



Regulating non-state actors in education

Findings from a collaborative research project

In support of
Global Education Coalition
launched by UNESCO



The Global Education Coalition is a multi-stakeholder platform, formed by UNESCO in March 2020, to protect the right to education and advance the achievement of the Sustainable Development Goals. The Coalition's 210+ members, which includes the United Nations agencies, civil society, academic and the private sector, collaborate to provide expertise, resources and capacity building to support countries in times of crisis and beyond.



The Global Schools Forum (GSF) is a member of the UNESCO Global Education Coalition. It is a collaborative community of non-state organizations working to improve education at scale for underserved children in low- and middle-income countries. The GSF community includes over 100 organizations, spanning more than 60 countries, collectively reaching over 200,000 schools and centres and impacting 18 million children.

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Acknowledgments

This report is the result of a fruitful collaboration between UNESCO and Global Schools Forum (GSF) under the umbrella of the Global Education Coalition. Under the joint supervision of Gwang-Chol Chang, Chief of the Section of Education Policy (UNESCO) and Aashti Zaidi, Chief Executive Officer (GSF), and the technical guidance of Rolla Moumné (UNESCO), Peter Colenso (GSF) and Joel Mullan (Independent Education Policy Consultant), this report has been drafted by Sharlene Bianchi (UNESCO) and Ross Duncan (GSF). Building on the UNESCO Global Education Monitoring Report 2021/2 on Non-State Actors which urges governments to see all institutions, students and teachers as part of a single system, it is primarily based on the findings of two complementary studies: the first on the perspectives of ministry officials conducted by Frank Marshall Adamson (Associate Professor of Education Leadership and Policy Studies, California State University, Sacramento), with the support of Rosemary Mitchell (Doctoral Student, Education Leadership, California State University, Sacramento); the second on the perspectives of non-state actors produced by GSF conducted by Ross Duncan (Policy and Research Associate, GSF), Joel Mullan (Independent Education Policy Consultant), and Ronald Odhiambo Omuthe (Doctoral Student, Education Policy and International Development, University of Cambridge).

The preliminary findings of these studies were presented during a closed-door workshop which gathered experts, practitioners, non-state providers and civil society organizations. The valuable inputs and insights are a welcome contribution to the project and have been reflected in this joint report.

The report has also benefited from reviews from: Salima Namusobya (Executive Director at the Initiative for Social and Economic Rights (ISER) and an expert member of the Working Group on Economic, Economic, Social and Cultural Rights of the African Commission on Human and Peoples' Rights (ACHPR)) and Zia Akhter Abbas (Executive Vice President at The Citizen's Foundation).

Executive Summary

The non-state sector accounts for a large and, in many countries, growing share of education provision. The State, as the primary duty-bearer, has the role of stewarding their entire education system which includes a wide and diverse number of actors. There is a need to reflect on how States can be better equipped to steward their education systems and what regulation is needed to ensure that principles of quality education, non-discrimination and inclusion are upheld across all education providers, including but not limited to public, private, religious and community providers.

This report, which builds on the findings of the UNESCO Global Education Monitoring Report 2021/2 on ‘Non-state actors in education: Who chooses? Who loses?’, explores the design and implementation of regulation of non-state education across five low- and middle- income countries. It is based on 25 key informant interviews with government officials and non-state education operators, and the contributions and inputs from a closed-door workshop with key international education stakeholders (experts, practitioners, non-state providers and civil society organizations). The report provides insights on how regulatory systems operate and suggests areas for considerations on how these systems can be strengthened to ensure all children have access to quality education.

Key findings

States have the obligation of stewarding their entire education system.

- **The State is the primary duty-bearer.** States need to ensure priority is given to education by complying with the right to education State obligations. This includes respecting educational choice including within the public education system; ensuring sufficient, efficient and effective public budget allocation; and putting in place strong regulatory and accountability mechanisms with the needs and interests of learners at the heart.
- **States have varying levels of capacity to implement regulations.** Both sets of interviews this report draws upon highlighted lack of financial and human resource in regulatory systems, which can result in under-implementation of regulations. Therefore, Government bodies tasked with overseeing the implementation of regulations need to be adequately equipped and supported to fulfil their responsibilities. Lack of State capacity for regulation has multiple reasons such as, under-investment in education systems, unwillingness to regulate, financial constraints, and education systems need capacity-strengthening in particular.

There is a need for minimum standards based on human rights and grounded in local contexts.

- **Clear and quality minimum education standards, grounded in human rights, must apply across all education provision.** Taking into account the child’s best interest, appropriate minimum education standards need to be established which ensure the health and safety of children and eliminate all kinds of discrimination.

- **Regulations cover a range of standards but not the full scope of school operations.** Registration and infrastructure requirements form a key part of current regulatory systems, yet there are areas of school operations such as education outcomes and teacher challenges that are not fully covered by regulatory frameworks.
- **Regulatory requirements should appropriately reflect the reality of operating environments, while ensuring that they do not sacrifice human rights standards.** As contexts vary considerably across and within countries, while a general framework establishing absolute minimum education standards must be defined, governments have an important role in adapting regulations to national and local contexts. Government interviewees highlighted the difference between the ‘letter and spirit’ of the law, distinguishing between written law, its intentions, and the practices. Across all countries studied, non-state school operators also reported a difference between regulatory requirements prescribed by government and the reality of operating schools.
- **Regulations can help address existing educational inequities by removing the financial burden for disadvantaged, marginalized and vulnerable students in non-state education.** Government officials raised issues of inequity in education with the most privileged students enrolling in high-fee private schools, and highlighted that specific measures, such as quotas, special admission criteria and cash incentives, can contribute to enhancing equality of opportunity in education.

Regulatory frameworks should embrace education pluralism.

- **Pluralistic education models¹ under a national education system are a key part of the education landscape** and are necessary to ensure the liberty of parents to choose non-state provision. Government and operator interviewees highlighted the need to ensure that regulations balance prescription with autonomy to respect educational freedom and the rights of minorities, for example by addressing curriculum requirements, languages of instruction and the needs of disadvantaged groups.
- **Participatory approaches are important - and desired - for establishing regulations.** In the context of embracing pluralistic models in national education systems, consultation between government and the non-state sector (besides other stakeholders such as communities, parents and children) in education policy implementation and monitoring should be encouraged.

Compliance with regulations can be a significant challenge.

- **Poor regulatory mechanisms can lead to incomplete oversight of non-state providers.** Insights from operators reveal that regulatory standards may be implemented inconsistently across all

¹ According to international human rights law, parents/legal guardians have the liberty to choose for their children educations institutions other than public education institutions (Convention against Discrimination in Education, Article 5(1)b).

providers as a symptom of lack of transparency, corruption and rent-seeking² behaviour. Implementation varies across different types of non-state schools, and between government and non-state schools.

- **States need to ensure that political power dynamics do not lead to reduced regulatory oversight and requirements.** Government interviews highlighted the significant power that certain non-state actors can have in the political sphere, which has the risk of unduly influencing government education agendas and regulation.
- **Lack of compliance can stem from poor understanding and clarity of regulatory frameworks.** Operators reported a lack of clarity in the requirements, poor communication of regulations, and complex reporting mechanisms, while government officials noted that political power dynamics can lead to limited oversight. Both sets of interviewees also highlighted the need to clarify who oversees the implementation of regulations. The clarity of regulatory requirements, required for, and exemplified in public-private partnerships can create effective relationships.

