

# Regulating non-state education: findings from school operators

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Background paper for  
UNESCO-GSF regulation study

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**Global Schools Forum is grateful for the valuable contributions from its members for this study.**

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# Foreword

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This study, *Regulating non-state education*, is an important document that addresses the imperative need to engage with the large and growing number of non-state education providers across developing countries. The non-state sector plays a significant role educating large numbers of children, and we must work to harness the potential of these actors to support education systems to improve children's learning outcomes.

In Lagos State, Nigeria, this is a very topical discussion. It is estimated that there are over 18,000 private schools in the State and with less than 1,800 public schools, over 70% of the children in the State are educated in private schools. As Honourable Commissioner for Education, my vision is that every child can achieve their full potential. To realise this, my priority is not to focus on developing solely public or private sectors, but rather to create a system where all schools deliver quality education, regardless of the school type.

We have taken a collaborative approach to working with non-state actors to promote quality education, through regulatory guidelines and bylaws. Where schools do not meet standards, we have learned that closing them down is counterproductive; we instead work with these schools to bring them up to required level of quality. We are also setting up a department in the Ministry of Education for managing the relationship with private schools. However, challenges remain, as less than 6,000 schools have been approved over many years despite all efforts, due to staff and resource constraints.

The experience of Lagos State is hardly unique. The other case studies in the report reveal a similar pattern. In addition to some bright spots, the study reveals that several of the regulatory systems face significant challenges. They range from impracticable and unenforceable conditions for registration, to a focus on infrastructure almost to the exclusion of learning outcomes, and a lack of capacity for implementing regulations. The relationship between government and these non-state providers can also in many cases be improved. Where non-state providers are unregulated, this has led to many schools operating under the radar of government. In view of the fact that government is the custodian of the educational system of a state, with overall responsibility for the quality of education provision that each child receives, this state of affairs is not acceptable. Regulatory systems must give full oversight of education systems.

The study has identified the implications and recommendations for regulation, which include improved funding for education, setting realistic standards, expanding the present narrow focus on infrastructure to include learning outcomes, and improving transparency and equity in the management of non-state providers. Stakeholders including development partners are also encouraged to support governments' capacity to address their regulatory function through capacity-building and guidance.

This is an important study and we in Lagos State plan to study the recommendations and develop appropriate strategies to engage with our large number of non-state education providers. I hope other states similarly circumstanced will reflect on their own situation and also develop strategies to ensure that we all fulfill our obligations to all the children in our care.



**Folasade Adefisayo**  
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# Executive Summary

This study examines the experience of regulation among 20 non-state education operators serving low-income students across five countries: Colombia, Nepal, Nigeria, Pakistan, and Uganda. It provides insights into the adequacy of regulation design, implementation of regulations, and the relationships between government and operators. It also provides recommendations on the steps that governments, operators, and international actors can take to improve regulatory systems.

Given the scale of the affordable non-state sector, governments need to engage with non-state education provision to ensure the twin goals of equity and quality are met. Governments are responsible for stewarding their entire national education system to ensure that all children can receive a quality education regardless of their background. Regulation is a key tool available to governments to do this.

## KEY FINDINGS

### DESIGN OF REGULATIONS

**Current regulations do not reflect the reality of operating environments.** Across all countries studied, school operators reported a disconnect between the regulatory requirements prescribed by government and the reality of operating schools. This is visible across areas including registration requirements, fee-setting, and teacher requirements.

**This disconnect has led to some schools operating without registration.** By being outside government accountability mechanisms, the consequence is under-regulation of some non-state actors. One unregistered low-fee private school owner in Pakistan was unable to describe any regulation that required their compliance. In some cases, this means that even basic requirements related to student safety are not met.

**Regulatory frameworks have a heavy focus on inputs and infrastructure.** This was present across the countries studied and can come at the expense of focusing on learning outcomes. In Lagos state, Nigeria, the process for a low-fee private school to register involves meeting high infrastructure requirements which can be beyond the financial reach of low-fee private schools.

**There is a mixed picture of prescription versus autonomy within regulatory systems.** In a public-private partnership in Nepal, prescriptive teacher recruitment policies can restrict school practices: neither schools nor the local government are able to control teacher recruitment as this is managed by central government. However, in other areas there can be a positive balance between regulatory control and autonomy, for example through Nigerian and Colombian schools' ability to implement curricula in a way that better meets learner needs.

### IMPLEMENTATION OF REGULATIONS

**Regulations are not implemented consistently across all providers.** Regulation implementation varies across school types, with enforcement appearing to be strongest among public-private partnerships and weakest among low-fee private schools. Interviewees reported differences in implementation between government and non-state schools, with registered non-state schools being monitored more closely than their public counterparts.

**Selective enforcement of the regulations can exist as a symptom of corruption and rent-seeking.**

In Pakistan, two of the three low-fee private school interviewees described having to provide bribes to register schools, while regulation in Lagos state was described as a means of rent-seeking.

**In four out of five countries in the sample, it was reported that regulations are under-enforced due to lack of government capacity.** In Uganda, a low-fee private school owner reported there were only two education officers present to regulate 700 private schools. With accountability for adhering to regulations sometimes falling solely to operators, under-enforcement can create problems for quality assurance.

**There is a lack of clarity on regulatory requirements across most of the countries studied.** A Ugandan public-private partnership school described being unclear on their regulatory requirements on issues such as child safety. Poor communication of regulations can exacerbate this difficulty. Complex regulatory requirements also cause challenges for compliance, for example when reporting to multiple agencies. A school operator in northern Nigeria described the involvement of multiple government agencies in education, which sometimes worked with different mandates; the result was a confused reporting process.

### RELATIONSHIPS BETWEEN GOVERNMENT & OPERATORS

**Relations between governments and non-state operators vary.** Collaborative working relationships can exist between government and operators, but there also are instances of poor relations across the breadth of non-state school types, which can create strained working relationships. There are common calls among operators for collaboration with governments. As may be expected, public-private partnerships reported the most positive interactions with government. Of all interviewees, those in Colombia were most positive about their regulatory system. They reported that regulations focus on outcomes through school improvement goals, that there is clarity on reporting requirements, and that, on the whole, there is a communicative, open relationship with government.

