered.

Donors should:

1. Support free, quality, public 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, quality, public 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, and privileging better off children, undermines/contradicts the principles they are supposed 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, researching 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 Abidjan Principles as a guide).
3. Ways to document the relationship between fiscal studies and levels of education provision.
4. Research projects that look at how or whether the regulation of private schooling and PPPs take place.

INTRODUCTION



Tanzania. PHOTO: MAKMENDE MEDIA/ACTIONAID

Despite the promise of free universal education in Ghana, Kenya, Malawi, Mozambique, Nigeria, Tanzania and Uganda, the lack of adequate financing of education is creating a gap which is being exploited by private providers of education. In many countries where ActionAid works, community members, including parents and children are largely dissatisfied with the quality of education being provided in public schools, and in turn, this perceived low quality of public education has led to a surge in alternatives for those who can afford them.¹ This includes private education opportunities in a range of formats from high-end provision for the urban elite to low-cost fee-paying schools. Some of these are offered by chains such as Bridge International, Omega and others, which claim to offer affordable education to the poorest families. Other schools are run by individuals, communities and religious groups.

In 2015, the report of former UN special rapporteur on education Kishore Singh, highlighted the spread of privatisation in and of education, noting that as the trend expands, States are assuming the role of a contractor of services delivered by a range of private providers (UNGA, 2015:6). This shift has been advocated by some key financial institutions and donors, who see this model as a way to overcome government inefficiencies, increase participation and introduce innovation (idem: 7). Singh's report called for more careful consideration on the impact of privatisation on education, in particular as to whether,

amongst other things it results in an abdication of State responsibility to meet its obligation to provide quality public education to all its citizens and whether the process of engaging with the private sector is undermining the norms and principles of the right to education (idem: 8). Adopted in February 2019, the *Abidjan Principles on the human rights obligations of States to provide public education* and to regulate private involvement in education unpack and compile existing provisions in international human rights law and provide guidance on how to put them into practice in the context of the rapid expansion of private sector involvement in education. The April 2019 report of the Special Rapporteur on the right to education recommends the full implementation of these principles¹

In 2019 ActionAid worked with the Centre for Education & International Development at University College London to explore how the Abidjan Principles can be used to analyse education systems and the impact of the growth of private provision on the fulfilment of the right to education.

MAIN FINDINGS

Constitutional Commitments are not being met

The findings of the research, show that whilst the 7 countries studied are signatories to the UN Convention on the Rights of the Child, and all except for Mozambique, have also signed the International Covenant on Economic, Social and Cultural Rights, they do not fully meet their obligations towards the right to education. **These countries have constitutional commitments, have enacted laws and policies to provide free and compulsory education, however, this has come to be interpreted as having been met by any form of schooling being provided, neglecting the states' obligations to provide a public education system that supports 9 years of free quality schooling for all, without discrimination, segregation or demands on parents to pay any fees.**

1. Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education <https://www.abidjanprinciples.org/en/principles/overview>

Using the Abidjan Principles as a tool for analysis reveals that **these conditions are not in place and obligations are not fully 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 primary school level. Enrolments in private primary schools comprise 27.8% of all primary level enrolments in Ghana, 17.8% in Kenya, 19.6% in Uganda and 12.6% in Nigeria. At secondary level enrolments in private

establishments constitute 19% of school enrolments in Nigeria, 18.5% of enrolments in Tanzania and 16% of enrolments in Ghana. **The result is a stratification of the education system where private schools contribute to entrenching social inequalities. Using the Abidjan Principles reveals some of these assumptions about the design of the education system, which do not question the effects of the private sector, on states' obligations to meet human rights commitments.**

