

# FALLING SHORT

The Right to Free Primary Education



**A Situation Analysis of Slums in Nairobi  
2007**

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## Analysis Brief

### Introduction

This report is a Human Rights Based analysis of the status of primary education in the slums of Nairobi. The analysis takes as its reference point the free education policy unveiled by the Kenyan government in 2003 which abolished levies in primary schools. The analysis proposes that any policy aimed at addressing challenges in access of a right must deliberately pay attention to the most marginalised in society, and urban slums constitute some of the poorest communities in Kenyan society.

The analysis concludes that significant challenges remain with respect to access to education by children in slum settlements. While Kenya has formally committed, through international human Rights instruments, to ensure realization of the Right to Education, legislative and policy frameworks are still weak and offer inadequate guarantees for the right to education.

Consequently, this analysis reveals that these structural weaknesses have contributed to the gap between the promise and the actual realization of free, quality primary education. It also reveals the urgent need to expand public education infrastructure in Nairobi's slums, and to promote public and private sector partnerships for the provision of education services in slums

### Free Primary Education in the slums at a glance

Since the introduction of FPE in 2003, the availability and quality of education has been compounded by lack of adequate physical facilities, learning equipment, overcrowding and insufficient teaching staff, among other things. Although 2.4 million children have joined primary school, 23 percent, or about 1.6 million children, are not in school. It has been estimated that \$137 million would be required to ensure that all these children joined school by 2015. Of these children, some of the most vulnerable are those who live in Kenya's slums where almost no public schools have been built for the past 15 years.

A combination of factors including poverty, child labor, displacement, and lack of schools and teachers contribute to especially low enrolment rates in urban slums. A survey conducted by DARAJA Civic Initiatives Forum in 2006 in Kibera and Korogocho slums indicates that up 48 percent of school age children are out of school in the slums. Nairobi City Council notes, 45 percent of children in Nairobi are not enrolled in school at all.

### Education and inequality in Nairobi

In the more affluent non-slum parts of the city, primary education seems to be thriving as private schools exist alongside public schools providing a wide variety of options. Private school registration by the MOE is based on regulatory benchmarks intended to ensure quality delivery of education by non-state providers. These terms and conditions are relatively attainable by capital endowed individuals and organizations, and typically private schools are commercial enterprises charging fees well above the facility of the average Kenyan household. The educational facilities and resources in private schools tend to be relatively abundant and well developed, thus assuring quality education.

For economically endowed households these schools are the obvious preference, with the additional option of sending their children to state sponsored schools which are numerous and well developed in non-slum areas.

In stark contrast, the situation in slums is very different. Local authorities have for decades argued that slums are informal and unplanned, and as such cannot be included in planning and provision of basic

infrastructure and services. This fact is supported by the acute shortage of essential social infrastructure and services that is typical of Nairobi slums. Owing to low economic potential, private investment and enterprise is low, and there are few private schools of the kind found in the more affluent city suburbs. In fact, most schools in slums can neither be termed private nor public. Most of the schools have a commercial dimension that seeks to provide livelihoods for the numerous unemployed teachers in slums. It is these schools that have acquired the label of non-formal schools. These so-called non-formal schools are ill equipped to meet stringent requirements for registration as private schools, and mainly operate within a regulatory vacuum.

As a result, some education sector stakeholders have proposed that Non-Formal Schools have no place in the provision of educational services. In turn, they have suggested that Non-Formal Schools ought to be outlawed to allow Formal Schools, in this case public schools, to become the only sites for primary education. Despite the bias against Non-Formal Schools, parents, educators and pupils alike attest to the important role these institutions play in educating vulnerable children who live and learn in slums. Non-Formal Schools cannot be simply wished away. Rather, they ought to be supported to surmount the challenges they face.

Although advocates of formal education will emphasize the importance of formality, and the possibilities that registration and accreditation of schools brings to the efficient use of public funding, this can do little for the children currently excluded from free primary education simply because they attend the so called non-formal schools. It is impractical to imagine that slum communities will fairly compete with non-slum communities for opportunities in schools – outside the slums, and as such it is imprudent to disregard the important role that these schools play in providing primary education in slums .

## **Lessons and options for advocacy**

### **1. There is need to promote equality in education through legislative frameworks**

The Right to Education is not adequately guaranteed by the legislative and policy measures undertaken in Kenya to date. Like all other fundamental rights, education must be guaranteed in the Constitution and the Laws of Kenya for its primacy is to be upheld in all spheres, including the delivery of education services. Legislative guarantees make rights justiciable, and therefore support demands for just and equitable treatment in the provision of education services and opportunities. Such guarantees must bind the arms of responsible authorities by making them legally accountable.

- The Constitution of Kenya should be amended to include guarantees for the Right to Education.
- The Education Act and the Local Authorities Act should be reviewed to include specific mandates for provision of education services in slums.

### **2. The Ministry of Education should increased spending and investment in slums**

Public spending remains a key indicator of government priorities. Financial plans and allocations are indicative of what the government intends to fulfill, and are an important proxy for commitment to progressive realization of obligations. Public spending should be interrogated to determine if the *maximum available resources* are actually being devoted to realizing the Right to Education in slums; and, if the expenditure reflects the principles of equity and non-discrimination as committed to by government for the purpose of protecting human rights. Budget analysis and tracking by communities can inform advocacy and promote accountability for increased public investment in primary education in slums.

### **3. Communities need to inform political leaders of the status of primary education and demand change**

There is widespread indifference among political leaders and decision makers, as evidenced by the low prioritization of slum education in the current political development agenda. Political focus has already shifted to free secondary education, even before all children are guaranteed free primary education. This problem can largely be attributed to low documentation and publication of the problem of education in slums.

Establishment of community based monitoring information and documentation systems can contribute, to enhanced political accountability by promoting informed civic engagement and decision making. This is

particularly important in the area of devolved public funds such as Constituency Development Funds CDF, which are managed through political leadership.

**4. Slums need to be guaranteed Security of tenure including the provision of education facilities.**

The formal recognition and inclusion of slums in urban physical and development plans is essential to the establishment of adequate primary education infrastructure in slums. Historically, planning and development policies have purposively omitted provision of essential services to slums on the basis of their spontaneity and informality.

The Nairobi City Council, and all other local authorities in urban areas, as legal trustees of education services, must honour their fiduciary responsibility by firstly appreciating the inevitability of slums given the prevailing social economic conditions, and begin to unconditionally discharge the obligation to respect, protect and fulfill the Right to Education for all.

**5. Civil society and private sector capacities should be enhanced to encourage partnership with the public sector**

Public schools remain the preferred conduit for state support including funding and teaching resources. Where the government has stipulated preconditions for accreditation of non-state schools for funding, the terms remain stringent and outside the means of non-state education providers in the slums. Thus, despite shouldering the larger burden of providing services to the most vulnerable, non-state schools are largely precluded from the benefit of public resources.

The need to regulate and account for public expenditure should not, as it is, be allowed to override the best interest of the child. Alternative funding procedures, which do not unnecessarily discriminate against non-state schools, should be devised. Guidelines for accreditation of non-state schools should be negotiated, streamlined and formalized to ensure transparency and accountability in the administration public funds.

The peculiar circumstances of hardship in slums should be grounds for special and differential treatment, which will allow non-state providers in slums to partner with the state to access public resources. Such measures should not be limited to financing, but also include quality assurance.

**6. Non-Formal Education should be promoted in slums to integrate out of school children into the formal education system**

Non-Formal Education provides a viable alternative for reintegrating out of school children into the formal system. The Government, donor community and development partners should prioritize the implementation of the new Non-Formal Education policy and curriculum in slums, with the objective of reintegrating out of school children into the mainstream formal system. Measures should be taken to promote clear linkages and protocols to bridge formal and Non-formal education systems.



*About 60% of the population in Nairobi lives in slums, occupying only 5% of the land  
Photo by Fredric Coubet*

## Section one: Free Primary Education and the Human Rights-Based Approach

### 1.1 Introduction

In every modern nation-state, education is at the centre of discourses on governance, development and more recently human rights. As a human right however, the history of education is shorter than these discourses given the relative youth of the universal human rights notion. Today however, early education of children variously referred to as basic education or primary education is considered one of the key human rights obligations that every state bears towards its citizens.

Internationally, the Right to Education is recognized in various international treaties, in regional human rights agreements and even in the constitutions of some states. Although Kenya, has ratified most of the international instruments on education, it still does not recognize education as a constitutional right. Moreover, before the enactment of the Children Act in 2001, there was no statutory recognition of the right. These conditions have contributed to weak legal and policy safeguards for the Right to Education. Nevertheless, in 2003, the newly elected National Rainbow Coalition (NARC) government of President Mwai Kibaki announced a new policy of free primary education (the first eight years of schooling). This policy saw a surge in primary school enrollment numbers winning both domestic and international praise. The free primary education policy, initially part of the NARC campaign promises in the 2002 General Elections is now official state policy and has been embraced by all political groups in Kenya.

The 2003 policy was important in opening doors to a large number of children hitherto locked out of the school system by a plethora of levies. The policy was viewed as an especially timely intervention for children from the poorest backgrounds. Four years down the road however, it is important to review the implementation of that policy and assess its role in promoting the progressive realization of the Right to Education. The impact of the free primary education policy on access to education in urban slum settlements is a particularly important evaluation since those living in these settlements are part of the most marginalized sector of the Kenyan society.<sup>1</sup> That impact and status is the subject of this report. The studies in this collection critique the implementation of the free education policy from the perspective of international human rights.

This analysis is a preliminary study of what is obviously a complex issue. Consequently, the report is not intended to be a last word on the status of the Right to Education in Kenya but rather a basis for dialogue between the various stakeholders: residents of slum settlement, teachers, civil society organizations, government and any one else with an interest in the fate of children living in urban slums in Kenya.

### 1.2 The Value of a Human Rights Approach

The question may be posed, why a human rights approach to evaluating the status of the free primary education policy? A human rights approach brings to the study table of policy implementation several critical insights that would otherwise be lost with other approaches.

First, human rights are based on legal obligations that states are legally bound to honour. Consequently, a human rights approach allows us to examine whether the government's free primary education policy is based on the acknowledgment of this obligation and what mechanisms the state has put in place for its realization. Second, a human rights approach alerts us to the need to examine whether the free education policy is in coherence with other state policies. Human rights obligations apply to the state as a whole and to all of the government's programmes and institutions. Therefore, if one institution implements a programme that defeats the purpose of the free education policy, then the policy could be judged to have failed the coherence test. Moreover, a human rights appraisal reveals whether the various government departments and policies take into account similar factors.

Third, a human rights approach asks questions on the decision-making process in the policy design and implementation. It seeks to establish whether the government involved those likely to benefit (in this case, the parents and children) in generating ideas on its implementation, necessary modification, in assessing trade-offs and in identifying priorities. In other words, here we seek to understand the extent to which the public is involved in the ownership of the policy.<sup>1</sup> Fourth, a human rights framework calls our attention to the impact of the policy on the well-being of various groups, especially those living in poverty as well as other marginalized sectors. In other words, for the free primary education policy to stand the human rights test, it should pay attention to the different vulnerabilities faced by the various groups in society. Fifth, a human

rights approach helps us examine whether a policy includes mechanisms for holding the policy makers accountable. If the free primary education policy is designed and implemented as official beneficence rather than a public policy grounded on rights, then it fails to live up to human rights standards.