There is a developmental role for regulations to improve school standards.

- **Government interviews highlighted the role of regulatory systems to bring schools up to standard.** Regulatory interactions can support schools to improve and there are various mechanisms available for pursuing a developmental approach. Workshop participants noted that more established education systems which foster pluralism focus on school improvement with students' and teachers' interest at the core of the debate. While political debate is important to take into account wide ranging opinions (particularly on contentious subjects), in fostering pluralism, education systems should avoid pitting public against non-state education.

² As an economic concept, rent-seeking occurs when entities seek economic gains without any reciprocal contribution of productivity ([Investopedia, C. Majaski, 2021](#)). In this context, it relates to the action of seeking payment in exchange for, for example, licensing or favorable treatment.

Summary of the implications for future work

→ States must steward their entire education system.

- States must not relinquish their obligation to ensure the provision of quality education.

→ Support for and investment in regulation must increase.

- Governments need to increase their resources for implementing regulations.
- International actors should prioritize building regulatory capacity, through technical assistance, funding and guidance.

→ Regulations must establish minimum education standards which are in line with human rights and grounded in local contexts.

- There must be absolute minimum education standards that are put in place irrespective of the context.
- Regulations should be comprehensive in scope, including consideration of the quality of education outcomes.
- Beyond minimum standards, regulations must be contextualized to reflect the reality of operating environments of schools.
- Regulations need to ensure that education provision does not lead to any kind of inequality and that all discrimination is strictly prohibited.

→ Education pluralism must be protected under the national education system.

- Regulations should protect and cater to education pluralism.
- Governments should take a participatory approach to elaborating regulations.

→ Compliance with regulations must increase.

- Regulatory standards and practices should be implemented consistently among non-state actors as well as between public institutions and non-state operators.
- Regulations need to be clear, unambiguous and transparent.
- Action should be taken to address any corruption in regulatory practices.
- School associations and non-state systems can be harnessed to further complement State regulatory systems through peer regulation.
- Where appropriate, human rights-compliant use of technology could be leveraged to improve regulatory systems

→ Regulations need to have a developmental role.

- While minimum education standards have to be respected immediately, various developmental mechanisms can be employed in regulatory systems to bring schools up to higher standards.

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Introduction

Non-state education is characterized by a vast diversity of providers. These include private actors, faith-based groups, NGOs, foundations, communities, and parents (UNESCO, 2015a). They have an important role in the provision of education to ensure parental choice and educational freedom, which are clear components of the right to education. As a fundamental human right, States have the primary role to invest in and provide free, quality public education. Yet, their role goes beyond this: they are stewards of their entire education system.

These non-state actors account for a large and, in many countries, growing share of education provision. 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). For secondary education, enrolment increased between 1998 to 2018 from 19% to 26% (Ibid.). The UNESCO Global Education Monitoring (GEM) Report 2021/2 on 'Non-state actors in education: Who chooses? Who loses' (hereafter GEM Report) found that more than 350 million worldwide are educated in the non-state sector and 'governments financially support non-state schools in 171 out of 204 countries' (UNESCO GEM, 2021, p. 34)

The GEM Report brought a new framing to policy debates, stating that 'governments need to see all education institutions, students and teachers as part of a single system' (Ibid.). With this expansion of non-state education provision, there is a need to reflect on how States can be better equipped to steward their education system. The Education 2030 Framework for Action, which lays out the roadmap to implement SDG4 on education, stated that 'Civil society, teachers and educators, the private sector, communities ... all have important roles in realizing the right to quality education' (UNESCO, 2015b, para. 10). It also recognized the essential role of the State in setting and regulating standards and norms (Ibid.).

The GEM Report also specifically highlighted the need to support governments with regulation of the non-state sector, to ensure that principles of quality education, non-discrimination and inclusion are upheld across education providers.

Regulations exist as one of multiple instruments available to governments to achieve policy objectives. They incentivize behaviour through measures ranging from prescriptive government-led interventions to market-led incentives. 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.

Today, States continue to face major challenges in ensuring regulation of the non-state sector, eight years down the line from the adoption of the Education 2030 Agenda. The GEM Report highlighted the lack of capacity of governments, but also found that generally there has been a deterioration in the quality of education, a persistent financial burden on families, and lack of inclusion with issues of stratification and segregation. The Transforming Education Summit noted that the 'UN has an important role to play providing a space for collective reflection, action, norm-setting, and international cooperation' (UN, 2022, p. 23).

It is against this backdrop that UNESCO and Global Schools Forum (GSF) have undertaken a collaborative research project in the spirit of the Global Education Coalition. This collaboration aligns with the Initiative of the Evolving Right to Education³ that explores which aspects of the right to education framework may need to be reframed in the light of 21st century trends and challenges. The partnership aims to build evidence by gathering perspectives of governments and non-state providers on regulation, and on areas where governments' regulatory capacity needs to be strengthened.

This report explores the design and experience of regulation of non-state education across five low- and middle- income countries: Colombia, Nepal, Nigeria, Pakistan and Uganda. It is based on 25 key informant interviews with two sets of stakeholders: government officials and non-state education operators. Additional insights came from a closed-door workshop with key international education stakeholders (for the full research methodology, please see the Appendix 1). Drawing from these ministry and operator perspectives, and workshop contributions, the report provides insights on how regulatory systems operate in reality, and creates implications for how these systems can be improved to ensure all children have access to quality education. The findings are grounded in the human rights framework which are identifiable by blue boxes.

This project accepts its limitations. It does not pretend to reflect the views and opinions of all those working in the government and non-state actors, nor the reality across all local and national contexts. The limited number of interviewees and selected countries give a sample of the effectiveness and challenges of regulatory frameworks. However, as the information is triangulated with broader literature including the extensive research conducted by UNESCO GEM available on the Profiles Enhancing Education Reviews (PEER) database⁴, certain insights and considerations can be drawn.

³ More information here: <https://www.unesco.org/en/right-education/evolving>

⁴ More information here: <https://education-profiles.org/themes/~non-state-actors-in-education>

Findings from the research and expert discussion

1. States have the obligation of stewarding their entire education system

Human rights framework

As a fundamental human right, States have the ‘principal responsibility of direct provision of education in most circumstances’ (CESCR, 1990, para. 48). International human rights law further details the specific obligations that States are required to fulfil to ensure the realization of the right to education. These notably include the provision of free and compulsory primary education, making secondary education generally available and higher education accessible on the basis of individual capacity, while introducing progressively free education at both these levels (article 13 of the 1966 International Covenant on Economic, Social and Cultural Rights, ICESCR).⁵

Besides the direct provision of education, educational choice is a key principle of the right to education which States must respect. The UNESCO 1960 Convention against Discrimination in Education (CADE) provides for the right of parents and legal guardians to choose for their children education other than that established by the State, as long as it conforms to minimum educational standards and to ensure the religious and moral education of the children in conformity with their own convictions (article 5(1)a). Natural persons and legal entities also have the liberty to establish and direct educational institutions as long as they conform to minimum education standards (article 2), and specifically with respect to private educational institutions, adds ‘if the object of the institutions is not to secure the exclusion of any group but to provide educational facilities in addition to those provided by the public authorities’ (article 2(c)).

