

Executive Summary

Background

African countries are parties to numerous international and regional human rights instruments which oblige their governments to take a central role in providing and financing public services. Over the past three decades, the private sector has become a major actor as a provider and financier of public services in Africa.

Private sector participation in the education and health service delivery is not a recent phenomenon. Prior to the 1980's, some African countries permitted private institutions to provide services although the government played a dominant role in the provision and regulation of these services. The increasing involvement of the private sector in the health and education sectors can be traced back to the economic reforms adopted during the Washington Consensus in the 1980's and 1990's. Numerous studies have demonstrated that the market oriented reforms adopted in that era laid the ground for the ongoing commercialization of public services.

From a human rights perspective, the profit driven motive behind private provision of public services is a key concern especially with respect to availability and access to quality services for low income households and vulnerable groups. This study investigated how the involvement of private actors in the service delivery and financing of social sectors over the past three decades has impacted the role of States in meeting their human rights obligations. It focuses on health and education service delivery and financing in the East African region, particularly, Uganda, Kenya, Tanzania and Rwanda.

Key Findings

General Findings

- a. Profit oriented delivery and financing of public services by private actors is negatively affecting availability and access to quality health and education services in the East African region.
- b. The government's key role as provider and regulator of service delivery is increasingly shrinking to an inferior one of a facilitator and enabler of private actors.
- c. A general reading of the current legal and policy framework governing health and education services in the region reveals a stronger bias for creating a favourable environment for private actors than strong regulation to ensure protection from human rights violations.

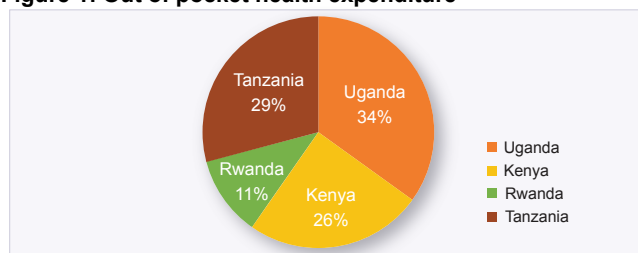
Availability of services

- a. Across the region, there is a cross-cutting concern of underfunding of the education and health sectors. This observation has been made by numerous human rights treaty bodies over the past decade.
- b. The health and education policy frameworks of the study countries are urging for private involvement in the delivery and financing of public services meet the funding gap by the State. While international human rights law requires private actors to supplement efforts of the public sector, the private sector is viewed as a complementary to the public sector in terms of increasing geographical access to health services as well as the scope of services provided.
- c. The rise of low-cost private schools, often fronted as an alternative option, has also been influenced by the inadequate quantity of public schools.
- e. Amidst low investment in the public health system, significant public resources are being injected into the private health sector for instance through contracting private actors to provide services of investing in PPP projects in health.

Accessibility of services

- a. High costs of healthcare and education are fueling economic inequality and deepening the divide between the wealthy and the poor in accessing public services. For instance, while all the countries provide free primary level education, the hidden costs inhibit access for children from low income households who are unable to afford the services.
- b. Particularly with respect to costs charged for public services, countries in the region previously has strong government oversight before the 1980's, particularly Tanzania and Uganda. Currently, only Kenya and Rwanda have capped the fees at public and subsidized schools. None of the study countries regulate the school fees and other charges levied by private schools. Kenya has taken steps to cap the professional fees chargeable by medical and dental practitioners (minimum and maximum costs), even though they are still considered to be high.
- c. According to 2021 data from the World Health Organisation (WHO) populations of all the study countries still pay a high percentage of the health expenditure out-of-pocket (Figure 1). The burden of high health costs is usually felt disproportionately by low income and poor households.

Figure 1: Out of pocket health expenditure



Source: World Health Organisation (WHO)

- d. In some instances, the government efforts to cap charges levied by private health facilities and private schools have been thwarted by the private sector for instance in Tanzania.
- e. Even where efforts are made to make public services accessible to the poor, the benefits are often enjoyed more by better off households. For instance, it's been noted that Rwanda's free education services and benefits under its Community Based Health Insurance (CBHI) scheme are often enjoyed by more well to do households than the poorest.
- e. Closely related to the high costs of healthcare, the unethical practice of detention of patients for unpaid medical bills at health private facilities is on the rise in the region. Currently, there are no policies or guidelines issued by any of the governments in the region on this issue.

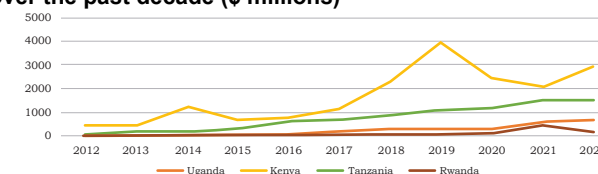
Acceptability and quality of services

- a. The legal framework of all the study countries require private actors who intend to found and operate schools to comply with the established education standards. In some instances, failure to meet standards has prompted the closure of schools by government officials on multiple occasions, including Bridge International Academies (BIA).
- b. Among the study countries, Rwanda has the most elaborate legal and policy framework on private provision of health services aimed at protecting citizens against unsafe standards, practices and low-quality health services. Uganda is yet to pass regulations governing the monitoring and evaluation of delivery of health services by the private sector despite its commitment in its First National Health Policy.
- c. While all the study countries have laws and policies requiring registration as well as regulation of private actors, none of the frameworks provide for obligations of private actors to deliver social services as a public function.