### **1.3 Education and the Human Rights discourse**

For historical reasons, the international discourse on the Right to Education, and indeed most of the other Economic Social and Cultural Rights, only regained prominence in the 1990s after the end of the Cold War. This has to do with the ideological polarizations that detained both the conceptual and policy progress in human rights during the Cold War. The end of the Cold War however, saw a resurgence of the idea of human rights in general.

In 1993, representatives of governments, United Nations agencies and non-governmental organizations converged in Vienna for the World Conference on Human Rights where the universality and indivisibility of all human rights was re-affirmed. The 1990s also saw UN-wide reforms spearheaded by then Secretary-General Kofi Annan which included the emphasis on human rights as a “cross-cutting” issue with the UN and its specialized agencies. In addition, in 1998, the UN Commission on Human Rights (now Human Rights Council) created the mandate of a Special Rapporteur on the Right to Education to among others, “[r]eport on the status, throughout the world of the progressive realization of the Right to Education, including access to primary education, and the difficulties encountered in the implementation of this right.”

Concurrently, the emergence of the rights-based discourse in development work also added impetus to the fresh international and national policy interventions aimed at securing access to primary education for all.

### **1.4 The Right to Education as a “Facilitative Right”**

As a right, education occupies a pivotal position in relation to other rights, playing a “facilitative” role in the enjoyment of other human rights. How individuals access other rights such as those associated with employment and social security is linked to their educational status. Those without formal education are disadvantaged in the labour market. They are condemned to lower salaries and which in addition, “negatively affect their old-age security.”<sup>2</sup> In Kenya, those without education and without formal employment are excluded from social security schemes often leaving them destitute in old age. For those living in extreme poverty, such as the residents of urban slums, education may be the only route out of a life of bare survival and destitution in old age. Moreover, those without education also find their political participation drastically curtailed. Those who are illiterate for instance cannot stand for civic or parliamentary elections in Kenya. In short, education occupies a unique position as a multiplier of other rights.

### **1.5 A Socio-Economic or Civil and Political Right?**

In most human rights discussions, certain rights are categorized as civil and political rights and others as economic, social and cultural. The two main international covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights reflect these distinctions. However, the Right to Education straddles both sets of rights underlining the indivisibility of human rights. As a civil and political right for instance, the Right to Education entails the freedom of parents to choose education that is acceptable to their religious beliefs. The bulk of the other aspects of the Right to Education fall within the economic, social and cultural dimension of human rights. What this means is that when we think about education as a right, we should free ourselves from the limitations of the divisions between the rights. This is especially so, since when taken as purely an economic, social and cultural right, there may be that temptation to regard the Right to Education as programmatic in its fulfillment and therefore a challenge to immediate enforcement. Section two expounds on this.

### **1.6 Right to Education and Rights in Education**

Substantively, the Right to Education is much more than access to a school. Instead, it also includes what quality of education is available as well as the conditions under which children are educated. This is what the concepts of availability, accessibility, acceptability and adaptability elaborated in Section two seek to address. It is tempting to assume that school is “benign” and therefore merely pay attention to getting the children to school. A rights approach however requires that equal attention be paid to concerns like the curriculum content, the language of instruction, as well as dangers of violence in school. In other words, the Right to Education is also about “rights in education.”



## 1.7 Rights Approach versus Political Commitments

While education has been internationally recognized as a right through international human rights treaties, over the years states have also been involved in international diplomatic conferences where they have undertaken political commitments to improve access to education for all. At the international level therefore, one sees two parallel processes, one political/diplomatic and the other the human rights law based. The human rights law process is the subject of Section two of this collection.

The first major development in the political/diplomatic process was a global conference of states in 1990, the Jomtien Conference. The Jomtien Conference sought to mobilize international political will and financial resources against set targets on primary education as a priority. However, the Conference did not recognize education as a human rights obligation of states but as a social responsibility. The language of the Conference was different from the language of human rights law.<sup>1</sup> Another significant international gathering along this political process was the Fourth Global Meeting of the International Consultative Forum on Education for All held in Dakar in 2000. The Dakar Conference has been criticized for replicating the language of Jomtien and failing to stress on state obligations in providing free primary education.

In addition to these Conferences, there is the Millennium Development Goals (MDGs) adopted by the Summit of Heads of States and Governments under the auspices of the United Nation at the turn of the millennium. The Millennium Development Goal number two seeks to achieve universal primary education. The MDGs have become an important policy reference point for multilateral donor agencies supporting education in most of the developing world as well as other actors working on the issue of education.

Governments appear more willing to make reference to these political commitments over obligations under human rights law. Sections two and three in this collection note that Kenya makes reference to these political commitments but not the International Covenant on Social and Cultural Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples Rights. Unlike human rights commitments that can be enforced through judicial and quasi-judicial avenues, political commitments made by states at the international level do not come with any mechanisms through which citizens can hold their governments accountable. Consequently, citizens have limited means for ensuring that governments honour these political commitments.

## 1.8 The Right to Education in Kenya

This Collection seeks to specifically examine the extent to which free primary education has been realized in urban slums. Evaluating the realization of the international Right to Education at the national level requires the unpacking of the content of that right since national contexts have a central bearing on how states honour that obligation. To undertake an effective and comprehensive evaluation is a task that is complex and requires a combination of expertise from a variety of actors. Moreover, one may need to develop a set of indicators specific to the country's realities against which a comprehensive evaluation can be conducted.

In recognition of this complexity, this publication is a much more limited study. It is primarily concerned with the extent of access to education by children in urban slums in Kenya. In particular it examines data from two urban slums.

Focusing on slums in the evaluation of the free education policy is important from a human rights perspective. In Kenya, those living in slums represent one of the most marginalized and vulnerable sectors of the society. That is not to say they are the only ones. Many Kenyans in the arid northern and north-eastern regions of the country suffer similar deprivations, extreme poverty and vulnerabilities. Nevertheless, to be manageable, any study has to choose what to include and what to exclude. This is one of the reasons this study has elected to focus on urban slums in exclusion of other marginalized groups equally deserving of attention. As a preliminary analysis therefore, this study limits its scope to the elaboration of the nature of the norm of the Right to Education in general and in the Kenyan context, the policy framework governing the education system in Kenya and a trends and statistical scan of two urban slums in Nairobi.



The Different faces of Education in urban Slums  
*Photo by Danny Rowan & Frederic Courbet*



*Above* Primary School kitchen at Laini Saba Primary (Church Sponsored school) supported by the World Food Programme –  
*photo by Danny Rowan*

*Below* Girl returns home from school in Korogocho  
*-photo by Frederic Coubet*

## Section Two: The Right to Education: Rhetoric and Reality

### The Quest for the Right to Education in Kenya: Rhetoric and Reality

#### 2.1 Introduction

The introduction of free primary education in Kenya in 2003 was a momentous milestone in the country's efforts to achieve education for all, and can arguably be regarded as a bold attempt by the Government to achieve the realization of the Right to Education.<sup>1</sup> Four years later, it is perhaps time to look back and take stock of the implications of this historic step. It is critical to recall 2003 was not first time that the Kenyan Government made commitments to free primary education; in 1972, Kenya signed the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Covenant entered into force in 1976 and one of the rights it provides for is the Right to Education.

In Kenya, for international human rights instruments to take any effect, they must be domesticated - that is, translated into legal obligations by an Act of parliament. Obligations under the International Covenant on Economic, Social and Cultural Rights require that states take steps "by all appropriate means including particularly the adoption of legislative measures"<sup>2</sup> with a view to achieving progressively the full realization of human rights. Legislation is obviously an important pre-condition in the progressive achievement of the Right to Education as in its absence, it is difficult to monitor and enforce state obligations. Adoption of appropriate legislation is what is termed as an obligation of conduct and is a critical indicator of State commitment to respect, protect and fulfill human rights obligations.

#### 2.2 Education as a Human Rights concern

Mass illiteracy is one of the most insidious scourges facing mankind. Historically, education is regarded as an end in itself, and as a means of individual and social development. Education is vital for the reservation and enhancement of the inherent dignity of the person, which largely explains why various international and regional human rights instruments have consistently listed education as one of the fundamental human rights.

Primary education is the foundation of any education system and is rightfully prioritized in international and domestic law. States undertake to guarantee the realization of primary education, and although some skeptics indignantly question the practicality of universal primary education, sample the following: in the year 2000, it was estimated that to achieve universal primary education in developing countries within a decade required about \$7-8 billion annually. In comparative terms, this represented about four days' worth of global military spending; seven days worth of currency speculation in international markets; less than half of what North American parents spend on toys for their children each year; and less than the annual amount Europeans spend on computer games or mineral water.<sup>1</sup>

International support is obviously important in contributing towards the progressive realization of the Right to Education. Such support is however only supplementary to national action. It is the primary responsibility of national governments to take all such measures as would be necessary to ensure the progressive realization of the Right to Education. As was stated by the South African Constitutional Court in the landmark case of the *Government of South Africa and others Vs Irene Grootboom*<sup>2</sup> such measures must be comprehensive, coordinated, reasonably implemented, balanced, targeted and flexible. They must make appropriate provision for attention to those whose needs are most urgent, and whose ability to enjoy all rights most is at peril. Inhabitants of urban slums fall squarely into this definition.

It is a fallacy to regard human rights as neutral and value free. The principle of equality in human rights is not meant to merely afford everyone the same treatment; it is also to ensure that historical, structural and social inequities are appropriately addressed. Human rights are only meaningful when they necessarily address both the practical and strategic needs of those who are excluded and marginalized. A country's commitment to the progressive realization of the Right to Education can therefore be appraised by

assessing how its laws, policies, budgetary philosophy/allocation respond to the interests of vulnerable children.

### 2.3 The Right to Education

A number of international human rights instruments and declarations/resolutions explicitly recognize the Right to Education, key of which include: the Universal Declaration of Human Rights (UDHR); International Covenant on Economic, Social and Cultural Rights (ICESCR); International Covenant on Civil and Political Rights; and, the Convention on the Rights of the Child (CRC). As a member of the United Nations, Kenya is privy to universal aspirations for human rights contained in these instruments, and in particular has ratified both the ICESCR and the CRC.

The UDHR in Article 26 provides that “...everyone has the Right to Education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.” It further stipulates that “...education shall be directed to the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms.” On its part, the ICESCR contains the most detailed provision on the Right to Education. Specifically the ICESCR in Articles 13 stipulates, among others, that:

- a. Primary education shall be free, compulsory and available to all;
- b. Secondary education, including technical and vocational education, shall be made generally available and accessible to all by every appropriate means, in particular by the progressive introduction of free education.

