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# Privatisation in education and discrimination: its impact on the right to education in Uganda

## by **Nakulima Saphina**

### Introduction

Privatisation in education is a growing global phenomenon threatening the right to education in many countries, including Uganda. This trend has significant implications for the human right to education in terms of quality, accessibility and affordability of education, especially for vulnerable children. Accordingly, private education refers to education provided by non-state actors, including private companies, religious institutions, non-governmental organisations, community groups, trusts or private individuals.

According to the United Nations Educational, Scientific and Cultural Organisation (UNESCO 2015), the development of private provision of education as it is – even at low cost – seems unlikely to address the issue of poor children who cannot access schools, and may even increase segregation and reinforce inequalities in education opportunities. Similarly, the United Nations (UN) special rapporteur emphasised that privatisation ‘throws overboard the fundamental principle of equality of opportunity in education, which is common to almost all international human rights treaties’ (Singh 2015). Access to education based upon the capacity to pay fees, which is entailed by privatisation, ‘flies in the face of prohibited grounds of discrimination’.

The right to education has been recognised in international human rights law. Article 26 of the Universal Declaration of Human Rights reads to the effect that everyone has the right to education, which shall be directed to the full development of the human personality. Subsequently, several international and regional human rights treaties have restated the right to education.

These include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child, the African Charter on Human and Peoples’ Rights, and the African Charter on the Rights and Welfare of the Child. Under international human rights law, the state has the principal obligation for ‘the direct provision of education in most circumstances’.

International human rights law further recognises the freedom to establish private education institutions, but provides that private education should not be developed to the detriment of human rights (ICESCR 1966). In particular, it should not lead to discrimination.

The ICESCR allows private actors to establish and direct schools, yet it imposes certain obligations on private actors and the state (CESCR General Comment 13). This liberty is subject to the requirement that these private actors must conform to the minimum standards laid down by the state.

The minimum standards in this regard include school infrastructure, teacher qualifications, curricula and licensing, among others, and the state must conduct regular monitoring to ensure compliance. Uganda’s domestic law also guarantees the right to education and cross-cutting rights such as equality and non-discrimination (Constitution 1995).

The growth of private actors in education has far-reaching consequences for the right to education. Hence, private actors must respect the right to education and the state must ensure that all private actors who play a role in education provision are held accountable.

### Privatisation of education in Uganda

In Uganda, privatisation in education manifests itself in a number of ways or models, including through public-private partnerships and private providers such as religious institutions, private individuals, low- and high-fee private schools, community schools, companies and international NGOs.

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

Since then, the national government has actively supported the establishment of private schools. The fifth periodic report by the Government of Uganda indicates ‘support for the establishment of private schools’ as one of the three measures to aid enrolment and retention of pupils in school (2013)

This support has been partly through the enactment of an enabling law and institutional restructuring to cater for the private sector. Indeed, one of the objectives of the Education (Pre-primary, Primary and Post-primary) Act of 2008 is ‘to promote partnerships with the various stakeholders in providing education services’. Section 6 of the Act lists the categories of recognised education institutions and includes profit and nonprofit private institutions, while Part VII has provisions relating to private schools.

The private sector is diverse, comprising individual investors, community groups, civil society organisations, international NGOs and faith-based organisations running for-profit and non-profit private schools. For-profit private schools include high-fee and medium-fee schools that are either fully financed by private sources or have entered into public-private partnerships with the government.

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Currently, 36.2 per cent of schools at primary level and 66 per cent of schools at secondary level are private (MoESTS 2015). As of 2015, the private school enrolment as a percentage of total enrolment was 17.1 per cent and 50.1 per cent at primary and secondary levels, respectively (MoESTS 2015). In 2008, the Private Schools and Institutions department was inaugurated and is charged with the overall coordination, regulation, policy formulation and guidance on all matters regarding private schools to ensure compliance with minimum standards.

The rapid growth of private education provision amidst declining state investment in public education can be attributed to inadequacies in the system, increasing government support for low-fee private schools without critical assessment of their impact on the right to education, and weak supervision and regulatory frameworks that fuel the discrimination and segregation of vulnerable groups. This is because growth has not been commensurate with proper regulatory and monitoring mechanisms, among others.