## IMPLICATIONS OF THE STUDY

### IMPLICATIONS FOR GOVERNMENTS

Governments should ensure that:

- ✓ **Regulations are based on realistic standards that are reasonably attainable for schools**, given the level of financial and other resources available. **This should include clear minimum standards covering areas such as child safety and non-discrimination. All schools should be registered and meet these basic standards on an ongoing basis as a condition of operating.** Governments may also choose to also set out aspirational higher standards that they expect schools to work towards over time.
- ✓ **The regulatory framework actively considers the appropriate balance between prescription and autonomy.** Governments should review their regulatory frameworks to consider the level of prescription that is appropriate in each area of regulation. In some areas, such as student safety and equity (for example, ensuring non-discrimination against vulnerable and marginalised groups), strict compliance to centrally-set standards will be necessary. In other areas, this study has observed an excessive focus on input measures. Here, the performance of the education system may be enhanced by giving school leaders flexibility on how they deliver educational provision to better meet the needs of pupils.
- ✓ **Regulations include a focus on learning outcomes** including measures of quality and student learning. Governments should have a single system of standardized assessment to allow all schools, regardless of their type or governance, to be judged transparently on the extent to which they support learners to achieve educational outcomes.
- ✓ **Regulations are as clear, transparent, and unambiguous as possible** to aid compliance and to remove scope for regulations to be a cause of corruption and rent-seeking. The text of regulations (and accompanying guidance) should be rationalised, publicly available, and easily accessible in a single location.
- ✓ **Regulatory frameworks are implemented consistently across schools.** This is to ensure that learners receive a consistent standard of education whether they are schooled within the public or non-state sector. A risk-based approach to regulation can be taken to increase compliance across the education system without placing too much additional strain on regulatory systems ie, through regulating some schools more or less intensely based on risk factors.
- ✓ **Action is taken to reduce corruption in the implementation of regulation**, so that all partners – including schools, parents, and citizens – can have confidence in the integrity of the education system.
- ✓ **Where appropriate, technology is used to improve the effectiveness of the regulatory system.** Where digital maturity and infrastructure levels are sufficiently high, digital monitoring systems can allow schools to fulfil reporting requirements to improve accountability and transparency, reduce corruption, and increase efficiency in the regulatory system.
- ✓ **Non-state education providers are viewed as partners.** Regulatory interactions should not be unnecessarily antagonistic and punitive, but instead look to build effective, productive, and collaborative working relationships. Governments should have more dialogue with operators. This can be through engaging operators directly, or by engaging intermediaries such as Private School Associations as an avenue for dialogue with the low-fee private school sector.

## IMPLICATIONS FOR NON-STATE PROVIDERS OF EDUCATION

Non-state actors should ensure that:

- ✓ **Their schools comply with regulations to the fullest extent possible - even when government enforcement is lacking.** Regardless of the strength of government implementation mechanisms, non-state operators should ensure they are meeting minimum standards, especially where these relate to child safety, non-discrimination, and learning outcomes.
- ✓ **Governments are supported in developing and implementing regulatory frameworks.** Where appropriate, non-state actors should look to share their existing capabilities with government. There are examples of this already taking place, such as the Inspect & Improve programme by Promoting Equality in African Schools (PEAS) and Uganda's Directorate of Education Standards, which improved leadership and management in government schools. School associations, as representative bodies for non-state schools, can also support implementation by requiring compliance with certain criteria as a condition of membership. Similarly, their network and relationships with operators can offer an avenue for governments to communicate and enforce school standards.
- ✓ **Governments are viewed as partners.** Non-state actors should act on the desire for effective, productive, and collaborative working relationships with government, for example through increased dialogue between operators and government.



## IMPLICATIONS FOR ALL STAKEHOLDERS

All stakeholders should work to increase government capacity for developing and implementing more effective regulation:

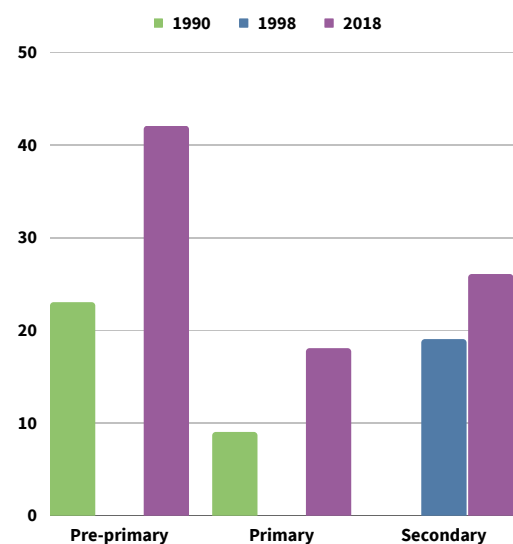
- ✓ **Governments should invest more financial and human resources in the design and implementation of regulatory systems for education.** This can include mobilizing existing capabilities among non-state operators to improve the implementation of regulations.
- ✓ **Development funders and multilateral agencies should invest in building government capacity** to design and implement better regulatory frameworks for education, through provision of new technical and financial assistance.
- ✓ **The World Bank, UNICEF, UNESCO, and the Global Partnership for Education should update and improve global guidance** available to governments on effective regulation of non-state actors – and aim for consistency across this guidance.



# Introduction

The non-state sector provides a large and, in many countries, growing share of education. According to UNESCO, the share of enrolments globally in private institutions rose between 1990 and 2018 from 23% to 42% in pre-primary education and 9% to 18% in primary education (UNESCO GEM, 2019, p.4). For secondary education, enrolment increased between 1998 and 2018 from 19% to 26% (Ibid.). Survey data shows even higher levels of enrolment in private institutions in low-income urban settings such as Nairobi (60%) and Kampala (84%) (CapPlus, 2017). Public-private partnerships (PPPs) are the norm rather than the exception, as government-aided non-state schools operate in 171 out of 204 countries (UNESCO GEM, 2021, p.34).

