



The Global Initiative
for Economic, Social and Cultural Rights



INITIATIVE FOR SOCIAL AND ECONOMIC RIGHTS

**Alternative Report Submitted by the Initiative for Social and Economic Rights
and the Global Initiative for Social and Economic Rights**

With the support of the Privatisation in Education Research Initiative, the Right to Education Project, Education International, the Global Campaign for Education, and the Girls Education Movement Uganda Chapter

**Presented to the African Commission on Human and Peoples' Rights, 56th
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KEY ISSUES ADDRESSED IN THE REPORT

This report demonstrates that:

- Parents are often forced to resort to private schools because the Ugandan public education system is largely failing, while private schools have common perceptions of better quality;
- Despite this, and although privatisation in education is growing, government financing for public education is decreasing. This is contrary to international standards that require that privatisation should only supplement public education;
- The State party is gradually releasing itself from its obligation to provide quality public education for all, as it is increasingly relying on private actors to provide education;
- The fees attached to privately provided education are bound to result in discrimination by keeping more children out of school, particularly those from low-income households and especially girls;
- The growing private sector in education has not been matched by appropriate regulatory, supervision and monitoring frameworks, resulting in many concerning issues in private schools.

I. Introduction

1. Uganda ratified the African Charter on Human and Peoples' Rights ("the African Charter") on 10 May, 1986. The State submitted its Fifth Periodic Report ("State Report") on the implementation of the African Charter on September 25th, 2013, covering the years 2010 to 2012. The African Commission on Human and Peoples' Rights ("African Commission") will consider Uganda's report during its 56th ordinary session, whose date needs to be confirmed.
2. This parallel report has been compiled by the following non-governmental organisations ahead of the consideration of Uganda's 5th Periodic report:

The Initiative for Social and Economic Rights (ISER) is a registered national non-governmental organisation (NGO) in Uganda founded to ensure the full recognition, accountability and realisation of social and economic rights primarily in Uganda, but also within the East African region.

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. The vision of the GI-ESCR is of a world where economic, social and cultural rights are fully respected, protected and fulfilled and on equal footing with civil and political rights, so that all people are able to live in dignity.

3. It has also received the support from the Girls Education Movement Uganda Chapter (GEM-U),¹ the Forum for Education NGO's in Uganda,² the Privatisation in Education Research Initiative (PERI),³ the Right to Education Project (RTE),⁴ Education International (EI),⁵ the Global Campaign for Education (GCE),⁶ and the Africa Network Campaign for Education for All (ANCEFA).⁷

II. Privatisation in Education in Uganda

4. 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.
5. Since then, the national government has actively supported the establishment of private schools. The State report indicates 'Support for the establishment of private schools' as one of the three measures to aid enrolment and retention of pupils in school.⁸ This support has partly been through the enactment of an enabling law and institutional restructuring to cater for the private sector. Government also supported the establishment of private schools through the provisions of tax exemptions on profits made by private education providers under the *Income Tax Act*⁹. This might change, as a proposal for taxation of private school income was introduced in the 2014/2015 budget, but the proposal is still highly debated¹⁰ – which demonstrates the importance of the issue, and that it is a critical moment to bring a human rights perspective on the topic.
6. Accordingly, 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'.¹¹

¹ <https://www.facebook.com/GirlsEducationMovementUganadChaptergemu>

² <http://fenu.or.ug/>

³ <http://www.periglobal.org/>

⁴ <http://www.right-to-education.org/>

⁵ <http://www.ei-ie.org/>

⁶ <http://www.campaignforeducation.org/>

⁷ <http://www.ancefa.org/>

⁸ 5th 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 (22nd October – 5th November, 2013) p. 23.

⁹ See Income Tax Act, 1997, Cap. 340, section 19 read together with the Second Schedule.

¹⁰ This issue has been the subject of national debate as indicated in various media reports. See for example Nangonzi N and Mwesigwa A., School Owners Must Pay Tax – Finance Insists, in the observer of 29, June 2014 available at http://www.observer.ug/index.php?option=com_content&view=article&id=32489:-school-owners-must-pay-tax-finance-insists&catid=85:education, and Ssenkabirwa A, & Tajuba P, Schools to Raise Fees Over New Tax, in the Daily Monitor of 19, June 2014, Available at <http://www.monitor.co.ug/News/National/School-owners-decry-tax/-/688334/2353396/-x5914n/-/index.html>

¹¹ Section 1(e) of the *Education (Pre-Primary, Primary and Post –Primary) Act of 2008*.

Section 6 of the Act lists the categories of recognised education institutions and includes profit and non-profit making private institutions, while Part VII has provisions relating to private schools.

7. The Ugandan private educational sector is diverse and comprised of individual investors, community groups, civil society organisations, international NGOs and faith based organizations, running for-profit and not-for profit private schools. For-profit private schools include high-fee and medium-fee schools that are purely financed from private sources, and 'low-fee' private schools. Low fee private schools are either fully financed from private sources, or have entered into Public-Private-Partnerships (PPPs) with the Government and therefore receive public funding for government-sponsored students. This report is largely focused on 'low-fee', for-profit, and privately owned and managed schools at primary and lower secondary levels, whose growth is the most concerning for the enjoyment of human rights.
8. The Private Schools and Institutions department was inaugurated in 2008 within the Ministry of Education and Sports to support the growing private investment following the liberalisation that opened the education sector to private investors.¹² **Currently, 27% of schools at primary level and 66% of schools at secondary level are private.**¹³ As of 2013, the private school enrolment as a percentage of total enrolment was 16.2% and 51.0% at primary and secondary levels respectively.¹⁴

Percentages of private to total enrolment in primary and secondary schools in Uganda 2000-2013 ¹⁵		
YEAR	Percentage of private enrolment at primary level	Percentage of private enrolment at secondary level
2003	10.21%	50.80%
2004	8.92%	46.57%
2005	8.33%	43.98%
2006	9.3%	39.61%
2007	10.1%	41%
2008	14%	52.8%
2009	13.4%	54%
2010	14.4%	52.2%
2011	13.1%	46.7%
2012	15%	47.4%
2013	16.2%	51.0%

¹² Interview with official from Ministry of Education and Sports, conducted on 1/09/2014.

