

**Free to Learn
A Rights Based Approach to Universal Primary Education in Kenya**

February 10, 2006

IMAGE REMOVED



Princeton University
**Woodrow Wilson School of Public and
International Affairs**

WWS



TABLE OF CONTENTS

GLOSSARY	ii
EXECUTIVE SUMMARY	iii
INTRODUCTION	1
Snapshot: Universal Primary Education in Kenya	1
Framework for Analysis: UPE in the Context of the Millennium Development Goals and International Human Rights	1
The Goals and Methodology of the Princeton University Team	4
The Case of Kenya	5
ACCESSIBILITY	7
Core Concept of Accessibility	7
Achievements and National Trends	7
Issues in Focus	8
Other Accessibility Concerns Noted	13
Recommendations to Expand Educational Access	13
ACCEPTABILITY	15
Core Concept of Acceptability	15
Achievements and National Trends	16
Issues in Focus	16
Other Acceptability Concerns Noted	20
Recommendations to Increase Acceptability	20
ADAPTABILITY	21
Core Concept of Adaptability	21
Achievements and National Trends	21
Issues in Focus	22
Other Adaptability Concerns Noted	24
Recommendations for Increasing Adaptability	24
AVAILABILITY	26
Core Concept of Availability	26
Achievements and National Trends	26
Issues in Focus	26
Other Availability Concerns Noted	28
Recommendations for Increasing Availability	28
ACCOUNTABILITY	30
Core Concept of Accountability	30
Achievements and National Trends	30
Issues in Focus	31
Other Accountability Concerns Noted	34
Recommendations to Expand Accountability	34
CONCLUSION	35
ACKNOWLEDGEMENTS	36
ITINERARY	37
ENDNOTES	38

GLOSSARY

ASAL	Arid and Semi-Arid Lands
CRC	Convention on the Rights of the Child
CSO	Civil Society Organization
DEO	District Education Officer
DFID	UK Department for International Development
ECED	Early Child Education and Development
EMACK	Education for Marginalized Children in Kenya
FPE	Free Primary Education
GPA	General Purposes Account
GoK	Government of Kenya
ICESCR	International Covenant on Economic, Social and Cultural Rights
KANU	Kenyan African National Union
KESSP	Kenya Education Sector Support Programme
MDG	Millennium Development Goal
MoEST	Ministry of Education, Science and Technology
NARC	National Alliance Rainbow Coalition
NFS	Non-Formal School
NGO	Non-Governmental Organization
OVC	Orphans and Other Vulnerable Children
PTA	Parent Teacher Association
PU Team	Princeton University Team
RBA	Rights-Based Approach
SIMBA	School Instructional Management Book Account
SMC	School Management Committee
USAID	United States Agency for International Development
UPE	Universal Primary Education

EXECUTIVE SUMMARY

In 2003, the Government of Kenya took the bold step of enacting a policy of free primary education, a necessary prerequisite for the achievement of universal primary education. This report evaluates this monumental endeavor in light of a rights-based approach to implementation and assessment. Developed by researchers at the Woodrow Wilson School of Public and International Affairs at Princeton University, the report analyzes their first-hand observations of schools, Non-Governmental Organizations (NGOs), and local, regional, and national government policies.

Specifically, this research utilizes a theoretical framework in order to provide practical policy recommendations. Both human rights norms and development theory espouse the virtues of free primary education. This report synthesizes the most recent work in human rights law and development practice and seeks to apply it to the context of free primary education in Kenya in order to create workable policy recommendations for both the Government of Kenya and UNICEF-Kenya. This synthesis, termed the "5-A framework", draws upon expertise in human rights law, development, education, and economics.

5-A Framework for Analyzing Universal Primary Education in Kenya

- *Accessibility:* Obstacles to completion of primary education by all children should be eliminated. Three key criteria that guide accessibility are non-discrimination, physical accessibility, and economic accessibility.
- *Acceptability:* The form and substance of education, including curricula and teaching methods, must be of acceptable quality to children and parents and within approved standards of the state.
- *Adaptability:* Education must be relevant. This means it has to be flexible so that it can adjust to the different and changing needs of students and communities given their diverse social and cultural settings.
- *Availability:* Functioning educational institutions and programs must be made available in sufficient quantity.
- *Accountability:* Mechanisms must be established to allow claim holders (children and others) to monitor and discipline duty bearers (government institutions and educational providers) so as to improve educational outcomes. These mechanisms must allow local-level participation, including in resource allocation decisions.