**Given the scale of the sector, governments need to engage with non-state education provision to ensure the twin goals of equity and quality are met.** While recognizing the role of the state in financing and providing public education, the government's role extends beyond this. They are stewards of their entire education systems – including overseeing financing and provision of services from both public and private sources – to ensure that all children can receive a quality education regardless of their background.



Global enrolments in private institutions (percentage)

Source: UNESCO, 2019

**One key tool for system stewardship is regulation.** Regulation exists as one of the instruments available to governments to achieve wider policy objectives. Regulations influence the behaviour of providers of services through measures which can range from prescriptive government-led interventions to market-led incentives and approaches. This study is particularly interested in ‘enabling regulation’, that is, regulation founded on a constructive relationship with stakeholders and focused on outcomes rather than processes. Enabling regulation aims to avoid punitive, restrictive regulatory frameworks while ensuring that operators continue to be accountable, and it draws on practice from other industries such as the nuclear sector (ONR, 2020). In education, regulation can give governments a system-wide view of all schools, set certain standards for the delivery of services, and provide information to parents on the school system.

**Existing evidence suggests that the design and implementation of regulations do not give full oversight of education systems.** While almost all countries regulate non-state schools in some form, for example through school inspections, the UNESCO Global Education Monitoring (GEM) Report on Non-state Actors found that, on a global level, “rules are often poorly designed or weakly implemented” (UNESCO GEM, 2021, p.26). In India, “what passes for regulation is a rudimentary set of rules” (Batty et al., p.96), while a focused study on Abuja, Accra, and Kampala concluded that unrealistic regulations contribute to a “patchy oversight system” of low-fee private schools (LFPS) (Härmä, 2019, p.139). Indeed, poor regulation design can have active negative implications for government oversight: where regulatory standards have been set too high in Sub-Saharan Africa, the result has been to increase the presence of unofficial – and unregulated – private provision (Baum, Cooper and Lusk-Stover, 2018).

**Insufficient capacity to implement regulations is also a key challenge.** Härmä pairs under-resourced inspectorates with unrealistic regulations as key reasons why regulatory frameworks among LFPS are “failing most children” (Härmä, 2019, p.139). An evidence review by the UK Department for International Development (DfID) found that low-income countries consistently lack capacity to regulate the private sector, while the GEM Report notes that “the paradox is that regulatory capacity is lowest where the need for it, and the potential for corruption, is highest” (Day Ashley et al., 2014; UNESCO GEM, 2021, p.26). And corruption and rent-seeking behaviour are widespread: regulations “may be selectively enforced offering opportunities for rent” (Day Ashley et al., 2014, p.2).

**There is a lack of evidence and advice on regulating non-state operators.** A GEM Background paper on public-private partnerships found that “evidence relating to the impact of regulatory measures on PPPs’ performance and, in particular, on education providers’ behavior is still scarce” (Zancajo et al., 2021, p.1). A brief review conducted by Global Schools Forum found that global education planning guidance provided minimal guidelines for governments on non-state financing and provision (GSF, 2020). A 2021 survey from the Center for Global Development (CGD) revealed that only 25% of governments were satisfied with advice from donors about private schools (Crawford and Hares, 2021). Evidence is particularly lacking for unregistered low-fee private schools, as available data sets can limit studies by tracking only ‘recognized’ private schools (Baum, Cooper and Lusk-Stover, 2018). With governments as the leaders of their education systems, and with private schools educating such a significant proportion of children, there is a need for more evidence, guidance, and technical assistance on how governments can best harness the full scope of this sector to provide quality, equitable education.



## PURPOSE OF THIS WORK

**This paper aims to explore the perspective of non-state actors regarding their experience with government regulation.** UNESCO's PEER profiles have mapped out the regulatory environment as set out in legislation in countries around the world (PEER, n.d), yet existing literature highlights the difference that arise between regulation as intended and regulation as implemented. There is a need to understand further how regulatory systems are experienced in reality.

In particular, the study seeks to answer the following research questions:

- To what extent do interviewees perceive that government in the selected countries is effectively regulating non-state actors in education? What is – and is not – working? How do perspectives vary across different types of interviewees?
- What challenges do non-state actors in the selected countries face in their interactions with government on regulation of education?
- What are the priority actions that governments, development partners and other stakeholders could do in order to improve regulation of non-state education? What is required to support governments to build their capacity to engage with and regulate non-state actors in education?
- What are the implications of the findings of this study for global guidance on regulation of education?

## METHODOLOGY

This study is based on 20 one-hour key informant interviews conducted with operators of non-state schools in Colombia, Nepal, Nigeria, Pakistan, and Uganda between August and November 2022. These countries were selected based on a convenience sample, while taking into account the scale of the non-state sector and region in each setting.

Interviewees were selected representing operators which serve low-income families across the following working categories of non-state actor:

- **Standalone low-fee private schools** – independent schools charging affordable fees to children, including schools which are unregistered. For this study this category excludes schools which receive a public subsidy.
- **School networks** – chains of schools, operated by NGOs or other private providers. For this study this category excludes networks which receive a public subsidy.
- **Public-private partnerships** – any standalone or network operator involved in a "contract between the State and private sector in which public sources fund an education service and a private actor delivers it" (Zancajo et al., 2021, p.4).

These working categories group actors based on those expected to have similar types of interaction with government; they are by no means a definitive means of representing all non-state education actors. The interviews covered perspectives of non-state providers on (i) the current engagement and regulatory interface with government, including its impact on their operations; and (ii) the efficacy of the current framework used to regulate non-state actors, and areas for improvement. Questions were based on the research questions and were framed according to regulation areas highlighted in UNESCO PEER profiles (PEER, n.d). Interview transcripts were coded inductively and deductively using Delve Tool and thematically analysed – again framed by the research questions – to produce the below findings.