¹³ Per Ministry of Education and Sports Department of Private Schools and Institutions on <http://www.education.go.ug/data/smenu/50/Private%20Schools%20and%20Institutions.htm> accessed 28 August, 2014.

¹⁴ Ministry of Education and Sports Sector Fact Sheet 2002 – 2012.

¹⁵ Source: Education and Sports Sector Fact Sheets 2000 – 2012, 2002 -2013.

9. While international human rights law recognises the freedom to establish private educational institutions¹⁶, private education should not be developed to the detriment of human rights (see part III below). Privatisation in education is a growing global phenomenon threatening the right to education in many countries.¹⁷ Generally, privatisation affects in particular vulnerable groups, such as girls, as shown in a recent submission made to the Committee on the Elimination of Women Against All Forms of Discriminations.¹⁸ An increasing body of research is examining the impact of these developments on human rights and social justice.¹⁹ In June 2014, thirteen organisations – including some of the organisations involved in writing this report – met for three days in Geneva to discuss these issues. **On this occasion the Special UN Rapporteur on the right to education Mr. Singh, reemphasised that according to human rights standards, private education should only supplement that of the State, which should remain the primary provider of education services.**²⁰
10. Using this human rights lens, there are serious concerns regarding the growth of privatisation in education and its impact on the right to education in Uganda especially for the poor and marginalised groups, as well as the State's dwindling commitment to treating education as a public good that must be accessible to all individuals. Rapid growth of the private sector amidst declining state investment in public education, inadequacies in the public education system that are forcing parents to enrol children in private schools, the growing 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 facilitates the negative consequences of privatisation, are all issues that create serious threat for the enjoyment of human rights, and in particular the right to education.
11. **Poor quality in the public education system, especially at the primary level and resulting from low government investment in education, is increasingly forcing parents to resort to private schools even where they have very limited income.** Whereas, private education should constitute an alternative choice, which parents should be fully free to not use. Uganda introduced the Universal Primary Education (UPE) scheme in 1997.²¹ The scheme was hailed for promoting the right to education in the country and has indeed registered some successes over the years – including an increase in the education enrolment rates countrywide, and improvement in the number of girls and children from poor families acquiring education. However, the increase in enrolment that came with the scheme also increased demands on Government resources for learning materials, teachers, and infrastructure that presented serious challenges to the educational system. What resulted was

¹⁶ See article 11 (4) of the African Charter on the Rights and Welfare of the Child (ACRWC), and article 13 (3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

¹⁷ See generally <http://www.periglobal.org/>

¹⁸ See <http://www.right-to-education.org/news/report-highlights-how-privatisation-education-negatively-impacts-girls-many-parts-world>

¹⁹ See generally the work engaged by a number of leading organizations working in the field of education summarised on <http://www.right-to-education.org/issue-page/privatisation-education>

²⁰ See the summary of the event on <http://globalinitiative-escr.org/wp-content/uploads/2014/07/GI-ESCR-Summary-of-Privatisation-in-Education-events-Geneva-June-2014-FINAL.pdf>

²¹ F.W.Juuko and C. Kabonesa "Universal Primary Education (UPE) in Contemporary Uganda: Right or Privilege? Human Rights and Peace Centre Working Paper No.8 (2007).

congestion, inadequate school and classroom infrastructure, facilities and materials that led to poor quality education and low pupil achievement. The poor quality public education in Uganda has been documented in several studies. For example by UWEZO²² (2014), and the Ministry of Education and Sports, together with the Stromme Foundation, Save the Children, UNICEF, and UNHCR²³ which show that there are low levels of literacy and numeracy among Ugandan children attending public schools.

12. According to a survey conducted by the ISER on privatisation in education in Uganda in August 2014, all the parents with children in private primary schools indicate that they were forced to take that option because of the various inadequacies in the public education system²⁴, or absence of a public school in their area. **Private education is thus often not a choice but the only acceptable option for parents.**
13. A recent interagency report done with the Ministry of Education and Sports attributed the inadequacies in public education to low government investment in education.²⁵ Trends in public financing of the education sector show that while spending on education has increased in absolute figures from UShs. 968 billion in 2003/4-2010/11, to UShs. 1.283 billion in 2013-2014, it has decreased as a share of GDP to reach 3.3% (against 4.2% in 2003/04).²⁶ This figure is far below the internationally accepted standard of 6%, which was for instance reiterated by States and international stakeholders in the recent UNESCO-led Muscat Agreement.²⁷ In addition, the share of the Education Sector Budget as a proportion of the national budget has continued to decline despite an increase in demand for education services as indicated in the table below. **This has continued to critically impact on the implementation of education policies, and indirectly facilitates a disproportionate growth of the private sector in education as more parents turn to private schools hoping for better services. The graph below shows this correlation with respect to primary education.**

²² Uwezo, Are Our Children Learning? Literacy and Numeracy Across East Africa, 2013.

