

# **Uganda's failure to regulate school fees in primary and secondary schools: A comparative analysis with other African countries regulating school fees in schools**

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NOVEMBER 2023

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## 1.0. Introduction

Education in all its forms (informal and formal) is crucial to ensure human dignity and societal development.<sup>1</sup> It is essential to the individual in form of fostering the full and holistic development of the human personality, ensuring physical and cognitive development, enhancing self-esteem, confidence, and acquisition of knowledge, skills, and talents.<sup>2</sup> These enable the individual to contribute to the general welfare of society to achieve the required social, economic, and political growth.<sup>3</sup>

Education is a public good and therefore it is the primary obligation of the state to offer all children the opportunity to access education, especially basic education. This requires the state to prioritize the funding and provision of free and quality public education<sup>4</sup> and non-state actors are also permitted to own and operate schools. The founding and operation of the schools by the non-state actors supplement the efforts of the state and their operations are subject to compliance with education standards established by the state. The state is also mandated to regulate their operation including school charges.<sup>5</sup> This is intended to ensure that education does not lose its character and attribute as a public good.

Over the years, there has been a lot of public concerns regarding the cost of pre – primary, primary and secondary education in the country. Although, it is clear that the government of Uganda is currently running a hybrid policy in regard to provision of education – public and private schools, there has been a lot of concerns with the school fees structures in all the schools.

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<sup>1</sup> UNESCO and Right to Education Initiative, *Right to Education Handbook*, 2019, at <https://unesdoc.unesco.org/ark:/48223/pf0000366556> accessed on June 15, 2023.

<sup>2</sup> *Ibid.*

<sup>3</sup> UN Committee on Economic, Social and Cultural Rights (CESCR). 1999. General Comment 13: The Right to Education (Art. 13 of the Covenant), (Doc. E/C.12/1999/10.) (CESCR General Comment 13) para. 1 at <https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-comment-no-13-right-education-article-13-1999> accessed on June 15, 2023.

<sup>4</sup> Principles 5, Abidjan Principles, Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education, at [https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/The%20Abidjan%20Principles\\_En\\_2019.pdf](https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/The%20Abidjan%20Principles_En_2019.pdf) accessed on June 13, 2023.

<sup>5</sup> Objective XVIII of the National Objective and Directive Principles of State Policy of the Constitution of the Republic of Uganda as amended.

There is no uniformity in school fees structures among private schools of the same standard operating in the same locality. Even the government grant – aided schools that are not implementing Universal Primary and Secondary Education (UPE and USE) have varying school fees structures.<sup>6</sup> The same applies to the UPE and USE schools – both public and government grant – aided schools.<sup>7</sup> For instance , the table below shows the discrepancy in the school fees structure of the government grant - aided schools in the Kampala metropolitan area.

Government Grant-Aided School	Averaged School Fees Charged (UGX)
Nabisunsa Girls' Secondary School	1,950,000
Gayaza High School	1,754,483
Kibuli Secondary School	1,995,010
Kawempe Muslim Secondary School	1,602,167
Kings College Budo	2,026,000
St Mary's College Kisubi	2,346,850

***Source: Parliament of Uganda, Report of the Parliamentary Committee on Education and Sports on the Motion for a Resolution of Parliament to Urging Government to Address the Exorbitant Tuition and Non-Tuition Fees Charged by the Government Grant Aided Schools, January 2023.***

The lack of uniformity is demonstrated by each school setting its own school fees structures and list of requirements some of which are non – scholastic. This has consistently attracted complaints from parents albeit with no success. This has also

<sup>6</sup> Section 2 of the Education Act, 2008 define UPE to mean the State funded universal primary education programme where tuition fees are paid by Government where the principle of equitable access to conducive, quality, relevant and affordable education is emphasized for all children of all sexes, categories and in special circumstances. USE means the state funded universal secondary education programme providing obstacle free post primary education.

<sup>7</sup> *Ibid*, Government grant aided school means a school not founded by the Government but which receives statutory grants in the form of aid from Government and is jointly managed by the foundation body and Government.

been subject to petitions to Parliament and litigation in the courts of law by the Initiative for Social and Economic Rights.<sup>8</sup>

Under the influence of various stakeholders, the Minister of Education has initiated the procedures for formulating and enforcing regulations on school fees. This move has sparked extensive debate, with certain segments of the population and the education sector endorsing it, while others, particularly non-UPE & USE schools and private school proprietors, oppose the proposed regulation of school fees structures. In this policy brief, ISER provides a rationale for why the regulation of school fees structures in the country is justified.

## 2.0. Ownership of schools in Uganda

Formal education in Uganda was introduced by the early missionaries who came to Uganda prior to the inception of British colonial rule.<sup>9</sup> This explains the special position that non-state actors especially the religious institutions, like the church – mainly Anglican and Catholic Churches have held in the delivery of education in the country to date.<sup>10</sup> Following the attainment of independence in Uganda in 1962, the post-colonial government partnered with the church to provide primary and secondary education and also prioritized the expansion and development of the education system to cater to the rapidly expanding number of school going age children as well as manpower needs of the country.

The historical background to the ownership of schools in Uganda was first incorporated in the Government White Paper on Education of 1992, the Constitution of the Republic of Uganda and the Education Act 2008. Objective XVIII of the National Objective and Directive Principles of State Policy grants the

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<sup>8</sup> Initiative for Social and Economic Rights has been at the forefront of calling for the regulation of school fees in the country. First, in 2017, it petitioned the Speaker of Parliament of Uganda urging her and the parliament to direct the Ministry responsible for education regulate school fees in schools. Then early 2022, together with other activists filed a suit in court to compel the Minister in charge of Education to issue Statutory Instruments to regulate fees.

