

'Build Us More Schools!'

The Quest for Quality Free Education in Mabatini and Ngei Wards of Mathare, Nairobi

Summary, March 2024



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**Right to
Education**



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This summary is based on a full report, on Participatory-Action-Research (PAR) methods and was conducted with communities in Mathare, Nairobi, Kenya. This publication is a summary of that report, which is available through the following [link](#).

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Summary

Kenya has established a legal framework and policies to implement the right to education.¹ Yet, the Kenyan government still grapples with fundamental challenges such as ensuring that all children can access quality education. This problem is especially pronounced in urban informal settlements and rural areas, where even when children do go to schools, the quality of education they receive is often below what is required by the law.

Over the course of several decades, private schools, including “low-cost” or “low-fee” schools for the economically disadvantaged, have proliferated.² This process has been supported by the Kenyan government, led by the Ministry of Education (MoE), which in 2009 published its Alternative Provision for Basic Education and Training (APBET) Policy, advocating for “non-formal” schools (referred to as APBET schools) to contribute increased and universal education access.

Although the Basic Education Act explicitly applies to all schools, including non-formal schools, it does not contain specific provisions relating to APBET schools. The APBET Policy was introduced prior to the Basic Education Act, yet, the latter makes no mention of it.

Despite this regulatory disconnect, by 2013 in low-income urban areas in Nairobi, some 63% of children at a primary school level attended “non-government schools”.³ Since then, an estimated 60% or more of children in Nairobi’s informal settlements enrolled in APBET schools at the outset of the COVID-19 pandemic.⁴

Significant challenges in “access and equity” of education in informal settlements were noted by the report of the “Presidential Working Party on Education Reform” in June 2023. The report, a product of a working group appointed by President Ruto, noted that: “only 10% of children from the poorest households in Kenya complete Secondary school, compared to 70% of children from the richest households. This gap is due to several factors, including access to quality education, teacher quality, and family resources.”⁵

Mathare, one of Nairobi’s 17 parliamentary constituencies, is made up of six administrative wards: Mabatini, Huruma, Hospital, Ngei, Mlango Kubwa and Kiamaiko.⁶ The constituency is home to the second largest informal settlement⁷ within Nairobi County. Among the many challenges faced by residents is, as the working group’s report notes, access to quality – or indeed any – education.

Since April 2015, community members, organised as the Mathare Community Education Taskforce (“Taskforce”), have raised concerns together with CSOs and their local leaders working with them about the challenges they face in ensuring their children have access to education. Their focus in this regard has been on the Mabatini and Ngei wards of Mathare, in which there is not a single public school. They have also called attention to the adverse impacts of the proliferation of private schools on equity in education, including on the quality of education.



GI-ESCR and partners host a follow-up session with the Mathare Community Education Taskforce.

This report is produced by Center for Education Policy and Climate Justice (CEPCJ); the East African Center for Human Rights (EACHRights); the International Commission of Jurists (ICJ); and the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)). It is the product of a long-term engagement between the Taskforce and various local and international non-governmental organisations engaged by the Taskforce to assist it with understanding these and other challenges in accessing education in Mathare. The research was conducted through a participatory and action-oriented method, which entailed collaborative decision-making by the Taskforce, members of the community, and other participating organisations.

Information was collected through interviews, focus group discussions, and remote research. Some 124 interviews were conducted with parents (77) and private school personnel (36) located in Ngei and Mabatini wards in May 2023. Focus group discussions involving different groups of parents in Ngei and Mabatini wards were held in August and one with children done in September 2023. Two validation workshops with community members were carried out in October 2023 and January 2024.



Community validation of the report

A. Findings

Information provided by private vschool personnel indicates that 86% of the sample of private schools interviewed were APBET schools. This information is inconsistent with the schools' registration status, with only seven schools reported being registered with the MoE, which is a requirement for APBET schools.

Most of these schools appear to be owned and hosted on land owned or leased by individuals or churches. None have reported presently receiving any financial support or assistance from the government since 2017, while a small number had previously received support for stationery, textbooks and food. Some schools received support from donors, well-wishers and churches, while most were completely reliant on fees paid by students.

Focus Group Discussion with Parents with Disability and Parents with Children with Disability



Most parents appeared uncertain about the registration status of their children's schools and could not distinguish the difference between an APBET school and any other private school. Parents' perspectives were varied. The reasons given for enrolling their children in private schools included:

- Absence of public schools in the area;
- Proximity of the private school to their home and the perceived safety due to the closeness;
- Size of classes;
- Personal connection with the private school; and
- Affordability.