Figure 1: School enrollment in private schools as % of total primary²

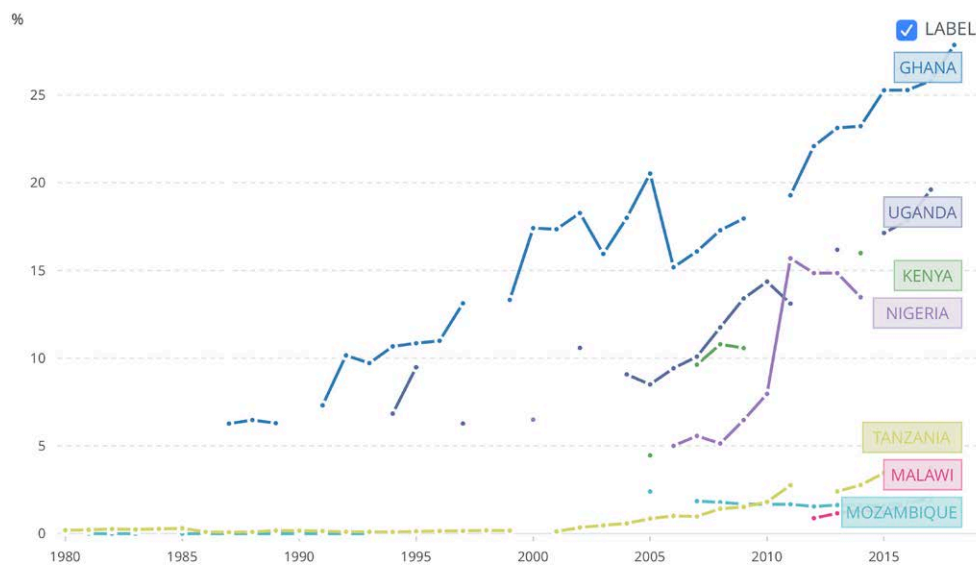
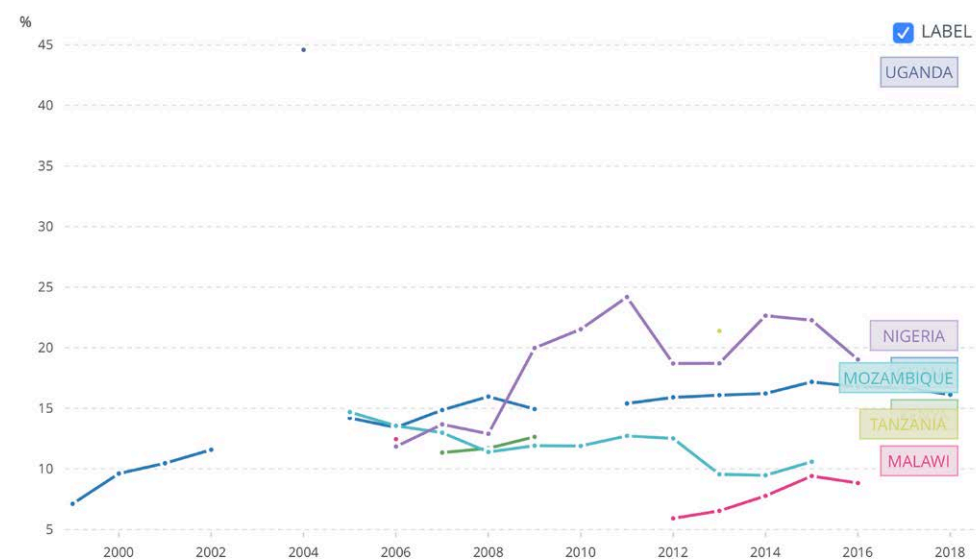


Figure 2: Enrolment in secondary school, % Private. Source: UNESCO Institute for Statistics³



2. <https://data.worldbank.org/indicator/SE.PRIV.ZS?end=2018&locations=GH-KE-UG-MW-MZ-NG-TZ&start=1980>

3. <https://data.worldbank.org/indicator/SE.SEC.PRIV.ZS?end=2018&locations=GH-KE-UG-MW-MZ-NG-TZ&start=1999&view=chart>

Policy documents present private provision as better and more efficient

Across the 7 countries there is considerable variation as to where and how private provision has emerged. However, the Abidjan Principles highlight that **it is not only the size of the private sector that indicates a failure by governments to meet human rights obligations, but the way in which the private sector has an impact on the public education system.** The research indicates that in some countries, even though the private sector is not a large provider, a discourse is evident in policy documents from some governments and donors which presents, without question, the assertion that the private sector is a more efficient or better-quality provider. The evidence on this is inconclusive. The literature has predominantly analysed the effect of private schools in terms of management, cost and results on individual children or age cohorts in particular locations. Although some research indicates some positive effect in these areas, these can be minimal when controlling for socio-economic status. **Generally, research indicates the negative effect of private schools in terms of equity and how education systems operate to ensure meeting rights to education.** Assessing the impact of private schools using the Abidjan Principles allows us to make not only inter and intra group comparisons, but also to analyse the ways in which private provision has particular effects at a system level. **The Abidjan Principles 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.**

