

'Build Us More Schools!'

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

Research Report, June 2024





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Authors

This summary was written by Roselyne Onyango, Associate Programme Officer- Africa at GI-ESCR and Timothy Fish Hodgson, Senior Legal Adviser: Economic, Social and Cultural Rights at ICJ. The summary has been reviewed by Ian Seiderman, Legal and Policy Director at ICJ, Juana Barragan Diaz, Programme Officer on the Right to Education at GI-ESCR, Aya Douabou, Programme Officer-Africa at GI-ESCR, José Antonio Guevara, Deputy Director at GI-ESCR and Magdalena Sepúlveda Carmona, Executive Director at GI-ESCR.

Inputs were also provided by Wilson Macharia, ICJ's Associate Legal Adviser, Madina Mohammed, Programme Officer at EACHRights, and Noah Adipo, Youth Leadership Movement and the Mathare Education Taskforce.

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Table of Contents

Acknowledgments	5
Acronyms	6
I. Context.....	7
I.1. What are “low-cost” private schools and APBETs?	8
I.1.1. Background	8
I.1.2. What are APBET schools?	9
I.1.3. What are low-cost private schools?	9
I.1.4. What is the difference between low-cost private schools and APBET schools?.....	10
I.2.The case of Mathare	13
I.3. Advocating for change.....	17
II. Methodology	18
III. The challenges regarding access to quality education in the Mabatini and Ngei wards of Mathare	23
III.1. Key issues raised by parents during individual interviews and focus group discussions	23
III.1.1. Attendance and school choice	23
III.1.2. Financial factors in public and private schools	32
III.1.3. Quality of education in public and private schools	37
III.1.4. General remarks and sentiments	48
I.2. Main takeaways from the interviews with private school owners/teachers	50
III.2.1. Basic information on the school (typology, registration status, ownership issues) of private schools	51
III.2.2. Money-related issues in private schools.....	54
III.2.3. Quality of education in private schools.....	56
IV.2.4. General remarks and perspectives of the private school personnel	60
IV. International and domestic legal framework on the right to education	63
IV. 1. The Right to Education in international law	65
IV.1.1. International Covenant on Economic, Social and Cultural Rights	65
IV.1.2. State’s obligations under the African Charter on Human and Peoples’ Rights.....	72

IV.1.3. State's obligations under the Convention on the Rights of the Child.....	75
IV.1.3. State's obligations under the African Charter on the Rights and Welfare of the Child	77
IV.1.4. State's obligations under the UN Convention on the Rights of Persons with Disabilities	78
IV.1.5. The Abidjan Principles: Private Actors' involvement in education in international law	82
IV.2. Right to Education in the Kenyan Legal system	85
IV.2.1. Constitution.....	85
IV.2.2. Kenyan laws: The Basic Education Act and the Children Act	88
V. Recommendations.....	97
V.1. Overarching Recommendations	97
V.2. Recommendations to the Ministry of Education.....	97
V.3. Recommendations to County-level entities.....	99
V.4. Recommendations to the Kenya Legislature	100
V.5. Recommendations to the Executive of Kenya.....	101
V.6. Recommendations to the Kenyan National Human Rights Commission.....	102
Bibliography	103
International Treaties	107
References to National Legislation and Policies.....	109
Case Law.....	110
Annexes.....	112
A. Interview Questionnaire with Parents.....	112
B. Interview Questionnaire with Private Schools	123
C. Formal Information Request Re: the Utility of Public Land in Mathare Sub-County; Mabatini and Ngei Wards.....	133
D. Formal Information Request Re: Notice to conduct research in Mabatini and Ngei Wards, Mathare Sub-County	134

Acknowledgments

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Acronyms

ACERWC	Africa Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
African Charter	African Charter on Human and Peoples' Rights
APBET	Alternative Provision of Basic Education and Training
CEB	County Education Board
CESCR	UN Committee on Economic Social, and Cultural Rights
CRC Committee	UN Committee on the Rights of the Child
CRC	Convention on the Rights of the Child
CRPD Committee	UN Committee on the Rights of Persons with Disabilities
CRPD	Convention on the Rights of Persons with Disabilities
ESCR	Economic, Social and Cultural rights
FGD	Focus Group Discussion
FPE	Free Primary Education
ICESCR	International Covenant on Economic, Social, and Cultural Rights
KLR	Kenya Law Reports
MoE	Ministry of Education
NACONEK	National Council for Nomadic Education in Kenya
NFE	Non- Formal Education
NGO	Non-Governmental Organisation
SAP	Structural Adjustment Program
TSC	Teachers Service Commission

I. Context

In Kenya, institutions of basic education are categorised as either public or private in terms of the Basic Education Act, 2013.¹ Public schools are managed and largely funded by the government, whereas private schools are managed by actors or entities other than the State and mainly charge user fees to fund their operations. Apart from these two categories of schools, the Act empowers the Minister of Education to enact regulations to “*prescribe how schools shall be classified*” and “*make different provisions with respect to different classes or kinds of schools, impose conditions and make exemptions.*”² It is in terms of this power that the Ministry of Education (MoE) has established policies in relation to “non-formal” education, which the Act itself defines but does not provide much information about.³

In Kenya, two parallel systems of private schools often exist: high-cost schools for the elite and so-called “low-cost” or “low-fee” schools for people living in including Alternative Provision for Basic Education and Training (APBET) schools.⁴ In urban contexts, this dichotomy is more visible, where “low-cost” private schools mainly serve populations living in low-income areas.⁵ In these low-income areas, which are home to over 70% of the city population, 63% of children at a primary school level attend non-government schools.⁶ Before the onset of the COVID-19 pandemic, it was estimated that over 60% of children in Nairobi’s informal settlements were enrolled in APBET schools.⁷

The high enrolment rates in private educational institutions are not necessarily families’ preference for such schools but may also be the result of the dearth of public schools available near them. In this context, “low-cost” schools appear to be vital in reducing the gap in the supply of public education in these settlements.⁸ Despite playing this gap-filling role, the economic downturn and income losses triggered by the COVID-19 pandemic and the government’s response to it led to the permanent closure of many of these low-cost private schools with some of them ultimately being repurposed as shops, storage facilities or residential units.⁹

¹ *Basic Education Act, 2013*. Section 43 (1): “Basic educational institutions shall be categorised as (a) public schools which are schools established, owned or operated by the Government and includes sponsored schools; (b) private schools as those established, owned or operated by private individuals, entrepreneurs and institutions”.

² *Ibid.* Section 95(3)(i-j).

³ The Basic Education Act defines “non-formal education” as “any organized educational activity taking place outside the framework of the formal education system and targets specific groups/categories of persons with life skills, values and attitudes for personal and community development.”

⁴ Olivier Habimana et.al, “Exploring the Effects of the COVID-19 Pandemic on Low-Cost Private Schools in Nairobi, Kenya,” (Washington DC: Center for Global Development, 2022) p.1.

⁵ *Ibid.*

⁶ *Ibid.* p. 1. See also, Moses Ngware et.al “Quality and access to education in urban informal settlements in Kenya,” (Africa Population Health and Research Center, 2013), p 21.

⁷ Olivier Habimana et.al, “Exploring the Effects of the COVID-19 Pandemic on Low-Cost Private Schools in Nairobi, Kenya,” (Washington DC: Center for Global Development, 2022) p.2.

⁸ *Ibid.*

⁹ Brenda Mulinya, “Pandemic Closes, Repurposes Kenya’s Private Schools” *Voice of America News Online*, January 16, 2021.

Responding to this reality, and to ensure that learners of low-cost private schools would not be left out of school, the MoE announced that no learner should be denied access to public schools after the reopening of the lockdown in January 2021.¹⁰ This led to an influx of learners in public schools. At the time, many private schools remained closed, and even where private schools stayed open, many parents who had previously paid fees could no longer afford to do so.¹¹

The resulting movement of children from private schools into the public school system worsened overcrowding problems at public schools and placed further strain on their administration, leading some to recommend that the government also provide capitation grants to low-cost private schools.¹²

I.1. What are “low-cost” private schools and APBETs?

I.1.1. Background

The mushrooming of informal private schools began in the 1980s and 1990s,¹³ after the adoption of the Structural Adjustment Programs (SAPs), characterised by the reduction of public expenditure on social services and the introduction of cost-sharing policies.¹⁴ The introduction of user fees led to reduced access to education for marginalised children in particular, a decline in school quality and enrolment, low completion and retention rates and an increase in the number of out-of-school children.¹⁵ In an effort to address the needs of the out-of-school children and youth, a number of educational programs emerged outside the formal education system, referred to as Non-Formal Education (NFE) activities.¹⁶

In 2003, in response to the challenges faced, the government introduced the Free Primary Education (FPE) policy, which led to a surge in enrolment in public schools, without a corresponding increase in investments to resource such schools. The growth in enrolment strained resources, contributing to a decline in the quality of public education due to overburdened facilities, high teacher-pupil ratio and poor learning environments, especially in the urban informal settlements.

¹⁰ Kihui Njoki, “Magoha says schools reopening largely successful after huge turnout,” *Capital News*, January 4, 2021.

¹¹ Olivier Habimana et.al, “Exploring the Effects of the COVID-19 Pandemic on Low-Cost Private Schools in Nairobi, Kenya,” (Washington DC: Center for Global Development, 2022) p. 2.

¹² Ibid.

¹³ Margaret Wawira and Abraham Ochieng’, “Low-Cost Private Schools: School Choice for the poor at the expense of Quality?” (Right to Education Initiative, 2017).

¹⁴ Linda Oduor-Noah, “The growth of private actors in education in East Africa”, in *Realising the Abidjan Principles on the Right to Education; Human Rights, Public Education, and the Role of Private Actors in Education*. eds. Frank Adamson, Sylvain Aubry, Mireille de Koning and Delphine Dorsi (Camberley Surrey: Edward Elgar, 2021) 191.

¹⁵ Ibid.

¹⁶ *Policy on Alternative Provision of Basic Education Institutions 2009*. p. 11

This forced many parents to look for alternatives.¹⁷ As a result, private schools grew significantly, particularly “low-cost” schools for impoverished people¹⁸ including schools that also offered alternative educational provision for out-of-school children.

I.1.2. What are APBET schools?

The 2009 Policy on APBET describes alternative provision as:

“a provision that intentionally seeks to provide an option/choice that is responsive to the needs of the targeted population. These options must have a parity of esteem and convey comparable chances.”¹⁹

Thus APBET schools are those “that offer education that meets the unique needs of certain communities while maintaining standards and opportunities equivalent to mainstream schools.”²⁰ Therefore, APBET schools, while required to uphold standards equivalent to public schools, diverge from the mainstream curriculum as they aim to address the specific educational requirements of the targeted population they serve (individuals facing disadvantaged backgrounds, and unable to access formal schooling opportunities)

I.1.3. What are low-cost private schools?

The Kenyan Basic Education Act, 2013 makes no distinction between “low-cost”/“low-fee” private schools. However, such schools exist in practice and have been described as “schools that target relatively poor households by offering education at a low cost” with the warning that “in most cases” they are “often low quality”²¹ in part because:

“Low-cost private schools have developed as a response to the demands of the immediate situation for a functional or compensatory education rather than as a projected deliberate educational planning and operating in the urban informal settlements of Nairobi and comprise schools with a diverse ownership and registration status.”²²

¹⁷ William Bulemi, “Free Primary Education: A noble idea poorly executed,” *The Standard*, 2020.

¹⁸ Wanza Mbole Namboya and Carol Matiko, “How will low-cost private schools survive COVID-19?” *Financial Sector Deepening Kenya*, February 21, 2021. See also, Margaret Wawira and Abraham Ochieng’, “Low-Cost Private Schools: School Choice for the poor at the expense of Quality?” (Right to Education Initiative, 2017), p. 10.

¹⁹ *Policy for Alternative Provision of Basic Education and Training 2009*, p.8

²⁰ *Ibid* p 8.

²¹ Margaret Wawira and Abraham Ochieng’, “Low- Cost Private Schools: School Choice for the poor at the expense of Quality” (Right to Education Initiative, 2017), p.12

²² *Ibid.*, p.13.

I.1.4. What is the difference between low-cost private schools and APBET schools?

The 2009 Policy on APBET allowed these schools to utilise several spaces, including those within existing institutions, as well as borrowed and rented areas such as community halls and religious facilities.²³ Additionally, the teachers were required to undergo training in pedagogical skills and alternative delivery methodologies.²⁴ The alternative provisions aimed to encourage the adaptation of traditional or religious learning methods, facilitate part-time learning, implement shift learning systems in high population areas, employ multi-grade/multi-age methodologies and small school approaches in sparsely populated areas, as well as ensuring adult and continuing education methods.

In contrast, low-cost private schools adhere to the same curriculum and system of learning as other private schools.

Despite these differences, in practice, some texts use the terms APBET and low-cost private schools interchangeably to refer to schools in informal settlements. Nevertheless, it should be noted that while all APBET schools may be referred to as low-cost private schools, not all low-cost private schools can be referred to as APBET schools. Despite this distinction, there remains a challenge in defining the two types of schools.

In 2015, the Ministry of Education issued "Registration Guidelines for Alternative Provision of Basic Education and Training" (Registration Guidelines) to provide greater clarity on the registration process in terms of the 2009 APBET policy. These guidelines defined APBET schools as:

"[A]n organised form of learning set up to deliver basic education and training to disadvantaged persons who, due to various circumstances, cannot access formal schools."²⁵

The guidelines detail the registration procedure for these schools and include comprehensive "basic standards and requirements for registration."²⁶ They also mandate the Education Standard and Quality Assurance Council (ESQAC) to broadly "carry out standards assessments, quality assure, monitor, evaluate and oversee the implementation of the APBET programmes for quality education."²⁷ This responsibility seems to apply both prior to registration and throughout the operation of APBET educational facilities.

²³ *Policy for Alternative Provision of Basic Education and Training 2009*, p.21

²⁴ *Policy for Alternative Provision of basic Education and Training 2009*, p.22

²⁵ *Registration Guidelines for Alternative Provision of Basic Education and Training 2015*, p. 7.

²⁶ *Ibid.* p. 10-13.

²⁷ *Registration Guidelines for Alternative Provision of Basic Education and Training, 2015*. p. 10-13

Nonetheless, subsequent policies by the Ministry of Education have left out specific guidelines on the management and monitoring of APBET schools. For instance, the current Registration Guidelines for Basic Education Institutions (2021) only provide for the definition of APBET schools without any further specific detail regarding their management and operations.²⁸

Moreover, to date, the total number of “low-cost” private schools and APBETs remains unknown. To determine this number as well as better understand their operations and challenges in offering basic education, some mapping exercises have been conducted. The largest mapping effort that has been undertaken in the country to date is the 2019 government-led mapping of basic learning institutions operating in the informal settlement of Nairobi County.²⁹ The mapping obtained data on many important aspects of basic learning institutions in Nairobi’s informal settlements. The data obtained included:

- **Ownership:**³⁰ “41.4% were owned by local individuals, while 38.8% were community-owned. Local faith-based organisations owned 11.2% of the schools mapped, while 2.5% were owned by foreign non-governmental organisations (NGOs).”³¹
- **Registration status:** only a minority 213, (12.7%) were registered with the MoE, despite the legal requirement. Among these, 163 (76.5%) were registered as private schools, and 33 (15.5%) were registered as APBET or had a provisional APBET registration certificate.³²

This implies that only 17 (8%) of the schools were effectively registered as APBET schools.³³ The study highlighted that the overwhelming majority, 1,193 (71.4%), of the mapped schools, reported registration with bodies other than the MoE, including the Ministry of Gender, Children and Social Services; Ministry of East Africa Community, Labour and Social Protection; Ministry of Labour, Social Security and Services; and the Registrar of Societies under the Attorney General’s Office.³⁴ Furthermore, some schools (11) reported registration with both the MoE and other bodies.

²⁸ *Registration Guidelines for Basic Education Institutions, 2021*. p. iv.

²⁹ Ministry of Education, National Council for Nomadic Education in Kenya (NACONEK), *Mapping of Basic Learning Institutions Operating in the Informal Settlements of Nairobi County Report* (2020), p. 13.

³⁰ It is important to note that there is some discrepancy in the data as the total number (percentage provided) does not add up to 100.

³¹ Ministry of Education, National Council for Nomadic Education in Kenya (NACONEK), *Mapping of Basic Learning Institutions Operating in the Informal Settlements of Nairobi County Report* (2020), p.13

³² *Ibid.* p. 14.

³³ *Ibid.* p. 39.

³⁴ *Ibid.* p. 42.

Of even greater concern, 271 (16.2%) schools operated without any form of registration or license.³⁵ This means that a much larger majority (87.3%) of the schools mapped were not registered with the MoE.³⁶ Lack of registration with the MoE has profound implications. First, it means that these schools and the children attending them are not considered in education planning and allocation of funds.³⁷ Second, it indicates that it is unlikely that such schools are subject to the requirements of the APBET policy and guidelines, which fall within the purview of the MoE. Third, it may imply that the quality assurance functions stipulated in both the Basic Education Act and other policy and guidelines, such as the Registration Guidelines for Basic Education Institutions, 2021, are neither applied nor enforced.

- **Enrolment figures:** in 2019, at the time of the mapping exercise, the total enrolment in the 1,677 institutions was 317,429 learners (157,511 male and 159,918 female).³⁸ A further breakdown of this enrolment revealed that only 181 (10.7%) of the mapped schools had enrolled children with special needs, implying that either (a) the schools do not provide inclusive education for children with disabilities and/or (b) parents of these children avoid enrolment at APBET schools.³⁹ Among the mapped schools, 2,507 learners (1,312 male; 1,195 female) were reported to be living with a disability,⁴⁰ though this is likely a significant underestimate in line with the likely proportion of children living with disabilities in Kenya in general and the informal settlement context in particular.⁴¹
- **School infrastructure:** in general, facilities in most mapped institutions were inadequate in many ways, including being overcrowded or dangerous and lacking adequate sanitary facilities.⁴² Most schools lacked a safe, regular, potable water supply and separate latrines for boys and girls. The report further stated: “[g]overnance and accountability in the mapped institutions remained undefined and largely ineffectual. Members of the Board of Management (BoM) responsible for overseeing school activities were reported to be relatives or associates of the school owners who were unaware of their responsibilities and had little knowledge about quality education as well as what can be done to attain it.”⁴³

35 Ibid. p. 14 and p. 42.

36 Ibid. p. 73.

37 Ibid.

38 Ibid. p. 14.

39 Ibid.

40 Ibid p.14 and 46.

41 The most recent data available on school attendance by persons with disability was done in 2008 by the National Coordinating Agency for Population and Development (NCAPD) and Kenya National Bureau of Statistics (KNBS).

42 Ministry of Education, National Council for Nomadic Education in Kenya (NACONEK), *Mapping of Basic Learning Institutions Operating in the Informal Settlements of Nairobi County Report* (2020), p.14.

43 Ibid.

Therefore, while some researchers have argued that “low-cost” private schools could offer a temporary option for families seeking accessible education opportunities,⁴⁴ human rights monitoring bodies have urged the Kenyan government to take responsibility for providing free quality public education without any hidden costs and to ensure the effective regulation and monitoring of private education providers, including APBET schools.⁴⁵ These appeals align with Kenya’s international and domestic legal obligations in terms of domestic and international human rights law and standards.

1.2. The case of Mathare

Mathare is located in Nairobi County and is one of the 17 parliamentary constituencies within Nairobi. It comprises six administrative wards, including Mabatini, Huruma, Hospital, Ngei, Mlango Kubwa and Kiamaiko.⁴⁶ The constituency is home to the second-largest informal settlement,⁴⁷ within Nairobi County.

It is also referred to as Mathare slum and has an estimated population of 200,000 to 800,000 residents, according to various sources⁴⁸ although the 2019 census states that the overall population of the constituency rests at about 206,564 people.⁴⁹ The lack of precise figures can be explained by the difficulty of estimating the population of an informal settlement, even when the area is well-defined, due to many unregistered persons and the fact that many people constantly move in and out without being captured by official statistics.⁵⁰

The settlement is further characterised by hundreds of structures, densely packed and laid out without adhering to spatial layout guidelines, with many residents experiencing poor access to sanitation facilities, lack of affordable healthcare and minimal access to job opportunities. Regarding education, there is limited availability and access to public schools and significant challenges exist in accessing quality, inclusive education.⁵¹ In the face of these challenges, the community has made a genuine effort to assist in capturing data necessary to assess and improve access to social services.⁵²

⁴⁴ Olivier Habimana et.al, “Exploring the Effects of the COVID-19 Pandemic on Low-Cost Private Schools in Nairobi, Kenya,” (Washington DC: Center for Global Development 2022).

⁴⁵ Committee on the Rights of the Child (CRC), *Concluding observations on the combined third to fifth periodic reports of Kenya*, CRC/C/KEN/CO/3-5 (Geneva: United Nations, March 21, 2016), para. 58(b); Committee on Economic, Social and Cultural Rights (CESCR), *Concluding observations on the combined second to fifth periodic reports of Kenya*, E/C.12/KEN/CO/2-5 (Geneva: United Nations, April 16, 2016), para. 58.

⁴⁶ National Government Constituency Development Fund (NGCDF), <https://mathare.ngcdf.go.ke/about-us/>.

⁴⁷ UN-HABITAT, *Informal settlements’ vulnerability mapping in Kenya: facilities and partners’ mapping in Nairobi and Kisumu settlements –The case of Mathare*, (2020).

⁴⁸ UN-HABITAT, *António Guterres visits UN-Habitat’s Mathare One Stop Centre on first field mission as UN Secretary-General*, (2017); Canada Mathare Education Trust, *Why Mathare*;

⁴⁹ The Kenya National Bureau of Statistics (KNBS), *Kenya Population and Housing 2019*.

⁵⁰ Jens Christopher Andvig and Tiberius Barasa, *A Political Economy of Slum Spaces: Mathare Valley*, (Oslo: Norwegian Institute of International Affairs, 2014), p.27.

⁵¹ UN-HABITAT, *Informal settlements’ vulnerability mapping in Kenya: facilities and partners’ mapping in Nairobi and Kisumu settlements –The case of Mathare*, (2020), p. 45.

⁵² Ivy Chumo et al. “Coming out from the ‘data shadow’: Improving accountability in informal urban settlements,” *ARISE*, March 11, 2021.

The available data on the number of schools and school-age children in the settlement is limited and varies depending on the source. According to the 2019 government mapping of basic education institutions in the city of Nairobi, 149 private schools were mapped in Mathare, out of which 17 were registered with the MoE, 107 were registered with other bodies and the remaining 25 were not registered at all.⁵³ This data does not include specific information regarding the Mabatini and Ngei wards of the settlement.

To obtain an approximate number of schools and learners in these two wards, the database of Map Kibera within the Open Schools Kenya Project was consulted.⁵⁴ Accordingly, there are currently 383 schools in Mathare, out of which 185 are primary schools and 29 are secondary schools (Figure 1).⁵⁵ Of these 185 primary schools in the settlement, only 11 are public/government-operated, while the other 174 are private/non-government (see Figure 2). Put differently, only 6% of all primary schools are public, with the majority (94%) being private (see Figure 3). Only 38% (15,515) of learners in the area attend public schools, while 62% (25,249) of learners attend private schools (Figure 4).

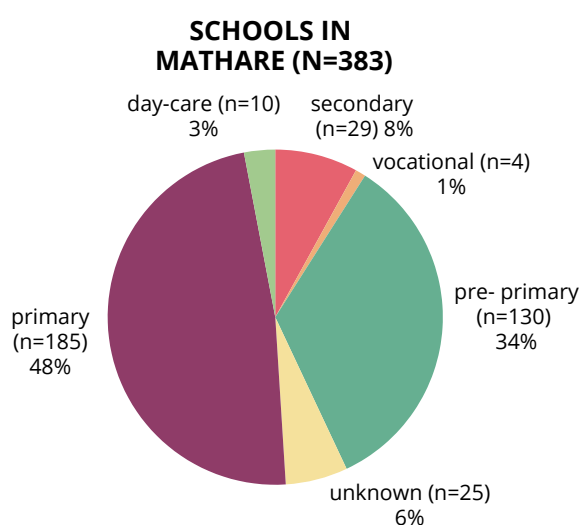


Figure 1 Source: Open Schools Kenya, 2023

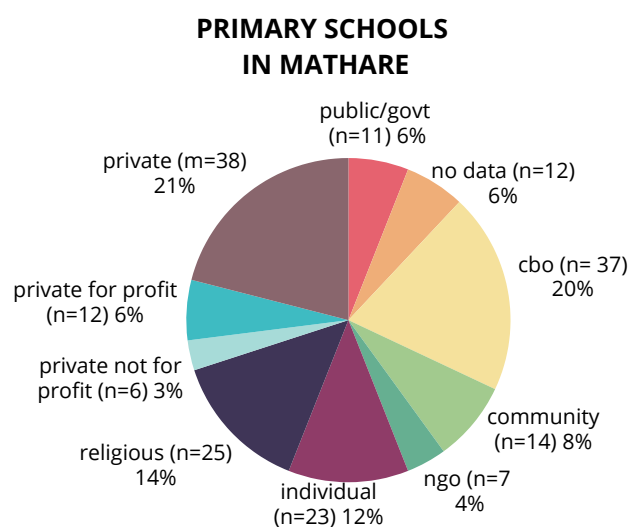


Figure 2 Source: Open Schools Kenya, 2023

⁵³ Ministry of Education, National Council for Nomadic Education in Kenya (NACONEK), *Mapping of Basic Learning Institutions Operating in the Informal Settlements of Nairobi County Report*, (2020), p. 39 (Table 6).

⁵⁴ Map Kibera through the Open Schools Kenya project has conducted citizen-led mapping exercises of schools in Kibra and Mathare sub-counties as well as in Kangemi, Kibagare, Githogoro and Deep Sea in Westlands sub-county. The team mapped local amenities and resources in these sites including the number of schools, their locations and enrolment levels. The initiative is currently ongoing and continues to give citizens the opportunity to upload information about schools, health facilities and available resources within urban informal settlements. See more information on this project on their website: <https://openschoolskenya.org/#map>

⁵⁵ The mapping done by Map Kibera is independent of the mapping done by the Ministry of Education. Therefore, it is not easy to compare if the same schools were mapped by both entities.