Those parents whose children did attend public schools outside of Ngei and Mabatini explained that this choice was guided by:

- Quality of education;
- Better prospects for their child's progression to secondary school; and
- Affordability.

Interview with a parent at her home



Not all parents and APBET/private school personnel were in full agreement on all issues relating to the affordability and quality of their children's education. However, the following conclusions can be drawn from the research conducted.

Affordability

While parents differed on whether public or private schools were more affordable, almost all parents noted that their children had occasionally been out of school due to their inability to pay fees. One reason why some parents described APBET/private schools as more affordable is that some schools allowed them to pay fees over monthly or termly instalments. When discussing fees, parents referred not only to school fees as such, but also to other school-related expenses, such as additional fees for exams, textbooks, uniforms, extra lessons and lunch. While public schools did not, strictly speaking, charge school fees, parents reported being required to pay similar additional fees. Ultimately, 54% of parents expressed a preference for their children to attend public schools if they could choose freely and money was not an issue; 17% of parents expressed indifference to the type of school their children attended, stressing quality; and the remaining 29% favoured private schools.

Teacher Qualifications

Personnel at APBET/private schools confirmed that many teachers at their schools had not obtained a registration certificate from the Teachers Service Commission (TSC). This is despite the Teachers Service Commission Act (2012) and TSC Code of Regulations for Teachers (2015) requiring that for a person to work as a teacher they need to hold a Certificate of Registration issued by the Commission.⁸ Approximately 52% of parents interviewed were unsure of the teachers' qualifications and why teacher qualifications are important. Parents with children in APBET/private schools indicated that this was therefore not a major consideration when enrolling their children. Most parents with children in public schools were more confident of teachers' qualifications in this setting.

Interview with a teacher at a low-cost private school



Entrance to a low-cost private school



Quality Assurance

Only 53% of school personnel interviewed could report any visits to their schools by quality assurance officers. Not a single case of the exercise of the officers' enforcement powers in terms of the Basic Education Act, including the power to suspend operation of a school, were documented during this research. This is perhaps unsurprising due to underfunding of this function and understaffing, with only 12% of the 82,000 learning institutions in Kenya assessed annually.⁹

Safety of Travel to and from Schools

Parents overwhelmingly expressed concerns that travel to and from schools was unsafe for a variety of reasons, including distance, unsafe transportation modes, heavy traffic, pollution, crime and poor road conditions. Reported commuting times for children ranged from 5-10 minutes to one hour, with most children walking to school. Some school personnel reported children traveling for up to 90 minutes to and from school, with only one school reportedly transporting children in a school bus.

Safety and Conditions at Schools

Concerns about safety and suitability of school infrastructure were raised more frequently among parents with children in APBET/private schools than in those with children in public schools. Problems documented included inadequate numbers of and quality of classrooms, toilets, and playgrounds. Some schools have no playground at all. While parents commonly perceived the condition of schools as poor, school personnel most often reported it was satisfactory.

Water and Electricity

During the interviews with school personnel, twenty-six (26) interviewees reported that their schools had access to both water and electricity. Out of the 26 interviewees, eleven (11) confirmed that their connections were safe and legal. Some school personnel and parents acknowledged that the electricity and water connections at their schools were illegal. Parents with children in public schools reported that their children had access to clean water and electricity with only a few exceptions.

Environmental Issues

Environmental concerns raised by parents included: waste pollution; sewage overflow/flooding; noise pollution from the motorists and neighbours; and exposure to chang'aa¹⁰ brewing and drugs within the settlement. Most school personnel confirmed the existence of the same issues.

The physical environment of Mathare. Around the Mathare River, where residents live and some schools are also located.



Quality and Availability of Food

While some parents reported paying for meals provided by APBET/private schools, others packed lunch and snacks for their children. Other children had to go home for lunch. Many parents highlighted the need for comprehensive and sustainable school feeding programmes to ensure that children, whether in public or private schools, receive adequate, nutritious meals. Over 78% of personnel at APBET/private schools indicated that parents paid for food provided at school daily. Personnel indicated that the food was similar or the same each day and typically described the quantity of food provided as insufficient or merely satisfactory.

Disability Inclusivity

Some 47% of school personnel reported having at least one child with a disability attending their school. Parents confirmed that neither the public schools in Mathare, nor the APBET/private schools were inclusive. Education in Mathare is therefore largely inaccessible for children with disabilities. While some special schools do exist in Mathare, these do not accommodate all disabilities, and children with some disabilities therefore commonly attend special schools outside of Mathare. The private school personnel confirmed the lack of accessibility of APBET/private schools for children with disabilities and noted the lack of appropriate training for their teachers in teaching children with disabilities.

