

Summary brief: Kenya's support to privatisation in education: the choice for segregation?

Summary of the report submitted by in September 2015 to the African Commission on Human and Peoples' Rights by the East African Centre for Human Rights (EACHRights), the Economic and Social Rights Centre (Hakijamii), and the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), and supported by three additional organisations. The full report is available on <http://bit.ly/KenyaACHPR>.

I. Global context

1. Privatisation in education is a growing global phenomenon threatening the right to education in many countries. An increasing body of research is examining the impact of these developments on human rights and social justice. The UN Special Rapporteur on the Right to Education, Kishore Singh, in particular raised concerns about the growth of private actors in education with respect to the right to education in two reports: one to the UN General Assembly in September 2014¹ focusing on States' responsibilities in this particular context, and one to the UN Human Rights Council in June 2015² focusing on "protecting the right to education against commercialisation". In his reports, Mr Singh considers that "soon, it may not be an exaggeration to say that privatization is supplanting public education instead of supplementing it".³ Yet, he says, "inequalities in opportunities for education will be exacerbated by the growth of unregulated private providers of education, with economic condition, wealth or property becoming the most important criterion for gaining access to education".⁴
2. In the last two years, UN human rights bodies have repeatedly expressed concerns about the growth of private education in a number of countries, as summed up in this synthesis document: <http://bit.ly/1QPZmlz>. Most recently, in its list of issues to Kenya, the UN Committee on Economic, Social and Cultural Rights questioned privatisation in education in Kenya, and asked the Kenyan government to "provide information on the measures taken to increase the number of public primary schools and enhance the quality of public schools, particularly in informal settlements and remote rural areas since the introduction of the free primary education policy" and to "explain how the State party has regulated and monitored" informal private schools (or low-cost private schools) "to ensure quality education".⁵

II. Private schools are growing very quickly in Kenya, and replacing the public sector

3. The number of private primary schools has grown tremendously since the 1990's; from 385 in 1998 to 1441 in 2002. After the re-introduction of the free primary education system in 2003 followed the highest recorded increase in number of private primary schools, recorded at 1624 in 2003 and later at an all-time high of 8917 in 2013. On the other hand, the increase in number of public primary schools has been minimal, from 16,971 in 1998, to 21,205 in 2013, an increase of 24.9%. In the same period, private schools increased by 2216%.

NUMBER OF PRIMARY SCHOOL INSTITUTIONS, BOTH PUBLIC AND PRIVATE, BETWEEN 1998 AND 2013.⁶

Year	Number of public schools	Number of private schools	Percentage of private schools
1998	16971	385	2%
1999	17054	569	3%
2000	17381	1236	7%
2001	17544	1357	7%

¹ The UN Special Rapporteur on the right to education, *State responsibility in the face of the explosive growth of private education providers, from a right to education perspective*, A/69/402, 2014: <http://www.right-to-education.org/node/371>

² UN Special Rapporteur on the right to education, *Protecting the right to education under commercialisation*, A/HRC/29/30, 2015: <http://bit.ly/1P9KR6Q>

³ A/69/402, para. 38.

⁴ Ibid., para. 48.

⁵ E/C.12/KEN/Q/2-5, para. 30.

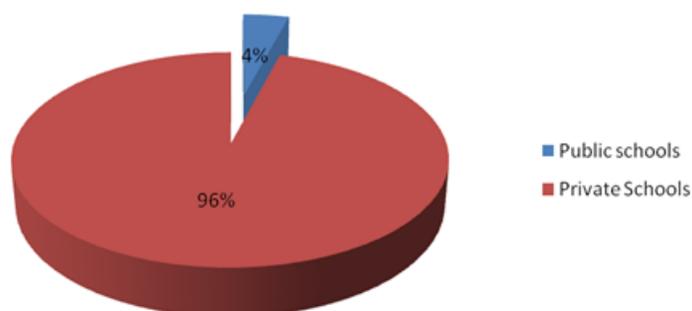
⁶ Data collected from the Kenya economic surveys, 2002-2014,.

