The TaxEd Alliance (Actionaid, Tax Justice Network, Global Alliance for Tax Justice, Education International, Global Campaign for Education) and GRADE welcome the opportunity to contribute to the thematic report on

"The Right to Education, Advances and Challenges"

of the Special Rapporteur on the Right to Education, which will be presented to the Human Rights Council in June 2023.

The submission focuses on part II of the call: "Main challenges and crucial issues for the future".

Introduction

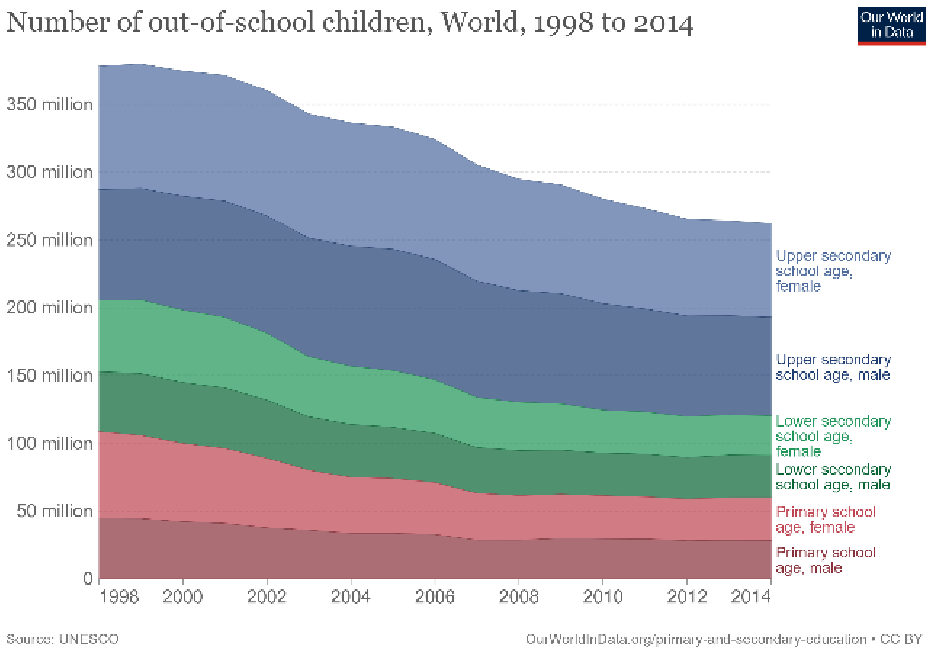
This submission assesses the challenges of advancing the right to free public education in the context of the prevailing weaknesses of the international tax system and the failure of governments to generate and allocate sufficient revenue to education. Our submission uses 'out-of-school' data to assess the impact of these weaknesses on the right to free education. We use available estimates of global tax abuse, tax expenditures (also called incentives or tax breaks) and debt service (driven by limited fiscal space partly due to foregone revenue from taxes) to illustrate the scale of the potential impact that additional revenue could have on the right to education and the number of children who could be in school if foregone government revenue was reduced. The report provides an overview of the policy and systemic constraints in which the right to education is denied for many millions of children in the context of the international tax system, fiscal redistribution at the domestic level, the political orthodoxy of austerity and vested interests of elites. We summarise how the current global and national regimes undermine states' ability to generate sustainable revenue, and we point to policy solutions that have consensus and credibility.

Using three country case studies – **Nepal, Senegal, and Zambia** – our report assesses the impact of the failure to generate and allocate revenue for the right to education and highlights policies which may remedy this, following the OPERA format.

Introduction

In 2014, 262 million children were out-of-school; in 2019, 63 million children of primary school age were out-of-school, see figure 1.

Figure 1 The number of children who are out-of-school globally

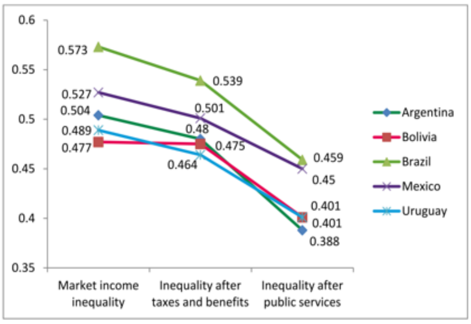


Policies - Progressive realisation

International human rights law specifies that primary education shall be compulsory and free, while secondary and higher education shall be made progressively free of charge (see art. 13 and 14 ICESCR, UN, 1966; or art. 28 CRC, UN, 1989). Progressively free entails that states **take deliberate steps to make education free, using their maximum available resources**. Despite these international obligations, schools in many countries impose direct and indirect fees and other costs, even at the primary level, impairing access to education for many children worldwide (Tomasevski, 2001, 2003, 2006)[1].