The Constitution of Kenya provides for the right of every child to “*free and compulsory basic education*,”¹¹ and emphasises the right of persons with disabilities to “access to educational institutions” that are “integrated into society to the extent compatible with the interests of the person”. It also underscores the government’s duty to ensure access to education for the youth, as well as minorities and marginalised groups.¹² To fulfil this Constitutional mandate, the Kenyan Parliament adopted the Basic Education Act,¹³ which regulates the provision of basic education.

Both the Basic Education Act and the Children’s Act, provide for the responsibility of the Cabinet Secretary of Education to develop and implement policies aimed at realising the constitutional right to education for every child.¹⁴ County governments are also given obligations to perform functions relating to education by the Constitution¹⁵ and County Education Boards are similarly given such responsibilities in terms of the Basic Education Act. In addition, and to give effect to the right to education, the government has also enacted various policies,¹⁶ regulations, and guidelines.¹⁷

Kenya is party to human rights treaties guaranteeing the right to education. In this publication, the practices identified in the findings of the report are evaluated and weighed against the standards of Kenyan domestic law and the following treaties:

- the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the Convention on the Rights of the Child (CRC);
- the Convention on the Rights of Persons with Disabilities (CRPD);
- the African Charter on Human and Peoples' Rights (African Charter);
- the African Disability Protocol (Disability Protocol); and
- the African Charter on the Rights and Welfare of the Child (Children's Charter).

Kenyan courts have affirmed¹⁸ that inhabitants of Kenya have a right to education and the Kenya government holds obligations to respect, protect and fulfil this right. Where the government fails to do so, individuals can approach Kenyan courts seeking redress for violations of their right to education. Kenyan courts, have, in this regard, drawn on both treaties and their correlative jurisprudence, as well as other declarative instruments and standards developed by experts.¹⁹

B. Recommendations for Kenyan Authorities

The report makes recommendations to Kenyan Authorities, some of which are specific to Mathare – and in particular the Ngei and Mabatini wards – while others are more generally applicable. The recommendations draw on advice of individuals interviewed and inputs from the Taskforce on draft recommendations. They are grounded in Kenya's domestic law and international legal obligations.

1. Overarching Recommendations

To ensure access to quality free education for children in the Mabatini and Ngei wards, **Kenyan authorities**, led by the Ministry of Education, in coordination with the Nairobi County Education Board, should undertake a combination of the following:

- a. The construction of public schools in areas where there is no access to public schools.
- b. The conversion of selected APBET schools to public schools;
- c. The rigorous monitoring of APBET schools while also enforcing a time-bound and provisional framework for establishing public schools.
- d. Take necessary measures to ensure that all schools provide access to nutritionally adequate, safe and sufficient food.²⁰

2. Recommendations to the Ministry of Education

The **Ministry of Education** should:

- a. In line with the recommendation of the Committee on Economic, Social and Cultural Rights (E/C.12/KEN/CO/ 2-5), review and revise the 2015 Registration Guidelines for APBET schools, and the 2021 Registration Guidelines for Basic Education Institution to ensure:
 1. the compliance with Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
 2. consolidation of coherent, comprehensive registration and monitoring guidelines for all school (public, private, formal or non-formal).
- b. Formulate and implement, in full collaboration with pertinent stakeholders, including members of the public and civil society, a time-bound strategy that will ensure an adequate number of inclusive, quality, and free of charge public schools in the Ngei and Mabatini wards. This initiative should ensure that all children have access to public schools. The strategy may include plans to:
 1. construct public schools in Mabatini and Ngei wards;
 2. convert selected APBET schools to public schools;
 3. ensure rigorous monitoring of APBET schools within Mabatini and Ngei wards, while also enforcing a time-bound and provisional framework for the establishment of public schools;
- c. Ensure adequate placement of certified teachers by the Teachers Service Commission both the public and private schools.
- d. Ensure the effective implementation of Part IX of the Basic Education Act relating to “standards, quality assurance and relevance” of education, in conformity with international law and standards. To achieve this, a targeted review should be conducted to assess and take corrective measures in relation to:
 1. the inadequacy of budget allocations to the implementation of Part IX;²¹
 2. the inadequate number of quality assurance officers employed by the MoE;²²
 3. the extent to which the power to enact regulations and guidelines in terms of section 72 of the Act has been effectively utilised;²³
 4. the effectiveness of the measures of quality assurance taken in respect of private schools, including APBET schools.
- e. Regarding Mathare, in particular, the MoE should take measures to ensure all schools (whether private, public, special, inclusive, community, formal and non-formal schools):
 1. are made aware of the required standards for education quality;
 2. undergo regular inspections by quality assurance officers, conducted at a minimum bi-annually, to ensure strict adherence to the established standards for educational quality;
 3. in accordance with section 66(2)²⁴ of the Act, are subjected to temporary suspension, where necessary, to facilitate compliance with quality standards.

