



UNITED NATIONS COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

77th Session of the UN Committee on Economic, Social and Cultural Rights

10 Feb 2025 - 28 Feb 2025, Geneva

INTERNATIONAL COMMISSION OF JURISTS (ICJ) AND GLOBAL INITIATIVE FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS (GI-ESCR) SUBMISSION TO THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN ADVANCE OF THE EXAMINATION OF KENYA'S SIXTH PERIODIC REPORT UNDER ARTICLES 16 AND 17 OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

13 January 2025

About the International Commission of Jurists:

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists 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 the 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.

Website: <https://www.icj.org/>

About GI-ESCR:

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights advocacy organization. Together with partners around the world, GI-ESCR works to end social, economic and gender injustice using a human rights approach. We envision a world in which every person and community lives in dignity and in harmony with nature. Our mission is to transform power relations to enable every person and community to enjoy their ESC rights and all other human rights now and in the future.

Website: <https://gi-escr.org/en/>

Introduction

1. During its 77th session, from 10 February 2025 to 28 February 2025 the Committee on Economic, Social and Cultural Rights ("this Committee") will examine Kenya's implementation of the International Covenant on Economic, Social and Cultural Rights ("the Covenant"), ~~considering~~ the State party's 6th periodic report under articles 16 and 17 of the Covenant. The International Commission of Jurists ("ICJ") and the Global Initiative for Economic, Social and Cultural Rights ("GI-ESCR") welcome the opportunity to submit the following comments to this Committee.
2. This submission focuses exclusively on the implementation of the right to education (Articles 13 and 14 of the Covenant) in Kenya. Drawing on a report co-published by ICJ and GI-ESCR in July 2024 and titled '*Build Us More Schools!*' *The Quest for Quality Free Education in Mabatini and Ngei Wards of Mathare, Nairobi* ("Build Us More Schools"), this submission specifically examines the involvement of private actors in education in Kenya and highlights the urgent need for the State to provide more public schools and ensure access to quality education.
3. In particular, the ICJ and GI-ESCR draw this Committee's attention to the following issues:
 - a. The complete absence of public schools in certain areas in Kenya, including Mathare's Mabatini and Ngei wards;
 - b. Challenges related to the accessibility, quality and affordability of education in some public and private schools in Kenya. In Mathare specifically, private schools face the following issues: ¹
 - the prevalence of unregistered or inappropriately registered schools;
 - unaffordability;
 - inadequately qualified teachers;
 - low quality of education and a lack of monitoring of quality of education;
 - unsafe conditions at and on the way to school;
 - inadequate and/or unlawful access to food, water and electricity;
 - environmental issues; and
 - inaccessibility to children with disabilities.
 - c. Legislative gaps requiring review or amendment and certain inconsistencies between education laws and policies, in particular, the

¹ Build us more schools!' The quest for quality free education in Mabatini and Ngei wards of Mathare, Nairobi, 2024, available: <https://www.icj.org/wp-content/uploads/2024/07/Build-Us-More-Schools-web-Version-1.pdf>.

gaps between the APBET Policy² and the Basic Education Act.³

4. On several occasions, this Committee has taken cognizance of the impact of private actor involvement in education in Kenya coupled with the inadequacies of the public education system:
 - a. **CESCR's 2008 concluding observations** emphasize 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."⁴
 - b. **CESCR's 2016 concluding observations** place a strong 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 marginalized children, including children living in informal settlements and arid and semi-arid areas."⁵ In addition, this Committee 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."⁶ Finally, this Committee 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."⁷
5. Overall, Kenya's sixth periodic report submitted in 2022 to this Committee makes overly broad claims about the increase in access to primary and secondary education; increased enrolment and completion rate in primary schools; and increased enrolment rates in secondary schools.⁸ This despite recent reports highlighting challenges in student transition including concerns about shortages of teachers and classrooms as students progress to grade 9, a level that was introduced as part of the curriculum reform.⁹

² Policy on Alternative Provision of Basic Education Institutions 2009, available: <https://planipolis.iiep.unesco.org/2009/policy-alternative-provision-basic-education-and-training-5113>.