Under Article 14, states not already securing compulsory primary education free of charge are required to work out and adopt a detailed plan of action for the progressive realization of compulsory and free primary education for all within two years. Accordingly, Kenya should have had this plan ready by 1978.<sup>1</sup> On its part, the CRC in Articles 28 and 29 reaffirms the provisions of articles 13 of the International Covenant on Economic, Social and Cultural Rights.

At a regional level, the African Charter on Human and Peoples Rights in Article 17 provides that “...every individual shall have the Right to Education.” The African Charter on the Rights and Welfare of the Child elaborates in relation to children, by stating that: “State parties...shall in accordance with their means and national conditions take appropriate measures... to assist parents and other persons responsible for the child and in case of need provide material assistance and support programs particularly with regard to education.”

Having accepted these binding obligations, Kenya has explicitly conceded that it is under a legal obligation to ensure the progressive realization of the full Right to Education.

### 2.4 The Nature of Obligations

It is important to consider what state obligation is, and demonstrate, in real terms, how it manifests itself. In defining the nature and extent of state obligations, we are trying to understand precisely what we can legally and practically expect from the states.

It is now well agreed that state obligations take three broad forms, namely the obligation to respect, the obligation to protect and the obligation to fulfill.

a. *The Obligation to Respect:*

Requires the state to refrain from any act that would result in the destruction of any right already being enjoyed by the people. In other words, what it must not do. If for example the state through its agents evicts people from a settlement, and in the process razes down classrooms or forces children to relocate, without adequate provisions, then this would constitute a classical example of a breach of the obligation to respect.

b. *The Obligation to Protect:*

Obliges the state to prevent non-state actors/third parties from interfering or disturbing the enjoyment of the Right to Education. The state has to ensure that children are not illegally prevented from attending school whether by their parents or anybody else.

c. *The Obligation to Fulfill:*

This requires that the state takes appropriate action to make sure that the Right to Education is attained. This does not necessarily mean that the state has to directly render the services but it means that the state must provide the necessary resources, adopt appropriate legal and policy measures (including action plans, programs and strategies) for the progressive realization of the Right to Education. This will include the provision of effective remedies in case of breach.

This typology is invaluable to monitoring state actions and adoption of corresponding advocacy. Obligations can broadly be categorized under two heads, namely *obligation of result and obligation of conduct*. Obligation of result refers to the attainment of a particular outcome through active implementation of laws, policies and programs. Most of the obligations of result are mainly programmatic statements that are politically important for the human right, but they are hardly helpful in determining violations of human rights.<sup>1</sup> The obligation of conduct means that the state has to undertake specific steps, for example, enact legislation that would not only guarantee the Right to Education but ensure that the previously excluded groups are given priority. This action should be specific.

The general obligation of states under the ICESCR is found in Article 2 which provides that:

*“...each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”*

This article has remained controversial, and is itself a poignant example of the furious contestation that accompanied the writing and final adoption of the Convention. The final product was obviously a political compromise. Many states have used this article as an alibi for doing nothing with regard to economic, social and cultural rights. Lack of adequate resources is a convenient excuse for inaction.

It is outside the scope of this analysis to make a detailed examination of the jurisprudential importance of article 2(1), but suffice it to say that the Committee on Economic and Social Rights has provided some useful insight on the issues raised by the article's wording. With regard to the issue of “maximum available resources,” the Committee has introduced the doctrine of minimum core obligations.<sup>1</sup> According to the Committee, a state:

*Where a significant number of individuals is deprived of essential foodstuff, of essential primary health care, or basic shelter and housing, or of the most basic forms of education is prima facie in violation of the Covenant. (emphasis added)*

In such a situation the onus is on the state to demonstrate that every effort has been made to use the resources at its disposal to satisfy the core minimum obligations. Does the “progressive achievement” element strip the right of any effectiveness and render them useless or superfluous? Again the Committee has had occasion to address this issue and this is what it had to say:

*[T]he fact that realization over time, or in other words progressively, is foreseen under the Covenant should not be misinterpreted as depriving the obligation of all meaningful content. It is on the one hand a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights. On the other hand the phrase must be read in the light of the overall objective, indeed the raison d'etre, of the Covenant, which is to establish clear obligations for States in respect of the full realization of the rights in question. It thus imposes an obligation to move as expeditiously and effectively as possible towards that goal.*

The point here is that states cannot be allowed to use this phrase as an escape hatch. To meet their obligations, states have to ensure the continuous improvement on the fulfillment of the right and no retrogression is to be allowed. We still have to address the following question: what exactly does the Right to Education entail?

## 2.5 The Normative Content of the Right to Education

The Committee on Economic, Social and Cultural Rights (CESCR) has over the years developed very authoritative interpretation and elaboration on the specific rights under the Covenant. These statements of interpretation are known as General Comments. With regard to the Right to Education, the Committee issued General Comment No.13 in which it provided some guidelines on the normative content of the Right to Education. Four elements have been identified as being critical to the state's obligations with respect to the Right to Education. These are:

Availability;  
Accessibility;  
Acceptability; and,  
Adaptability.

### **Availability**

Here, the requirement is that functional educational institutions and programs have to be available in sufficient quantity. These include buildings sufficiently protected from the elements, sanitation facilities for the different sexes, safe drinking water, trained teachers on domestically competitive salaries, teaching materials and security among other things.

This does not necessarily mean direct State provision of primary education. It can be implemented through the provision of appropriate subsidies to a diverse range of primary schools<sup>1</sup>. The state is not the only investor, but should be the investor of last resort and has to ensure that primary schools are available for all school-going children.<sup>2</sup>

### **Accessibility**

Existing educational institutions should be made accessible to all on the basis of equality and nondiscrimination. Accessibility is considered at two levels:

- a. *Physical Accessibility*: Educational institutions have to be within safe physical reach and accessible to all in a nondiscriminatory manner especially with regard to the vulnerable groups such as people with disabilities. Pupils should not walk several kilometers to access the nearest school.
- b. *Economic Accessibility*: Education has to be affordable to all including the poorest. It is irrelevant if the nearest school is a mere ten meters from your home and yet the fees payable is beyond your reach. The two accessibility tests must merge together for the obligation of accessibility to be met.

### **Acceptability**

The form and substance of education including curricula and teaching methods should be acceptable to both parents and pupils. Pupils and parents should not be subjected to any form of indoctrination. Any mandatory subject that may be inconsistent with a pupil's religious or other beliefs may have to be considered very carefully otherwise it may amount to violation of the Right to Education.

Moreover, schools should create an atmosphere that is friendly to the pupils. As remarked by one commentator, "it is imperative that education respects the right of the child to be curious, to ask questions and receive answers, to argue and disagree, to test and make mistakes, to know, to create and be spontaneous."

### **Adaptability**

There is need to have a system of education that is flexible and is able to respond to the changing needs of society while at the same time responding to the needs of students within their diverse social and cultural settings. In trying to achieve all this, *the best interests of the student shall be the primary consideration*. This is obviously a very challenging task as it poses quite a number of questions: who determines the needs of the society and how are such needs determined? What about the interests of the students? Are they ever consulted? Is it not true that the interests of the dominant actors/players in the sector invariably inform and determine the agenda? These are some

of the critical issues that cannot be answered by a textual analysis of the international instruments or the national laws. It demands an examination of the underlying dynamics propelling the political economy of education both at the global and national levels.

## 2.6 The Right to Education in Kenya

### 2.6.1 The Constitution of Kenya

Forty nine year old Mr. Saidi Ngira, a peasant from Takaungu, Kilifi District of Kenya was jailed for two months in June 2007, for failing to take care and maintain his son who was supposed to be in Standard six at the local primary school. Mr. Ngira's problems started when his son was found working in a quarry.<sup>1</sup> His jail sentence was hailed by many child rights activists as an apt example of how the Government is complying with its obligation to protect the Right to Education. The legal basis of the case is the Children's Act 2001. One may of course question the jurisprudential rationale for fining or imprisoning the father but the fact is that this is a classical example of how effective domestic legislation can be used to enforce the Right to Education. Whether it furthers the interest of the child to jail the father for failing to provide proper maintenance is also a matter of debate. Moreover, one would obviously be interested in inquiring as to the whether the same enthusiasm would be applied in penalizing the state when it violates the right, for instance, when it destroys schools through evictions.

Is the domestic scene as rosy as the case of Mr. Ngira may seem to indicate? Unfortunately the answer is No. In its first periodic report to the Economic and Social Rights Committee<sup>1</sup> the Government admits that "[t]he current Constitution of Kenya makes no provision for the Right to Education." Instead, the Government pinned its hopes on the rejected Draft Constitution when it stated that<sup>2</sup> [t]he Draft Constitution would have corrected this position as Section 62 provided that very person has the Right to Education and obligated the state to implement the right of very child to free and compulsory education." On its part, the Committee on the Rights of the Child, in its Concluding Observations to Kenya's second periodic report on the rights of the child underscored the need for the harmonization of the laws dealing with the welfare of the children.<sup>3</sup>

The absence of constitutional guarantees to the Right to Education is obviously a great set back in the efforts to realize the Right to Education in Kenya. Constitutional provisions by themselves would not transform the right into an immediate reality, but are a formidable framework for monitoring the performance and holding the state accountable. It is generally acknowledged that the Constitution is an important, nay a *sine qua non*, for the effective realization of human rights.

An example of how legislation can be used to promote the realization of the Right to Education is the case of the *Campaign for Fiscal equity Vs Sate of New York et al*, which centered on the method of funding education in the State of New York.<sup>4</sup> The argument was that the funding system discriminated against the minority public school children. The Education Articles of the New York Constitution provided that the state shall offer all children the opportunity for a sound education. In one of its findings, the court held that the State school funding system had an adverse and disparate impact on minority public school children and that this disparate impact was not adequately justified. The Court proceeded to order the State to devise and implement necessary reform of the public financing system to remedy the situation.

When the State failed to implement the necessary reforms, the Court proceeded to propose its own solution. It ordered an additional \$5.6b in annual operating expenses to be provided within four years. It also ordered that \$9.2 billion in additional funding for capital projects be provided over the next five years. Leaving out the details which may only be of interest to practicing lawyers, the case is significant in illustrating the following points:

- a. Human rights provisions in the Constitution or any other statute can be legally enforced, and can contribute towards the progressive realization of the Right to Education especially with regard to the vulnerable and marginalized groups;
- b. That the judicial system can reorganize resource allocation to ensure the effective implementation of its orders.

The second point is of considerable interest as more jurisprudence is emerging especially from India, USA and South Africa where courts are increasingly “defying” the traditional separation of power orthodoxy where matters of resource allocation have been seen as the exclusive domain of the legislature. Courts are sending a clear message that where human rights are at stake they will not shy away from “encroaching” into the territory of the legislature. Would it, for example, be possible for the Courts in Kenya to direct the Government to set aside KShs.10b for the construction or equipping of schools in the urban slums?

## 2.6.2 The Laws of Kenya

There are about fourteen statutes that deal with educational matters in Kenya. These include the Education Act and the Children’s Act and others creating various universities. Most of the statutes deal more with the creation of institutions than with the substantive issues regarding the realization of the Right to Education.