Once they have ratified either of these two treaties, the International Covenant of Economic, Social and Cultural Rights (ICESCR) or the Convention on the Rights of the Child (CRC) (which has been ratified by almost all countries), they are **obliged to provide compulsory education free of charge**, at least at primary level. Even if a State has financial difficulties, the burden of proof that they are taking appropriate measures for the progressive realisation of this right falls on the State (CESCR GC11 and GC13, UN, 1999; UNESCO, 2008).

Progressive realisation of the right to education and other rights **does not excuse a lack of action or progress**. States are obliged to take steps towards fully realising human rights, and for that, they must use their **maximum available resources** (ICESCR Article 2 (1)), including economic, legal, administrative, and technical. Equally, this obligation goes beyond the resources currently at governments' disposal and **includes resources that could potentially be mobilised** by the state, for example, by curtailing redundant tax expenditures. Mobilising domestic resources must comply with human rights, and increasing tax revenue through progressive taxation reform is a sustainable way to increase revenue, redistribute wealth, reduce inequality, and fund education fairly and sustainably. Equally, government spending on education by providing public services and transfers (including subsidies and cash transfers) must be equitable. Investing in public services may be more effective in reducing inequality, see figure 2.



Seery E. Working for the Many: Public services fight inequality https://www.oxfam.org/en/research/working-many

Figure 2 The impact of public services on equality

Regarding **extra-territorial obligations**, Official Development Assistance (ODA) only accounts for 2% of education spending in lower-middle-income countries and 18% in low-income countries (WB/UNESCO 2021. Education Finance Watch). Extraterritorial obligations include reducing the vulnerabilities for tax abuse. Several UN Human Rights experts and committees have commented on the spillover implications of cross-border tax abuse on human rights. Moreover, they have collectively called for rigorous human rights assessments on the impact of fiscal policies, including tax policies.

Retrogression

Crises, such as environmental disasters or armed conflicts, affect states' capacities to meet their human rights obligations. The principle of **non-retrogression requires states to demonstrate that their failure to meet their human rights obligations is the consequence of the absence of resources rather than a lack of political will** to mobilise internal and external economic and non-economic resources. Furthermore, any **retrogression must be temporary, proportionated and adequately monitored, and must ensure that the core obligations of non-discrimination, accountability, transparency, and participation are respected.**

Against the backdrop of the pandemic, the continuation and the legacy of conflicts, and the economic recession, many countries witness retrogression under the guise of '**fiscal consolidation**', also known as **austerity**. The economic environment, particularly for low-income countries, is often driven by International Financial Institutions and is in part characterised by public sector wage bill constraints and cuts in public services. Such fiscal regimes are premised on an ideology requiring people to subsidise the economy by accepting, for example, real-term reductions in wages and ending public services that support and nurture well-being and the enjoyment of human rights. There is clear evidence that austerity and structural adjustment exacerbates inequality. Budget

[1] Data collected through surveys and participatory action research in Ghana, Kenya, and Uganda, reveal high levels of education cost borne by families both in public schools, supposedly free, in the form of Parent Teacher Association fees, examination fees and others (Ron Balsera, 2018, Ron Balsera, Klees, Archer, 2018)

austerity detrimentally impacts spending on education, including intensifying teacher shortages. Also, the greater dependency of lower-income households on public services means they are disproportionately affected. Political ideology does not justify austerity or inadequate resourcing of public services that contribute to realising human rights. The ICESCR has warned against austerity measures E/C.12/ARG/CO/4 and their impact on the effective protection of rights.