³ Act 14 of 2013 available: <https://planipolis.iiep.unesco.org/2013/basic-education-act-2013-no-14-2013-5560>.

⁴ 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.

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

⁶ Ibid. para 58

⁷ Ibid.

⁸ 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 and Replies of Kenya to the list of issue in relation to its sixth periodic report, E/C.12/KEN/RQ/6 (June 11, 2024)

⁹ Mike Kihaki, "Classrooms and teacher crises greet transition to grade 9" The Standard; Lucy Mumbi, "Lobby group slams govt's ill-preparedness for Grade 9 transition in 2025" The Eastleigh Voice

6. Kenya's report also claims to have continuously increased budgetary allocation for education, despite the information they provided revealing very small increases in many years and small decreases in others.¹⁰ Furthermore, a significant portion of the education budget is allocated to recurrent expenditure leaving capitation per learner stagnant and unable to meet learners' needs. With the rising cost of living, the unchanged capitation has forced schools to impose illegal levies on parents to sustain learning activities, despite the policy on free primary education.¹¹
7. In respect of APBET schools, Kenya's report makes only passing mention of private schools. It does so by merely providing the purported reason for the existence of APBET schools and referring to the relevant sections of the 2013 Basic Education Act and the 2015 Registrations Guidelines for Alternative Provision of Basic Education and Training schools.¹² At the same time, it omits references to the 2021 Registration Guidelines for Basic Education Institutions, which regulate all learning institutions, and the specific actions taken by Kenya to regulate private schools.¹³

Private schooling in Kenya

8. The failure of the government to provide sufficient public primary schools has led to the tremendous growth of "low-cost" or "low-fee" schools for the economically disadvantaged in Kenya.¹⁴ In response to the lack of formal education opportunities, communities and organizations established non-formal schools to meet the needs of out-of-school children and youth.¹⁵ In 2009, the Ministry of Education introduced the Policy for Alternative Provision of Basic Education and Training to improve access to education for marginalized groups. However, while the policy streamlined standards for the curriculum, teacher training and registration for non-formal institutions, it lacked implementation guidelines until 2015.
9. Although the Basic Education Act 2013 explicitly applies to all schools,¹⁶ including non-formal schools, it does not contain specific provisions relating to APBET schools. For purposes of legal registration, the Basic Education

¹⁰ 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 and Replies of Kenya to the list of issue in relation to its sixth periodic report, E/C.12/KEN/RQ/6 (June 11, 2024) para. 212-214.

¹¹ Kenya Civil Society Joint Submission for the Right to Education for Kenya's 4th Universal Periodic Review (49th Session of the Human Rights Council for UPR)

¹² Kenya, Sixth periodic report submitted under articles 16 and 17 of the Covenant to UN CESCR, E/C.12/KEN/6 (November 14, 2022) para. 215.

¹³ Registration Guidelines for Basic Education Institutions, 2021, available:

<https://www.studocu.com/row/document/meru-university-of-science-and-technology/computer-science/registration-guidelines/100877835>.

¹⁴ Margaret Wawira and Abraham Ochieng', "Low-Cost Private Schools: School Choice for the poor at the expense of Quality?", (Right to Education Initiative, 2017).

¹⁵ Ministry of Education, Policy for Alternative Provision of Basic Education and Training (APBET), 2009

¹⁶ Basic Education Act 14 of 2013, available: http://www.parliament.go.ke/sites/default/files/2017-05/BasicEducationActNo_14_of_2013.pdf, section 3.

Act recognizes only two schools 'public' and 'private'. Introduced before the Basic Education Act, the 2009 APBET Policy is not referenced in the Act, creating a regulatory disconnect and contributing significantly to the challenges outlined below. Furthermore, the 2021 Registration Guidelines for Basic Education Institutions only provide for the definition of APBET schools without any further specific detail regarding their management and operations. This suggests that these schools are to be registered under the provisions of private schools under the 2021 registration guidelines.