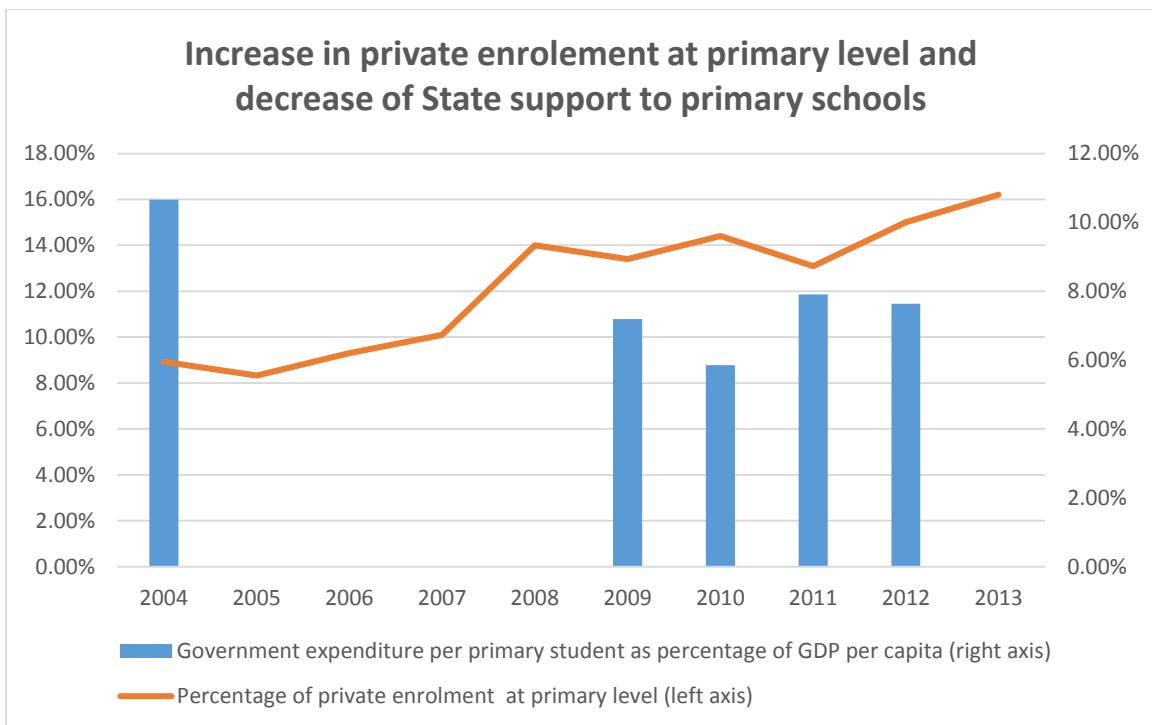
²³ Ministry of Education and Sports, in collaboration with Unicef, Eriks, Save the children, UNHCR and Stromme Foundation, 'Out of School Children Study in Uganda', (March 2014).

²⁴ Respondents were selected by random sampling at churches or mosques and schools, as well as the researchers' neighborhoods and comprised of parents with children in both low-fee and middle-class private schools in central Uganda. 76 out of the 100 respondents had children in private schools.

²⁵ Ministry of Education and Sports, in collaboration with Unicef, Eriks, Save the children, UNHCR and Stromme Foundation, 'Out of School Children Study in Uganda', (March 2014) p. 9.

²⁶ Analysis based on Ministry of Education and Sports Ministerial Policy Statements and Budget Framework Papers.

²⁷ *Muscat Agreement*, May 2014, available on <http://www.uis.unesco.org/Education/Documents/muscat-agreement-2014.pdf>.



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14. In light of the failure of the public education system, the idea of delivering education through 'low-fee' private schools is fast gaining momentum, particularly at the secondary school level. 'Low-fee' private schools are independent, for-profit private schools that target low-income households and that claim to offer a quality education for fees affordable to most. However, this dynamic supporting private school is the direct consequence of the government failure – and whether this is a deliberate choice is open to questions. For instance, 'low-fee' private schools are being used to implement the Government Universal Secondary Education (USE) scheme.²⁹

15. The Universal Secondary Education scheme was introduced in November 2005.³⁰ The scheme started in 2006, and is implemented through government aided³¹ schools, and with private schools under Public Private Partnerships (PPPs). The justification for engaging private schools in the USE programme was that there were limited places and facilities in government secondary schools and

²⁸ Source: government expenditure, UNESCO Institute for Statistics, October 2014; private enrolment, Education and Sports Sector Fact Sheets 2000 – 2012, 2002 -2013.

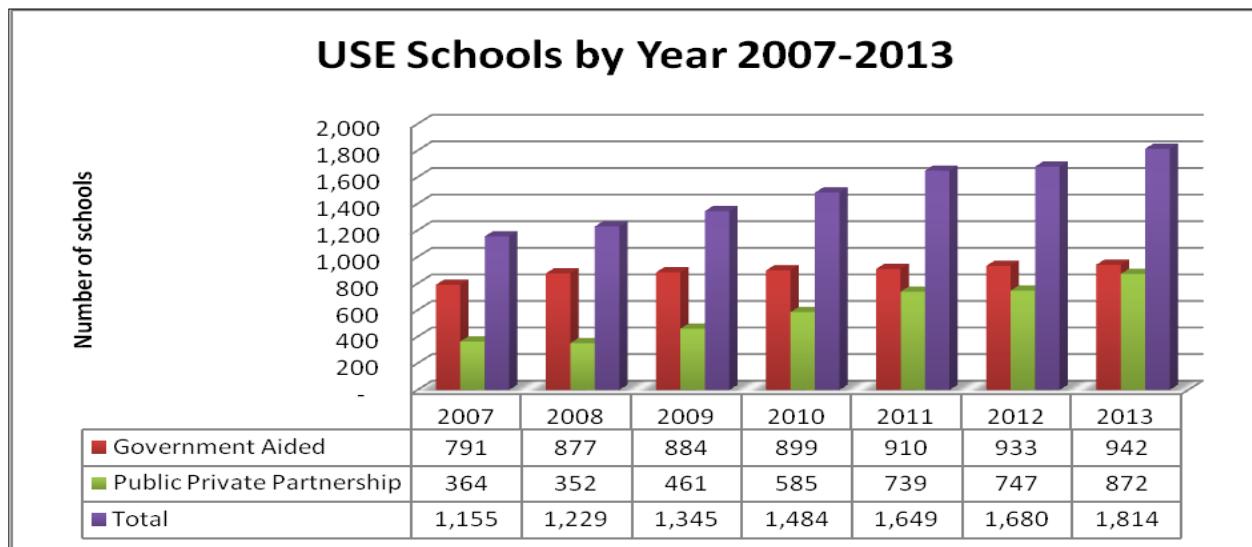
²⁹ Ministry of Education and Sports Presentation, 'An Appraisal of the Possible Implications of the Policy Reversal on Public Private Partnership for USE/UPOLET', July 2014.