According to human rights, the State is the primary duty bearer and can therefore be held accountable for its actions (or inactions) in terms of ensuring the realization of this right. In this regard, regulation is key. The Education 2030 Framework for Action states that ‘the role of the State is essential in setting and regulating standards and norms’ (para. 10).

- **States have varying levels of capacity in providing for education and enforcing regulations**

Human rights framework

States have to abide by their obligation to take the necessary steps to realize the right to education ‘to the maximum of [their] available resources’ (article 2(1) of the ICESCR). In this respect, States need to make every effort use all resources that are at the State’s disposition in an effort to satisfy, as a matter of priority, the minimum core obligations (CESCR, 1990, para. 10). States are also bound by the principle of non-retrogression whereby if any deliberately retrogressive measure is taken, State parties to the ICESCR ‘have the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party's maximum available resources’ (CESCR, 1990, para. 9). Furthermore, in 2015, States worldwide committed to ensuring ‘the provision of 12 years of free, publicly funded, equitable quality primary

⁵ For more detail please see [Appendix 2](#).

and secondary education, of which at least nine years are compulsory, leading to relevant learning outcomes' (UNESCO, 2015b, para. 10).

Appropriate financial investment, which according to human rights law, includes 'international assistance and co-operation, especially economic and technical' (article 2(1) of the ICESCR), is essential to provide quality education to all. The Education 2030 Framework for Action gives an additional indication on the actual budget, requiring States to allocate at least 4-6% of the GDP to education and/or at least 15-20% of public expenditure to education (UNESCO, 2015b, para. 10). This commitment needs to be accompanied by measures to '[widen] the tax base (in particular, by ending harmful tax incentives), [prevent] tax evasion and [increase] the share of the national budget allocated to education', 'prioritize those most in need', and 'increase efficiency and accountability' (ibid.). The need for tax justice and combatting fiscal evasion were echoed by participants to the workshop.

Both sets of interviewees highlighted that there is insufficient investment in regulatory capacity. Government interviews in Nepal and Uganda highlighted the need to build regulatory capacity both in the design and in enforcement. In Uganda, the ministry official interview revealed that the school governing bodies, which are to be approved by the Minister and provide school oversight, lack support and struggle to implement their duties and responsibilities as they are not fully aware of what these are. The official raised that the government funds are inadequate to carry out effective supervision and that the budget cuts made it impossible to reach all schools within a given period. The ministry official in Nepal similarly reported the lack of an adequate number of technical people to perform school site visits, to talk with and support teachers, observe the classroom, and monitor the other developmental activities.

From operator interviews, non-state actors in four out of the five countries reported under-regulation due to lack of government resource. In Uganda, a low-cost private school reported the presence of only two education officers to regulate 700 private schools. Different school types reported that inspections only take place if the schools cover the relevant costs such as travel for government officials. In Nepal, interviewees described the system as being insufficiently staffed to carry out inspections – and this was a problem described across the breadth of non-state school types. In fulfilling their role as leaders of the whole education system, governments need to ensure financial investment in regulatory capacities.

Financing for regulation is linked to a broader issue of a lack of education financing. Across the interviews with government officials, it was reported that there was a general lack of education funding leading to inadequate provision of education. In Pakistan, according to one official, issues relating to enrolment, curriculum and regulations can all be addressed, if education is made a priority. In Nepal, the ministry official noted that while investment in the education sector has increased in the past twenty years, the percentage remains substantially lower than its SDG 4 commitment. This reportedly has repercussions on teaching, the infrastructure and management. In Nigeria, the inadequacy of resources has also led to teacher shortages and improper deployment, notable in rural areas where living conditions are not attractive. As a result, due to the excess demand for education and the gaps in provision, unregistered private schools cannot be shut down because they provide essential social services. As noted by a participant during the closed-door workshop, there is no 'magic trick' in financing: education comes at a cost and States need to prioritize education in their budget allocation.

It is necessary to ensure efficient and effective use of resources. The ministry official in Uganda noted the recent revision of the lower secondary curriculum, which applies to all education providers, required new

educational materials which are provided by the State. However, private schools did not receive a sufficient number of textbooks for the learners, leading to some private schools selling the government textbooks to purchase those from private arrangements.

→ **Governments need to prioritize education in their budget allocation.** The lack of appropriate financial investment, including international assistance and co-operation, can lead to States not fully delivering high quality education to all.

→ **Governments need to increase their resources for implementing regulations.** In filling their role as stewards, governments must increase their enforcement capacity both in terms of human and financial resources. This is part of the wider financial obligation of States to realize the right to education.

→ **International actors should both invest in strengthening regulatory capacity and domestic financing of education⁶.** With governments operating with finite technical, financial and human resources in the public purse, bilateral and multilateral agencies should dedicate more support towards strengthening regulation systems. This can be through developing new guidance and technical assistance that builds up government systems and capacity to implement regulatory frameworks. This would increase accountability in national education system, important both for increasing the quality of education provision and for increasing the level of trust from parents in the government's education role. In parallel, international actors should support domestic financing of education through various measures, including debt relief and coordinated tax justice work⁷.

2. There is a need for minimum standards based on human rights and grounded in local contexts

Human rights framework

Setting minimum standards for all educational institutions is required by human rights law to ensure that the rights of children, and their right to education, are fully upheld. Under international human rights law, certain fundamental principles are laid out for which all education providers (both public and non-state) must comply with. These relate to providing quality education, serving the best interests of the child, and fulfilling the aims of education.⁸

As detailed by the Committee on the Rights of the Child, 'the school environment must not impair the right to education, it must support the full development of the child, and it must also contribute to the aims of education and the right to a quality education by creating an inclusive and quality learning environment' (UNESCO 2019, p. 121, based on Committee on the Rights of the Child, 2001, para. 10, 19 and 22). The

⁶ Under international human rights law, States have an obligation to allocate the maximum available resources to provide for the right to education, through domestic but also international resources (CESCR, 1999, para. 13). As such, international actors have a responsibility to provide resources to States, which include economic resources, to realize this obligation.

⁷ Supporting domestic financing through debt relief and tax justice is important as the financial capacity of a State is often limited due to lost tax revenue, tax abuse and austerity measures.

⁸ Further detail can be found in [Appendix 2](#).

Committee on the Rights of the Child further explains that corporal punishment is not respectful of the inherent dignity of the child nor the strict limits on school discipline (Committee on the Rights of the Child, 2001, para. 8).

Furthermore, minimum standards should focus on non-discrimination and equality of educational opportunities. These are central for the full realization of the right to education. The CADE prohibits any discrimination based on, among others, ‘social origin’, ‘economic condition’ or ‘birth’, so that educational opportunities are truly accessible to all (article 1(1) of the CADE). All forms of discrimination in the education system, including those by third parties need to be prevented and eliminated.

While these fundamental principles should be the foundation for regulatory frameworks, precisely what minimum education standards need to be laid out by governments requires further clarification. Some indication is given by the CESCR to what these standards may cover: ‘these minimum standards may relate to issues such as admission, curricula and the recognition of certificates. In their turn, these standards must be consistent with the educational objectives set out in article 13 (1)⁹’ (footnote added, CESCR, 1999, para. 29). Yet, given the diversity of non-state actors in education, greater clarity could be provided beyond these aspects to support governments in elaborating national regulations that adopt a rights-based approach. While the Abidjan Principles¹⁰ provide detailed guidance on possible regulation requirements and offer an interpretation of the various dimensions of minimum education standards, this section aims to shed light on and summarize the main findings, concerns and voices that emerged during the interviews and discussions of the collaborative research by GSF and UNESCO.