10. In practice, APBET schools are, however, not the same as "low-cost" or "low-fee" private schools. Arguably, the failure to clearly define and distinguish between the two has contributed to slow progress in bringing APBET schools effectively under Ministry of Education's oversight. Most low-cost private schools operating in Nairobi's urban informal settlements do not currently comply with any of the official definitions and requirements of APBET schools, though they refer to themselves as such.
11. By 2013 in low-income urban areas in Nairobi, for example, 63% of children at a primary school level attended "non-government schools".¹⁷ Since then, an estimated 60% or more of children in Nairobi's informal settlements enrolled in APBET schools at the outset of the COVID-19 pandemic.¹⁸
12. The June 2023 report by the Presidential Working Party on Education Reform highlighted significant challenges related to access and equity in education, particularly in informal settlements. The report revealed that: "only 10% of children from the poorest households in Kenya complete Secondary school, compared to 70% of children from the richest households. This gap is due to several factors, including access to quality education, teacher quality, and family resources."¹⁹ This finding, presented after Kenya submitted its report to this Committee, sharply contrasts with the claims made in Kenya's report and replies to the list of issues before this Committee.
13. Concerns relating to private schools, as detailed in the report of the Presidential Working Party, extend beyond access and equity. They also refer to the unaffordability of so-called "low-cost" private schools and the low quality of education provided in these institutions. Something that the State is yet to actively address.
14. The total number of "low-cost" private schools and APBETs remains

¹⁷ Moses Ngware, Abuya Benta, Admassu Kassahun, Maurice Mutisya, Peter Musyoka, and Moses Oketch, "Quality and access to education in urban informal settlements in Kenya," Africa Population Health and Research Center (APHRC), October 2013. p. 21.

¹⁸ Olivier Habimana, Francis Kiroro, John Muchira, Aisha Ali, Catherine Asego, Rita Perakis and Moses Ngware, "Exploring the Effects of the COVID-19 Pandemic on Low-Cost Private Schools in Nairobi, Kenya," Center for Global Development, October 19, 2022. p.2. See also, Moses Ngware and Maurice Mutisya, "Demystifying privatisation of education in Sub-Saharan Africa: Do poor households utilise private schooling because of perceived quality, distance to school, or low fees?" Comparative Education Review 65, no. 1 (March,2021) 1): 124-146.

¹⁹ Transforming Education, Training and Research for Sustainable Development in Kenya," Report of the Presidential Working Party on Education Reform, June 2023.

unknown in Kenya. To try determine this number and better understand their operations and challenges in offering basic education, some mapping exercises have been conducted especially within Nairobi County. The largest mapping effort that has been undertaken in the country to date is the 2019 government-led mapping of basic learning institutions that identified 1,677 learning institutions, operating in Nairobi's informal settlements.²⁰ This mapping revealed a very low rate of registration of APBET schools with the Ministry of Education (12.7%) and even lower registration of such schools as APBET schools with APBET specific registration certificates (8%).²¹ The findings of this mapping are important for several reasons:

- a. First, they show that the Kenyan authorities are aware of the confusions and challenges caused by regulatory gaps and that the vast majority of APBET schools are either inappropriately regulated (in terms of registration with other government departments) or unregulated.
- b. Second, they illustrate that many APBET schools, being unregistered or inappropriately registered, and the children attending them, are not considered in education planning and allocation of funds.²²
- c. Third, it indicates that it is unlikely that such schools are subject to the requirements of the 2009 APBET policy and guidelines, which fall within the purview of the Ministry of Education.
- d. Fourth, it may imply that the quality assurance functions stipulated in both the Basic Education Act and other policy and guidelines, such as the 2021 Registration Guidelines for Basic Education Institutions are neither applied nor enforced.