³⁰ Ministry of Education and Sports Policy Guidelines for Public – Private Partnership in the Implementation of Universal Post Primary Education and Training, November 2009.

³¹ Government-aided under section 2 of the Education Act, 2008 refers to a school which was 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. The majority of schools at secondary level are in this category, and there are very few schools that are purely government founded and funded.

there were 314 sub-counties with no government secondary school.³² Out of the 1820 schools implementing the USE scheme, 943 (52%) are government aided, while 852 (48%) are private institutions operating under PPP arrangements.³³ Since inception of the USE program, the share of government schools has remained higher than that of private schools, but the gap has been narrowing over the years as shown in the table below. This indicates that there is less effort in investing in government schools and increased reliance on low-fee private schools to implement the government programme.

USE Schools by year 2007-2013 and ownership³⁴



16. Similarly at the beginning of the USE programme, 25% of the students were enrolled in PPP schools, but the share has increased to 45% as indicated below.

USE ENROLMENT BY SCHOOL OWNERSHIP ³⁵							
Year	2007	2008	2009	2010	2011	2012	2013
Government aided	106,582	232,170	313,653	407,953	449,585	462,878	471,726
Public Private Partnerships	54,972	84,482	137,534	192,375	239,956	291,139	335,266
Total	161,554	316,652	451,187	600,328	689,541	754,017	806,992
% PPPs share	25%	27%	30%	32%	35%	39%	42%
							45%

³² Ministry of Education and Sports Policy Guidelines for Public – Private Partnership in the Implementation of Universal Post Primary Education and Training, November 2009, page 2.

³³ Ministry of Education and Sports USE - UPOLET Head Count Database as at 21st May, 2014.

³⁴ Source: Ministry of Education and Sports USE -UPOLET Headcount, May 2014

³⁵ Source: Ministry of Education and Sports USE -UPOLET Headcount, May 2014

17. Yet, stakeholders have raised concerns about the quality of education and value for money in schools under PPPs. In December 2013, the President of Uganda complained about what he called '*squandering of Government money*' with regards to 53 billion Ugandan Shillings spent to support private schools under PPPs. He argued that this money could be saved to build secondary schools in the 243 remaining sub-counties without a Government secondary school in about 3 years at a rate of 88 schools per annum. He therefore proposed a class-by-class phase out of schools under PPPs.³⁶

18. In response to the president's concern, the administration is proposing, among other things, that instead of relying on private for-profit schools to implement the USE programme, the Government should encourage private not-for-profit schools to take over the PPP arrangement as a policy alternative. However, ISER's inquiries about the private not-for-profit schools in Uganda revealed that they also charge some fees that are not affordable to the poorest families, as exemplified in the case below.

Promoting Equality in African (PEAS) Schools in Uganda – towards a new discrimination system?

PEAS is a UK based charity/social enterprise that has operated in Uganda since 2000, and signed a Memorandum of Understanding with the Government in 2010, entering into a secondary education public-private partnership. Under the agreement, PEAS receives a per-pupil per term capitation grant enabling them to eliminate tuition fees for eligible students. However, students in the different PEAS schools pay other fees ranging from USHs. 80.000 to 250.000 (approx. \$35 to \$100) per school term to cater for expenses like lunch or boarding fees. Considering that, according to the Uganda Bureau of Statistics 2012 Statistical Abstract³⁷, nearly 7.5 million Ugandans living in 1.2 million households were considered poor in 2009/10, additional fees charged by schools such as PEAS would in effect exclude a significant number of children from very poor households, who are unable to afford these fees. According to the Uganda Bureau of Statistics, as of 2010, 12.6% of urban wage earners earned less than Ushs 100,000 (Approx. \$40) per month and were categorised as working poor because their earnings in most cases are not able to sustain them and their families.³⁸ To date, the PEAS project runs 24 schools in Uganda, and plans to open more secondary schools. While the project is seen to be increasing access to secondary education in the country, it may create a negative impact as it proposed a memorandum of understanding with the Government whereby PEAS schools would be given a capitation grant per pupil of approximately Ushs. 211,000 (approx. \$85)³⁹, which is much higher than what other PPP schools receive, of about Ushs. 47,000 (approx. \$19). Such a move could result in the creation of discrimination whereby students going to PEAS schools will have better resources than their counterparts in other secondary PPPs schools

³⁶ Ministry of Education and Sports Presentation, An Appraisal of the Possible Implications of the Policy Reversal on Public Private Partnership for USE/UPOLET, July 2014.

³⁷ The statistical abstract is an annual publication which provides the statistical summary on various socio-economic indicators for Uganda

³⁸ Uganda Bureau of Statistics *The Urban Labour Force Survey, 2009 Report* (October 2010) p. 38.

³⁹ Proposed MOU in Relation to a Public Private Partnership to Facilitate the Management of PEAS-Built Secondary Schools between Ministry of Education and Sports in Uganda and PEAS Uganda Ltd, 2013.

receiving Government grants. If implemented, the proposal would also result in the further diversion of public funding that could be used for the establishment of free secondary Government schools.

19. In addition, expanding privatisation at primary and secondary levels in education in Uganda is very unlikely to ensure the enrolment of out of school children and may increase school dropout rates because of tuition and other fees. A recent study of out of school children in Uganda run by the Government pointed to financial constraints as the most prominent factor explaining both non-enrolment and high drop-out rates. Approximately 81% of the households sampled stated that a lack of money was the reason why their children dropped out of school, while 58% claimed financial constraints was the reason their children never enrolled in school in the first place.⁴⁰
20. Yet, private schools often charge fees that are above the resources of most Ugandans, and even low-fee private schools, ask for non-tuition fees in the form of school development fees, scholastic material, school uniforms and examination fees as a way of making up for the low tuition paid by the students. As a result, the total cost of these additional fees may double the amount payable (see box below).