DISTRIBUTION OF PUBLIC V. PRIVATE PRIMARY SCHOOLS IN MATHARE

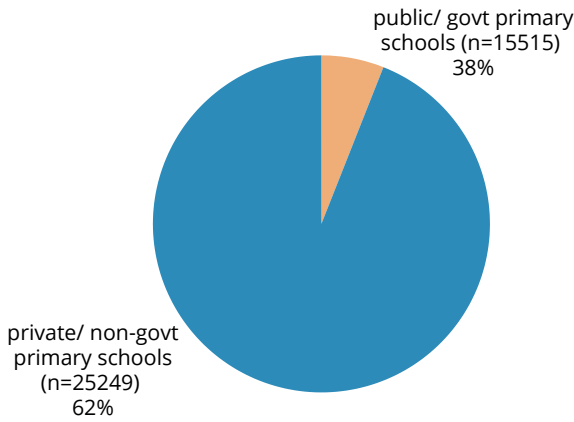


Figure 3 Source: Open Schools Kenya, 2023

DISTRIBUTION OF LEARNERS (N=40764) IN PUBLIC V. PRIVATE PRIMARY SCHOOLS IN MATHARE

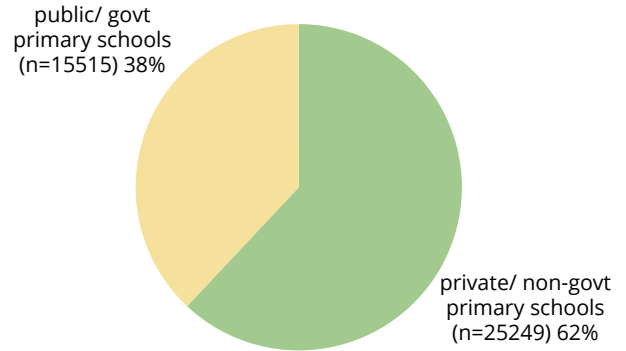


Figure 4 Source: Open Schools Kenya, 2023

SECONDARY SCHOOLS IN MATHARE

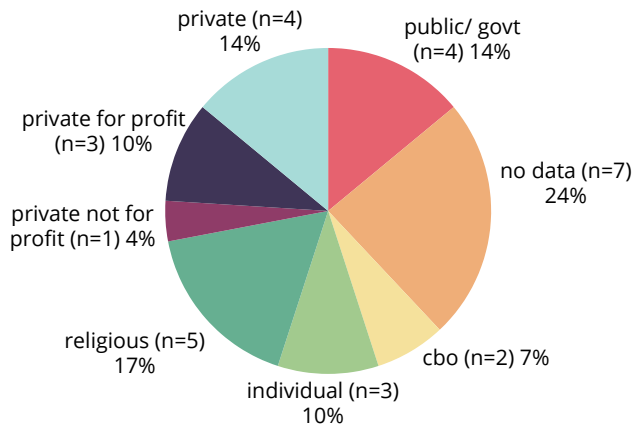


Figure 5 Source: Open Schools Kenya, 2023

NUMER OF LEARNERS IN SECONDARY IN MATHARE (N=3637)

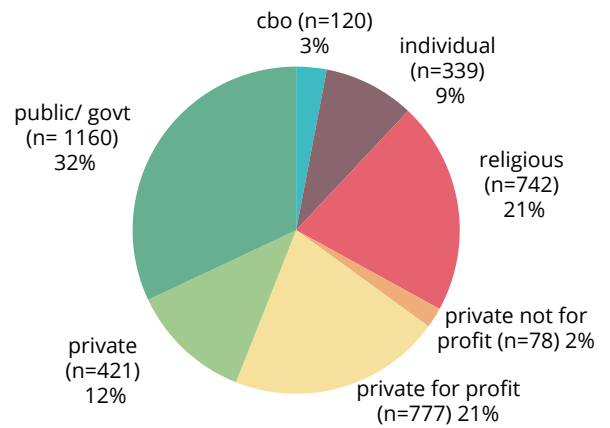


Figure 6 Source: Open Schools Kenya, 2023

DISTRIBUTION OF PUBLIC V. PRIVATE SECONDARY SCHOOLS IN MATHARE

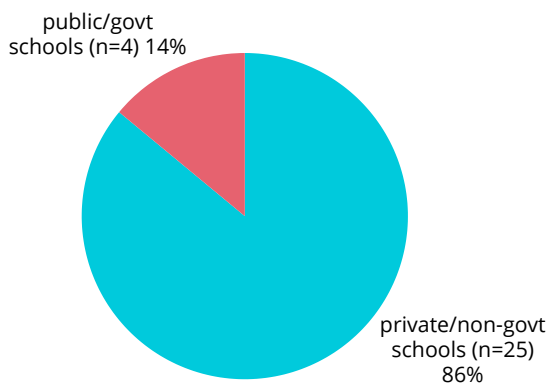


Figure 7 Source: Open Schools Kenya, 2023

DISTRIBUTION OF LEARNERS IN PUBLIC V. PRIVATE SECONDARY SCHOOLS IN MATHARE

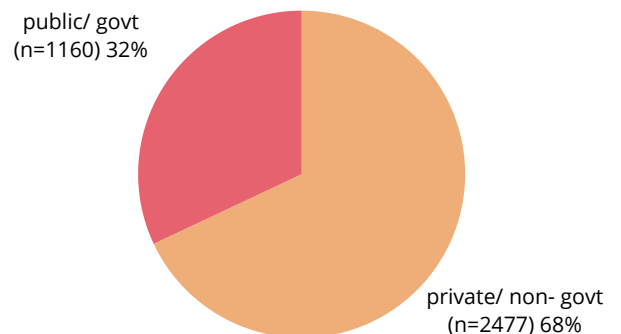


Figure 8 Source: Open Schools Kenya, 2023

Considering the schooling data, in Mabatini there are 28 private/non-government primary schools with 5,948 learners and not a single public/government primary school (Figures 9 and 10). Similarly, Ngei has 29 private/non-government primary schools with 2,865 learners and no public/government primary schools (Figures 11 and 12).

PRIMARY SCHOOLS IN MABATINI WARD (TOTAL =28)

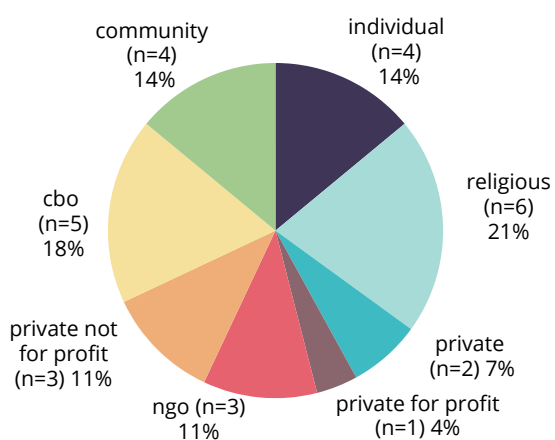


Figure 9 Source: Open Schools Kenya, 2023

PRIMARY LEARNERS IN MABATINI WARD (TOTAL=5948)

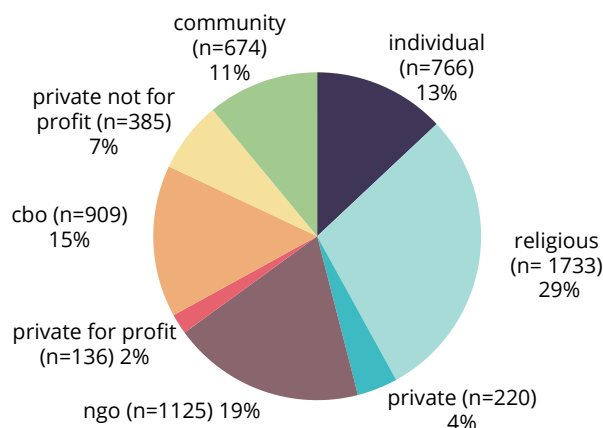


Figure 10 Source: Open Schools Kenya, 2023

PRIMARY SCHOOLS IN NGEI WARD (TOTAL 29)

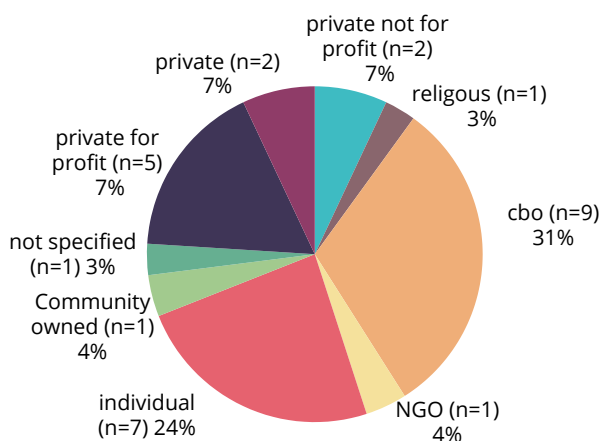


Figure 11 Source: Open Schools Kenya, 2023

PRIMARY LEARNERS IN NGEI WARD (TOTAL=12,865)

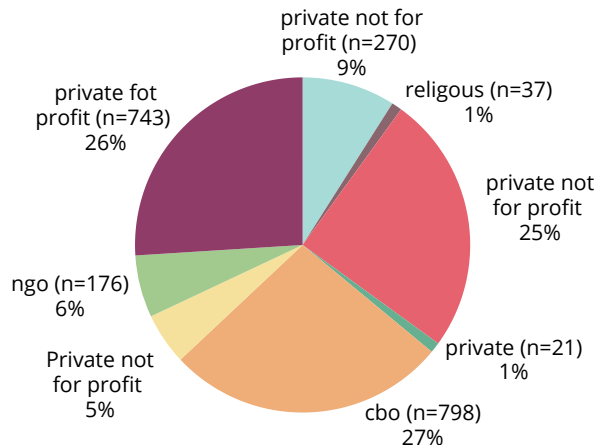


Figure 12 Source: Open Schools Kenya, 2023

I.3. Advocating for change

For years, the residents of Mathare have persistently voiced concerns about the limited number of public schools within various areas of the settlement,⁵⁶ including in Mabatini and Ngei wards.⁵⁷ Community members have consistently maintained that there is no public school within the Mabatini and Ngei wards and that children who attend public schools do so in the neighbouring wards.

Several factors contribute to the increase in enrolment in private schools, deepening inequalities in educational opportunities for the children of the settlement, including:⁵⁸

- Non-existent access to public schools in some areas;
- Limited access to existing public schools in other areas that are far to reach; and
- Accessibility and physical proximity to parents' homes of private schools.



A low cost private school in Mabatini Ward

⁵⁶ Stephanie Chebet Mate, *Role of community dialogues in enrolment and retention of children in primary school in Mathare informal settlements, Nairobi County-Kenya*, University of Nairobi, Master's thesis, October, 2016.

⁵⁷ This has been raised during several interactions with the community: <https://giescr.org/en/our-work/on-the-ground/gi-escr-and-partners-host-dialogue-with-the-mathare-community-education-taskforce>

⁵⁸ Ministry of Education, National Council for Nomadic Education in Kenya (NACONEK), *Mapping of Basic Learning Institutions Operating in the Informal Settlements of Nairobi County Report*, (2020), p 72.

The present report is the outcome of research undertaken with the community in Mathare (participatory action research). It aimed at understanding the depth of the challenges regarding community members' access to public education and the impact of the commercialisation of education on their human rights. It also seeks to identify possible avenues for advocacy and remedial action in that context.

The research was undertaken by members of the Mathare community, represented by the Mathare Education Taskforce,⁵⁹ in partnership with four civil society organisations: 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).

In line with the recommendations of the Mathare Education Taskforce, the research paid particular attention to the right to quality free primary education in the Mabatini and Ngei wards of the Mathare settlement. The objective is to put forward the views and experiences of the community members/residents of the Mabatini and Ngei wards regarding access to education. It is hoped that the report's findings will be channelled toward advocacy for effective change and the full realisation of the right to education.

II. Methodology

The present research project has relied on the methods of participatory action research (PAR), in which the research process is designed and decided together with the members of the community and the organisations participating in the project to achieve practical solutions for the challenges they face.

What is participatory action research (PAR)?

Participatory Action Research (PAR) is an umbrella term, covering **a comprehensive process of research, education, and action to which all participants contribute their unique skills and knowledge and through which all participants learn and are transformed.**⁶⁰ Applicable to a variety of fields and contexts, PAR privileges the active involvement of people with lived experiences as participants (co-researchers) to generate new knowledge and act on findings to improve their lives.⁶¹ In this sense, PAR

⁵⁹ The Mathare Education Taskforce is a movement formed by 30 community members living in Mathare who came together to advocate for better education in Mathare and its environs. The taskforce is made up of twelve (12) women and eighteen (18) men out of which 3 are persons with disabilities.

⁶⁰ Mary Brydon-Miller, "Participatory Action Research: Psychology and Social Change," *Journal of Social Issues*, 53, no. 4, (April 9, 2010) 657–666.

⁶¹ Caroline Lenette, *What Is Participatory Action Research? Contemporary Methodological Considerations: Participatory Action Research. Ethics and Decolonisation*, online edition. (New York: Oxford University Press, 2022), p 1.

replaces an 'extractive' model of research with one in which the benefits of research accrue more directly to the communities involved.⁶² Thus, PAR seeks to remove hierarchy and empower 'ordinary people' in and through the research process to achieve a flexible and socially owned process.⁶³ Importantly, PAR aims to document, interpret, and address complex systemic problems in a collaborative, impactful and contextually situated manner; therefore, it does not follow a set research design or particular methodology.⁶⁴ PAR combines research and action through a cyclic or spiral process that alternates between action and critical reflection.⁶⁵

What is the methodology of PAR?⁶⁶

PAR may use a **range of different (qualitative) research methods** in a flexible, often combined manner. **These include field observation, archival and library research, historical investigations using personal history documents, narratives and storytelling, focus group discussions, key informant interviews, community meetings, role-playing, etc.** Whichever methods are selected, they should ensure that they are giving the community the strongest voice as well as tackling and balancing any power asymmetries that may hinder their fullest participation.

PAR's methodology encourages multiple data collection techniques and instruments and the development of unconventional methods. **Methods are chosen or developed because they can potentially draw out useful knowledge and because they invite the involvement of all stakeholders.** Since PAR focuses on the experiential knowledge of community members, approaches like informal interviews or open-ended questions might be chosen over more structured researcher-controlled data collection methods.

PAR involves visits, workshops, seminars, multi-stakeholder meetings and academic journals in which local-level experiences and insights are shared with a view to sensitize those monopolizing authority and knowledge resources, which eventually contributes to advocating for change.

⁶² Sara Kinson, Rachel Pain and Mike Kesby, *Participatory Action Research Approaches and Methods: Connecting People, Participation and Place*, 1st ed. (London: Routledge, 2007), p.1.

⁶³ *Ibid.*

⁶⁴ Caroline Lenette, *What Is Participatory Action Research? Contemporary Methodological Considerations: Participatory Action Research. Ethics and Decolonisation*, online edition. (New York: Oxford University Press, 2022), p 2.

⁶⁵ David Coghlan, and Mary Brydon-Miller, "The SAGE Encyclopaedia of Action Research," (United Kingdom: SAGE Publications Ltd, 2014).

⁶⁶ Fran Baum, Colin MacDougall, and Danielle Smith, "Participatory Action Research", *Journal of Epidemiology and Community Health* 60, no.10 (October 1, 2006): 854-857.

The primary qualitative data for this research was obtained through semi-structured interview questionnaires with key informants grouped into two categories: parents and private schools' personnel (owners/directors/head teachers).⁶⁷ The interviews were conducted by 6 members of the Mathare Education Taskforce trained for the task by the ICJ and GI-ESCR. They were administered face-to-face and conducted in Swahili. The responses were transcribed by hand and audio-recorded to ensure that, as far as possible, precise accounts of the participants could be documented before being translated into English. The participants for the interviews were selected by the Mathare Education Taskforce. All participants provided written consent for their participation and the use of their anonymised data. To ensure the capture of the experiences of persons with disabilities, 6 out of the 77 parents interviewed were parents with disabilities and/or parents of children with disabilities.

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



⁶⁷ The set of interview questionnaires are annexed to the present report.

The interviews were conducted from the 18th to the 26th of May 2023. A total of 77 interviews were done with parents residing in the Ngei and Mabatini wards of Mathare, and 36 with the personnel of APBET/private schools operating in the two wards.⁶⁸ Personnel often completed the questionnaires by hand, offering more limited responses and information compared to parents.

Informal interviews with State officials (including sub-county education officers, quality assurance officers, local administrators), village elders and chiefs were also conducted during the first week of September 2023. Regrettably, a significant number declined to provide permission to be quoted in this report, citing the requirement for authorisation from senior administration before participating in a formal interview. To facilitate the process of data collection, formal letters were sent to the MoE, the Governor of the county of Nairobi, the Lands Ministry and the Office of the Ombudsman. Despite these efforts, no formal responses have been received from these offices to date.

To allow for a more detailed discussion on the education ecosystem in Mabatini and Ngei wards and provide a platform for community members to express their views and share their experiences, parents and children (in separate sessions) from these wards were invited to attend focus group discussions (FGDs). The FGDs with parents were convened on the 14th and 15th of August 2023 and with children on the 6th of September 2023.

The FGDs focused on community members' experiences regarding their access to education from the following points of view: experiences of women (6 attendees), experiences of persons with disabilities (6 attendees), experiences of parents of children in public schools (6 attendees), general experiences of parents regarding their children's schooling (6 attendees), and the experiences of children (6 attendees).

More qualitative responses that informed this report were provided during a validation workshop on the preliminary findings on the 13th of October 2023, to which interviewed parents were invited. These parents were given an opportunity to provide comments and input on the preliminary findings presented by all the partners (CEPCJ, EACHRights, ICJ and GI-ESCR). Furthermore, on the 26th of January, 2024, another validation session was held with a representative of the Mathare Education Taskforce to review and agree on the recommendations put forth in the research context.

⁶⁸ The interviews were conducted with 6 members of the Mathare Education Taskforce who were to interview 78 parents and 42 personnel (owners/directors/head teachers) of APBET/private schools operating in the two wards. However, due to availability and time constraints, the interviews were instead conducted with 77 parents and 37 personnel (owners/directors/head teachers) of APBET/private schools operating in the two wards.



Community Validation of the report

Secondary data was collected through desk research, including a literature review, an analysis of the international and domestic human rights frameworks and standards, and the domestic legal and policy frameworks regarding the right to education in urban informal settlements. Furthermore, to estimate the number of private schools operating in the Mabatini and Ngei wards of the Mathare sub-county, valuable data was obtained from the Open Schools Kenya project's dataset.

Finally, a formal information request was filed on the 25th of August 2023 with the National Land Commission⁶⁹ under Article 35 of the Constitution of Kenya (2010) and the Access to Information Act (2016) in order to obtain data on the utility of public land for building a public school in the Mabatini and Ngei wards of Mathare sub-county. Regrettably, no responses have been received.

⁶⁹ The information request is included in the annex of the report.

III. The challenges regarding access to quality education in the Mabatini and Ngei wards of Mathare

This chapter highlights the key takeaways from the interviews conducted in May 2023 and from the focus group discussions (FGDs) in August, September and October 2023. Notably, these responses underscore the intricate nature of schooling realities within the area, revealing diverse and sometimes contrasting individual experiences and subjective perceptions among parents with children in public and/or private schools.

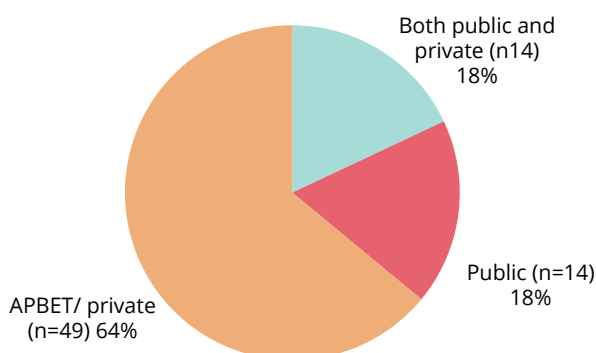
III.1. Key issues raised by parents during individual interviews and focus group discussions

The questionnaires used during the scoping interviews of parents as well as the focus group discussions gathered questions around four main themes:

- a. basic information about their child’s education, including school attendance and reason underlying school choice;
- b. financial factors or money-related issues regarding their child’s education;
- c. questions related to the quality of education, including teachers’ qualifications, school infrastructure and environment, safety within school as well as on the way to/from school; and
- d. general remarks or comments parents wished to share about their child’s education.

III.1.1. Attendance and school choice

ATTENDANCE AND SCHOOL CHOICE



Out of the seventy-seven (77) parents interviewed for this research, fourteen (14) parents had children attending public schools, forty-nine (49) parents had children attending APBET or private schools, and fourteen (14) parents had children enrolled in both public and APBET/private schools. As revealed during the interviews and FGDs, most parents were uncertain about the differences between APBET and private schools. They were often simply unaware of the category their child’s school fell under and would generally refer to all schools that are not public schools simply as private schools.

Figure 13

Regarding their children's attendance, many parents with children in APBET/private schools admitted that their children have occasionally been out of school for various reasons, mainly due to the inability to pay school fees. This extremely strong trend in the interviews was confirmed in the FGDs, during which participants reported instances where their children had been out of school for shorter or longer periods due to financial constraints, lack of nearby schools, or personal circumstances. The reported absences varied between two weeks up to two years out of school.

Regarding the school attendance of children with disabilities and their parent's choice of schools for them, parents reported very limited suitable options in Ngei and Mabatini wards. Learners with disabilities often attended special schools outside the two wards. Some attended Mathare Special School, which admits learners with intellectual disabilities; others went to Salama Primary School and Valley Bridge School, which have special units for learners with intellectual disabilities, primarily catering to children with cerebral palsy.⁷⁰ Learners with visual and hearing disabilities go to special schools in other towns away from Mathare because of the absence of options within Mathare. One mother of six said:

"Schools that cater to children with disabilities are very few in Kenya, let alone in Mathare, especially for deaf children. The closest public school for the deaf is a mixed school in Racecourse, Eastleigh. My child had to wait for 7 years as I looked for a school that would cater to her needs at her tender age and that was also not too far from home. Finally, I had to take her to Nyang'oma School for the Deaf, which was unfortunately in Bondo town. I chose this school because I met a lady who also took her child to this school and was also a resident of the county; therefore, in case of anything, the lady could assist me in reaching out to my child, for example, in case the schools closed earlier. Unfortunately, after a few years, I was unable to continue sending my child to this school because of lack of funds, and she stayed out of school for 2 years before I found another school in Bungoma County for her to attend."⁷¹

(Bondo town, is in Siaya county which is approximately 400.6 kilometres from Nairobi county and Bungoma county is approximately 412 kilometres from Nairobi county.)

The parents all agreed that numerous schools, both private and public, lack facilities and structures that cater to children with disabilities. However, it is important to mention that during our FGDs, one parent

⁷⁰ Response from parents during FGD with persons with disabilities 14/08/2023.

⁷¹ Response from a mother with children living with disability during FGD with persons with disabilities, 14/08/2023.

highlighted that the public school 4A (Heidemarie)⁷² has some facilities and classes specifically designed for children with disabilities.⁷³ Yet, during a visit to the school in the context of this research on the 13th of February 2023, the headmistress mentioned that while the school did have such classes, the children with disabilities had not returned to school after the COVID-related closure because their parents moved away from the city during and after the COVID pandemic, being unable to sustain themselves in the city over that period.

III.1.1.1. Reasons for private school attendance

It is important to emphasise that parents' decision-making is highly constrained by their social and economic circumstances and the lack of options outside private schools. Parents cited various reasons for preferring private schools, such as the absence of nearby public schools, the convenience of proximity to home and the perceived safety associated with closeness, smaller class sizes, and affordability (especially due to flexible payment arrangements). Nonetheless, the experiences and opinions shared during the interviews and FDGs are subjective, and often based on incomplete information held by parents and inaccurate information that is prevalent and distributed within their social networks. Therefore, similar ideas expressed here can also be encountered in the answers provided by parents explaining their preference for public schools.

III.1.1.1.1. Absence of public schools in the area

In Ngei and Mabatini wards, parents often face the challenge of limited access to public education. For example, one parent expressed his frustration by stating: "*there is no public school where I live.*"⁷⁴ This scarcity of public schools has led many parents to send their children to private schools, with one parent emphasising, "*most public schools in the area are full.*"⁷⁵ For these families, the decision to enrol their children in private institutions stems from the realisation that the existing public schools in Mathare are not within their locality and/or are already at maximum capacity.

III.1.1.1.2. Proximity of private school to home and perceived safety due to closeness

Parents in Mabatini and Ngei wards have tried to mitigate the difficulty in accessing public schools by enrolling their children in private schools close to their homes. Many parents in the area echoed a common sentiment, exemplified by one parent's reflection that:

⁷² Residents of Mathare refer to the public school (Heidemarie) as 4A or Heidemarie interchangeably. The school's initial name was 4A before it was renovated.

⁷³ Response from parent MK on the question "does the school cater for children with disability?" General FGD with parents 15/08/2023.

⁷⁴ Response from father of 1 living in Ngei to the question "How and why did you decide to send your children to their current schools? (Parents interview No. 69, 24/05/2023).

⁷⁵ Response from mother of 2 living in Huruma Lions area to the question "How and why did you decide to send your children to their current schools? (Parents interview No. 6, 22/05/2023).

*"the area I live in is surrounded by private and APBET schools and all public schools are a long distance away from where I live. So, I decided it is safer for my children to go where I am certain they are safe in a school which is closer to home."*⁷⁶

Parents generally agreed that having the school close to their homes was a relevant factor in deciding where to send their children as they believed it was much safer to have them walk to the vicinity rather than having them travel on unsafe roads with heavy traffic, often late in the afternoon, to public schools far from where they live. As one father succinctly put it, the school he sends his child to is "*near to my residence and the only school around the locality*",⁷⁷ with another mother confirming that "*I sent him to his current school because of the distance; it is easily accessible, and sometimes he goes by himself. It is near home*".⁷⁸

Considering safety as an important factor, parents carefully assessed the distance and security of their children when making decisions about school enrolment, with one parent stating, "*I looked at the distance and safety of the child*"⁷⁹ when deciding on the school to enrol him.

The prevailing belief among many parents was that if the school their child attended was closer to home, a safer environment was generally provided for them to travel to the school. A mother in Mabatini articulated this perspective, saying, "*In case of violence, he can reach home fast, and also, he does not use the road often*".⁸⁰

This safety concern was amplified by the impact of recent anti-government protests (*maandamano*) on children's schooling, with numerous instances where children had to navigate through potentially perilous streets to reach home amidst clashes between stone-throwing youths and tear gas-deploying police officers in the streets of Mathare.⁸¹

In addition to concerns raised around political unrest, parents voiced their worries during the FGDs about the general unsafe conditions of the roads, citing concerns about dangerous driving behaviours, especially involving drivers of motorcycles (*bodaboda*) and motor vehicles. One mother stated, "*I fear for my girl child going to a far school because of her safety. My child has once been hit by a bodaboda*".⁸²

⁷⁶ Response from mother of 3 living in Mabatini 3C to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 6, 24/05/2023). [re: FN 67 - are there two interviews numbered 6?]

⁷⁷ Response from father of one living in Mabatini to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 21, 23/05/2023).

⁷⁸ Response from mother of 1 living in Huruma flats to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 61, 23/05/2023).

⁷⁹ Response from mother of 1 living in Ngei, Kibicho to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 55, 20/05/2023).

⁸⁰ Response from mother of 2 living in Mathare No. 10 to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 35, 23/05/2023).

⁸¹ Maandamano Wednesday: Mathare in Protests in Pictures <https://www.standardmedia.co.ke/nairobi/article/2001477091/maandamano-wednesday-mathare-protests-in-pictures>

⁸² Response from a mother during the General FGD, 15/08/2023.