Financial allocations for public education provision are inadequate

All the countries studied have allocated inadequate financing for education, even though some of them (such as Ghana) are meeting the internationally agreed benchmark of 15-20% of national budget allocation to the sector. The Abidjan Principles outline that a state must allocate the maximum available resources at its disposal to fulfil its obligations associated with the right to education, particularly to provide free quality public education. Financial resources to be mobilised include fair and progressive taxation and other domestic income-generating mechanisms; reallocation of public expenditures; elimination of illicit financial flows and tax evasion; use of fiscal and foreign exchange reserves; the management of debt; and development of appropriate macro-economic policies. Retrogressive measures, which downgrade or limit existing levels of enjoyment of the rights to education, are only to be undertaken in exceptional circumstances, and must be understood to be temporary, to have been undertaken only as a last resort, and to be implemented with appropriate care for the most vulnerable. **Yet, in the last decade, these 7 countries have reduced the proportion of the national budget allocated to education (as can be observed in figure 3), without any human-rights compliant justification. They also give away large sums of money each year to harmful tax incentives (see table 1 below), failing in their obligation to mobilise enough revenue to allocate the maximum available resources.**



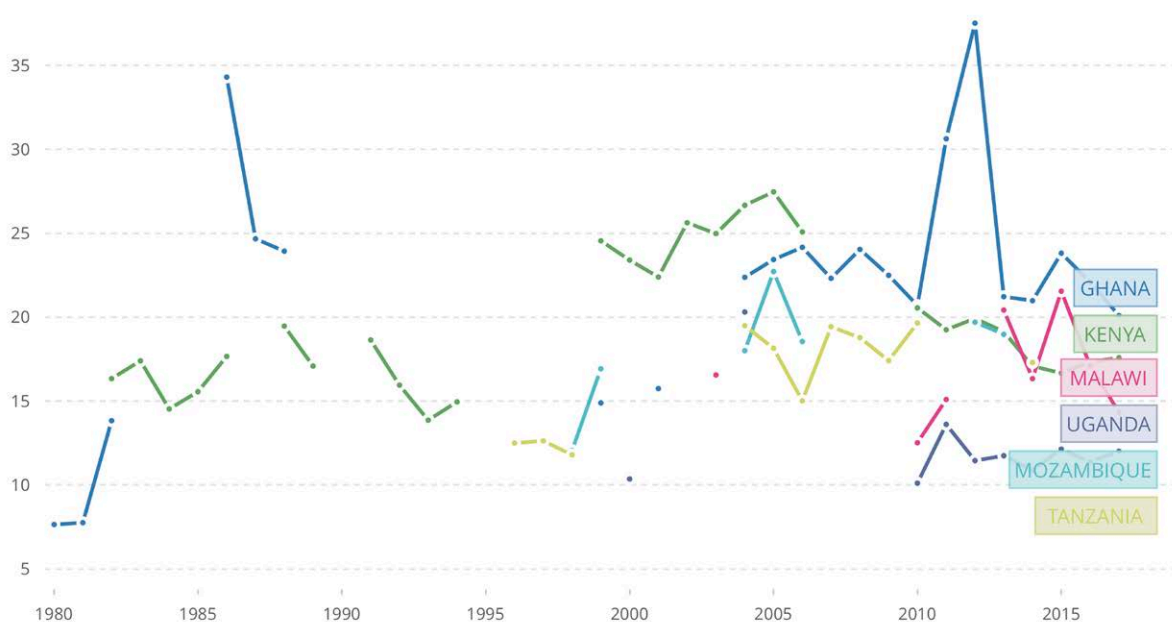
Elementary school in Volta region, Ghana. PHOTO: MEREDITH SLATER

Table 1: How amounts lost to tax incentives could be used to invest in public education