The Education Act requires the Minister of Education to advance the education of Kenyans and to promote the progressive development of institutions devoted to the promotion of education. It also requires the Minister to formulate a development plan for education. The rest of the Act is devoted mainly to issues of the management of schools and related matters. There are no rights or clear obligations created. The Act is couched in generic language and is ineffective in terms of promoting the progressive realization of the Right to Education. Its repeal is long over due a fact that the Government has acknowledged. The enactment of the Children’s Act in 2001 was perhaps the boldest attempt by the Government to domesticate an international human rights instrument to date.<sup>1</sup> The Act provides for the right to free and compulsory primary education and the right to health care. Section 7 provides that “*every child shall be entitled to education the provision of which shall be the responsibility of the Government and parents*” and that, “[e]very child shall be entitled to free primary education which shall be compulsory in accordance with Article 28 of the Convention on the Rights of the Child.” The Act also imposes sanctions upon any person who violates this right, with a term of imprisonment not exceeding 12 months or a fine not exceeding fifty thousand shillings or both such fine and imprisonment. This is what snared Mr. Ngira in the case described above.

The Children’s Act is currently the only legislation specifically providing for the human Right to Education in Kenya. Nevertheless, its connection with the government’s decision to introduce free primary education in 2003 is not obvious. The free education policy is obviously a gigantic step towards the progressive realization of the Right to Education. However, several questions need to be posed with respect to this free education policy: is the government applying to the maximum its available resources towards progressively achieving the full realization of the Right to Education? In very simple terms, is education getting the priority it deserves? These are not easy questions since there are competing demands especially with regard to other rights.

Percentage-wise, there has been a drop in the education budget from 21 percent of the national budget in 2006/07 to 17 percent in 2007/2008.<sup>3</sup> Examining the budget is important as the budget translates development or action plans into programs of action. In looking at the budget, a number of issues call for attention:

- a. Does the expenditure mix, geographical and spending level patterns indicate any attempt to address the structural inequality in terms of accessibility and availability of primary education? Is there any special attention being paid to the provision of educational facilities/teachers in the slums? It is a fundamental requirement that in order to comply with the obligation of progressive realization of the Right to Education, special attention must be paid to those in urgent and most need. Residents of urban slums are part of those in most need. How much of the budgetary allocation under the ministry of education has gone directly to address their education needs? Very simply how many new schools, for instance, were constructed in Kibera or Mukuru or are being constructed?
- b. The National Action Plan on Education for All (2003-2015) is one of the key components in the education sector and is in fact a key requirement in the progressive realization matrix. The Plan contains a number of benchmarks. To what extent has the appropriated funds been used to target the stated benchmarks?
- c. How much of the budgetary allocation is actually appropriated, and for that which is appropriated, how much is used for the purpose for which it was allocated? What is the quality of the services or goods procured? What action is being taken against those who are misappropriating or simply stealing the funds?

We have no legislative answer to these questions and yet they are very vital if we are to justify the continued massive budgetary allocation for primary education. If there are no flexible, comprehensive, targeted



policies, plans and strategies that recognize and give priority to victims of structural inequality/discrimination and exclusion, then it does not matter how many billions of shillings are allocated to primary education. We must begin to see changes in the educational facilities and dropout patterns in such slum areas as Kibera, Manyatta, and Mukuru. Currently there is no effective legal remedy to assist in challenging any incident of discriminative allocation of resources. Allocation is still a political decision. Yet we saw how the existence of an effective remedy could make a difference in the case of *Campaign for Fiscal Equity* case above.

### 2.6.3 Legislative Reforms and Emerging issues

The latest legislative initiative is the Draft Bill on Education, Training and Research. A few comments about it will suffice. The Draft is clearly an improvement on the existing laws. In the first place, it explicitly provides for the Right to Education both in the general principles and in the main body. It further provides that primary education and training shall be free and places the responsibility on the government to provide the infrastructure and the regulatory regime.

The emphasis put on non-discrimination is positive as it can provide a legal foundation for challenging the disparity in opportunities and facilities with regard to education in urban slums.

The Draft however, as is typical with most laws, assumes a sense of neutrality and even where it talks about non-discrimination it fails to recognize the consequences and victims of the historical and structural/social inequality that had characterized the educational sector. Where a substantial percentage of the population has hitherto been denied equal access to educational opportunities (as in the case of urban slums) the reaffirmation of the principle of non discrimination is important. It is equally important that the law very clearly sets out specific measures to be undertaken to redress these faults.

The Act does not impose unequivocal duty on the State. Indeed Section 13 talks of the political responsibility of the Minister. It is not quite clear however, whether political responsibility has the same weight as legal responsibility. Educational institutions seem to be the primary duty bearers under the Bill. It is as if the State is a bystander who only comes in to penalize the institutions. This is not right. The State, through the Government must assume its primary responsibility.

If we contrast this to the Right to Education Bill (2005) of India, the differences in approach are stark. The Indian Bill provides that every child shall have a right to be admitted to a neighborhood school.<sup>2</sup> It then very unambiguously provides that: “It shall be responsibility of the State: i) *To ensure the availability of a neighborhood school for every child within a period of 3 years after the commencement of this Act... Provided that in case of non-availability of a neighborhood school the state shall provide free transportation arrangements to the nearest school or provide free residential schools/facilities.*”

This provision gives concrete effect to the non-discrimination clause and it is suggested that any new legislation in Kenya must surely provide some more specific measures on how the Government intends to deal with the groups and areas such as urban slums. The current legal regime lacks adequate provisions to address issues of availability and accessibility which are fundamental for the progressive realization of the Right to Education in the urban slums.

The Draft Bill on Education, Training and Research, for instance, just makes some passing reference to “informal settlements.”

### 2.7 Policy Concerns

At this stage, a few comments on two policy documents that have some relevance to the state obligation of progressive realization of the Right to Education are apt. First is the National Action Plan on Education for All 2003-2015. Such a Plan is of course a very important ingredient in any effort to realize the Right to Education. The Action Plan has a very detailed matrix that should be used very effectively to hold the Government accountable. Is it living up to the benchmarks set out therein? This requires a more detailed inquiry.

The second policy document is the Education Sector Support Program 2005-2010. What is interesting about this Program is that it starts from the premise that the resources available are scarce. This is a typical alibi that many states use to abdicate from discharging their obligations. The Plan should have provided a framework for the maximum use of the available resources rather starting from the point of view that the resources are scarce.<sup>1</sup> Where the starting point is scarcity of resources, then whatever the state does is supposed to be taken with enthusiastic gratitude; whereas when we talk about “to the maximum of its

available resources”, the burden of proof is shifted and it is up to the state to demonstrate that the resources are not available.

It is also very interesting that the Program identifies three key documents as informing its content, namely: the Economic Recovery Strategy Paper, The Sessional Paper No.1, 2005, The Millennium Development Goals and the Education for All (the Dakar Declaration). For some reason the International Covenant on Economic, Social and Cultural Rights (arguably the most important international document on the Right to Education) is not mentioned. Was this an inadvertent oversight? We hope so. The program mentions the need for support to non-formal schools in slums and mobile schools in Arid and Semi Arid Lands.

## 2.8 Conclusion

International, regional and national legal instruments are of course very important in the quest for the Right to Education, but it must always be remembered that in themselves they will not achieve much. The key lies in recognizing that policy options and actions are mainly a function of constant shifts in the contestation of power amongst the various actors. Currently, the budget for primary education runs into billions of shillings and quite a good percentage goes directly to schools. How much of this is being used for the purpose for which they were intended? Who is deciding on the expenditure? Who is monitoring? How is the overall budget of the ministry arrived at? Is the situation in the slum understood, and adequately presented at the policy table? After the budget, are the people ever told about how much, if any, has been allocated for educational purposes in their respective areas? When it comes to policy and the legislation, is the issue of education in the slums on the agenda? These are questions that the law will not answer. The best way to domesticate human rights is to make it part of people’s lives, part of their organizing and part of their daily struggles.

## **Section Three: Education Policy and the Problem of Primary Education in Slums**

### **Education Policy and the Problem of Primary Education in Slums**

#### **3.0 Introduction**

This section reviews the success and failures in the development and implementation of education policies aimed at expanding universal primary education (UPE) for all children in Kenya. It identifies the salient issues, outlining the inequality between education in slum and non-slum locations, as well as the dysfunction created by absence of a coherent framework for partnership in delivery of education service between state and non-state actors. It highlights some of the issues at the root of complications that have arisen since the inception of free primary education in 2003.

#### **3.1 Past Experience with Free Primary Education**

In 1974 the Kenyan government introduced free primary education only to discard it in the 1980s under pressure to adopt the World Bank/IMF's Structural Adjustment Programs (SAPs). Parents were now required to make financial contributions to their children's education through a cost-sharing program, and subsequently, primary school enrolment rates dropped from 97 percent in 1989 to 88.67 percent in 2002. Since the re-introduction of FPE in 2003, primary school enrolment rates have shot up dramatically and an estimated 2.4 million children have been enrolled in primary school.<sup>2</sup> Today, the government is spending Kshs. 1,020 per pupil per annum.<sup>3</sup> Of this amount, Kshs. 650 goes towards teaching and learning materials while the rest finances school running costs.

Since the re-introduction of free primary education FPE in 2003, policy-making has focused on increasing enrolment rates in primary schools and improving the quality of education. More specifically, policy makers have recommended expanding and streamlining the infrastructure for primary education; reducing costs; encouraging parents to enroll their children in schools; and strengthening partnerships between key stakeholders in the education sector among other measures. However, four years after the introduction of FPE, the Kenya government programs to expand quality FPE to all children appear limited. The Economic Recovery Strategy for Wealth and Employment Creation (ERS) of 2003 and the Kenya Poverty Reduction Strategy Paper (PRSP) of 2004 affirm that education is a key determinant of incomes and poverty alleviation. It is instructive that these policy documents partly draw their inspiration from Goal II of the UN Millennium Development Goals, which aims to expand universal primary education in all parts of the world by the year 2015.

While the FREE PRIMARY EDUCATION program is a commendable initiative, the reach and quality of education is complicated by the unavailability of physical facilities, school furniture, equipment, overcrowding and insufficient teaching staff. Even though 2.4 million children have joined primary school, 23 percent, or about 1.6 million children, are not in school. In fact, Oxfam notes that \$137 million would be required to ensure that all these children joined school by 2015. Of these children, the most vulnerable are those who live in Kenya's slums where no public schools have been built for the past 15 years. A combination of factors including poverty, child labor, displacement, and lack of schools and teachers contributed to the especially low enrolment rate and poor quality of primary education in urban slums. For instance, soon after introduction of FREE PRIMARY EDUCATION, out of 5, 000 newly enrolled pupils in Nairobi only 500 children came from the populous Mukuru slum. A survey conducted by DARAJA Civic Initiatives Forum in 2006 in Kibera and Korogocho slums indicates that up 48 percent of school age children are out of school in the slums. Indeed, as the Nairobi City Council notes, 45 percent of children in Nairobi are not enrolled in school at all.