2002	17683	1441	8%
2003	17697	5857	25%
2004	17804	6839	28%
2005	17807	7547	30%
2006	17964	7983	31%
2007	18063	8041	31%
2008	18130	8076	31%
2009	18543	8124	30%
2010	19059	8434	31%
2011	19848	8719	31%
2012	20307	8824	30%
2013	21205	8917	30%

III. The growth of private schools takes place in poorer areas, and is drive by for-profit, commercial private schools

4. Most of the growth of private schools is driven by so-called “**low-cost**” schools, which are low quality schools targeting poor people for a relatively lower fees than expensive private schools. In urban slums in Nairobi, Eldoret and Mombasa, more than 50% of children attend so called “low-fee” private schools.⁷

PROPORTION OF SCHOOLS, PUBLIC AND PRIVATE, SERVING KIBERA INFORMAL SETTLEMENT.



5. While low-cost private schools are diverse, ranging from schools run by NGOs to schools run by private companies, a number low-cost private schools have been taking advantage of poor parents’ legitimate aspiration to a better life and on the government’s failure to provide enough public facilities to provide low-quality education against a fee and make a profit on it. This is in particular the case of **for-profit commercial “low-cost” private school chains**, such as Bridge International Academies, which have emerged in the last years, and are particularly concerning.

⁷ APHRC, Quality and Access to Education in urban informal Settlements in Kenya, October 2013, <http://aphrc.org/publications/quality-and-access-to-education-in-urban-informal-settlements-in-kenya>

Bridge International Academies, World Bank funding, and its impact on access to the right to education in Kenya

Bridge International Academies (BIA), a for-profit fee-charging chain of private primary schools operating in Kenya, serving informal settlements and poor rural areas. It has recently received monetary support from the World Bank, through its private sector investment arm, the International Finance Corporation (IFC), which invested \$10 million. Bridge has also attracted more than US\$100m from international investors, including Bill Gates, Facebook founder Mark Zuckerberg, eBay founder Pierre Omidyar, education company Pearson, and the UK's Department for International Development.

BIA uses highly standardised methods, called "school in a box", and barely trained, unqualified, poorly paid teachers, who are given a tablet to deliver and control a totally scripted curriculum to students, written on a tablet. Teachers in Bridge schools are expected to all read aloud to the students, almost word-for-word, the content delivered on the tablet at the same time in each school every day.

The school chain claims to provide affordable education by charging 'just' \$6 a month, per child. However, NGOs calculated that the monthly cost is closer to \$17 a month, and for families in vulnerable areas where BIA operates, who earn an average \$75 or less, sending an average of three children to these schools, means sacrificing other essential survival rights such as food and water, and it is enough to entrench inequalities and create deep educational segregation.

In response to the World Bank's support to for-profit, low-cost and low-quality education models such as BIA, and its lack of support to public education, 119 civil society organisations from around the world, including 30 organisations in Kenya and Uganda, published a statement in May 2015, asking the World Bank to ensure it fulfils its mission to truly help the poor: see <http://bit.ly/WBprivatisation>

6. Support to and institutionalisation of private education takes place in particular through **the legal framework provided for non-formal schools**. Although the Government policy on non-formal schools dates back to 2009, and the Basic Education Act, 2013, does not provide a framework for alternative schools, it seems to still be applicable, according to a recent presentation from the Cabinet Secretary of Education.⁸
7. While the recognition of and support to alternative private schools flows from a commendable effort by the government to include children who would otherwise not be able to attend school into the formal education system, the policy has largely been abused. In the country's major urban informal settlements where demand for basic education is high because public schools are unavailable, private individuals who are keen on making quick money from some of the country's poorest pockets have used the policy to provide poor quality basic education in poorly structured schools in the name of "non-formal schools". The vague definition of non-formal schools and tolerance from the authorities also allow for large commercial education actors to register as non-formal schools and benefit from the lower legal requirements – although it is not clear why large-scale organised companies like Bridge International Academy (see box) should not rather be registered as private schools.
8. Worryingly, whereas the government has recently tried to improve the regulation of low-cost private schools, with minimum basis requirements – for instance that 50% of the teachers in non-formal schools be adequately trained (against 100% required in normal public and private schools) – private school chains such as Bridge International Academies have been actively lobbying against these standards.