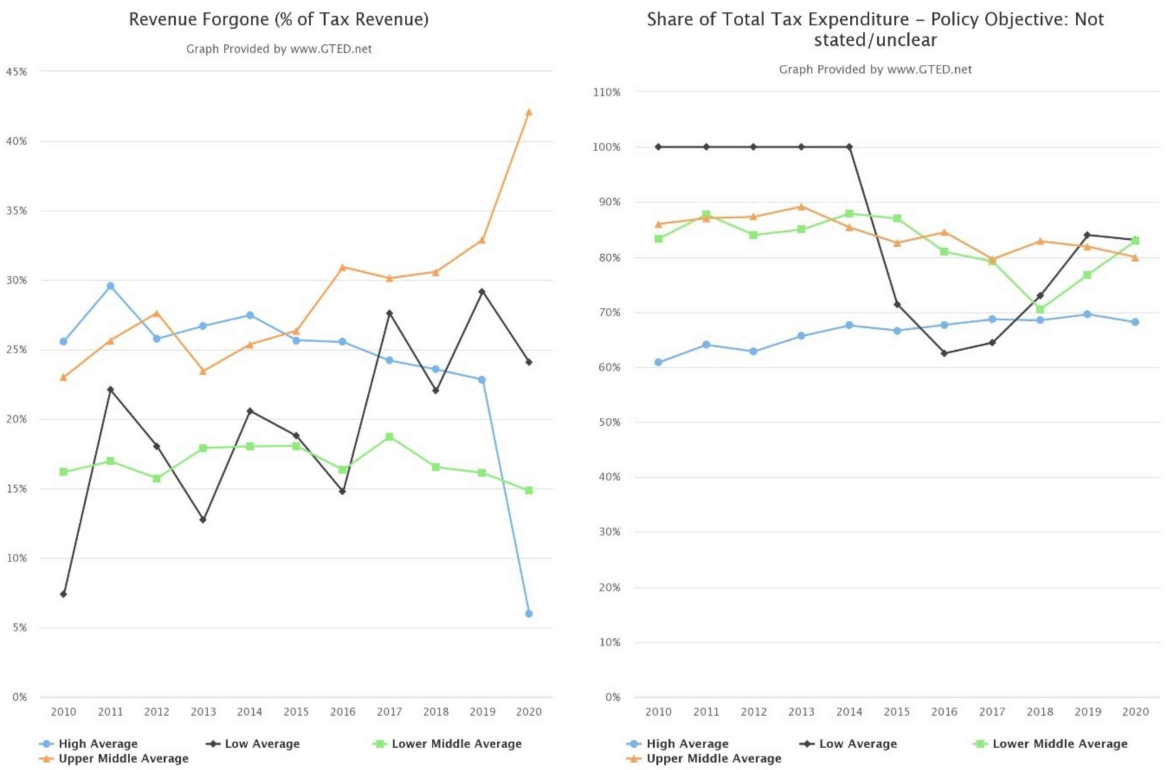
Resources –progressive taxation and fiscal redistribution

Governments are the largest funders of education in all countries. Funding for education as a share of national income has not changed significantly over the last decade for any income group. Before the COVID-19 pandemic, it averaged 3.5 per cent of the GDP for low-income countries and 4.3 per cent for middle-income countries (World Bank/UNESCO, 2021). However, low GDP and low tax-to-GDP ratios in low-income countries mean that even governments that allocate a fair share of national spending to education still need more resources.

Underpinned by progressive tax policies, domestic resource mobilisation is critical to sustainable and democratic financing for education and other rights. Progressive taxation is where those with a higher income pay more; for example, personal income tax is generally based on graduated scales, where the tax rate goes up as income level rises. Regressive taxation requires those on low or no incomes to pay a greater proportion of their available resources than the rich. Consumption taxes which employ a flat rate, such as the Value Added Tax, are the clearest example of retrogression. Taxes can be made more progressive with well-designed scales and thresholds (on who earns or has enough to pay a particular tax). Strong social protections and welfare benefits can ameliorate Regressivity. However, the absence of policy assessments on human rights impacts makes it difficult to quantify any regime's progressivity and policy coherence.

Tax Justice refers to both fair domestic and international resource mobilisation. Foregone revenue at the domestic level may include some tax incentives or tax expenditures. The Global Tax Expenditure Data (GTED) provides data for those 102 countries which report their tax expenditures. Figure 3 shows that tax expenditures constitute a large proportion of tax revenue although the policy objective may not be stated or is unclear.

Figure 3 Average tax expenditures as a percentage of tax revenue by income level



Further, foregone revenue due to tax evasion (illegal) and tax avoidance (legal but morally wrong, done through exploiting tax loopholes) amounts to **US$483 billion of foregone revenue globally**. Developing countries lose $36 billion from corporate tax abuse. The industrial scale of the **global tax abuse** facilitated by an out-of-date international financial architecture, designed by and for the betterment of the wealthiest nations and the very rich, merits attention. This architecture perpetuates the so-called **'race to the bottom',** leaving low- and low-middle-income countries (see below case studies Nepal, Senegal and Zambia) dispossessed of the fiscal space they need to raise domestic revenues and to fulfil their rights obligations. This international framework serves only a tiny proportion of the world's population and, in its design, fails any reasonable test of being legitimately governed, as it is, by a privileged group of wealthy nations. In the heightened context of Covid-19 and austerity regimes, the longstanding status of global tax governance is under scrutiny that is long overdue. A new framework for tax governance that is truly inclusive and transparent for all countries has gained substantial momentum. Higher-income countries are not doing enough to control the spillover impact of cross-border tax abuse and impede developing countries from using their maximum available resources.

