

Regulating market entry of low-cost private schools in Sub-Saharan Africa: Towards a theory of private education regulation

Donald R. Baum ^a, Rachel Cooper ^b, Oni Lusk-Stover ^b

^aBrigham Young University, United States

^bThe World Bank, United States

Abstract

This study provides a comparative assessment of policies governing private schools in twenty countries in Sub-Saharan Africa. Findings suggest that current regulatory systems are failing to adequately address the negative externalities and failures of private schooling markets. Insufficient capacity on the part of governments is a contributor to uneven policy implementation and creates opportunities for rent-seeking and corruption. Onerous market entry regulations offer constraints on the growth of *official* private education markets, but facilitate growth in *unofficial* markets if demand for education is not being fully met by the supply of government service provision, restricting the government's ability to provide adequate oversight of private providers.

Keywords

Education policy; regulation; education markets; school choice; low-cost private schools; Sub-Saharan Africa

1. Introduction

Over the last two decades, a growing body of research has emerged documenting the expansion of a for-profit private school sector in developing countries catering to the demand of poor families for non-state education services (Ashley et al., 2014; Härmä, 2011; Kingdon, 1996; Kitaev, 1999; Nguyen and Raju, 2014; Tooley and Dixon, 2006; United Nations Educational Scientific and Cultural Organization (UNESCO), 2015). These so-called 'low-cost private schools' are educating significant shares of primary and secondary school students in South Asia and Sub-Saharan Africa. Indeed, as shown in Table 1, across Sub-Saharan Africa, over 11 percent and 19 percent of primary and secondary students are enrolled in private¹ schools, with moderate growth in these sectors demonstrated over the last decade and a half. This study adopts the definition of 'private school' used by the UNESCO Institute for Statistics: that is, "all educational institutions not operated by a public authority, regardless of whether they receive financial support from such authorities," which includes but is not restricted to "religious bodies, other organizations, associations, communities, private enterprises or persons" (UNESCO Institute for Statistics (UIS), 2009, p. 31). Within Sub-Saharan Africa, the growth and contributions of these schools have been investigated in countries such as Kenya, Nigeria, South Africa, and Tanzania, among others, highlighting issues of quality, efficiency, accessibility, and equity within the low-cost private school market.

As a result of this growing education subsector, there has been increasing interest on the part of governments, donors, and other international stakeholders concerning effective inclusion of these schools within national education systems and international education commitments. In particular, there is great need for evidence on what constitutes effective regulation of private schools, to ensure that non-state providers are operating to enable optimal social benefit by minimizing the effects of both market

¹ The data for private school enrollments are accessed through the World Bank's EdStats database, with the original data source being identified as UNESCO Institute for Statistics (UIS).

and non-market failures. While a handful of studies have touched upon issues of regulation in select African countries (Ashley et al., 2014; Härmä and Adefisayo, 2013; Heyneman and Stern, 2014) no study has yet provided a systematic and theoretically-grounded assessment of the regulatory environment of private schools.

To present, understanding of private education regulation has been driven less by empirical observation than theoretical reasoning. As a result, one notion that has persisted is that stricter regulation suppresses private sector growth and participation of students in private schools, and that restrictive regulations can be used as a mechanism for governments to constrain private sector competition, thus maintaining the role of the state in providing free education services to the majority of its student populations (Fielden and LaRocque, 2009; Härmä and Adefisayo, 2013; McLoughlin, 2013; Rose, 2006; Singh, 2015). For example, the World Bank's framework for engaging the private sector in education (Baum et al., 2014) outlines a number of regulatory mechanisms commonly understood to restrict the growth of private education, including: the financial costs of private school registration and certification; the length of the registration process; accessible information on certification procedures; requirements on school land, facilities and infrastructure; and the approval of for-profit provision. Verspoor (2008) suggests that "overly complex procedures for registration and licensing, exacerbated by the weaknesses of the institutions that administer the policy, often hamper the development of private-sector provision" (p. 35). The intuitive assumption is that restrictive regulatory environments constrain the contributions of private parties to education and thus the growth of the sector. However, these theoretical assertions have yet to be tested empirically within the context of a low-cost private school environment. The current study aims to provide some of the first cross-country research to assess the relationship between private sector regulation and private sector growth² in education.

In an effort to extend the foundations of private school regulation theory, this study explores existing theoretical frameworks of market entry and regulation – including state-driven, market-driven, and regulation-driven theories – and their application to the regulatory environments governing non-state schooling in twenty (20) countries in Sub-Saharan Africa to understand the effect of existing policy on the behavior of the educational marketplace. Using data collected as part of the World Bank's *Systems Approach for Better Education Results (SABER)* initiative, we empirically investigate some of the primary assumptions of the market regulation literature, addressing the following research questions:

1. Is stricter regulation of market entry negatively associated with the *size* of the private school marketplace?
2. Is stricter regulation of market entry negatively associated with the *growth* of the private school marketplace?
3. Is the effect of regulation on market size and growth moderated by the supply of public schooling?

² Growth in the share of student enrollments in the private sector can take place through three avenues. First, by transfer of students from public to private schools. Second, by enrollment into private schools of children previously not enrolled in any school. And third, by a change in school status from unregistered to registered. It might be assumed that changes in private enrollment share, as shown in Table 1, are the result of the first two scenarios; however, if previously unregistered private schools become reclassified as registered private schools, either by those schools meeting existing registration standards or by changes in official standards for private school registration, this would also be reflected as growth in private sector enrollment share. Unfortunately, the available administrative data used in this study do not allow us to identify which of these avenue(s) are determining changes in private enrollment; but we are able to assess overall changes in private enrollment as a share of total enrollment.

4. Is current private education regulation in these 20 countries effective in correcting for market failures and negative externalities?

Table 1. Private primary and secondary enrollment as a percentage of total enrollment, Sub-Saharan Africa

Country	Private share of total primary enrollments		Private share of total secondary enrollments	
	2014	2000-2014 increase	2014	2000-2014 increase
Angola	3.0%	-2.2%	11.0%	-7.2%
Benin	17.0%	6.9%	18.0%	1.8%
Botswana	5.8%	0.9%	3.0%	-1.0%
Burkina Faso	16.5%	5.1%	41.1%	6.9%
Burundi	1.2%	-0.1%	9.1%	-2.4%
Cabo Verde	0.7%	0.7%	10.8%	
Cameroon	22.5%	-4.7%	27.0%	-5.1%
Central African Republic	13.7%	4.0%	9.7%	
Chad	10.4%	2.1%	16.3%	1.3%
Comoros	19.1%	8.4%	50.4%	4.3%
Congo, Dem. Rep.	11.2%	-1.8%	16.5%	
Congo, Rep.	31.1%	15.9%		
Cote d'Ivoire	13.0%	1.4%	47.7%	11.5%
Equatorial Guinea	54.2%	21.4%		
Eritrea	9.4%	-0.6%	5.6%	0.0%
Ethiopia	4.0%	-2.2%	11.3%	
Gabon	43.9%	15.6%		
Gambia, The	29.9%	16.2%		
Ghana	23.1%	5.7%	16.1%	6.5%
Guinea	29.5%	13.4%	26.3%	14.2%
Guinea-Bissau	27.7%	8.3%	12.8%	0.0%
Kenya	10.6%	6.1%	12.7%	4.6%
Lesotho	1.3%	1.3%	0.9%	-10.2%
Liberia	32.6%	-5.9%	60.0%	22.8%
Madagascar	19.1%	-3.5%	40.5%	-1.9%
Malawi	1.2%	0.1%	6.5%	-5.9%
Mali	35.3%	13.4%	39.5%	14.7%
Mauritania	14.2%	11.4%	25.5%	16.7%
Mauritius	29.7%	5.7%	56.8%	-10.8%
Mozambique	1.6%	-0.8%	12.7%	-2.0%
Namibia	5.9%	1.7%	4.9%	0.7%
Niger	3.5%	-0.8%	17.9%	1.5%
Nigeria	8.0%	1.5%	21.5%	9.7%
Rwanda	2.7%	1.8%	18.0%	-25.7%
Sao Tome and Principe	0.5%	0.5%	3.8%	3.8%
Senegal	15.4%	4.8%	19.2%	-7.1%
Seychelles	10.5%	6.2%	8.6%	5.8%
Sierra Leone	7.8%	6.1%	7.0%	5.1%
South Africa	3.8%	2.1%	5.1%	2.8%
Swaziland	1.5%	1.5%	2.3%	
Tanzania	2.4%	2.2%	21.4%	
Togo	28.3%	-8.6%	23.3%	5.6%
Uganda	16.2%	5.6%		
Zambia	3.2%	0.6%		
<i>Mean</i>	14.4%	3.8%	19.4%	1.9%

Source: World Bank (2016). Enrollment shares above 20% are bolded. Data points come from specified or closest available year, and are represented in terms of increases in percentage points.