Key Recommendations

The following recommendations are made after careful consideration of the Team's first-hand observations of the state of free primary education in Kenya. Though it is clear that the Kenyan government is already devoting attention to many of these issues, it is hoped that it may prove useful to highlight some particular areas of priority:

Regarding Accessibility

Expand current policy to include a detailed strategy related to the development and implementation of increased access to education for nomadic communities

- Model the policy on the gender and development and Orphans and Other Vulnerable Children (OVC) policies
- Build on best practices from NGO and pilot programs and include specific plans for enhancing the capacity of relevant actors to meet the needs of communities in Arid and Semi-Arid Lands (ASALs)

Explore the possibility of making secondary education free of charge for girls

- Continue to enhance the availability of scholarships as an added incentive for girls to remain in school through Standard 8 (approximately age 13)
- Consider making early childhood education free for girls in those districts where girls' enrollment continues to lag behind that of boys'

Regarding Acceptability

Provide additional support, training, and resources to prepare teachers to address quality issues resulting from increased class sizes

- Give particular attention to Standards one through four (about ages 6 through 9)
- Focus in-service training sessions on techniques for individualizing instruction in the context of larger classrooms and the adaptation of "active learning" instructional methodologies

Actively promote and provide for the provision of high-quality Early Childhood Education and Development programs in high-need communities as well as communities with significantly higher levels of poverty

Regarding Adaptability

Integrate formal primary education with Madrasa/Islamic schools

- Structure schools that are adaptable to traditional habits and norms in order to address specific issues of mobility and preferential adherence to religious learning

Create friendly and culturally compatible learning environments

- Orient teachers and school administration to the cultural sensitivities of these communities
- Provide support in creating an environment such that parents feel confident about sending their children to school

Regarding Availability

Prioritize the construction of single-sex latrines equipped with adequate water and sanitation

- Renew the commitment to the construction of additional toilets for use exclusively by females
- Ensure that these are furnished with doors to safeguard the privacy of the occupant

Integrate awareness of shared responsibility with respect to latrines, water and sanitation, and other facilities into school curricula

- Facilitate awareness of the rights and responsibilities of parents and community groups by including rights language in UNICEF-distributed and other textbooks
- Emphasize the importance of community participation and support in the construction of physical infrastructure such as suitable latrines, sanitation, electricity, and fencing

Regarding Accountability

Develop an "accountability through participation" framework that builds on the decentralization process described in the Kenya Education Sector Support Programme 2005-2010

- Confer greater scope for community stakeholders to participate in the planning, resource allocation and monitoring activities affecting schools
- Develop capacities at the district and community levels so that the districts can partner community stakeholders in a collaborative process

INTRODUCTION

Snapshot: Universal Primary Education in Kenya

In 2002, Daniel was 13 years old. He lived with his mother and seven brothers and sisters in a shack in the Nairobi slum of Kawangware. Daniel was constantly unhappy. His preoccupation, however, was not his tattered shirt, the small shack he lived in or the fact that his mother could only feed him one solid meal of ugali per day; it was that he had been forced to drop out of school four years earlier because his mother could not afford the fees, let alone the uniform and books.

In 2003, the newly-elected government of Mwai Kibaki enacted a dramatic policy that enabled Daniel and millions of children like him to attend school: it abolished school fees. The implementation of Free Primary Education (FPE) – which had been a central campaign promise of the incoming administration – was heralded by poor Kenyan parents and international development policy makers alike. The abolition of school fees constitutes a significant step toward achieving Universal Primary Education (UPE), which is both a human right and a millennium development goal. UPE is the proposition that every Kenyan child can have full access to education, and the institution of FPE removed one large barrier to UPE. However, FPE has also placed a significant strain on the country's education system. Responding to the myriad of challenges that have arisen – including the inadequacy of financial resources, severely overcrowded classrooms and confusion as to the ongoing role of parents in ensuring their children's education – has shaped and will continue to shape Kenyan education policy in the coming years.