III.1.1.1.4. Size of classes

Parents with children in private schools sometimes held the perception that there were smaller class sizes in those schools as compared to public schools (in terms of the number of learners), which they indicated may contribute to a more favourable and conducive learning environment. One parent highlighted this, stating, *"I believe private schools have less learners, making it easy for teachers to concentrate on each learner."*⁸³ Another parent, whose child was attending a private school, admitted that she preferred private schools because *"the number of pupils for class is less compared to public schools."*⁸⁴ Similarly, the reason why another mother preferred private schools was that *"the student-to-teacher ratio is low [in private schools] as compared to public schools, hence the teacher can keenly monitor the pupil or student's performance."*⁸⁵

Moreover, insights from the FGD with the children revealed the challenges of large class sizes in public schools. A child in one of the public schools reported that their classroom had as many as eighty-two (82) students, making it difficult to move around and creating an impediment to effective learning in that context.⁸⁶

III.1.1.1.5. Personal connection with the private school

For some parents, the decision to enrol their children in a particular private school was influenced by a personal connection that the parent had with the teachers or owners of the school. For instance, one parent indicated that *"I had a connection with a teacher in that school, and I liked the school."*⁸⁷ Another parent shared a similar sentiment revealing *"I was introduced by my cousin's sister who knew some of those in management."*⁸⁸

Parents noted that having a personal relationship with someone from the private school (either a teacher, the owner or manager) was reassuring to them and weighed into their decision to send their children to that private school as the teacher/owner/manager would thus allow flexibility in terms of fee payments. Comments by a father from Mabatini exemplified this sentiment: *"Due to the fact that I have a personal relationship with the school owner and the school fee is very affordable."*⁸⁹

⁸³ Response from mother of 2 living in Thayu-Mabatini to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 31, 25/05/2023).

⁸⁴ Response from mother of 1 living in Huruma Sokoni to the question "If money was not an issue, what kind of school would you want your child to go to?" (Parents interview No. 50, 24/05/2023).

⁸⁵ Response from mother of 2 living in Huruma Sokoni to the question "If money was not an issue, what kind of school would you want your child to go to?" (Parents interview No. 51, 23/05/2023).

⁸⁶ Response from a child during the FGD with children 16/08/2023.

⁸⁷ Response from mother of 2 living in Gumba No.10 -Mabatini Ward to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 20, 23/05/2023).

⁸⁸ Response from mother of 1 living in Gumba No.10 -Mabatini Ward to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 64, 23/05/2023).

⁸⁹ Response from father of 2 living in Mabatini village to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 21, 23/05/2023).

III.1.1.1.6. Affordability

The parents' choice of school was also influenced by the school's affordability. While public schools should be free (no admission or other fees), in practice, most schools charge some type of fees at the discretion of the headteachers and Board of Management. Depending on the school, the informal fees charged by public schools could be higher than in some "low-cost" private or APBET schools. Thus, for community members, whether a school is affordable will depend on the circumstances of the household and the fees charged by the specific schools they are comparing.

One parent revealed, *"I tried to take the child to public school at Heidemarie, but admission [fees] was very high,"*⁹⁰ and thus decided to enrol her child in a private school. This sentiment was also shared by some parents in the FGDs, with one stating, *"I wanted my child to join Moi Forces Academy, but the admission fees"*⁹¹ *were costing me between Ksh. 30k-35k."*⁹²

Overall, parents indicated that APBET/private schools are more financially accessible, especially compared to the admission fees required for public schools. Echoing this viewpoint, a father simply stated, *"It's affordable."*⁹³

One possible explanation of why "low-cost" private schools could be more affordable by parents emerged during the FGDs. Many parents expressed the view that the option to pay school fees in instalments or other suitable arrangements made private schooling more affordable for them than public schooling, where fees were asked for upon admission. One mother shared her experience, stating:

*"I looked for a public school to enrol my child, and I was asked to pay Ksh. 10,000 to admit my child to a public school; as a single unemployed mother, this was very expensive for me. The public school was also far from Ngei, Mbutia, where I live, as it was in Mathare 4A (Heidemarie). My child stayed home for 5 months before I met a lady who directed me to an affordable private school where I pay Ksh. 2,500 per term. I talked to the school owner, and my child was admitted without having to pay the whole fee and I was allowed to slowly pay the fees."*⁹⁴

⁹⁰ Response from father of 1 living in Mabatini kwa Kariokis to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 41, 23/05/2023).

⁹¹ This is despite the Ministry of Education issuing directives during term openings, explicitly stating that public primary schools should refrain from denying any child access due to lack of admission fees or schools fees. However, despite these directives, the implementation of the Free Primary Education Policy remains unchecked, with fees demanded from parents at the discretion of the school's Board of Management.

⁹² Response from a parent during the general FGD 15/08/2023.

⁹³ Response from father of 3 living in Mabatini 3C to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 24, 25/05/2023).

⁹⁴ Response from Parent E, to the question "How and why did you decide to send your children to their current schools?" FGD with women 14/08/2023.



Interview with a parent at her home

This comment was generally consistent with information shared by parents who wanted to send their children to the public school, Heidemarie. They felt that because of the admission fees, they were compelled to opt to enrol their children to a private school.

III.1.1.2. Reasons for public school attendance

For the parents who sent their children to public schools, three main reasons emerged: quality of education, better prospects for their child to progress to secondary education and affordability.

III.1.1.2.1. Quality of education

Parents with children in public schools reported that they felt that their children received a higher quality of education in public schools, encompassing both the academic aspects, infrastructure and learning environment. A father from Huruma (Ngei Ward) expressed this view, saying: *“the school is free and has facilities that can support good learning for my child. It also has qualified teachers which help my child to have a proper education.”*⁹⁵ Another parent added, *“the school has good infrastructure, playground, the children’s performance and discipline are very high.”*⁹⁶ A mother of three in Mabatini highlighted the dual appeal of public schools, stating:

⁹⁵ Response from father of 1 living in Huruma Sokoni to the question “How and why did you decide to send your children to their current schools? (Parents interview No. 60, 21/05/2023).

⁹⁶ Response from mother of 2 living in Mabatini kwa Shosho to the question “How and why did you decide to send your children to their current schools? (Parents interview No. 40, 23/05/2023).

"My last-born's school is a public school with great infrastructure and well-qualified teachers, and we do not pay school fees, only lunch and remedial. As for my 1st and 2nd born, they are both in public secondary schools, which I believe is the best place in terms of quality education."⁹⁷

In the FGDs, a parent acknowledged the commendable quality of education in a distant public school but also pointed out the financial challenges associated with it: *"I took my child to 4A, which although is really far from home as I live in No.10, the quality of education is really good. However, the school charges so many other fees that I struggle to pay."⁹⁸* This perspective reflects the multifaceted considerations parents weigh when deciding between public and private education.

III.1.1.2.2. Better prospects for secondary education at public schools

Parents favouring public primary schools often cited the potential for smoother transitions to public secondary schools as a key factor in their decision. One parent emphasised this perspective, stating: *"Once they finish primary education, finding a good high school will not be hard if they come from a public school as opposed to if they finished school in a private school."⁹⁹* Echoing a similar sentiment, another parent expressed confidence that *"when the child finishes grade 7 or class 8 [in public school], he or she will join a good secondary school."¹⁰⁰*

Insights from parents attending the FGDs also highlighted the perception that children attending public schools had better chances to continue their secondary education than those learning in private schools. One father shared that:

"The reason I removed my children from private school to public school is because when they do their national examinations, children in public schools are given preference in school selection for their continuous education in secondary school and also university choice."¹⁰¹

This sentiment was reiterated by children preparing for their class 8 national examinations during the FGD, with one of them stating *"being in a public school allows registration for national exams easily and also to be picked to join a good public secondary school."¹⁰²*

⁹⁷ Response from mother of 3 living in Bondeni, Mabatini to the question "How and why did you decide to send your children to their current schools?" (Parents interview No. 32, 21/05/2023).

⁹⁸ Response from Parent SN, to the question "How and why did you decide to send your children to their current schools?" (FGD with parents with children in public schools)

⁹⁹ Response from father of 3 living in Mabatini village to the question "If money was not an issue, what kind of school would you want your child to go to?" (Parents interview No. 54, 24/05/2023).

¹⁰⁰ Response from mother of 3 living in Ngei to the question "If money was not an issue, what kind of school would you want your child to go to?" (Parents interview No. 56, 23/05/2023).

¹⁰¹ Response from a parent during the FGD with parents with children in public school 15/08/2023.

¹⁰² Response from a child studying in a private school during the FGD with children 06/09/2023.

III.1.1.2.3. Affordability

Interestingly, and in sharp contrast with the perception of parents of children in low-cost private schools, parents with children in public schools highlighted the cost-effectiveness of public schools compared to private alternatives.

One parent emphasised, *“Private was very expensive and I could not afford it. So, I decided to take her to a public school”*.¹⁰³ Another echoed these comments stating, *“My children were in a private school, and now I take them to public school because it is cheaper.”*¹⁰⁴ Yet another parent noted similarly that, *“the children were in private schools since they are expensive, I decided to send them to their current public school.”*¹⁰⁵

As explained above, views about affordability vary among community members depending on the specific schools they are comparing. While formally in Kenya, there is a free primary education policy, and the MoE has issued circulars stating that public primary schools should be free,¹⁰⁶ most public schools still require parents to pay for lunch, exam fees, extra lessons, textbooks and uniforms. The amount each public-school charges for these additional costs varies as determined by the headteachers and Board of Management.



FGD with parents with children in public schools

¹⁰³ Response from parent of 1 living in Ngei, Kibicho to the question “How and why did you decide to send your children to their current schools?” (Parents interview No. 74, 13/06/2023).

¹⁰⁴ Response from mother of 2 living in MBUTHIA-NGEI to the question “How and why did you decide to send your children to their current schools?” (Parents interview No. 68, 20/05/2023).

¹⁰⁵ Response from mother of 2 living in Huruma Sokoni to the question “How and why did you decide to send your children to their current schools?” (Parents interview No. 51, 23/05/2023).

¹⁰⁶ Irene Githinji, “Schools warned against demanding unauthorised charges from parents,” *People Daily*, 2024.

III.1.2. Financial factors in public and private schools

Based on the responses received regarding economic accessibility, particularly in relation to the schools attended by their children and considering both school fees and additional costs borne by parents, the following trends became apparent.

III. 1. 2. 1. School fees and additional expenses

Parents interviewed and having their children in APBET/private schools reported paying school fees (meaning tuition fees) per term for their children's education. This system frequently poses challenges, resulting in children being left out of school due to their guardians' inability to meet payment deadlines. In some APBET/private schools, parents could discuss their economic circumstances with the school owner or teachers, and some allowed flexibility in terms of payment. Parents reported that in some APBET/private schools, the school fees were supposed to cover meals. Still, in most cases, parents reported paying additional money for lunch, exam fees, extra lessons, textbooks and uniforms.

In contrast to this, most parents sending their children to public schools reported that they did not pay school fees (meaning tuition fees) as public education was free; as one parent stated, *"We don't pay school fees because it is a public school and it is free,"*¹⁰⁷ but were required to pay for other school fees or expenses, such as meals, textbooks, uniforms, extra lessons and remedials, motivation fees, expenses for school trips, activity fees, firewood, and admission fees, among others. While some parents did report having to pay school fees (tuition fees) in public schools, it appears that what they understood under the term "school fees" was not tuition fees but any expense that was collected by the school. One parent summarised the issue by saying *"Hakuna shule ya bure sasa,"*¹⁰⁸ which means "there is no free school now", to show that even where public schools should provide free education, given the indirect charges levied on them, schooling is never truly free.

In the FGD of parents with children attending public schools, concerns were raised about the definition of "school fees", with one of the parents explaining:

*"If you do not pay 'motivation fees',¹⁰⁹ your child suffers. The teachers pay attention to students whose parents 'pay motivation fees'. They have renamed/baptised fees into different names such as motivation fees, etc."*¹¹⁰

¹⁰⁷ Response from father of 1 living in Huruma, Sokoni and sending his child to public school to the question "Do you pay school fees for your children to attend school? How much are the fees per term?" (Parents interview No. 60, 21/05/2023).

¹⁰⁸ Response from Parent X, who has a child in a public school, on "any additional fees they pay apart from school fees" (FGD with parents with children in public school, 15/08/2023).

¹⁰⁹ The parents described a motivation fee as an extra amount of money that is paid to the school to motivate the teachers.

¹¹⁰ Response from parent J, who has a child in a public school (FGD with parents with children in public school, 15/08/2023).

This comment highlights the creative ways in which fees are often disguised under different labels. The so-called “motivation fees” are said to go to the teachers to motivate them to teach well.

It was evident from the interviews and FGDs, that school fees were a significant concern, with parents paying varying amounts per term, impacting their ability to afford education for their children. The amounts reportedly paid ranged between Ksh.1,000 and Ksh.15,000 in both public and private schools. The expenses beyond school fees, including uniforms, books, meals, extra lessons, and exam fees, were standard in public and private schools. These supplementary costs reported by parents ranged between Ksh. 50 to 10,000, posing significant challenges to many parents.

A parent with a child in a public/mission school for persons with disabilities indicated that the same problem exists in special schools:

"In the special schools I take my child to, I pay all the fees since there is no government support in the public school in Mathare. I also pay fees, but the government currently says that this is lunch money, which is about Ksh.1,500 per term, and I still have to pay Ksh. 50 per child every Saturday as tuition fees. If you do not pay, when the exam results are released, the child will not be given their report form."¹¹¹

Other parents gave examples of specific expenses that were challenging for them to afford, with one parent expressing concern that:

"I pay Ksh. 300 for the games kit, and I buy the exercise books once they are filled up. We are also required to pay for exams, and I pay ksh.600 for lunch per month."¹¹²

Another parent shared an instance where her child missed doing exams in a public school because of failure to pay the requested fees, saying: *"My child studies in Heidemarie and this term my child has not done exams because of school fees."¹¹³*

Overall, both the parent interviews and the FGDs have highlighted that, parents living in Ngei and Mabatini wards have limited knowledge about the specific expenses public schools can collect from them upon their child's enrolment and during the academic year. In conjunction with this lack of awareness, responses from parents whose children attend public schools reveal a dissonance between the government's and the MoE's responsibility to ensure the effective implementation of the Free Primary Education policy, which in principle guarantees free education in public schools, and the reality where parents still find themselves compelled to pay various fees to the school.

¹¹¹ Response from a mother of 6 with a deaf child on how and why did you decide to send your children to their current schools (Focus Group Discussion with persons with disabilities 14.08.2023).

¹¹² Response from Parent E on the question “Are there any other additional fees that you pay apart from school fees” (FGD with Women 14/08/2023).

¹¹³ Response from Parent SE, (FGD with Parents [general]), 15/08/2023).

III.1. 2. 2. Preference for school (if money was not a constraint)

During interviews parents were asked if money were not an issue, which kind of school would they prefer their child to attend.¹¹⁴ Forty-two (42) out of the seventy-seven (77) parents interviewed indicated a preference for public schooling, citing a range of reasons including trained teachers, well established facilities, easier admission to public secondary schools, affordability, the use of official curriculum, and safety for learners. A mother in Ngei, said that she would prefer a public school: *"because there are well-trained teachers [...] enough facilities and are well established"*.¹¹⁵ A father asserted he preferred a *"proper public school because they follow the curriculum well and they also have competent teachers."*¹¹⁶

PREFERENCE OF SCHOOL IF MONEY WAS NOT A PAROBLEM

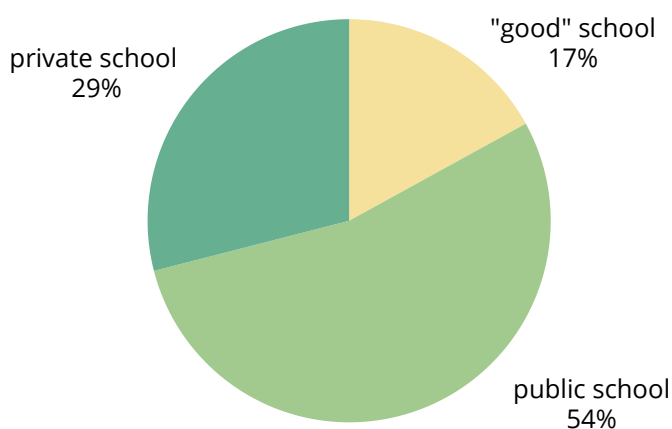


Figure 14 Source: Data collected by Mathare Education Taskforce, 2023

Some parents stressed a preference for public schools due to the government support that public schools receive. Other specific responses included the following: *"[p]ublic school with all the amenities provided by the government. The fees and books are provided for by the government"*¹¹⁷ and *"I would like my children to go to a public school because the government will cater for all their expenses and ensure a good learning environment."*¹¹⁸

Some parents' preference for public schools stems from the assurance of quality secondary education once the child completes primary education, as expressed by one parent who stated: *"Public school, because afterwards you are guaranteed a good secondary school."*¹¹⁹ Another parent explained her preference: *"Public, because they lack issues. You may be shocked to find private schools during national examinations are not registered."*¹²⁰ Others indicated that the safety of their children was the deciding factor in their preference for public schools.¹²¹

¹¹⁴ See Question 8 of the Parents Interview Questionnaire: "If money was not an issue, what kind of school would you want your child to go to? What is it about this kind of school which you like?".

¹¹⁵ Response from mother of 2 living in Ngei, Metameta and sending her child to private school (Parents interview No. 52, 19/05/2023).

¹¹⁶ Response from father of 1 living in Huruma Sokoni and taking his child to public school (Parents interview No. 60, 23/05/2023).

¹¹⁷ Response from mother of 4 living in Sokoni, Ngei and taking her children to private schools (Parents interview No. 62, 23/05/2023).

¹¹⁸ Response from father of 2 living in Mabatini village and taking his children to private schools (Parents interview No. 21, 23/05/2023).

¹¹⁹ Response from mother of 1 living in Ngei and taking her child to APBET school (Parents interview No. 70, 24/05/2023).

¹²⁰ Response from mother of 3 living in Bondeni, Mabatini and taking her children to public schools (Parents interview No. 32, 21/05/2023).

¹²¹ Response from mother of 2 living in Mathare 3C and taking one to public school, the other to APBET school (Parents interview No. 25, 24/05/2023).

Conversely, among the seventy-seven (77) parents interviewed, twenty-two (22) expressed a preference for private schools, citing smaller class sizes conducive to learning, caring teachers, and perceived higher quality of education, as illustrated by the following comments::

- *"Private schools, because they have a better education than public. Teachers are hardworking there. The population is very accommodative";*¹²²
- *"Private schools because of the attention that is guaranteed to my child in a private school";*¹²³
- *"Private schools, because the student to teacher ratio is low as compared to public schools, hence the teacher can keenly monitor the pupil or student performance."*¹²⁴.

Some parents even specifically named elite private schools of their choice, with one stating: *"Private (Bishop Gitonga), because of the quality of the food, good performance and security (in the current school the child has to cross Juja road which is not safe)."*¹²⁵ Such elite private schools are well out of the range of affordable prices for the overwhelming majority of residents of Mathare, including those interviewed.

Finally, thirteen (13) out of the seventy-seven (77) parents interviewed expressed a more generalised preference for *"a school"*, a *"better"* school or a *"good"* school, focusing on their desire for their children to receive quality education irrespective of whether it was provided publicly or privately. Responses included sentiments such as:

- *"I would take her to a school with all the needed facilities to get good education";*¹²⁶
- *"A school with all learning facilities for my child to get proper education";*¹²⁷
- *"Better school with all educational facilities. My child will get better education";*¹²⁸

¹²² Response from parent of 1 living in Mabatini and taking her child to public school (Parents interview No. 73, 13/06/2023).

¹²³ Response from father of 1 living in Mabatini and taking child to public school (Parents interview No. 66, 23/05/2023).

¹²⁴ Response from mother of 1 living in Negi Sokoni and taking child to private school (Parents interview No. 50, 23/05/2023).

¹²⁵ Response from father of 1 living in Number 10-Mabatini taking his child to public school (Parents interview No. 29, 21/05/2023).

¹²⁶ Response from mother of 1 living in and Kibicho, Ngei and taking her child to APBET school (Parents interview No. 30, 20/05/2023).

¹²⁷ Response from father of 1 living in Ngei and taking his child to private school (Parents interview No. 36, 18/05/2023)

¹²⁸ Response from mother of 2 living in MBUTHIA-NGEI taking her children to public school (Parents interview No. 68, 20/05/2023).

- *"I would wish my child to be in the best school with all the learning facilities so that my child would have quality education";¹²⁹*
- *"I would wish to take my son to a good school with well trained teachers and good facilities";¹³⁰*
- *"I would take her to a school with all the needed facilities to get a good education."¹³¹*

A parent of a child with disability expressed that *"I would prefer a school that could accommodate the disabled child with all the facilities."¹³²* During the FGDs, when asked the same question, the responses of persons with disabilities included the following showcasing, in particular, a preference towards public schools:

- *"I prefer public schools since I will be guaranteed that the teachers there are qualified";¹³³*
- *"I prefer a public school because you are assured of the quality of the teachers and that the schools will always have teachers as they are provided by the government compared to a private school."¹³⁴*

Some other responses from other FGDs were also specific to particular schools, with one parent stating *"I would like my child to attend Moi Airbase. It is a secure school. It has a good performance and everything is of good quality"¹³⁵* (Moi Airbase is a public school).

A small number of parents were content with the school their child was in, with responses such as *"I am happy with Hope School"¹³⁶* and *"I would like to continue with 4A" [4A also known as Heidemarie is a public school, Hope School is a private school].¹³⁷* Some parents in FGDs also said that what mattered most to them was a good quality school, saying, for example: *"I would pick a good quality school with good quality facilities."¹³⁸*

¹²⁹ Response from father of 1 living in Ngei and taking his child to private school (Parents interview No. 65, 18/05/2023).

¹³⁰ Response from mother of 1 living in Bondeni -Mabatini taking child to APBET school (Parents interview No. 34, 24/05/2023).

¹³¹ Response from mother of 1 living in Kibicho- Ngei taking child to APBET school (Parents interview No. 30, 20/05/2023).

¹³² Response from parent of 4, one having a disability, living in Ngei, Metameta and taking 2 children to APBET and 1 to public school (Parents interview No. 77, 13/06/2023).

¹³³ Response from a parent with a child with disability during the FGD with persons with disabilities 14/08/2023.

¹³⁴ Response from Parent MY, mother of 6 with a deaf child on preference of school they would pick to send their child if money was not a problem (Focus Group Discussion with persons with disabilities 14.08.2023).

¹³⁵ Response from parent during the general FGD 15/08/2023.

¹³⁶ Response from parent OO, during the general FGD 15/08/2023.

¹³⁷ Response from parent SE, during the general FGD 15/08/2023.

¹³⁸ Response from Parent AD, during the general FGD 15/08/2023.

III.1.3. Quality of education in public and private schools

Overall, parents' confidence in the quality of education available to their children in Mathare's Mabatini and Ngei wards was mixed. Some parents expressed satisfaction with the quality of education received by their children, while others had reservations about the curriculum and teaching standards, environment, and safety of schools.

III. 1. 3. 1. Teachers' qualifications in public and private schools

More than half (40 out of 77) of the parents (with children in only private schools and with children in both public and private schools) interviewed admitted to being uninformed or uncertain about the qualification level of their children's teachers or its significance when queried *"Do you know whether the teachers at the school are registered with TSC (the Teachers Service Commission) or have degrees or diplomas that qualify them to be teachers? Do you think it is important for teachers to be qualified?"* One mother candidly admitted: *"I don't know [if teachers are qualified] but I see my baby performing, so I can say they are trained by the TSC."*¹³⁹

Some parents shared that information about the qualifications of teachers was not the kind of information or details they would ask when seeking admission. One explained that *"parents don't ask details about teaching staff"*,¹⁴⁰ and another added *"No [I don't know] because parents have not been inducted on the same."*¹⁴¹

One father explained that he was aware of the prevalence of non-registered teachers stating:

*"Most of them are not registered teachers. Majority are sourced locally, and we know them. Sometimes you might meet them around. Shockingly your kid will point them out that they are their teacher and all along you have been knowing them after completing their O levels or form four. Most teachers are form four leavers."*¹⁴²

Many parents who had children in APBET/private schools reported that they believed some of their children's teachers were registered with TSC as *"most move to public schools after teaching at the school"*¹⁴³ implying that such qualifi-

¹³⁹ Response from father of 2 living in Mabatini, Gumba having his child in APBET school (Parents interview No. 46, 23/05/2023).

¹⁴⁰ Response from mother of 2 living in Mabatini, Gumba having her child in APBET (Parents interview No. 58, 23/05/2023).

¹⁴¹ Response from father of 1 living in Mabatini kwa Kariokis having his child in APBET school (Parents interview No. 41, 23/05/2023).

¹⁴² Response from father of 2 living in Mabatini, Gumba having his kids in private school (Parents interview No. 33, 19/05/2023)- A Form four leavers is a person who has completed 8 years of primary school and 4 years of secondary school. In this context O levels would also mean the same as someone who has completed 8 years of primary schools and 4 years of secondary school.

¹⁴³ Response from parent of 1 living in Mathare 3C having child in APBET school to question (Parents interview No. 39, 26/05/2023).

cations are required for employment at public schools. In contrast to parents' knowledge about teachers' qualifications in APBET/private schools, all parents who sent their children solely to public schools assumed all teachers at public schools were TSC certified. One parent confidently asserted *"We all know for a teacher to teach at a public school they are certified by TSC."*¹⁴⁴

During the FGDs, some parents with children in APBET/private schools expressed uncertainty about the qualifications of their children's teachers, indicating their limited knowledge about teacher registration with TSC. Those with children in public schools were assured that the teachers were qualified as they were posted by TSC into these schools; however, due to the high student-teacher ratios, the school board of management would sometimes also hire teachers or community members who they deem sufficiently qualified or who are still under training. As one parent explained concerning community members who the school board deem sufficiently qualified: *"The children are sometimes too many that the school hires form four leavers. However, these form four leavers are not well trained. There is a need for the government to follow up on the teacher qualification."*¹⁴⁵

During the FGDs with women, when asked whether they "actively participated in the school meetings" one of the mothers noted that *"If you dare give a negative report about a teacher to their bosses, your child would be ostracised in school. No teacher would want to teach your child."* All the other women agreed with this statement, saying that this happens in all the schools.

FGD session with women



¹⁴⁴ Response from parent of 3 living in Mabatini, Bondeni, having all children in public school (Parents interview No. 33, 21/05/2023).

¹⁴⁵ Response from Parent M, (FGD with women, 14/08/2023?).

A mother in the FGD shared a distressing experience that led her to transfer her children from a private school to a public one. She explained that her concern arose from the fact that her children were being instructed by the school owner's children, who were still in secondary school. This revelation became a decisive factor in her decision to switch schools.¹⁴⁶

One of the students participating in the FGDs who attends a public school indicated that she liked her teachers, they taught well, checked their homework, and responded to all questions asked.¹⁴⁷ Similarly, when asked about the quality of their teachers, one child who attends a private school expressed satisfaction: *"I like all my teachers because they are good, they do not discriminate and help students understand better. They do not leave any student behind."*¹⁴⁸ Yet, another child, attending a different private school, expressed a dissimilar opinion, explaining that while she liked her teachers, *"sometimes they answer rudely when a student asks a question."*¹⁴⁹

III. 1. 3. 2. Safety and school infrastructure in public and private schools

In general, most parents interviewed had concerns regarding the safety and suitability of the school infrastructure, including classrooms, sanitary facilities, and playgrounds. Complaints from parents whose children were attending APBET/private schools were, however, more numerous compared to parents having their children in public schools.