<sup>9</sup> Ministry of Education and Sports, *National Education Accounts Report Uganda, 2016* at [http://uis.unesco.org/sites/default/files/uganda\\_nea\\_report-2016-en.pdf](http://uis.unesco.org/sites/default/files/uganda_nea_report-2016-en.pdf) accessed on June 13, 2023.

<sup>10</sup> Initiative for Social and Economic Rights (2021), *Context Analysis and Policy Mapping on Existing Legal and Policy Framework on Inclusive Primary Education* (Unpublished).

non-state actors in form of organizations, churches, and individuals the power to found and operate schools. Equally, the Education Act also allows organizations, communities, companies, and individual persons to start and operate schools. As a result of the hybrid approach adopted by the government to provide primary and secondary education, ownership of schools in the country is by various stakeholders as shown in the table below;

**Table 1: Ownership and funding of primary education in Uganda**

Funding	COU	Catholic	Entrepreneurs	Community	Others	Islamic	Government	SDA
Government aided	4,676	4,224	33	947	185	790	1,046	15
Not Gov't aided	519	774	3,532	1,805	1,176	306	08	14
Grand Total	5,195	4,998	3,565	2,752	1,361	1,096	1,054	29

### Ownership of secondary schools in Uganda

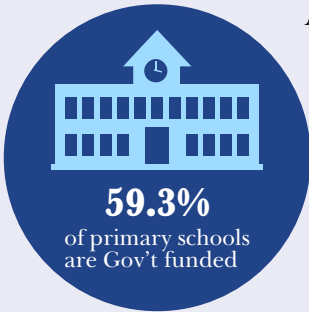
	COU	Catholic	Entrepreneurs	Community	Others	Islamic	Government	SDA
Number of schools	503	514	895	452	260	141	189	41

*Source: Ministry of Education and Sports, Education Statistical Abstract, 2017*

As indicated in the table above, the majority of the government-aided schools are owned by the Church of Uganda, followed by the Catholic Church, government, community, and Moslem founded schools among others. The number of private schools both at primary and secondary levels belonging to entrepreneurs is quite high. However, it is interesting to learn that some of the government-owned schools are not being funded by the government that owns them. The current ownership of schools in the country is an indication that the government is largely relying on non-state actors to provide education.

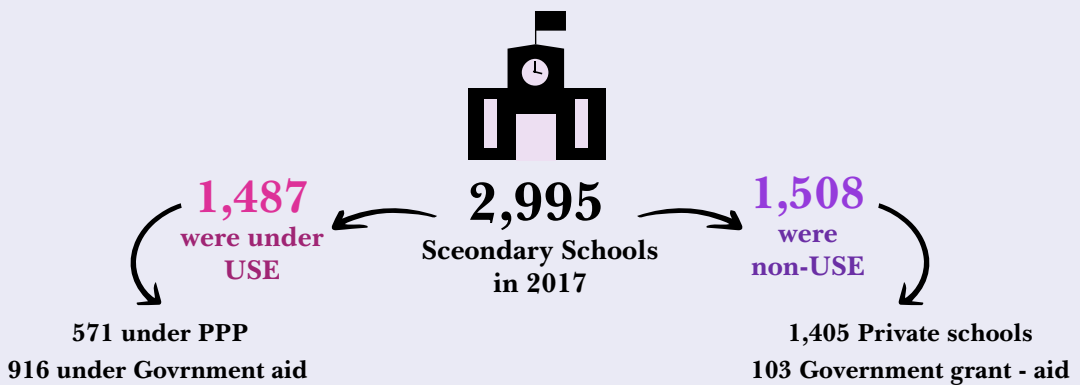
In 1997, the Universal Primary Education (UPE) program was introduced and this was followed by the Universal Secondary Education (USE) program in

2007.<sup>11</sup> These two programs are being implemented by both public and government grant - aided schools, community and religious-founded and owned schools in Uganda. In the implementation of UPE and USE, the government largely funds primary and secondary education through an arrangement called government grant - aiding, for example 59.3% of the primary schools are under such an arrangement as indicated in the table above.



A government grant - aided school is a school not founded and owned by the Government but which receives statutory grants in the form of aid from the Government and is jointly managed by the foundation body and Government.<sup>12</sup> Out of the total number of 2,995 secondary schools in the country, as reported in 2017, 1,487 schools were under the USE arrangement and 1,508 were non-USE. Of the 1,487 USE schools, 571 were under the Public Private Partnership (PPP)

arrangement and 916 under the government grant - aided arrangement. Of the 1,508 non-USE schools, 103 were government grant - aided schools and 1,405 were private schools without grant aiding from the government.



Recently, the Ministry of Education and Sports commenced the implementation of the distribution of textbooks to schools including some private-for-profit schools

<sup>11</sup> Ministry of Education and Sports, 2016, *supra*.

<sup>12</sup> S.2 of the Education (Pre-Primary, Primary and Post-Primary) Act 2008.