# Design of Regulations

*Although regulatory frameworks exist across the sample countries, their design often does not reflect the reality of operating environments. This can cause challenges for compliance, with the result being under-regulation of operators. Regulation design can also have a heavy focus on inputs and infrastructure at the expense of focusing on outcomes, while there is a mixed picture of the balance between prescriptive regulation and school autonomy.*

**Interviewees in all countries report that there is a mismatch between regulations and the reality of their operating environments.** In Lagos, Nigeria, the process for registering a school involves meeting high infrastructure standards, such as a certain number of toilets, sickbays, and classrooms. It is agreed that standards should meet safety and hygiene requirements, but the desired requirements are seen as being beyond the financial reach of LFPS.

Elsewhere, regulations can demand certain levels of teacher qualifications without sufficient reference to the supply of teachers in the labour market. This can be seen in Colombian concession schools.\* Providers are restricted to employing teachers who fulfil certain qualification requirements and have a minimum level of two years' experience. This can create challenges when there are teacher shortages, for example making it difficult to employ teachers who trained through alternative means such as the Enseña por Colombia (Teach for Colombia) programme. One interviewee reflected: “... the most difficult part... is the teacher credentials and experience ... an economist cannot teach mathematics unless they are qualified mathematics teacher with [official] credentials...”

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\*These are public-private partnerships in which non-profit non-state providers are contracted to run public schools for a given period.

This mismatch is also visible among school fees. Low-fee private schools in Nepal reported the challenges stemming from fee restrictions, which mean that schools struggle to buy increasingly expensive teaching and learning materials. *“...the government has restricted the amount charged by private schools... they have maintained the same charge for the past 10 years despite the changes in economy... for example, we used to buy papers at 40 rupees per kg 10 years ago but now it's 160 rupees per kg yet the charges at schools have remained the same...”*

A similar situation was described in Uganda. A low-fee private school provider described: *“... the ministry determines the amount of fees to be charged and once approved it cannot be increased unless you ask for permission from the ministry of education... the ministry comes on board to ask the schools not to increase fees whenever the prices of commodities are increased...”*

The result is that non-state operators in Uganda report being unable to cater for school learning materials and school operations. Some operators such as school networks have been able to supplement fees with donor funding support to address the deficits.



**The disconnect between regulatory requirements and reality leads to some schools operating unregistered.** In Lagos, one interviewee noted that, with infrastructure requirements beyond the reach of LFPS, schools often do not complete the registration process. The situation was illustrated by a LFPS in Lahore, Pakistan, which previously ran a primary and secondary school registered with government. Due to financial difficulties during COVID-19 they have downsized to running one smaller school on a lower budget; as it is unable to meet government registration requirements, it is operating without registration.

**The result is under-regulation of providers.** For the LFPS owner in Pakistan, by operating as an unregistered school, there is minimal interaction with government: for their current school, they were unable to describe any regulation that required their compliance. Similarly, in Lagos, an interviewee described the lack of regulation for unregistered schools: *“...the government do not know where the unregistered schools are located and thus [are] unable to inspect the schools to determine the curriculum and quality of education provided... there is an LFPS that has operated unregistered for many years...”*. The non-state operator noted that these unregistered private schools mainly employ untrained teachers whom they are able to afford. This system has created an environment where schools are operating beneath the radar of government accountability mechanisms.

**In some cases, even basic requirements related to student safety are not being met.** In Pakistan, some LFPS operate in small buildings without proper infrastructure as required by the regulations, which has led to instances where school buildings have collapsed.

**Additionally, the regulatory system can exclude some operators, which can limit their capacity to comply.** In Lagos, schools are categorized either as public schools, or as private institutions that are assumed to be profit-making. The regulatory framework does not account for non-profit school networks. One school network therefore is registered as an NGO rather than as a school, which means that interactions with government focus on issues like child health, rather than monitoring education-specific activities.

## DISCUSSION

**These insights confirm findings from existing research on regulation being disconnected from the reality of school contexts – and the result being unregistered schools.** 40% of a school sample in Makoko slum, Lagos, reported that the key reason for remaining unregistered was because it was impossible for them to meet regulation requirements (Härmä and Adefisayo, 2013, p.146). Across 20 Sub-Saharan Africa countries, onerous market entry requirements for schools have facilitated the growth of unofficial – unregistered – private providers (Baum, Cooper and Lusk-Stover, 2018).

**Regulations must be based on realistic minimum standards.** Governments should ensure that regulations are set at a level that ensures a minimum standard, for example to address student safety and non-discrimination. But at the same time, regulations must account for the contexts in which schools operate. For example, infrastructure requirements must cover safety standards, while also acknowledging the financial circumstances of LFPS. Making regulations attainable in this way can encourage more low-fee private schools to register, which would increase governments' visibility over all schools – this visibility is a crucial starting point for governments to guarantee an education system that emphasizes quality and equity.

**There are positive examples of governments taking collaborative approaches to support schools to meet minimum standards.** This is illustrated in Lagos State. Here, efforts have been made to work with low-fee private schools to support them to meet minimum requirements within a three-year period (UNESCO GEM, 2021). The Honourable Commissioner for Education noted that some low-fee private schools are not up to required standards, but acknowledged that closing them down would be counter-productive. For schools which are not approved, the state government takes a collaborative approach to work with consultants and microfinance institutions to help the schools to get up to required standards related to safety and infrastructure\*.

Aspirational regulation can be used for continuous improvement. Governments can differentiate between mandatory standards, achievable now, and higher aspirational standards which schools aim to meet in future. Compliance with realistic minimum standards is “often not an endpoint but a waypoint – albeit a most important one – to improved regulatee behaviour” (Kolieb, 2015, p.138). Regulations which include higher aspirational standards would help promote continuous improvement of schools longer-term.