#### **3.2 Renewed Policy Commitment to FPE 2003-2006**

The 2003 National Conference on Education held in November 2003 was seen as a turning point for education and training in the country. Its deliberations led to the preparation of the Sessional Paper No. 1 of 2005 on a Policy Framework for Education, Training and Research. The paper recommends policies and

strategies that will enable Kenya to meet the challenges of education, training and research in the 21<sup>st</sup> century by emphasizing quality assurance, governance and management and financing in all education sub-sectors. It envisions an educational sector guided by the understanding that education is vital for social cohesion and human and economic development. Consequently, education must necessarily impart life-skills and be a life-long process.

Implementing this Sessional Paper requires the streamlining of the budgetary and programming needs for the sector. Currently, about 70 percent of the education budget is spent on administrative costs.<sup>1</sup> This problem is being partly addressed by the implementation of the Kenya Education Sector Support Program (KESSP).<sup>2</sup> Under the program, education stakeholders are expected to align competing objectives, procedures, approaches and financing priorities. Within it are 23 different investment programs grouped around six thematic areas of financing, access, sector management, quality, retention, secondary, tertiary and higher education. The program's efficiency and effectiveness is enhanced further by implementation through the Medium Term Expenditure Framework (MTEF).

There is also the National Action Plan on Education for All (2003-2015) which the Kenyan government designed to coordinate all its policy initiatives and implementation strategies for the education sector.<sup>4</sup> This plan is in line with the government's commitments to the Dakar Framework for Education for All (EFA) which stresses that education is a human right that is indispensable to poverty eradication and sustainable development.

### 3.3 Emerging Policy Challenges after 2003

#### 3.3.1 Formal versus non-formal: the paradox of formality and access to public funding

In the 1990s, the Government of Kenya set up the Non-Formal Education (NFE) Desk at the Ministry of Education (MOE), in an attempt to improve access, equity, relevance and quality of primary education for the vulnerable (including as those living in urban slums). This policy initiative was supported by the 1999 Report of the Commission of Inquiry into the Education System in Kenya, which called for a new approach to the delivery, management and financing of education to ensure improved access, equity, relevance and quality for children living in slums and other contexts of marginalization.

Since 2000, subsequent policy documents have continued to highlight the challenges of accessing quality education in urban slums and spelling out various strategies to address them. At the National Conference on Education and Training held in 2003, stakeholders made a commitment to improve the NFE. Extensive recommendations were made to integrate NFE into the education system primarily through a Non-Formal Education Commission created by an Act of Parliament. Such legislation would guide issues of registration, structure, financing, linkages with the formal education system, recruitment of qualified teachers, inspection and quality assurance and curriculum content for non-formal schools (NFSs). However, to date, none of these recommendations have been implemented.

There is a continuing debate in policy circles on the relative merits of formal and non-formal education. Popularly, the term formal education refers to the structured educational system provided by the State for children. In most countries, the formal education system is state-supported and state-operated. In some countries, like Kenya, the state allows and certifies private systems which provide a comparable education as part of the formal system.

In contrast, non-formal education refers to education which takes place outside of the formally organized school (see Annex 2). Typically, the term or phrase "non-formal education" is used to refer to adult literacy and continuing education for adults. However, in most cases education is non-formal because:

- it is not compulsory
- it does not lead to a formal certification, and
- it may or may not be state-supported.

NFE is any organized, systematic and quality education and training programs, outside formal school system, that are consciously aimed at meeting specific learning needs of, youth and adults.

*-Government of Kenya and UNICEF Non-formal Education Directory. November, 2006.*

### 3.3.2 Conflict of operational definitions, concepts and legal status of schools

In Kenya the debate between the merits of formal versus non-formal education has taken a unique twist. The emergence of public funding in 2003 initiated a divide that has compounded the distinction between formal and non-formal education, and the relevance of each to promoting the Right to Education. The key issue seems to be whereas public funding has almost exclusively been made available through the state owned public school system, the same is not available through non-state providers who nonetheless provide a substantial amount of primary education services in urban slums. These providers can seldom afford the requirements for registration by the Ministry of Education, and have taken the recourse to register with less stringent government departments. As such, these schools cannot be described as private, and despite offering services akin to formal schools, are in fact commonly referred to as non-formal schools.

Contrary to popular usage, the term 'non-formal' here refers to a status relative to the legal and policy requirements for registration by the Ministry of Education, and not the objectives or methodology of the school. Therefore, despite offering services akin to formal schools, providers in this category are referred to as non-formal, and are in most instances disentitled of legal benefits including access to public funding.

Our school survives on donations from charity groups. It is unknown to the government. As teachers we are greatly discouraged and distracted by the low wage of Kshs. 1, 500 which we take home each month. It is a mere token and that is why we call it an honorarium.

*-Primary school teacher in a Non-formal school in korogocho*

### 3.3.3 Formal Schools

In the more affluent parts of the city, non-state sponsored schools are referred to as private schools, a definition that also reflects a legal status of registration with the ministry of education. Private school registration is based on regulatory benchmarks intended to ensure quality delivery of education by non-state providers.

These terms and conditions are relatively attainable by capital endowed entrepreneurs and organizations, and typically private schools are commercial enterprises charging fees well above the facility of the average Kenyan household. The educational facilities and resources in private schools tend to be relatively abundant and well developed, thus assuring quality education. For economically endowed households these schools are the obvious preference, with the additional option of sending their children to state sponsored schools which are numerous and well developed in non-slum areas.

### 3.3.4 ...so called non-formal schools

In stark contrast, the situation in slums is different. Local authorities have for decades argued that slums are informal and unplanned, and as such cannot be included in planning and provision of basic infrastructure and services. This fact is supported by the acute shortage of essential social infrastructure and services that is typical of Nairobi slums. Owing to low economic potential, private enterprise is low and there are no private schools of the kind found in the more affluent city suburbs. In fact most of the primary schools found in slums can neither be termed private nor public. These schools formed by individuals or community based organizations. Most have a commercial dimension that seeks to provide livelihoods for the numerous unemployed teachers in slums. It is these schools that have acquired the label of non-formal schools. These so called non-formal schools are ill equipped to meet stringent requirements for registration as private schools<sup>1</sup>, therefore they exist in a regulatory vacuum.

Other than individuals and community based organizations, development, humanitarian and church based institutions have initiated welfare programmes that include provision of primary education in slums. These are perhaps the best option available in the slums, as the schools utilize donations and local resources to provide education to needy children. Although such organizations charge a nominal amount of fees, cost of uniform, learning materials and other ad hoc expenses have to be footed by households.

Our schools are termed as "informal" because classrooms are not spacious, we do not have enough books and there are no playgrounds to speak of.

*-Non-formal School Principal korogocho*

Some education sector stakeholders have proposed that NFSs have no place in the provision of educational services. In turn, they have suggested that NFSs ought to be outlawed to allow FSs, in this case Nairobi City Council schools, to become the primary sites for primary education. Despite the bias against NFSs, parents, educators and pupils alike attest to the important role these institutions play in educating vulnerable children who live and learn in slums. NFSs cannot be simply wished away. Rather, they ought to be supported to surmount the challenges they face.

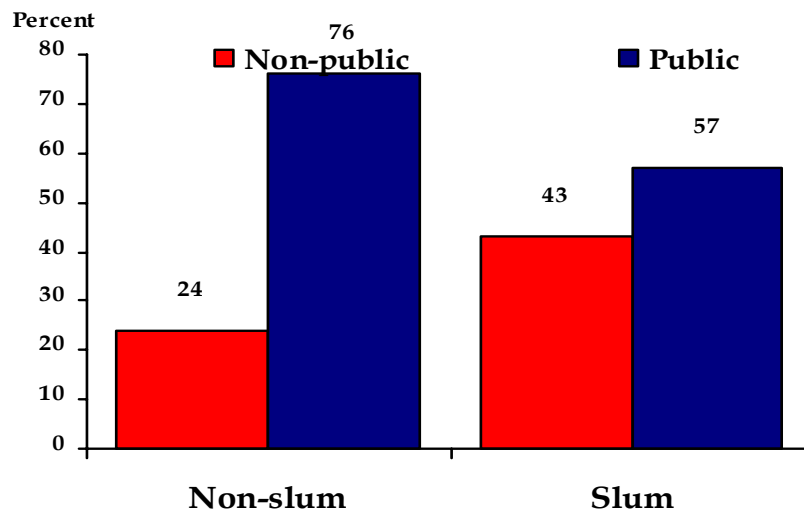
My school does not have its own sports facilities. Therefore, we have no option but to use the field of a neighboring school known as “Our Lady”.  
*-12 year old girl in non-formal school, student in Non-formal School*

**3.3.5 Previous efforts at public funding of primary education through non-state providers in slums**

The Ministry of Education undertook a pilot funding exercise involving 59 NFSs in 2004 in Nairobi to test the viability of public funding for non-formal schools. As a result in 2005, 166 NFSs were brought on board for the initial disbursement of FPE grants. The programme failed and in 2006 the exercise stalled.

*The amount involved in 2004 [in the pilot] was about 5.6 million shillings, then in 2005, we were given a grant by the world bank of 43 million shillings which we disbursed to 166 centers to cater for instructional materials because during the pilot, it was discovered that most schools did not own land on which they stood. Some leased the premises and we could give money for renovating buildings not owned by the schools. A total of 29000 children benefited under this initiative in Nairobi and we are going to replicate this in the municipalities. We have already received the data [from these municipalities] and we have done the schedules and are waiting to disburse. This time we have been given about 40 million and we will be disbursing about 7 million to the municipalities. (Education official IDI\_5, October 27, 2006)*

**DISTRIBUTION OF CHILDREN IN FORMAL AND NON-FORMAL SCHOOLS IN SLUM AND NON-SLUM AREAS, 2005**



**Graph 1**



Low cost private school in Korogocho *left* and A Nairobi City Council Primary School *Right*  
*Photos courtesy of African Population and Health Research Centre and Concern worldwide*



A Classroom in a Church sponsored school in Kibera Slum *left* A Classroom in a privately owned schools *Right*  
*Photos courtesy of African Population and Health Research Centre*

Despite the progress, the bold initiative encountered major hitches owing to the fact that most of the non-formal schools operated outside the regulatory frameworks. A good number of schools were unregistered, and of those registered, few were registered within the regulatory control of the ministry of education. Owing to low economic potential, and the absence of capital, most non-formal providers circumvented requirements for registering private schools by choosing to register as legal entities within other departments of government. The resulting discordance provided a weak regulatory framework and ample opportunity for fraud and misappropriation by unscrupulous entrepreneurs. The management of public funds also demanded standards of reporting and accountability previously unknown to providers. All these factors contributed to the abrupt but justified review of the intervention.

Some Community Based Organisation leaders in this Korogocho FGD allude to the possibility of corruption and under-hand dealings in clearing schools for FREE PRIMARY EDUCATION grants. This points to lack of clear structures and conditions which a policy would probably help fix. This process would need to be as transparent as possible.