Our hypotheses with respect to the first two research questions fall in line with the existing literature on private school regulation, namely that increased stringency of entry regulations will result in lower relative size and growth of private schooling markets. Concerning the third research question, the existing regulation literature has yet to address whether regulation or public school supply is more predictive of private market size; although the amount of discussion on the link between market regulation and market growth may implicitly suggest regulation to be more salient to existing theory. Our hypothesis, however, is that existing supply within the public school sector (and the corresponding demand for private school services) is more predictive of private market share. Lastly, given prior research on implementation of private education regulation in low- and middle-income countries (Ashley et al., 2014; Härmä and Adefisayo, 2013; Ohara, 2013, 2012; Rose, 2006; Srivastava, 2008; Stern and Heyneman, 2013), we expect private education regulation in our sample of countries to bear little relationship to market failures and externalities.

2. Low-cost private schools in Sub-Saharan Africa

There is a sizable body of research on the prevalence and operation of low-cost private schools³ in Sub-Saharan Africa, accompanied by a politically heated debate as to the proper role of private education in a post-2015 world of human rights and Education for All. The growth in evidence has advanced the discussion beyond questions of the existence of private school participation in less wealthy communities, a point of contention in the early years of low-cost private school research (Ashley et al., 2014; Tooley, 2013). In nineteen countries of Sub-Saharan Africa, over 20 percent of students are enrolled in non-state institutions at either the primary or secondary school levels (Table 1). Between 1991 and 2003, private primary enrollments in Sub-Saharan Africa grew by 113 percent, compared with a 52 percent growth for public primary education (World Bank, 2016a).

Furthermore, research has demonstrated growth of participation in unofficial education markets in numerous developing countries. Referred to commonly as ‘unrecognized’ or ‘unregistered’ private schools, these unofficial education markets often account for significant shares of total private enrollments (Härmä, 2011; Larbi et al., 2004; Mehta, 2005; Ohba, 2013; Tooley et al., 2011, 2005; Tooley and Dixon, 2006; World Bank, 2016b). Unofficial low-cost private schools are increasing in urban localities, with informal settlements demonstrating particularly high levels of participation (Oketch et al., 2010b; Rose and Adelabu, 2007; Tooley et al., 2008); although, strong participation has also been identified in some rural areas (Akaguri, 2011; Härmä, 2011). Such findings have contributed to a shift in conversation, with little debate now over the existence of low-cost private schools, and a greater emphasis on the government’s role in responding to growing private enrollment.

Many privatization opponents maintain that increased public ownership of education is necessary, due to market failures within the private sector. Critical arguments against private schooling are often embedded in critiques of the neoclassical economic framework, with concerns that market-driven education policy compromises social justice and equity for the sake of operational efficiency (Klees et al., 2012; Menashy, 2014; Robertson and Dale, 2013; Verger et al., 2016). From this perspective, government

³ Within the literature on private education, the key features of public and private schooling entail funding and provision (i.e., management). The classification of public and private schools typically follows whichever sector is in charge of the management of the school. Public schools are managed and operated by individuals who are employees of the state – oftentimes career civil servants. In the case of private schools, management includes independently paid and employed principals and teachers.

support to non-state providers diminishes the value of schooling as a global public good, and threatens the legally established human right to a free and universal education. These concerns are not unfounded. There is a robust body of empirical research that identifies growth in social inequities as a common negative spillover of private school interventions in developing countries (Akresh et al., 2012; Aslam, 2009; Härmä, 2011; Pal and Kingdon, 2010). Across a multitude of studies, researchers have found that increases in private education provision disproportionately increase educational opportunities for the most advantaged student populations (Akresh et al., 2012; Aslam, 2009; Bangay and Latham, 2013; Härmä, 2009; Hsieh and Urquiola, 2006; Maitra, 2011; Söderström and Uusitalo, 2010; Waslander et al., 2010).

However, evidence also suggests that growth of private education markets has enabled access to education for millions more children across the globe (Baird, 2009; Dixon, 2012; Tooley, 2013; Tooley and Dixon, 2006). Participation in private education is a multifaceted phenomenon, with increased enrollments in private schools being driven by a range of forces, including: excess demand (i.e., inadequate public supply) (James, 1994, 1987; Kisira, 2008; Oketch et al., 2010b), differentiated demand (i.e., consumer desires for education services of differential values or quality) (Chimombo, 2009; James, 1994, 1987; Ohba, 2013; Oketch et al., 2010a; Sawamura and Sifuna, 2008; Somerset, 2009), and proximity to school (Government of Cameroon, 2007; Longfield, 2012; Tooley and Yngstrom, 2014). All three of these forces demonstrate market responses to non-market failures – accounting for the demand of students and their families to receive services that are not adequately provided by the state.

In summary, the existing literature suggests that low-cost private schools in Sub-Saharan Africa have emerged as a direct response to non-market failures in education and a demand for the marketplace to rectify these failures. The private sector has proven to be an important contributor towards Education for All (Heyneman and Stern, 2014); without the existence of private schools, most countries in Sub-Saharan Africa would be further from their universal education goals, and many students would lack access to any educational opportunities. That is, if the alternative is no access to school, a low-cost private school is an important option for students, parents, and communities. These facts notwithstanding, there is reason to maintain measured expectations for the contributions of the non-state sector in education, particularly with respect to the market's ability to deliver socially efficient outcomes without government intervention.

3. Government regulatory capacity, enforcement, and corruption

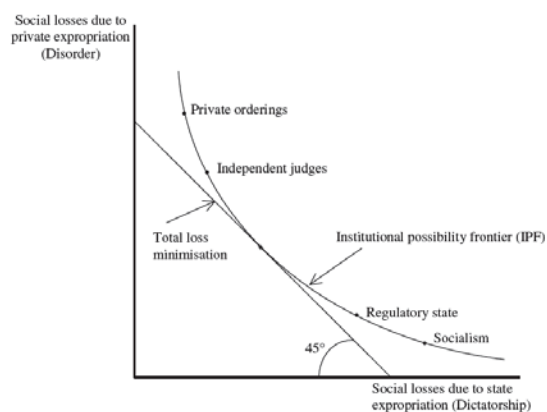
In their systematic review of the evidence on low-cost private schools, Ashley and colleagues (2014) find that low-income countries consistently lack the capacity to closely regulate the private sector. One challenge is that many governments currently have an incomplete knowledge about private schools, including size of the sector, location of schools, constraints and needs of private schools, and determinants of private participation (Humayun et al., 2013; Sommers, 2013). Existing regulatory frameworks, particularly those with more stringent registration requirements, are often enforced selectively or ineffectively, which is found in numerous cases to facilitate rent-seeking and bribery by state regulators (Härmä and Adefisayo, 2013; Ohara, 2013, 2012; Srivastava, 2008; Stern and Heyneman, 2013). As government inability to enforce regulations increases, so does the level of graft and corruption (Stern and Heyneman, 2013), as paying bribes to inspectors can be a much quicker and less costly means of gaining recognition than meeting an extensive set of onerous registration requirements (Tooley and Dixon, 2006). Yet the largest constraint to effective enforcement of regulation seems to be a lack of manpower in government oversight, inspection, and registration offices (Rose, 2006).