**Regulations have a heavy focus on inputs and infrastructure.** Among LFPS operators in Lagos State, Nigeria, regulations primarily apply when schools were trying to get approval. “... *there are different categories of things that the government uses when they want to establish a school. So you have things like building structure that they require. And there's a whole list of things, the size of the land, the building plan approval, all of the testing that needs to be done. Then there's the physical facilities...*” In Kano State, Nigeria, a low-fee private school owner reported having to register with at least five different agencies to set up their school. This can be accompanied by a reduced focus on quality and outcomes: a Pakistani PPP who highlighted monitoring assessments was an outlier, while a Pakistani low-cost private school described lacking guidance on what to teach in non-state schools.

Even within input-related regulations, there can be gaps. An Education in Emergency provider in northern Nigeria described that there were no government standards for infrastructure of emergency education providers, meaning that the onus is on the NGO to follow industry best practice. They recommended that the government established education standards aligning with Inter-agency Network for Education in Emergencies (INEE) minimum standards.

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\*These insights came from follow-up conversation between GSF and the Lagos State Honourable Commissioner for Education in March 2023.

**In some cases, prescriptive regulations restrict school practices.** In a Nepali PPP, the ministry of education manages the transfer of teachers. Neither the operator nor municipal government have the power to control teacher recruitment, which can make it difficult for operators to control teacher quality and mean it takes a long time to make replacements.

**Yet in other areas of regulation there is a positive balance between control and autonomy.** The same PPP in Nepal reported that, teacher challenges aside, it is a strength of the system that they have been given the authority and funding to manage a government school. In the Nigerian curriculum, a school network described positively that: *“There is a national curriculum that schools generally abide by, but they don't have hard and fast rules around how they keep to that... You have flexibility around what time in the term you want to, I guess, introduce those topics or how much time you want to adopt for each of those topics.”* Similarly, in Colombia, while the government controls what is included in the curriculum at a macro level, the school operator has the autonomy to decide how heavily this should feature in weekly timetables.

**Of all countries, the Colombian regulatory system emerges most positively.** Those involved in PPPs – the concession schools – have contracts with District Education Office which include targets for quality standards. This formalized relationship brings clarity to the regulatory system: the government regulates on ‘improvement goals’ which ensure that concession schools are decreasing dropouts and improving learning outcomes. Regulations are enforced through fortnightly technical meetings and quarterly reporting. The operator reported that the accountability system works to ensure schools are performing – if they do not perform, they will lose their government contract. All this is in the context of a positive, communicative, open relationship with government.

## DISCUSSION

**Regulations should have an increased focus on quality (outcomes) and equity.** Interviewees’ experience of input-related regulations aligns with the findings of the UNESCO GEM Report on Non-State Actors. It found that government regulatory frameworks are least likely to focus on quality or equity as compared to other indicators like registration, approval or licensing, or teacher certification (UNESCO GEM, 2021). It is important that input-related issues are not overlooked. However, monitoring outcomes is essential to ensure students are learning in school.

Quality can be regulated through standardised assessments that apply to all schools – state and non-state – across a common examination framework. It is encouraging that 81% of countries mandate participation by non-state schools in large-scale assessments (UNESCO GEM, 2021, p.65). Positive steps have been taken to include all schools in examination systems: in Ghana, the National Standardized Test for state primary school students was expanded from 2021 to 2022 to include private school students (GhanaEducation.org, 2022). Lessons can also be learned from the Colombian system which, while not necessarily appropriate to transplant elsewhere, demonstrates a focus on learning outcomes through school improvement goals. Regulatory frameworks should have an equity focus through regulations focusing on fee-setting, admission processes, and policies for vulnerable groups. However, as highlighted by the challenges in fee levels, these regulations must acknowledge the contexts in which schools operate.

**Regulations should balance prescription and autonomy.** Consistent standards across school operators are needed, but regulations should not be so prescriptive as to unnecessarily restrict day-to-day operator activity. An overly prescriptive regulatory framework can risk creating homogenous education provision. Governments should allow scope for operators to tailor the detail of their activities according to what works best in their individual school. The positive examples seen in school autonomy for curriculum delivery can be applied to areas such as teacher recruitment. Balancing prescription and autonomy has the dual effect of facilitating provision which is relevant to local settings, and encouraging innovation in schools which can improve education outcomes. Indeed, non-state actors can be key testbeds for innovation: an analysis of 3,000 innovations in education suggested that 86% were implemented by non-state actors (Winthrop, 2018, p. 6).



# Implementation & Enforcement of Regulations

*Beyond the design of regulations themselves, interviewees painted a mixed picture of the implementation and enforcement of regulations, that is, the extent to which regulatory policies are put into practice among operators. Regulations are not implemented consistently across all schools, which can stem from corruption and rent-seeking behaviour. Insufficient state capacity – both in terms of financial and human resources – presents a major challenge for implementing regulatory frameworks. Operators also face compliance challenges where regulatory requirements are unclear or complex.*

**There are positive examples of systems that ensure regulations are implemented.** Most interviewees reported that, once schools are set up, regulatory requirements for are not overly cumbersome nor do they take up too much of operators' time. Nepali and Pakistani non-state providers have a quarterly compliance reporting system to share continuous updates to the Ministry of Education, while a digitized education management information system (EMIS) in Nepal provides real-time updates on the status of education to the ministry. In Uganda, non-state providers participate in the termly coordination with the district education office through head teacher meetings. Concession schools in Colombia engage with the local education office throughout the academic year on enrollment, maintenance of infrastructure, utilisation of approved curriculum framework, and employment of qualified teachers.

**Operators reported taking proactive steps to comply with regulations.** A headteacher of a rural primary school in Uganda reported that, as they had never been visited by inspectors, they took responsibility to self-regulate. A school network in Nigeria and a PPP in Pakistan reported that they routinely monitor their schools' compliance with Ministry of Education regulations. One interviewee described the culture of self-regulation among LFPS in Lagos: "...Any regulations that the government requires compliance with the private school must follow religiously, whether the government come for inspections or not..."