Average school requirements in private primary schools

On average, per student, schools require scholastic materials (including books, pens, pencils, ream of papers, and a geometry set) estimated to cost **58,400** USHs (approx. \$24) per term; School uniform (including two pairs of school uniform, sportswear T-shirt and sweater) estimated to cost **70,000** USHs (approx. \$28); and other fees that include a school development fee (paid by all new entrants), examination fee, a housing fee and lunch fee (optional) estimated to cost **125,000** USHs (approx. \$50) per year. Students, who opt to join schools with boarding facilities, will on top of these requirements be required to bring other dormitory equipment.

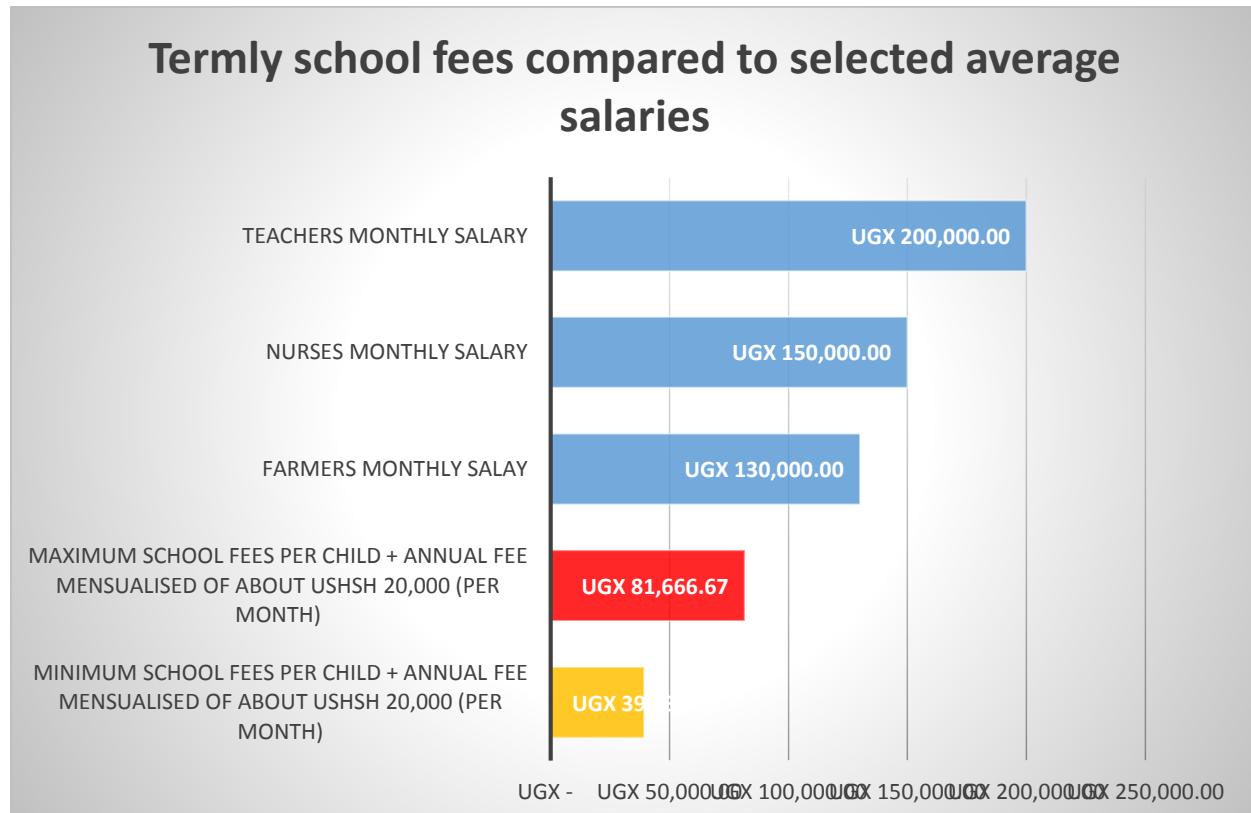
This would be in addition to the average tuition fees. Schools sampled in central Uganda had the following rates for day (non-boarding) and boarding schooling per term:

Day	Boarding
1. 58,000 (Approx. \$23.2)	156,000 (Approx. \$62.4)
2. 120,000 (Approx. \$48)	420,000 (Approx. \$168)
3. 152,000 (Approx. \$60.8)	260,000 (Approx. \$104)
4. 160,000 (Approx. \$64)	300,000 (Approx. \$120)
5. 185,000 (Approx. \$74)	340,000 (Approx. 136)

Source: Findings from ISER's right to education monitoring work

⁴⁰ Ministry of Education and Sports, in collaboration with Unicef, Eriks, Save the children, UNHCR and Stromme Foundation, 'Out of School Children Study in Uganda' (March 2014) page 9.

21. According to the 2011 Demographic health survey, 17% of the out of school children in Uganda are from the poorest wealth quartile.⁴¹ It has been found that many Ugandans with a regular income earn less than \$100 per month. For example, it has been estimated that farmers earn Ushs. 130,000 (approx. \$52) per month, policemen and nurses earn Ushs. 150,000 (approx. \$60) per month, and teachers earn less than Ushs. 200,000 (approx. \$80) per month.⁴² **Comparing these salaries to the monthly cost of low-fee private schools, it is clear that private schools, including low-fee ones, only cater for a minority of households whose income is much above the average.**



22. **Privatisation in education also has a negative impact on the education of girls.** One of the most celebrated successes of the Universal Primary Education scheme in Uganda is that it significantly increased the enrolment of girls in school to a level of parity with boys at the primary level, and to 47% at secondary level.⁴³ This was largely attributed to the abolition of fees that came with the UPE scheme. Uganda's State report acknowledges that before 1997, many families were inclined to enrol boys at the expense of girls, partially due to cultural stereotypes that favoured allocating family's

⁴¹ See www.ubos.org/onlinefiles/uploads/ubos/UDHS/UDHS2011.pdf for the full report.