Access to Education in Mathare

15. The in-depth research pertaining to education in the Mathare area was developed by our organisations, working in partnership with community members in the Mathare area in Nairobi. The community members we engage with are individuals who are actively advocating for access to education, and this engagement has allowed the gathering of data to illustrate some of the broader trends mentioned in the previous section of this submission. Mathare is one of the 17 parliamentary constituencies of the Nairobi County. It comprises six administrative wards, including Mabatini, Huruma, Hospital, Ngei, Mlango Kubwa and Kiamaiiko.²³ It is home to the second-largest informal settlement²⁴ within Nairobi County.

16. Mathare is also referred to as "Mathare slum" and has an estimated

²⁰ 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.

²¹ Ibid. p. 14.

²² Ibid. p. 73.

²³ National Government Constituency Development Fund (NGCDF), <https://mathare.ngcdf.go.ke/about-us/>.

²⁴ UN-HABITAT, Informal settlements' vulnerability mapping in Kenya: facilities and partners' mapping in Nairobi and Kisumu settlements –The case of Mathare, (2020).

population of 200,000 to 800,000 residents, according to various sources although the 2019 census states that the overall population of the constituency rests at about 206,564 people.²⁵ 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.²⁶

17. The settlement is further characterized 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.²⁷ 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.²⁸
18. 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 Ministry of Education, 107 were incorrectly registered with other bodies (including other government ministries, community-based organizations and churches) and the remaining 25 were not registered at all.²⁹
19. Using available mappings and surveys, the report estimates that there are currently 383 schools in Mathare, out of which 185 are primary schools and 29 are secondary schools.³⁰ Of the 185 primary schools, only 11 are public/government-operated, while the other 174 are private/non-government. This means that only 6% of all primary

²⁵ 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;

²⁶ The Kenya National Bureau of Statistics (KNBS), Kenya Population and Housing 2019; Jens Christopher Andvig and Tiberius Barasa, A Political Economy of Slum Spaces: Mathare Valley, (Oslo: Norwegian Institute of International Affairs, 2014), p.27.

²⁷ UN-HABITAT, Informal settlements' vulnerability mapping in Kenya: facilities and partners' mapping in Nairobi and Kisumu settlements –The case of Mathare, (2020), p. 45.

²⁸ Ivy Chumo et al. "Coming out from the 'data shadow': Improving accountability in informal urban settlements," ARISE, March 11, 2021.

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. 39 (Table 6). See also: <https://www.icj.org/wp-content/uploads/2024/07/Build-Us-More-Schools-web-Version-1.pdf>, p 50-52.

³⁰ Map Kibera through the Open Schools Kenya project has conducted citizen-led mapping exercises of schools in Kibera 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>

schools are public, with the majority (94%) being private. Furthermore, only 38% (15,515) of learners in the area attend public schools, while 62% (25,249) of learners attend private schools.

20. The situation is particularly poor in the Mabatini and Ngei wards of Mathare, where there are no public/government operated primary schools at all. In Mabatini ward there are 28 private/non-government primary schools with 5,948 learners while in Ngei ward there are 29 private/non-government primary schools with 2,865 learners.
21. The situation in Mathare is not unique as many other informal settlements in Kenya face similar situations. Informal settlements often lack the infrastructure and public services required to support sustainable living conditions, leading to overcrowding and limited access to services necessary to realize human rights such as education. The reliance on private education institutions, particularly in low-income areas, is due to the failure of the public education system to meet the needs of all children.

Findings of the report

22. The "Build Us More Schools" report makes a number of crucial findings about education in the Ngei and Mabatini wards in Mathare:
 - a. **Unaffordability of education:** While parents differed on whether public or private schools were more affordable, almost all parents noted that their children had occasionally been out of school due to their inability to pay fees. When discussing fees, parents referred not only to school fees as such, but also to other school-related expenses, such as additional fees for exams, textbooks, uniforms, extra lessons and lunch. Some parents sent their children to further off public schools outside the Mabatini and Ngei Wards. While public schools are prohibited from charging fees, parents reported being required to pay them.
 - b. **Inadequately qualified teachers:** Personnel at APBET/private schools confirmed that many teachers had not obtained a registration certificate from the Teachers Service Commission (TSC), despite the requirements set forth in the 2012 Teachers Service Commission Act and the 2015 TSC Code of Regulations for Teachers.³¹ Parents with children in APBET/private schools indicated that this was not a major consideration when enrolling their children. However, most parents with children in public schools expressed greater confidence in teachers' qualifications within that system.
 - c. **Quality of Education:** A significant challenge was noted regarding the ability of quality assurance officers and other ministry officials to visit schools in informal settlements to assess and ensure adherence