**Regulations are typically implemented most strongly in PPPs compared with other non-state education providers.** This is to be expected as a means of monitoring taxpayer spending. In a Pakistani PPP, the government conducts school visits to inspect the delivery of curriculum as per targets in the PPP contract. In Nepal, PPPs have routine meetings with government to update on their progress towards achieving set deliverables such as improving teaching and learning resources. In Uganda, an NGO operating in a PPP submits regular reports and has frequent meetings with the district education office on regulatory requirements. In Colombia, the private partners operating concession schools are evaluated every five years on the achievement of their education targets agreed with the district education office. They also provide quarterly progress reports that include competence standards and financial information. In school networks, a Ugandan interviewee reported that head teachers meet with district education office each term on regulation, and that government representatives sit on school management committees as part of the Education Act of 2008. However, it was reported that government representatives do not offer substantive input on school activities.

**Yet under-enforcement of regulation was reported as being prevalent among LFPS, and was mentioned by operators in Nigeria and Pakistan.** In Nigeria, it was reported that the ministry of education officials do not do inspections in LFPS; in cases where they do, government inspectors review only a few documents provided by the school administration, providing a limited picture on regulatory compliance. A Pakistani low-fee private school described how regulations are in place but not followed up: for private school fees, there is a 5% limit on fee increases, but there is no mechanism to monitor compliance with this. They lamented the lack of monitoring across multiple areas of regulation: *“There is no check and balance on anything, for registration there is no check and balance ... there is no check and balance on what is happening in enrollments and there is no check and balance and what is people doing how the schools are running, how the schools inducting teachers...”*

**Implementation of regulations can differ between government and non-state schools.** A Pakistani PPP reported that their school was regulated closely on infrastructure and student outcomes through inspections and assessments; by contrast, they reported that government schools are not regulated. In Lagos, despite the low levels of enforcement among LFPS, it was reported that there was a more rigorous enforcement of common standards in low-fee private schools compared with government schools. This applied to infrastructure requirements necessary for non-state schools to register, such as number of sick bays. One interviewee reported that if quality assurance was carried out on government schools, they expected *“maybe a handful”* of these schools would pass. The result is selective enforcement of regulation whereby different schools are, in effect, held to different standards.

## DISCUSSION

**Regulatory frameworks should be implemented consistently across schools.** This is to ensure that learners receive a consistent standard of education whether they are schooled within the public or non-state sector, in a PPP or standalone low-fee private school. And this aligns with the recommendation in the GEM Report for governments to “see all education institutions, students and teachers as part of a single system” and to address any disparities “head-on” (UNESCO GEM, 2021, p.4). Indeed, uniformity across the whole education system was a key recommendation given by a low-fee private school operator in Pakistan. Yet it should be caveated that, while enforcement should aim to be consistent, it should also be sensitive to the contextual differences between schools which affects their operation, for example due to variety in level of school budget or geography (urban versus rural settings).

**Governments can take a risk-based approach to increase compliance where it is most needed.** This means prioritising efforts to enforce regulation based on a risk rationale. For example, PPPs receiving public money would have a heightened need for regulation enforcement; similarly, low performance in a school would also increase the need for enforcement. There remains a need for spot-checks to ensure that ‘low-risk’ schools are still adhering to standards. However, overall this approach can increase implementation of regulation among areas which need it most without placing too much additional strain on regulatory systems.

Interviewees also gave insight into some of reasons that can lie behind reduced enforcement of regulation.

**Regulations can be selectively enforced as a symptom of corruption or rent-seeking.** In Lagos, regulation can be used as a means of rent-seeking, for example through the collection of high-rate TV and radio licenses. Among low-fee private schools, unregistered schools are vulnerable to officials demanding bribes to keep them open: *“local government officials extort this schools, threatening to report them to the state government because they know that they're not approved.”* In Pakistan, two of the three low-fee private school interviewees described having to provide bribes to register schools. One low-fee private school owner had been trying to re-register their school for the past three years – because they had not provided bribes, they not been successful: *“I'm trying and again... I'm not getting anything. Since we are not giving a bribe, we are not getting registered.”*

## DISCUSSION

**Governments must address corruption within regulation systems.** Our findings align with reports of rent-seeking practices elsewhere: in Accra, both schools and a private school association have reported that government visits don't take place without money exchanging hands (Härmä, 2019). And corruption in regulation has the twin effect of reducing compliance while also undermining the existing legitimacy of regulation (Härmä, 2019). But regulatory systems can be a tool to tackle this. Governments must ensure that regulations are clear and unambiguous to reduce scope for requirements to be mis-represented in rent-seeking behaviour.

**Governments should use regulation to address corrupt practices across wider education systems.** Governments need to identify areas of the education system which are at-risk of corruption. For example, one interviewee highlighted widespread cheating across Pakistani examinations. There is a need to implement or improve monitoring and accountability mechanisms in relevant areas. An example of this comes from a project by CARE Cambodia to improve school management and community relations. By monitoring student and teacher attendance through physical inspections by parents, students, and teachers, and by following up where there were absences, teacher absenteeism reduced dramatically (CARE, 2017).

**Under-enforcement of regulation can stem from a lack of government capacity.** This is a pervasive issue highlighted across school operators in Nigeria, Pakistan, Uganda, and Nepal. In Nigeria, a low-cost private school owner reported there were no means for checking private school practices, such as inspections or contact to check fee levels. In Pakistan a PPP operator reported that government oversight on compliance was insufficient even for monitoring government schools: *“...if you look at the policy or documentation level..., it's not that those regulations do not exist, they do but since the government is not even able to implement those... in the state schools itself, they failed to do it and the non-state school level also. So it's less of a gap of the policies or the processes or the mechanism being not available but more on the part of actually implementing those...”*

In Uganda, a low-cost private school reported the presence of only two education officers to regulate 700 private schools. Both a school network and low-fee private school reported that inspections only take place if the schools cover the relevant costs such as travel for government officials. The same LFPS owner recommended that the government allocate more funds, vehicles, and personnel to carry out school inspections. In Nepal too, interviewees described the system as being insufficiently staffed to carry out inspections – and this was a problem described across the breadth of school type. There can be simply insufficient financial and human resources for regulatory frameworks to be put into practice.