### How privatisation of education in Uganda is leading to discrimination against vulnerable groups

The possibility for non-state actors to establish and direct private institutions should not engender any form of discrimination or segregation. The state is obliged to ensure that this does not lead to extreme disparities of educational opportunities for some groups. However, it has been documented that private provision of education in Uganda excludes some groups (ISER 2015).

Despite this growth, the government has not effectively regulated and monitored private providers of education to ensure that they adhere to the Basic Requirements and Minimum Standards (BRMS). The education ministry has cited lack of human and financial resources as the problem, which has led to the establishment of many substandard private schools. For example, on 4 November 2016, the Uganda High Court at Kampala ordered closure of Bridge International Academies for operating without license and in disregard of the BRMS for schools as regards infrastructure, meet minimum sanitation requirements of operation use of qualified teachers, and approved curricula. The lack of regulation and proper monitoring mechanisms has paved the way for social segregation and discrimination, which is greatly affecting vulnerable children.

Most private schools charge high fees, which is a barrier for the poor and leads to high drop-out rates (ISER, 2016). Private schools charge exorbitant fees, higher than the average income of most parents in the lowest quintile. As a result of those parents being unable to pay school fees, 27 per cent of children are forced to drop out, with a further 18 per cent prohibited from sitting exams. The financial burden on low-income families is worsened by the associated costs of schooling, such as uniforms, development and examination fees, scholastic materials and toilet paper (ISER, 2016). In most low-fee private schools, access to education for children from poor backgrounds is still a significant challenge because many families cannot afford the total cost of education.

As a result, many students end up dropping out or not enrolling in school. There is also gendered inequality as a result of private provision of education. The high cost of education in private schools has forced families with uncertain sources of income to choose which child they can send to school (UNESCO). In most cases, parents prioritise boys over girls. This is influenced by cultural beliefs in some rural and remote areas, where girls are seen as a source of income once married off and boys, as future breadwinners. Poor parents do not want to waste their meagre resources on girls' education, so some drop out while others never enroll.

There is little or no reasonable accommodation for children with disabilities in private schools, despite the government's promotion of inclusive education. In most private schools, the buildings are not physically accessible. The reason for this may be that construction for private schools is not inspected and supervised by district engineers, as is the case for public schools. As a result, most children with physical disabilities drop out of school because of the difficulty in accessing different buildings. Many of these schools do not have a single special-needs teacher, or one proficient in sign language to assist the deaf children. This has been attributed to the expense of such teachers, which schools are not willing to cover.

Lastly, many children from rural backgrounds are disadvantaged due to the fact that private schools, especially those on public-private partnerships, are concentrated in urban and peri-urban areas. This is because most business people do not want to open up businesses in rural areas for fear of not being able to maximise profits. As a result, children who come from such disadvantaged areas will have access only to public education if available, with its associated poor quality and poor-performance outcomes. This puts them at a great disadvantage compared to their counterparts in areas where private schools are accessible.

### Conclusion

The poor quality of public schools has forced many parents to opt for private schools, even when they have to carry the burden of high tuition and non-tuition fees. However, the quality in private schools is also a mere perception that is not backed by concrete evidence. This has been worsened by the lack of proper regulatory and monitoring mechanisms at private schools. The situation has exacerbated discrimination and segregation, especially for children from poor backgrounds and rural areas, those with disabilities, and girls, who are seen as income-generators through marriage. These factors contribute to the high drop-out rates at schools.

### References

- Fifth Periodic Report by the Government of the Republic of Uganda to the African Commission on Human and Peoples' Rights, presented at the 54th Ordinary Session held in Banjul, the Gambia (22d October – 5h November, 2013)
- African Charter on the Rights and Welfare of the Child (ACRWC), 1990
- Committee on Economic Social and Cultural Rights (CESCR), General Comment No.13
- Education Management Information Systems (EMIS) 2002–2015