- **Regulations cover various areas of school operations and highlight the need for absolute minimum standards**

Government interviews highlighted that regulation of non-state providers focuses on a range of areas, such as registration, financial generation and management, curriculum, teacher training and licensing, student-teacher ratio, school and classroom size, and fee-setting.

Regulations must pertain to certain conditions for the health and safety of children. In Uganda, for example, the ministry official reported that non-state actors are required to meet certain criteria including on health, sanitation and environmental organization, school safety and security as well as discipline management. Operator interviews furthermore revealed that, where regulatory systems do not adequately monitor school activities, this can risk even basic requirements related to student safety not being met. In Pakistan, it was

⁹ Article 13 (1): The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

¹⁰ The Abidjan Principles compile and unpack existing legal obligations that States have regarding the delivery of education, and in particular the role and limitations of private actors in the provision of education. Drafted by a team of nine legal experts, the Abidjan Principles were adopted in 2019. While UNESCO has not formally endorsed the Abidjan Principles, several UN and regional human rights institutions refer to them, including the UN Human Rights Council (2020). The Abidjan Principles are accessible here: <https://www.abidjanprinciples.org/explore-the-principles>. Global Schools Forum has raised significant concerns about the process and substance of the Abidjan Principles and commissioned an expert legal opinion from a former UN Special Rapporteur. GSF’s legal opinion is accessible here: https://cdn.ymaws.com/www.globalschoolsforum.org/resource/resmgr/policy/abidjan_principles_report_fi.pdf.

reported that some low-fee private schools (LFPS) operate in small buildings without proper infrastructure as required by the regulations, which has led to instances where school buildings have collapsed.

The workshop participants particularly emphasized the need for regulations to be framed with the child's best interests at the centre: the importance of respecting the rights of the child and of recognizing children as rights-holders, notably their right to participation and to be heard. This requires regulatory frameworks to consider not only children who are enrolled in school, but also the barriers faced by out-of-school children, to ensure that regulations cater to enhancing their access to education. This may, for example, include teachers being equipped with the necessary skills to address the diverse needs of out-of-school children. It also requires regulating areas beyond education per se, for example by addressing child labour, exploitation and abuse.

Registration and infrastructure requirements form a key part of regulatory systems. Government officials highlighted the systems for licensing schools: in Uganda, an entity cannot establish a school in Uganda without being licensed by the Ministry of Education and Sport, which is mandated to maintain a register of all privately owned school in the country. For LFPS in Lagos State, Nigeria, regulations can primarily apply when schools were trying to get approval: to quote a LFPS operator, '... there are different categories of things that the government uses when they want to establish a school... 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...'.

The workshop discussions and government interviews highlighted regulations which apply to school fees and hidden fees. The government interviewee in Uganda noted that as most schools depend on fees, the burden of a fee increase falls on parents and to overcome this, the government is considering a policy to regulate school fees to ensure that education also by the non-state actors becomes affordable. This approach was adopted in Nepal, whereby for non-state actors operating schools, the fee structure is regulated, and they are not to charge a fee greater than that set by education regulations.

On fees, while regulations are necessary to address inequities, they must not unduly restrict school practices. From operator interviews, low-fee private schools in Nepal and Uganda reported that fee restrictions meant that schools struggled to buy necessary teaching and learning materials. Some operators such as school networks have been able to supplement the fees collected from the enrolled learners with donor funding support to address the deficits. When non-state actors complement the provision of free, quality, public education, school fees do not constitute a barrier to the right to education, as learners have the freedom to choose between free and fee-paying schools, thereby the principle of freedom of choice is protected.¹¹

There are areas of school operations which are not fully covered by regulatory systems, such as those related to outcomes and teacher issues. Operators described a limited focus on quality and outcomes: a Pakistani low-cost private school described lacking guidance on what to teach in non-state schools, while a Pakistani PPP who highlighted monitoring assessments was an outlier.

Un- or underqualified teachers and teacher shortage in non-state schools was a challenge that emerged from government interviews. For example, in Uganda, the official shared that private school classrooms can have extremely high learner-teacher ratios and may also highly depend on part-time teachers. This creates challenges, for example when implementing the new lower secondary curriculum that requires the full presence of the teacher. In Nepal, according to operators, some non-state schools (private schools mainly located in cities) have good teachers, but more than half do not have qualified teachers. In Nigeria, some teachers do not

¹¹ For more information see UNESCO (2015a).

have the minimum teacher qualifications and receive a grace period, although some employers still employ people that are not registered teachers. According to the government official, Uganda also does not regulate the minimum wage and as private schools depend on school fees, teachers are paid in accordance with the amount collected which, due to the lack of consistency, can compromise staffing, and as a result, school quality. Furthermore, there is the possibility that staffing decisions can be based on financial factors instead of focusing on the pedagogical needs, which lead to teacher churn due to the hiring and firing of teachers.

However, it is important to note that teacher recruitment is equally a major challenge for public education. The Nigerian government official noted that, among government schools, in some cases, physical classrooms are available, but states lack enough teachers due to shortages or improper deployment. It is important that regulations establish clear teacher training requirements, adequate teacher conditions including competitive salaries, and acceptable pupil- teacher ratios to ensure favourable learning conditions which are not sacrificed to lower education costs.

Abrupt closures of non-state schools can also have dramatic effects on children's education. In Uganda, the government official raised such concerns as during the COVID-19 pandemic and consequent lockdown, several schools which were highly reliant on the collection of fees, were forced to close – even without stakeholder consultations – due to the enrolment decrease. The official noted that legal texts do not regulate abrupt school closures, leaving school proprietors free to close schools without warning, disrupting the education of learners who find themselves without a school to go to and their education trajectories affected. Regulatory frameworks must therefore include specific conditions for school closure that protect the right to education of learners. This should include the prevention of abrupt school closures during emergency situations (such as the COVID-19 pandemic) and appropriate measures to ensure learning continuity.

→ **There is a need for absolute minimum standards that are to be protected and effectively implemented irrespective of the context.** Among those highlighted from the workshop discussions and study findings, are the need to proscribe discrimination, ensure child health and safety as well as their best interest and establish clear staffing and teacher training requirements.

→ **Regulations should include focus on the quality of education outcomes.** Operators' experience of input-focused regulations (such as registration, approval or licensing, or teacher certification) aligns with the findings of the GEM Report that government regulatory frameworks are least likely to cover quality or equity dimensions. It is important that input-related issues are not overlooked. However, monitoring progress and outcomes is essential to ensure that students are learning and flourishing in school. Quality can be monitored through standardized assessments which apply to all schools – State and non-state – across a common assessment framework.

- **Beyond minimum education standards, regulations should not be disconnected from the reality of operating environments**

Both studies highlighted a mismatch between regulations and the reality of their contexts, for example in registration. In Pakistan, the government official noted the 'letter and spirit' of the law, suggesting that the intentions of the written law and the actual practices occurring in non-state schools are not always aligned. The

official reported that non-state actors circumvented regulatory processes or intentions, leading to unfulfilled regulatory expectations.