4. Market entry and regulation – towards a theoretical framework

Theories of market governance are a lynchpin of modern day economic, political, and social philosophy, playing a substantial role in the historical arcs of global economic systems. According to Djankov et al. (2003), the mechanisms available to governments to control the behavior and products of the market lie along a continuum (or institutional possibility frontier) with the juxtaposed social outcomes of disorder and dictatorship on either end (Figure 1). Disorder represents risk to individual rights and property resulting from private activity in the forms of monopoly pricing, torts, violation of agreements, or exploitation of public institutions through bribes and threats, while dictatorship involves most of these same risks due to the activity of the state (Djankov et al., 2003).

Optimal social welfare can be pursued with respect to government interaction with markets through four institutional approaches along this continuum – private orderings (i.e., market behavior), private litigation, state regulation, and state ownership – with accompanying levels of state control increasing with growth on the x-axis, and decreasing with growth on the y-axis (Djankov et al., 2003). This model suggests that the social losses from disorder diminish as those from dictatorship grow, and vice versa (Shleifer, 2005). Implicitly, as the state power to control disorder increases, so do the opportunities for dictatorial abuse. However, there are instances where certain activities increase both disorder and dictatorship; for example, government restriction of market entry increases dictatorship and may simultaneously increase disorder in the presence of bribes, negative externalities, and diminished quality of outputs.

Figure 1. Institutional possibilities for market governance



Source: Djankov et al. (2003)

4.1. Examining state-driven and market-driven theories of regulation

Public interest theory, as outlined by Pigou (1938), identifies government regulation of industry as a means of pursuing social efficiency – that is, protecting public interests from the negative externalities of market failures. The ideas of public interest have influenced the growth of public ownership and regulation of business over the past century. Public interest theory is based, in part, on the notion of a good-willed, if not altruistic, state, whose primary aim is to promote the public good and the well-being of its citizens. Where markets seek to maximize economic efficiency, governments strive to maximize social welfare.

Public interest theory is based on two key assumptions: first, that unchecked markets fail due to problems of monopoly or externalities, and second, that governments are capable of correcting market failures through regulation, while minimizing adverse externalities (Shleifer, 2005). From a public interest perspective, regulation of market entry is used to screen new entrants with the intent of ensuring high quality products from 'desirable' service providers. Thus, public interest predicts that greater regulation will produce higher quality goods and fewer damaging externalities than those produced under *laissez-faire* approaches to market entry (Arruñada, 2007; Djankov et al., 2002). Implicit within this argument, public interest theory also assumes that states have the intent, knowledge, and capacity to effectively assess, monitor, and regulate private markets.

In contrast, many market-driven theories of economic behavior, governance, and policy making – largely products of the Chicago School of Economics – offer theoretical counterpoints to the claims of public interest. For example, neoliberalism posits that, rather than the state, competitive free markets are the social institution with the greatest likelihood to deliver maximal social welfare, and as such, all social institutions, and all human transactions more broadly, should be brought into the domain of the market (Harvey, 2007; Vlachou and Christou, 1999). The state's role in this context is to create an enabling environment to allow markets to behave as freely as possible, through mechanisms such as liberalization, deregulation, privatization, market fundamentalism, and minimum intervention (Rose, 2003; Stiglitz, 2003).

Another critique of the public interest perspective – public choice theory – provides an approach for applying economic thinking to explain the action and behavior of policy makers and politicians. In short, public choice asserts that public policymakers, politicians, and regulators behave as rational, self-interested actors in their areas of public service in much the same way as the rational consumer behaves within the market. Initially proposed by Buchanan and Tullock (1962), the basic tenets of public choice influenced the development of two sub-streams of theory: the 'regulatory capture' and 'tollbooth' models of market regulation. From these perspectives, regulation of firm entry into the market occurs not because it produces socially desirable outcomes, but because doing so benefits incumbent firms (Posner, 1974; Stigler, 1971) and regulators (McChesney, 1987; Shleifer and Vishny, 1993).

Based on this assertion, public choice theories accept private orderings through *laissez-faire* market behavior as preferable to the political graft, rent-seeking, and other corrupt practices often exploited through use of public rules and regulations, particularly in societies with few checks and balances (Djankov et al., 2002; Shleifer, 2005). Such thinking finds parallels with theories of non-market failures, wherein the free activity of private markets is seen as beneficial, in contexts where state intervention is unable to produce socially desirable outcomes. Although, from the public interest perspective, the inability for markets to produce socially desirable outcomes is adequate justification for public policy intervention, theories of non-market failure explain that the remedies pursued through state involvement often fail to alleviate market shortcomings (Wolf, 1987, 1979).

These market-based theories offer specific expectations with regards to the consequences of market regulation. In line with theories of public choice and non-market failures, strict regulation itself can produce rather than inhibit negative externalities, particularly growth of the informal economy (Almeida and Carneiro, 2012; Feldmann, 2009; Perry et al., 2007). These effects can be particularly acute for the most vulnerable households, with the poorest, at times, being those forced into the unofficial market (De Soto, 2002). Due to a proclivity for regulation to become inefficient and corrupt, public choice predicts

that, rather than producing social benefit, tighter regulation of market entry will lead to decreased competition, increased corruption, adverse externalities, and failure to produce high-quality products, unless checks on government are in place to protect against public abuse. Evidence from studies on the regulation of (non-education) markets, supports the assertion that regulatory barriers to market entry can contribute to political corruption and have substantial impacts on the size of the informal economy, with little effect on the quality of delivered products (Antunes and Cavalcanti, 2007; De Soto, 2002; Djankov, 2009; Djankov et al., 2002).

4.2. The enforcement theory of regulation

Importantly, state interaction with private markets is not restricted to only a state-based or market-based approach; in reality, nearly all systems govern through a combination of market and government forces (Wolf, 1987). In particular, given the realities of both market and non-market failures, it is perhaps critical to employ a theoretical framework that incorporates the realities of both forms of interaction with the market. Shleifer's (2005) enforcement theory of regulation strives towards this end, calling into question (i) the benign, efficient, and incorrupt nature of regulators, politicians, and even private courts, but also (ii) overconfidence in the ability for private orderings to produce socially desirable outcomes. Enforcement theory attempts to pull the benefits of both privately- and publicly-derived social order from each of these competing theories of market governance, recognizing the ability of private orderings to efficiently produce socially desirable outcomes in some situations (particularly given realities of non-market failures), while not overlooking the benefits of state regulation and even state provision of services when market failures pose actual threats to societal well-being.

The foundational argument of enforcement theory is that each alternative for social control of business, as presented in Figure 1, is imperfect, and that, as such, the optimal approach for state intervention involves an imperfect choice among these alternatives. Enforcement theory posits that, where market discipline is able to control social disorder, it is the preferable option, as it has the lowest dictatorship costs; and thus, any state intervention, through either regulation, state ownership, or provision is justified only where market failures pose actual threats *and* where government control is deemed capable of improving social order. When social outcomes are not adequately adjusted by the market, the enforcement theory response is to move sequentially up the continuum of government intervention, towards private litigation (Coase 1960; Posner 1995), regulation, and finally state ownership. Ultimately, enforcement theory places burden of proof upon the state to demonstrate social harm at the levels of market discipline before justifying increased state intervention, such as regulation or public delivery. If government action cannot correct for market failures, there is little justification for state intervention, otherwise the system simply increases in both disorder and dictatorship.

5. Market entry and regulation of private education providers

Specific application of these theories to the education marketplace has been limited. In line with the theoretical literature discussed above, there are four institutional possibilities for governance of the education market:

- i. Privately provided education, controlled internally by market forces, such as incentives for providers to produce socially desirable outcomes;
- ii. Privately provided education, kept in check through processes of private litigation;
- iii. Privately provided education, controlled through government regulation of market activity; and
- iv. Publicly provided education.