R3:I think here in Korogocho, there are some schools that did benefit but here at [Name of school withheld], we have not and we are following it up to know what is required [...]

R6:[...] corruption, you had to have a godfather for your school to be given a grant [...]

R7:As we are talking, what I know is that the programme of grants has been suspended by the permanent secretary due to some irregularities [...] I don't know for how long.  
(Korogocho CBO Leaders FGD\_1, October 26, 2006)

### 3.3.6 The aftermath of pilot financing of non-state providers in slums and the lessons for capacity building

Lessons learned from the pilot emphasized the need for a unified and coherent regulatory structure. It also revealed the existence of unscrupulous providers, a matter that caused due apprehension.

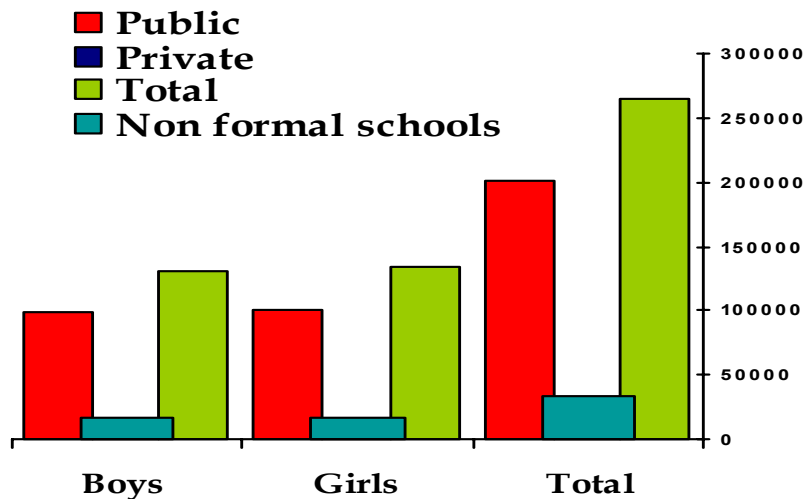
*There are about 411 non-formal schools and centers in our database for Nairobi [...] For a school to get to our database and benefit from FREE PRIMARY EDUCATION support, it should bring a registration certificate from a government department, be offering the 8-4-4 curriculum, have a bank account with three signatories and the bank should have an Memorandum of understanding with the Government, have a management committee in place and an instructional materials selection committee that will select the teaching aids needed by the schools [...] once they meet these conditions, we go to the field to verify the information and when satisfied we add them to our database and they begin benefiting.  
(Education official IDI\_5, October 27, 2006)*

The government also instituted mandatory training for head teachers in non-formal schools on management of grants, although its effectiveness has been criticized for various reasons. On one hand, some schools that have benefited did not have their head teachers attend the briefing. On the other, some schools whose head teachers attended did not benefit. Also, some schools have since changed head teachers, and thus the need for fresh training. The following statement reveals some of the apprehensions that have been revealed.

*... there is someone who came to me and asked... he had received the fund but knew nothing...he did not attend the meeting [for briefing head teachers on FREE PRIMARY EDUCATION grants] [...] so you see, even those who did not attend the meeting received and yet some who attended did not [...] but the training was too short to capture anything [...] there is a school that withdrew 47,000 shillings to pay teachers expecting to collect school fees then deposit back the 47000 [...] when they went to deposit this money, they were told by the bank that they cannot deposit money into this account as it is only the government that is supposed to remit money through it [...] this brought accounting problems.*

- (Korogocho head teachers FGD\_1, October 26, 2007)

Primary schools Enrollment in Nairobi - Source Nairobi City Council, 2007.



Graph 2



### 3.4 Conclusion

Few examples provide a more vivid account of how policy can have a profound effect in slums than the issue of public funding of non-state providers.

Although formal registration of schools is very important, the use of the term “non-formal” to denote unregistered schools should not be allowed to undermine the importance of conventional Non-Formal Education NFE, it is important to appreciate that non-formal education is essential in slums, to the extent that it can provide out of school children a chance to reintegrate into the mainstream.

Although advocates of formal education will emphasize the importance of formality, and the possibilities that registration and accreditation of schools brings to the efficient use of public funding, it can do little for the children previously excluded from school. It is impractical to imagine that slum communities will fairly compete with non-slum communities for opportunities in public schools outside the slum, and given the fact that there are very few public schools in slums, it is imprudent to disregard the important role of non-state providers.

Perhaps the most persuasive argument in these circumstances is one that is complementary to both approaches, and builds upon the demand for coherent regulatory frameworks that can adequately harness the potential synergies among primary education stakeholders in slums, an approach that quenches the demand for funds, and instead focuses on the objectives and quality of primary education.

## **Section Four: the Right to Education in Nairobi's slums: trends and indicators**

### **The Right to Education in Nairobi's Slums: Primary Education Trends and Indicators**

#### **4.1 Introduction**

This section provides a quantitative examination of availability and access to primary education in two urban slum settlements in Nairobi. Part one of the section ties the local and international developments in the quest for expansion of universal primary education to the context of rapid urbanization in the developing world. In Part two, key indicators related to primary education in Nairobi are evaluated by comparing and contrasting their measures in slums and non-slum areas since the re-introduction of Free Primary Education in 2003.

#### **4.2 Urban Slums and Free primary Education in Kenya**

In January 2003, the newly elected National Rainbow Coalition (NARC) government of President Mwai Kibaki introduced a national FPE programme to benefit all children in Kenya. Payment of school fees was abolished and all public primary schools were prohibited from expelling children who lacked school uniforms.<sup>1</sup> The programme was warmly endorsed by international development partners who quickly provided financial support to the Government of Kenya (GOK). The World Bank, Britain's Department for International Development (DFID), Swedish International Development Agency (SIDA), Organization of Petroleum Exporting Countries (OPEC) and United Nations Children Fund (UNICEF) are among some of the international organizations which contributed generously to the new programme.

While a majority of Kenyan children have benefited from the programme, a provisional assessment of its immediate impact concluded that a substantial proportion have not. For instance, while Nyanza Province registered a gross primary school enrolment rate of 120 percent, Nairobi registered only 62 percent while the North Eastern Province trailed in at 25 percent.<sup>2</sup> At the time, the relatively low enrolment rate for Nairobi was understood as a reflection of the unique vulnerability of children living in slums where 60 percent of Nairobi's population resides.<sup>3</sup> Besides urban poverty, this situation has raised questions about the existence of factors uniquely associated with life in slums, which may hinder children from enrolling and remaining in the FPE programme. In neighboring Uganda, relatively low enrolment rates have been recorded for

Kampala District, the country's capital city, despite the existence of a national FPE programme.<sup>4</sup> Extra financial costs for items such as school uniforms, insecurity, negative attitudes held by parents, early pregnancies and child labor have been identified as key barriers to higher enrolment rates in public primary schools in Uganda.

#### **4.3 FPE, the MDGs and Growing Urbanization in Sub-Saharan Africa**

The NARC government partly adopted the FPE policy as a component of its declared intention to achieve the Millennium Development Goals (MDGs), which were generated from the United Nations (UN) 2000 Millennium Declaration. Goal II of the MDGs package envisions the achievement of universal primary education (UPE) for all children in all parts of the world by 2015. Its framers agree unequivocally that education is a human right which must be fulfilled for over 115 million children of primary school age who are unable to attend school in sub-Saharan Africa, Southern Asia and parts of Latin America and the Caribbean.<sup>1</sup> To realize universal primary education (UPE) there is need to increase enrolment of children in primary schools while ensuring that they remain in school and receive quality education. According to the UN, this challenge is especially difficult to overcome in sub-Saharan Africa where most children live in rural areas characterized by low quality educational facilities.

Kenya's FPE programme is intended to reach every child of primary school age. Therefore, the same level of attention given to the education of children living in rural areas must be observed for their counterparts in

urban slums. The fact that a large proportion of children who live in slums are not yet benefiting from the FPE programme raises the possibility that Kenya may not achieve MDG II where it fails to design and implement measures to address the plight of these particularly vulnerable children. The urgency for remedial measures aimed at expanding the reach of the FPE programme to these children is underscored by the reality that Africa is one of the most rapidly urbanizing regions of the world. The urban population was 15 percent in 1950, 32 percent in 1990 and projections show this rate to stand at 54 percent by 2030.

Rapid population growth and the corresponding inability of local economies to generate enough jobs and provide basic services results in ever-increasing proportions of new urban inhabitants. These people are pushed into life in urban slums which are characterized by difficult livelihoods, poor health and environmental conditions. Poor children living in slums are especially vulnerable, exhibiting poorer health and nutrition and lower levels of access to quality primary education, in contrast to children from wealthier urban households and even rural areas.<sup>1</sup>

#### 4.4: Indicators of quality primary education in slums

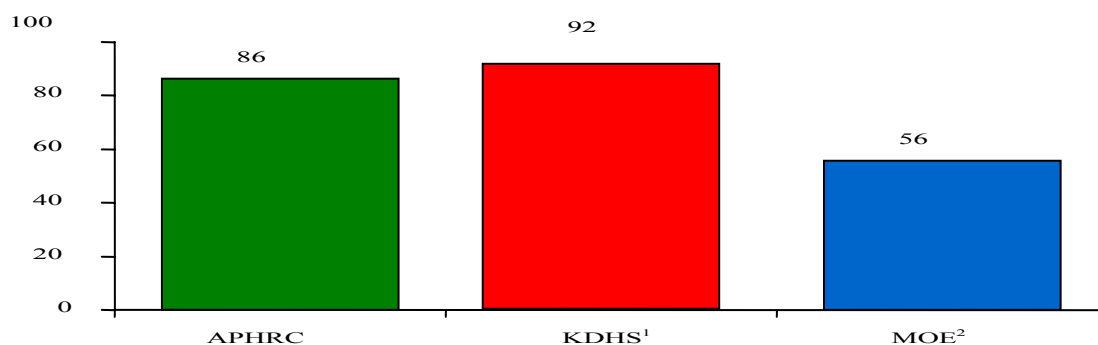
This section evaluates access to quality primary education by presenting key indicators, including primary school enrolment, retention levels and the quality of education in Nairobi’s slums, and contrasting these to similar indicators in non-slum areas in the city. It concludes by arguing that existing inequalities between slum and non-slum education can be ameliorated by improving the means and type of data collected. The ability of the Education Management Information Systems to present accurate disaggregated data between slum and non slum indicators can significantly contribute to better planning and subsequent provision of education services in slums.

##### 4.4.1 Enrolments – in support of public funding of non-state schools

School enrolment rates for primary school age children living in slums are considered to be lower than those recorded in rural communities and relatively wealthier non-slum parts of urban areas. In fact, an initial assessment of the FPE programme carried out soon after it was launched confirmed that Nairobi Province’s 62 percent enrolment rate was the second lowest rate in the country.<sup>1</sup> Then again, this figure represents enrolment rates in public primary schools, excluding children in non-state schools.