Further, the reduced fiscal space leads to debt accumulation, and debt service diverts revenue from spending on education. A growing number of countries are **diverting revenue from public services to servicing debt**. For example, in 2020, funding allocated to external public debt service was larger than education expenditure in at least 36 countries.

As well as progressive taxation and the restructuring or cancellation of unsustainable debt, progressive government spending is critical, including public services, subsidies, and transfers. Households in low-income countries tend to pay more (compared to income) for education (which proves to be a very regressive and unfair way of financing education). At the same time, governments tend to spend less on them – the public education spending for a child of the poorest 20% of families is only a quarter of his peer from the wealthiest 20% of families.

Recommendations

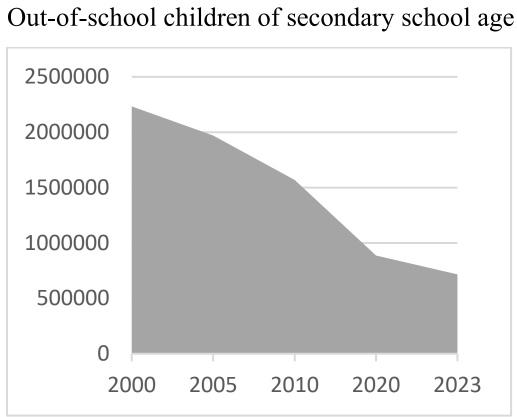
- To ensure adequate financing of public education so that it is free, available, accessible, acceptable, and adaptable
- To evaluate whether states are using their maximum available resources for the right to education and whether retrogressions are adequately justified, proportionated, and monitored
- To investigate and remediate the impact of global and national tax abuse on the right to education.
- To restructure or cancel debt which impacts the right to education
- To substantially tax wealth to reverse overlapping inequalities and to shore up the state's capacity for domestic revenue generation, thereby meeting their obligation to the right to free public education
- To reshape international decision-making on tax to address global inequalities in taxing rights.

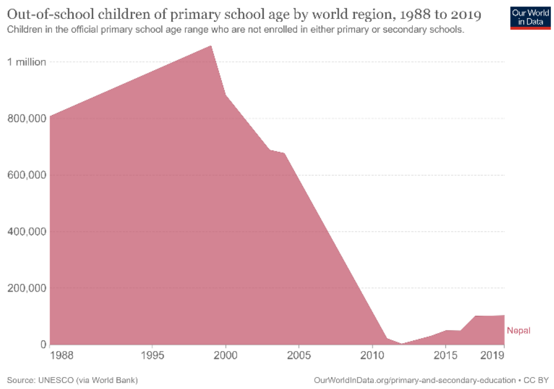
Please see the country case studies below.

Nepal

There has been a sharp reduction in the number of out-of-school children in Nepal, see figure 4. However, there appears to be an increase in out-of-school primary children in recent years.

Figure 4 Out-of-school children in Nepal





Source UNESCO

Low-income families are picking up the bill from Nepal's lack of public funding. Households fund half of all education expenditures, compensating for the lack of government spending and declining external financing. Household expenditure in education is 3.2% of the GDP (GEMR 2020/21: 408). This rises to 71% at the upper secondary level. When financing comes from the pockets of the poorest, it eats into more of their meagre household budgets – a regressive way of funding education – and if the burden on family finances is too high, problems arise with education access and equity (UNESCO). More children are being educated in private schools in Nepal, with 26% of student enrolment in primary to higher secondary (UNESCO PEER education profile). The amount spent on this is increasing, especially compared to government spending – as this has decreased. This entrenches social inequalities, creating a segregated education landscape that drives inequality in and through education.

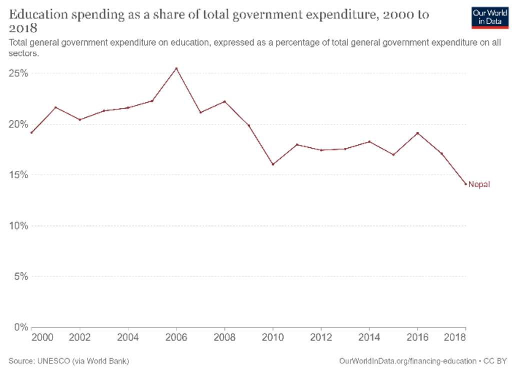
Foregone revenue

- Domestic - In 2016, Nepal's tax administration estimated that the foregone revenue from tax expenditures offered to investors could amount to as much as 5% of its GDP, or US$ 1.68 billion.
- International – Foregone revenue due to tax abuse was $38,277,556 in 2021.
- Debt servicing - In the 2020 budget, debt servicing constitutes around one-quarter of government revenues (24%) – this was expected to rise to 28% in 2022. In fact, the government allocated more resources to pay its creditors (6.3% of GDP) than education (4.2% of GDP) in 2019. This will place further downward pressure on expenditures on education.