These approaches for education governance address only operation and management of schools, allowing variations in private or government funding across any of these interventions. For instance, while the first approach seeks to capitalize on market efficiencies through private provision (in line with a neoliberal theoretical justification), this could involve partial or even complete government finance, such as a universal voucher program, which pays for student attendance in the private schools of their choice. In a majority of low-income countries, existing legal systems lack capacity for private litigation to effectively protect individual consumers against socially unsavory providers in the market; as such, this step in the continuum should not be met with realistic expectations for delivering outcomes of social efficiency in Sub-Saharan Africa.

Debates over government regulation of private schooling include arguments on both ends of the institutional possibility frontier. Some conceptual models and theoretical schools of thought would suggest that market forces are adequate guarantors of quality service delivery, as low-quality operators are penalized through loss of students and forced closure (Friedman, 1955; World Bank, 2004). However, the market may only be capable of achieving these outcomes after accounting for existing market failures and negative externalities, including: (i) insufficient choice options to allow selection of alternative providers, (ii) distributional inequity, and (iii) information asymmetries regarding the quality of services within the private school sector (Baird, 2009; Bruns et al., 2011; Languille, 2016; Schirmer et al., 2010).

Whether education is considered a human right, a national economic imperative, or both, the failure of the education system to provide access to a quality education for all children constitutes a foundational societal inadequacy. As such, we should be cognizant of situations in which private markets are correcting for the failure of states to deliver adequate or sufficient education services, as well as those wherein regulation of private schools is facilitating better quality of privately-delivered services, and removing cost barriers to private sector access. If market failures prevent market self-regulation from guaranteeing optimal educational activity, enforcement theory would suggest investigating the sequential steps towards increasing social order:

- Can government regulation of the private sector more effectively deliver desired levels of social welfare than unfettered educational markets?
- Might complete state ownership in education be the most assured means of delivering socially-desirable outcomes?
- Or, does the optimal approach for educational governance require a mix of market behavior, government regulation, and state provision?

This paper offers findings which suggest that across Sub-Saharan Africa the capacity of governments to oversee and manage the official market entry process, particularly given high demand for non-state education services in some contexts, is insufficient to reduce negative externalities and increase social gains resulting from the private delivery of education. The driving question of this study is whether regulation of market entry is an effective means of mitigating these failures and of producing more socially optimal educational outcomes.

6. Methodological approach

This study presents data collected as part of the World Bank's *Systems Approach for Better Education Results (SABER)* initiative, a systematic review and assessment of policies governing key education domains globally. *SABER-Engaging the Private Sector (SABER-EPS)* collects data on current laws and regulations across four key policy areas for private sector governance: school autonomy, provider accountability, market entry, and information dissemination. These policy areas are assessed across the

four most common models of private service delivery: independent private schools, government-funded private schools, privately managed schools, and private school vouchers⁴ (Baum et al, 2014).

SABER-EPS works to provide a better understanding of the ways in which governments are regulating the private school sector across Sub-Saharan Africa, with the ultimate aim of improving the quality of regulation and thus the outcomes particular to each educational context. In this paper, we assess these regulatory environments, with respect to the previously discussed theoretical frameworks, to understand whether existing policies are sufficiently protecting against the negative externalities and failures of the private education marketplace, as well as allowing the private sector to respond to non-market failures. Lastly, we investigate the extent to which regulation of market entry impacts the expected size and growth of the private education sector.

The *SABER-EPS* analysis was carried out in twenty⁵ countries across Sub-Saharan Africa (and three separate states in Nigeria, for a total sample size of 22), representing the most comprehensive overview of policies relating to private education in the region to date. Countries self-selected into the study based on their education priorities. For many countries, the decision to be involved in the study was driven by recognition that a better understanding of private school regulation would be an important input into the education policy-making process. Given this non-random sampling procedure, we present results with some level of caution, as they might not be generalizable to all countries outside the study sample, particularly given that this set of countries has a higher average participation rate in private schooling (17 percent and 26 percent at the primary and secondary levels) than the average for the region. In fact, a higher degree of private enrollment may have been a determining factor for countries to participate in the study, as the results would have more relevance for their particular contexts.

Within each country, policies governing private schools were identified through searches of written documents and interviews with Ministry of Education officials, inspection agencies, registration officers, and private school associations. Countries are assessed expressly on their laws, policies, and other officially-documented regulatory norms (i.e., policies that have been codified within official written and disseminated government documents, such as national constitutions, laws, decrees, government memos, etc.).

Data were collected on fourteen common types of regulation used by governments for the registration of private schools, including: teacher and headmaster qualifications and salaries; class sizes (i.e., number of students per classroom); tuition levels; profit status; number of registration fees; geographical restrictions; and infrastructure requirements such as land and building ownership, number, size or type of classrooms, school equipment, playgrounds, and purpose-built school buildings. Values were assigned to variables to indicate the relative stringency of each registration requirement, with higher

⁴ Independent private schools are those operated and funded completely independent of government. Government-funded private schools (or subsidized schools) are operated independent of government, but receive some degree of financial or non-financial support from the state. Privately managed schools are those owned and funded by the government, but operated by private providers, often through explicit contracts (such as in the case of charter schools in the United States). School vouchers offer funding for students to attend the private school of their choice.

⁵ The countries included in this analysis are: Benin, Burkina Faso, Cameroon, Comoros, Cote d'Ivoire, Ghana, Guinea, Liberia, Malawi, Mali, Mauritania, Mozambique, Nigeria (three individual states were assessed in Nigeria: Anambra, Ekiti, and Lagos), Senegal, Sierra Leone, Swaziland, Tanzania, Togo, Zambia, and Zimbabwe. Although the sample includes three states within Nigeria, for simplicity, the analysis refers to all of these as countries.

values denoting more restrictive market entry regulations. For instance, if a country lacks any regulatory requirement on the necessary qualifications of teachers in private schools, a value of '1' is assigned on the *Teacher Qualifications* variable, whereas a value of '4' is assigned if a country sets centralized teacher qualification standards to which private schools must adhere. More restrictive registration criteria are assigned higher potential values – such as a '6' for centralized tuition caps or an '8' for requiring schools to own their own land or be housed within purpose-built buildings. The determination of these values was driven by (i) a review of the research literature on market entry regulations for private schools, (ii) interviews and focus groups with private school operators, school associations, and government officials, and (iii) a logical assessment of each indicator by the authors, to determine which of these factors are most prohibitive to market entry and continued registration. Descriptions of each variable are presented in Table 2, along with the assigned values for each registration requirement and averages for each variable across the twenty countries in the sample. To assess the effect of market regulations on the activities of the private sector, we constructed a composite measure – the sum of all individual regulation variables – of private education regulation.

To test the key assertions of the previously-discussed state-driven and market-driven theories regarding the relationships between market regulation, market growth, and market outcomes, we combine the *SABER-EPS* data on country regulatory policy with available education administrative data across countries. Given the small sample size of countries included in the *SABER* study, we are only able to test simplified statistical models, with a limited number of variables. We carry out bivariate correlations and OLS regression models to assess the effect of market entry regulation and supply of government-provided education on two dependent variables:

- i. Percentage of primary school students enrolled in private schools; and
- ii. Growth in the percentage of primary school students enrolled in private schools.

Unfortunately, available data across countries only allows for tracking of the size and growth of 'recognized' private schools. Given the failure of some private schools to be registered with the government, this set of unregistered schools is left out of official administrative data (UIS, 2009). We recognize this as a limitation of the current study; but, nevertheless, feel confident that there is tremendous value in a systematic assessment of the relationships between these two outcomes for registered private schools and countries' regulatory procedures. Data on the corresponding enrollment of students in non-registered private schools is only available from case studies of specific countries, and thus, unfortunately, is not able to provide evidence on cross-country trends at this point in time. However, to understand the effects of regulation on the unofficial school sector, we present some case study findings from our data collection in Nigeria and Tanzania.

An additional limitation of the study relates to the nature of the measures of market entry regulation – specifically, that these policies represent only the officially codified regulatory frameworks of each country, and do not necessarily capture the extent to which these policies are applied. However, we assert that finding significant relationships related to our research questions would indicate some degree of consistency between policy and practice; if policy bears little relationship to the regulations that are enforced upon private markets, we would be unlikely to find any significant relationships between these official policies and any systematic between-country variation in the size or growth of private markets.