Operators reported that registration can involve meeting excessive infrastructure standards. This leads to some schools operating unregistered and a limited regulation of providers. In Nigeria, the registration process involves having an unreasonable number of toilets, sickbays, and classrooms. Operators agreed that standards should meet safety and hygiene requirements, but voiced that the excessive requirements were seen as being beyond the financial reach of LFPS. A LFPS in Lahore, Pakistan, used to run 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 unregistered. 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.

Yet cost factors should not prevail over fundamental human rights principles in the elaboration of regulatory requirements. A workshop participant raised concerns that considerations of the minimum requirements non-state actors can afford should not override the child's best interest which should be at the heart of regulation elaboration. Similarly, the ministry official in Uganda highlighted the danger that business interests and practices might divert the regulatory process to minimize costs and maximize profits at the expense of offering quality education.

→ **While regulatory standards set minimum standards as a necessity, regulations must also acknowledge the contexts in which schools operate¹².** Participants during the workshop underscored the need to adapt regulations to the national and local context while guaranteeing absolute minimum standards in education across all contexts. Regulations need to cater for the local and national specificities, and they may even require evolving as situations change, including by addressing issues such as abrupt school closures. Increased registration would increase governments' visibility over all schools – this visibility is a crucial starting point for governments to guarantee an education system that protects the right to education.

- **Regulation can help address existing education inequalities**

Human rights framework

As noted above, non-discrimination and equality of opportunities are fundamental human rights principles. The CESCR explains that 'the State has an obligation to ensure that the liberty set out in article 13 (4) [on establishing education institutions¹³] does not lead to extreme disparities of educational opportunity for some groups in society' (CESCR, 1999, para. 30).

¹² See [Appendix 2](#) which refers to acceptable (ie: culturally appropriate) and adaptable (ie: to the needs of changing societies) education as part of the 4As framework.

¹³ ICESCR, Article 13 (4): No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Across the government interviews, officials raised issues of inequity in education. In this regard ‘Nepal and Colombia especially have stratified economic systems reproduced by and within the education system’ (F., M. Adamson and R. Mitchell, 2023). One government interviewee noted that the families who have the resources send their children to private schools and that students tend to have better results in private schools compared to the students of the public education. Ensuring all education provision meets quality standards, including by adequately financing public education, is one way to reduce inequality. In this regard, as was noted by the Nigerian ministry official, States are encouraged to ensure that their schools are geographically well spread and properly staffed.

If implemented correctly, some measures such as quotas, special admission criteria, vouchers and cash incentives can contribute to addressing inequality in education and enhancing access. In Pakistan, the government official highlighted use of vouchers for lower socioeconomic students for them to access non-state schools (PEER - Pakistan, n.d). When implemented correctly, such measures are a useful lever for disadvantaged students. The GEM Report found that 7% of countries have quotas for disadvantaged groups (p. 81). In Nepal, all institutional schools are required to provide free scholarships to disadvantaged student groups, corresponding to 10% of total seats (PEER - Nepal, n.d.). In Uganda, ‘[b]ased on the Universal Primary Education (UPE) program implemented by the Government of Uganda in 1997, tuition fees in primary State schools were abolished, while the Universal Secondary Education (USE) program introduced in 2007 provides tuition-free places in secondary State and non-state schools to students from more disadvantaged backgrounds’ (PEER - Uganda, n.d). However, at the secondary level, the ministry official was concerned that scholarships do not necessarily go to the neediest learners, but instead to the most talented ones.

→ **Regulatory frameworks must be articulated in a way to ensure that education provision does not lead to any kind of inequality and that all discrimination is strictly prohibited.** The Annual Status of Education Reports in Pakistan revealed that ‘the richest are three to four times more likely to attend private school’ (GEM Report, 2023, p. 42). This echoes the findings from the GEM Report, which notes that school choice can also exacerbate inequality as in general, ‘poorer families tend to have fewer options to choose from’ (Ibid., p. 24). Ensuring all education provision meets quality standards, including by adequately financing public education, is one way to reduce inequality.

3. Regulatory systems should embrace education pluralism

Human rights framework

As a fundamental principle of the right to education, educational choice needs to be respected. While all schools should fall under the government’s purview, States should be careful to ensure that the control exercised on non-state actors does not infringe on their right to establish and maintain educational institutions as long as these institutions meet the standards that the government lays out (article 2(b) and (c), CADE). These articles explicitly guarantee the liberty to offer any type of school other than public education, including for religious and linguistic reasons. Article 5(c) of the CADE further specifically guarantees the right of members of national minorities to carry on their own educational activities, in order to cater for their specific challenges with regard to their culture, values and language.

With regard to religious education, article 18 of the ICCPR recognizes that ‘Everyone shall have the right to freedom of thought, conscience and religion’. The CESCR further adds that ‘this element of article 13 (3) permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. It notes that public education that includes instruction in a particular religion or belief is inconsistent with article 13 (3) unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians’ (CESCR, 1999, para. 28).

Government interviewees recognized the value of having a diverse range of school providers. In Nepal, the ministry official noted the importance of maintaining community schools which receive partial funding from the government but also from their own sources (parents, local collections or support from the local or provincial government) and that if Nepal kept these schools as government schools, it would be considered unjustifiable by the community. The ministry official in Uganda noted the importance of recognizing the diversity of education providers, noting that faith-based schools and community-established schools have made considerable efforts to make education affordable in order to attract needy students. Meanwhile, the operator interviewee in Nigeria highlighted the need for the government to recognize and support NGOs, noting that they are a bridge between public and private schools. In fact, in the State of Lagos, Nigeria, the government has relaxed restrictions for community and low-income private schools to improve access for vulnerable groups (PEER – Nigeria, n.d.). Regulatory frameworks should therefore be sensitive to context.

There is a balance to be found between ensuring educational freedom and abiding by government established standards – operators reported positive examples of this. In the Nigerian curriculum, a school network described 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.

Yet there can be a tension between ensuring educational freedom and abiding by government established standards. The interview with the Colombian official revealed that religious schools do not necessarily agree with some policies regarding rights of vulnerable groups. Similarly, during the workshop, concerns were voiced over ensuring that faith-based education providers teach human rights. On the other hand, during the discussion, a concern was raised about imposing a compulsory curriculum that does not respect minorities rights, particularly with regard to religious education.

Interviewees described that there are areas where regulations could better reflect education pluralism. A school network in Lagos state reported being registered as an NGO rather than as a school, which means that interactions with government focus on issues such as child health rather than monitoring education-specific activities. The Nigerian government official highlighted some of the repercussions that can come about because of this categorisation: since NGO schools are not government schools, the government does not provide for them and teachers cannot be deployed there. All schools must register under the school regulatory framework.

In some cases, prescriptive regulations restrict school practices. An operator described that, in 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 can mean that it takes a long time to make replacements.

Public education needs to be truly inclusive and culturally appropriate. A workshop participant noted the importance of ensuring culturally appropriate education, noting that freedom of education can be exercised within the public education system and that students can opt out of certain courses. An interesting example comes from Colombia, where the government may contract culturally relevant education providers to offer educational services to indigenous communities (PEER – Colombia, n.d.). In today's context, the need to build peaceful societies, which is at the heart of UNESCO's mission, resonates particularly strongly. States should therefore take all efforts to ensure inclusive education which is culturally appropriate, and permits optional religious and moral courses, allowing for learners to have a true choice between education providers.

→ **Regulations must protect and cater to education pluralism.** With the wide variety of non-state actors, regulations need to be formulated in a way that they ensure certain minimum standards and safeguards but are not too restrictive that they have negative repercussions on educational freedom and the rights of minorities.