Allocation of revenue to education

Nepal appears to have regressed in allocating resources to education, see figure 5. A World Bank study shows that though the devolution of educational responsibilities has reduced federal spending on education from 1.2 per cent of GDP in 2014/ 2015 to 1 per cent of GDP in 2018/19, the reduction was not fully compensated by the sub-national governments through their allocations to education[2]. An analysis of the 2022/23 budget shows that out of the total budget of Rs 1793.84 billion, the total budget allocated to the education sector has been around 10.95 per cent. Out of the total allocation of Rs 196.4 billion, the federal government, provinces and local governments have allocated around 5.1, 4.1 and 40.3 per cent, respectively. The local and provincial government's allocations are based on fiscal transfers from the federal government. More concerning is the sharp decline in the education budget planned for 2023/24 and 024/25 in the NPC's Medium-Term Expenditure Framework (MTEF). In addition, a sharp decline in the share of foreign aid has also been projected[3].

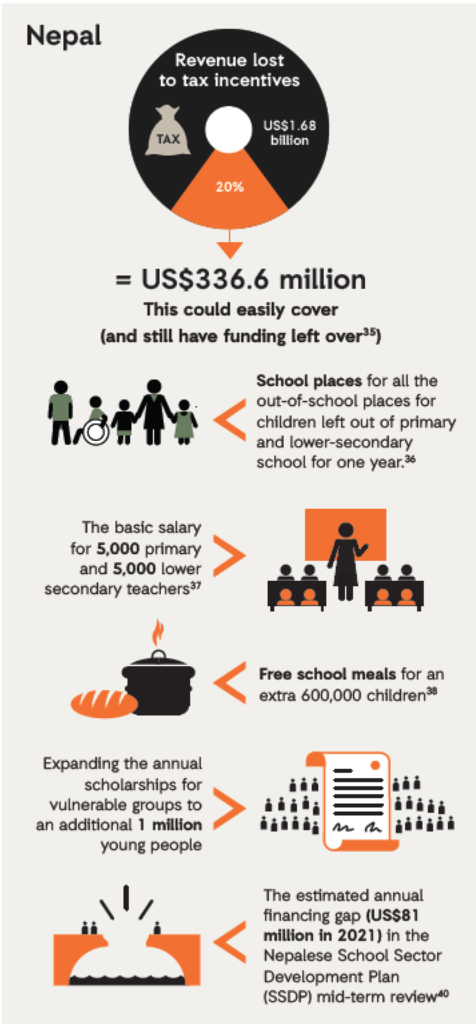
Figure 5 Education spending



Assessment/ recommendations

Nepal needs to find new ways to reverse the decline in its public spending capacity by increasing its tax revenues in a progressive manner. Nepal should focus on increasing tax-to-GDP ratios by five percentage points from the present levels.

- ☑ By reducing the tax expenditures or incentives offered to investors. The foregone revenue could amount to 5% of its GDP. ActionAid has calculated that 5% of GDP in 2020 was US$ 1.68 billion, and if 20% of these forgone revenues was US$336.6 million) was allocated to education (as per international recommendations), all children of primary and lower secondary school age could attend school, see the infographic.
- ☑ Curtailing international corporate tax abuse and spending 20% of the foregone revenue on education would allow 57,614 extra primary school children to attend school. There were 331,300 children not in school in 2018, so curtailing tax abuse would enable 17% of out-of-primary school children to attend school.
- ☑ Debt – restructuring or cancelling the unsustainable debt would increase government revenue. If 20% of the foregone revenue were spent on education, there would be an increase in the number of children attending school.

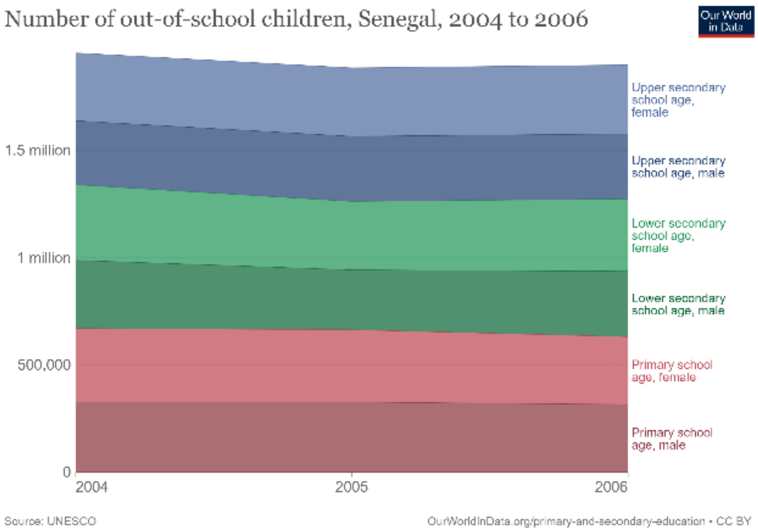


[2] See World Bank 2021.
[3] See NPC 2022.