7. Findings

7.1. Types of private provision

The review of existing policies demonstrates that private providers have some level of involvement in the delivery of basic education services in each of the sample's twenty countries. In each of the countries, official policies provide evidence of the existence of independent private schools, outlining rules and regulations for the legal operation of these schools (Table 3). In half of the countries (11), policy documents establish an operating legal framework for the state to provide support to private schools through provision of funds, staffing, materials or other resources (Table 3). In only three countries – Burkina Faso, Cote d'Ivoire, and Guinea – does official policy identify the existence of and establish the regulatory environment for the operation of privately managed schools. Lastly, we find evidence of a codified legal framework for the administration of a school voucher program in only one country – Mali.

Table 2. Description of market entry regulation variables (n = 22)

Variable	Mean (SD)	Scale
Teacher qualifications	3.63 (.90)	1 = School determines teacher qualification requirements, without approval from government 3 = Government must approve teacher qualifications 4 = Government sets standardized teacher qualification requirement
Teacher salaries	1.22 (.75)	1 = Teacher salaries set by the school, with no government approval 3 = Teacher salaries approved by government 4 = Teacher salaries set by government
Class size	2.81 (1.36)	1 = Private schools are free to determine their own class sizes 3 = Government has right to approve/reject class sizes 4 = Government sets standardized class size
Tuition	2.13 (1.61)	1 = Schools free to set their own tuition 4 = Tuition levels must be approved by government 6 = Standardized tuition levels (or caps) set by government
For-profit providers	1.13 (.63)	1 = For-profit schools are allowed 4 = For-profit schools are not allowed
Playground	2.5 (1.53)	1 = No requirement for playground/outdoor space 4 = Established requirement for playground/outdoor space
Land ownership	4.81 (3.56)	1 = No requirement for minimum land space or land ownership 8 = Established requirement for minimum land space or land ownership
Building ownership	1.31 (1.49)	1 = No requirement for building ownership 8 = Established requirement for building ownership
Purpose-built building	1.31 (1.49)	1 = No requirement for purpose-built building 8 = Established requirement for purpose- built building
Number, size, type of classrooms	3.0 (1.19)	1 = No requirement for classroom type/size/number 3 = Government must approve quality of classroom/school infrastructure 4 = Established requirement for type/size/number
Head teacher qualifications	2.72 (1.48)	1 = No requirement for head teacher certification 3 = Head teacher qualifications must be approved by government 4 = Established requirement for head teacher certification
School equipment	1.81 (1.36)	1 = No requirement for certain (non-computer) equipment 4 = Established requirement for certain (non-computer) equipment
Distance from other schools	1.59 (1.00)	1 = Private schools can operate without restriction to existence of public or private schools nearby 3 = Government must approve school location 4 = Standardized formula exists for distance from public or private school
Registration fees	1.95 (1.78)	Number of fees to be paid for school to register
Regulation total	33.09 (7.68)	Composite of all market entry regulation variables

Table 3. Types of private education provision⁶ in SSA (n = 22)

	Independent Private Schools	Government-funded Private Schools	Privately Managed Schools	School vouchers	Share of private primary enrollments ⁷	Share of private secondary enrollments
Benin	Yes				17.0%	18.0%
Burkina Faso	Yes		Yes		16.5%	41.1%
Cameroon	Yes	Yes			22.5%	27.0%
Comoros	Yes				19.1%	50.4%
Cote d'Ivoire	Yes		Yes		13.0%	47.7%
Ghana	Yes				23.1%	16.1%
Guinea	Yes		Yes		29.5%	26.3%
Liberia	Yes	Yes			32.6%	60.0%
Malawi	Yes	Yes			1.2%	6.5%
Mali	Yes	Yes		Yes	35.3%	39.5%
Mauritania	Yes	Yes			14.2%	25.5%
Mozambique	Yes				1.6%	12.7%
Nigeria – Anambra	Yes	Yes			36.2%	41.0%
Nigeria – Ekiti	Yes					
Nigeria – Lagos	Yes				61.0%	33.0%
Senegal	Yes	Yes			15.4%	19.2%
Sierra Leone	Yes	Yes			7.8%	7.0%
Swaziland	Yes	Yes			1.5%	2.3%
Tanzania	Yes				2.4%	21.4%
Togo	Yes				28.3%	23.3%
Zambia	Yes	Yes			3.2%	
Zimbabwe	Yes	Yes				
Total	22	11	3	1	16.7%⁸	25.5%

⁶ Results indicate existence of private school types according to official policy documents only.

⁷ The available data does not enable us to distinguish between different types of private school models in terms of private enrollment share. Rather, the share of private enrollments includes private schools of all management and funding structures.

⁸ Provided totals indicate medians. There is no correlation between the number of private school types and the share of private enrollments at the primary or secondary levels.

Table 4. Market stringency and input-focused registration regulations

	Market entry regulation index	Government sets or approves teacher qualification standards	Government sets or approves headmaster qualification standards	Government sets or approves maximum class size	Government sets, caps, or approves tuition fees	Registration requires land of certain size or land ownership	Regulations on number, type, or size of classrooms	Number of fees to be paid to obtain registration
Nigeria – Lagos	57	Yes	Yes	Yes	Yes	Yes	Yes	5
Togo	44	Yes	Yes			Yes	Yes	5
Cote d’Ivoire	39	Yes	Yes			Yes	Yes	3
Nigeria – Anambra	39	Yes	Yes	Yes		Yes		3
Burkina Faso	36	Yes		Yes		Yes	Yes	0
Cameroon	36	Yes	Yes		Yes	Yes	Yes	2
Liberia	36	Yes		Yes	Yes		Yes	1
Nigeria – Ekiti	34	Yes		Yes		Yes	Yes	1
Sierra Leone	33	Yes	Yes	Yes		Yes		0
Swaziland	33	Yes		Yes		Yes	Yes	1
Zimbabwe	33	Yes	Yes	Yes	Yes		Yes	2
Benin	31	Yes					Yes	5
Tanzania	31	Yes		Yes	Yes		Yes	4
Mozambique	30	Yes	Yes	Yes			Yes	1
Zambia	30			Yes		Yes	Yes	2
Ghana	28	Yes	Yes		Yes			3
Comoros	27	Yes		Yes	Yes		Yes	1
Senegal	25	Yes	Yes	Yes			Yes	0
Malawi	24	Yes	Yes	Yes			Yes	0
Mauritania	24			Yes		Yes		0
Mali	22	Yes	Yes				Yes	0
Total	32.9 ⁹	19	12	16	7	11	17	1.8 ⁹

7.2. The majority of private school regulations focus on schooling inputs rather than on equitable access or quality outcomes

Driven by motivations of public interest, it might be expected that the policies governing private education should be attentive to the quality of services delivered by private markets. Indeed, public interest theory argues that regulations on the market exist to protect the well-being of consumers and to improve the quality of outcomes. However, there is little indication that current policies governing private schools are overly focused on service quality. The regulatory frameworks in the examined countries place little emphasis on student learning outcomes in private schools; instead, across the region, education policies governing the private sector are heavily biased towards control of inputs into the private education sector, with codified policies on minimum input benchmarks such as the number of students per classroom, number or size of classrooms per school, level of teacher and headmaster qualifications, and other input-level constraints that have little relationship with quality of outcomes (see Baum et al. 2014 for a discussion of the literature on schooling inputs). Table 4 provides a list of countries by levels of regulation stringency (higher values represent more restrictive regulatory regimes) and results across a number of the input-focused market entry regulations. The most common private school regulations

⁹ Mean

concern the establishment of teacher qualification standards (19 countries); the number, type, or size of classrooms (17), and maximum number of students per classroom (16 countries). One-third of countries have regulatory requirements governing the allowed tuition levels of private schools, either setting standardized tuition levels, setting caps on allowable tuition, or requiring private schools to gain approval from government on their proposed tuition fees.