³¹ Teachers Service Commission Code of Regulation for Teachers, 2015. Sec 19 and see also, Teachers Service Commission Act, 2012. Sec 23(2)

- to the standard and quality of learning. Not a single instance was reported of these officers exercising their enforcement powers under the Basic Education Act, including the authority to suspend a school.³²
- d. **Safety of Travel to and from Schools:** Parents overwhelmingly expressed concerns that travel to and from schools was unsafe for a variety of reasons, including distance, unsafe transportation modes, heavy traffic, pollution, crime and poor road conditions. Reported commuting times for children ranged from 5-10 minutes to over an hour, with most children walking to school. Some school personnel reported children traveling for up to 90 minutes to and from school, with only one school reportedly transporting children in a school bus.
 - e. **Safety and Conditions at Schools:** Concerns about safety and suitability of school infrastructure were raised more frequently among parents with children in private schools than those with children in public schools. Problems documented included inadequate numbers of and quality of classrooms, toilets, and playgrounds; with some schools having no playground at all. While parents with children in private schools commonly perceived the condition of schools as poor, school personnel most often reported it was satisfactory.
 - f. **Water and Electricity:** During the interviews with school personnel from APBET/private schools, some interviewees reported that their schools had access to both water and electricity. Some school personnel and parents acknowledged that the electricity and water connections at their schools were illegal. In comparison, parents with children in public schools reported that their children had access to clean water and electricity with only a few exceptions.
 - g. **Environmental Issues:** Environmental concerns raised by parents included: waste pollution; sewage overflow/flooding; noise pollution from the motorists and neighbors; and exposure to chang'aa³³ brewing and drugs within the settlement. Most school personnel confirmed the existence of the same issues.
 - h. **Quality and Availability of Food:** While some parents reported paying for meals provided by APBET/private schools, others packed lunch and snacks for their children. Other children had to go home for lunch. Many parents highlighted the need for comprehensive and sustainable school feeding programs to ensure that children, whether in public or private schools, receive adequate, nutritious meals. Over 78% of personnel at APBET/private schools indicated that parents paid for food provided at school daily. Personnel indicated that the food was similar or the same each day and typically described the quantity of food provided as insufficient or merely satisfactory.

³² See: "Medium Term Expenditure Framework 2023/24-2022 Education Sector Report," Ministry of Education Sector Working Group, December 2022. This issue is a general one throughout Kenya which is likely due to underfunding and understaffing of this function, with only 12% of Kenya's 82,000 learning institutions being assessed annually.

³³ An illicit alcohol, locally produced in Kenya.

- i. **Disability Inclusivity:** Both public and private education for children with disabilities was largely inaccessible. Special schools located outside the settlement were often the only option, but these did not cater to all types of disabilities. Personnel from private schools and APBET schools confirmed the lack of accessibility of their institutions for children with disabilities and highlighted the lack of appropriate training for their teachers to effectively teach to children with disabilities.

Recommendations

We invite the Committee to recommend the following measures to executive authorities, through the Ministry of Education and to legislative authorities through Kenya's parliament:

23. To executive Authorities, through the Ministry of Education:

- a. In line with Kenya's constitutional guarantee of the right to education and the 2023 Presidential Working Party Report of Reforming Education,³⁴ ensure that capitation grants allocated per learner under the Free Education Policy is increased.
- b. Ensure that the education budget allocation provides sufficient resources to guarantee the full realization of the right to education.
- c. In line with the recommendations of this Committee (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 their compliance with Articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights. Ensure the consolidation of coherent, comprehensive registration and monitoring guidelines for all schools (public, private, formal or non-formal).
- d. Formulate and implement, in full collaboration with pertinent stakeholders, including members of the public and civil society, a time-bound strategy to ensure an adequate number of inclusive, quality, and free public schools throughout the country. This initiative should ensure that all children have access to public schools.
- e. Ensure rigorous monitoring of APBET schools while also enforcing a time-bound and provisional framework for the establishment of public schools where they are needed.
- f. Ensure adequate placement of a sufficient number of certified teachers by the Teachers Service Commission in both public and private schools.
- g. 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