Public debt as a driver of commercialisation of public services

- a. Over the past decade, external debt repayments have risen significantly - almost tenfold for Rwanda, and beyond this mark for both Uganda and Tanzania (Figure 2).

Figure 2: External debt repayments (principal and interest) over the past decade (\$ millions)

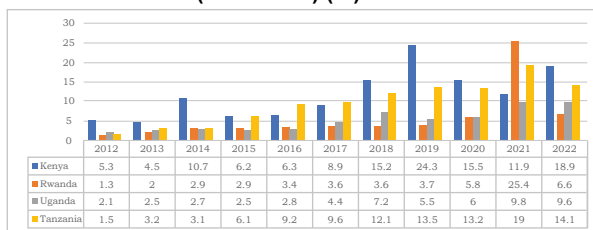


Source: World Health Organisation (WHO)

- b. The impact of this is demonstrated by the surge in the government revenues spent on external debt repayments in all the four countries during the same period (Figure 3) amidst an ongoing trend of declining revenues in Africa.

- c. In 2021, during the COVID-19 pandemic, all the study countries spent more than 10% of their revenues on external debt repayments (Figure 3).

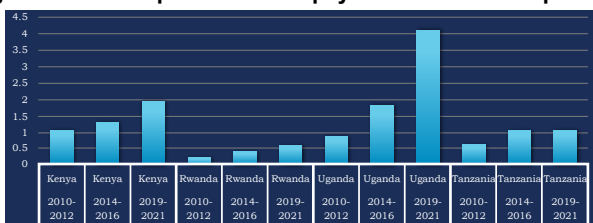
Figure 3: External debt repayments as a percentage of government revenue (2012-2023) (%)



Source: Debt Justice Debt Data Portal

- d. The ratio of interest payments to health expenditure of the study countries increased over the years (Figure 4). A rise is especially noted between 2019 and 2021 when the COVID-19 pandemic associated effects were felt the most, with Uganda spending over 4% of its health expenditure on interest payments (Figure 4).

Figure 4: Ratio of public interest payments to health expenditure



Source: UN Trade and Development World of Debt Report 2023

Private debt

- Recent financial surveys in the region have revealed that people are increasingly borrowing to meet the education and health care related expenses. Data on digital lending in Kenya and Tanzania shows that digital credit is increasingly being used for meeting health and education related expenses. While its hailed as a milestone for financial inclusion, there are human rights concerns associated with digital lending including exploitative predatory lending practices and violation of borrowers' rights to privacy.

Key recommendations of the study

- States should take the lead in the provision of public services and private education should not replace public education as it is likely to exacerbate the existing inequalities in access to education, especially for children from poor or low-income backgrounds.
- States should strengthen government delivery of health and education services through an increase public funding, at government and county or local government level. The regulation of private health providers is not sufficient in itself. It needs to be backed by sufficient public funding of the health system to ensure that the poor and vulnerable are not excluded from accessing health services.
- States should take necessary measures improve access to and the quality of primary education for all without hidden costs. This includes regulating school fees and health care charges in both public and private schools and health facilities.
- With respect to low cost schools, it is crucial to note that an increase in the number of schools available is not a milestone in itself if the human right to education is not being realized. Where private actors are permitted to operate schools, States should ensure that they meet the minimum standards and are routinely monitored and inspected.
- States should ensure that private actors have a public function ethos in their service delivery and respect human rights. This can be achieved through adoption of policies and laws which emphasize the public nature of these services and the need to adopt a human-rights based approach to service delivery.
- States should strengthen the regulation of private actors in health and education. Particularly, there is need to adopt monitoring and evaluation frameworks to assess the performance of private health and education service providers.
- States should adopt a human rights approach to contracting and implementing PPPs. This will entail conducting a cost-benefit analysis of funding private investments over public investment in health and education sectors. They should put in place substantive, procedural and operational requirements with respect to service delivery by private actors in health including under PPP arrangements. It should be a requirement for the State and private investors to take into account human rights considerations in the structure and implementation of PPP projects in the health and education sectors.

THE HUMAN RIGHTS IMPACT OF COMMERCIALISATION OF PUBLIC SERVICES IN EAST AFRICA

Public debt as an effect of commercialisation of public services

- All four countries permit the governments to make financial contributions to PPP projects and offer a myriad of policy incentives such as waivers of fees, tax incentives, guarantees and subsidies.
- The domestic PPP laws of three of the study countries (Kenya, Uganda and Tanzania) indicate that the risks of PPPs are to be borne primarily by the private sector. However, there is evidence to contrary showing that these governments are taking on far more financial risks than the private sector.
- Under the legal and policy framework on PPPs of the study countries, there is no requirement for private investors to take into account human rights considerations in implementation of PPP projects in public service delivery.
- The contingent liabilities associated with such PPP projects in the study countries are often not disclosed to the public nor calculated in the government's overall debt burden. As of 2023, according to the World Bank Debt Reporting data, only Rwanda reports specific information on its fiscal risk exposure from PPP projects under its contingent liabilities indicating project values.

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