→ **Balancing prescription and autonomy can bring further benefits to education systems.** An overly prescriptive regulatory framework can risk creating 'unitary' education provision. Governments should allow scope for operators to tailor the detail of their activities according to what best meets learner needs in their individual school and to what is required for educational freedom and innovation. This has dual effect of facilitating provision, which is relevant to local settings, and encouraging innovation in schools which can improve education outcomes.

- **Participatory approaches are important – and desired – for establishing national regulations**

Human rights framework

Article 25 of the International Covenant on Civil and Political Right (ICCPR) states that every citizen has the right to take part in the conduct of public affairs, which according to General Comment n°25 of the ICCPR, 'covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels' (Human Rights Committee, 1996, para. 5). Therefore, in the elaboration of regulations on non-state actors in education, local government entities, all types of non-state actors, teachers, communities, parents and students need to have their voice heard to ensure they reflects the reality of national and local contexts.

In the context of embracing education pluralism, operators revealed a desire for greater collaboration 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.'

Yet government officials cautioned against allowing too much influence to a particular group of actors. In Nepal, ‘non-state actors [have] a potentially more powerful influence on the education agenda than the State actors’ (F., M. Adamson and R. Mitchell, 2023). As such, care needs to be given to ensure that the voice of one group of actors does not outweigh all the others.

→ **Governments should take a participatory approach to elaborating regulations.** Besides other stakeholders, such as the community, teachers, parents and students, governments should capitalize on the desire for participation among non-state actors to include them in regulatory processes, while taking account the motives and influence of each group. In the elaboration of regulations on non-state actors in education, local government entities, all types of non-state actors, teachers, communities, parents and students need to have their voice heard to ensure they reflects the reality of national and local contexts. There are positive examples of these perspectives being considered, for example, the Nigerian ministry official noted that the federal government designs the regulatory policies in consultation with all relevant stakeholders prior to the policy creation.

4. Compliance with regulations can be a significant challenge

- **Regulatory mechanisms can be enforced and implemented inconsistently**

Operator interviews gave insight into the degree of oversight experienced in regulatory systems, highlighting positive examples of regulatory systems being implemented smoothly. 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 teachers’ meetings.

However, operators also reported that regulations can be implemented inconsistently across different types of non-state providers. Enforcement appears strongest among public-private partnerships (PPPs), which is to be expected as a means of monitoring taxpayer spending. By contrast, implementation was reported as being weakest among low-fee private schools. Under-enforcement of regulation was reported as being prevalent among LFPS: in Nigeria, it was reported that inspections by the Ministry of Education were not carried out in LFPS.

Furthermore, implementation of regulations can vary between government and registered non-state schools, leading to double standards. Operators reported that registered non-state schools are monitored more closely than their public counterparts. 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 on these matters. In Lagos, it was reported that there was a more rigorous enforcement of common standards in registered low-fee private schools compared with government schools. The result can be selective enforcement of regulation whereby different schools are, in effect, held to different standards.

Government interviews revealed non-state actors who do not adhere to regulatory processes or intentions, thereby falling short of the requirements. This was indicated by the high numbers of unregistered schools across countries, which has already been discussed in this paper. While the relationship between the government and non-state actors is quite open, according to a ministry official, even given these relationships, or perhaps because of them, the regulatory role is not as strong as it should be. Political power dynamics, which relate to the significant power that certain non-state actors can have in the political sphere, must not lead to pressure for unduly limiting oversight.

On the other hand, regulations can be selectively enforced as a symptom of corruption. 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: to quote, ‘for the past three years, I’m trying and again... I’m not getting anything. Since we are not giving a bribe we are not getting registered.’ In Lagos, operators described how regulation can be used as a means of rent-seeking, for example through the collection of high-rate TV and radio licenses.

- **There can be a lack of clarity in regulatory requirements and implementation mechanisms**

Compliance challenges can also stem from a lack of clarity in regulatory requirements. School leaders in Nepal, Pakistan, Nigeria, and Uganda reported being unclear in regulations, including a Ugandan PPP describing being unclear on their requirements on issues such as child safety. Poor communication of regulations can compound this issue, as in Nigeria low-fee private school operators can find out about regulatory requirements from other schools rather than from government. Lack of detail, complexities, or ambiguities in existing regulatory requirements can result in operators failing to comply even with core standards such as safety. The Nepalese official further raised that the repercussions in case of non-compliance are also unclear, partly due to the lack of resources to ensure proper oversight.

Further, both sets of interviewees highlighted a lack of clarity in implementation mechanisms. Operator interviews revealed that Nigerian low-fee private schools report to multiple stakeholders from government; 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 officials within the ministry of education and ministry in charge of infrastructure and public health.

Government perspectives pointed to similar situations in Nepal and Pakistan. Since 2015, Nepal has been structured into the federal, provincial, and local governments, which have the full mandate in education. Yet, as noted by the ministry official, the government has struggled to elaborate a new Education Act in line with the federal structure requiring defining the role of the ministry regarding policy, standards, quality, assurance, monitoring and evaluation. Without a clear regulatory framework, there are risks of overlapping and duplicating work between the ministry and the local governments. Similarly, in Pakistan, while provincial governments have the responsibility for regulation and establishment of non-state actors, not all provinces have a regulatory system established (PEER – Pakistan, n.d.). Where this is a lack of clarity on where regulatory responsibility lies, the impact can be felt by operators.

The clarity of the conditions and standards for public-private partnerships can contribute to increased compliance. In receiving government funds or using government school buildings, in Pakistan, for example, it was noted that the government ensures regular quality checks and oversight of these schools. Of the countries studied, the Colombian regulatory system emerged most positively. Those involved in PPPs, known as

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, and 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.

This paper has already discussed means of enhancing compliance: greater investment in capacity to implement regulations, and alignment between regulatory standards and the reality of school contexts. However, there are additional measures that can be taken to improve compliance with regulations.

→ **Regulatory frameworks must be implemented consistently across all 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. 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).

→ **Regulations need to be clear, unambiguous and transparent.** Greater clarity and transparency is needed to engender greater compliance, which in turn could foster accountability. 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. While it is acknowledged that PPPs are not appropriate for all interactions with non-state providers, the Colombian system highlights that a clearer understanding about regulatory standards, and clearer accountability mechanisms, can help improve regulatory compliance.

→ **Governments could consider taking a risk-based approach to increase compliance where it is most needed.** In tailoring regulations to risk, regulatory resource target the highest risk areas as a means of increasing compliance with limited resources. This can increase implementation of regulation among areas which need it most without placing too much additional strain on regulatory systems.

→ **Whilst acknowledging that the State cannot abrogate their responsibilities as the primary regulator and duty bearer, school associations can be harnessed as complementary mechanisms for peer regulation.** Belonging to an association of non-state actors can create a more enabling environment which encourages peer learning. School associations can further complement and reinforce regulatory capacity. As representative bodies for non-state schools, membership to their network can be contingent on schools fulfilling certain criteria, and they can be used by government as an avenue for implementing standards.

→ **Action should be taken to address any corruption in regulatory practices.** All partners – including schools, parents and citizens - must have confidence in the integrity of the education system. Corruption in regulation has the twin effect of reducing compliance while also undermining the existing legitimacy of regulation. 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.