IV. The growth of private schools in Kenya is done in violation of human rights standards

9. As demonstrated in the full report, the growth of private education as it is taking place in Kenya is leading to the breach of a number of human rights standards, including the right to education, which are protected by the African Charter on Human and Peoples' Rights. Two particularly concerning impacts are on the right to education without discrimination and segregation, and the right to free quality education.

a) Impact of privatisation in education on segregation and discrimination in Kenya

10. School fees, even when relatively low, cannot be afforded by part of the population. As a result, the introduction of fee-charging private schools results in a stratification of the children, whereby the relatively richer go in different schools from the poorest. There are, schematically, three types of schools in Kenya, whose distinction is the source of segregation.
 - Formal private schools, including "elite, proprietor-owned schools, charging high fees and providing in return high-quality education to pupils from middle-income and upper-income families." They "recruit their

⁸ <http://ir-library.ku.ac.ke/bitstream/handle/123456789/12293/Education%20Reforms%20in%20Kenya...pdf?sequence=3&isAllowed=y>

intakes from much wider geographic catchment areas than most public schools – but from much narrower socioeconomic catchments”, and “achieve outstanding results” in national examination.⁹

- Low-cost private schools, which provide sub-standard education, charge moderate fees, and take children from relatively poor and lower-middle class households.
- Public schools, which charge low or no fees, whose quality varies, and which accept all children, often the poorest.

11. To illustrate this, data from the latest 2012/2013 household survey in Kenya show that half of the households in Kenya earn KES 7,000 (\$75) or less.¹⁰ Thus, for half of Kenyan households, even assuming a cost of \$6 a month, sending 3 children of primary school age to a private school chain such as Bridge International Academies would cost **at least 24% of their monthly income**. Taking into account more realistic monthly cost for such chains of about \$17 that include school meals, sending their children to these schools would cost half Kenyan households **at least 68% of their monthly income**. Private schools costing \$6 or above are therefore not accessible by the poorest, who put their children in cheaper private schools, or public schools, creating a stratification in the education system.

12. Consequently, as shown in the following table which reflects a survey in six informal settlements, **education in Kenya has become highly stratified. It segregates by socio-economic backgrounds**, so that pupils attend different schools according to their level of wealth. Such segregation, which is made possible by the government’s policies in favour of low-cost private schools, constitutes not only a gross systematic human rights violation, it is also affecting **social cohesion** and dangerously creates frustrations and tensions amongst communities.

ASSOCIATION BETWEEN BACKGROUND CHARACTERISTICS AND SCHOOL TYPE ATTENDED IN SIX INFORMAL SETTLEMENTS (IN %)¹¹

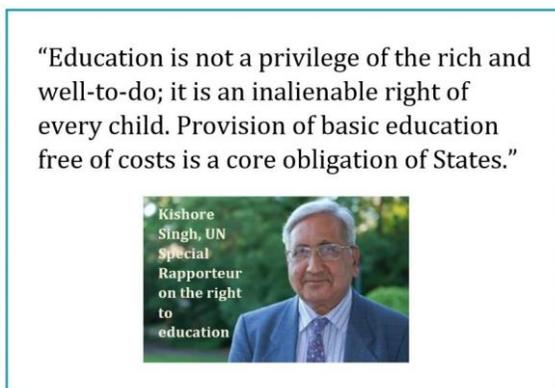
Background	School Type		
	Public	Formal Private	Low-cost
Sex of Child:			
Boy	62.2	22.2	15.6
Girl	63.9	19.4	16.8
Orphan status			
Both parents	74.6	10.4	
Single parent	71.2	14.3	14.5
None orphan	61.3	22.2	16.5
Sex of HH head			
Male	59.6	23.3	17.1
Female	71.9	14.3	13.8
HH head education			
Below secondary	64.2	16.5	19.3
Secondary or above	61.5	26.3	12.2
HH size			
1-3	57.4	24.6	18.0
4-6	63.2	21.0	15.9
7+	69.5	15.4	15.1
HH wealth status			
Bottom 40%	70.5	14.2	15.3
Middle 40%	57.9	21.0	21.2
Top 20%	52.5	39.5	8.0

⁹ Moses Oketch and Anthony Somerset, “Free Primary Education and After in Kenya: Enrolment impact, quality effects, and the transition to secondary school” Create Pathways to Access Research Monograph No. 37 (May 2010), available on http://www.create-rpc.org/pdf_documents/PTA37.pdf.