As highlighted by a parent with a child in a private school: *"classrooms and structures are made of iron sheets, and they share the toilets with the community and have no playground."*¹⁵⁰ In her view, this rendered the school environment unsafe. Another parent with children at an APBET school reported that *"the toilets are close to the classrooms, and they are not good for the learners' health. There is no space for a playground. The classes are small, yet the learners are many."*¹⁵¹

Most parents with children in APBET schools agreed that the conditions of school toilets were bad, and their children's school did not have a playground, or only a very small one, which added to their safety concerns. Some views expressed include:

¹⁴⁶ Response from Parent A, (FGD with parents with children in public schools 15/08/2023).

¹⁴⁷ Response from child GA in a public school, during the FGDs with children 16/09/2023.

¹⁴⁸ Response from child BA in a low-cost private school, during the FGDs with children 16/09/2023.

¹⁴⁹ Response from child MN in a private school, during the FGDs with children 16/09/2023.

¹⁵⁰ Response from mother of 2 living in Mabatini and having her kids in APBETS to the question "Are the classrooms and other structures at the school (toilets, playgrounds etc) safe and in good condition?" (Parents interview No. 20, 23/05/2023).

¹⁵¹ Response from father of 2 living in Mabatini, Gumba and taking his kids to an APBET school to the question "Are the classrooms and other structures at the school (toilets, playgrounds etc) safe and in good condition?" (Parents interview No.33, 19/05/2023).

- *"They [the school structures] are made out of iron sheets, they do not have a playground and [children] play along the road which is dangerous";¹⁵²*
- *"The classrooms have pot-holes, the toilets sometimes get blocked and the children have to stay home until it gets unblocked";¹⁵³*
- *"The toilets are very dirty. The classes are very small and congested. No playground and the children play dangerously along the corridors and road and [it] is very dangerous for the kids";¹⁵⁴*
- *"They [the classes and school structures] are in terrible condition especially the toilets."¹⁵⁵*

One parent with children in both public and private schools conveyed a view that neither environment was entirely safe for his children because while in the public school, *"classrooms are full to capacity and not safe for children"*, in the APBET school, classrooms *"are too small [and] therefore not safe and not in good condition."*¹⁵⁶

The general perception of the state of public schools during the interviews was that their facilities and classrooms were generally adequate and safe, and students had access to playgrounds on the premises. Yet, several parents also reported that the overcrowded classrooms were unsafe and/or unsuitable for quality learning.

According to parents participating in the FGDs, the condition of school infrastructure varied in public and private institutions, including classrooms and sanitation facilities. In their FGD, parents with children in public schools acknowledged that public schools generally offer well-structured classrooms, ample playing fields, and proper toilet facilities. However, challenges arise from the imbalance between school population and limited resources, the learner-to-classroom and toilet ratios that are often far too high.

Parents with children in private schools shared that some of these institutions are often situated on rental properties, leading to limited space for playgrounds and classrooms. One parent emphasised that:

¹⁵² Response from mother of 2 living in Mathare 3C and taking her younger child to an APBET school to the question "Are the classrooms and other structures at the school (toilets, playgrounds etc) safe and in good condition?" (Parents interview No.25, 24/05/2023).

¹⁵³ Response from father of 1 living in Mabatini kwa Kariokis and taking his child to an APBET to the question "Are the classrooms and other structures at the school (toilets, playgrounds etc) safe and in good condition?" (Parents interview No.41, 23/05/2023).

¹⁵⁴ Response from father of 2 living in MBUTHIA and taking his child to an APBET to the question "Are the classrooms and other structures at the school (toilets, playgrounds etc) safe and in good condition?" (Parents interview No.44, 20/05/2023).

¹⁵⁵ Response from father of 3 living in Mabatini Village and taking his kids to private schools to the question "Are the classrooms and other structures at the school (toilets, playgrounds etc) safe and in good condition?" (Parents interview No.54, 24/05/2023).

¹⁵⁶ Response from parent of 4 living in Metameta, Ngei and taking 2 kids to public and one to an APBET school to the question "Are the classrooms and other structures at the school (toilets, playgrounds etc) safe and in good condition?" (Parents interview No.77, 13/06/2023).

"The APBET schools are built in 10 by 10 plots and are overpopulated, with two toilets serving the school population. The size of the schools also means there is no accessible field."¹⁵⁷

This view was also echoed in the FGD with children, as several expressed that private schools had limited playgrounds and smaller classes. One child, for example, stated that they would like to go to a public school because it has bigger a playing field, whilst his current school had a very small field.¹⁵⁸

III. 1. 3. 3. Access to water and electricity in public and private schools

The research also sought to inquire about the availability and accessibility of drinking water and electricity and the legality of their connections.

Parents whose children were attending APBET/private schools reported inconsistent access to clean running water and electricity, with only a few schools having access to clean running water. Schools resorted to purchasing water from vendors and storing it in water tanks on school premises when there was no running water. Some parents also indicated that their children were in schools where they were asked to bring their own water to school for consumption during the day. This was echoed by the children in their FGD session as all of them – both in public and private schools – reported taking drinking water with them to school.

Regarding the legality and safety of electricity and water connections at APBET/private schools, some parents raised concerns, especially regarding electricity:

- *"The electricity connection is illegal posing danger to the children";¹⁵⁹*
- *"They have illegal electricity, and this is very dangerous for our children."¹⁶⁰*

In many instances, parents were unaware of the legality of existing school connections. However, what emerged clearly from the parents' interviews is that most of those with children in public schools reported good and safe connections. Only one parent expressed problems with the water supply in a rural public school,¹⁶¹ and two more said that their children's public schools had no access to electricity.¹⁶²

¹⁵⁷ Response from parent PP, during the General FGD 15/08/2023.

¹⁵⁸ Response from child KN, student in a low-cost private school during the FGD with children 16/09/2023.

¹⁵⁹ Response from mother of 2 living in Mathare 3C and sending one to an APBET to question "Do your children have access to running water and electricity at school? Are the connections for these legal and safe?" (Parents interview No.25, 24/05/2023).

¹⁶⁰ Response from mother of 2 living in Mathare 3C and sending both to an APBET to question "Do your children have access to running water and electricity at school? Are the connections for these legal and safe?" (Parents interview No.26, 24/05/2023).

¹⁶¹ Response from parent of 1 living in Mabatini and taking her child to public school (Parents interview No. 73, 13/06/2023).

¹⁶² Response from mother of 2 living in Mabatini kwa Shosho and sending her children to public school (Parents interview No. 40, 23/05/2023) and Interview with mother of 4 living in Meta Meta, Ngei ward, sending her children into public school (Parents interview No. 16, 23/05/2023).

The above views were reaffirmed by the participants of the FGDs. Parents with children in public schools agreed that the schools benefit from legal connections to essential utilities like electricity and water. This is because they are under the control and direction of the State. While some private schools are legally connected to these services, others resort to unauthorised connections. Some private schools even charge students for toilet use due to inadequate facilities.¹⁶³ One parent emphasised the challenge faced by students as follows: *"The ratio of children to the washroom facilities is not balanced. Many schools do not have safe water and many children have to carry water to school. There are even private schools where children have to carry firewood to school"*.¹⁶⁴

III. 1. 3. 4. Health and environmental issues around public and private schools

In response to the question, *"Are there any environmental issues (such as pollution or waste) impacting on your child's education?"* the parent interviews revealed four main environmental issues affecting their children's performance and well-being in both private and public schools:

- a. waste pollution;
- b. sewage overflow/flooding;
- c. noise pollution from motorists and neighbours; and
- d. exposure to *changa* brewing and drugs.

Mothers from Mabatini ward highlighted the implications of the poor hygienic conditions in private schools, with one stating, *"My child has fallen sick due to the hygienic conditions in school, [furthermore], the poor state of the toilets and the open drainage smell can distract learners,"*¹⁶⁵ while another added *"the drainage system and the sewer line pollute the air. The bad smell interferes with learning."*¹⁶⁶

A father from Ngei ward pointed out that *"a lot of sewage and loud music from the bars"*¹⁶⁷ affected his child's learning environment, while another parent reported *"trash dumped near the school, poor drainage near the school, violence and teargas during protests [affect the learning environment of the child]."*¹⁶⁸ A mother from Mathare 3C raised con-

¹⁶³ Response from Parent D, on the question "Do your children have access to running water and electricity at school? Are the connections for these legal and safe?" (FGD with parents with children in public school, 15/08/2023).

¹⁶⁴ Response from Parent D, on the question "Do your children have access to running water and electricity at school? Are the connections for these legal and safe?" (FGD with parents with children in public school 15/08/2023).

¹⁶⁵ Response from mother of 3 living in Mabatini 3C and taking kids to private school (Parents interview No. 6., 24/05/2023).

¹⁶⁶ Response from mother of 2 living in Gumba Mabatini and taking her child to APBET school (Parents interview No. 58., 23/05/2013).

¹⁶⁷ Response from father of 3 living in Choma Zone Ngei and taking his kids to private schools (Parents interview No. 17., 23/05/2023).

¹⁶⁸ Response from father of 2 living in Mathare No. 10 Mabatini and taking his kids to APBET schools (Parents interview No. 18., 23/05/2023).



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

cerns that *“the environment is not good”* because *“there are open sewer lines, and the drainages are full with litter everywhere,*¹⁶⁹ while another mother from the same area added, *“noise pollution from motor vehicles and motor bikes and loud music from the neighbours affect the concentration of children in the class.*¹⁷⁰

Additional forms of disruption that elicited concern were underscored by certain parents, with one particularly worried parent expressing: *“local breweries¹⁷¹ is a major problem here. It is sold openly, and also other forms of drugs are being sold”.*¹⁷² Another parent confirmed this concern: *“The environment is not good because [there are people partaking in smoking of all illicit [drugs] all over the place.”*¹⁷³ Participants in the FGDs reported environmental issues, such as noise pollution from nearby churches and residential buildings that also house the APBET/private school. They also complained about the proximity of bars and local brew sellers to such schools. One parent stated, *“You find that the schools are located side by side with busaa (local brew) seller,”*¹⁷⁴ while another added

¹⁶⁹ Response from mother of 2 living in Mathare 3C and taking her children to APBET schools (Parents interview No. 26., 24/05/2023).

¹⁷⁰ Response from mother of 2 living in 3C village in Mabatini and taking her children to APBET schools (Parents interview No. 28., 22/05/2023).

¹⁷¹ These are informal breweries, whereby traditional home brewed spirits popularly known as chang’aa and busaa are made through fermentation and distillation illegally in this context as the law requires them to be manufactured, distributed and sold in glass bottles. This is not the case in Mathare. Also see: AFP, “Chang’aa, the potent liquor that’s both a scourge and a lifeline for many” *Nation*, June 07,2023.

¹⁷² Response from mother of 1 living in Bondeni- Mabatini and taking her child to APBET school (Parents interview No. 34., 24/05/2023).

¹⁷³ Response from father of 1 living in Mabatini kwa Kariokis and taking his child to APBET school (Parents interview No. 41., 23/05/2023).

¹⁷⁴ Response from Parent MK on “How the environment around the school is?” (FGD with parents with children in public school. 15/08/2023).

that: *"My child's school is located very close to a residential building. So, you will find once in a while someone is playing their loud music as the children are still in school and thus cannot concentrate in class."*¹⁷⁵

These views were also echoed by two children in the private schools during their FGD. Additionally, they also raised problems about *bodabodas* (motorcycle drivers) and *matatus* (commercial minibuses) playing loud music or honking, waste pollution due to poor drainage systems and waste disposal affecting their learning environment.

III. 1. 3. 5. Safety of travel to/from public and private schools

When addressing the safety of commuting to and from public and private schools, parents offered a range of experiences shaped by factors such as distance, transportation modes, and local conditions. Commuting times varied significantly, spanning from 5 to 10 minutes to over an hour, with distances ranging from 100 meters to 2 kilometres.

The most common form of travel was walking, which, in general, was considered to be unsafe for a range of reasons, including:

- the lack of pedestrian walkways;
- busy traffic on the roads;
- flooding of roads;
- sewage overflow during the rainy season; and
- a general lack of public security in the settlement (made even worse in times of conflict, riots or protests).

When asked, *"How far does your child have to travel each day to and from school? How do they travel? In your view, is this trip safe?"* a parent of three children with two children in the same public school gave the following response: *"[it's a] 1.5 km walk. I am not sure about the safety since we stay in an informal settlement, and I just hope each day that he makes it safe to school and back home."*¹⁷⁶ Another parent added that the children: *"walk to school every day. It is not safe, especially in the morning; they could be kidnapped or even murdered."*¹⁷⁷

A father of two from Ngumba, Mabatini, reported that the distance is also too long: *"[It is] around 2km walk to and from school. Not safe when police are raiding the chang'aa dens and in the morning, there are too many vehicles on the road and there are no pedestrian walkways along Maumau road."*¹⁷⁸

¹⁷⁵ Response from Parent E, on the environment around the school (FGD with women 14/08/2023).

¹⁷⁶ Response from parent of 3 living in Ngei Pag and sending children to public (Parents interview No. 72, 13/06/2023).

¹⁷⁷ Response from mother of 2 living in Mathare 3C and sending her children to APBET schools (Parents interview No. 26, 24/05/2023).

¹⁷⁸ Response from father of 2 living in Ngumba village-Mabatini sending one child to public, the other to APBET school (Parents interview No. 27, 22/05/2023).

Another father from Mabatini emphasised the dangers of his child's one-kilometre walk to school, stating it is *"not safe during conflict in the area and crossing Juja road is also not safe."*¹⁷⁹ Several parents echoed similar concerns, underlining the importance of school proximity to their homes in their decision-making process when enrolling their children to school. Examples of such views include:

- *"[the] school is just 100 meters from where I am living and it is very safe for my children";*¹⁸⁰
- *"It is a 3-minute walk, it is safe since it is very close";*¹⁸¹
- *"[my child] walks to school; it is safe since it is near home."*¹⁸²

However, even though some parents said a shorter distance helped, others who lived very close to their child's school still reported concerns with the safety of their short walks to school:

- *"[our home is] 70-100 meters walk to school. Not safe due to kidnappers, injuries from accidents by bodaboda";*¹⁸³
- *"[my children's schools are] around 200 meters walk. Not safe because of bodaboda riders who are careless";*¹⁸⁴
- *"[it is] 15 minutes' walk to and from. No safety issue, but there is a possibility of theft and accidents and also being lured by strangers."*¹⁸⁵

The FGDs with parents also revealed that the distance children travelled to and from school ranged from 10 minutes to one hour. The mode of transportation also varied. For parents with younger children aged 4-6, a prevalent opinion emerged: many preferred to escort their children to school. This inclination stemmed from the distance to school and apprehensions about safety along the way.

¹⁷⁹ Response from father of 1 living in Mabatini and sending child to public school (Parents interview No. 29, 21/05/2023).

¹⁸⁰ Response from mother of 2 living in Mabatini kwa Shosho and sending her children to public school (Parents interview No. 40, 23/05/2023).

¹⁸¹ Response from mother of 2 living in Mathare No 10 and sending her children to private schools (Parents interview No. 35, 23/05/3023).

¹⁸² Response from mother of 1 living in Huruma and sending her child to private (Parents interview No. 61, 23/05/2023).

¹⁸³ Response from mother of 4 living in Sokoni and sending her children to private schools (Parents interview No. 45, 21/05/2023).

¹⁸⁴ Response from father of 3 living in Ngei and sending his children to private schools (Parents interview No. 53, 23/05/2023).

¹⁸⁵ Response from father of 1 living in Huruma Sokoni and sending his child to public school (Parents interview No. 43, 23/05/2023).

During the session with parents whose children attend public schools, one parent recounted the challenges their child faces. The child often doesn't return home until close to 7 pm due to the lengthy commute and the remedial classes he must attend after regular school hours. This extended day leaves little time for completing homework.¹⁸⁶

In the FGD session with women, the mothers shared that their children take an average of 30-40 minutes to and from the schools they are enrolled in. A mother shared during the FGD of parents with children in public school that: *"My child goes to school in Kiboro, and I live next to the DC, which is quite a distance to Kiboro. My child walks an average of 35-40 minutes to and from school every day. By the time she gets home she is very tired to even do her homework."*¹⁸⁷

The issue of distance and long commutes has further implications on schooling. Another parent in the FGD with parents with children in public schools mentioned the case of a private school instructing students to return home if they arrived at school later than 6 am, despite the official government directive for classes to commence at 8 am.¹⁸⁸

III. 1. 3. 6. Quality and availability of food in public and private schools

The parents' interviews revealed that most schools, both private and public, provided meals, including breakfast (usually porridge) and lunch (usually rice or maize with beans, popularly known as *Githeri*) for a fee, but parents found it was generally not enough food for their children. Some admitted that because of the school fees, they had little left to pay for meals, leaving their children hungry.¹⁸⁹ There was a general agreement among the parents that the government should be providing feeding programs in schools. Some parents opted to pack lunch for their children to take to school,¹⁹⁰ while other parents' children ran home to have lunch during the day.¹⁹¹

The opinions regarding the quality and quantity of food provided in schools were similar irrespective of whether children were in private or public schools. The participants in the FGDs reported that some schools provided food, which was appreciated, though there were concerns about the repetitiveness, inadequacy, and nutritional value of the meals: *"In the public school my child goes to, they are served githeri for lunch every day.*

¹⁸⁶ Response from a Parent FD, on the safety and the distance the child travels to school (FGD with parents 15/08/2023).

¹⁸⁷ Response from Parent MK, on the safety and distance the child travels to and from school (FGD with parents with children in public schools 15/08/2023).

¹⁸⁸ Response from Parent DL, on the safety and distance the child travels to and from school (FGD with parents with children in public school 15/08/2023).

¹⁸⁹ Interview with parent of 2 children, living in Ngei Mbutia, sending his children to a private school (Interview No.47 20/05/2023).

¹⁹⁰ Interview with father of 2, living in Gumba Village, Mabatini Ward, sending his 2 children to a private school (Parents Interview No 33. 19/05/2023).

¹⁹¹ Interview with mother of 4, living in Mabatini village, sending 3 of her children to a public school in the rural area and one in a private school (Parents interview No.11 18/05/2023).

The githeri is served in a bucket that should serve an average of 80 students per class. I personally do not think that the food is nutritious and enough for the children.”¹⁹² The choice of githeri as a school-preferred meal was highlighted by all the parents.

Students attending APBET/private schools reported inconsistent quantities of food, noting that some days there was sufficient food while on others it fell short. Conversely, students in public schools highlighted a recent shift in policy requiring them to bring their own food from home. This change came despite an announcement by the county government on 7th of June, 2023, regarding an upcoming food program for public schools in Nairobi.¹⁹³ However, this initiative has not been fully implemented across all public schools, leading to a cessation of lunch provision in anticipation of its launch.



The parents' and students' responses underscore the need for comprehensive and sustainable school feeding programs to ensure adequate, nutritious meals, addressing concerns raised by parents and fostering a conducive learning environment for all students.

¹⁹² Response from a mother of 6 with a deaf child on the quality and availability of food current schools (FGD with persons with disabilities 14.08.2023).

¹⁹³ The National Treasury and Economic Planning, "Government launches shilling 1.7billion school feeding program", July 18, 2023.

III.1.4. General remarks and sentiments

When asked, “what could the government do to support your child’s education?” parents offered a diverse set of perspectives. Their sentiments encapsulated their aspirations for their children while highlighting the depth of challenges faced within the education landscape in Mathare, Mabatini and Ngei wards. Many, however, called for the building of public schools in the areas:

- *“Build more public schools plus equip the neighbouring [schools] with the necessary equipment”;*¹⁹⁴
- *“There is a dire need for more schools within Mabatini, especially public schools, more so because there is a need to ensure the environment is safe and conducive for children”;*¹⁹⁵
- *“Build us a public school in Ngei and feed the children at school”;*¹⁹⁶
- *“The government should come up with a public school in our area so that my child can have quality education.”*¹⁹⁷

Others raised concerns about employment opportunities for school leavers, teacher-student ratios, and the need for free education:

- *“The government should support children with disabilities to get job placements once they complete school and have all the necessary certificates”;*¹⁹⁸
- *“They should make education free for both primary and secondary school and also for the schools with persons with disabilities”;*¹⁹⁹
- *“A public school would ease the congestion in the other public schools because currently, we have the challenge of more children than teachers in these schools. Therefore, the children are not getting quality education”;*²⁰⁰

One parent highlighted that he considered the failure of the government to build public schools in Ngei and Mabatini wards to amount to discrimination:

*“There is a form of discrimination that our children who study in wards that they are not residents in and also us as parents face, especially during PTA and other school meetings as their opinions are not heard. Therefore, if a public school is built, then the government should also make sure that the representation within this school boards are balanced within the wards.”*²⁰¹

¹⁹⁴ Interview with father of one living in Mabatini (Parents interview No. 23, 23/05/2023).

¹⁹⁵ Ibid.

¹⁹⁶ Interview with mother of 2 living in Huruma, Lions area (Parents interview No. 63, 22/05/2023).

¹⁹⁷ Interview with mother of 1 living in Ngei, Kibicho (Parents interview No. 55, 20/05/2023).

¹⁹⁸ Response from parent M mother of a child with disability (FGD with persons with disabilities, 15/08/2023).

¹⁹⁹ Response from Parent S mother of a child with disability (FGD with persons with disabilities, 14/08/2023).

²⁰⁰ Response from Parent during the General FGD 15/08/2023.

²⁰¹ Response from Parent RN, (FGD with parents 15/08/2023).

Asked for their additional inputs or “*any other comments or general information you want to add?*”, the parents raised a variety of issues including infrastructure, teachers’ qualifications, inclusive education, support for private schools, and reducing the cost of education.

- *“To improve school infrastructure and employ qualified teachers and let also the government to visit various households with persons with disabilities that are not going to school to know what can be done for them”;*²⁰²
- *“Since we don’t have private or public children, all these children have the same rights. It would be good if the gov[ernmen]t supported education of learners in private school.”*²⁰³
- *“Lower cost of education and build more schools”;*²⁰⁴
- *“To support a child going to school and accomplish without paying fees-free primary education. Arrange where the child will go after completing school for those who studied in public. The government should lower the cost of living and health. It should offer more scholarships to school-going children.”*²⁰⁵

In the FGD with persons with disabilities, the participants unanimously voiced the challenges parents face in getting bursary funds for their children, emphasising the need for the government to allocate separate bursary funds to support children with disabilities.

Participants in the FGD with women echoed recommendations to the government and other stakeholders to ensure that all children are enrolled and supported until they finish schooling.

²⁰² Interview with father of 1 living in Mabatini kwa Kariokis, sending his child to APBET school (Parents interview No. 41, 23/05/2023).

²⁰³ Interview with mother of 2 living in, Thayu-Mabatini ward, sending her children to an APBET school (Parents interview No. 31, 25/05/2023).

²⁰⁴ Interview with mother of 2 living in Gumba-Mabatini ward, sending her child to APBET school (Parents interview No. 9, 23/05/2023).

²⁰⁵ Interview with father of 5 living in No. 10 - Mathare Mabatini, sending 1 child to public, 3 to private schools (Parents interview No. 4, 21/05/2023).

I.2. Main takeaways from the interviews with private school owners/teachers

To better understand the general ecosystem of APBET/private schools in Ngei and Mabatini wards, a series of interviews were conducted in May 2023 involving thirty-six (36) school personnel representing various APBET or private schools. The respondents included the school owner, school principal/director or head-teacher, depending on the personnel available during the interview. The interview questions were probing into the following main themes:

- a. basic information about the private school, including official registration status of the school and ownership of both the school and the land it is built on;
- b. financial factors or money-related issues regarding school fees and financial or other support received from the government or other sources;
- c. quality of education, including teachers' qualifications, conditions and safety of school infrastructure and environment, safety of commute to/from school, as well as oversight/monitoring by quality assurance offices; and
- d. general remarks or comments by interviewees.

Interview with a teacher at a low-cost private school



TYOLOGY OF PRIVATE SCHOOLS IN MABATINI AND NGEI WARDS

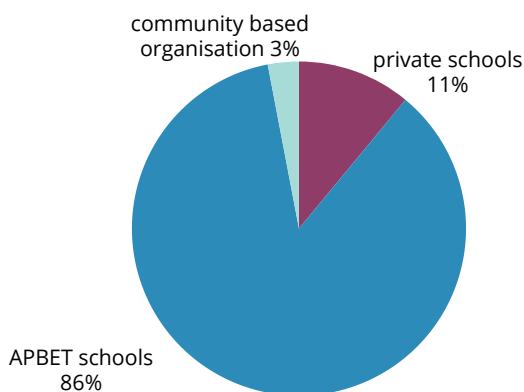


Figure 15 Source: Mathare Education Taskforce, 2023

III.2.1. Basic information on the school (typology, registration status, ownership issues) of private schools

III.2.1.1. Typology (APBET versus private) of the school

Regarding the typology of their schools, thirty-one (31) interviewees responded that their schools were APBET schools, while four (4) responded that their schools were private schools and one (1) responded that their school was a community-based organisation.

III.2.1.2. Registration status of private schools

When asked about their school's registration status, the responses varied among the 36 interviewees.

- Nine (9) reported that their schools were registered as community-based organisations (CBOs);
- One (1) interviewee stated that his/her school was registered as CBO under the Ministry of Gender;
- Three interviewees stated that their schools were registered under the following ministries, Ministry of Labour and Social Protection one(1); Ministry of East-Africa, Gender, and Social Security one (1), and the other under the Ministry of Social and Cultural Services one (1);
- One (1) interviewee noted that his school was registered by the church;
- One (1) interviewee indicated that his/her school was an APBET school;
- Eight (8) interviewees stated that their schools were not registered;
- Two (2) interviewees simply stated that their schools were registered, but they did not provide under which authority;
- One (1) interviewee responded that their school was registered under an individual
- One (1) was registered under an organisation;
- One did not give a response when asked the question;
- One (1) interviewee simply responded that the school was registered by the government, and;
- Seven (7) interviewees stated that their schools were registered under the MoE.

REGISTRATION STATUS OF PRIVATE SCHOOLS

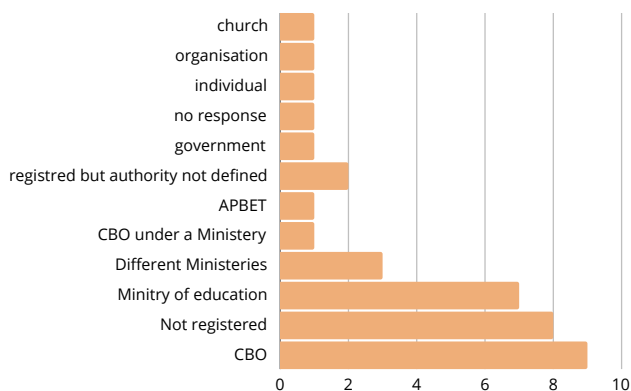


Figure 16 Source: Mathare Education Taskforce, 2023

This revelation highlights the varied registration pathways undertaken by private schools, each influenced by organisational structures, affiliations, and compliance with educational benchmarks.