In 2003, Daniel enrolled in the Dagoretti Muslim School. His clothes were still tattered, he could only afford to drink a cup of tea before school in the morning, and he was significantly older than his six-year-old classmates. Daniel was, however, much happier: he was learning to read and write. "I am clever!" he said.¹

Framework for Analysis: UPE in the Context of the Millennium Development Goals and International Human Rights

Relationship between the Millennium Development Goals and Human Rights

The struggle to achieve universal primary education in Kenya must be viewed in the context of two prevailing international paradigms: the Millennium Development Goals (MDGs), which have become the focus of the development community since their establishment in 2000, and International Human Rights law. The conventional wisdom of both the human rights and development communities suggests that a large chasm separates both worlds. This chasm is presupposed in much of the expanding literature on integrating human rights and development, and in the design of rights-based approaches (RBA) to development. These claims exaggerate the gaps and emphasize formal differences between both disciplines, but an analysis of the substance of human rights and development practices reveals smaller theoretical gaps than is typically claimed. As a result, many current claims regarding the prospects for integration appear overly alarmist.² This report contends that the struggle to achieve UPE is not only compatible with, but actually *demand*s, an integrated policy approach that draws upon the strengths of both development practice and human rights standards. Three observations support this contention.

First, the education goals of the both the development worlds and human rights are essentially the same. The human rights goal is reflected in a number of international treaties. The most pertinent are the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC).³ Relevant provisions are extracted here:

International Covenant on Economic, Social and Cultural Rights, Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, 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.

International Covenant on Economic, Social and Cultural Rights, Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;

Convention on the Rights of the Child, Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

A right to education is also included in the African Charter on Human and Peoples' Rights.⁴ Kenya has taken positive steps to incorporate this international human right to education into its domestic law. The *Children's Act 2001* imposes responsibility on the government to provide every child with a free basic education.⁵ Despite the strong development orientation built into the FPE policies, many relevant human rights standards are also evident in the policies. One good example is the core component of the FPE policy: the abolition of primary school tuition fees. As mentioned above, key human rights instruments require primary education to be free and compulsory.⁶ Therefore, abolishing primary school tuition fees implements much of this obligation.

For the purposes of this report, the development goals associated with education equate with the Millennium Development Goals Nos. 2 and 3. These goals commit the international community—and Kenya—to:

- | | |
|----------------|---|
| MDG Goal No.2: | Ensuring that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling. |
| MDG Goal No.3: | Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education no later than 2015. |

Ensuring that all children enjoy a full cycle of primary education is the ultimate goal, whether expressed in human rights or development language.

Second, human rights law provides scope to utilize best development practices in pursuit of UPE. While human rights law often imposes non-negotiable legal obligations, there is also some flexibility built into the legal framework. For example, under the ICESCR, Kenya is obligated to take steps towards the "progressive realization" of the right to education. This affords governments some discretion in devising their policies. In exercising that discretion, one logical set of ideas to consult is the corpus of development best practices. These practices are at their best when they are sufficiently flexible to be suitably adapted to local contexts. Following a development framework, then, allows countries to choose between a series of goals, and policy prescriptions for achieving them. Such an approach also fits with the requirements of human rights law.

Third, certain fundamental tenets of human rights and development practices are increasingly converging. Here are three pertinent examples.

(1) Free and compulsory education

Human rights law requires primary education to be free and compulsory. In the development discipline, the World Bank now advocates that the elimination of schools fees and provision of free textbooks and supplies constitutes best practice.⁷

(2) Non-discrimination

The non-discrimination norm in human rights law is very strong; it is a mandatory requirement.⁸ The development world may not be far behind. Consider: MDG Goal No.2 applies to “children everywhere, boys and girls alike.” The World Bank’s *World Development Report 2006, “Equity and Development”* argues that inequality of opportunity is “inimical to sustainable development and poverty reduction” and that “the implication of this message for the work of the World Bank and others in the development community is that a focus on equity should be a central concern in the design and implementation of policy for development and growth.”⁹ Equity in development equates with non-discrimination in human rights.