### **3.0. Financing models of primary and secondary education by the government**

The government of Uganda is currently operating two financing models for primary and secondary education as explained below;

#### **3.1. Public and government grant - aided primary and secondary schools implementing the UPE and USE programs**

UPE program is a state-funded universal primary education program where tuition fees are paid by the Government with the aim of achieving the principle of equitable access to conducive, quality, relevant, and affordable education for all children of all sexes, categories, and in special circumstances.<sup>13</sup> Equally, the USE program is also a state-funded universal secondary education program providing obstacle-free post-primary education.<sup>14</sup>

Both UPE and USE are the government's flagship programs geared towards enabling all children the opportunity to access education. S. 9 of the Education Act prohibits the levying and collecting of school fees in schools implementing both UPE and USE. However, the same provision allows schools to collect voluntary contributions to respond to an emergency.

In UPE and USE schools, the government finances the infrastructure; distributes textbooks; recruits, deploys, and pays teachers' salaries; and provides the per learner capitation (operation) grants used to run the schools. For UPE, the capitation grant provided is per pupil per year, while for USE it is per student per term. The amount of the unit capitation grant allocated per learner varies every year depending on the enrollment and national capitation grant budget.

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*



### 3.2. Government grant - aided schools not implementing the UPE and USE programs

These include public and religious-founded schools that receive government funding in terms of salaries for teachers and support for infrastructure and textbooks but do not implement the UPE and USE programs. These schools do not receive capitation grants. Access to these schools is based on payment of both tuition and non-tuition fees and high excellence in the Primary Leaving Examination for O-level admission as well as excellent performance in Uganda Certificate of Education for A-level admission. Over the years, the cost of accessing these schools has been skyrocketing to the extent of either matching or exceeding the school fee structure of high-end private schools despite them receiving state funding.

### 4.0. Implications of high school fees structure in government grant - aided schools on access to education

The introduction of UPE and USE programs was based on research findings by the government and other agencies that fees were the major barrier to access education by children from poor backgrounds. This explains why the government took the decision to outlaw the charging of fees in UPE and USE schools.<sup>15</sup> Despite all these efforts and because of absence of regulations, schools implementing UPE and USE programs are charging fees.<sup>16</sup> The lack of uniformity in fees charged makes the situation worse. For instance, in 2020 Lweru Senior Secondary in Buikwe District charged UGX 50,000 per term compared to Ongino Secondary School in Kumi District which was charging UGX 210,000 per term.<sup>17</sup> It has also been established by the National Planning Authority (NPA) that current universal education programs such as UPE are just subsidized education.

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<sup>15</sup> *Ibid*, s.9.

<sup>16</sup> Initiative for Social and Economic Rights (2022), Getting Children Back To School; Emerging Human Rights Issues From the Nationwide Reopening of Schools in Uganda, Kampala, p. 2 at <https://iser-uganda.org/publication/getting-children-back-to-school-emerging-human-rights-issues-from-the-nationwide-reopening-of-schools-in-uganda/> accessed on June 13, 2023.

<sup>17</sup> See Initiative for Social and Economic Rights (2020), *Leaving No One Behind: Barriers to Continuity of Education for Vulnerable Children Impacted by Covid-19 in Uganda*, Kampala at: [https://www.iser-uganda.org/images/downloads/Barriers\\_to\\_Continuity\\_of\\_Education\\_for\\_Vulnerable\\_Children\\_Impacted\\_by\\_Covid-19\\_in\\_Uganda.pdf](https://www.iser-uganda.org/images/downloads/Barriers_to_Continuity_of_Education_for_Vulnerable_Children_Impacted_by_Covid-19_in_Uganda.pdf) accessed on June 13, 2023.

Additionally, the high school fees structures in government grant - aided non-UPE/USE and the private schools have resulted in increase in the cost of education and made the schools inaccessible for poor households and increasingly out of reach for learners from relatively well-to-do families as well. The school fees structures for some of the schools are higher than some programs at the university level. This is undermining the right to education. It has been reported by the Uganda Bureau of Statistics that 6 out of 10 learners are dropping out of school due to high education costs.<sup>18</sup> When COVID-19 set in with its resultant effects on the economy, the NPA approximated that 64.6% of parents are either struggling or not in a position to afford tuition and non-tuition fees for their children.<sup>19</sup> As a result, close to 30% of households in Uganda have to borrow to meet the fees and school requirements for their children's education.<sup>20</sup>

## 5.0. Legal and policy framework governing the relationship between foundation bodies and government in government grant - aided schools

The right to education is recognized in several international, regional and domestic legal instruments. At the international and regional level, the right is codified in the Universal Declaration of Human Rights (UDHR),<sup>21</sup> the International Covenant on Economic Social and Cultural Rights (ICESCR),<sup>22</sup> the Convention on Elimination of all Forms of Discrimination against Women

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<sup>18</sup> Uganda Bureau of Statistics (UBOS), 2021. *Uganda National Household Survey 2019/2020*. Kampala, Uganda; UBOS, p. 29 at [https://www.ubos.org/wp-content/uploads/publications/09\\_2021Uganda-National-Survey-Report-2019-2020.pdf](https://www.ubos.org/wp-content/uploads/publications/09_2021Uganda-National-Survey-Report-2019-2020.pdf) accessed on June 13, 2023.

<sup>19</sup> National Planning Authority (2021), *Towards Safe Opening of The Education Sector in Covid-19 Times: Technical Note*, Kampala, p. 12 <http://www.npa.go.ug/wp-content/uploads/2021/09/NPA-on-Reopening-of-Schools-AmidstCOVID19.pdf> accessed on June 13, 2023.

<sup>20</sup> UNESCO (2021), *Global Education Monitoring Report 2021/2: Non-state actors in education: Who chooses? Who loses?* Paris, UNESCO at <file:///D:/Policy%20Papers/Global%20Education%20Monitoring%20Report%202021%20-22.pdf> accessed on June 13, 2023.