**Graph 3** presents net enrolment of primary school age children in Nairobi using three data systems which include the Kenya Demographic and Health Survey (KDHS), the Education Management Information System (EMIS) and the Demographic Surveillance System (DSS). The KDHS is a national representative survey which is conducted every five years while EMIS is facility-based since it relies on enrolment data submitted by individual schools. DSS data is collected by the Africa Population and Health Research Council (APHRC) in two slums, Korogocho and Viwandani in Nairobi, with an extension of a similar data collection approach in Harambee and Jericho, which are non-slum areas. According to the KDHS, enrolment in Nairobi stands at 92 percent while computation through EMIS shows that the figure is 56 percent. DSS data shows the enrolment rate to be 86 percent

**Primary School net Enrollment for Nairobi using KDHS, EMIS & DSS**

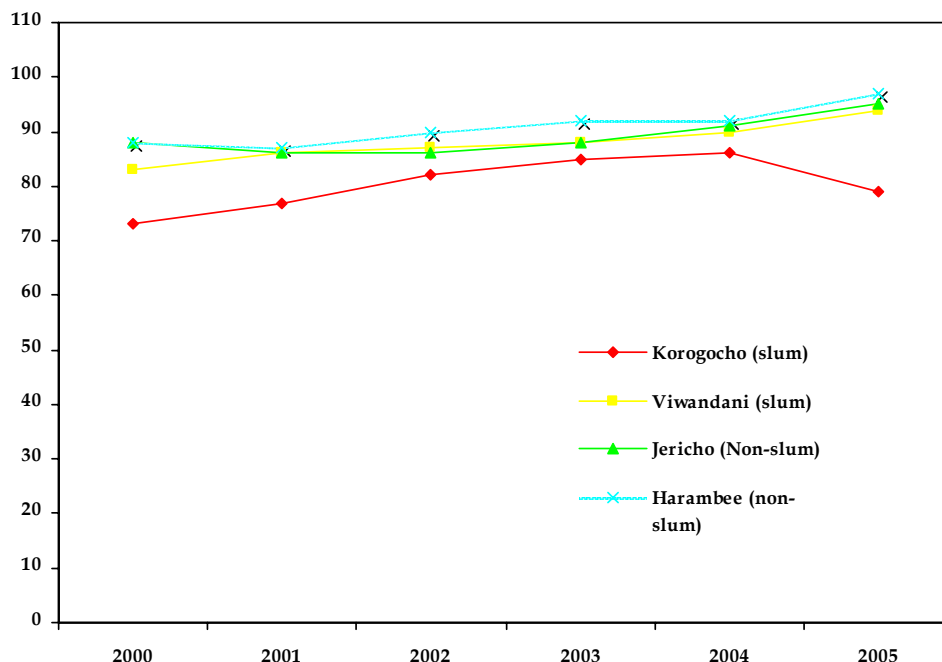


**Graph 3**

To understand the variance, it is important to note that when the computation of the Net Enrolment Rate includes both public and non-state primary schools in Nairobi, it is comparable to enrolment in non-slum areas of Nairobi. However, when non-state schools are excluded, Net Enrolment Rate is actually underestimated. Facility based systems, such as the EMIS (MOE), have a tendency to under-report enrolment owing to an inherent dependency on public facilities, and inability to comprehensively report on non-state schools. This underreporting contributes to poor planning data in slums.

Graph 4 presents primary school net enrolment estimates in four communities under surveillance for which data is available for the period 2000-5. Primary School net enrolment for the years 2000-5 has been consistently higher than 70 percent, and in most cases, with the exception of Korogocho, above 80 percent. On the basis of Graph 3, it is observed that net enrolment has been consistently increasing in all four communities irrespective of their status as slums or non-slum areas. Consequently, it would appear that the present emphasis on increasing school enrolment for children in slums is imprudent; enrolment may actually be comparable to non-slum areas provided data is inclusive of both State and Non-State school. In fact slum children stand to benefit more from programmes that appreciate the existence, and contribution, of non-state schools to overall Net Enrolment. Therefore emphasis needs to shift more towards integrating these schools into the public system to allow more children access FPE.

NET ENROLMENT RATIO BY SITE %



Graph 4

**4.4.2 Retention and progression – a case for free secondary education and affirmative action in slums**

Primary school progression among children in slums and non-slum areas in Nairobi is not a major challenge. Graph 5 shows the rate of progression of Standard One pupils to Standard Six through the period 2000-5. Out of every 10 children who were in Standard One in 2000, nine progressed on to Standard Six in non-slum areas in Nairobi. Within the same period, 6.7 out of every 10 children from slums who were in Standard One in 2000, or about three-quarters of the children living in slums, had progressed on to Standard Six in 2005.

In contrast, the sharply declining rate of progression to secondary school in slums does present a serious problem. Graph 6 on the right plots the rate of progression of Standard Four pupils to the first year of

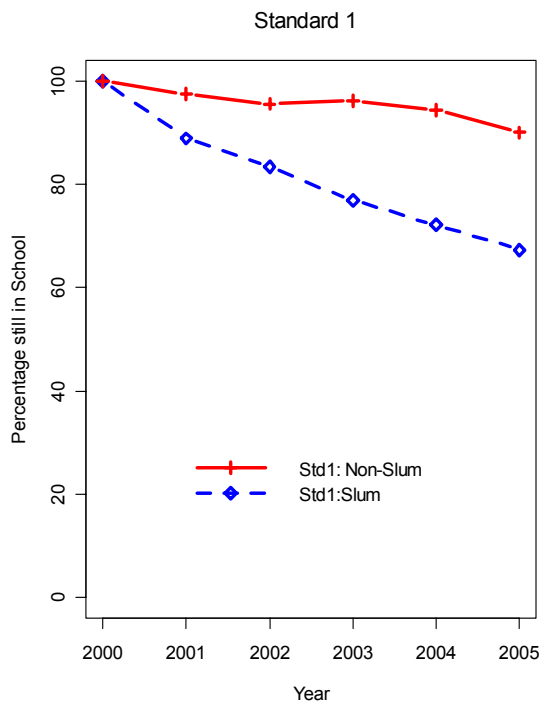
secondary school over the same time period. Out of every 10 children in Standard Four in 2000, 8.2 children from non-slum areas had progressed on to Form One by 2005. Within the same timeframe, 3.2 out of every 10 children who were in Standard Four in slums in 2000, or about a third of children living in slums, had progressed on to Form One in 2005.

#### 4.4.3 Education curriculum and quality assurance

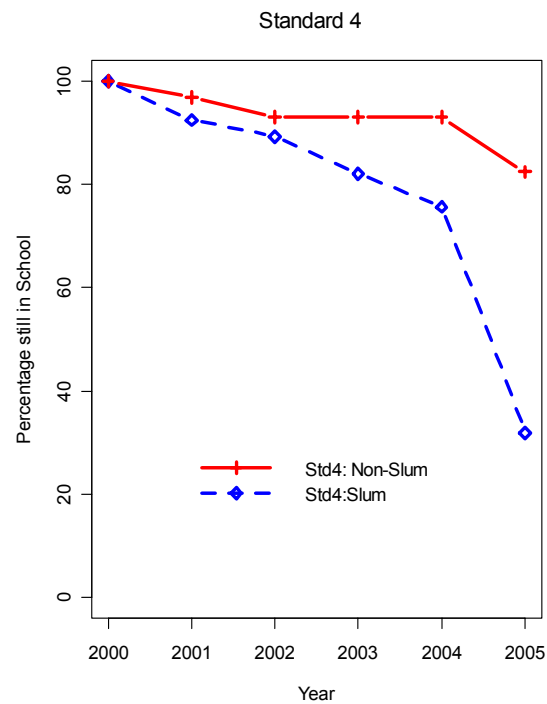
The quality of education in slums in Nairobi is lower in comparison to the standards found in non-slum areas. Table 1 presents some quality indicators for primary education in primary schools. Although they are not exhaustive, differences in the quality of primary education provided in formal schools (FSs) and non-formal schools (NFSs) may be inferred from these indicators. It is important to recall that the latter constitute the large majority of primary schools in slums while the former prevail in relatively affluent sections of Nairobi.

Table 1 shows that only 12 percent of NFSs compared to 75 percent of FSs are registered with the Ministry of Education (MOE). A large majority of NFSs are registered with the Ministry of Gender, Sports, Culture and Social Services (MOGSCSS). The implication of this dual registration system is that FSs have to comply with the entire MOE primary school curriculum while NFSs do not have to adhere to the standards it sets out. Even though 94 percent of NFSs indicate that they apply the MOE primary school curriculum, it is reasonable to expect that children learning in NFSs receive a lower quality of education in comparison to their counterparts in FSs.

### Primary school progression in slum and non-slum areas



Graph 5

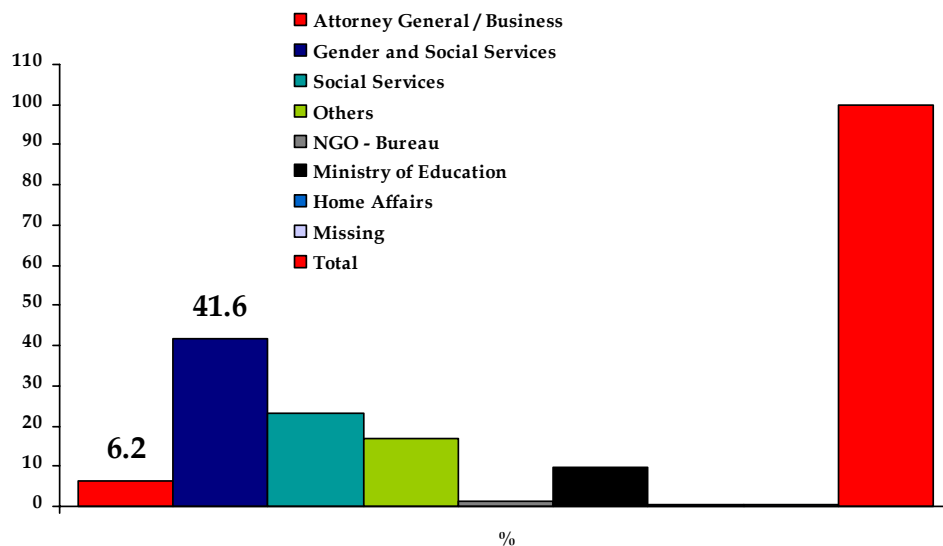


Graph 6

**Table 1: Selected Quality Indicators for Primary Education in Nairobi**

Quality indicator	Formal (state schools) %	Non-formal (Non-state) %
<b>Type of school</b>	61	33
<b>Registration with government department</b>		
Ministry of education	75.4	12.1
Ministry of Gender Sports Culture and Social Services	8.2	60.6
Non-governmental Organization Bureau	1.6	3.0
Not Registered	14.8	24.2
<b>Education curriculum offered</b>		
8-4-4 curriculum	96.7	93.9
<b>Examinations accreditation</b>		
Kenya Certificate of Secondary Education	72.1	18.2
<b>Inspection for quality assurance</b>		
2005	16.4	54.5