Senegal

Figure 6 shows out-of-school children in Senegal

Figure 6 Out-of-school children in Senegal



Despite a strong government commitment to ensuring better equity and quality through strong public investment in education, concerns about the equity of spending on education. Tuition fees and other indirect household costs remain important barriers to improving access to primary education - households contributed an estimated CFA 17 billion for school expenditures in 2018, representing 2.8% of total education expenditures. (USAID, 2017). Enrolment in private schools was 17% in primary education and 24% in secondary school in 2020 (UIS). The increasing enrolment in private schools (from 10.6% enrolled in private primary schools in 2000 to 14% in 2010 and 17% in 2020) is entrenching social inequalities. Inequitable spending patterns in education in Senegal are reflected in broader geographically unequal public spending patterns.

Foregone revenue

Senegal requires new public funds to meet the sustained costs needed to meet their obligations for the right to education.

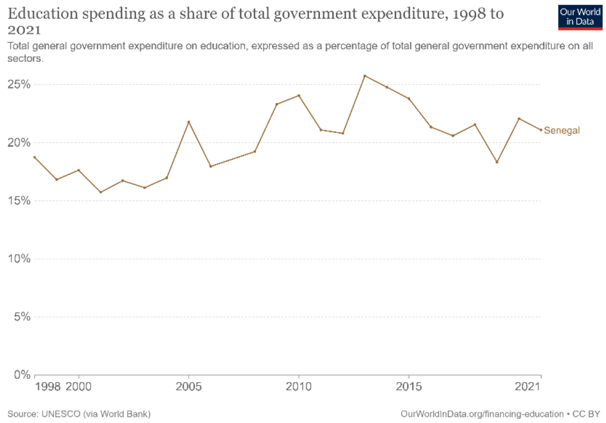
- Domestic - In 2014, the government of Senegal estimated that lost revenues in tax expenditures were around CFA 588 billion (around 7.8% of GDP at the time, about 40% of revenues). Action Aid estimates that foregone revenues due to tax expenditures to be $1.19 billion.
- International – In 2021, foregone revenue because of tax abuse was estimated to be $259 million
- Debt - The external debt as a percentage of government revenue is increasing and stands at 15% in 2022; see figure 7.

Figure 7 External debt as a per cent of government revenue in Senegal

Allocation to education

Senegal prioritises education expenditure in its budget: in 2020, this stood at **20% of the budget share and 5% of GDP.** However, Figure 8 shows that the education share of the budget has been decreasing since 2015, which is a regression that needs adequate justification.

Figure 8 Education spending in Senegal



<u>**Assessment/ recommendations**</u>

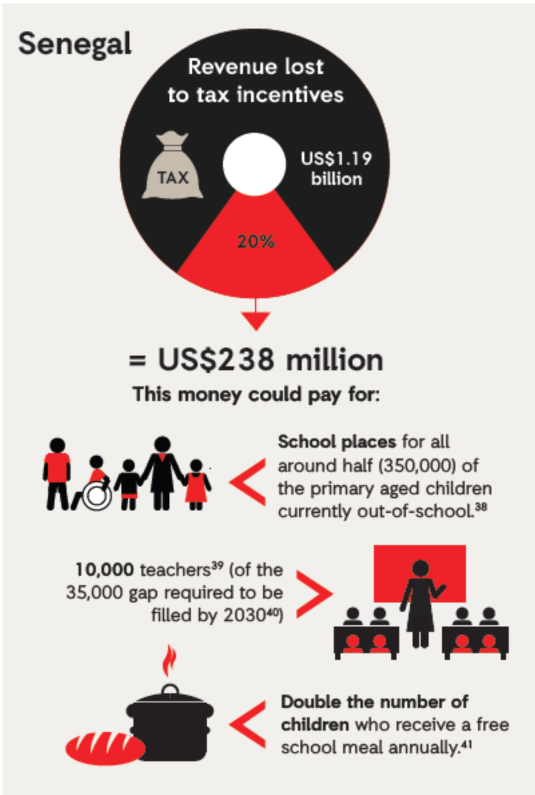
Senegal should focus on increasing tax-to-GDP ratios by five percentage points from the present.