(3) Participation

Human rights emphasize process. People are recognized as key actors entitled to participate in their own development. The development world has often eschewed concern for process. However, development practice may be reforming its ways. The World Bank’s *World Development Report 2004, “Making Services Work for Poor People”* notes that governments can do better to improve service delivery—including education—by “putting poor people at the center of service provision: by enabling them to monitor and discipline service providers [and] by amplifying their voice in policymaking”.¹⁰ Despite this positive shift in development thinking, the well-established practice of prioritizing participation within a human rights framework represents a significant enhancement to the development approach.

Theoretical Underpinnings of UPE in Kenya

The eradication of school fees is grounded in the idea that UPE is a necessary condition to eradicating poverty in Kenya. This idea is enshrined in the MDGs and reflects the wisdom of development experience: income poverty cannot be eradicated through economic growth alone. Strategies to reduce income poverty must include the development of human capabilities, which in turn relies on education. The report *Geographic Dimension of Well Being in Kenya*, released 1 November 2005, identifies this causal relationship between education and poverty.¹¹ It is reflected in the national budgetary allocations to the education sector. The Kenyan people also possess this insight. In nationwide surveys conducted as part of the Poverty Reduction Strategy Paper process, Kenyan citizens consistently prioritize the need to improve the education sector above other sectors.¹²

Approaching UPE as a poverty challenge—that is, through the lens of economic development—is to perceive it in its historical evolution. However, FPE is also consistent with Kenya’s international and domestic human rights obligations. As noted above, education is enshrined as a right in the Children’s Act of 2001. That Kenyans have a human right to education is also noted briefly in the *Sessional Paper* and the Kenya Education Sector Support Programme 2005-2010 (KESSP).¹³ Notwithstanding these acknowledgements, the FPE policy reflects a strong development orientation.

Application of an Integrated Framework to UPE in Kenya

The increasing convergence of human rights and development practices, together with Kenya’s existing policy framework, suggest two key insights. First, a complementary, integrated framework for the analysis of UPE is possible. Secondly, and importantly, integration does not require a radical departure

from the existing policy process underway in Kenya. In turn, these realizations constitute a powerful logic for pursuing an integrated policy approach to studying the FPE initiative.

What would an integrated framework look like in practice? This report describes the integrated framework according to a 5-A system: Availability, Accessibility, Acceptability, Adaptability and Accountability. Each component of the 5-A framework is constructed by combining the strengths—and in the human rights context, wherever necessary, the requirements—of both disciplines. The end result is as follows.

- *Availability*: Functioning educational institutions and programs must be made available in sufficient quantity.
- *Accessibility*: Educational institutions have to be available to all; three key criteria guide accessibility: non-discrimination, physical accessibility, and economic accessibility.
- *Acceptability*: The form and substance of education, including curricula and teaching methods, must be of acceptable quality to children and parents and within approved standards of the state.
- *Adaptability*: Education must be relevant. This means it has to be flexible so that it can adjust to the different and changing needs of students and communities given their diverse social and cultural settings.
- *Accountability*: Mechanisms must be established to allow claim holders (children and others) to monitor and discipline duty bearers (government institutions and educational providers) so as to improve educational outcomes. These mechanisms must allow local-level participation, including in resource allocation decisions.¹⁴

The remainder of this report describes Kenya specific observations against each of these components. In doing so, it does not follow the order established above. The reason for this is simple. Each “A” is dealt with according to a simple rule: the components requiring urgent Kenyan government attention are first analyzed. The report identifies Accessibility and Acceptability as the two major governmental priorities. The report then considers Availability and Adaptability before turning to the new, fifth-A, Accountability. This new component is discussed last not because it is considered to be least important, but because it underpins all the other four A’s. Accountability should be considered of equal rank with Accessibility and Acceptability. For each of these components the report articulates policy recommendations for the Kenyan government and its development partners, including UNICEF-Kenya. These recommendations chart a path for accelerating Kenya’s pursuit of an education system that provides a quality primary education to all.