Moreover, one principal from a church-owned school with forty-four (44) students stated that the school was “not yet registered because the school has not yet met the standards of education”.²⁰⁶ This clearly acknowledges the connection between the quality of schooling and registration.

Overall, of the 36 interviews conducted, twenty-seven (27) respondents indicated that their schools were registered in some form or way, with only seven (7) interviewees confirming registration with the Ministry of Education.

III.2.1.3. Ownership status of the school and land

The ownership of the schools varied between individual ownership (in 22 cases), the church (in 9 cases), private company (in 1 case), CBO (2 cases), and ownership by an organisation (in 1 case). In one case, the ownership of the school was not indicated by the person interviewed.

OWNERSHIP OF THE PRIVATE SCHOOL

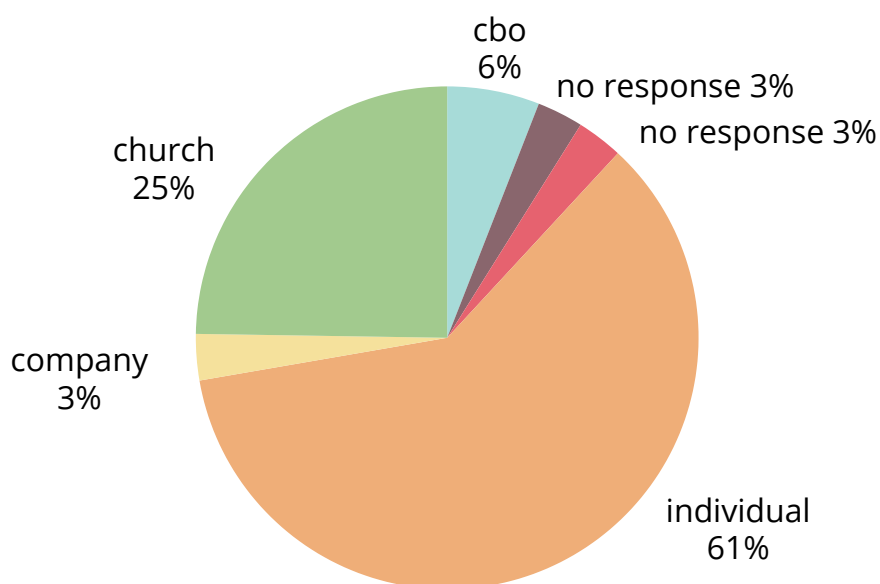


Figure 17 Source: Mathare Education Taskforce, 2023

²⁰⁶ Response from principal of a private school in Ngei ward. (Private school interview No.6).

Regarding the ownership of the land on which the schools were built, respondents indicated that the land was:

- church-owned (4),
- owned by a landlord (11),
- leased from an individual or company (8),
- the property of the school owner/director (5),
- owned by the community (2),
- owned by a CBO (1) or
- the land was partially rented and owned by the school (1 case).

In the other cases, the land's ownership status was as follows: owned by the school (1) and not known and/or not disclosed (3).

OWNERSHIP OF THE LAND THE SCHOOL WAS BUILT ON

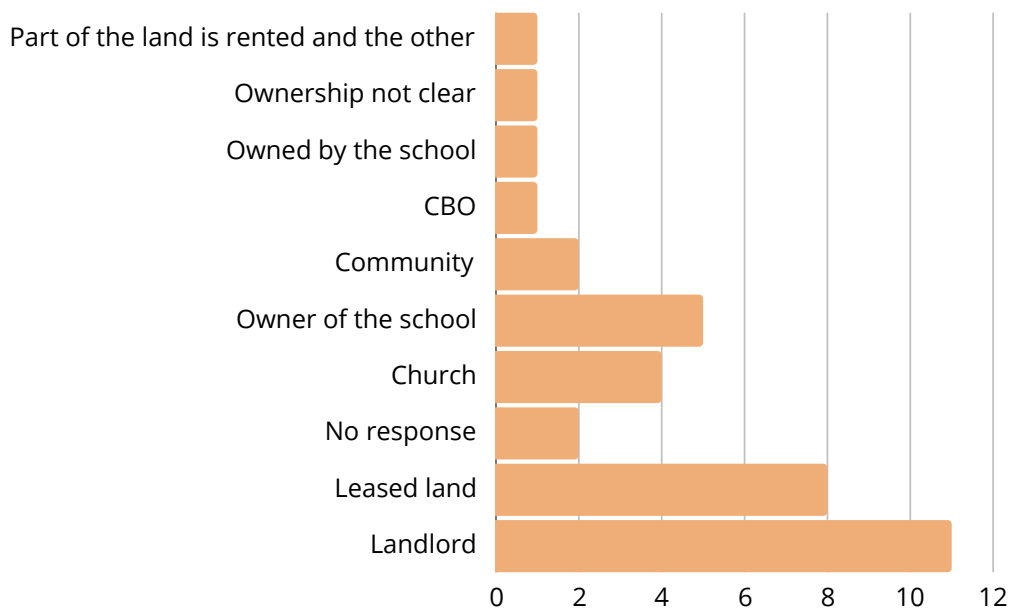


Figure 18 Source: Mathare Education Taskforce, 2023

III.2.1.4. Attendance of private schools by children with disabilities

Exploring the issue of inclusivity within the schools, the interviewees were asked the question *"do any children with disabilities go to the school? Are there any special measures taken to ensure they can go to the school?"* In response to this question, personnel at seventeen (17) schools were reported as having or receiving children with disabilities among their pupils, while personnel at nineteen (19) schools reported not having children with disabilities at their schools.

Of the thirty-six (36) schools, it is worth noting that four (4) respondents replied that they had children with disabilities and special measures put in place; five (5) had children with disabilities but no measures put in place to cater for them and three (3) had no children with disabilities but had measures to cater for the children in case any were admitted. Twenty-four (24) schools did not have any special measures put in place for children with special needs. As for the schools that reported not accepting children with disabilities, the reason given was the lack of specialised support or an accessible environment within the school.²⁰⁷

From the interviewees, one (1) respondent stated: *"Yes, we have two children [with disabilities], and we have no teachers, but we absorbed them because they are neglected."*²⁰⁸ Meaning that although they did not have trained teachers for these children with disabilities, they still admitted them into the school. It is evident that the mere fact that a school admits a child with a disability does not amount to inclusion, as many of these schools lacked the necessary infrastructure and qualified teachers to accommodate the needs of the children admitted.

III.2.2. Money-related issues in private schools

III.2. 2. 1. School fees in private schools

Thirty -four (34) interviewees responded that their schools systematically charged fees. Only the following two interviewees responded differently, and as follows: apart f

- *"No school fees charged. Parents are only encouraged to commit themselves to pay Ksh.300 per month to support the feeding programme";*²⁰⁹
- *"We have two groups of learners in our school. Those whose parents are totally poor don't pay anything while those who can afford pay Ksh.2,100 for lower primary and Ksh.3,000 per term for those in upper primary."*²¹⁰

²⁰⁷ Response from principal of a private school in Thayu, Mabatini (Private school interview No.25, 23/05/2023).

²⁰⁸ Response from GMB, from an APBET school in Ngei, Kibicho (Private school interview No.3, 22/05/2023).

²⁰⁹ Response from headteacher of an APBET in Mabatini (Private school interview No. 21, 24/05/2023).

²¹⁰ Response from director of an APBET school in Juja Road (Private school interview No.18, 23/05/2023).

Interviewees reported that their schools charged school fees each term ranging between Ksh. 1,000 – 8,000. In some instances, they reported allowing parents to pay monthly fees to ease their financial burden. One interviewee explained: " *Yes, we can charge a smaller amount of Ksh. 500 per month, that is Ksh.1,500 per term*".²¹¹ In addition to these termly tuition fees, parents were charged extra for other items, including food, exams, extra lessons, and Saturday school. In some schools, parents are required to buy uniforms and books for their children. Some schools incorporated all expenses into the tuition fees, eliminating the need for additional payments from parents.²¹²

III.2.2.2. Support (financial or other) received from government or elsewhere

Inquiring into the financial support provided to private schools, the interviews sought to discern the extent of support received from both the government and other external, non-state sources.

III.2.2.2.1. Government support to private schools

Only eight (8) interviewees responded that their school previously received some government support. Regarding the kind of support from the government, interviewees reported that some schools used to receive stationery or textbooks, and sometimes even food through the government feeding programme, but did not receive it any longer.

Most of the interviewees expressed the idea that the government should provide this kind of support to their schools. One interviewee explained: "*I believe the government is not giving any support because they have not recognised APBET schools.*"²¹³ This indicates the interviewees' perception that there is a lack of State support for APBET schools.

III.2.2.2.2. External support to private schools

Some interviewees indicated that donors, well-wishers, and churches have occasionally provided support to some schools. This support manifested in various forms, including covering teachers' salaries, providing books or other learning materials, and contributing towards food provision. Many schools were reported to be entirely dependent on the school fees and have never received any external support.

²¹¹ Response from APBET school owner in Mabatini (Private school interview No.5 25/05/2023).

²¹² Response from interviewee at APBET school in Ngei (Private school interview No. 9 15/05/2023).

²¹³ Response from APBET school owner in Mabatini (Private school Interview No.5, 25/05/2023).

III.2.3. Quality of education in private schools

III.2.3.1. Teachers' qualifications in private schools

Overall, only ten (10) respondents were able to give a clear number of teachers who are registered with the Teachers Service Commission (TSC) and of those that are not registered, or undergoing training to be registered. Many interviewees reported that at least some of their teachers had certificates, diplomas or degrees. As was shared by one (1) of the interviewees, *"Yes, we have teachers with degrees/diplomas but have not yet registered with TSC."*²¹⁴

In one APBET school, which is attended by eighty-six (86) students, the interviewee shared that out of the five (5) teachers they employ: *"We only have one who is registered with the TSC. Regarding the others, we train them on basic ways of handling children (short course) during the holidays. We make teaching aids and improvise professional documents."*²¹⁵

In the 2012 Teachers Service Commission (TSC) Act ²¹⁶and the 2015 TSC Code of Regulations for Teachers,²¹⁷ individuals practising as teachers are required to hold a Certificate of Registration issued by the Commission (TSC). Schools that employ teachers who are not registered do not comply with the law and ultimately undermine the quality of education received by their pupils.

Interview with a teacher at private school



²¹⁴ Response from teacher in a private school (Private school interview No. 7, 24/05/2023).

²¹⁵ Response from owner of an APBET school in Mabatini (Private school interview No. 29, 18/05/2023).

²¹⁶ Teachers Service Commission Act, 2012. Sec 28

²¹⁷ Teachers Service Commission Code of Regulations for Teachers, 2015

III.2.3.2. Safety and condition of private schools' infrastructures

Regarding the condition and safety of the infrastructures and the classrooms in their schools, twenty-seven (27) interviewees considered their schools to be in good shape and safe for learning. This starkly contrasts the parents' views on these schools, as detailed in their interviews and FGDs. One (1) staff member at an APBET school reported that the school was in an "okay" condition, while only three (3) interviewees thought that their schools' classrooms were in poor condition and not safe. Five (5) interviewees did not consider their schools to be in good shape or safe for learning.

The issue of playgrounds was also mentioned in responses, with six (6) interviewees stating that their schools had no playground at all and one (1) saying that his school used the playground that belonged to the neighbouring public school. In four (4) cases, interviewees highlighted that the school's playground was too small. Twenty-five (25) interviewees did not provide specific responses regarding the issue of playgrounds in their schools.

Entrance to a low-cost private school



III.2.3.3. Health and environmental issues around private schools

Out of the thirty-six (36) interviewees, twenty-two (22) reported that their schools were affected by pollution. This included noise pollution from motorways and surroundings, garbage pollution, as well as sewage and water (in the rainy season) pollution. The most frequently mentioned type of pollution was noise pollution. Many schools reported issues related to noise pollution caused by factors such as loud music, motorbikes, nearby businesses, community events, and school neighbours.

Some personnel mentioned that *chang'aa* brewing and criminal activities in the neighbourhood, as well as insecurity during political demonstrations, affected the school environment. For instance, one interviewee stated: *"Yes, there is sewage waste, scrap metal business, loud music from the neighbouring market, bhang smokers and cigarettes around the school gate, insecurity i.e., tear gas during skirmishes, theft and violence, hunger and sexual harassments."*²¹⁸

In fourteen (14) cases, the interviewees stated that no environmental issues were causing problems in their schools.

III.2.3.4. Water and electricity connections in private schools

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. In three (3) cases, it was reported that although the schools were connected to both water and electricity, connections were not legal.

Eight (8) interviewees, highlighted that the schools had to buy water with one respondent stating:

*"The school has no running water but a tank that is situated where they buy water from the water bowser @Ksh. 5000 after every two weeks. This caters for washing, cleaning and drinking."*²¹⁹

Another highlighted that the school did not have water and that the school had to buy water and store it in tanks and jerry cans adding that the 'cartels' in the area have also hindered their access to water and electricity.²²⁰

Two (2) respondents reported that they had to fetch water from the communal taps, they did not indicate if they had to pay for the water while one (1) indicated that they stored water in water tanks, not indicating if they had to buy it or if was already connected. Four (4) schools responded that they had access to water only and did not respond on electricity.

Two (2) interviewees reported that, their schools had illegal connections to electricity, while (4) had no electricity in the school and a further two (2) reported to being only legally connected to electricity with no water connection in the school.

Given the diverse range of question asked looking into the availability and legality of connection of water and electricity, coupled with the nuances in the way the respondents interpreted and conveyed their situations, with some offering partial information. This could explain the discrepancies when tallying the responses.

²¹⁸ Response from owner of APBET school in Mabatini (Private school interview No.29 18/05/2023).

²¹⁹ Response from owner of APBET school in Ngei Sokoni (Private school Interview No.23, 18/05/2023).

²²⁰ Response from owner of APBET school in Gumba Mabatini (Private school interview No. 36, 23/05/2023).

III.2.3.5. Safety of travel to/from private schools

Most interviewees said that their schools were primarily attended by children within the school vicinity. The distances varied from 200 meters to two kilometres, resulting in travel times ranging from a mere minute to as much as 90 minutes. They reported that most children walk to school, with some reporting that some children arrived on bodabodas. Only one school representative reported that learners were transported by a school bus. Responses with respect to safety varied, with some respondents saying it was safe for children to travel to schools and others disagreeing.

III.2.3.6. School meals in private schools

Twenty-eight (28) interviewees responded that their schools provided food in school, with breakfast being the main meal. Out of the twenty-eight (28) schools, two (2) schools provided porridge during break time and the children had to go home for lunch and one (1) school provided lunch for 100-150 children and the rest had to go home for lunch. In the remaining eight (8) schools, the school did not provide food.

Some responses included:

- *"The children receive food at school when the food is in the store, but when we have shortage, they go without food. Sometimes they receive githeri, rice and beans or dengu (green grams), ugali with cabbage/omena. The food is not enough for learners";²²¹*
- *"Yes, they receive porridge at 10 am and others are on special arrangements with the Management while others go home for lunch";²²²*
- *"100- 150 Children eat at school. Majority have to go back home for lunch";²²³*
- *"No. They receive only porridge for breakfast";²²⁴*
- *"We have porridge feeding during breaktime. Lunch is taken from home by the learners";²²⁵*
- *"We cook for the few who pay on a daily. We provide healthy meals. That is rice beans dengu (green grams). The food is not enough."²²⁶*

²²¹ Response from director of APBET school on Juja Road (Private school Interview No. 18 23/05/2023).

²²² Response from teacher of private school at Huruma Flats (Private school interview No 26 23/05/2023).

²²³ Response from owner of APBET school in Ngei Sokoni II (Private school interview No. 23 18/05/2023).

²²⁴ Response from APBET school in Mathare 3C (Private school interview 29/05/2023).

²²⁵ Response from headteacher of APBET school in Ngei Sokoni (Private school interview No. 15 28/05/2023).

²²⁶ Response from owner of APBET school in Kibicho Ngei (Private school interview No. 24 22/05/2023).

III.2.3.7. Visits by education officers to private schools

Understanding the effectiveness of quality assurance standards is important in assessing the educational landscape of APBET/private schools. When asked, "Is the school visited by the Sub-County Curriculum Support Officer (CSO) and the quality assurance officers?" nineteen (19) interviewees indicated that their school had been visited by an official from the MoE. It is good to note that such officials may have included quality assurance officers, curriculum support officers and an official from the MoE Sub County office. One (1) respondent stated that their school had not yet been visited by any official, while two (2) respondents did not answer the question, and fourteen (14)²²⁷ respondents were not asked this question.

IV.2.4. General remarks and perspectives of the private school personnel

In offering additional insights and perspectives, the interviewees provided valuable comments underscoring the role they believed the government could play in enhancing the education environment concerning private schools. Their comments reflected various ideas for the kind of support that could be provided, including with respect to feeding programmes, books, payment of teachers, and rent for premises:

- "I feel the government should chip in and help the APBET schools. The government should fund the APBET schools in feeding programs and books";²²⁸
- "Let the government consider assisting the APBET school so that the slum children can enjoy the government's involvement in their learning and well-being";²²⁹
- "I wish every school would be considered in the feeding programme. Assist in paying teachers in our school. Rent and textbooks be considered by the government";²³⁰
- "I would request the government to support us with funds to cater for textbooks/stationery, and even feeding programme because most of the time we try feeding them from our pockets";²³¹

²²⁷ The fourteen respondents were not queried about this particular aspect, as the question was added by handwriting onto the questionnaire after its initial printing.

²²⁸ View of an employee of an APBET school in NGEI / KITATHURU (Private school interview No. 1, 22/05/2023).

²²⁹ View of an employee of an APBET school in Ngei KIBICHOI (Private school interview No. 4, 24/05/2023).

²³⁰ View of the Owner of an APBET school in Ngei KIBICHOI (Private school interview No. 10, 23/05/2023).

²³¹ View of an employee of an APBET school in Huruma (Private school interview No. 20, 24/05/2023).

- *"We need help from the government as we are based in a slum. We need food support for the learners as they come to school hungry and the food in the school is not enough. Most of the children in the area don't go to school due to lack of finances by the parents, others due to them joining bad groups that influence them negatively";²³²*
- *"Government is to provide learning materials to all types of schools. All children are equal and all need to be supported for better education."²³³*

Interestingly, several of the responses by the private school personnel indicated that, in addition to support to private schools as mentioned above, the government should build more public schools in the area. Such responses are reflected in these comments:

- *"The government should provide the APBET schools with textbooks, teachers, and food and also build extra schools in the area. This area should have at least three government schools to avoid congestion of pupils and classes. And also, each and every child in Kenya should have access to education";²³⁴*
- *"We as teachers urge the government to build a public school in Ngei since we don't have any."²³⁵*

Some comments also focused on improving the quality of education (*"every child should be given equal opportunity to access quality education"*)²³⁶ and providing for inclusive education (*"[we] want to admit children with special needs but do not have a teacher trained in such."*)²³⁷

One of the teachers remarked that, overall, the learning environment for children is not adequate:

"We are not satisfied with our school's learning condition since the classes are made of iron sheets and wood. It is too cold when it's cold and very hot when the weather is hot, which is not conducive for learning. Lack of sufficient learning materials is also an issue. Our learners can perform better if they are provided with good facilities such as permanent classes which are well ventilated, spacious and there is enough light for learning."²³⁸

²³² View of headteacher of a private school in Mashimoni (Private school interview No. 22, 18/05/2023).

²³³ View of owner of an APBET school in Madoya, Ngei (Private school interview No. 11, 22/05/2023).

²³⁴ View of an employee of an APBET school in Metameta, Ngei (Private school interview No. 12, 22/05/2023).

²³⁵ View of owner of a private school in Ngei 2 (Private school interview No. 17, 24/05/2023).

²³⁶ View of a Headteacher of an APBET school in NGEI / Madoya (Private school interview No. 2, 22/05/2023).

²³⁷ View of principal of an APBET school in THAYU MABATINI (Private school interview No. 25, 23/05/2023).

²³⁸ View of a director of an APBET school near Juja Road (Private school interview No. 18, 23/05/2023).

Another teacher expressed some satisfaction with the ability of private schools to provide some form of education to the children, even amidst all these challenges, stating:

"I feel somehow content with the type of education we impart although there are challenges that hinder quality education e.g., inadequate learning resources, not enough money/finance to employ more teachers. We are hoping for the best and support to encounter our challenges either from government, NGOs, well-wishers, [or] donors."²³⁹

²³⁹ View of a headteacher of a private school in Mabatini, Mashimoni (Private school interview No. 28, 24/05/2023).

IV. International and domestic legal framework on the right to education

The findings from the participatory research reveal significant gaps in Kenya's education legal framework and its implementation. Challenges persist within public education, particularly due to the ineffective implementation of the FPE Policy. Similarly, in APBET/private schools, there is a lack of clear guidelines for the registration of APBET and low-cost private schools (LCSPs), underscoring the need for their streamlining as well as the implementation of monitoring protocols. Moreover, the observations highlighted the pressing need to enhance quality assurance measures, as well as address safety concerns and accessibility issues. These findings emphasise the urgent need for legal and regulatory reforms to ensure equitable and quality education for all students.

Kenya is bound to a range of international law obligations relating to the right to education, the majority of which emanate from international and regional treaties and their authoritative interpretation by human rights monitoring bodies (i.e., UN treaty bodies and special procedures).

International human rights instruments ratified by Kenya are directly incorporated into the Kenyan domestic legal system through Article 2(6) of the Constitution of Kenya 2010.²⁴⁰ This position of international law has been confirmed in several judgments, including in *Bankruptcy Cause (2010)*, in which the High Court applied Article 11 of the International Covenant on Civil and Political Rights (ICCPR), holding that Article 2(6) of the Constitution meant that provisions of treaties ratified by Kenya "are imported as part of the sources of the Kenyan Law."²⁴¹

In the case of *John Kabui (2011)*, within the specific context of the right to education as delineated by the International Covenant on Economic, Social and Cultural Rights (ICESCR), the High Court held that "*under article 2(6) of the Constitution, the Convention forms part of our laws. Articles 13 and 14 of the Convention set out detailed provisions on the right to education.*"²⁴² Moreover, the Court applied the Committee on Economic, Social and Cultural Rights' (CESCR) authoritative interpretation of the right to education in its General Comment 13.²⁴³

²⁴⁰ Constitution of Kenya, 2010. Article 2(6) provides that "Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution."

²⁴¹ Bankruptcy cause 19 of 2010, In Re The Matter of Zipporah Wambui Mathara [2010] eKLR. Kenya Law Reports.

²⁴² Petition 15 of 2011, John Kabui Mwai & 3 Others v Kenya National Examination Council & 2 Others [2011] eKLR.

²⁴³ Ibid.

Moreover, in the case of *Mitu-Bell (2008)*,²⁴⁴ albeit in the context of evictions and on the right to adequate housing, the Kenyan Supreme Court noted, citing Article 27 of the Vienna Convention of the Law of Treaties, that: "it is an established principle that a State cannot plead its domestic law as an excuse for non-compliance with international law."²⁴⁵ Thereafter, the Court provided the following explanation:

"[...]In other words, article 2(5) and (6) of the Constitution, recognizes international law (both customary and treaty law) as a source of law in Kenya. By the same token, a court of law is at liberty, to refer to a norm of international law, as an aid in interpreting or clarifying a Constitutional provision[...]"²⁴⁶.

The Supreme Court further applied the United Nations Guidelines on Evictions and CESCR's General Comment 7 as "interpretative tool[s] aimed at breathing life to interpret Kenya's obligations in terms of its Constitution", despite observing that they are not binding as such.²⁴⁷

It is therefore clear that Kenyan Courts have affirmed the Government of Kenya's legally binding treaty obligations²⁴⁸ resulting from its ratification of a range of treaties, including the ICESCR. Kenyan Courts have also confirmed the importance of using international standards and jurisprudence developed by, among others, the CESCR, to give content to rights, including the right to education in the Kenyan Constitution.

²⁴⁴ Petition 3 of 2018, *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae)* [2021] KESC 34 (KLR) (11 January 2021) (Judgment).

²⁴⁵ *Ibid.* para 126

²⁴⁶ *Ibid.* para 132.

²⁴⁷ *Ibid.* para 134-143.

²⁴⁸ Petition 15 of 2011, *John Kabui Mwai & 3 Others v Kenya National Examination Council & 2 Others* [2011] eKLR. See also, Petition 3 of 2018, *Mitu-Bell Welfare Society v Kenya Airports Authority & 2 others; Initiative for Strategic Litigation in Africa (Amicus Curiae)* [2021] KESC 34 (KLR) (11 January 2021) (Judgment).

IV. 1. The Right to Education in international law

Kenya has ratified several treaties that imposed obligations regarding the right to education. For the purpose at hand, a focus is placed on Kenya's obligations in terms of 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 (African Children's Charter).

In addition, this section draws on a range of standards developed by the United Nations treaty bodies and special procedures and within the African Union human rights system. It also outlines key standards on the right to education emanating from expert sources, including most notably the *Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*.²⁴⁹

IV.1.1. International Covenant on Economic, Social and Cultural Rights

The right to education is protected under several articles in the ICESCR.²⁵⁰ Importantly, Article 13 highlights that "everyone" has this right.²⁵¹ This article further provides for the different levels of education and indicates States' obligations regarding each one.²⁵² It provides that "primary education shall be compulsory and available free to all."²⁵³ Secondary education must be "generally available and accessible to all."²⁵⁴ Tertiary education, referred to by ICESCR as "higher education" must be "made equally accessible to all."²⁵⁵

Articles 13(3) and 13(4) thereafter provide for the right to establish and maintain private schools subject to the requirement that such schools "conform to such minimum educational standards as may be laid down or approved by the State."²⁵⁶

²⁴⁹ For more information on the Abidjan Principles, 2019. <https://www.abidjanprinciples.org/>

²⁵⁰ Kenya acceded to the ICESCR on May 1, 1972.

²⁵¹ *International Covenant on Economic Social and Cultural Rights (ICESCR)*, 1966. Article 13(1).

²⁵² *Ibid.* Article 13 (2).

²⁵³ *Ibid.* Article 13 (2) (a).

²⁵⁴ *Ibid.* Article 13 (2) (b).

²⁵⁵ *Ibid.* Article 13 (2) (c).

²⁵⁶ *Ibid.* Article 13 (3)-(4).

IV.1.1.1. Elements of the right to education

The following provisions have been interpreted by the Committee on Economic, Social and Cultural Rights (CESCR) under General Comments 11 and 13, which establish that “education in all its forms and at all levels” must be available, accessible, acceptable, and adaptable.²⁵⁷

The 4 A's: Availability, accessibility, acceptability, and adaptability

The **Availability** component of the right to education requires “functioning educational institutions and programmes [...] to be available in sufficient quantity.”²⁵⁸ While entailing different things in different contexts, availability does specifically always involve sufficient availability of:

- Buildings or other protection from the elements;
- Sanitation facilities;
- Safe drinking water;
- Trained teachers receiving domestically competitive salaries;
- Teaching materials;
- Libraries; and
- Computer facilities and information technology.