⁴² See Black Monday Newsletter, Issue No. 6 of 2013, p.6, available at http://www.actionaid.org/sites/files/actionaid/black_monday_may_issue_final.pdf.

⁴³ See for example the Uganda Country Report of the Committee on the Elimination of Discrimination Against Women, 2009, page 37.

(meagre) resources to boys.⁴⁴ Therefore it is logical that an attempt to increase privatisation would result in a reversal of the gains made in the enrolment of girls. Indeed research conducted by ISER has indicated that when pressed to make a choice, parents will more likely choose to pay school fees for a boy rather than a girl.⁴⁵ According to the Uganda National Household Survey, 2012/13, there are 10% of girls between 6-12 years who are out of school because education is considered to be too expensive, compared to 7% of boys who are out of school for the same reasons.⁴⁶ So an increase of the effective schools fees due to privatisation in education is likely to mostly affect girls.

23. **The growing privatisation in education has not been matched with an appropriate regulatory, supervision and monitoring framework.** According to an official from the Ministry of Education, the private sector has grown much faster than anticipated and is driven by market forces, and it is only now that government is trying to catch up with this expansion of the private sector. Currently, the private sector in education is regulated by the *Education (Pre-Primary, Primary and Post-Primary) Act, 2008*. Specifically, Part VII of the Act provides for setting up and registration of private schools, but it is only recently in 2014 that the Ministry of Education issued guidelines to give effect to the Act.⁴⁷ However gaps remain in terms of quality control, and protecting families from exploitation by private schools.
24. The above is confirmed by the 2012/2013 Education and Sports Sector Annual Report (ESSAPR) which indicates that there is no clear policy on quality assessment at all education levels, and there are inadequate school inspection services in the country.⁴⁸ The Private Schools and Institutions department is charged with the overall coordination, regulation, policy formulation and guidance on all matters regarding private schools, but it faces serious challenges in carrying out its mandate due to limited financial and human resources. For example every quarter, the department monitors not more than 50 schools making it 200 per year out of the 4000 private schools.⁴⁹ Existing policies and regulations on education have not been implemented and there is scepticism about the current government capacity to implement the recently passed regulations for private schools.⁵⁰ Indeed the weak regulation and supervision of the private sector in education has been faulted for failure to

⁴⁴ 5th 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 (22nd October – 5th November, 2013), page 4.

⁴⁵ Research conducted by ISER on Privatisation in Education in Uganda.

⁴⁶ Uganda Bureau of Statistics, Uganda National Household Survey, 2012/2013.

⁴⁷ See Ministry of Education and Sports, Guidelines for Establishment, Licensing, Registration and Classification of Private Schools/Institutions in Uganda (2014).

⁴⁸ 2012/2013 Education and Sports Sector Annual Report (ESSAPR)

⁴⁹ Information from Ministry of Education and Sports

⁵⁰ Al-Mahaddi Senkabirwa 'Can Government Enforce New Private School Rules' Article in the *Daily Monitor Newspaper*, Wednesday 3rd September, 2014.

ensure quality, affordable services, and accountability, with the resultant creation of categories of schools including those for the poor, middle class and the very rich.⁵¹

25. Accordingly, contrary to assertions that the introduction of private actors in the education sector would result in improvement in the quality of education, private institutions at both primary and secondary levels have also been found to be contributing to the country's poor quality education. Although reports indicate that pupils in private schools are performing better than those in government schools,⁵² questions remain about the factors that drive the better performance of private schools. Even within the private sphere, there are disparities in quality between rural and urban private schools, as well as between high-fee and low-fee private schools.⁵³
26. There is low staffing in many private schools, while some of them do not have permanent staff or employ unqualified teachers, which affects the quality of education.⁵⁴ According to the 2013 World Bank Service Delivery Indicator report, teachers in private schools did not consistently outperform their counterparts in the public sector on 'measures of ability'. Indeed none of the differences in the scores between these two groups was statistically significant, be it on minimum teacher knowledge, or adherence to guidelines.⁵⁵ Therefore, as a result, in Uganda it largely works in a way that the more money parents have, the better education their children will receive, with the poorest children going to either failing public schools in marginalised areas or to poor quality private schools.

III. The Right to Education under Regional and International Human Rights Law as it Relates to Privatisation in Education

27. Apart from the African Charter, Uganda is also a State Party to the International Covenant on Economic, social and Cultural Rights ("ICESCR"),⁵⁶ the Convention on the Rights of the Child (CRC),⁵⁷ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),⁵⁸ and the

⁵¹ Mubatsi 'Is Uganda Losing the Quality of Education Battle to Businessmen/Women?' Published in *Learning Our Lesson on Africa*, Uganda (June 12,2012).

⁵² National Assessment of Progress in Education, 'The Achievement of Primary School Pupils in Numeracy, Literacy in English, and Local Languages' Uganda National Examinations Board, 2010, concluded that the pupils in private schools performed better than their counterparts in government schools, with a mean score of 63.8% and 49.5% respectively. This trend has also been severally made by Uwezo, for example in their 2012 report, where it was indicated that the difference is mostly seen in the formative years of primary education.

⁵³ Uwezo, Are Our Children Learning? Literacy and Numeracy Across East Africa, 2013.

⁵⁴ Interview with a senior officer within the Ministry of Education and Sports (conducted on 1/9/2014).

⁵⁵ World Bank Service Deliver Indicator Report- Education and Health Services in Uganda: Data for Results and Accountability (November, 2013).

⁵⁶ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (Uganda acceded to and ratified the ICESCR on January 21, 1987. The country is not a State Party to the Optional Protocol to the ICESCR).

⁵⁷ Ratified on 17 August 1990.

⁵⁸ Ratified on 22 July 1985.

African Charter on the Rights and Welfare of the Child (ACRWC),⁵⁹ among other treaties that provide for the right to education.