The Goals and Methodology of the Princeton University Team

Project Summary: Woodrow Wilson School Workshop

This report represents the culmination of a semester-long Woodrow Wilson School workshop (WWS 591i, Fall 2005) facilitated by Professor Martin Flaherty of the Crowley Program in International Human Rights at Fordham Law School. Miranda Johnson and Andrew Egan, both second-year WWS Master of Public Affairs (MPA) students, originally proposed, planned, and organized the workshop. Second-year MPA students who also participated in the workshop included Christine Bischoff, Margot Brandenburg, Mangesh Dhume, Danielle Osler, Colleen Quinn, Sasidhar Thumuluri and Benny “Jihad” Williams.

The objective of the Princeton University Team (PU Team) was to use the integrated 5-A framework to evaluate the implementation of UPE in Kenya, with the intent to support the Kenyan Ministry of Education, Science and Technology (MoEST)’s goal of attaining a full course of primary education for all eligible students by 2015. Workshop clients were MoEST and UNICEF-Kenya, which has provided substantial ongoing support to MoEST in the implementation of FPE.

The workshop occurred in three stages:

Stage 1 consisted of a six-week intensive seminar devoted to the study of MDGs, RBA approaches to development, and Kenyan history and politics. The seminar included an extensive literature review, discussions, and presentations from experts in the above fields.

Stage 2 consisted of ten days of field research in Kenya (October 28 to November 5, 2005), during which Team members split up to gather data and conduct interviews with national and local government officials, students, parents, teachers, school administrators, school management committees (SMCs), and non-governmental organizations (NGOs) in Nairobi, Kwale and Garissa. A complete listing of the institutions encountered by the Princeton University Team is available in Appendix 1. At the conclusion of Stage 2, an interim presentation was made to MoEST and UNICEF-Kenya officials that summarized the Team's key findings.

Stage 3 consisted of further data collection, analysis and report preparation.

Organization of the Report: A Roadmap

The analysis contained in this report is structured according to the integrated 5-A framework described in the preceding section. Part III, which contains the substance of the report, is organized into sections devoted to each of the 5-A components: Accessibility, Acceptability, Adaptability, Availability, and Accountability. Each section is in turn divided into the following sub-sections: a brief discussion of the theoretical concept as it pertains to UPE in Kenya, a summary of government achievements to date, a discussion of two or three focus issues, a summary of additional areas of concern, and PU Team recommendations.

The selection of focus issues proved to be one of the greatest challenges in writing the report. In many cases, the issues of greatest overall importance were those already receiving the greatest attention from MoEST and UNICEF-Kenya, or those where the PU Team did not feel qualified to make recommendations on the basis of its limited observations. For example, the millions of children infected with or orphaned by HIV/AIDS remain among those least able to access primary education; however, the PU Team was not able to gather significant data or conduct interviews in areas of high disease prevalence. Focus issues were therefore selected on the basis of three primary criteria: relative importance, availability of information to the PU Team, and ability of the PU Team to provide value-added analysis.

The Case of Kenya

Roots of FPE: the Political Climate in Kenya and Abroad

A number of political factors converged to result in the Kenyan government's decision to implement Free Primary Education in January 2003. The first, and most significant, was the election of Kabaki's National Alliance Rainbow Coalition (NARC) to office in 2002. NARC defeated the Kenyan African National Union (KANU) government that had governed the country since its independence. NARC ran on a social reform platform that prominently featured a promise to eliminate school fees. The second factor contributing to the implementation of FPE was a downward trend in school enrollment and completion rates in Kenya during the 1990s, from a net enrollment rate of 80% in 1990 to 74% in 2000.¹⁵ The third contributing factor was the abolition of school fees in neighboring countries, starting with Malawi in 1994 and followed by Uganda in 1997, Cameroon in 1999, Tanzania in 2001 and Zambia in 2002. The proliferation of FPE was itself reflective of a growing international consensus, shared by governments, donors, and international agencies such as the World Bank, that 'cost-sharing' in the health and education sectors – which had been highly encouraged by structural adjustment programs of the 1980s and 1990s – often produced highly adverse social outcomes. There were thus regional precedents, as well as widespread international support, for the NARC campaign promise to make primary education free for all students.