¹⁰ http://www.knbs.or.ke/index.php?option=com_phocadownload&view=category&download=710:housing-survey-report-2012-2013&id=123:kenya-national-housing-survey&Itemid=599.

¹¹ Adapted from APHRC, Quality and Access to Education in urban informal Settlements in Kenya (October 2013), available on <http://aphrc.org/publications/quality-and-access-to-education-in-urban-informal-settlements-in-kenya>, p. 23.

b) Impact of privatisation in education on the right to free quality education



13. The government has failed to provide sufficient public schools in the last years to cater for everyone.

NUMBER PRIMARY EDUCATION FACILITIES 2004-2008 ¹²

CATEGORY	2004	2005	2006	2007	2008
Schools					
Pre-primary	32,879	34,043	36,121	37,263	37,954
<i>Primary</i>					
Public	17,804	17,807	17,946	18,063	18,130
Private	6,839	7,546	7,983	8,041	8,076
Totals	24,643	25,353	25,929	26,104	26,206

14. As a result, in many parts in Kenya, private schools do not represent an alternative to free quality education, as they should, but they have replaced public education. The situation of the Mathare Valley informal settlement, in Nairobi, illustrates this situation. The population in Mathare is unknown, and has been estimated around 180,000.¹³ In any case, the slum itself only has only one government school available (see map below), Kiboro primary school, which was originally a community school started by residents, and later upgraded and taken over by the authorities. All other 40+ schools in the area are private schools.

MAP OF MATHARE SLUM VALLEY¹⁴



¹² Source: National Education Support Strategy, UNESCO, 2010.

¹³ <https://en.wikipedia.org/wiki/Mathare>. See also

http://www.mathareroots.org/index.php?option=com_content&view=article&id=103&Itemid=27 (estimating 500,000),

<http://www.matharevalley.org/mvalley.html> (estimating 600,000), <http://cmetrust.org/mathare/> (estimating more than 600,000).

¹⁴ Map from Geonames, http://www.geonames.org/maps/google_-1.266_36.854.html

V. Suggested questions to Kenya

- a. Why are private school chains, such as Bridge International Academies, registered as non-formal schools, whereas they appear to offer formal education?
- b. How does the state supervise, monitor and evaluate the implementation of basic education by private non formal schools to ensure it complies with the Convention on the rights of the child? Is the ministry of education well equipped in terms of data and technical capacity to carry out this function?
- c. If the Government intends to progressively replace non-formal education by formal quality free education, why does it continuously support non-formal schools without a plan to lead to formalisation? Otherwise, what are the plans from the Government to phase out non-formal education, and how is this intention materialised in laws and policies?
- d. What steps are being taken to ensure that public primary education is strengthened to reach out to marginalised groups, such as in non-formal settlements, and to ensure that public education is free and of good quality to avoid forcing parents having to resort to private schools? Specifically, does the government have plans to allocate resources to improve the public education access and quality in informal settlements?

VI. Recommendations to Kenya

- i. **Review and enforce the education regulatory framework to ensure that no private school takes advantage of the framework governing complementary schools to provide sub-standards education, and take action to ensure that all private schools, including Bridge International Academies, abide by minimum educational standards set by the State.**
- ii. **Effectively enforce regulations in the education sector to ensure that free basic education remains free and accessible to all the members of society, particularly vulnerable children.**
- iii. **Assess the direct and indirect impacts of the development of private education in the last ten years, in the light of its obligations to ensure that private education supplements but does not supplant public education and does not foster discrimination.**
- iv. **Regularly collect and make publically available data on private school fees and social diversity amongst the pupils attending private and public schools, so as to be able to transparently identify and understand inequalities.**
- v. **Take all necessary measures, to avoid any direct or indirect harmful impact of the private educational sector and to ensure that the private sector contributes to the fulfilment of the right to education for all in Kenya, and review and amend if necessary its laws and policies governing private education providers to ensure the enjoyment of the right to education without any discrimination.**
- vi. **Ensure it has the necessary human and regulatory capacities to ensure effective implementation of the existing regulations with regard to provision of education by private providers, and halt further development of private education until the State has developed more comprehensive regulations and human capacities to adequately monitor private schools.**

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