Accessibility incorporates three requirements, namely: non-discrimination, physical accessibility, and economic accessibility.

- *Non-discrimination* requires the prohibition of discrimination on a full range of grounds recognised in international law.²⁵⁹ The non-discrimination prohibition is applicable “fully and immediately to all aspects of education.”²⁶⁰
- Physical accessibility requires that all educational institutions and programmes are “within safe physical reach” either in terms of “geographical location” or “via modern technology.”²⁶¹ This means that children cannot be expected to walk or otherwise travel long and/or unsafe distances to get to school and that schools need to be available within

²⁵⁷ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, UN doc. E/1992/23, May 10, 1999, General Comment No. 13: The Right to Education (Art. 13 of the Covenant), UN doc. E/C.12/1999/108, December 1999, para. 6.

²⁵⁸ CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, UN doc. E/C.12/1999/108, December 1999, para. 6.

²⁵⁹ CESCR, *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, E/C.12/GC/20, (2 July 2009).

²⁶⁰ CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, UN doc. E/C.12/1999/108, (December 1999), para 31.

²⁶¹ *Ibid*, para. 6 (b).

the proximity of where they live. The CRPD specifically requires States to take measures to ensure “the identification and elimination of obstacles and barriers to accessibility” including “buildings, roads, transportation and [...] schools” in terms of a specific right to accessibility.²⁶²

- Economic accessibility requires the State to ensure that education is “affordable to all” at all levels.²⁶³ According to the CESCR, in terms of ICESCR, “whereas primary education shall be available ‘free to all’, States parties are required to progressively introduce free secondary and higher education.”²⁶⁴ The Committee has also indicated that the requirement that primary education is “free” is “unequivocal” and therefore prohibits the charging of “fees” – whoever they are imposed by – as well “other direct costs” and indirect costs.²⁶⁵

The **Acceptability** element of the right to education requires that the “form and substance of education” are acceptable. This includes “curricula” and “teaching methods” which must be acceptable to students and “in appropriate cases, parents.”²⁶⁶ The CESCR has explained that to be acceptable, such aspects of educational institutions and programmes would have to at least be “relevant”, “culturally appropriate” and “good quality”.²⁶⁷ Though the assessment of “acceptability” involves the subjective inputs of students and parents, the CESCR is also clear that acceptability requires general compliance with:

- the educational objectives set out by ICESCR; and
- minimum educational standards “approved by the State.”²⁶⁸

These minimum educational standards should apply to all educational institutions, irrespective of level, and irrespective of whether the institution is public or private.

Adaptability requires that education is “flexible so it can adapt to the needs of changing societies and communities” and so that it can be responsive to “the needs of students within their diverse social and cultural settings.”²⁶⁹

²⁶² *United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)*, December 12, 2006, Article 9(1) (a) para. 6(b).

²⁶³ CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, UN doc. E/C.12/1999/108, (December 1999), Para. 6.

²⁶⁴ CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, UN doc. E/C.12/1999/108, (December 1999), para. 6 (b) (iii).

²⁶⁵ CESCR, *General Comment No. 11: Plans of Action for Primary Education (Art. 14 of the Covenant)*, UN doc. E/1992/23, (May 10, 1999).

²⁶⁶ CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, UN doc. E/C.12/1999/108, (December 1999), para. 6 (c).

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.* para. 6 (d).

IV.1.1.2. State's obligations under the International Covenant on Economic, Social and Cultural Rights

Under the ICESCR, Kenya must take all necessary measures – whether legislative, executive, administrative, budgetary, judicial, or other measures – to respect, protect and fulfil the right to education.²⁷⁰

The **duty to respect** the right to education requires Kenya not to actively take measures that harm access to education.

The **duty to protect** education requires Kenya to ensure effective regulation and monitoring of education systems, including that of private educational institutions, to prevent these entities from abusing the right to education. This duty is particularly important for the context of this report because it places the obligation on the Kenyan government to effectively regulate and monitor private schools including APBET schools. Kenya must also, in terms of this duty, provide an effective remedy for such abuses by private actors where they occur.

The **duty to fulfil** requires the active facilitation, promotion, and direct provision of education by Kenya, including most commonly through the provision of public education programmes and schools. This is also particularly applicable in affirming the obligation of Kenya to make provision for public schools in the Mabatini and Ngei wards.

Kenya has both “immediate” obligations which are to be complied with immediately and “progressive obligations” which are to be realised through concrete measures over time.²⁷¹ The immediate obligations in relation to the right to education include those in relation to;

1. non-discrimination;
2. taking steps;
3. non-retrogression and
4. minimum core obligations.²⁷²

²⁷⁰ *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/CN.4/1987/17, (1987). See also *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, (1997).

²⁷¹ CESCR, *General Comment No. 3: The Nature of States Parties' Obligations* (Art. 2, para. 1 of the Covenant), UN doc E/1991/23, (December 14, 1990), para.2.

²⁷² International Commission of Jurists, “*A Guide for the Legal Enforcement and Adjudication of Economic, Social and Cultural Rights in South Africa*,” (August 2019). p. 45-84.

Kenya's immediate obligations in terms of the right to education

The **non-discrimination** obligation has been explained above.

The obligation to **take steps** means that even where obligations in terms of the right to education are progressive, Kenya has an immediate obligation to take "deliberate, concrete and targeted" measures "towards the full realization of the right to education."²⁷³

Relatedly, any measures taken by States which reduce existing access to education are considered **retrogressive measures** and therefore are not permissible unless Kenya can show that they "have been introduced after the most careful consideration of all alternatives and that they are fully justified."²⁷⁴

Kenya's **minimum core obligations** require it to ensure that the "minimum essential levels" of access to education are provided to all people. This requires, "at the very least" that Kenya:

- ensure the right of access to public educational institutions and programmes on a non-discriminatory basis;
- ensure that education conforms to the objectives set out in ICESCR;
- provide free primary education for all;
- adopt and implement a national educational strategy which includes provision for secondary and higher education; and
- ensure free choice of education without interference and ensure to conformity with "minimum educational standards."

In reiterating these principles relating to immediate obligations, Kenyan Courts have delivered notable decisions regarding the right to education which are particularly relevant to the context of Mathare. The High Court, for instance, has confirmed that the State is the primary duty bearer in the realisation of the right to education, including the duty to set minimum standards that all actors in education should conform to.²⁷⁵ According to the Court, this duty also requires the State to demonstrate "*the actions it has taken towards achieving the progressive realization of the right to education in a holistic manner.*"²⁷⁶

²⁷³ CESCR, *General Comment No. 13: The Right to Education (Art. 13 of the Covenant)*, UN doc. E/C.12/1999/108, (December 1999), para.43.

²⁷⁴ *Ibid.*, para.45.

²⁷⁵ Petition 391 of 2015, *Joseph Njuguna and 28 others v George Gitau t/a The Emmaus School and Kenya National Examination Council and another* [2016], Kenya Law Reports.

²⁷⁶ Constitutional Petition 133 of 2013, *Michael Mutinda Mutemi v Permanent Secretary, Ministry Of Education & 2 Others* [2013] eKLR, (Kenya Law Reports), para 3.

In addition, the CESCR has issued two sets of concluding observations (recommendations) to Kenya in 2008 and 2016.²⁷⁷ In 2022, Kenya filed its updated report to the CESCR, which in March 2023 issued its List of Issues, which will form the basis of its consideration of Kenya's current report.²⁷⁸

The recommendations of the CESCR to Kenya in respect of education

CESCR's 2008 Concluding Observations

The CESCR's 2008 concluding observations to Kenya emphasise the need for Kenya to improve access to education for "[children] from poor families, pregnant girls, children living in remote rural areas and in informal settlements, nomadic children, children with disabilities, refugee children and internally displaced children."²⁷⁹

CESCR's 2016 Concluding Observations

CESCR's 2016 concluding observations to Kenya place a greater emphasis on Kenya's obligations in terms of the right to education, including by warning that:

"inadequacies in the public schooling system have led to the proliferation of so-called 'low-cost private schools', which has led to segregation or discriminatory access to education, particularly for disadvantaged and marginalised children, including children living in informal settlements and arid and semi-arid areas."²⁸⁰

This analysis is directly relevant for the situation in Mathare.

The CESCR specifically recommended Kenya to take "all the measures necessary to strengthen its public education sector" and to "improve access to and the quality of primary education for all without hidden costs."²⁸¹

Finally, the CESCR recommended that Kenya bring the APBET Policy and Registration Guidelines in line with "articles 13 and 14 of the Covenant and other relevant international standards" and ensure that "all schools, public, private, formal or non-formal, are registered; and that it monitors their compliance with the Guidelines."²⁸²

²⁷⁷ CESCR, Concluding Observations to Kenya E/C.12/KEN/CO/1, December 1, 2008; CESCR, Concluding Observation to Kenya, E/C.12/KEN/CO/2-5, April 6, 2016. para 57 and 58.

²⁷⁸ See, UN CESCR questions Kenya and the United Kingdom on the impact of privatisation and commercialisation of healthcare and education services following concerns raised by GI-ESCR and partners <https://gi-escr.org/en/our-work/on-the-ground/un-cescr-questions-kenya-and-uk-on-privatisation-of-healthcare-and-education>

²⁷⁹ CESCR, *Concluding Observations to Kenya*, E/C.12/KEN/CO/1, (December 1, 2008), para.34.

²⁸⁰ CESCR, *Concluding Observations to Kenya*, E/C.12/KEN/CO/2-5, (April 6, 2016), para 57.

²⁸¹ *Ibid.* para 58.

²⁸² *Ibid.*

Ongoing reporting to the CESCR

In its report to CESCR filed in November 2022, Kenya makes broad claims about the increase in access to primary and secondary education and increased enrolment and completion rate in primary schools and increased enrolment rates in secondary schools.²⁸³ It also claims to have continuously increased budgetary allocation for education, despite the information provided revealing very small increases in many years and small decreases in others.²⁸⁴

In respect of APBET schools, Kenya's report makes only passing mention of private schools, merely providing the reason for the existence of APBET schools and referring to the relevant sections of the Basic Education Act in regard to registration as well as the APBET Policy.²⁸⁵ It provides no information on the number of schools, the number of children in those schools, the quality of education in such schools or the measures it has taken to ensure registration and/or further regulation and monitoring. As a result of the State's failure to report on these details and/or update the Committee on progress made in line with its 2016 recommendations, the CESCR has requested the following from Kenya:

"Please provide updated statistical information on the enrolment, dropout and completion rates of public and private primary and secondary education students, disaggregated by age, sex, region, disability, income, ethnicity or other relevant indicators. Please provide information on the measures taken to regulate and monitor informal private schools or low-cost private schools and the steps taken to ensure transparency and accountability for all education providers in the State party. Please provide information on the measures taken to improve the availability and accessibility of education, particularly for children with disabilities, children in rural areas and refugees and asylum-seeking children, including recognizing schools in refugee settlements as national schools. In this regard, please provide information on the steps taken to prevent hidden school costs, particularly for children with disabilities."²⁸⁶

²⁸³ Kenya, *Sixth periodic report submitted under articles 16 and 17 of the Covenant to UN CESCR*, E/C.12/KEN/6 (November 14, 2022), paras. 205-206.

²⁸⁴ *Ibid.* para. 212-214.

²⁸⁵ *Ibid.* para. 215.

²⁸⁶ CESCR, *List of Issues in relation to the sixth periodic report of Kenya*, E/C.12/KEN/Q/6, (March 28, 2023), para. 34.

IV.1.2. State's obligations under the African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights (African Charter) protects a wide range of economic, social and cultural rights (ESCR), including the right to education.²⁸⁷ The African Commission on Human and Peoples' Rights (ACHPR) has elaborated on States' obligations in terms of ESCR entrenched in the African Charter through its Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights published in 2010.²⁸⁸ These Guidelines, which follow the jurisprudence of ICESCR quite closely, describe education as the "primary vehicle by which economically and socially marginalised children and adults can lift themselves out of poverty and obtain the means to participate fully in their community."²⁸⁹ The Guidelines also stress that all education programmes should be "aimed at reducing inequalities within societies."²⁹⁰

In addition to the Guidelines, the ACHPR's more recently published General Comment 7 on *State Obligations Under the African Charter on Human and Peoples' Rights in the Context of the Private Provision of Social Services*, gives further clarity to State obligations in relation to private actors' involvement in education.²⁹¹

²⁸⁷ *African Charter on Human and Peoples' Rights*, 1981. Article 17(1).

²⁸⁸ ACHPR, *Guidelines and Principles on Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights*, (October 24, 2011).

²⁸⁹ *Ibid.* para. 69.

²⁹⁰ *Ibid.* para 71 (n).

²⁹¹ ACHPR, *General Comment 7: State Obligations under the African Charter on Human and Peoples' Rights in the Context of Private Provision of Social Services*, October 22, 2022.

ACHPR General Comment 7 on Private Provision of Social Services

General Comment 7, which has been celebrated as a “landmark document,”²⁹² “remarkable”²⁹³ and a “major step forward,”²⁹⁴ develops the normative standards applicable to private actors’ involvement in education.

In General Comment 7, the ACHPR notes its concern that “commercial private schools have heightened the risk of discrimination against children from low-income households.”²⁹⁵ It also warns that “many commercial actors have pursued profit-seeking strategies that make services [like education] more inaccessible to large segments of the population,” and that “increasingly commercial interests in Africa are transforming social services into private commodities.”²⁹⁶

The ACHPR is thus emphatic that States must both “ensure equal and universal access to quality social services” and “protect individuals from discrimination by all social service providers.”²⁹⁷ The ACHPR details States’ obligations to provide public services such as education directly,²⁹⁸ stating explicitly that States have an obligation “to provide quality public education.”²⁹⁹ More generally, the ACHPR describes the provision of social services such as education as an “inherently public activity,” which is “critical for the enjoyment of human rights.”³⁰⁰ All of this fortifies community members’ claims to provide public schools in Mabatini and Ngei wards.

Kenya also carries a legal obligation under the African Charter to “impose public service obligations” on private actors providing social services like education. Building on the existing jurisprudence of CESCRC in this regard, General Comment 7 articulates six specific elements for assessing whether States have complied with their obligations to ensure these public service obligations exist and are enforced, adding a requirement that all public services – including education – must be “effectively regulated” and “subject to democratic public accountability” in addition to being available, accessible, acceptable and adaptable.³⁰¹ The absence of effective

²⁹² “Unpacking General Comment 7 of the African Commission: RTE participates in online webinar,” Right to Education Initiative, April 28, 2023.

²⁹³ Sfiso Nxumalo, “A Promising New Dawn: The African Commission’s General Comment 7 on Social Services,” Oxford Human Rights Hub, November 17, 2022.

²⁹⁴ Eurodad, “69 CSOs welcome landmark General Comment by African Commission on States’ obligations to public services: A resounding response to the growing human rights concerns arising from the rapid commercialisation of public services in Africa,” October 26, 2022.

²⁹⁵ ACHPR, *General Comment 7: State Obligations under the African Charter on Human and Peoples’ Rights in the Context of Private Provision of Social Services*, (October 22, 2022), para. 17.

²⁹⁶ *Ibid.* para 11.

²⁹⁷ *Ibid.* para 18.

²⁹⁸ *Ibid.* para 37.

²⁹⁹ *Ibid.* para 36.

³⁰⁰ ACHPR, *General Comment 7*, para. 14.

³⁰¹ ACHPR, *General Comment 7*, Para. 15, which reads: “States must impose public service obligations to ensure that social services, at minimum, are: (a) available to all individuals on an equal basis and without discrimination; (b) accessible, even in times of emergency; (c) acceptable to the users; (d) of the highest attainable quality; (e) effectively regulated; and (f)

regulations for APBET and other private schools, as highlighted by the Mathare community's research, falls short of this standard.

Ultimately, the ACHPR's position, which is grounded in increasing scepticism about the private provision of social services, is that the African Charter requires prioritisation of "effective regulation" as part of a right and not merely an implied State obligation. The aim of effective regulation of private actors, for the ACHPR, is extended to not being "simply to ensure that [private actors] do not explicitly abuse rights" but also that they "support, rather than undermine, broader efforts to realise economic, social and cultural rights."³⁰² This implies that States must place extensive positive obligations on private actors in education. Generally, the ACHPR also indicates that it is incumbent upon States to "create a predictable legal environment, premised on standards that are accessible, clear, and consistent."³⁰³

The absence of clearly applicable laws and policies – including minimum standards for quality – in respect of APBET and other private schools, compounded by the fact that various schools in Mathare are registered by different departments in terms of different processes calls into question whether there is an adequately predictable or consistently applied legal regime in Kenya.

Finally, the ACHPR makes it abundantly clear that States are required, as part of the obligation to ensure effective regulation, to prevent the "level of fees and other direct and indirect charges" levied by private companies from rendering access to education unaffordable.³⁰⁴ Moreover, in regard to "public accountability" some of the steps the Commission indicates are required of States include, where "private social service providers are unable or unwilling to comply with standards and regulations" States should require them to "cease their operations."³⁰⁵ Kenya's failure to consider such measures, and the ongoing reality of fees in APBET and other private schools demonstrably being unaffordable, both amount to failures by the State to realise the right to education.

and subject to democratic public accountability."

³⁰² ACHPR, *General Comment 7*, para. 43.

³⁰³ ACHPR, *General Comment 7*, para. 47.

³⁰⁴ ACHPR, *General Comment 7*, para. 47 (a)(iv), (b).

³⁰⁵ ACHPR, *General Comment 7*, para. 50.

IV.1.3. State's obligations under the Convention on the Rights of the Child

Kenya signed and ratified the Convention on the Rights of the Child (CRC) in 1990.³⁰⁶ Articles 28 and 29 of the CRC entrench the right to education and contain similar protections to those in the ICESCR, including in respect of compulsory and free education.³⁰⁷ In the specific context of private educational institutions, the CRC also protects the right to establish and maintain such institutions subject to such institutions conforming "to such minimum standards as may be laid down by the State."³⁰⁸

The Committee on the Rights of the Child (CRC Committee) has issued three sets of concluding observations to Kenya in 2001, 2007 and 2016 respectively.

The recommendations of the CRC Committee to Kenya in respect of education

Similar to its 2001 recommendations to Kenya, in 2007 the CRC Committee recommended several measures pertaining to education including that Kenya:

- ensure that children complete all 8 years of primary education;
- take measures to ensure secondary education is free; and
- eliminate indirect costs of school education.³⁰⁹

³⁰⁶ UN Treaty Body Database: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx

³⁰⁷ *Convention on the Rights of the Child, 1989*. Articles 28.1: "States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:(a) Make primary education compulsory and available free to all;(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;(c) Make higher education accessible to all on the basis of capacity by every appropriate means;(d) Make educational and vocational information and guidance available and accessible to all children;(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates."

Article 29.1: "States Parties agree that the education of the child shall be directed to:(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;(e) The development of respect for the natural environment."

³⁰⁸ CRC 1989, article 29.2: "No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

³⁰⁹ CRC, *Concluding Observations on the second periodic report of Kenya*, UN. doc CRC/C/KEN/CO/2, (June 19, 2007), para. 58.

The CRC Committee also emphasised the need to increase budget allocations for education and improving the quality of existing education.³¹⁰

In its 2016 concluding observations, the CRC Committee highlighted Kenya's obligations in terms of the right to education and more specifically, implored the government of Kenya to:

*"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."*³¹¹

The CRC Committee made this recommendation after acknowledging directly the "low quality of education" and the "rapid increase in private and informal schools, including those funded by foreign development aid", which "provide[e] substandard education" and "result in deepening inequalities."³¹²

The situation faced in Mathare clearly indicates that the CRC Committee's recommendations – as is the case with those of the CESCR Committee – have not been implemented by Kenya. The low quality of education in Mathare and the proliferation of private schools has resulted in inequalities and continues unabated.

Other recommendations extended to Kenya by the CRC Committee included:

- ensuring "increased budget allocations in certain areas, including education and social protection, which still do not match the overwhelming needs in these sectors",³¹³
- giving "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",³¹⁴
- taking the necessary measures to "guarantee the legal right to free compulsory education for all, without direct or hidden costs, including for non-Kenyan citizens."³¹⁵

³¹⁰ Ibid. paras. 53-54.

³¹¹ CRC, *Concluding Observations on the combined third to fifth periodic reports of Kenya*, UN. Doc CRC.C/KEN/CO/3-5, (March 21, 2016), para 58 (b).

³¹² Ibid. para. 57.

³¹³ Ibid. para. 11 (a).

³¹⁴ Ibid. para. 46 (b).

³¹⁵ Ibid. para. 58 (b).

IV.1.3. State's obligations under the African Charter on the Rights and Welfare of the Child

At the regional level, Article 11 of the African Charter on the Rights and Welfare of the Child (ACRWC) provides a detailed explication of the right to education that is very similar to the CRC as interpreted by the CRC Committee.³¹⁶ The African Committee of Experts on the Rights and Welfare of the Child (ACERWC), established under Article 32 of the ACRWC, has issued three sets of concluding observations to Kenya to assist it in implementing its obligations under the ACRWC; the most recent of which were issued in 2020.³¹⁷ The ACERWC has recommended that Kenya improve access to pre-primary education; improve the transition between primary and secondary education; and extend free education to the secondary level.³¹⁸

The ACRWC also imposes obligations regarding learners with disabilities. It requires States to ensure that children with disabilities "have effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development."³¹⁹

³¹⁶ *African Charter on the Rights and Welfare of the Child (ACRWC)*, (July 1, 1990), reads in full: "1. Every child shall have the right to education. 2. The education of the child shall be directed to: (a) the promotion and development of the child's personality, talents and mental and physical abilities to their fullest potential; (b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples' rights and international human rights declarations and convention; (c) the preservation and strengthening of positive African morals, traditional values and cultures; (d) the preparation of the child for responsible life in a free society, in the spirit of understanding, tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups; (e) the preservation of national independence and territorial integrity; (f) the promotion and achievements of African Unity and Solidarity; (g) the development of respect for the environment and natural resources; (h) the promotion of the child's understanding of primary health care. 3. States Parties to the present Charter shall take all appropriate measures with a view to achieving the full realization of this right and shall in particular: (a) provide free and compulsory basic education; (b) encourage the development of secondary education in its different forms and to progressively make it free and accessible to all; (c) make the higher education accessible to all on the basis of capacity and ability by every appropriate means; (d) take measures to encourage regular attendance at schools and the reduction of drop-out rate; (e) take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community. 4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the state, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child. 5. States Parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter."

³¹⁷ African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *Concluding Observations and Recommendations on the Second Periodic Report of the Republic of Kenya, on the Status of the Implementation of the Africa Charter on the Rights and Welfare of the Child*, (November 2020).

³¹⁸ ACERWC, *Recommendations and Observations to the Government of Kenya concerning the Initial Report on the implementation of the African Charter on the Rights and Welfare of the Child*.

³¹⁹ ACRWC, article 13(2).

Moreover, the ACHPR has interpreted the African Charter to require States to:

“ensure that all children with disabilities are provided with inclusive quality and free primary education and access to inclusive quality secondary and tertiary education on an equal basis with other members of their communities. States should ensure that effective individualised support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.”³²⁰

IV.1.4. State’s obligations under the UN Convention on the Rights of Persons with Disabilities

Kenya ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) on 19 May 2008, imposing concrete obligations regarding learners with disabilities.³²¹ Article 24 of the CRPD entrenches the right to inclusive education.³²² Article 24(2) of the CRPD specifically requires Kenya to ensure that persons with disabilities

³²⁰ ACHPR, *Principles and Guidelines on the Implementation of Economic Social and Cultural Rights in the African Charter on Human and Peoples’ Rights*, (October 24, 2011), para 71 (t).

³²¹ UN Treaty Body Database, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx

³²² *UN Convention on the Rights of Persons with Disabilities* (UNCRPD), December 2006. Article 24 reads :1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to: (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;(b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential; (c) Enabling persons with disabilities to participate effectively in a free society.2. In realizing this right, States Parties shall ensure that: Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;(b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;(c) Reasonable accommodation of the individual’s requirements is provided;(d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;(e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:(a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;(b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;(c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.”

“are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability”.³²³

Therefore, “inclusive, quality and free primary education and secondary education” must be made available to children with disabilities on an “equal basis with others in the communities in which they live.”³²⁴ To achieve this Kenya must ensure the availability of “reasonable accommodation” matching “individual’s requirements” as well as any other “individualized support measures” necessary.³²⁵

Other particular obligations include facilitating “the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring” and employing teachers who are qualified in such modes of communication, languages and scripts “who work at all levels of education”. Training should be provided to staff tasked with educating children with disabilities to equip them with these skills and with “educational techniques and materials to support persons with disabilities.”³²⁶

The Committee on the Rights of Persons with Disabilities (CRPD Committee) has given further details on these obligations in its General Comment 4 (inclusive education), which should be read in conjunction with its other general comments, including General Comment 2 (Accessibility),³²⁷ and General Comment 6 (Equality and Non-discrimination).³²⁸ General Comment 4 elaborates the requirements of ensuring that education is available, affordable, accessible and adaptable for persons with disabilities, building on the jurisprudence of the CESCR Committee. It also details the requirements of the obligations to respect, protect and fulfil the right to education in regard to children with disabilities.

In General Comment 4, the CRPD Committee clarifies that inclusive education requires “a transformation in culture, policy and practice” in both “formal and informal educational environments” so as to “accommodate the differing requirements and identities of individual students, together with a commitment to remove the barriers that impede that possibility.” This requires “strengthening the capacity of the education system to reach out to all learners.”³²⁹ The CRPD Committee

³²³ Ibid. article 24(2) (a).

³²⁴ Ibid. article 24 (2) (b).

³²⁵ Ibid. Article 24 (2)(c), (e).

³²⁶ Ibid. Articles 24(3)-(40).

³²⁷ The CRPD Committee states that “the entire process of inclusive education[...] must be accessible.” See the CRPD Committee *General Comment No. 2 (2014): Article 9: Accessibility*, UN. Doc. CRPD/C/GC/2, May 22, 2014.

³²⁸ CRPD Committee *General Comment No. 6 (2018) on Equality and Non-discrimination*, UN. Doc CRPD/C/GC/6, April 26, 2018, para. 63,

³²⁹ CRPD, *General Comment 4 (2016), Article 24: Right to inclusive education*, September 2, 2016, para. 9.

is clear, for example, that the refusal of either a public or private educational institution to “enrol persons with disabilities based on their [disabilities],” amounts to a violation of a State’s obligations in terms of Article 24.

The community’s research in Mathare shows that children with disabilities are commonly excluded from attending private schools in the area, and, even where they are enrolled, they are not provided with inclusive education. Failure to ensure school accessibility and provide reasonable accommodations in both public and private schools is exacerbated by the absence of trained teachers and other resources necessary for the education of children with disabilities.