Implementation of FPE

The FPE initiative consisted of a government commitment to abolish tuition fees for primary school and to meet the costs of teaching and learning materials, wages for teachers and key non-teaching staff, and co-curricular activities.¹⁶ The response to the announcement of the policy was overwhelming: the number of students in primary school increased from 5.9 million in December 2002 to 6.9 million in 2003 and to 7.2 million in December 2004, an increase of over 20% in less than two years. The gross enrollment ratio increased from 92% in 2000 to 104% in 2003-04.¹⁷

As enrollment rates soared, classroom size increased significantly. The teacher-pupil ratio worsened from a national average of 1:34 in 2002 to 1:40 in 2003.¹⁸ It is also important to note that the average ratio masks the asymmetry in teacher distribution across grade level and school: in many schools, the teacher-pupil ratio exceeds 1:100 in the lower levels. Construction of additional schools and classrooms was not part of the FPE initiative, and enrollment surges placed a similar strain on the physical infrastructure of schools. In some schools, multi-shift or multi-grade classrooms were instituted to help address the shortage of teachers and classrooms.

Announcement of the initiative was accompanied by the allocation of additional funds to the education sector. The total budget was increased to 79.4 billion Kenyan shillings (USD 1.07 billion in current dollars, or an increase of 17.4% from previous funding levels), with over Ksh. 5.6 billion (USD 75 million) specifically allocated to the FPE initiative.¹⁹ In 2004, 40% of the public sector recurrent budget was devoted to education.²⁰ An additional Ksh 7.18 billion (USD 96.4 million) was mobilized from donor agencies, although 80% of funding for primary education continues to be mobilized from domestic sources.²¹

In order to satisfy the funding requirements of schools, the government initiated a new policy of directly transferring funds, excluding teacher salary funds, to individual schools. Allocations are based on the number of students in a school (1120 Ksh – or USD 14 – is allocated for each student), and funds are disbursed to schools through two accounts that are managed by the School Management Committee (SMCs). SMCs, which consist of the Head Teacher, an elected parent representative from each grade, and community leaders serving in an ex officio capacity, existed before the onset of FPE but their role was substantially expanded by the onset of the new policy. The first account through which funds are disbursed is the School Instructional Management Bank Account (SIMBA), which is used for the provision of teaching and learning materials. The second account is a general purposes account to be used for operating expenses of the school, excluding teacher salaries. The funds are transferred twice a year by the Ministry of Education within a maximum delay of 48 hours from when funds are received from the Ministry of Finance.²²



The government also recognized that a coherent education sector policy framework, as well as stronger stakeholder coordination, would be needed to overcome the challenges that remained after the implementation of FPE. The government led various donor agencies, NGOs and other key stakeholders active in the education sector to develop a five-year plan – consistent with the budget cycle and other national and sector policy frameworks - to achieve universal primary education by 2015. The outcome was the Kenya Education Sector Support Programme 2005-2010 (KESSP), which outlined 23 priority areas for investment in the education sector, including general areas, such as primary school infrastructure, and specific targeted initiatives towards areas facing particular challenges, like the arid and semi-arid lands.²³

ACCESSIBILITY

Core Concept of Accessibility

A fundamental prerequisite of the realization of the right to education is to ensure that education is accessible to all children.

Accessibility requires that obstacles to completion of primary education by all children be eliminated. Three key criteria guide accessibility: economic accessibility, non-discrimination, and physical accessibility.²⁴

There is considerable convergence in the human rights and development literature concerning the importance of ensuring widespread access to education as well as relevant considerations for assessing whether education is accessible. The following three features are particularly important for assessing accessibility.

The first is that schools must be **affordable**. This means that governments should seek to eliminate school fees as well as other expenses which might serve to effectively deny access to school to children of poor parents, such as fees for uniforms and textbooks. Over the last decade, a consensus has emerged within the development community that school fees should be eliminated—at least in primary school—based on considerable evidence documenting their detrimental effects on the attendance of students, particularly girls.²⁵ The development literature also emphasizes the need to address other costs of education that may effectively deny access, including the opportunity costs parents incur by sending a child to school rather than using them for household, farm or business labor.²⁶ International human rights treaties have consistently emphasized the right to free education.²⁷ This commitment has been interpreted to require that governments remove both direct and indirect fees that hinder the realization of the right to education.²⁸