<sup>21</sup> Article 26, UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III) at: <https://www.refworld.org/docid/3ae6b3712c.html> accessed June 13, 2023.

<sup>22</sup> Article 13 & 14, UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 at <https://www.refworld.org/docid/3ae6b36c0.html> accessed June 13, 2023.

(CEDAW),<sup>23</sup> the Convention on the Rights of the Child (CRC),<sup>24</sup> the African Charter on Human and Peoples' Rights (ACHPR),<sup>25</sup> African Charter on the Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),<sup>26</sup> and the African Charter on the Rights and Welfare of the Child (ACRWC).<sup>27</sup> The State of Uganda is a party to the above international and regional human rights treaties providing for the right to education. Domestically, the right has been codified in the Constitution of the Republic of Uganda,<sup>28</sup> the Education Act,<sup>29</sup> the Children (Amendment) Act<sup>30</sup> and the Persons with Disabilities Act.<sup>31</sup>

Article 13(2) of ICESCR requires the provision of primary education to be both compulsory and free to all and; adoption of progressive measures to avail free secondary education to all.<sup>32</sup> The United Nations Committee on Economic Social

<sup>23</sup> Article 10, UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13 at: <https://www.refworld.org/docid/3ae6b3970.html> accessed June 13, 2023.

<sup>24</sup> Article 28, UN General Assembly, *Convention on the Rights of the Child*, Human Rights Instruments, 20 November 1989, General Assembly resolution 44/25 at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> accessed on June 28, 2022.

<sup>25</sup> Article 17, Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights ("Banjul Charter")*, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) at <https://www.refworld.org/docid/3ae6b3630.html> accessed June 28, 2022.

<sup>26</sup> Article 12, African Union, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*, 11 July 2003 at <https://www.refworld.org/docid/3f4b139d4.html> accessed June 28, 2022.

<sup>27</sup> Article 11, Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990) at <https://www.refworld.org/docid/3ae6b38c18.html> accessed June 28, 2022.

<sup>28</sup> Objective XVIII of the National Objectives and Directive Principles of State Policy, Article 30 & 34(2), Government of Uganda, *Constitution of the Republic of Uganda*, 1995 (As Amended), promulgated on 8 October 1995 at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44038/90491/F206329993/UGA44038.pdf> accessed on June 13, 2023.

<sup>29</sup> S. 4(2), Government of Uganda, *Education (Pre – Primary, Primary and Post – Primary), Act*, 2008, *Uganda Gazette no. 44* on 29 August 2008 at <https://ulii.org/akn/ug/act/2008/13/eng%402008-08-29> accessed on June 13, 2023.

<sup>30</sup> S. 5, Government of Uganda, *The Children (Amendment) Act*, 2016 at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/104395/127307/F-171961747/UGA104395.pdf> accessed on June 13, 2023.

<sup>31</sup> S.6, Government of Uganda, *Persons with Disabilities Act*, 2019, at <https://www.parliament.go.ug/cmis/views/a88ad8e1-f66d-4f9e-990a-03dddeff14c1%253B1.0> accessed on June 30, 2022.

<sup>32</sup> Article 13 & 14, UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3 at <https://www.refworld.org/docid/3ae6b36c0.html> accessed January 26, 2023.

and Cultural Rights in its General Comment No. 13, requires among others education to meet the requirements of the element of accessibility.<sup>33</sup> This entails education being accessible to all, especially the most vulnerable groups, without discrimination on any ground and economically affordable to all.<sup>34</sup> This would necessitate sufficient public financing of education such that schools do not charge tuition or non – tuition fees or regulation of fees structures in private schools. Still the Committee under General Comment No. 11 interprets the term “free of charge” contained in Article 13 (2) of ICESCR to imply accessing primary education without any charge on children and their parents or guardians.<sup>35</sup> It further prohibits school charges imposed by government, the local authorities or the school, and other direct costs, which constitute disincentives to the enjoyment of the right and may jeopardize its realization.<sup>36</sup>

In furtherance of the foregoing obligations, the government of Uganda enacted the Education Act, 2008 as the main legislation governing pre – primary, primary and secondary education. Section 9 of the Education Act, 2008 does not only outlaw charging of school fees in UPE and USE schools but also criminalizes its implementation. The enactment of this provision was on the basis that upon the introduction of UPE and USE, the government would meet all the financial needs of the school – infrastructure, teaching staff and operation funds for the schools.

In addition to public education, private entities are allowed to operate to complement the public system. Article 13(4) of ICESCR protects the right of non – state actors to found and operate schools provided they comply with the established minimum education standards established by the state.<sup>37</sup> Equally, Objective XVIII of the National Objectives and Directive Principles of State Policy of the Constitution of the Republic of Uganda 1995, as amended reiterates the position of the covenant.

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<sup>33</sup> Committee on Economic Social and Cultural Rights General Comment No. 13: The Right to Education (Article 13). Para.6. Available at <http://www.right-to-education.org/resource/cescr-general-comment-13-right-education-article-13> June 13, 2023.

<sup>34</sup> *Ibid.*

<sup>35</sup> Committee on Economic Social and Cultural Rights General Comment No. 11: Plans of Action for Primary Education (Article 14). Para. 7. Available at [https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR\\_General\\_Comment\\_11\\_en.pdf](https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_11_en.pdf) June 13, 2023.

<sup>36</sup> Committee on Economic Social and Cultural Rights General Comment No. 11: Plans of Action for Primary Education (Article 14). Para. 7. Available at [https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR\\_General\\_Comment\\_11\\_en.pdf](https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CESCR_General_Comment_11_en.pdf) June 13, 2023.