³⁴ Available: <https://www.education.go.ke/sites/default/files/2023-08/B5%20REPORT%20OF%20THE%20PRESIDENTIAL%20WORKING%20PARTY%20ON%20EDUCATION%20REFORM%207th%20JULY%202023%20.pdf>

achieve this, a targeted review should be conducted to assess and take corrective measures in relation to:

- the inadequacy of budget allocations to the implementation of Part IX;
- the inadequate number of quality assurance officers employed by the Ministry of Education;
- the extent to which the power to enact regulations and guidelines in terms of section 72 of the Act has been effectively utilized;³⁵
- the effectiveness of the measures of quality assurance taken in respect of private schools, including APBET schools. This interpretative approach is consistent with this Committee's own observation that "courts should take account of Covenant rights where this is necessary to ensure that the State's conduct is consistent with its obligations under the Covenant" and therefore "domestic law should be interpreted as far as possible in a way which conforms to a State's international legal obligations".²¹

24. To Legislative Authorities: the Kenya Legislature (parliament) should:

- a. Ensure that the education budget allocation provides sufficient resources to guarantee the full realization of the right to education.
- b. Conduct a review of the Basic Education Act to determine if it is necessary to amend provisions thereof to:
 - 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;
 - ensure that it fully recognizes and incorporates a system of inclusive education.
- c. 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 Disabilities) with the Basic Education Act, the Constitution and international human rights law and standards.

25. Regarding the Mabatini and Ngei wards in Mathare

In light of our findings, we invite the Committee to recommend the following measures to ensure the Kenyan government guarantees access to quality, free education for all children in the Mabatini and Ngei wards, in compliance with articles 13 and 14 of the Covenant:

- a. The construction of public schools in the Mabatini and Ngei wards.
- b. The conversion of selected APBET schools to public schools.
- c. The allocation of qualified teachers to all schools in the Mabatini and Ngei wards through proper legal processes.

³⁵ Section 72 reads:

"The Cabinet Secretary in consultation shall, in consultation with the relevant stakeholders, make Regulations on standards, quality and relevance in education in Kenya."

- d. The rigorous monitoring of APBET schools, alongside the enforcement of a timebound, provisional framework for establishing public schools.
- e. Ensuring that all schools provide access to nutritionally adequate, safe and sufficient food, a healthy environment, water, electricity and transportation.

Conclusion

26. We thank this Committee for the opportunity to make this submission, which is made in a spirit of co-operation and with the intention of improving the Government of Kenya's efforts to ensure that the right to education is respected, protected, promoted and fulfilled. The ICJ and GI-ESCR hope that this submission may assist the Government of Kenya in reporting to this Committee in the future. Further Information can be found in our full report³⁶ and the meaningful engagement with the communities directly concerned by the issues raised in the submission will help to improve the situation of education for children in the most vulnerable situations.

Contact:

Timothy Fish Hodgson, Senior Legal Advisor: Economic, Social and Cultural Rights at International Commission of Jurists (ICJ). E-mail: timothy.hodgson@icj.org

Roselyne Adhiambo Onyango, Associate Programme Officer – Africa, at the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR). E-mail: roselyne@gi-escr.org

Wilson Macharia, Associate Legal Adviser at International Commission of Jurists (ICJ). E-mail: Wilson.macharia@icj.org

³⁶ Build us more schools!' The quest for quality free education in Mabatini and Ngei wards of Mathare, Nairobi, 2024, available: <https://www.icj.org/wp-content/uploads/2024/07/Build-Us-More-Schools-web-Version-1.pdf>.