**Schools as registered by different Government Departments (%)**



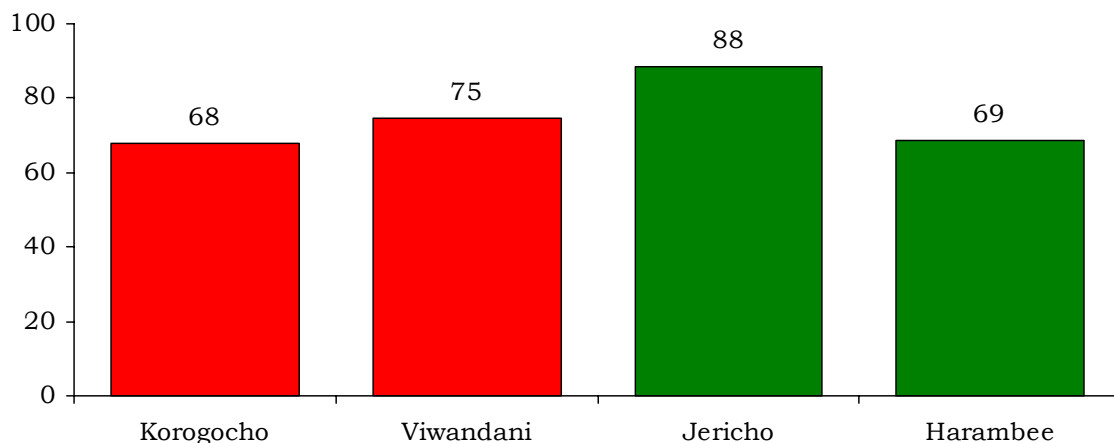
**Graph 7**

It is reasoned that the MOE is reluctant to license NFSs to offer the formal curriculum because in most cases NFSs do not have the capacity to implement it properly. The fact that 94 percent of NFSs offer a curriculum which they cannot deliver effectively is a pressing concern that government and civil society organizations ought to address.

Only a small minority of NFSs have the capacity to serve as centers which administer KCPE examinations. This concern is all the more daunting because Standard Eight pupils in over 70 percent of NFSs have to seek registration in schools accredited as KCPE examination centers if they are to have any hope of progressing on to secondary school. It is particularly disheartening to note that reports continually surface in the Kenyan media of unscrupulous educators who swindle funds from parents with children in NFSs who need to be registered at KCPE examination centers.

Finally, there is the critical concern of inspections for support, supervision and monitoring of compliance with rules and regulations for primary education institutions. Figure 4 shows that most NFSs, with the exception of 16 percent, were inspected over a one-year period while inspections were not conducted in more than half of the NFSs. This situation raises questions about the extent to which government bodies that register primary education institutions can effectively enforce compliance with their regulatory regimes.

Percent of children in schools that made official returns to Nairobi City Council, 2005



Graph 8

#### 4.5 Conclusion

So far, the findings presented in this section demonstrate that enrolment rates in schools offering primary education are underreported. This situation implies that the efforts of government, civil society organizations and households to improve enrolment rates have not been fully acknowledged by analysts. Reliance on incomplete statistical data may result in undue attention being focused on improving an indicator such as enrolment when in fact it is already at its peak. The imperfect data is accounted for by the limitations of the government's data collection strategy which relies for the most part on returns filed by MOE-registered schools. In 2005, MOE and UNICEF jointly conducted a study which revealed that of 411 NFSs in Nairobi only 9.5 percent (39) are registered with MOE.

The large majority of these institutions are registered with the MOGSCSS as self-help groups; with the Ministry of Home Affairs as NGOs; and the Office of the Attorney General as private enterprises. Fewer are registered by the NGO Bureau. In Kenya as in other parts of the developing world, administrative data mainly covers schools operating within the official educational framework. In Kenya, data on low-cost private schools and NFSs, which provide education in slums, are to a great extent not included in government statistics.

## Section Five: Recommendations

### Recommendations

The introduction of free primary education in 2003 marked an important milestone in the realization of the Right to Education in Kenya. Nevertheless, as has been identified in this analysis, several challenges persist, and children living in urban slums are some of the most affected. When consolidated, the evidence contained within this report suggest that the problems facing primary education in slums fall within three tiers: first, at a macro-level in relation to legal and policy guarantees; second, at the urban planning and governance level, where physical and development plans are formulated and executed; and third, within the education departments, where the planning for primary education is done. This report makes the following recommendations to the various actors:

#### 1. There is need to promote equality in education through legislative frameworks

The Right to Education is not adequately guaranteed by the legislative and policy measures undertaken in Kenya to date. Like all other fundamental rights, education must be guaranteed in the Constitution and the Laws of Kenya for its primacy is to be upheld in all spheres, including the delivery of education services. Legislative guarantees make rights justiciable, and therefore support demands for just and equitable treatment in the provision of education services and opportunities. Such guarantees must bind the arms of responsible authorities by making them legally accountable.

- The Constitution of Kenya should be amended to include guarantees for the Right to Education.
- The Education Act and the Local Authorities Act should be reviewed to include specific mandates for provision of education services in slums.

#### 2. The Ministry of Education should increased spending and investment in slums

Public spending remains a key indicator of government priorities. Financial plans and allocations are indicative of what the government intends to fulfill, and are an important proxy for commitment to progressive realization of obligations. Public spending should be interrogated to determine if the *maximum available resources* are actually being devoted to realizing the Right to Education in slums; and, if the expenditure

reflects the principles of equity and non-discrimination as committed to by government for the purpose of protecting human rights.

Budget analysis and tracking by communities can inform advocacy and promote accountability for increased public investment in primary education in slums.

#### 3. Communities need to inform political leaders of the status of primary education and demand change

There is widespread indifference among political leaders and decision makers, as evidenced by the low prioritization of slum education in the current political development agenda. Political focus has already shifted to free secondary education, even before all children are guaranteed free primary education. This problem can largely be attributed to low documentation and publication of the problem of education in slums.

Establishment of community based monitoring information and documentation systems can contribute, to enhanced political accountability by promoting informed civic engagement and decision making. This is



particularly important in the area of devolved public funds such as Constituency Development Funds CDF, which are managed through political leadership.

#### **4. Slums need to be guaranteed Security of tenure including the provision of education facilities.**

The formal recognition and inclusion of slums in urban physical and development plans is essential to the establishment of adequate primary education infrastructure in slums. Historically, planning and development policies have purposively omitted provision of essential services to slums on the basis of their spontaneity and informality.

The Nairobi City Council, and all other local authorities in urban areas, as legal trustees of education services, must honour their fiduciary responsibility by firstly appreciating the inevitability of slums given the prevailing social economic conditions, and begin to unconditionally discharge the obligation to respect, protect and fulfill the Right to Education for all.

#### **5. Civil society and private sector capacities should be enhanced to encourage partnership with the public sector**

Public schools remain the preferred conduit for state support including funding and teaching resources. Where the government has stipulated preconditions for accreditation of non-state schools for funding, the terms remain stringent and outside the means of non-state education providers in the slums. Thus, despite shouldering the larger burden of providing services to the most vulnerable, non-state schools are largely precluded from the benefit of public resources.

The need to regulate and account for public expenditure should not, as it is, be allowed to override the best interest of the child. Alternative funding procedures, which do not unnecessarily discriminate against non-state schools, should be devised.

Guidelines for accreditation of non-state schools should be negotiated, streamlined and formalized to ensure transparency and accountability in the administration public funds. The peculiar circumstances of hardship in slums should be grounds for special and differential treatment, which will allow non-state providers in slums to partner with the state to access public resources. Such measures should not be limited to financing, but also include quality assurance.

#### **6. Non-Formal Education should be promoted in slums to integrate out of school children into the formal education system**

Non-Formal Education provides a viable alternative for reintegrating out of school children into the formal system. The Government, donor community and development partners should priorities the implementation of the new Non-Formal Education policy and curriculum in slums, with the objective of reintegrating out of school children into the mainstream formal system. Measures should be taken to promote clear linkages and protocols to bridge formal and non-formal education systems.

## Annexes

### Annex 1

#### **Conditions for registration of a Private Primary School**

All schools must be registered with the MoE. This begins with the acquisition of authority from the DEB. The documents to accompany the application include minutes of the DEB or notification of the DEB decision signed by the DEO in person, a School Inspection Report signed by the District Inspector of schools in person, a Public Health Inspection Report signed by District/ City/Municipal Public Health Officer in person, a copy of the title deed or renewable lease agreement of at least 8 years, copies of teachers academic and professional certificates (in the case of private/religious schools), copies of registration Certificate by Teachers Service Commission for all teachers, copy of Business Name Registration Certificate or Certificate of Incorporation for a private school (this is only obtainable after certifying other registration requirements), a bankers cheque addressed to the Permanent Secretary of Education ( Kshs. 10,000/= for private schools, Kshs. 4,000/= for religious organisation schools and Kshs.1,000 for public schools as registration fee).

Re-registration application will be made when: providing an additional class, providing a different type of education other than the one originally registered for, transferring the school to a new site, re-opening a school that has been closed, changing ownership or management of school. Once a school has been registered as public, the MoE will not change its status to private.

Physical facilities must reflect at least standard class sizes of 8×8 metres for 40 pupils with one toilet for 30 boys and one toilet for 25 girls coupled with a urinal for boys and staff toilets.

Land acreage for primary school should be 4 hectares or 12 acres for a double stream boarding, 2.5 hectares or 7 acres for a double stream day school and single stream boarding, while a single stream day will require 2.0 hectares or 5 acres.

A school should organise to cater for extra curricular activities including playground and in urban areas where play grounds may not be readily available, a site plan done by the district physical planner from the ministry of lands and settlement indicating the arrangement of buildings and playground facilities and where this is not possible, schools must have signed agreements with neighboring school/institutions for playground facilities and the distance between should be commutable.

The manager will be the proprietor charged with developing the institution and employ professional staff, the manager should have a minimum of 'O' level/KCSE qualifications, a manager who oversees the daily running of the institution should have necessary professional qualification, private schools should establish a management board of at least 3 members. The head teacher should at least be a P1.

### Annex 2

#### **Definition of formal and non-formal education**

##### **Formal education (or initial education or regular school and university education)**

Education provided in the system of schools, colleges, universities and other formal educational institutions that normally constitutes a continuous 'ladder' of fulltime education for children and young people, generally beginning at age five to seven and continuing up to 20 or 25 years old. In some countries, the upper parts of this 'ladder' are constituted by organized programmes of joint part-time employment and part-time participation in the regular school and university system: such programmes have come to be known as the 'dual system' or equivalent terms in these countries.

**Non-formal education** Any organized and sustained educational activities that do not correspond exactly to the above definition of formal education. Non-formal education may therefore take place both within and outside educational institutions, and cater to persons of all ages. Depending on country contexts, it may cover educational programmes to impart adult literacy, primary education for out-of-school children, life-

skills, work skills, and general culture. Non-formal education programmes do not necessarily follow the 'ladder' system, and may have differing duration.

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