<sup>37</sup> ICESCR, *supra*.

The United Nations Committee on the Rights of the Child in its General Comment 16 requires states to “protect against infringements of rights guaranteed under the Convention on the Rights of the Child and its protocols, by third parties. The duty is of primary importance when considering States' obligations to the business sector such as private schools. The States are therefore required as a must to take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children’s rights. Such measures can encompass the passing of laws and regulations, their enforcement and monitoring, and policy adoption that frame how business enterprises can impact children’s rights. A State is therefore responsible for infringements of children’s rights caused or contributed to by business enterprises where it has failed to undertake necessary, appropriate and reasonable measures to prevent and remedy such infringements or otherwise collaborated with or tolerated the infringements.”<sup>38</sup>

The African Commission in its General Comment No. 7 took note of the increasing commercialization of social services in Africa which is undermining the object and purpose of the African Charter, which views social services not as commercial products, but as essential preconditions for the enjoyment of human rights.<sup>39</sup> Consequently, it guides that private provision need not necessarily result in the commercialization of social services. It further emphasizes that with effective and comprehensive regulation, democratically controlled, noncommercial private actors have the potential to contribute to ensuring universal access to social services.<sup>40</sup>

In the context of private schools, the foregoing international provisions require the state of Uganda to enact, implement and establish a legal and institutional framework aimed at effectively monitoring, supervising and regulating the operations of the schools such that they do not jeopardize the rights of children.

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<sup>38</sup> Committee on the Rights of the Child, General comment No. 16 (2013) On State obligations regarding the impact of business on children’s rights, para 28. Also see Committee on Economic, Social and Cultural Rights General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paras 14 – 16.

<sup>39</sup> African Commission on Human and Peoples’ Rights, General Comment 7: State obligations under the African Charter on Human and Peoples’ Rights in the context of private provision of social services, Adopted during the 72<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples’ Rights on 28 July 2022 in Banjul, The Gambia, Para 11.

<sup>40</sup> *Ibid*, para. 13.

Section 3 and 57 of the Education Act, 2008 empower the Minister responsible for education to issue statutory instruments to regulate various aspects in the education sector including school fees in all schools. The question as whether the government has power to regulate the operations of private schools was settled in *Initiative for Social and Economic Rights v. Attorney General*,<sup>41</sup> that challenged the discrepancy in financing of the USE program with schools under PPP scheme receiving less funding compared to the government grant - aided schools which was occasioning provision of poor-quality education to children in PPP schools. The government had defended itself that it was not its responsibility to regulate, supervise and monitor the operations of the PPP schools. The court held that to allow the government's defence would be granting it the leeway to run away from its cardinal role of supervising, monitoring and regulating the operations of the private provision of education.

The court further ordered the Government to take lead in regulating private actors' role in education, ensuring minimum standards and sanctioning violators, all while seeking "guidance from the Abidjan Principles on the human rights obligations of states to provide public education and to regulate private involvement in education in designing education programs in the country." The Principles also re – echo the obligation on the states to establish effective regulation of private educational institutions which must be in line with applicable human rights law and standards.<sup>42</sup>

The Education Act which is the primary legislation on basic education provides mechanisms through which non – state actors can start and operate their schools.<sup>43</sup> As noted earlier, the government has partnered with some of the non–state owned schools to provide education. Section 6 of the Education Act recognizes government grant-aided institutions as one of the categories of education institutions. The law further provides that government may determine which education institutions shall be or continue to be grant-aided, on application by the foundation body of the school.<sup>44</sup>

Pursuant to Section 8 of the Education Act, where government and a foundation body enter into an arrangement of grant-aiding, in regard to financing and

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<sup>41</sup> Civil Suit No. 353 of 2016.

<sup>42</sup> Abidjan Principles on the Human Rights Obligations of States to Provide Public Education and to Regulate Private Involvement in Education, 2019, para. 53.

<sup>43</sup> Education Act 2008, supra, Part V.

<sup>44</sup> *Ibid*, s.7 (2).

management of the schools, the government is obligated to;

- a. Ensure that trained teachers are deployed;
- b. Pay salaries and allowances to teachers;
- c. Appoint Heads of the school of the Government grant-aided education institutions, and deploy such heads to institutions in consultation with foundation bodies;
- d. Pay salaries and wages to all established non-teaching staff;
- e. Pay statutory grants;
- f. Provide educational materials and other capital development inputs;
- g. Provide national selection and admission guidelines for all pupils or students to be enrolled;
- h. Monitor behavior and performance of staff both teaching and non-teaching; and;
- i. Ensure safety and security of children in schools and all education institutions.

Equally, Section 5 (3) of the Education Act, enjoins the Foundation body of the school to;

- a. Take part in ensuring proper management of schools of their foundation;
- b. Ensure the promotion of religious, cultural, and moral values and attitudes in schools of their foundation;
- c. Mobilize resources for education purposes;
- d. Participate in the implementation, monitoring and evaluation of education and services.

It can be inferred from the foregoing provisions that the government is legally mandated to shoulder the biggest financial burden in the running and operation of government grant - aided schools. This is through provision of both recurrent and development funding which is essential for the smooth running of the schools. Indeed, in practice, the government recruits and remunerates teachers in the grant - aided schools, it also provides teaching materials and infrastructure support. In the same vein, foundation bodies are also required to mobilize resources including financial for purpose of running and operating the schools of their foundation. Therefore, there is no basis for these schools to charge exorbitant charges from learners as if they are purely private schools for profit, since the state is committing the highest financial requirements.<sup>45</sup>

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<sup>45</sup> *Ibid*, s. 3.