Another interesting finding concerns the regulation of for-profit education provision. Within the scholarly literature, the issue of for-profit schooling is a heated point of debate, with many suggesting that state policy should prohibit profit-making in education (Chumacero and Paredes, 2008; Elacqua, 2001; Ginsburg et al., 2012; Hill and Welsch, 2009). However, in only 1 of the 22 countries – Liberia – did we find any policy evidence of restrictions on for-profit providers.

In a number of countries (71 percent), government requires schools to pay fees in order to operate, which theory suggests discourages new providers from entering the market. In Lagos State, Nigeria, for example, non-state schools are able to operate only when they have paid the following fees: name search, purchase of forms, pre-inspection, approval, and an annual renewal fee. In Togo, to open a private school, an application for authorization must be submitted to the regional government with a fee of \$85 (USD). If granted, authorization is valid for two years, after which proprietors must request permission to open with a fee of \$255 to \$515.

Some instances of outcomes-focused policies are found, most notably the requirement in the majority of countries (86%) for registered private schools to take part in standardized examinations, and in some countries (43%) for schools to undergo regular inspections (Table 5). Regarding standardized exams, in Burkina Faso, according to policy, the government sets standards for what students need to learn each year and for each class in privately managed schools. Each year's program is set and needs to be followed closely by each school. The curriculum is validated by three state exams at the end of primary, lower-secondary, and secondary. In Tanzania, students must pass a series of examinations to proceed to the next education level (World Bank, 2014). These exams are administered at four points during the basic education cycle. In Togo, students must also pass a series of examinations to proceed to the next level in their education. Lastly, in Mozambique, community schools that receive government funding are subject to strict teacher pay policies in an effort to tackle the problem of high rates of teacher absenteeism. Schools may receive support from the government in the form of teacher salaries and in direct support to schools. Some schools receive budgetary support from the Ministry of Finance for current expenses as well. However, schools that receive government budget support are required to keep records of teacher attendance and to discount the salaries of teachers who do not show up to teach.

As mentioned, less than half of the countries have policies which require schools to undergo regular inspections. In Comoros, schools are required to undergo inspections, the terms of which are not specified, and schools are not subject to any type of sanctions. Policy specifies that inspections are to focus on students, staff, schools, external services, and central administration. Malawi's inspection framework specifies that schools be inspected once every two years, utilizing need-based criteria to prioritize schools, including: (i) schools with poor examination results, (ii) schools which are poorly managed, (iii) schools which have not been inspected for more than two years, and (iv) high-performing schools to learn from good practices. Following inspections, school staff and head teachers receive briefings on the findings, and school reports are sent to individual schools, district education officers and divisional offices, the education authority of religious education agencies (for religious schools), and to

proprietors for private schools. Government-funded private schools are not required to report on use of public funds. In Mali, sanctions have been established based on inspection results or performance on standardized exams. These include additional monitoring and fines. Government-funded private schools are required to report annually on the use of public funds as a condition of any further funding. Finally, in Tanzania, sanctions can be imposed on schools, including higher levels of supervision, cancellation of the school registration, and government takeover, the conditions for which are clearly specified in policy documents including the grounds for license revocation and compensation guidelines for school takeover.

Although some degree of accountability for outcomes is facilitated through standardized exams and school inspections, the consequences tied to underperformance in these areas have yet to be sufficiently and objectively codified. Where sanctions can be levied upon schools for poor performance – in 12 of the 21 countries – the standards for performance are rarely outlined. Rather, power for determining when and whether schools are performing adequately typically lies with the state. These policies on sanctions give governments complete autonomy to subjectively decide whether private schools should be closed down or otherwise sanctioned (e.g., additional monitoring or fines), providing potential opportunities for ad hoc enforcement and political graft – a substantial concern from the perspective of public choice theory.

Table 5. Outcomes-focused policy regulations

	Standardized exams are administered annually	Policy requires standardized exam results to be distributed annually	Policy requires schools to undergo regular inspections	Policy requires school inspection results to be distributed	Sanctions are administered to schools based on results of exams or inspections	Government has power to subjectively or arbitrarily approve, sanction or close down schools
Benin	Yes	Yes	Yes		Yes	Yes
Burkina Faso						
Cameroon	Yes	Yes	Yes		Yes	Yes
Comoros	Yes	Yes				Yes
Cote d'Ivoire	Yes				Yes	
Ghana	Yes		Yes			Yes
Liberia	Yes					Yes
Malawi	Yes		Yes			Yes
Mali	Yes				Yes	
Mauritania	Yes			Yes	Yes	
Mozambique	Yes	Yes			Yes	
Nigeria – Anambra	Yes		Yes		Yes	
Nigeria – Ekiti			Yes			
Nigeria – Lagos					Yes	Yes
Senegal	Yes				Yes	Yes
Sierra Leone	Yes		Yes			Yes
Swaziland	Yes					Yes
Tanzania	Yes		Yes		Yes	Yes
Togo	Yes				Yes	Yes
Zambia	Yes		Yes			
Zimbabwe	Yes					Yes
Total	18	4	9	1	12	13

7.3. Existing policies are not correcting for market failures or externalities

As proposed by Shleifer's (2005) enforcement theory, government regulation of private markets provides social value given the existence of two conditions: (i) market failures and negative externalities resulting from market control of a particular industry, and (ii) sufficient will and capacity on the part of government to correct for these market failures. As part of this systematic review of private education policies in Sub-Saharan Africa, we assess the extent of market failures and externalities, as well as investigate whether governments possess the necessary will and capacity to adequately account for these market failures.

7.3.1. Negative externalities: distributional inequity

At present, in regards to the regulatory environments across this set of countries, it is clear that few policies provide adequate support for the poorest students. In addition to the primary focus on schooling inputs, few policies are in place to benefit the most at-risk student groups. Legally-established caps on private tuition fees and regulatory restrictions prohibiting operation of for-profit providers, for example, might intuitively be assumed to protect less affluent students from prohibitive tuition levies; however,

tuition restrictions appear to have little impact on increasing participation differences between poor and wealthy students. For example, in Comoros, where private school tuition levels must be approved by government, only 2 percent of second and fifth graders from the lowest income households attend private schools, as opposed to 20 percent of second graders and 24 percent of fifth graders from wealthy families that attend private school (CONFEMEN, 2010).

In Ghana, where the Ministry of Education must approve private school tuition levels, costs in even low-fee private schools often represent a large proportion of household costs for poor families. A *SABER-Engaging the Private Sector* census of private schools in Kasoa, Ghana revealed that the average private school fees for a single primary-age child are equivalent to approximately 15 percent of the annual income for a household in the poorest income quintile. In Liberia, where the Ministry of Education sets standardized guidelines for private school tuition fees, access to basic education still largely depends on household wealth. Data from 2007 show that 17 percent of children from the poorest quintile were enrolled in primary school, compared with 65 percent from the wealthiest quintile. At the secondary level, only 2 percent of children from the poorest quintile were in school, compared with 37 percent from the wealthiest quintile. With the non-state sector accounting for nearly half of all schools at the secondary level, it is clear that equitable access remains an issue.

As such, tuition restrictions seem to offer little protection for poorer families, as posited by the public interest framework. Public choice theorists would further argue that such regulations provide an opportunity for increased rent-seeking and corruption, with little value in decreasing social disorder, particularly given the authority for governments in most of these countries to subjectively approve and shut down schools without any standardized guidelines on expectations. In sum, while the negative externality of inequitable access to education persists (particularly in the private education sector), current approaches for addressing this from a policy perspective don't seem to hold much promise. More direct approaches for increasing participation of less affluent students are required.