International Covenant on Economic Social and Cultural Rights, 1966  
 ISER, 2016. A Threat or Opportunity? Public-private Partnerships in Education in Uganda,  
 ISER, 2015. Privatization, Discrimination and the Right to Education in Uganda  
 Kishore Singh, Report of the UN Special Rapporteur on the Right to Education, issued at the 70th Session in accordance with Human Rights Council Resolutions 8/4, 17/3, and 26/17 (August 2015)  
 Ministry of Education and Sports Sector Fact Sheet 2002 – 2012  
 Ministry of Education Science Technology and Sports, Education Statistical Abstract 2015  
 Right to Education Project, 2014. Privatization in Education: Global Trends of Human Rights Impact  
 Report of the UN Special Rapporteur on the Right to Education, A/69/402 (24 September 2014)  
 The Constitution of the Republic of Uganda, 1995  
 The Privatization of Education in Developing Countries. Evidence and Policy Implication, UNESCO Working Papers on Education Policy No. 2, Pedro F; Leroux G and Watanabe M © UNESCO, 2015  
 Universal Declaration of Human Rights, 1948

## 3 Updates

### **African Human Rights System: African Commission's Resolution on the right to food and Food security in Africa**

During its 60th Ordinary Session from 8 to 22 May, Niamey, Niger, the African Commission on Human and Peoples' Rights adopted an important resolution on the right to food and food security in Africa. The resolution draws on existing standards such as the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter and the Declaration of the Pretoria Seminar on Economic, Social and Cultural Rights in Africa (the Declaration). The Commission notes with concern threats posed by food insecurity to the enjoyment of the right to food of millions of people in the region. It therefore urges African governments to adopt legislative, administrative and other necessary measures with a view to addressing the challenge of food insecurity and hunger in the region. It further urges African governments to ensure accessibility of food to the most vulnerable and marginalised groups in the region through the adoption of special programmes. More importantly, the Commission calls on non-state actors involved in conflicts to ensure access to humanitarian reliefs and food to victims of war without any hindrance.

The resolution is available here <http://www.acdhrs.org/2017/07/adopted-resolutions-at-the-60th-ordinary-session-of-the-achpr->

### **UN Human Rights System: UN Committee on Convention on the Rights of the Child adopts General Comment 20 on the implementation of the right of the child during adolescence**

This General Comment addresses the role of states and non-state actors in implementing the rights of the child during adolescence. It provides a comprehensive guide to states on measures to adopt with a view to realising the rights of children during adolescence in line with the sustainable development goals (SDGs). The Committee notes that focus on adolescents is necessitated by their 'unique and defining stage of human development' which is often characterised by physical and mental growth. It further notes that in implementing the rights of the child during adolescence states must adhere to the general principles of the Convention such as the right to development (evolving capacities), best interests of the child, non-discrimination, life and survival and participation. According to the Committee certain adolescents require special attention and they include girls, boys, children with disabilities, lesbian, gay, bisexual, transgender and intersex adolescents and minorities and indigenous adolescents. The Committee addresses some of the important socioeconomic needs of children during adolescents. For instance, the Committee notes that health care services hardly address the peculiar needs of adolescents. The Committee identifies barriers to health care services for adolescents to include legal and financial, discrimination, lack of confidentiality and respect, violence and abuse, stigma and judgmental attitudes of health care providers. The Committee urges states to adopt a comprehensive and gender sensitive measures to address barriers to health care services for adolescents. The Committee equally examines the impact of poverty on the well-being of adolescents and the need for states to adopt comprehensive, affordable, inclusive and quality access to education for all adolescents.

For more on the General Comments of the Committee visit [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11).

### **UN Human Rights System: UN Committee on Economic, Social and Cultural Rights General Comment 24 on Business and Human Rights**

In this important General Comment, the Committee examines the impact of business activities on the enjoyment of socioeconomic rights. The General Comment builds on existing norms and standards such as the Human Rights Council's Guiding Principles on Business and Human Right. It sets out to clarify the nature and extent of states' obligations in addressing the negative impacts of business activities on the enjoyment of socioeconomic rights. It also seeks to assist non-state actors, particularly corporate entities 'in discharging their human rights obligations and assuming their responsibilities... that may be associated with violations of Covenant rights within their sphere of influence'. According to the General Comment, the word 'business', should be construed broadly to include 'all activities of