Country	Revenue losses from tax incentives	How this could fund education
Ghana	US\$2.27bn in 2014. In 2015 the IMF stated that discretionary tax treatments may amount to 'perhaps 6% of GDP', i.e. around US\$2.27bn.	These revenues could have more than doubled the education budget, which in 2014 stood at around US\$1077m equivalent. ⁱⁱ
Kenya	The Government of Kenya estimated its annual losses to all tax incentives at around US\$1.1bn in 2011 amounting to around 3.1% of GDP.	These revenues could have more than doubled the primary education budget, which stood at US\$924.15m in 2012/2013.
Malawi	The Government of Malawi loses an estimated US\$87.0m each to harmful tax incentives and tax treaties.	A mere 6% of this amount would be enough to cover the annual cost of sending the 154,000 out of school girls of primary school age in Malawi.
Mozambique	The Government of Mozambique loses an estimated US\$562.0m each year due to harmful tax incentives and tax treaties.	Just 23% of this amount would be enough to cover the annual cost of sending the 426,250 out of school girls of primary school age in Mozambique.
Nigeria	According to the IMF Nigeria loses around US\$2.9bn a year or 0.5 per cent of its GDP in corporate income tax incentives given to companies with "Pioneer status". A further US\$327m per year are lost on import duty exemptions.	These amounts could more than double the allocation to education which at present only constitutes 7% of the national budget - far below the globally agreed benchmark of 15-20%.
Tanzania	The Government of Tanzania loses an estimated US\$531.5m each year to tax harmful incentives and tax treaties.	Just 13.7% of the amount lost could educate all 952,499 girls currently out of primary school.
Uganda	In 2009/10 the African Development Bank estimated that Uganda loses around US\$272m to tax incentives, amounting to around 2% of GDP.	This revenue could have more than doubled Uganda's education spending, which in 2008/09 was equivalent to around US\$210.5m.

Sources: Archer, D. (2016). 'Domestic Tax and Education', Background Paper for the Education Commission. <http://report.educationcommission.org/resources/>; ActionAid (2018). 'Making Tax Work for Girls' Education. https://actionaid.org/sites/default/files/publications/making_tax_work_online_1.pdf

Figure 3: Government expenditure on education, total (% of government expenditure).



Source UNESCO IUIS⁴

4. <https://data.worldbank.org/indicator/SE.XPD.TOTL.GB.ZS?end=2018&locations=GH-KE-UG-MW-MZ-NG-TZ&start=1980>

Cost and distribution of private provision contribute to exacerbating social stratification and inequalities

In all 7 countries the greatest prevalence of private provision is in and around wealthier urban areas and, in general, private schools, even low-fee schools, are not affordable to most poor people (Robinson, Unterhalter, Ibrahim, 2018). These findings on both cost and distribution suggest that private education does not constitute a realistic alternative in areas of greatest need not met by the government, and cannot be said to adequately compensate for lack of public provision, as private schools do not go to where most children are out of school. Essentially, private provision follows the money and unsurprisingly rural areas and small towns are not seen as commercially viable for private school proprietors (ActionAid, 2017). **As a result, it would appear that both the cost of private education and the geographical distribution of private schools can be seen as factors potentially contributing to exacerbating the urban/rural divide and social stratification, with urban/wealthier children having a much higher chance of being enrolled in private schools** (ActionAid, 2017: 7).

CONCLUSIONS

The presence and role of private schools is growing, without adequate regulation in the 7 countries studied leading to the states abdicating their responsibility for fulfilling the right to education. Our research finds that the Abidjan Principles serve as a comprehensive human rights-based framework highlighting the right to non-discrimination and equality in education, reminding states of their obligation to use the maximum available resources at their disposal to provide free and quality education. They also support a critical analysis of the discourse that presents private sector engagement as essential in solving the current 'education crisis' and offer authoritative guidance on how to regulate private providers to ensure they are compliant with human rights standards.

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- i. Ron Balsera, M. (2017). Tax, privatisation and the right to education Influencing education financing and tax policy to transform children's lives. International Report. ActionAid. <https://actionaid.org/publications/2017/tax-privatisation-and-right-education>
 - ii. Archer, D. (2016). 'Domestic Tax and Education', Background Paper for the Education Commission. <http://report.educationcommission.org/resources/> p. 23.
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This Policy Brief draws on data from the following publications:

Ron Balsera, M (2019) *Multi-Country Research on Private Education in Compliance with the Right to Education: a study of Ghana, Kenya and Uganda*. ActionAid <https://actionaid.org/publications/2019/multi-country-researchprivate-education-compliance-right-education#downloads>

Forthcoming (2019) Unterhalter, E., Robinson, L., Benito Canelhas, J.L., Coysh, J. *Private education and compliance with the Abidjan Principles: A study of Malawi, Mozambique, Tanzania and Nigeria*. ActionAid

See full reports for complete list of references cited in this document.

ActionAid is a global movement of people working together to achieve greater human rights for all and defeat poverty. We believe people in poverty have the power within them to create change for themselves, their families and communities. ActionAid is a catalyst for that change.

<http://actionforglobaljustice.actionaid.org>

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Cover photo: Tanzania. PHOTO: MAKMENDE MEDIA/ACTIONAID

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