→ **Where non-state actors have strong management and monitoring systems, these could be used to strengthen State regulatory systems.** 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.

→ **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.com). Automated processes can also help increase efficiency when fulfilling regulatory requirements, for example through the UNESCO Institute for Statistics' [Education Management Information Systems](#).

- **There is a developmental role for regulations to improve school standards**

Government interviews highlighted the role of regulatory systems in bringing schools up to standard¹⁴. In Uganda, in order to license a school, compared to the previous permanent licensing, the ministry introduced a two-year probation period followed by renewable five-year cycles, which according to the ministry official, improves efficiency and quality assurance. Schools that are non-compliant receive a warning, such as an identified problem and guidance on how to solve it. The official noted that private schools require nurturing and the site visits and inspections form part of that support and guidance until the school situation has improved. Once licensed, the ministry has a role of providing guidance and support to schools (through school-based seminars, workshops, or national workshops) to ensure growth towards becoming efficient and well established.

Similarly, in Colombia, annual self-evaluations and assessments are required and schools with exceptional scores are provided with financial incentives, while those not meeting standards must create a remedial plan (PEER – Colombia, n.d.). The government interviewee in Colombia noted that non-state schools would benefit from technical assistance and government support, similarly to what is provided for in public schools. Interestingly in Pakistan, the reverse also applies, whereby through the program 'Adopt-a-School', private individuals or organizations are encouraged to 'adopt' and 'improve' State schools (PEER - Pakistan, n.d.).

A workshop participant suggested that a grading system for schools could encourage improvement: beyond mandatory minimum standards, regulations which include higher aspirational level could promote continuous improvement longer-term. Further research on the efficiency of such a system could be taken to evaluate the viability of such a method, while factoring in transparency and accountability concerns.

¹⁴ Non-state actors could benefit from government support (such as knowledge products) to enable them to reach the desired standards.

→ **Regulation needs to have a developmental role – not only seeking compliance but supporting actors to ensure they meet standards.** This was a key insight that was raised in the workshop. While seeking compliance is essential to ensure that minimum education standards are respected, non-state actors do need to be supported in this endeavour. Participants noted that more established pluralistic systems don't pit public against private; they focus on school improvement.

→ **Various developmental mechanisms can be employed to bring the schools up to standards.** These can include conditional registration, that is, final registration subject to schools meeting certain criteria within a given amount of time. Developmental timelines can be put in place for when certain standards must be reached.

Conclusion: Insights and implications for future work

The issue of regulating non-state actors in education is highly complex due to the wide diversity of actors and contexts, the blurred lines between what is considered State and non-state provision, and what falls under the remit of human rights law. While this topic has benefited from extensive research and analysis, this project contributes to the discussion by shedding some light on the concrete challenges faced by the public and non-state sector and what they perceive to be the solution.

The findings from the research project present two complementary perspectives, that of the ministry officials and of non-state actors. Combined with the discussion of the workshop, these give an overarching understanding of the regulatory issues at stake. Based on these, certain implications can be drawn:

States must steward their entire education system.

- **States must not relinquish their obligation to ensure the provision of quality education.** States need to ensure priority investment is given to education, by complying with the right to education State obligations, while respecting educational choice.

Support for and investment in regulation must increase.

- **Governments need to increase their resources for implementing regulations.** States must ensure adequate investment in education which requires sufficient, efficient and effective budget allocation and strong accountability mechanisms. Government bodies tasked with overseeing the implementation of regulations need to have sufficient human and financial resources and be adequately equipped to fulfil their regulatory responsibilities.
- **International actors should invest in building regulatory capacity through technical assistance and funding.** Bilateral and multilateral agencies should dedicate more resources towards strengthening regulation systems. This can be through developing hands-on guidance and technical assistance that build up government systems and capacity to implement regulatory frameworks.

Regulations must establish minimum standards which are in line with human rights and grounded in local contexts.

- **There must be absolute minimum standards that should be put in place irrespective of the context.** Such standards must not lead to any kind of discrimination or inequality and include health and safety requirements. Quotas, vouchers, and special admission criteria for disadvantaged, marginalized or vulnerable groups that apply to non-state actors are a welcome measure. Children, as right-holders, must be at the centre of regulation formulation to consider what is in their best interest.
- **Regulations should be comprehensive in scope, including consideration of the quality of education outcomes.** It is important that input-related issues are not overlooked. However, accounting for and monitoring outcomes is essential to ensure that students are learning and flourishing in school.

- **Beyond minimum standards, regulations must be contextualized to reflect the reality of operating environments.** While absolute minimum standards in education are applicable irrespective of contexts, regulations need to consider local and national realities. Regulatory requirements must be attainable by schools in areas such as registration requirements, fee-setting, and teacher requirements, while ensuring that they do not sacrifice human rights standards.
- **Regulations must ensure that education provision does not lead to any kind of inequality and that all discrimination is strictly prohibited.** Vouchers and cash incentives help address inequality in education, while quotas and special admission criteria can be introduced which extend to non-state providers.

Education pluralism must be protected under the national education system.

- **Regulations should protect and cater to education pluralism.** Regulations need to ensure that minimum standards and safeguards are not so restrictive that they have negative repercussions on educational freedom and the rights of minorities. While all schools should be viewed under one umbrella, regulations should avoid creating ‘unitary’ provision and respect parents’ rights to choose non-state provision.
- **Governments should take a participatory approach to elaborating regulations.** Governments should capitalize on the desire for participation among non-state actors to include them in design and implementation of regulatory processes on an equal footing as all other stakeholders, while taking account the motives and influence of each group.

Compliance with regulations must increase.

- **Regulatory standards and practices should be implemented consistently among non-state actors as well as between public institutions and non-state operators.** This is to ensure that learners receive a consistent standard of education and fair treatment whether they are schooled within the public or non-state sector.
- **Regulations need to be clear, unambiguous and transparent.** This includes clarity on who is responsible for overseeing the implementation of regulations. The text of regulations (and accompanying guidance) should be rationalized, publicly available, and easily accessible in a single location. This can aid compliance and remove the scope for regulations to be a cause of corruption and rent-seeking behaviour.
- **Action should be taken to address any corruption in regulatory practices.** This includes tackling rent-seeking behaviour within regulatory systems.
- **Governments could consider taking a risk-based approach to increase compliance where it is most needed.** By targeting regulatory resource at the highest risk areas, this can increase compliance with limited resources.
- **School associations and non-state systems can be harnessed to strengthen State regulatory systems through peer regulation.** Whilst acknowledging that the State cannot abrogate their responsibilities as the primary regulator and duty bearer, school associations can further complement and reinforce regulatory capacity. Where non-state actors have strong management and monitoring systems, these could be used to strengthen State regulatory systems.

- **Where appropriate, technology should be used to improve regulatory systems.** Digital monitoring systems can help improve accountability and reduce corruption.

Regulations need to have a developmental role.

- **Various developmental mechanisms can be employed in regulatory systems to bring schools up to standards.** These can include conditional registration, applying developmental timelines, and introducing grading systems for schools. However, further work is required to understand the effectiveness of these strategies.

These considerations could help in advancing the policy debate on the regulation of non-state actors in education and contribute to achieving SDG4 and advancing the UN transformation of education agenda.