Article 13 of the African Charter on the Rights and Welfare of the Child (ACRWC) targets children with disabilities specifically and requires States to take measures to ensure children with disabilities “have effective access to training, preparation for employment and recreation opportunities in a manner conducive to the child achieving the fullest possible social integration, individual development.” In addition to the CRPD and the ACRWC, Kenya has also acceded to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities (Africa Disability Protocol). While the Protocol is not yet in effect as it has yet to garner the requisite number of signatures and accessions, it provides similar protection to the right to education for children with disabilities in terms of its article 16.³³⁰

³³⁰ *Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Persons with Disabilities*, (Africa Disability Protocol), January 29, 2018. Article 16 reads in full: “1. Every person with a disability has the right to education. 2. States Parties shall ensure to persons with disabilities the right to education on an equal basis with others. 3. States Parties shall take, reasonable, appropriate and effective measures to ensure that inclusive quality education and skills training for persons with disabilities is realised fully, including by: a) Ensuring that persons with disabilities can access free, quality and compulsory basic and secondary education; b) Ensuring that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others, including by ensuring the literacy of persons with disabilities above compulsory school age; c) Ensuring reasonable accommodation of the individual’s requirements is provided, and that persons with disabilities receive the support required to facilitate their effective education; d) Providing reasonable, progressive and effective individualised support measures in environments that maximise academic and social development, consistent with the goal of full inclusion; e) Ensuring appropriate schooling choices are available to persons with disabilities who may prefer to learn in particular environments; f) Ensuring that persons with disabilities learn life and social development skills to facilitate their full and equal participation in education and as members of the community; g) Ensuring that multi-disciplinary assessments are undertaken to determine appropriate reasonable accommodation and support measures for learners with disabilities, early intervention, regular assessments and certification for learners are undertaken regardless of their disabilities; h) Ensuring educational institutions are equipped with the teaching aids, materials and equipment to support the education of students with disabilities and their specific needs; i) Training education professionals, including persons with disabilities, on how to educate and interact with children with specific learning needs; and j) Facilitating respect, recognition, promotion, preservation and development of sign languages. 4. The education of persons with disabilities shall be directed to: a) The full development of human potential, sense of dignity and self-worth; b) The development by persons with disabilities of their personality, talents, skills, professionalism and creativity, as well as their mental and physical abilities, to their fullest potential; c) Educating persons with disabilities in a manner that promotes their participation and inclusion in society; and d) The preservation and strengthening of positive African values.”

Concluding observations of human rights bodies in respect of inclusive education

Committee on the Rights of Persons with Disabilities (CRPD Committee)

A range of the concluding observations of the CRC and ICESCR, referred to above, reiterate the importance of ensuring equal and inclusive access to education for children with disabilities.³³¹ For its part, the CRPD Committee has issued one set of concluding observations to Kenya in 2015.

Noting concerns about the lack of information provided by Kenya regarding the education for children with disabilities as well as the “persistence of segregated education institutions,”³³² it made several recommendations including that Kenya:

- establish a time frame for the transition process from segregated to inclusive quality education;
- immediately adopt a non-rejection policy for children with disabilities enrolling in regular schools, and provide reasonable accommodations to allow them to do so; and
- ensure the training of all teachers in inclusive education.

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

The ACERWC has made recommendations to Kenya in two instances regarding the education for children with disabilities.³³³ It recorded concern that “only 2% of the children with special needs are in school” and recommended that “the Government of Kenya to take further actions to provide education for children with disabilities” emphasising the need for “building adequate infrastructure” and “building capacities” of children with disabilities. More recently, the ACERWC highlighted particular concern about discrimination, in particular, against children with autism and albinism in access to a range of services, including education.

³³¹ The CRC Committee affirms that discriminatory practices “are in direct contradiction with the requirements of article 29(1)(a)” of the Convention on the Rights of the Child. See CRC, *General Comment No. 1 (2001) Article 29(1): The Aims of Education*, UN Doc. CRC/GC/2001/1, April 17, 2001. para. 10. See also CRC, General comment No. 9 (2006): The rights of children with disabilities, UN Doc. CRC/C/GC/9, February 27, 2007. Para 8; CESCR, General Comment No. 5: Persons with Disabilities, UN Doc. E/1995/22, 9 December 1994, para. 5, para 35 also states that States Parties should ensure that “teachers are trained to educate children with disabilities within regular schools and that the necessary equipment and support are available to bring persons with disabilities up to the same level of education as their non-disabled peers.” See also CESCR, *General Comment No. 13: The right to education (article 13 of the Covenant)* E/CJ.12/1999/10, December 8, 1999. para. 31.

³³² CRPD, *Concluding Observations on the initial report of Kenya*, UN Doc CRPD/C/KEN/CO/1, September 30, 2015, para 43.

³³³ ACERWC, *Recommendations and Observations to the Government of Kenya by the African Committee of Experts on the Rights and Welfare of the Child concerning the Initial Report on the Implementation of the African Charter on the Rights and Welfare of the Child*; and the *Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Second Periodic Report of the Republic of Kenya, on the Status of the Implementation of the African Charter on the Rights and Welfare of the Child*, (November 2020).

The community's research shows that special schools, outside of Mabatini and Ngei, and indeed even outside of the broader Mathare area, often remain the only option for children with disabilities wishing to access schooling. Leaving children with disabilities with no choice but to attend such far away, segregated schools is in direct breach of the obligation to ensure inclusive education in community schools.

IV.1.5. The Abidjan Principles: Private Actors' involvement in education in international law

The Abidjan Principles on the human rights obligations of States to provide public education and to regulate private involvement in education³³⁴ (also referred to as the Abidjan Principles) specify States' and private actors' obligations regarding the right to education. They recognise the diversity of private actors "from small faith-based or community schools to large providers, and, increasingly, transnational enterprises" in education.³³⁵ The Principles apply to private actors' involvement in "education at all levels", including "pre-primary" education.³³⁶ They assert that States' obligations in terms of the right to education must include measures that "prioritise [e] the provision of free, quality, public pre-primary education"³³⁷ and affirm the need for the "adoption and enforcement of effective regulatory measures regarding private actors involved in education"³³⁸ including by placing "public service obligations" on private educational institutions.³³⁹

In pursuing the effective regulation of private involvement in education States must seek to ensure that "private educational institutions do not supplant or replace public education," but instead "supplement it in a way conducive to the realisation of the right to education for all."³⁴⁰ In the context of Mathare, it is clear that, in the complete absence of public schools in Mabatini and Ngei wards, private schools have completely supplanted access to public schooling.

³³⁴ The Abidjan Principles are expert principles issued in 2019 which have since been referred to and endorsed by a range of international human rights mechanisms and treaty bodies including the UN Human Rights Council, the UN High Commissioner for Human Rights, the Inter-American Commission on Human Rights, the UN Special Rapporteur on the Right to education.

³³⁵ The Abidjan Principles preamble states: "Private actors involved in education are diverse. Private providers range from small faith-based or community schools to large providers, and, increasingly, transnational enterprises. There are also other private actors, such as institutions offering ancillary services, tests and curricula, or education financing services. These actors have different impacts on the right to education, in different contexts. Some may play a positive role, supporting the State in developing quality, public education and helping to fulfil the right to education. Others, in particular commercial actors, which treat education as a market good, threaten the fulfilment of the right to education."

³³⁶ *Abidjan Principles, Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*, February 23, 2019. Guiding Principle 9.

³³⁷ *Ibid.* Guiding Principle 17(a).

³³⁸ *Ibid.* Guiding Principle 17(f).

³³⁹ *Ibid.* Guiding Principle 19, and 52.

³⁴⁰ *Ibid.* Guiding Principle 48(a).

According to the Principles, regulations should be in place to ensure that the operation of private educational institutions do not result in harm and abuses of the right to education and other human rights on specific or systemic levels. Importantly, even where provision of private education results from lack of availability of public education options, as is the case in Mabatini and Ngei wards, States are obliged to “take all effective measures to develop or restore universal access to free, quality, public education as effectively and expeditiously as possible” while simultaneously requiring “private instructional educational institutions to meet the minimum standards set by the State.”³⁴¹ This closely aligns with the insistence expressed by members of the Mathare community, who emphasise their desire for *both* the improvement of conditions in private schools and the construction of public schools.

Building on these general principles, the Abidjan Principles indicate that States’ obligation to effectively regulate private participation in education, requires Kenya to take a range of measures, including those detailed in the box below.³⁴²

Abidjan Principles: measures required to ensure effective regulation of private actors in education (summary of Guiding Principles 50 and 53-57)

States should take, at a minimum, the following regulatory measures to comply with their obligations in terms of the right to education:

- **Human Rights:** Any regulation necessary for the protection of human rights.
- **Governance:** Regulation of several aspects related to the governance of private actors in education, including but not limited to: registration and licensing; reporting and financial requirements; level of fees and other charges.
- **Academic freedom:** Regulation ensuring respect for academic and pedagogical freedom.
- **Rights of Learners:** Regulation to ensure respect for the rights of learners, including their rights to freedom of expression and association, and their rights to participation in decision-making. This will also include regulation to strictly limit and ensure due process prior to the suspension or expulsion of learners and to protect learners’ rights where there is a failure or delay in paying fees.
- **Non-Discrimination:** Regulation to prohibit and protect against discrimination, whether direct or indirect, including in admission and enrolment. This includes requirements regarding accessibility, for persons with disabilities in line with the obligation to guarantee reasonable accommodation.

³⁴¹ Ibid. Guiding Principle 50.

³⁴² Ibid. summary of Guiding Principles 53-57.

- **Qualifications of Staff and Employment Conditions:** Regulation to ensure appropriate qualifications of staff and respect for the right to just and equitable conditions of employment.
- **Standards on Learning Environments:** Regulation of learning environments to ensure their safety, security and adequacy for all learners including in respect of equipment, facilities and learning materials. This could also include setting standards regarding physical and mental health for learners, amongst other things regarding abuse, violence, harassment, bullying, threatening and shaming.
- **Discipline:** Regulations pertaining to acceptable methods of discipline and the prohibition of corporal punishment.
- **Privacy and data:** Regulation to ensure the protection of personal data, including by that no personal, including biometric data, is collected or retained without consent, or be shared with third parties without express consent.
- **Undue Influence:** Regulation to prevent undue influence of private actors on the education system. This may involve capping the number of private institutions or share of educational provision by private actors.
- **Conflict of Interest:** Regulation to prevent conflicts of interest on the part of public officials involved in regulating, monitoring, or influencing private actor involvement in education.
- **Marketing:** Regulation to prevent misleading marketing or advertising by private actors in education or excessive marketing to learners.

Importantly, in situations of limited resources, which are prevalent in many countries in the Global South, including Kenya, the Abidjan Principles indicate that international human rights law requires States to “prioritise the continued provision of quality, public education,”³⁴³ including in their efforts of international cooperation and assistance, and specifically regarding the provision of “free, quality, public pre-primary, primary, and secondary education for all.”³⁴⁴

The Abidjan Principles clarify that, in terms of international law, States are under no obligation to fund or finance private educational institutions at all. States may only do so if the operation of such institutions is consistent with applicable international human rights law and standards, including those operationalised in national legislation and policy enacted to give effect to States’ human rights obligations.³⁴⁵ While Kenya may, therefore, take measures to support APBET schools, it should not do so in the absence of comprehensive regulations that are effectively monitored and applied.

³⁴³ Ibid. Guiding Principle 38.

³⁴⁴ Ibid. Guiding Principle 39.

³⁴⁵ Ibid. Guiding Principle 64.

Even in the appropriate circumstances, and taking into account the need for States to prioritise funding for public education, public funding provided to private actors in education must be “time-bound” and publicly demonstrated to be the “only effective option” to advance the right to education.³⁴⁶ It is therefore important, in terms of States’ obligations, to ensure that any funding provided to private actors in education is only provided transparently after full, wide and meaningful consultations and “does not create a foreseeable risk of adverse effect on or delay to the most effective and expeditious possible development of a free public education system of the highest attainable quality”. Nor should the provision of such funding “contribute to the commercialisation of the education system” or “create a foreseeable risk that the funded private instructional educational institution could exercise an undue influence on the education system.”³⁴⁷

In the context of Mathare, it is far from obvious that the expansion of private APBET schools, without substantial regulation or monitoring thereof, represents the “only effective option.” The APBET Policy does not appear to be time-bound and there exists a significant risk, as evidenced by the community’s research, that private schools are exacerbating inequalities.

IV.2. Right to Education in the Kenyan Legal system

IV.2.1. Constitution

Article 43(1)(f) of the Kenyan Constitution enshrines the right of every person to education. This is further detailed in Article 53(1)(b) which entails the right of all children to “free and compulsory basic education.” Specific provisions of the Constitution also emphasise the right to education of persons with disabilities,³⁴⁸ youth,³⁴⁹ minorities and marginalised groups³⁵⁰ in particular.

These rights – and Kenya’s corresponding obligations – must also be read together with other provisions of the Constitution, including the national values and principles of governance, which include “human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised.”³⁵¹ Article 10(1) of the Constitution requires that these values and principles are considered in the application or interpretation of the Constitution and laws, as well as in the making and/or implementation of law and policy.³⁵²

³⁴⁶ Ibid. Guiding Principle 65.

³⁴⁷ Ibid. Guiding Principle 65

³⁴⁸ *Constitution of Kenya*, 2010. Article 54(1)(b) entitling persons with disabilities “to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person.”

³⁴⁹ Ibid. article 55(a) provides that “The State shall take measures, including affirmative action programmes, to ensure that the youth-... access relevant education and training.”

³⁵⁰ Art 56(b), which provides: “The State shall put in place affirmative action programmes designed to ensure that minorities and marginalised groups are provided special opportunities in educational and economic fields.”

³⁵¹ Ibid. article 10(2).

³⁵² Ibid. article 10(1).

Also, of clear relevance to this research, are the provisions of the Constitution relating to equality and freedom from discrimination,³⁵³ which prohibits discrimination “on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”³⁵⁴ It must be noted that, in *Non-Governmental Organizations Co-Ordination Board v Eric Gitari*, the Kenyan Supreme Court has recently found that “sex” in terms of Article 27(4) includes sexual orientation.³⁵⁵

The Constitution establishes a decentralised governance system in Kenya involving the national government and the 47 counties and emphasises the importance of consultation and cooperation between these two levels of government under Article 6(2). Therefore, concerning education, the national government is responsible for: education policy; standards; curricula; examinations; primary schools; secondary schools; and special education institutions.³⁵⁶ County governments, on the other hand, are mandated with functions and powers in respect of pre-primary education and childcare facilities.³⁵⁷

Moreover, the Kenyan Courts have also made notable decisions regarding private actors’ involvement in education (as highlighted in the box below). Some of these decisions relate to school fees and funding of private schools.

³⁵³ The equality provision reads in full: “27. Equality and freedom from discrimination. 1. Every person is equal before the law and has the right to equal protection and equal benefit of the law. 2. Equality includes the full and equal enjoyment of all rights and fundamental freedoms. 3. Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. 4. The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. 5. A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4). 6. To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination. 7. Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need. 8. In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.”

³⁵⁴ *Ibid.* Article 27(4).

³⁵⁵ Petition 16 of 2019, *NGOs Co-ordination Board v EG & 4 others*; Katiba Institute (Amicus Curiae) (Petition 16 of 2019) [2023] KESC 17 (KLR) (Constitutional and Human Rights) (24 February 2023) (Judgment) (with dissent - MK Ibrahim & W Ouko, SCJJ).

³⁵⁶ *Constitution of Kenya*, 2010. Fourth Schedule, part 1, Paras. 15 and 16.

³⁵⁷ *Ibid.* Fourth Schedule, part 2, para 9.

Kenyan jurisprudence on the right to education

In *Githunguri Residents Association v Cabinet Secretary Ministry of Education (2013)*, the High Court recognised that basic education provided by public schools should be free of charge, and that any hidden costs charged in public schools infringed on the rights of learners to access free and compulsory basic education.³⁵⁸ In coming to this conclusion, the Court referred to both ICESCR and the CRC and held that “the right to basic education is not to be progressively realised” as to do so would “cheapen the constitution” because in a society “where we live with great wealth disparities and million wallowing in abject poverty, only education can give everyone the chance and opportunity to realise their dream and aspirations.”³⁵⁹

This position is not the same as for private schools, however. In *Njuguna v George Gitau* the Court found that:

“A private school cannot be equated to a public school, where free tuition is offered and charges can only be imposed with the approval of the Cabinet Secretary.”³⁶⁰

This was also confirmed in *NJ v Agha Khan Academy*, where the Court held that:

“[P]rivate institutions do not have a constitutional or legal obligation to provide free education to children whose parents enrolled them in such institutions on the basis that they would pay fees.”³⁶¹

In the 2014 *Nyabola* decision, the court found that because Kenya was required to “give priority to the most vulnerable and marginalized in the society” the “funding of children in private schools” by the State was “a goal to be progressively realized”, not a legal obligation.³⁶² The petitioner had challenged as discriminatory the State’s failure to provide funding support to private schools.

³⁵⁸ Petition 464 of 2013, *Githunguri Residents Association v Cabinet Secretary Ministry of Education and others* [2015], (Kenya Law Reports).

³⁵⁹ *Ibid.* para. 58.

³⁶⁰ Petition 391 of 2015, *Joseph Njuguna and 28 others v George Gitau t/a The Emmaus School and Kenya National Examination Council and another* [2016] eKLR, (Kenya Law Reports), para 45.

³⁶¹ *NJ v Agha Khan Academy & 6 others* [2018], para 39. See also Constitutional Petition 11 of 2020, *KESTPA’ & 2 others v Kisumu Education Society Trust & 2 others* [2021] eKLR, (Kenya Law Reports), para. 39.

³⁶² Petition 72 of 2012, *Nyabola v Attorney General & another; Kenya Private School Association Nakuru Branch (Interested Party) (Petition 72 of 2012)* [2014] KEHC 2599 (KLR) (Constitutional and Human Rights) (10 October 2014) (Judgment), (Kenya Law Reports), paras 55-56.

IV.2.2. Kenyan laws: The Basic Education Act and the Children Act

The 2013 Basic Education Act is the primary legislative measure enacted by the Kenyan parliament with the explicit purpose to “give effect to Article 53 of the Constitution”; “promote and regulate free and compulsory basic education”; “provide for accreditation, registration, governance and management of institutions of basic education”; and “provide for the establishment of the National Education Board, the Education Standards and Quality Assurance Commission.”³⁶³

Section 4 of the Act includes “guiding values and principles,” by which the provision of basic education should be provided,³⁶⁴ including:

- the right of every child to free and compulsory basic education;
- equity and non-discrimination in access;
- quality and relevance;
- accountability and democratic decision-making within the institutions of basic education;
- cost-effective use of educational resources and sustainable implementation of educational services;
- provision of appropriate human resources, funds, equipment, infrastructure and related resources that meet the needs of every child in basic education.

The 2022 Children's Act³⁶⁵ also entrenches the right to “compulsory basic education” and places a responsibility on parents/legal guardians to ensure their children are admitted to schools. Section 13(3) of the Act empowers the Minister responsible for the Children's Act, in consultation with the Minister of Education, to “develop and implement policies for the realization by every child of the constitutional right to basic education.”³⁶⁶

IV.2.1.1. The Regulation of Private Educational Institutions

As indicated above, the Basic Education Act does contemplate a potential role for private educational institutions in Kenya. Section 49 allows any person to “establish and maintain a private school,” subject to compliance with the “Con-

³⁶³ *Basic Education Act 2013*, Preamble.

³⁶⁴ *Ibid.* at Section 4.

³⁶⁵ *Children's Act No. 29 of 2022*.

³⁶⁶ *Ibid.* Section 13 of the Act reads in full: 13. (1) Every child has the right to free and compulsory basic education in accordance with Article 53 (1) (b) of the Constitution. (2) It shall be the responsibility of every parent or guardian to present for admission or cause to be admitted his or her child, as the case may be, to a basic education institution. (3) The Cabinet Secretary shall, in consultation with the Cabinet Secretary for the time being responsible for education.

stitution and the provisions of this Act.”³⁶⁷ Section 50 prohibits the establishment or maintenance of a private school “unless it is registered under this Act” (emphasis added).³⁶⁸ Moreover, it explicitly prohibits the registration of any private school if, among other things, it: employs any teacher not registered by the Teachers Service Commission; or has premises, or any part thereof, which are unsuitable for a school.³⁶⁹

As evidenced by the community’s research, the APBET Policy itself, and the way it is implemented on the ground in Mathare, there is a clear lack of respect for Section 50 of the Act. As a common practice, APBET schools are registered in terms of a range of laws/policies and under a wide variety of government departments contrary to what is prescribed by the Act. Many APBET schools are simply not registered at all, and many do not fulfil the other requirements, such as registration of all teachers and suitability of premises.

The Basic Education Act also renders initial registration as “provisional for a term of one year renewable for one further term of one year until the institution is quality assured and notice given in writing to the proprietor that the registration is final.”³⁷⁰ The failure to register therefore results in the by-passing of the Act’s in-built quality assurance mechanisms both at registration and after registration.

Indeed, the Act requires the government to take registration of private school sufficiently seriously that it makes the operation of a private school that is not properly registered – or misrepresents the registration status of a private school – a criminal offence subject to a fine or a term of imprisonment.³⁷¹ The research reveals no instances of criminal investigation, let alone prosecution, for failure to register.

The Section 52 of the Basic Education Act also includes a specific section dedicated to listing a range of “duties and rights of a private school.” Among these duties, the Act includes:

- The establishment of governance structures;
- The recruiting of registered teachers;
- Compliance with educational curricula;
- Maintenance of premises that meet the requirements of the occupational health, safety regulations and building standards;
- Provision of necessary teaching and learning materials; and
- Furnishing, upon request, evidence that pupils are making reasonable educational progress appropriate for their age and grade level.

³⁶⁷ Ibid. Section 49.

³⁶⁸ Ibid. Section 50.

³⁶⁹ Ibid. Section 50 (2).

³⁷⁰ Ibid. Section 50 (3).

³⁷¹ Ibid. Section 50 (4).

Again, the community's research shows that APBET schools are both unaware of these duties and seemingly, for the most part, incapable of complying with the standards set out in the Basic Education Act.

Finally, the Act requires the "County Education Board in consultation with the Teachers Service Commission" to "assess a private school, including teachers, non-teaching staff, the school's educational programmes and the school instructional materials" and "the school's facilities."³⁷² As this community research shows, neither this assessment by the County Education Board nor the assessment by officers of the Education Standards and Quality Assurance Council detailed in section IV.2.1.4. below appear to have ever occurred in the overwhelming majority of schools in Mabatini and Ngei wards.

IV.2.1.2. The regulation of APBET schools

Even though the APBET Policy predates both the Constitution and the Basic Education Act, neither the Policy itself nor principles cemented in it find clear expression in the Basic Education Act. While providing definition for "non-formal education,"³⁷³ which appears to be sufficiently broad to include APBET schools, the Act contains not a single chapter, section, or provision on non-formal education although presumably the ordinary provisions of the Act relating to all educational institutions may apply equally to all schools including APBET schools. Indeed, the best presumption is probably that APBET schools should be considered as being in the same category of schools as all other private schools in terms of the Basic Education Act.³⁷⁴

IV.2.1.3. The regulation of school Fees

According to section 29 of the Basic Education Act, charging tuition fees in public primary schools is unlawful.³⁷⁵ As indicated above, the High Court of Kenya has also reiterated that basic education provided by public schools should be free of charge and that any hidden costs charged in public schools infringe on the rights of learners to access free and compulsory basic public education.³⁷⁶

³⁷² Ibid. Section 52 (2).

³⁷³ *Basic Education Act 2013* In terms of the Act "non-formal education" means: "any organized educational activity taking place outside the framework of the formal education system and targets specific groups/categories of persons with life skills, values and attitudes for personal and community development."

³⁷⁴ Margaret Wawira and Abraham Ochieng', "Low-Cost Private Schools: School Choice for the poor at the expense of Quality?" (Right to Education Initiative, 2017),p 15.

³⁷⁵ *Basic Education Act 2013*, Section 39. Section 29 reads in full: (1) No public school shall charge or cause any parent or, guardian to pay tuition fees for or on behalf of any pupil in the school. (2) Notwithstanding subsection (1)— (a) tuition fees may be payable by persons who are not Kenyan citizens; (b) other charges may be imposed at a public school with the approval of the Cabinet Secretary in consultation with the county education Board provided that no child shall be refused to attend school because of failure to pay such charges; (c) no person shall collect levies without issuing an official receipt.

³⁷⁶ Petition 464 of 2013, Githunguri Residents Association v Cabinet Secretary Ministry of Education and others [2015]. Kenya Law Reports.

Exceptions are foreseen in respect of tuition fees for non-citizens, as well as in respect of other charges than tuition fees which may be imposed with the approval of the MoE in consultation with a County Education Board “provided that no child shall be refused to attend school because of failure to pay such charges.”³⁷⁷ It is clear from the community’s research that children are consistently denied the right to attend public schools in Mathare - in schools outside of Mabatini and Ngei wards - based on their parents’ inability to pay school and admission fees.

The Act does not explicitly mention fees, including tuition fees, in private schools. Yet, under-regulated “low-fee” private schools have been found to perpetuate discrimination and segregation against those who are already marginalised, potentially amounting to discrimination prohibited by the Act.³⁷⁸ Moreover, charging fees may render education unaffordable and inaccessible to those learners who live in areas where no public schools are available. This violates the right to education in domestic and international law. Although Kenya courts have determined that charging fees in private schools does not per se amount to discrimination, they have not yet been called upon to determine whether the specific fees charged in particular contexts have a discriminatory impact.

IV.2.1.4. Quality Assurance

In a separate chapter, the Basic Education Act deals with “standards, quality assurance and relevance of education” primarily through the establishment of the Education Standards and Quality Assurance Council,³⁷⁹ which is tasked with, among other things:³⁸⁰

- ensuring standards and maintaining quality in institutions of basic education;
- administering policies and guidelines set for basic education;
- supervising and overseeing curriculum implementation and delivery; and
- monitoring and evaluating standards and quality in basic education.

The obligations of the Education Standards and Quality Assurance Council evidently apply to all basic educational institutions, whether private or public. To perform these functions, “officers” employed by the Council are empowered to, as relevant:³⁸¹

- **Enter and inspect:** “at any time enter any basic education and training institution with or without notice to ensure compliance with education standards and regulations.”

³⁷⁷ *Basic Education Act 2013*. Section 29(2)(b)

³⁷⁸ *Ibid.* at Sections 4, 9, 34.

³⁷⁹ *Ibid.* Section 64 (1).

³⁸⁰ *Ibid.* Section 64 (2).

³⁸¹ *Ibid.* Section 66 (3).

- **Access and review data/information:** require staff of any educational institution “to produce for his or her quality review any timetable syllabus, or record book, material or document” and “to furnish the Quality Assurance and Standards Officer with such information relating to the teaching or the management of the basic education institution.”
- **Investigate and question:** “require by order in writing, the attendance before him or her any person who appears to be acquainted with the facts or circumstances of the case.”
- **Document:** “take such photographs or video recording as the Quality Assurance and Standards Officer deems necessary of the premises and persons reasonably believed to be acquainted with the fact or the circumstances of the case.”