This must be done progressively, with attention to this falling on the richest:

☑ **Domestic** - curtailing tax expenditures. Using government figures, Action Aid estimates that foregone revenues due to tax expenditures to be $1.19 billion. If 20% (as per international recommendations) of these forgone revenues were spent on education, then half of all primary school children who are out-of-school would attend school, see the infographic.

☑ **International** – curtailing international tax abuse and spending 20% of the foregone revenue on education would enable 300,000 children to attend primary school or 35% of children of primary school age out-of-school in 2018.

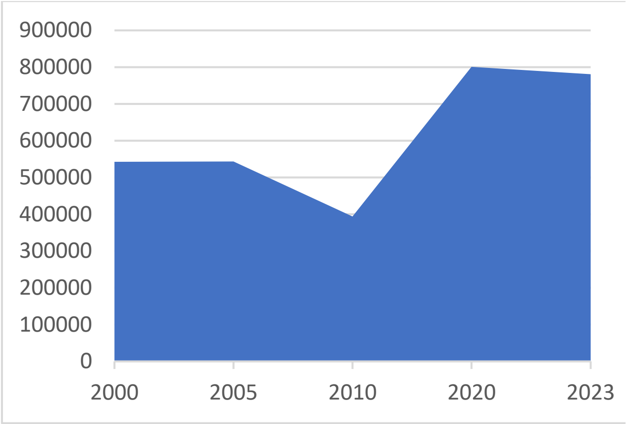
☑ Debt – restructuring or cancelling the unsustainable debt would increase government revenue. If 20% of the foregone revenue were spent on education, there would be an increase in the number of children attending school.



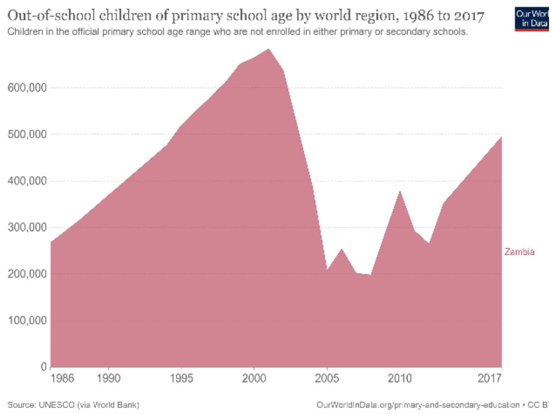
Zambia

There has been an increase out-of-school children of primary school age, see figure 9.

Figure 9 Out-of-school children in Zambia



Out-of-school children of secondary school age. Source UNESCO

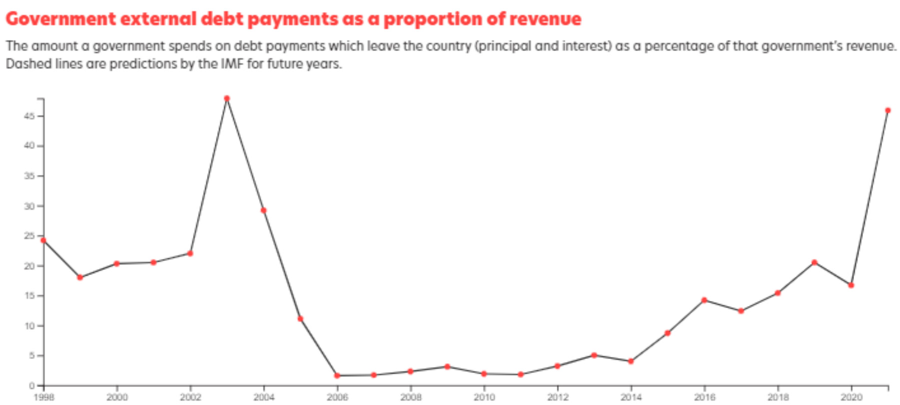


The Free Education Policy removed all tuition, parent-teacher association and exam fees in 2022. Some schools may still be charging fees, but the Ministry of Education has called for any such cases to be reported. Uniforms at the Primary school level are non-mandatory, but all learners are encouraged to have them

Raising revenue

- Domestic – Estimate on tax expenditures in Zambia ranges from 0.8 – 3.5% of GDP.
- International – In 2021, foregone revenue due to tax abuse was estimated to be $635.3 million.
- Debt - In the 2021 budget, debt servicing constitutes the largest expenditure, representing around 40% of the total budget, see figure 10. The debt-to-GDP has increased from 20.81% in 2011 to 140.21% in 2020.