The same Education Act also provides for mechanisms through which individuals and private entities can start and operate their own schools.<sup>46</sup> Majority of these schools are for – profit whereas the rest are not for profit. An examination of the Education sector Ministerial Policy Statements for various financial years indicated that the private schools receive support from government in form of capacitating their school management committees and board of governors, text books among others.<sup>47</sup> All these categories of schools are subject to monitoring, supervision and regulation by the government. The regulation also includes school fees structures.

## 6.0. Efforts by the Ministry of Education and Sports to regulate school fees

Over the years, the ministry has made attempts to regulate fees in all schools through guidelines and circulars to local governments and heads of primary and secondary schools. It is usually the Permanent Secretaries of the Ministry of Education and Sports (MEoS) that have allocated themselves the responsibility of regulating the fees. For instance, in 2017, the Permanent Secretary, MoES issued guidelines on school charges in school. The guidelines were to the effect that no school (public grant - aided and private) would be allowed to make any school fees adjustments without approval by the Permanent Secretary of the Ministry.<sup>48</sup> These guidelines also went as far as strictly prohibiting non-cash requirements outside the approved school fees structures, requiring School Boards of Governors and School Management Committees in USE and UPE schools respectively that need to employ additional teachers to those on payroll to seek permission to use part of the capitation grant towards the payment of the additional teachers, and refraining government grant - aided schools from taking commercial loans except with authorization from the Minister of Finance Planning and Economic Development.<sup>49</sup>

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<sup>46</sup> *Ibid*, Part VII of the Education Act, 2008.

<sup>47</sup> See for instance the Education and Sports Sector Ministerial Policy Statement for FY 2017/18; 2018/19; 2019/20.

<sup>48</sup> Ministry of Education and Sports, Guidelines on School Charges, Kampala, 2017.

<sup>49</sup> *Ibid*.



MEoS should be commended for having taken such a vital step to curb the challenge of arbitrary hiking of school fees. However, the guidelines do not have any legal effect and in most cases, they have been ignored by the schools.<sup>50</sup> Also analysis of the circulars and guidelines issued on the matter revealed that they have been more on halting the increase of school fees and maintaining the status quo but not undertaking a review of the school fees structures of the schools.<sup>51</sup> It followed therefore that the school fees structures of various government grant - aided non – UPE/USE and private schools remain high and continue to increase unabated. It requires the ministry to delve into the school fees structures of all the schools, government-grant-aided and private ones. The Minister responsible for education is mandated under Sections 3 and 57 of the Education Act to issue statutory instruments from time to time to regulate both tuition and non–tuition charges in all schools in the country.

With the Statutory Instrument, the minister can even provide penalties to deal with the non – compliant schools and their respective owners and administrators. However, ever since the enactment of the Education Act, 2008, other than the Education (Management Committee) Regulations and The Education (Board of Governors) Regulations contained non–tuition charges in all schools in the country. With the Statutory Instrument, any school that levies school fees beyond the maximum provided as per section 57(g) of the Education Act, commits an offense and in case of conviction suffers a fine not exceeding one million shillings (UGX 1,000,000) or imprisonment not exceeding 12 months or both as per section 51 of the Act. It is therefore clear that Statutory Instrument has a force of law compared to circulars and guidelines that have been ignored without any legal effect on the non - compliant school administrators. Recently, there has been media reports of the Ministry of Education and Sports submitting a Draft Regulation of School Fees to Cabinet for approval which has enlisted a lot of debate in the country.<sup>52</sup>

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<sup>50</sup> Emwamu et al “Schools hike fees ahead of third term” Daily Monitor, August 31, 2022 at <https://www.monitor.co.ug/uganda/news/national/schools-hike-fees-ahead-of-third-term-3932128> accessed on September 29, 2022.

<sup>51</sup> Ministry of Education and Sports, 2017, *supra*.

<sup>52</sup> Jane Nafula “Cabinet yet to decide on school fees policy” Daily Monitor, January 26, 2023 at <https://www.monitor.co.ug/uganda/news/national/cabinet-yet-to-decide-on-school-fees-policy-4099652> accessed on January 27, 2023.

## 7.0. Comparative Analysis on Regulation of School Fees: Approaches used by other countries to regulate school fees; Regulation of school fees in Rwanda, South Africa, South Sudan and Kenya

### 7.1 Rwanda

Under Article 41 of the Law N°23/2012 of 15/06/2012 Governing The Organization and Functioning of Nursery, Primary and Secondary Education, an Order of the Minister in charge of Education determines school fees to be paid by parents in both public and government-subsidized secondary schools. Where there is a need to add other fees, Article 41 requires a related action plan to be developed and examined by the School General Assembly and submitted to the District for approval. In private schools, fees are determined according to the action plan examined by the School General Assembly and submitted to the District for approval. For learners from poor households, Article 41, provides for the issuance of a Presidential Order to establish a District Education Fund designed to help destitute children to pay school costs.