If an officer’s execution of their mandate reveals non-compliance with legal and quality standards by an educational institution, the officer is empowered to “recommend temporary suspension of operations of the institutions to the County Education Board for a specific period until the basic standards are met” and “make recommendations to the Teachers Service Commission and County Education Board for necessary action.”³⁸²

In addition to the general power to establish regulations in terms of section 95(1) of the Act, section 81 requires the Minister to, in consultation with the Council and other relevant stakeholders, “establish guidelines and prescribe rules and regulations for the establishment, licensing, accreditation and registration of basic education and training institutions.”³⁸³

While a minority of the personnel at APBET schools interviewed in Mabatini and Ngei wards stated that they had, at some point, been visited by quality assurance officials from the Ministry of Education, details provided in this regard were insubstantial. This research did not document a single case of the exercise of the officers’ coercive powers in terms of the Act, including the power to suspend the operation of a school.

Most personnel indicated that no such inspections had occurred. This is despite the fact that the overwhelming evidence from this research suggests that the conditions and quality of schooling at APBET schools in Mabatini and Ngei wards fall below the standards required by various domestic laws and policies, as well as international human rights law and standards.

These findings are consistent with the conclusions of a report compiled by the MoE’s “Sector Working Group”, which found that, throughout Kenya, the basic education sector is “unable to effectively quality assure education provision” partly because of “the low number of quality assurance officers,” noting also that there were “472 quality assurance officers against an optimum requirement of 2603” and that “only 12% of the 82,000 learning institutions are assessed annually.”³⁸⁴

³⁸² Ibid. Section 66(2)-3).

³⁸³ Ibid. Section 81.

³⁸⁴ “Medium Term Expenditure Framework 2023/24-2022 Education Sector Report,” Ministry of Education Sector Working Group, (December 2022).

IV.2.1.5. Education for Children with Disabilities

The Basic Education Act provides definitions for “special education needs,”³⁸⁵ “special needs education”³⁸⁶ and “special school.”³⁸⁷ In setting out the types of institutions that may be established by the government to ensure the provision of basic education, section 28 refers to both “special” and “integrated” schools “for learners with disability.”³⁸⁸ The Act generally prohibits discrimination against persons with disabilities including, in particular, in relation to “denial of admission.”³⁸⁹

Moreover, sections 44 to 48 of the Act deal specifically with special educational institutions.³⁹⁰ While empowering the establishment and operations of special schools specifically, the Act contemplates the provision of education to children with disabilities either in special schools “or in pre-primary, primary and secondary schools suitable to the needs of a pupil requiring special education.”³⁹¹ The MoE is also required to ensure

³⁸⁵ *Basic Education Act 2013*. Section 2. “Special education needs” means conditions, physical, mental or intellectual conditions with substantial and long-term adverse effects on the learning ability (other than exposure) or the needs of those who learn differently or have disabilities that prevent or hinder or make it harder for them to access education or educational facilities of a kind generally provided for learners of the same age in the formal education system.

³⁸⁶ *Ibid.* Section 2. “Special needs education” includes education for gifted or talented learners as well as learners with disability and includes education which provides appropriate curriculum differentiation in terms of content, pedagogy, instructional materials, alternative media of communication or duration to address the special needs of learners and to eliminate social, mental, intellectual, physical or environmental barriers to learners.

³⁸⁷ *Ibid.* Section 2. “Special school” means a school established for the benefit of a particular class of children who require some special form of education, treatment or care.

³⁸⁸ *Ibid.* Section 28(2)(d).

³⁸⁹ *Ibid.* Section 34(2).

³⁹⁰ *Ibid.* Section 44 and 45 read: “44. **Establishment and management of special institutions** (1) Subject to the Constitution and the provisions of this Act, the Cabinet Secretary shall establish and maintain public special schools. (2) The Cabinet Secretary shall provide special needs education in special schools established under subsection (1) or in pre-primary, primary and secondary schools suitable to the needs of a pupil requiring special education. (3) Children with special needs include— (a) intellectually, mentally, physically, visually, emotionally challenged or hearing-impaired learners; (b) pupils with multiple disabilities; and (c) specially gifted and talented pupils. (4) The Cabinet Secretary shall ensure that every special school or educational institution with learners with special needs is provided with appropriate trained teacher, non-teaching staff, infrastructure, learning materials and equipment suitable for such learners. 45. **Regulations in special needs education** (1) The Cabinet Secretary may make regulations for the establishment and management of special schools and institutions offering special needs education to pupils with special needs. (2) Notwithstanding the generality of subsection (1) the Cabinet Secretary shall make regulations to— (a) prescribe the duration of primary and secondary education suitable to the needs of a pupil pursuing special needs education; (b) provide for the learning and progression of children with special needs through the education system; (c) prescribe standards and requirements relating to the conduct of schools making provision for special needs education for pupils with special needs; (d) prescribe the curriculum to be used in respect of special needs education; (e) prescribe the categories of pupils requiring special needs education and methods appropriate for the education of pupils in each category of special school or educational institutions under section 42; (f) prescribe guidelines for the promotion of education for children with special needs; (g) establish mechanisms to ensure that every special school or educational institution offering special needs education has appropriate personnel, infrastructure, learning materials and equipment; and (h) establish a mechanism for monitoring and evaluation to advise the government on the quality of infrastructure and learning facilities in regard to special needs education. (3) The curriculum used in special needs education shall comply with the requirement of the national curriculum in so far as it is reasonably practicable.”

³⁹¹ *Ibid.* Section 44(2).

that schools have “appropriate[ly] trained teacher[s], non-teaching staff, infrastructure, learning materials and equipment suitable” for children with disabilities.³⁹²

The MoE is also empowered to enact regulations “for the establishment and management of special schools and institutions offering special needs education to pupils with special needs,”³⁹³ and required to make regulations on a range of aspects concerning the education for children with disabilities, including:

- the duration of primary and secondary education suitable to the needs of a pupil pursuing special needs education;
- the learning and progression of children with special needs through the education system;
- the prescription of standards and requirements related to the conduct of schools making provision for special needs education for pupils with special needs;
- the prescription of curriculum to be used for special needs education, which the Act also says must “comply with the requirement of the national curriculum in so far as it is reasonably practicable.”³⁹⁴
- the prescription of categories of pupils requiring special needs education and methods appropriate for their education;
- the prescription of guidelines for the promotion of education for children with special needs;
- the establishment of mechanisms to ensure appropriate personnel, infrastructure, learning materials and equipment at both special and integrate schools;
- the establishment of a mechanism for monitoring and evaluation processes to advise on the quality of infrastructure and learning facilities for children with disabilities.

Given the Act’s focus on special needs education as well as that of integrated schools, it is generally out of line with the right to inclusive education entrenched in the CRPD. It ultimately, therefore “legislates the status quo in education by segregating children with disabilities in so-called ‘special schools’.”³⁹⁵ It is important to note that an integrated school - one that merely allows children with disabilities to attend - is not an inclusive school. Inclusion requires teachers to be trained, materials to be available, and all

³⁹² Ibid. Section 44(4).

³⁹³ Ibid. Section 45.

³⁹⁴ Ibid. Section 45(3).

³⁹⁵ William Aseka and Arlene S. Kanter, “The Basic Education Act Of 2013: Why It Is One Step Forward And Two Steps Back For Children With Disabilities In Kenya,” *Africa Disability Rights Yearbook 2*, Chap 2 (2014): 33-50.

students to learn together in a manner that provides all children with equal opportunities for learning.

The Act should, however, be read with the relevant provisions of the Persons with Disabilities Act (2003), which explicitly provides for the right to education for all persons with disabilities.³⁹⁶ Importantly, section 18(1) of the Persons with Disabilities Act prohibits the denial of admission of persons with a disability to any learning institution or course of study “by reason only of such disability.” Section 18(2) requires educational institutions catering for children with disabilities to:

“take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations”.

The Persons with Disabilities Act was enacted in 2003 before the CRPD came into force and is being reviewed at the time of drafting.³⁹⁷ To complement the Act, in 2009 the MoE issued the Special Needs Education Policy,³⁹⁸ which was thereafter substantially revised by the 2018 Sector Policy for Learners and Trainees with Disabilities.³⁹⁹ The latter defines inclusive education as “an approach where learners and trainees with disabilities are provided with appropriate educational interventions within regular institutions of learning with reasonable accommodations and support.”⁴⁰⁰

³⁹⁶ *Persons with Disabilities Act, 2003*. Section 18 reads in full; “**Education**-1. No person or learning institution shall deny admission to a person with a disability to any course of study by reason only of such disability, if the person has the ability to acquire substantial learning in that course. 2. Learning institutions shall take into account the special needs of persons with disabilities with respect to the entry requirements, pass marks, curriculum, examinations, auxiliary services, use of school facilities, class schedules, physical education requirements and other similar considerations. 3. Special schools and institutions, especially for the deaf, the blind and the mentally retarded, shall be established to cater for formal education, skills development and self-reliance.

The persons with disabilities Act was enacted in 2003, before the CRPD came into force. As such, several provisions under the act go contrary to those of the CRPD, including on the right to education. For instance, the Act still prescribes segregated learning institutions for persons with disabilities, and uses derogatory terminologies to refer to persons with intellectual and psychosocial disabilities. The Act is undergoing review at the point of drafting this report.

³⁹⁷ *Persons With Disabilities (amendment) Bill 2023*; See also Ouma Kizito Ajuong “Evolution and devolution of rights: Persons with disabilities (Amendment) Bill, 2022 in context,” *The Platform Magazine*, (April 1, 2023); National Council for Persons with Disabilities, Invitation for Public Participation and Submission of Memoranda, 2021.

³⁹⁸ Ministry of Education, *The National Special Needs Education Policy Framework*, (July 2009).

³⁹⁹ Ministry of Education, *Sector Policy for Learners and Trainees with Disabilities*, (May 2018). The policy was published alongside the *Implementation Guidelines for Sector Policy for Learners and Trainees with Disabilities*, (May 2018). See also UNESCO, *Global Education Monitoring Report, Kenya*.

⁴⁰⁰ Ministry of Education, *Sector Policy for Learners and Trainees with Disabilities*, May 2018. p. vii.

Chapter 3 of the Policy, titled "Inclusive Education," emphasises the need for "every learner with disability" to have "an opportunity to learn in mainstream education environment together with his or her peers without disabilities."⁴⁰¹ The Policy recognises the need to "specifically maintain special schools" while simultaneously "striving to transition towards inclusive education."⁴⁰² It is also important to note that the Policy is intended to cover all educational institutions, including APBET institutions.⁴⁰³ However, no detailed provisions on non-formal schools are included in the Policy, nor is there a more general treatment of inclusion within the private school environment. This is even though the Policy considers "development partners", including the "private sector", to be "an important policy option for the government to collaborate with private providers of education and training to reduce gaps in financing."⁴⁰⁴

Evidence suggests that the policy and legislative provisions relating to inclusive education are poorly implemented for a range of reasons including limited funding, weak systems, and lack of monitoring.⁴⁰⁵ This situation was worsened by the COVID-19 pandemic.⁴⁰⁶

The present research reveals that the same conditions persist for children with disabilities in the Mabatini and Ngei wards, and Mathare more generally. While some public schools in Mathare and private schools in Mabatini and Ngei wards sometimes admit children with disabilities, such nominal admission is radically insufficient in ensuring that all children with disabilities have access to inclusive education in schools of their choice in their communities. The research confirms that when children with disabilities do attend schools in Mathare, such schools are inaccessible, do not provide reasonable accommodations and do not have teaching staff qualified to provide quality education to them.

⁴⁰¹ Ibid. p.11.

⁴⁰² Ibid. p.11.

⁴⁰³ Ibid. p.4.

⁴⁰⁴ Ibid. p.31.

⁴⁰⁵ International Centre for Evidence in Disability, University of Nairobi, Mastercard Foundation, "Disability-inclusive education and employment: understanding the context in Kenya," London: ICED, February 2023; See also Brent C. Elder, "Right to Inclusive Education for Students with Disabilities in Kenya," *Journal of International Special Needs Education* 18, no. 1 (2015): p. 18–28.

⁴⁰⁶ Wilson Macharia, "Realising the Right to Education for Learners with Disabilities during the Covid-19 Pandemic in Kenya," *ESR Review*, 23, no 2 (2022): p. 10.

V. Recommendations

In this section, a comprehensive set of recommendations is outlined for Kenyan authorities at different levels, addressing specific challenges observed in Mathare, particularly in the Ngei and Mabatini wards, alongside broader recommendations applicable nationwide. These recommendations are informed by insights gleaned from the interviews with the stakeholders and the inputs provided by the Mathare Education Taskforce on the draft recommendations. They are firmly rooted in Kenya's legal obligations under both domestic and international law.

V.1. Overarching Recommendations

The research has made evident that there is an urgent need for public schools in the Mabatini and Ngei wards. Whether achieved through the construction of new public schools and/or the conversion of private/APBET schools into public schools immediate and decisive interventions are required to ensure the availability and accessibility of quality inclusive education in Mabatini and Ngei wards, in accordance with international and domestic law.

To ensure access to education for children in the Mabatini and Ngei wards, **Kenyan authorities**, spearheaded by the Ministry of Education and in collaboration with the Nairobi County Education Board and County government, should proactively implement a combination of the following measures:

- a. The construction of public schools in areas where there is no access to public schools.
- b. The conversion of selected APBET schools into 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.⁴⁰⁷

V.2. Recommendations to the Ministry of Education

The **Ministry of Education** should:

- a. In line with the recommendations 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:

⁴⁰⁷ Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, UN doc. E/C.12/1999/5, (May 12, 1999), para. 14.

- a. the compliance with Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
 - b. the 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 the civil society, a timebound strategy that will ensure an adequate number of inclusive, quality, and free 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:
- a. construct public schools in Mabatini and Ngei wards;
 - b. convert selected APBET schools into public schools;
 - c. ensure the 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 in 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:
- a. the inadequacy of budget allocations to the implementation of Part IX.⁴⁰⁸
 - b. the inadequate number of quality assurance officers employed by the MoE.⁴⁰⁹
 - c. the extent to which the power to enact regulations and guidelines in terms of section 72 of the Act has been effectively utilised.⁴¹⁰
 - d. 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):

⁴⁰⁸ Ministry of Education Sector Working Group, *Medium Term Expenditure Framework 2023/24-2022 Education Sector Report*, (December 2022). p.143.

⁴⁰⁹ Ibid. p. 139.

⁴¹⁰ Presidential Working Party on Education Reform, *Transforming Education, Training and Research for Sustainable Development in Kenya*, (Nairobi: Government of Kenya, June 2023), p. 44.

- a. are made aware of the required standards for education quality;
- b. undergo regular inspections by quality assurance officers, conducted at a minimum bi-annually, to ensure strict adherence to the established standards for educational quality;
- c. in accordance with section 66(2)⁴¹¹ of the Act, schools who do not comply should be subjected to temporary suspension, where necessary, to facilitate compliance with quality standards.

V.3. Recommendations to County-level entities

- a. The Mathare County Education Board should:
 - a. 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.⁴¹²
 - b. 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.
 - c. In compliance with section 18(1)(g) of the Basic Education Act, 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;
 - e. the number of classrooms at the schools and the student-teacher ratio in classes.

⁴¹¹ *Basic Education Act, 2013*. Section 66(2): (2) “An officer appointed under this section shall have power to recommend temporary suspension of operations of the institutions to the County Education Board for a specific period until the basic standards are met.”

⁴¹² Section 18(1)(n) of the Basic Education Act 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.”

b. The **County Government** should:

- a. 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.

V.4. Recommendations to the Kenya Legislature

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

- a. 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.
- b. 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.
- c. Ensure that the education budget allocation from the national revenue⁴¹³ 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 school;
 - 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.

⁴¹³ *Constitution of Kenya, 2010. Article 95 (4).*

V.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 between the Ministry of Lands and 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 CESCR (2016),⁴¹⁴(2008),⁴¹⁵ the CRC (2016),⁴¹⁶ (2007)⁴¹⁷ and the CRPD (2015)⁴¹⁸ relating to the right to education.

⁴¹⁴ CESCR, *Concluding observations on the combined second to fifth periodic reports of Kenya*, UN doc E/C.12/KEN/CO/2-5, (April 6, 2016). para. 58 states that, "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 monitors their compliance with the Guidelines."

⁴¹⁵ CESCR, *Concluding Observations on the initial report of Kenya*, UN doc E/C.12/KEN/CO/1, (December 1, 2008). para. 34 states that, "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 supporting 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."

⁴¹⁶ CRC, *Concluding observations on the combined third to fifth periodic report of Kenya*, UN doc CRC/C/KEN/CO/3-5, (March 21, 2016). para. 46 states that, "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;"

⁴¹⁷ CRC, *Concluding Observations on the second periodic report of Kenya*, UN. doc CRC/C/KEN/CO/2, (June 19, 2007). 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.

⁴¹⁸ CRPD, *Concluding Observations on the initial report of Kenya*, UN doc CRPD/C/KEN/CO/1, (September 30, 2015). para.44 States that, "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

- c. Ensure that the education budget allocation provides sufficient resources to provide for the full realisation of the right to education, particularly by facilitating:
 - a. the construction or acquisition of buildings for public schools to ensure all children in Kenya can access education;
 - b. the progressive conversion of private schools to public schools where necessary to ensure accessibility of education;
 - c. 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;
 - d. the implementation of a country-wide inclusive education system.

V.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.⁴¹⁹
- 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.

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."

⁴¹⁹ 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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Annexes

A. Interview Questionnaire with Parents

Consent Form

I _____ hereby give permission to Mathare Community Task Force and its partners (International Commission of Jurists, EACHRights and Global Initiative For Economic, Social and Cultural Rights) to interview me about the state of education in Mathare.

I give permission for the information shared during this interview to be used by the Mathare Community Task-force and its partners for research and advocacy materials aimed at improving access to education in Mathare. In any such research and advocacy materials, the names of individuals will be anonymized.

The Mathare Community Task Force and its partners will **not** share or use any of the information provided during this interview to any other person for any other purpose.

Date: _____

Signature: _____

Questionnaire for Parents

A. Biographical Information

Date of Interview	
Area, Cluster	
Details of Parent	
Official Names of Parent	
Gender	
Disability	
Contact Number	
Consent form signed	

Details of Children						
Number of Children						
Name	Age	Grade	Gender	Disability	School Name/Not in School	Type of School
1.						
2.						
3.						
4.						
5.						

B. Basic Information about the School

1. Has there been any time when your child(ren) has not been in school at all since they turned 4? If so, why were they not in school? How long were they out of school?

2. How and why did you decide to send your children to their current schools?

3. Do you know whether the school is a public school, a private school or an APBET school? Do you think the type of school is important? Why/why not?

4. Do you know whether the school is registered? If it is not registered, do you know why it is not registered? Why is registration important?

5. Do any children with disabilities go to the school? Why/why not?

C. Money-related Issues

1. Do you pay school fees for your children to attend school? How much are the fees per term?

2. Do you pay any other amounts outside of the school fees (uniform, books, extra lessons, lunch, exams etc)? How much would you estimate per term?

3. If money was not an issue, what kind of school would you want your child to go to? What is it about this kind of school which you like?

4. What could government do to support your children's education?

D. Quality of Education

1. Do you know whether the teachers at the school are registered with TSC (the Teachers Service Commission) or have degrees or diplomas that qualify them to be teachers? Do you think it is important for teachers to be qualified?

2. Are the classrooms and other structures at the school (toilets, playgrounds etc) safe and in good condition?

3. Do your children have access to running water and electricity at school? Are the connections for these legal and safe?

4. Are there any environmental issues (such as pollution or waste) impacting on your child's education?

5. How far does your child have to travel each day to and from school? How do they travel (walk, matatu, bodaboda etc)? In your view is this trip safe?

6. Does your child receive food at school? What food do they receive? Is the food enough for them?

7. Are you confident in the quality of education at your child's school?

B. Interview Questionnaire with Private Schools

Consent Form

I _____ hereby give permission to Mathare Community Task Force and its partners (International Commission of Jurists, EACHRights and Global Initiative For Economic, Social and Cultural Rights) to interview me about the state of education in Mathare.

I give permission for the information shared during this interview to be used by the Mathare Community Task-force and its partners for research and advocacy materials aimed at improving access to education in Mathare. In such research and advocacy materials, the names of individuals will be anonymized.

The Mathare Community Task Force and its partners will **not** share or use any of the information provided during this interview to any other person for any other purpose.

Date: _____

Signature: _____

Questionnaire for Private Schools

B. Biographical Information of Interviewee

Date of Interview		
Area, Cluster		
Official Names and Position (Principal/Teacher/Owner etc)		
Name of school and year it was founded		
Number of teachers		
Number of children at school and age range		
Grades offered at the school and number of children in each grade	PP1	
	PP2	
	G1	
	G2	
	G3	
	G4	
	G5	
	G6	
	G7	
Play group 10	C8	
Grades which are in combined classes		
Contact		
Consent signed		

A. Basic Information about the School

1. Is the school an APBET school or another type of private school?

2. Who owns the school? Who owns the land on which the school is built?

3. Is the school registered? If it is who is it registered by? If it is not, do you know why?

4. Where do the children who attend the school live? How far away is this from the school?

5. Does the school turn away any children? Are there any children in the area who are not in school at all? Do you know why?

6. Do any children with disabilities go to the school? Are there any special measures taken to ensure they can go to the school?

B. Money-related issues

7. Does the school charge school fees for children to attend? How much are the fees per term?

8. Are there any other charges paid by parents other than fees themselves (uniform, books, extra lessons, exams etc)? How much per term?

9. Will a child be asked to not come back to school if their fees have not been paid?

10. Does the school currently receive any regular (termly, yearly etc) funding/support from the government? If yes, can you say how much and what for? Has the school ever received funding/support from the government?

11. Are there any amounts of money/types of support that the school is supposed to receive from the government that it does not receive? Do you know why?

12. Other than from the government and the fees charged, does the school have any other source of income such as from an external donor?

C. Quality of Education

13. Are the teachers at the school registered with TSC (the Teachers Service Commission)? Do they have degrees/diplomas that qualify them to be teachers?

14. Are the classrooms and other structures at the school (toilets, playgrounds etc) safe and in good condition?

15. Are there any environmental issues (such as pollution or waste) impacting on the children's education?

16. Does the school have access to running water and electricity? Are the connections for these legal and safe?

17. On average, how far do the children who attend the school have to travel each day to and from school? How do they travel (walk, matatu, bodaboda etc)? Is this trip safe?

18. Do the children who attend the school receive food at school each day? What food do they receive? Is the food enough for them?

19. Are you confident in the ability of the teachers at the school to provide all children who attend the school with a high-quality education?

D. General

20. How do the conditions at the school and the education you are able to provide the children who attend make you feel?

21. Any other comments or general information you want to add?

C. Formal Information Request Re: the Utility of Public Land in Mathare Sub-County; Mabatini and Ngei Wards.

RE; RESPONSE TO ACCESS TO INFORMATION REQUEST



Samantha Oswago <samoswago@gmail.com>

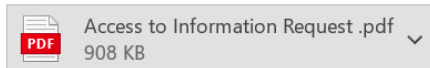
To info@ombudsman.go.ke

Cc Gilbert Omware; Florence Shako; Zsuzsanna Nyitray; Roselyne Onyango; Macharia Wilson



28/09/2023

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.



Dear Sir/ Madam,

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) together with the International Commission of Jurists Africa (ICJ Africa), the East African Center for Human Rights (EACHRights), and the Center for Education Policy and Climate Change (CEPCJ) are supporting the Mathare Community Taskforce on Education to champion for increased access to quality, inclusive public education within Mabatini and Ngei Wards, in Mathare Sub-County.

In the spirit of transparency and public interest, we sought clarification and ostensibly raised our interest in a number of crucial aspects from your esteemed institutions as provided for under Article 35 of the Constitution of Kenya (2010) and The Access to Information Act (2016).

To this regard, we issued an Access to Information Request on the 25th of August 2023, attached herein to this effect.

We kindly seek your indulgence in the follow-up of this matter.

Kind Regards,

D. Formal Information Request Re: Notice to conduct research in Mabatini and Ngei Wards, Mathare Sub-County

Fwd: REF; NOTICE TO CONDUCT RESEARCH IN MABATINI AND NGEI WARDS, MAT...

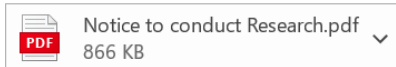


Samantha Oswago <samoswago@gmail.com>

To Zsuzsanna Nyitray; Roselyne Onyango; Macharia Wilson; adipooah93@gmail.com;
Johnstone Shisanya; Madina Mohamed



25/08/2023



Dear Sir,

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) together with the International Commission of Jurists Africa (ICJ Africa), the East African Center for Human Rights (EACHRights), and the Center for Education Policy and Climate Change (CEPCJ) are supporting the Mathare Community Taskforce on Education to champion for increased access to quality, inclusive public education within Mabatini and Ngei Wards, in Mathare Sub-County.

The limited access to public schools and the growth of low-cost private schools in Mathare continue to deepen inequalities in education instead of remedying it.

It is to this end that we wish to issue this Notice of Research. This effort will involve the use of participatory action research (PAR). The main outputs of the research will be:

1. The joint publication of a participatory action research brief/report on the impact of commercialization on the right to education in Mathare;
2. Recommendations to the Kenyan authorities of measures needed to secure compliance with Kenya's domestic and international human rights obligations;
3. A proposed advocacy plan agreed upon between the Mathare Community Taskforce and partnering organizations to influence national, regional, and international fora to ensure free, quality, inclusive public education in Mathare settlement.



We operate as a 501(c)(3) non-profit organisation and depend on donations to support our work. Donations to our organisation are tax-deductible in many countries, including the United States. To learn more, visit our website at <https://gi-escr.org/en/take-action#support-us>

About GI-ESCR

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights advocacy organisation. Together with partners around the world, GI-ESCR works to end social, economic and gender injustice using a human rights approach.

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Contact us: info@gi-escr.org

About ICJ

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists ("ICJ") promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession. The ICJ is committed to securing the realization of all human rights for all people, and in particular the rights of marginalized and disadvantaged individuals and groups.

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Authors

This summary was written by Roselyne Onyango, Associate Programme Officer- Africa at GI-ESCR and Timothy Fish Hodgson, Senior Legal Adviser: Economic, Social and Cultural Rights at ICJ. The summary has been reviewed by Ian Seiderman, Legal and Policy Director at ICJ, Juana Barragan Diaz, Programme Officer on the Right to Education at GI-ESCR, Aya Douabou, Programme Officer-Africa at GI-ESCR, José Antonio Guevara, Deputy Director at GI-ESCR and Magdalena Sepúlveda Carmona, Executive Director at GI-ESCR.

Inputs were also provided by Wilson Macharia, ICJ's Associate Legal Adviser, Madina Mohammed, Programme Officer at EACHRights, and Noah Adipo, Youth Leadership Movement and the Mathare Education Taskforce.

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: <https://gi-escr.org/en/resources/publications/build-us-more-schools-the-quest-for-quality-free-education-in-mabatini-and-ngei-wards-of-mathare-nairobi>.