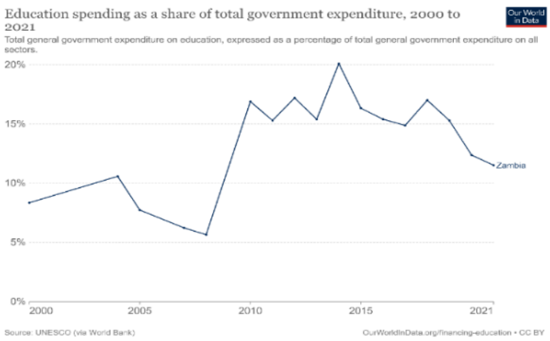
Figure 10 Debt service as a percentage of government revenue.



Revenue allocation

To finance SDG 4, the UN recommends that at least 15-20% of the budget, or 4-6% of GDP, must be spent on education. In 2021 this stood at just **11.5% of the budget share** (UIS) (and 3.9% of GDP) and 10.5% in 2022, falling below the lower threshold of 15% from 2019 onwards, see figure 11.

Figure 11 Education spending

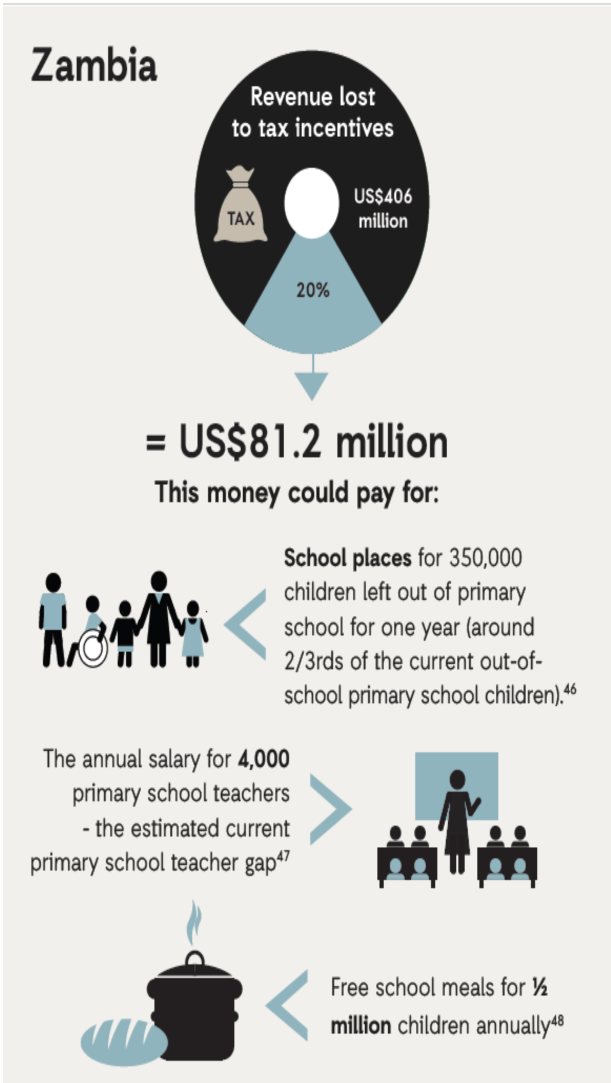


Assessment/ recommendations

The government of Zambia needs to ensure that public education is completely free, accessible and of good quality. In 2015, the Commitment to Equity Institute analysed the combined impact of public tax and spending on inequality in Zambia, showing that in-kind public expenditures on education had the largest effect on income inequality among all categories of public spending. This is crucial since Zambia is one of the least equal societies in sub-Saharan Africa (and globally).

Zambia needs to find a new way to urgently reverse the decline in their public spending capacity: this is increasingly important given that debt servicing is draining precious revenues.

Zambia should focus on increasing tax-to-GDP ratios by five percentage points from the present. If Zambia did this, it could lead to **additional revenues of US$6.2 bn annually by 2023,** of which, if the government allocated just 20% of the additional tax revenues, as per international benchmarks, this could increase the education budget by US$1.2bn – **twice the amount allocated to education in the 2021 budget.**



- ☑ **Domestic** – curtailing tax expenditures
- ☑ **International -** curtailing international tax abuse and spending 20% of the foregone revenue on education would enable 650,000 children to attend primary school, or >135% of primary school children, in 2018. Based on country-by-country reporting data from multinational corporations, the Tax Justice Network has estimated that the effective tax rate paid by these corporations in Zambia is 19%. In comparison, the statutory corporate income tax rate is 30%.
- ☑ **Debt –** Debt – restructuring or cancelling unsustainable debt would increase government revenue. If 20% of the foregone revenue were spent on education, there would be an increase in the number of children attending school.