In the academic year 2022-2023, the Minister of Education exercised the powers under Article 41 of the Act by capping the school fees in public and government - subsidized primary and secondary schools at a maximum of Rwf 85,000 (\$85).<sup>53</sup> In secondary, fees were capped at Rwf 19,500 (\$20) for day scholars and Rwf 85,000 (\$85) for boarding.<sup>54</sup>

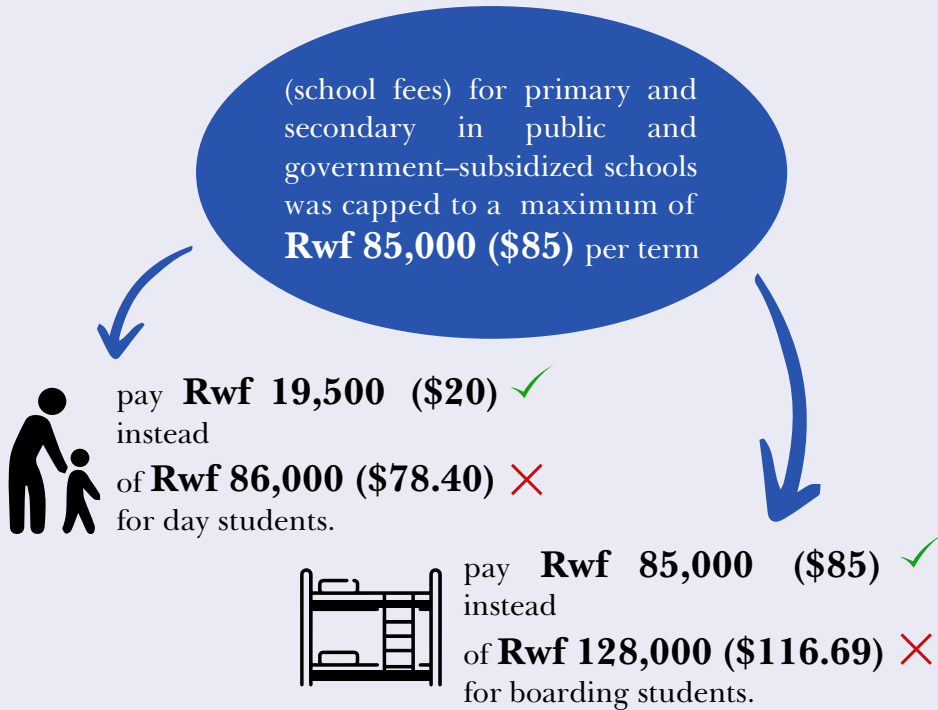
The new guidelines further indicated that when necessary and upon parents' approval, a contribution for other school needs shall not exceed Rwf 7,000 (\$7). For schools that rent mattresses as bedding requirements, they are permitted to charge only new students Rwf 9,000(\$9) once in three years for replacement purposes.<sup>55</sup> While announcing the fee structure, Valentine Uwamariya, Minister

<sup>53</sup> Lliza Ange "Public School Fees capped at \$85 to meet Education for All national goal" Rwanda Today, September 21, 2022 at <https://rwandatoday.africa/rwanda/news/public-school-fees-capped-at-85-to-meet-education-for-all-national-goal-3956612> accessed on March 4, 2024.

<sup>54</sup> *Ibid.*

<sup>55</sup> Alice Kagina "Rwanda: Govt Scraps Tuition Fees for Public Primary Schools" The New Times at <https://allafrica.com/stories/202209150070.html> accessed on February 06, 2023.

of Education indicated that private schools will continue charging fees by inputs from the Parents General Assembly.



A contribution for other school needs shall not exceed **Rwf 7,000 (\$7)**

For schools that rent mattresses as bedding requirements, they are permitted to charge only new students

**Rwf 9,000 (\$9)** once in three years for replacement purposes

The Ministry of Education also issued Guidelines setting out the cost for school feeding. The average cost of a meal was capped at Rwf 150 (\$0.15) per student, the government partly contributes Rwf 56 (\$0.056) per student per meal and the balance of Rwf 94 (\$0.094) is met by parents.<sup>56</sup>

<sup>56</sup> Ministry of Education, Rwanda School Feeding Operational Guidelines Summary, Republic of Rwanda, P. 6 at <https://www.mineduc.gov.rw/index.php?eID=dumpFile&t=f&f=21456&token=1c5c32adbfa165d36c394888e4dfc5a14697b200> accessed on March 4, 2024.

## 7.2 South Africa

The country runs a hybrid system of delivery of education i.e. public and private schools. Some public schools charge school fees while there are some that do not charge fees. Section 39 of the South African Schools Act, No. 84 of 1996 empowers the Minister responsible for education to determine the various quantiles of the schools. This is done by determining the national quantile of the schools. The Minister classifies schools according to the level of poverty in surrounding areas – the factors taken into consideration include the surrounding infrastructure and how many homes in the area are made from brick, wood, iron sheet and so on.<sup>60</sup> Schools are then ranked between quantiles 1 and 5. Schools with in quintile 1 are those in a very poor area, while those in quintile 5 are in a wealthier area.<sup>61</sup> Schools in quintiles 1 to 3 are no – fee schools as they are fully funded by the government and therefore not allowed to charged school fees. They can collect donations and voluntary contributions, however, due to the limited state funding they are sometimes forced to collect compulsory contributions from parents.<sup>62</sup> The schools in quintiles 4 and 5 are fee-charging schools – they are allowed to charge school fees. They receive partial subsidies from the government.<sup>63</sup>

The public schools that are allowed to charge fees are required to exempt the parents who cannot afford the school fees from paying the school fees. Under section 39 of the Act, school fees can only be determined and charged at a public school after the adoption of a resolution by the majority of the parents. The law further requires that the resolution must provide for; the amount of fees to be charged; and equitable criteria and procedures for the total (automatic), partial or conditional exemption of parents who are unable to pay school fees.<sup>64</sup> The governing body of the school is under strict obligation to implement the resolution of the school.