The second is the importance of **non-discrimination** on the basis of gender, race, ethnicity, or any other grounds. This means that governments must remove direct and indirect barriers that result in disparities in enrollments among girls or racial and ethnic minorities. International human rights law requires States Parties to achieve equality of result.²⁹ Consequently, an education policy violates the prohibition on non-discrimination even if it does not appear to directly discriminate against a disadvantaged group but rather fails to address underlying factors that may result in lower numbers of that group being able to realize their right. When necessary, States are allowed to institute temporary special measures, or affirmative action programs—such as scholarships for girls—in order to remedy disadvantage.³⁰ This is consistent with the emphasis in the development literature on the enormous payoffs for developing countries of investments in girls' education.³¹

Finally, schools must be **physically accessible** to children. Schools must be in reasonable and safe geographical proximity to students. This seems to be particularly important to ensure access to primary schools and also to ensure equal access for girls, for whom safety while traveling to school may be a particular issue.

Achievements and National Trends

Through its FPE initiative, the Government of Kenya has demonstrated a strong commitment to expanding educational access. The abolition of school fees removed one of the major barriers to access to education for children of parents of limited means and reversed a trend of declining enrollment rates. The significant increase in the number of children enrolled in school since 2003 has been noted in the previous section: the gross enrollment rate increased from 92% in the year 2000 to 104% in 2003-04.³² Furthermore, enrollment rates increased in all three of the districts where the PU Team conducted field

research. In Garissa, the gross enrollment rate increased from 12.9% in 2000 to 21.2% in 2005.³³ Kwale District also experienced a steady rise in attendance: from 109,668 students in January/March 2003, to 128,876 in January 2004, to 132,560 in January 2005.³⁴

Achievements have also been made in removing indirect barriers to school attendance. In particular, the World Food Programme and MoEST coordinate the administration of school feeding programs in ASAL districts and informal settlements in Nairobi. Furthermore, the FPE initiative includes funding for provisions of textbooks and exercise books to students. Money transferred to schools through the SIMBA Account is earmarked for the procurement of teaching and learning materials to the sum of Ksh. 650 (USD 8.72) per student per year.

The policy documents of MoEST recognize that, even after FPE, access barriers to education continue and places priority on continuing to expand access. The Sessional Paper includes as one of its goals: "To ensure that all children, including girls, children in difficult circumstances, and those from marginalized/vulnerable groups, have access to and complete free and compulsory primary education by 2010."³⁵

Issues in Focus

Although Kenya has made significant progress in addressing access barriers to education, an estimated 22% of Kenyan children have not yet been enrolled in school. According to KESSP, an estimated 1.7 million children and youth were not able to access formal school in 2004.³⁶ These groups are disproportionately children from nomadic communities, girls, orphans and other vulnerable children (OVCs), children from informal settlements and other children of poor parents. Addressing the access barriers that these groups face likely requires focusing policy and funding priorities on their specific needs.

This section will focus on the following major issues:

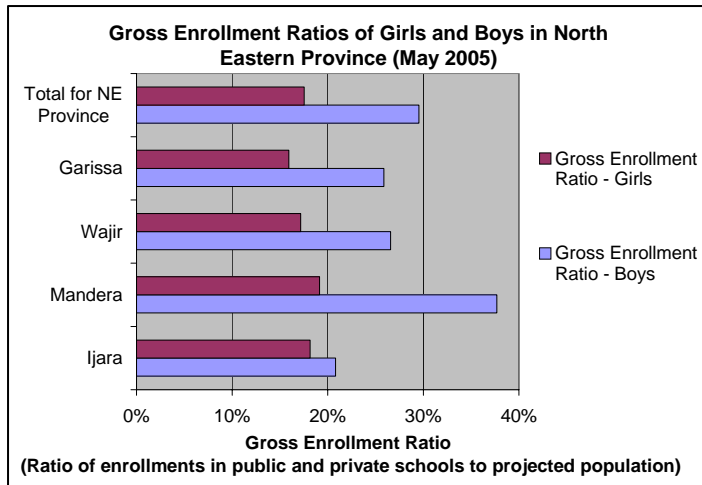
1. Barriers to access to education for children from nomadic communities
2. Barriers to access to education for girl children
3. Barriers to access to education for children in informal settlements

Additional access barriers to other children, particularly OVCs, will be discussed briefly at the end of this section.