7.3.2. Information asymmetries

As previously addressed, one of the assumptions on which market-driven regulatory theories rest concerns the dissemination of information regarding the quality of services produced by the market. For markets to behave efficiently and in the interest of social order, consumers must have access to timely and accurate information. However, information asymmetries in private education markets are widespread, and thus, typically require some kind of external intervention to be overcome (Bruns et al., 2011). Unfortunately, current policy frameworks across Sub-Saharan Africa largely overlook the regulation of information dissemination. As presented in Table 5, although 86 percent of countries in the sample have policy requirements for private schools to take part in standardized examinations, and 43 percent require private schools to undergo regular inspections, only 19 percent and 5 percent of countries require results from those standardized exams and inspections to be publicly disseminated. One of the potentially more effective (and efficient) policy mechanisms for improving accountability of schools, and thus quality of outcomes, could be to increase the requirements for schools to disseminate these results. At present, however, this constitutes a significant inadequacy of both the private schooling market and government regulatory priority. In any case, given the failure of private education markets to adequately disseminate information on the quality of their products, there is a clear justification for state regulation in this sphere.

7.3.3. Government will and capacity

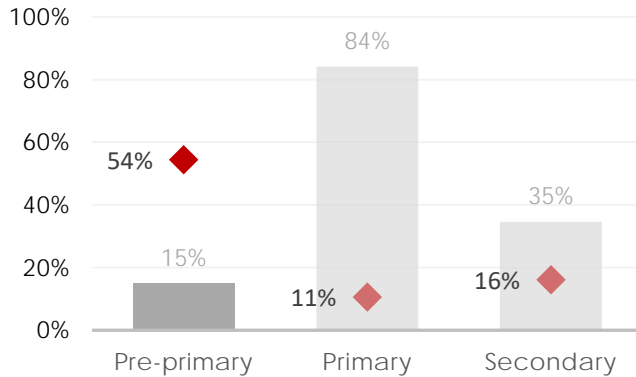
Comparisons between the codified education policies of a country and the extent to which those policies are actually implemented can offer relevant insight regarding the will and capacity of governments to enforce market regulations. *SABER-EPS*'s policy data offers a regional perspective on the regulatory regimes across a set of countries. In a few country cases, the *SABER-EPS* research on private education policies was followed up with data collection on the implementation of these policies on the ground. Findings from policy implementation analysis in three countries in the region – Ghana, Nigeria, and Tanzania – suggest that current shortcomings in government will and capacity are causes for serious under-implementation of state policies, thus inhibiting the value of market regulation for the purposes of social efficiency.

The *SABER-EPS* project carried out a census of all private schools in one administrative unit of Lagos State, Nigeria – Ajeromi-Ifelodun. The research identified several discrepancies between what was found in policy and practice. Regarding teacher certification, while legislation requires all teachers to hold official training diplomas, only 49 percent of teachers in private schools in Ajeromi-Ifelodun are certified. Lagos State policy further stipulates that private schools are to take part in standardized student assessments; yet only 61 percent of schools participate in national or state examinations. To operate legally, regulations require that schools pay 4 or more types of fees. In Ajeromi-Ifelodun, less than 1 percent of schools pay these fees. Lastly, while policy dictates that private schools are to be regularly inspected by government, 26 percent of private schools have never been inspected, and 17 percent were last inspected more than 2 years ago. Although it is understandable that consistent enforcement of market regulations across all of Lagos State's 12,000 private schools is a burdensome task, inconsistent enforcement is a natural ingredient for ad hoc exploitation of schools and bribery to maintain government approval.

7.4. Do onerous regulations restrict the size and growth of private education markets?

The first two research questions of this study address whether the size and growth of the private education sector are impacted by the existing supply of government school services and by the nature of existing policy regulations. The third questions whether any relationship between regulation and market size and growth is moderated by the supply of public schooling. That is, does regulation have differential effects on the size and growth of private markets depending on the availability of public school spaces? Arguments from the perspective of public choice theory follow that only the size of the 'official' or 'recognized' private school sector will be impacted by the relative stringency of market entry regulations, while the size of unofficial schooling markets will be inversely correlated – growing more rapidly in response to unmet demand for private services. The variation in private market size between the pre-primary, primary, and secondary school sub-sectors provides suggestive evidence of this relationship. Although each of these three school levels is typically governed by the same set of education policies, there are substantial differences in the relative size of the private sector at these levels. Where provision of government education services at the pre-primary level has greatly lagged behind primary provision, there has been strong demand for access to private schooling. Thus, although the registration requirements for pre-primary and primary schools are often identical, a significantly larger share of education provision is in the private sector at the pre-school level (54% private in preschools across Sub-Saharan Africa, versus 11% in primary schools) (Figure 2).

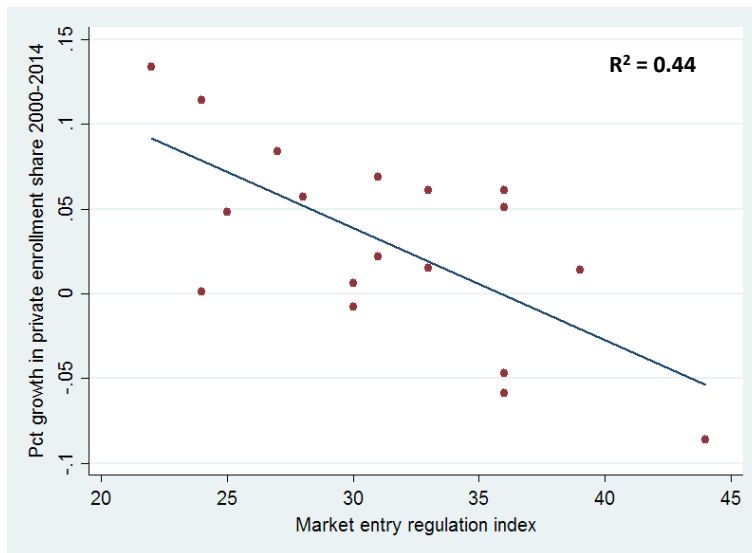
Figure 2. Net enrollment rates (■), and share of enrollments in private institutions (◆) by subsector, Sub-Saharan Africa (median, 2014¹⁰)



Source: World Bank (2016a)

Bivariate correlations suggest that the relative stringency of market entry regulations (measured by the composite variable described in Table 2 above) has no significant association with the size of the private market ($r(15) = .17, p = .52$), but there is a strong negative relationship between regulation stringency and private market *growth* at the primary school level ($r(16) = -.67, p < .05$). Indeed, market regulation stringency accounts for a sizable share of explained variation in private primary market growth between 2000 and 2014, with $R^2 = .44$ (see Figure 3).

Figure 3. Relationship between market entry regulations and growth of primary enrollment share



A series of regression models, presented in Table 6, show the relationships between the supply of public education, the average public school class size (an indicator representing differentiated demand in the schooling market), GDP per capita, the stringency of market regulations, and the two outcomes of

¹⁰ Data on private enrollment share come from 2014 or most recent available year

interest: (i) share of private enrollments and (ii) growth in private enrollment share (change in private enrollment share between 2000 and 2014). When not accounting for the effect of market regulations, the supply of public education (measured by the ratio of school-age population to number of public school classrooms in the country) ($\beta = 0.448$, $t(10) = 2.65$, $p < .05$), and the average public school class size ($\beta = -0.602$, $t(10) = -2.50$, $p < .05$) are significant predictors of private enrollment share (Model 1), suggesting that private enrollment increases as supply of public education decreases and as public school class sizes increase. GDP per capita has no influence over the size of the private school market. Overall, these predictors explain a moderate amount of variation in the outcome ($R^2 = .63$). However, these same variables¹¹ have no significant association with growth in private market share (Model 2) ($F(3, 7) = 1.05$, $p = .429$).

In order to investigate the influence of market regulation on these relationships, we add the market regulation index variable to both of these models (Models 3 and 4). Results suggest no significant relationship between the rigor of market entry regulations and private sector size (Model 3). For example, countries with higher proportions of students enrolled in private schools demonstrate no greater or lesser control of market entry. However, even after accounting for market entry regulations, the size of the private sector *is* significantly related to the supply of public education, with higher proportions of private school enrollment in countries with fewer public school classrooms per child ($\beta = 0.46$, $t(10) = 2.56$, $p < .05$).