3. Recommendations to County-Level Entities

a. The **Mathare County Education Board** should:

1. Coordinate and cooperate with the national government and Ministry of Education in taking all necessary measures to ensure that there are sufficient public schools in Mabatini and Ngei wards so that all children who desire to attend public school can do so.²⁵
2. Coordinate and cooperate with the national government and Ministry of Education in monitoring the quality of education in Mathare consistently with section 18(1)(h) of the Basic Education Act.
3. In compliance with section 18(1)(g) of the Basic Education Act and the requirements of international law and standards, collect and publish publicly a "data bank" of all basic education institutions operating in the County, including:
 - a. the category of all schools within the county (i.e., private, public, special, inclusive, community, formal and non-formal school);
 - b. the registration status of the schools;
 - c. the number of students disaggregated by age, gender and disability, among others;
 - d. the number of teachers and their qualification status; and
 - e. the number of classrooms at the schools and the student-teacher ratio in classes.

b. The **County Government** should:

1. Coordinate and cooperate with the national government and relevant state agencies to take measures that will improve access to education including:
 - a. ensuring that roads within the county are accessible, safe, and well maintained;
 - b. ensuring the availability of access to basic services such as running water and electricity to all schools;
 - c. eliminating environmental pollution in Mathare, including that which is caused by waste and river pollution.

4. Recommendations to the Kenya Legislature

The **Kenya Legislature** (parliament) should:

1. Conduct a review of the Basic Education Act to determine if it is necessary to amend provisions thereof to:
 - a. ensure the effective regulation of all categories of schools including private, public, community, formal and non-formal schools in compliance with international law and standards;
 - b. ensure that it fully recognises and incorporates a system of inclusive education.
2. Conduct a targeted inquiry to evaluate the consistency of education policy documents produced by the Ministry of Education (including the APBET Policy and the Sector policy for learners and trainees with disability) with the Basic Education Act, the Constitution and international human rights law and standards.
3. Ensure that the education budget allocation from the national revenue²⁶ provides sufficient resources to guarantee the full realisation of the right to education including, and, in particular:
 - a. building or otherwise providing sufficient appropriate facilities for public schools and/or converting private schools to public schools;
 - b. the effective operation of the Quality Assurance Council in the performance of its legislatively mandated functions in respect of monitoring the quality of education in all schools whether private, public, community, formal or non-formal schools;
 - c. the implementation of a country-wide inclusive education system.

5. Recommendations to the Executive of Kenya

The relevant responsible authorities within the executive branch of the government of Kenya should:

- a. Ensure full cooperation and coordination of the Ministry of Lands, the Ministry of Education, and all other relevant government departments at national and county level, to ensure that all public schools and schools identified for conversion to public schools are in possession of valid title deeds for the land upon which the schools operate.
- b. Ensure the full implementation of the recommendations made to Kenya by the CESCRC (2016),²⁷ (2008),²⁸ the CRC (2016)²⁹ (2007)³⁰, and the CRPD (2015)³¹ relating to the right to education.
- c. Ensure that the education budget allocation provides sufficient resources to provide for the full realisation of the right to education, particularly by facilitating:
 1. the construction or acquisition of buildings for public schools to ensure all children in Kenya can access education;
 2. the progressive conversion of private schools to public schools where necessary to ensure accessibility of education;
 3. the effective operation of the Quality Assurance Council in the performance of its legislated functions in respect of monitoring the quality of education in all schools whether private, public, community, formal or non-formal schools;
 4. implementation of a country-wide inclusive education system.