**Under-enforcement of regulations creates problems for quality assurance.** In Nepal, an interviewee involved in PPP highlighted that though regulatory and reporting systems existed, their under-enforcement could lead to unverified data across all schools, for example under-reporting of teacher absenteeism. In Uganda, insufficient enforcement resulted in the existence of ghost teachers in government schools. With school funding based on student enrollment, it was acknowledged that there has been a problem of schools inflating student numbers to attract more funding, across all school types.

## DISCUSSION

**Governments need to increase their capacity for implementing regulations.** Interview responses on under-enforcement confirm the conclusion in DfID's evidence review that governments in low-income countries consistently lack the capacity to enforce regulation (Day Ashley et al., 2014). While it is positive to see operators taking their own steps to comply with regulations, this needs to be accompanied by government oversight as a means of quality assurance. Government enforcement must increase both in terms of human and financial resources.

**International actors should invest in building regulatory capacity.** With governments operating with finite resources in the public purse, bilateral and multilateral agencies should dedicate more resources towards strengthening regulation systems. This can be through developing new guidance how to engage with non-state actors, and technical assistance that builds up government systems and capacity to implement regulatory frameworks. This would increase accountability in national education systems which is important both for increasing the quality of education provision and for increasing the level of trust from parents in the government's education role.

**Governments should mobilise capabilities among non-state operators to improve implementation.** A Nepali PPP and Ugandan school network both reported that their internal regulation mechanisms hold their schools to account more so than government mechanisms. The Ugandan school network suggested sharing their monitoring systems and processes with government to strengthen state enforcement of regulations. There are existing examples of this working successfully, such as a programme to improve leadership and management in Ugandan government schools. Carried out by Promoting Equality in African Schools (PEAS) in partnership with Uganda's Directorate of Education Standards, an independent evaluation found improvements in student and teacher attendance, teaching practices, and student safety and well-being across government schools as a result of this joint programme (Chu, Galvis and Kotonya 2021).

An additional option for governments is to mobilise organisations such as private school associations (PSAs) to support regulatory compliance. As representative bodies for non-state schools, membership of their network can be contingent on schools fulfilling certain criteria. Similarly, their network and existing relationships with operators can offer an avenue for governments to communicate and enforce school standards.

**There is a lack of clarity in regulations across most countries.** This was reported by interviewees in Nepal, Pakistan, Nigeria, and Uganda. In Nepal, there is a perceived lack of clarity on the government stance on non-state education providers, while a Pakistani low-fee private school operator described how regulatory systems focus on registration and examinations, but admitted that they find regulations unclear: "...I won't say they give us a pattern of rules and regulations which we have to follow. We just come to know it from various sources... on the rules and regulations definitely keep an eye on whatever instructions are coming. But it's not that they exactly tell what to do, or what not to do... the regulations in Pakistan are not clear..."

In Nigeria, the communication of regulations seemed to be a challenge, as low-fee private school operators find out about regulatory requirements from other schools rather than from government. Even though formalised relationships can produce better working relationships, a Ugandan PPP described their desire for clearer MoU, as they are unclear on their regulatory requirements on issues such as child safety. Naturally, where operators are unclear on regulatory requirements, this reduces regulatory compliance – or at the very least creates inefficient compliance processes.

**Complex regulatory requirements in Nigeria cause challenges for compliance.** For Nigerian low-fee private schools, operators who run a nursery, primary, and secondary schools within one compound are required to have three separate licenses which bring in different charges. Additionally, multiple stakeholders from government are involved in reporting: having different people from the ministry visit schools at different times with different perspectives on regulation can confuse proprietors. The interviewee reported that they have experienced contradictory instructions from uncoordinated inspection visits by different officials within the Ministry of Education and ministry in charge of infrastructure and public health. In emergency settings, a provider in northern Nigeria reported that there were often multiple government agencies involved in education, sometimes with different mandates e.g. the State Universal Basic Education Port and Universal Basic Education Commission. Complex regulatory systems can make reporting an arduous and confused process for providers.

## DISCUSSION

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**Regulations need to be clear, visible, and simple to follow. Where schools have been unclear about regulatory requirements, they can fail to follow requirements.** Similarly, there is need to mitigate the challenge of complex regulatory systems: we learn that in Delhi, it can take 155 steps within the Directorate of Education and 125 documents to open a private school (Center for Civil Society, 2019). While a regulatory system should not compromise on thoroughness, in practical terms regulations should be rationalized (i.e. reduce unnecessary components), should be available in a single place, and should be free of ambiguity. This clarity helps to increase compliance and can help to mitigate the risk of misinterpretation for rent-seeking.

**Where appropriate, technology should be used to improve regulatory systems.** Digital monitoring systems can help improve accountability and reduce corruption, for example through the CU@school app in Uganda which tracked – and consequently reduced – teacher absenteeism (u4, n.d.). Automated processes can also help increase efficiency when fulfilling regulatory requirements. These do not have to be high-tech solutions: for the Nigerian school network who reports using paper-based systems used for reporting, increased efficiency could come from simple digital systems on Microsoft Excel. However, it should be noted that increasing the use of technology requires increased capacity from operators as well as governments: a Nepali PPP highlighted the need among school principals for tech support to be able to submit reports using an online system. It is encouraging to see existing work to improve these processes, for example through the UNESCO Institute for Statistics' work on Education Management Information Systems (UNESCO UIS, 2017).