28. Article 60 of the African Charter encourages the African Commission on Human and People's Rights to "draw inspiration from international law on human and peoples' rights...as well as from the provisions of various instruments adopted within the specialized agencies of the United Nations of which the parties to the present Charter are members." Thus, the abovementioned international instruments are relevant and will be discussed below insofar as they help describe Uganda's obligations under the African Charter.
29. Furthermore, Uganda's domestic law also guarantees the right to education and crosscutting rights like equality and non-discrimination.⁶⁰ The Constitution of the Republic of Uganda further affirms that the country's foreign policy shall be based on the principles of respect for international law and treaty obligations, and also reaffirms that Uganda shall continue to be a party to all agreements, treaties and conventions it was a party to prior to the coming into force of the 1995 Constitution.⁶¹ Therefore, violations of the rights guaranteed under regional and international instruments that Uganda is a party to are violations of Uganda's own domestic law.
30. Article 17 of the African Charter provides that every individual shall have the right to education. The UN Committee on Economic, Social and Cultural Rights (CESCR) has stated that education is a fundamental right that affects the growth, development and welfare of human beings, and as a human right, education is the primary vehicle by which economically and socially marginalised children and adults can lift themselves out of poverty and obtain the means to participate fully in their community. It has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, among other roles.⁶²
31. The African Commission has also stated that no child should be denied the right to education because of school fees or related costs of education. Special measures may be required to ensure that children belonging to disadvantaged or vulnerable groups receive free primary education.⁶³ To achieve this objective, States are bound to progressively increase the amount of national resources allocated to education.⁶⁴

⁵⁹ Ratified on 17 August 1994.

⁶⁰ Article 30 of the Constitution of Uganda, 1995 guarantees the right to education, and article 21 guarantees the right to equality and freedom from discrimination

⁶¹ See Objective xxviii and article 287 of the Constitution of the Republic of Uganda respectively.

⁶² UN CESCR, *General Comment 13: The right to education (Art. 13 of the ICESCR)* and UN CRC General Comment 1: the aims of education. See also, for example: UNESCO, *The Right to Education* (2008) at <http://unesdoc.unesco.org/images/0016/001612/161200e.pdf> (accessed on 8 September 2014).

⁶³ The State Party Reporting guidelines for Economic, Social and Cultural Rights under the African Charter on Human and Peoples' Rights, Part II, para. 48(a). See also: Declaration on the African Plan of Action, with reference to the girl child.

⁶⁴ Decision on the Progress Report on the implementation of the programme of action of the decade of Education in Africa CM/Dec. 533 (LXXII) Rev 1 2000.

32. In relation to primary education, the CESCR in General Comment 13 says that the State's obligation to fulfil the right to education amounts to an obligation to *directly provide* education in most circumstances and suggests that its obligations in relation to primary education may be of a higher order and entails more immediate obligations.⁶⁵ General Comment 13 states:

First, it is clear that article 13 regards States as having principal responsibility for the direct provision of education in most circumstances; States parties recognize, for example, that the "development of a system of schools at all levels shall be actively pursued" (art. 13 (2) (e)).⁶⁶

33. While the CRC permits (as does the ICESCR⁶⁷) the provision of education (to unspecified levels) by non-State providers, as provided in Article 29(2), the liberty to establish educational institutions is construed negatively, as something that should not be affected by the fulfilment of the right to education. The responsibility is thus on the State to fulfil the right to education. The UNESCO Convention against Discrimination in Education takes a similar approach in its Article 2 which provides that the establishment or maintenance of private educational institutions does not constitute discrimination when it is to provide educational facilities *in addition to those* provided by the public authorities.⁶⁸ It should also be noted that in its indicators on the right to education, the OHCHR suggests measuring child enrolments in *public* education institutions as an indicator of compliance with human rights standards.⁶⁹

34. A former Special Rapporteur on the Right to Education, the late Katarina Tomaševski, emphasised that:

[i]nternational human rights law defines free and compulsory education as a government obligation, thus implying that it should be a free public service, while permitting private education for those parents who desire and can afford it, bearing in mind most private schools charge for their services.⁷⁰

35. Thus, it is permissible and even required, to allow the development of private education, but the State retains the positive obligation to fulfil the right to education, and the obligation to provide primary education for all is an immediate duty of States.⁷¹

36. Regarding non-discrimination, Article 2 of the African Charter mandates that “[every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed [in the African Charter] without distinction of any kind such as race, ethnic group, color, sex, language, religion,

⁶⁵ CESCR, General Comment 13, paragraphs 48, 51 and 52.

⁶⁶ *Emphasis added.* CESCR, General Comment 13, paragraph 48.

⁶⁷ See also ICESCR, Article 13(4) and CESCR General Comment 13, paragraph 59.

⁶⁸ UNESCO Convention against Discrimination in Education, 1960. It can also be noted that in Africa, the African Commission on Human and Peoples' Right also considers the African Charter on Human and People's Rights to requires States 'to respect the liberty of parents and guardians to establish and choose for their children schools, *other than those established by the public authorities*', clearly emphasizing the primacy of public schools.⁶⁸

⁶⁹ OHCHR, Human Rights Indicators: A Guide to Measurement and Implementation (2012).

⁷⁰ Katarina Tomaševski, *Manual on rights-based education*, UNESCO (2004), p. 55.

⁷¹ CESCR, General Comment 13, para. 51.

political or any other opinion, national and social origin, fortune, birth or other status." The African Commission described the rights enshrined in Articles 2 and 3 of the African Charter as essential and central, "provid[ing] the foundation for the enjoyment of all human rights."⁷² The Commission underscored their character as threshold rights in *Purohit and Moore v. The Gambia*:

*"Articles 2 and 3 of the African Charter basically form the anti-discrimination and equal protection provisions... Article 2 lays down a principle that is essential to the spirit of the African Charter and is therefore necessary in eradicating discrimination in all its guises, while Article 3 is important because it guarantees fair and just treatment of individuals within a legal system... These provisions are non-derogable and therefore must be respected in all circumstances in order for anyone to enjoy all the other rights provided for under the African Charter."*⁷³