6. Recommendations to the Kenyan National Human Rights Commission

The Kenyan National Human Rights Commission should:

- a. Strengthen the capacity of learners, parents and any other individuals from marginalised communities by providing comprehensive training on human rights law and standards, and on effective remedies for violation thereof.³²
- b. Empower and assist community members of Mathare, and, in particular, the Mathare Community Education Taskforce, to engage in constructive dialogue with their duty bearers and other stakeholders by strengthening their knowledge and capacity to utilise relevant legal frameworks.
- c. Encourage and support community-led initiatives to enhance awareness and understanding of the right to quality, inclusive and free public education in Kenya.

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- ²⁵ Ibid Section 18(1)(n) of the empowers the CEB to "perform such other functions as may be necessary for the better carrying out of the functions of the county education board under this Act or any other written law."
- ²⁶ Constitution of Kenya, 2010. Article 95 (4)
- ²⁷ CESCR Concluding Observation, CESCR (E/C.12/KEN/CO/2-5, par. 58 Recalling that the State has the primary responsibility in ensuring the right to education, the Committee recommends that the State party take all the measures necessary to strengthen its public education sector. The State party should increase the budget allocated to primary education and take all the measures necessary to improve access to and the quality of primary education for all without hidden costs, particularly for children living in informal settlements and arid and semi-arid areas. It also recommends that the State party bring the Registration Guidelines for Alternative Provision of Basic Education and Training in line with articles 13 and 14 of the Covenant and other relevant international standards; that it ensures that all schools, public, private, formal or non-formal, are registered; and that it monitor their compliance with the Guidelines.
- ²⁸ CESCR, Concluding Observations, E/C.12/KEN/CO/1 para. 34 The Committee recommends that the State party (a) increase the funds allocated to bursaries and textbook subsidies for children from poor families, as well as to school transportation and mid-day meals in remote rural and deprived urban areas; (b) facilitate the readmission of girls who dropped out of school due to pregnancy by support-

ing them in finding adequate arrangements for the care of their babies; (c) ensure adequate access for nomadic children to mobile schools, including in the North Eastern Province; and (d) cater for the special needs of children with disabilities and integrate refugee children and internally displaced children in the regular school system.

²⁹ CRC Concluding Observations, CRC/C/KEN/CO/3-5 para. 46 (a) Give priority to inclusive education at mainstream schools over special schooling and allocate adequate human, financial and technical resources for schools to provide inclusive education in an effective way, including for refugee children with disabilities. 58. With reference to the Committee's general comment No. 1 (2001) on the aims of education, the Committee recommends that the State party: (a) Prioritize the elimination of geographical and gender disparities through targeted programmes and resource allocations that improve primary access, completion rates, retention, and transition to secondary school;

(b) Guarantee the legal right to free compulsory education for all, without direct or hidden costs, including for non-Kenyan citizens such as, in particular, refugee children. In doing so, prioritize the provision of quality, free primary education at public schools over the provision of education at private schools, including informal low-cost schools, and regulate and monitor the quality of education provided by private schools in line with the Convention;

³⁰ CRC, Concluding Observations, CRC/C/KEN/CO/2 para 46. The Committee recommends that the State party take fully into account the Committee's General Comment No. 9 (2006) on the rights of children with disabilities (CRC/C/GC/9), and more specifically: (d) Initiate programmes for public education on children with disabilities. The programmes should aim at addressing the stigmatization of and discrimination against children with special needs. Similarly, initiate community-based programmes to support families and parents with children with special needs;

(e) Increase the financial allocation given to children with disabilities in schools. The allocation of resources should take into consideration the specific needs of each child;

³¹ CRPD, Concluding Observations, CRPD/C/KEN/CO/1 para.44: The Committee calls upon the State party to: (a) Establish a time frame for the transition process from segregated to inclusive quality education and ensure that budgetary, technical and personal resources are available to complete the process, and collect disaggregated data on the advancement of the inclusive education system; (b) Immediately adopt a non-rejection policy for children with disabilities enrolling in regular schools, and provide reasonable accommodation; (c) Ensure that school facilities are accessible for deaf-mute children, and provide materials and curricula adequate to their needs;

(d) Undertake measures, including by encouraging public-private partnerships, to ensure the provision of assistive technologies in education; (e) Ensure the training of all teachers in inclusive education and establish a programme

for continuous training in sign language in mainstream schools and universities.

³² Kenyan National Commission on Human Rights Act, 2011, Section 8(1)(g) requires the Commission to: "formulate, implement and oversee programmes intended to raise public awareness of the rights and obligations of a citizen under the Constitution."



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This summary is based on a full report, on Participatory-Action-Research (PAR) methods and was conducted with communities in Mathare, Nairobi, Kenya. This publication is a summary of that report, which is available through the following [link](#).