Appendix 1: Research methodology

Building on existing work, including the UNESCO GEM Profiles Enhancing Education Reviews (PEER) database¹⁵, the research explores the gaps in the existing literature around (i) the **perspectives of non-state providers and governments on regulation**, and (ii) on **areas where governments' regulatory capacity needs to be developed at primary and secondary education levels**. Where useful, the information collected is triangulated with that gathered through PEER on non-state actors in education to provide context and clarity.

The study focuses on five low- and middle-income countries: Colombia, Nepal, Nigeria, Pakistan and Uganda. These countries were selected based on a convenience sample, while taking into account the scale of the non-state sector and covering different regions of the world. The research undertaken has two components:

1. **Exploring the perspectives and needs of ministry officials:** Led by Dr Frank Marshall Adamson, UNESCO consultant, the study explores in further detail the perspectives of relevant education ministry officials of the non-state sector, and what is needed to support them to effectively regulate non-state education and play a system stewardship role. A series of one-hour Key Informant Interviews have been carried with one ministry official from each country and cover their perspectives on:
 - The effectiveness or best practices of their current engagement with, and regulation of, non-state actors in the school sector
 - The efficacy of the current framework they use to regulate non-state actors
 - Challenges faced in regulating non-state provision
 - Areas that require support and capacity development to improve the regulation of non-state actors (including both regulatory system design, and their capacity to monitor and enforce regulations)
2. **Exploring the experiences and perspectives of non-state actors:** Led by GSF, the study explores the perspectives of non-state actors on key dimensions of their relationships with government – including their relationships and current interactions; regulation; data collection and reporting; governance; funding and finance. Twenty one-hour Key Informant Interviews were carried across the selected countries with a sample of leaders of non-state providers from GSF's network from the following working categories: 11 standalone low-fee private schools (LFPS)¹⁶, five public-private partnerships (PPPs)¹⁷ and four school networks¹⁸. Interviewees were selected representing operators across the following working categories of non-state actor which serve low-income families. The interviews cover the perspectives of non-state providers on:
 - The current engagement and regulatory interface with government – and its impact on their operations

¹⁵ More information here: <https://education-profiles.org/themes/~non-state-actors-in-education>

¹⁶ 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.

¹⁷ 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' (UNESCO GEM, 2021).

¹⁸ School networks – chains of schools, operated by NGOs or other private providers. For this study this category excludes networks which receive a public subsidy.

- The efficacy of the current framework used to regulate non-state actors – and areas for improvement

The interviews were conducted from August 2022 to February 2023.

The study seeks to address the following **research questions**:

1. 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?
2. What challenges do governments in the selected countries face in engaging with and regulating non-state actors in education?
3. What challenges do non-state actors in the selected countries face in their interactions with government on regulation of education?
4. 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?
5. What are the implications of the findings of this study for global guidance on regulation of education?

All the interview transcripts were coded and thematically analysed. Two reports were produced: one by Dr Frank Mitchell Adamson and Ms. Rosemary Mitchell (UNESCO) which presents the perspectives of ministry officials, and the other by Ross Duncan, Joel Mullan, and Ronald Odhiambo (GSF), which presents the perspectives of non-state actors. The findings of both reports were presented and discussed during a **closed-door workshop on 13 March 2023** co-organised by UNESCO and GSF, which gathered experts, practitioners, non-state providers, and civil society organizations.

The outcome of the workshop discussions, the analysis from the two reports as well as relevant sources such as the GEM report and papers, are presented in this report.

Appendix 2: Framing within human rights

The right to education fundamental principles

According to General Comment¹⁹ No. 13 on the Right to Education of the Committee on Economic, Social and Cultural Rights (CESCR), there are **three types of State obligations** (CESCR, 1999, paras. 46 -47), the obligation to:

- **respect the right to education:** to avoid measures that hinder or prevent the enjoyment of the right to education;
- **protect the right to education:** to take measures that prevent third parties from interfering with the enjoyment of the right to education and to protect individuals and groups against abuses; and
- **fulfil the right to education:** to provide and to facilitate and requires States to take positive measures to enable and assist individuals and groups to enjoy the right to education.

In addition, **minimum core obligations** are incumbent upon every State party (CESCR, 1990, para. 10) whereby States parties have ‘a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels’ of the right to education. In the context of article 13, the CESCR has specified these include obligations: ‘to ensure the right of access to public educational institutions and programmes on a non-discriminatory basis; to ensure that education conforms to the objectives set out in article 13 (1); to provide primary education for all in accordance with article 13 (2) (a); to adopt and implement a national educational strategy which includes provision for secondary, higher and fundamental education; and to ensure free choice of education without interference from the state or third parties, subject to conformity with ‘minimum educational standards’ (Art. 13 (3) and (4))’ (CESCR, 1999, para. 57).

The 1960 Convention against Discrimination in Education (CADE) introduces the notion of **quality education** by defining that education refers to ‘all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given’ (article 1(2)). There is no benefit in accessing poor quality education. However, what constitutes quality education is not clearly defined as it a dynamic concept that evolves with time (UNESCO, 2005). The CADE also provides for the right of parents and legal guardians to choose for their children education other than that established by the State on the condition that such education conforms to minimum educational standards laid out by the State and that the religious and moral education of the children is in conformity with their own convictions (article 5(1)a). Furthermore, article 2 specifies that natural persons and legal entities can establish and direct educational institutions as long as they conform to minimum education standards and specifies that if the object of the private educational institutions is not to exclude any group but to provide additional educational facilities to those provided by the public authorities, then it does not constitute discrimination (article 2(c)).

¹⁹ A General Comment is a treaty body's interpretation of the content of human rights provisions, on thematic issues or its methods of work. General Comments often seek to clarify the reporting duties of States parties with respect to certain provisions and suggest approaches to implementing treaty provisions. Also called ‘General Recommendation’ by other treaty bodies (CERD & CEDAW).

Nevertheless, the 4As framework provides some indications by defining the essential features of the right to education (CESCR, 1999, para. 6). Education is to be:

- **Available:** available in sufficient quantity, education institutions require certain factors to function including 'buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology' (Ibid. para. 6(a)).
- **Accessible:** Education must be accessible to all without discrimination, within physical reach and affordable to all.
- **Acceptable:** The form and substance of education which should cover curricula and teaching methods, have to be 'relevant, culturally appropriate and of good quality [...] to students and, in appropriate cases, parents' (Ibid., para. 6(c)) as long as it conforms to the aims of education.
- **Adaptable:** Education also 'has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings' (Ibid. para. 6(d)).

Closely related to the concept of quality education, is the '**best interest of the child**' (article 3(1) of the Convention on the rights of the child, CRC, 1989). This must be the 'primary consideration' in all actions concerning children (Ibid.).

The CRC further lays out the **aims of education** which state that education, including non-state education, must be directed to:

- '(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment' (article 29, CRC).

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Regulating non-state actors in education:

Findings from a collaborative research project

This report, which examines the pivotal role of States as stewards of their education system in regulating non-state actors, presents the findings of a study conducted by UNESCO and Global Schools Forum (GSF) in the context of a collaborative research project, undertaken, in the spirit of the Global Education Coalition, to build evidence on regulating non-state actors in education.

Building on key informant interviews with government officials and non-state actors in education, the report also includes contributions from an expert workshop organized in March 2023, to shed light on gaps and challenges, promising practices and national and local realities.

With a steadfast commitment to quality, inclusion and human rights principles, this report serves to provide insights on how to strengthen governments' regulatory capacity, in light of the evolving landscape of education.