# Relationships between Governments & Operators

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*Given the range of stakeholders involved in education provision, collaborative working relationships are needed to engage all actors effectively in a single system of education delivery, and to allow them to work towards a common goal of quality education for all. Collaborative relationships do exist between governments and non-state actors, but there are also challenges in these interactions.*

**There are instances of positive, collaborative working relationships between governments and operators.** In Lagos, a reported strength was that there is openness within the government to engage in partnerships with the non-state sector. The same interviewee reported that the regulatory system has been effective at creating improvements in child safety in schools, for example through a positively described whistleblowing procedure. During the COVID-19 pandemic, the Nigerian government was willing to approve loans and fund support for LCPSs at reduced interest rates, which mitigated schools' risks of closure. Non-state providers in Uganda have worked collaboratively with the state to support the under-resourced district education office to conduct inspections for licensing and registration.

**Across different school types, PPP operators report the most positive interactions with government on regulation.** School networks report positive interactions albeit to a lesser extent. The PPP operators have Memoranda of Understanding (MoU) which define the state and non-state parties' roles and responsibilities. The role of the non-state actors in the PPPs are usually focused on constructing or maintaining school infrastructure and improving the overall school management. In a Ugandan PPP, there are regular reports and communication between school and district education office on compliance. One of the providers shared that they have monthly meetings and frequent WhatsApp chats and calls with the district education office to follow up on the achievements of the targets as prescribed in the PPP MoU. In a Nepali PPP, the local education office was described as providing oversight on school activity.

**However, poor relations between government and non-state schools were also reported across the breadth of non-state school types.** These can create strained working relationships. Low-cost private schools reported that they feel they lack sufficient support from government. A PPP operator in Uganda reported there were challenges working with the district to try to get resources such as new teachers, or desks. Even through the regulatory system in Colombia was described most positively of interviewees, the politicisation of non-state education means that PPP operators are subject to greater scrutiny than government schools: though regulatory requirements for child safety are the same across all schools, beyond this, reporting requirements are more intensive for non-state rather than government schools. In Nepal, there is little political or legislative support for non-state education providers, despite the fact non-state providers account for over 70% of education provision in Kathmandu (PEER, n.d.). Because of the politicised nature of private provision, the government, though working with non-state providers through PPPs, does not give a clear stance on private provision. This creates confusion among low-cost private school operators regarding their stance with government.



The strained relationship between the government and the private providers has been manifested during response to emergencies caused by natural disasters such as earthquakes and floods in Nepal and storms in Uganda. In these separate instances, there has been little emergency support for private providers. The LFPS in Uganda reported that: *“...recently the storm had destroyed all our place, most of the school in the area had their iron sheets blown away... We sought support from the government [but] the government only helped the public schools leaving learners in our school stranded...”*. In Nepal *“...the earthquake and flood affected hundreds of thousands of households including private schools but the government while supporting all the victims choose not to support private schools...”*

**The result of poor working relationships can manifest itself in negative effects for students.** For example, non-state school students are not able to take scholarship exams for higher education in Nepal.

**There is a strong desire for a more positive, partner-oriented relationship between government and the non-state sector.** A school network operator in Nigeria wanted the regulators to view themselves as partners with school operators, to create a more collaborative environment. In Colombia, the same recommendation came from a low-fee private school: *“it will be good for government and private schools to be partners... governments can take a more collaborative approach for the sector to work together to guarantee the sustainability of the private schools and also to improve infrastructure and in the end, to establish a teamwork approach in which certainly education will improve for all.”*

A network school in Uganda recommended a collaborative relationship with the government to allow both parties to capitalise on the other’s strengths and learnings. For example, some of the non-state actors have strong management and monitoring systems in their school that can be adopted by the state: *“...government should not see private schools as competitors but partners who complement their efforts in provision of quality education. The private providers have been able to pilot innovations that take long for government to implement...”* Meanwhile, a LFPS in Pakistan shares the desire for partnership with the state on capacity development. The interviewee recommended that the government should include private school teachers in training workshops as all children taught in the country belong to the state regardless of the school they are enrolled in.

## DISCUSSION

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**Governments and non-state actors should view one another as partners.** As the GEM Report on Non-state actors recommends, “Regulations need to treat non-state providers with trust as partners, rather than antagonists” (UNESCO GEM, 2021, p.26). At times there is need for strict enforcement, for example when dealing with issues such as non-compliance. However, governments should apply an attitude of trust in their regulatory systems by focusing on positive collaboration over punitive measures in their regulation design and implementation, and by prioritizing cooperation in working relationships with operators.

**Improved relations can take place through increased dialogue between government and operators.** For example, outside the sphere of regulation, a low-fee private school in Kathmandu described having constructive conversations with government to reduce congestion on roads, specifically by altering school bus schedules. Governments can engage with operators directly or engage intermediaries such as Private School Associations as an avenue for dialogue with the low-fee private school sector. Given that non-state actors constitute a significant proportion of provision in low-income countries, regardless of government policy stances on non-state actors, there is need for constructive relationships between all education actors to create an education system that works for all children.





# Conclusion

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Among all the insights produced through this study, two findings emerged most strongly. First, regulation design does not reflect the reality of non-state actors' operating environments. This can cause challenges for compliance with regulation and result in under-regulation. Governments therefore must ensure that there are realistic minimum and aspirational standards for schools, and that regulations give sufficient focus to outcomes and equity.

Secondly, regulation enforcement is not consistent across all schools, either through selective enforcement or under-enforcement. Government capacity to implement regulatory standards must increase, both in terms of human and financial capacity. Governments, international actors, and local non-state actors can all support in this.

With non-state operators educating over 350 million children worldwide, they constitute a core part of education provision (UNESCO GEM, p.20). If the Sustainable Development Goals are to be met, regulation design and implementation must be improved to mobilise this sector to deliver quality education equitably in low- and middle- income countries.



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# About Global Schools Forum

**Global Schools Forum (GSF) is a collaborative community of non-state organisations working to improve education at scale for underserved communities in low- and middle-income countries.**

**Our network is currently 84 members strong**, each working in partnership with communities and governments in 53+ countries. Our secretariat – spread across 4 continents – has expertise in school leadership, education innovation, and education financing. Our vision is that all children in low- and middle-income countries have equitable and safe access to quality education so they can realise their potential.

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