When predicting *growth* in the private school market, market regulation, by itself, accounts for a sizable amount of explained variance ($\beta = -.006$, $t(10) = -3.25$, $p < .05$), increasing the R^2 of the model from 0.31 in Model 2 to 0.75 in Model 4. As stringency of market entry regulations increases, growth in private school enrollment decreases. Additionally, while accounting for market regulations, the population-to-school ratio and average public school class size contribute some explanatory variation in private enrollment growth at $p < .10$ ¹².

¹¹ When not accounting for the effect of market regulations.

¹² While we would not typically report a result of $p < .10$ to be statistically significant, given the small sample size of this model ($n = 11$), considering a coefficient at this alpha level to be significant seems justifiable.

Table 6. Country-level predictors of private enrollment share and growth in private enrollment share (primary)

VARIABLES	(1) Share of primary enrollment in private schools	(2) Percentage growth in private enrollment share (2000 – 2014)	(3) Share of primary enrollment in private schools	(4) Percentage growth in private enrollment share (2000 – 2014)
Ratio of school-age population to number of public school classrooms (primary)	0.448** (0.17)	0.0018 (0.0011)	0.464** (0.18)	0.0014* (0.00069)
GDP per capita	-0.0071 (0.0061)	9.17e-06 (3.76e-05)	-0.0069 (0.0064)	3.18e-06 (2.45e-05)
Average public class size (primary)	-0.602** (0.241)	-0.0013 (0.0015)	-0.575* (0.260)	-0.00201* (0.00099)
Regulation index			0.244 (0.485)	-0.006** (0.0018)
Constant	23.25 (16.46)	-0.0109 (0.102)	13.23 (26.49)	0.236* (0.101)
Observations	11	11	11	11
R-squared	0.628	0.310	0.643	0.750

Standard errors in parentheses;
*** p<0.01, ** p<0.05, * p<0.1

8. Conclusions

These results confirm the initial hypothesis of the existing private school regulation theory, that increased regulation over market entry has a negative effect on the growth of official private schooling markets. Beyond this, the theory would further predict these decreases in official private school activity to be coupled with increases in unofficial private school activity. Unfortunately, we don't have the same systematic data to be able to compare unofficial market activity across all of these countries. However, we can look at differences in official and unofficial private school enrollments in some locations for an indication of this relationship.

As an example, in Tanzania, according to official administrative data, roughly 4.8 percent and 2.7 percent of students countrywide at the pre-primary and primary levels were enrolled in private schools in 2012 – these data points would represent the enrollment in official (i.e., registered or recognized) private schools in the country. However, as reported in nationally representative household surveys (a source of data that captures both official and unofficial private provision), these figures are 25 percent and 3.5 percent for pre-primary and primary students (LSMS 2012). Note the large difference in official and unofficial enrollment at the pre-primary level. This large difference is likely influenced by the relative supply of public education at the primary and pre-primary levels in Tanzania. Tanzania has had a primary net enrollment rate above 80 percent since 1999, much earlier than most other countries in Sub-Saharan

Africa. This is indicative of the fact that there is relatively high coverage of public primary schools in Tanzania. In contrast, the current pre-primary net enrollment rate in Tanzania is just above 30 percent, in large part because there is a much more limited supply of public preschool services in the country. As a result, notwithstanding the same regulatory policies for primary and pre-primary schools, and similar sizes in the official private schooling market at both levels (within a couple of percentage points), there is a substantial difference in the size of the unofficial schooling markets between these two sectors.

In Lagos, Nigeria, the location in our sample with the most restrictive market entry regulations (three standard deviations above the mean), the size of the official private schooling market has been substantially restricted historically, while growth of the unofficial private schooling market has boomed – the 2011 DFID census found that only 26 percent of all private schools in the state were officially approved and registered with the government, with the remaining 74 percent being unapproved schools (Härmä, 2011). In Lagos' administrative region of Ajeromi-Ifelodun, where *SABER-EPS* carried out a census of schools in 2014, we found further evidence of this relationship. In 2011, there were 73 approved private schools and 519 unapproved private schools in Ajeromi-Ifelodun. Between 2011 and 2014, 332 private schools began the process for registration and approval. During that period, only 5 new schools were granted official registration status. Nearly three-quarters of the unapproved private schools (74%) in Ajeromi-Ifelodun identify inadequate infrastructure, lack of purpose-built buildings, and failure to own their land as the reasons for their unrecognized status. This is a substantial barrier, as schools strongly desire to become officially approved, particularly because it will increase their opportunities for accessing viable credit lines through local financial institutions, who currently do not lend money to unapproved schools.

These two examples offer some initial evidence in support of public choice theory on the fact that restrictive market entry regulations offer constraints on the growth of official private education markets, but that the same restrictive regulations are likely to facilitate the growth of unofficial markets, if demand for education is not being fully met by the supply of government service provision. Although, there is clearly a need for more rigorous research examining the effects of government policy on the behavior of both official and unofficial education markets.

Moreover, citing the prior research on private schooling and regulation, we highlight the insufficient capacity on the part of governments, combined with our own evidence on uneven policy implementation, to suggest that current regulatory environments in Sub-Saharan Africa provide regulators with opportunities for rent-seeking and corruption. While direct observation of regulator corruption falls outside the scope of this study, further research is needed to uncover whether corruption is a contributor to the maintenance of existing policy frameworks. The foundational principles of state-driven regulatory theories assume that governments have the intent, knowledge, and capacity to implement effective monitoring and regulation of private education markets; however, there is evidence to confirm that government efforts to intervene in the private education sector are commonly limited by inadequate or incorrect information about the size and activity of private school markets, and by insufficient government capacity for monitoring and oversight.

As long as inadequate supply and perceptions of low quality of public education persist in Sub-Saharan Africa, increased regulation is likely to drive growth of unofficial markets and increase the influence of unregulated, unmonitored, and low-quality private education services. Regulation of market entry alone is ineffective in controlling the market and protecting interests of social justice. If governments desire to

restrict the growth of private education markets, the most effective means of achieving this outcome will not be through regulation of the market, but rather through expansion of quality public services. Attempts to curtail private school delivery through onerous regulations (so long as demand for private education remains high) will only increase the extent of illicit education operations, while significantly reducing the ability of government to provide adequate oversight to the industry and protection to consumers.

The most effective regulatory frameworks realistically balance the need to protect consumers from both market and non-market failures, and the need to ensure quality provision and adequate oversight. Instead of over-regulating private schooling inputs such as standardized policies on minimum teacher and head teacher qualifications, number of students per class, the size and type of classrooms, and tuition restrictions, greater attention should be placed upon the results being produced by private providers, and the accessibility of services for the most at-risk social groups. If government policy to tightly control private school inputs is an attempt to protect students from low-quality providers, it appears that these regulations bear little relationship to actual schooling outcomes. Rather than raising the quality of private school services, they are keeping more schools from becoming officially recognized entities, and thus removing avenues for school monitoring and quality control.

Given that capacity for enforcement of regulation in many African nations is low, it appears to be the case that governments focus much of their regulatory oversight on the registered private sector. For schools that have been approved by the state, there are much higher rates of school inspection, more common visitation to schools, and greater attention to student needs within these institutions. If regulation is keeping schools in unofficial markets, it is unable to impact the behavior of institutions within that sector. The aim should be to bring as many schools as possible under the purview of government regulation, monitoring, and support. Current regulations that keep large numbers of private schools in the unofficial sector provide no value to students.

In conclusion, there is some initial evidence to support the assertion that restrictive market entry regulations offer constraints on the growth of official private education markets. Onerous regulation of market entry for private schools appears to be restricting growth of official providers in Sub-Saharan Africa, with minimal social benefit, as the market failures of information asymmetries and inequitable access to education have been little impacted by current regulatory regimes. However, this restricted growth of official provision is coupled with more rapid growth in unofficial education markets, particularly where public supply is low and demand for education is high. By more directly addressing the market failures and negative externalities of the private education market, namely the existence of information asymmetries, and the inequities in access, regulations will have a greater likelihood of enhancing social efficiency while simultaneously increasing the quality of education delivered by private providers.

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