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<sup>60</sup> Sherylle Dass & Amanda Rinqest, Basic Education Rights Handbook – Education Rights in South Africa – Chapter 7: School Fees at <http://section27.org.za/wp-content/uploads/2017/02/Chapter-7.pdf> accessed on May 20, 2023.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> Also see Regulations Relating to the Exemption of Parents from Payment of School Fees in Public Schools, No. 29311, Government Gazette, 18 October 2006.

In case of private schools, the Act is silent on them, nevertheless, the court of law in South Africa has guided that when enforcing the payment of school fees, they have to ensure that there is a due and fair process. For instance, they have to first engage the parents to establish why school fees have not been paid; offer payment arrangements; and the last resort should be to exclude the learner but with sufficient notice to the parents.<sup>65</sup>

### 7.3 South Sudan

The General Education Act, 2012 Act No.30 provides for both public and private education. For instance, Article 21 (B) of the Act allows private schools to charge reasonable fees. Under Article 8 (1) (g) of the Act, the Minister in – charge of education has the obligation to regulate the operations of private schools in the country which may include regulating their school fees structures. In 2021, the Minister issued the Ministerial Order No. 5/2021 – Private Schools’ Fees following complaints from over the high cost of private education. The Order issued by the Minister dealt with the following issues: first, it restricted payment of all school fees in South Sudan Pounds (SSP) and not any other currency. Secondly, it capped fees at SSP 80,000 per year including scholastic materials for the day program and SSP 200,000 for boarding; thirdly, it provided for payment of fees in three instalments annually; fourthly and lastly, it made payment for pupils’ extracurricular activities optional.<sup>66</sup>

### 7.4 Kenya

The Minister in charge of Education issues Guidelines on school fees charged to schools implementing free secondary education program depending on the category of the school. For instance, the government meets the human resource, infrastructure and instructional material costs as well as provides capitation grants (operational funds). Parents with learners in day schools pay for learners who are in free secondary schools but on day programs, their parents/guardians meet the

<sup>65</sup> Mhlongo v John Wesley School and Another (4594/2016) [2018] ZAKZDHC 64.

<sup>66</sup> Ministry of Education and General Instruction, Ministerial Order No. 05/2021 – Private Schools’ Fees, Republic of South Sudan, 2021.

cost of lunch though it is regulated.<sup>67</sup> While those enrolling their children in the Extra County/ County and national schools, the school fees paid is set by the Minister and they cover the following items: Boarding Equipment & Stores, Maintenance & Improvement, and Activity Fees.<sup>68</sup> The schools fees in the 2024 – Education Calendar were increased from that of 2023, however the government capitation remained constant as shown in the table below;

<b>National schools</b>		
Item	School fees and government capitation grant 2023 (Kshs)	New school fees and government capitation grant 2024 (Kshs)
Government grant	22,244	22,244
Fees paid by Parents	53,554	73,182
Increase in the fees		19,628
<b>Extra County/ County Schools</b>		
Government grant	22,244	22,244
Fees paid by Parents	40,535	66,023
Increase in the fees		25,488
<b>Day schools</b>		
Government grant	22,244	22,244
Fees paid by Parents	Lunch program only	5,372
Increase in the fees		5,372

**Source: News Hub, Fees Structure Guidelines for Secondary Schools, 2024<sup>69</sup>**

<sup>67</sup> News Hub, 2023-2024 new reduced School Fees structure and guidelines for all secondary schools in Kenya; Education Ministry releases guidelines at <https://educationnewshub.co.ke/2023-new-reduced-school-fees-structure-and-guidelines-for-all-secondary-schools-in-kenya-education-ministry-releases-guidelines/> accessed on November 19, 2023.

<sup>68</sup> *Ibid.*

<sup>69</sup> At <https://educationnewshub.co.ke/fees-structure-guidelines-for-secondary-schools-2024/> accessed on February 6, 2024.

## 8.0. Conclusion and Recommendations

With the sustainable development agenda of leaving – no – one – behind, the state of Uganda is under an obligation to ensure that the system of delivery of education does not embody discrimination in access as a result of various structural and policy considerations such as the cost of accessing education. Over the years, Ugandan households have grappled with the high cost of education. This is largely attributed to three major factors. First, the limited financing of public education that has forced administrators of UPE and USE schools to levy and collect non – tuition fees to fill the gap left by the insufficient funds from the government. Second, the non-regulation of school fees which has resulted in variations in school fees structures despite the schools being public or government grant - aided. Third and also related to the foregoing, the adoption of a hybrid system of education delivery that allowed non – state actors including for-profit actors to establish and operate schools. This has raised a lot of debate that the state has no basis to regulate school fees in such schools which is untenable.

An examination of the Education Act, 2008 – the primary legislation that regulates the operations of pre–primary, primary and post-primary schools indicates that the Minister of Education has the powers to regulate school fees in all schools including non–state schools. This position is also further buttressed by international law and domestic laws from other countries where ministers responsible for education are empowered in their various legislations to regulate school fees in all categories of schools. Therefore, the following actions should be considered;

- a. The Ministry of Education and Sports should establish the appropriate unit cost required to educate a learner in primary and secondary school. This established unit cost should be used to guide the financing of UPE and USE schools and as a benchmark for regulating school fees in private schools.
- b. The Minister responsible for education complies with the Education Act to issue Regulations on School Fees in Pre–primary, Primary and Secondary schools in the country.



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