37. Aside from the African Commission, international human rights bodies have underscored the importance of non-discrimination. It is an immediate and crosscutting obligation in the ICESCR, which requires States parties to guarantee non-discrimination in the exercise of each of the ESCRs.⁷⁴
38. CESCR General Comment 20 specifies that any kind of discrimination, whether direct or indirect, formal or substantive is prohibited.⁷⁵ The States Parties' obligations with respect to non-discrimination are immediate (as opposed to being subject to progressive realization) and require States to pay particular attention to vulnerable or marginalized groups. Non-discrimination also applies to the distribution of government funds and resources for education.
39. According to the CESCR, the State has an obligation to ensure that privatized education '*does not lead to extreme disparities of educational opportunity for some groups in society*'.⁷⁶ Similarly, the Committee on the Rights of the Child has recently noted that States must ensure that the provision of essential services by private actors '*does not threaten children's access to services on the basis of discriminatory criteria*'.⁷⁷
40. These obligations entail States regulating private providers, monitoring and evaluating their compliance and educational outcomes and enforcing compliance where necessary. The CRC indicated that States have '*an obligation to set standards in conformity with the Convention and closely monitor them*'.⁷⁸ Failure to do so amounts to a violation of the Convention⁷⁹ and the privatisation of State services has repeatedly been struck down or limited by courts.⁸⁰

⁷² Zimbabwe Human Rights NGO Forum v. Zimbabwe, Communication 245/02, ¶169, May 15, 2006.

⁷³ *Purohit and Moore v. The Gambia*, Communication 241/01, ¶49, May 29, 2003.

⁷⁴ See Article 2(2).

⁷⁵ CESCR, General Comment 20.

⁷⁶ CESCR, General Comment 13, para. 30.

⁷⁷ CRC General Comment 16, paragraph 34.

⁷⁸ CRC General Comment 16, paragraph 34.

⁷⁹ Ibid., CESCR General Comment 13, paragraph 59 which states that failure to maintain a transparent and effective system to monitor conformity with ICESCR Article 13(1) is a violation of Article 13.

⁸⁰ *Argentina, Aquino, Isacio vs. Cargo Servicios Industriales S. A. s/accidentes ley 9688* (2004); South Africa, *Nkonkobe Municipality v Water Services South Africa (PTY) Ltd & Others* (2001); Argentina, *Defensora del Pueblo de la Ciudad de Buenos Aires y otro c. Instituto Nacional de Servicios Sociales para Jubilados y Pensionados* (1999).

41. Finally, States have an obligation to ensure that the maximum available resources are devoted to achieving education outcomes, and thus have the burden of demonstrating that any State resources diverted to private providers of education cannot be better utilized by allocating them to the direct provision of public education.
42. Based on the legal analysis above, we believe that, according to international law, while it should be allowed, private education must:
 1. Not lead to the creation of extreme disparities or discrimination of any sort, or be a factor of segregation or division in societies in general and education in particular;
 2. Provide for an true alternative choice to quality public education, and not replace the public system, as the State retains the responsibility to offer quality public education for all;
 3. Not lead to a marketization of education which would entail that education is no longer directed to the full development of a child's personality, talents and mental and physical abilities to their fullest, but instead only to achieving measurable outcomes, which would be contrary to the aims of education recognised in human rights law;
 4. Be adequately regulated, both in law and in practice, with adequate inspection staffing, effective accountability mechanisms, and without corruption; and
 5. Be subject to democratic scrutiny, and open to the human rights principles of transparency and participation.

Accordingly, the facts presented above in part II above are in violation of these standards.

IV. Questions to ask the State party

43. We suggest that the African Commission could raise the following questions with the State Party in order to gain clarification on the privatisation in education and its impact in Uganda:
 - a) Has the State Party assessed whether its policy of privatizing education in Uganda is the most effective in terms of realizing the right to education under the Charter and in terms of use of available resources, in particular in order to address discrimination and how has it done so?
 - b) What steps are being taken to ensure increment of investment towards public primary education to match the increasing enrolment in public schools, and ensure quality to avoid forcing parents to resort to private schools?
 - c) How does the state supervise, monitor and evaluate the implementation of private education in Uganda to ensure that it complies with the African Charter and improve accountability within the private sector? Is the Ministry of Education and Sports well facilitated to carry out this function?
 - d) As a number of international donors are supporting the development of private schools, has the State Party engaged with these actors to:
 - i. monitor and address the impact that their support to private schools has on the right to education; and

- ii. re-direct these resources towards supporting the public education system so as to fulfil the State Party's core minimum obligations under the Convention, including the obligations to not discriminate and to prioritize disadvantaged groups, in accordance with the international donors' human rights obligations

V. Recommendations to the State party

44. In light of the discussion above, we propose the following recommendations to Uganda:

- a. Put in place a plan of action for improving the quality of public education in Uganda by among other things immediately increasing financial investment in the public education sector, as and match as a minimum the international target of 6% of GDP or 20% of the budget dedicated to education.
- b. Assess the direct and indirect impacts of the implementation of the liberalisation policy under the National Education Policy and the 2008 Education Act and the development of private education in the last ten years, in the light of its obligations to ensure that private education supplements but does not supplant public education and does not foster discrimination.
- c. Regularly collect and make publically available data on private school fees and social diversity amongst the pupils attending private and public schools, so as to be able to transparently identify and understand inequalities.
- d. Take all necessary measures, to avoid any direct or indirect harmful impact of the private educational sector and to ensure that the private sector contributes to the fulfilment of the right to education for all in Uganda, and review and amend if necessary its laws and policies governing private education providers to ensure the enjoyment of the right to education without any discrimination.
- e. Review the Income tax Act (cap 340.) to ensure that private schools are taxed as any other profit-making entity in the country, in line with the current bill under discussion.
- f. Ensure it has the necessary human and regulatory capacities to ensure effective implementation of the existing regulations with regard to provision of education by private providers, and halt further development of private education until the State has developed more comprehensive regulations and human capacities to adequately monitor private schools.
- g. To review its current public-private partnership policy in the education sector, and redistribute funds to develop free quality public education as a matter of priority.

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