Issue 1: Addressing Access Barriers for Children from Nomadic Communities

The North Eastern Province, the area of the country that this analysis will focus on, is the site of the lowest primary enrollment rates in the country. The four districts in the North Eastern province are among the 22 arid and semi-arid (ASAL) districts in the country and are inhabited primarily by residents of Somali origin and Muslim faith. The majority of the population in these areas is pastoral, nomadic and highly dispersed geographically. The province represents one of the poorest areas of the country, with the lowest socio-economic indicators, and is characterized by frequent drought and food insecurity.

Addressing the educational needs of students in the North Eastern province is particularly challenging. Even after the introduction of Free Primary Education, the district with the highest enrollment rates in the province, Mandera district, has only achieved a 29% enrollment rate of school-age children. The overall gross enrollment rate in the province was 24%, with 30% of boys and 17.5% of girls in the region enrolled in school.³⁷ Completion rates are also very low: 24% of children in Garissa drop out between class 1 and class 3.³⁸ Ensuring that all children in this province are able to access education is likely to represent one of the greatest challenges to achieving universal primary education in Kenya.



The combination of the poverty, low population density and the high levels of mobility of the communities mean that traditional educational models have limited usefulness in reaching many of the children from this region. Family economies also depend on the labor of children, particularly herding animals and household chores, meaning that there are significant opportunity costs to sending children to school. Families may also be reluctant to send their children, particularly girls, to formal school and may opt for religious education instead. Schools are also frequently not physically accessible to students in this region: schools are 20-45

kilometers apart.³⁹ Development and expansion of alternative forms of education is critical to further increase school enrollments.

As a means to address access barriers related to population mobility, the government operates low cost boarding schools throughout the Northeast Province and other ASAL districts.⁴⁰ Formally attractive educational options for pastoral children in the 1980s, boarding schools became less popular with the introduction of cost sharing policies. After the government stopped providing grants to the schools, the facilities deteriorated in quality.⁴¹ With the introduction of FPE, the boarding facilities again are subsidized by the government, receiving 2000 Ksh. per year per student. Furthermore, the facilities are being renovated and equipped and food is now being provided at the schools.

While becoming more popular, boarding facilities throughout the district continue to operate below capacity.⁴² Part of the explanation may be the additional boarding fees that parents are required to pay to supplement the government subsidy. For example, parents must contribute 500 Ksh. per term towards the boarding facilities at one primary school visited and 1000 Ksh. per term for the facilities at another.⁴³ Other parents may be concerned about the safety of their children, particularly girls and younger children. Furthermore, there are significant opportunity costs for parents sending their children to boarding when they may rely on the children's labor in the household or for herding animals. On the other hand, due to increasing recognition of the importance of girls' education, some parents are send their daughters to boarding precisely because it allows them to study without being encumbered by domestic tasks.⁴⁴ Convincing others of the value of this decision will require continued advocacy.

Even those who attend boarding schools may not represent the primary target population, children of nomadic parents. For example, students interviewed at one primary school we visited reported that their parents lived in Garissa town and sent them to boarding based on the academic excellence of the school.⁴⁵ While boarding schools are an important component of addressing the access barriers to education for children in this province—particularly for students in the upper grades—they are only part of the solution.

Institutionalizing a system of mobile schools appears to provide the greatest promise for reaching children in the province. Mobile schools are modeled on the local system of *dugsi* schools, whereby a Koranic teacher travels with each community and provides religious instruction at hours convenient for the children in the context of their family labor responsibilities. Currently, such schools are being provided on a pilot basis by two non-governmental organizations. Oxfam Great Britain, together with the Provincial Director of Education and UNICEF, has been piloting two mobile schools in Wajir district, and

Education for Marginalized Children in Kenya (EMACK), a USAID-funded project, is piloting mobile ECED centers. These pilot programs have demonstrated positive results, both in terms of attendance and gender parity.⁴⁶

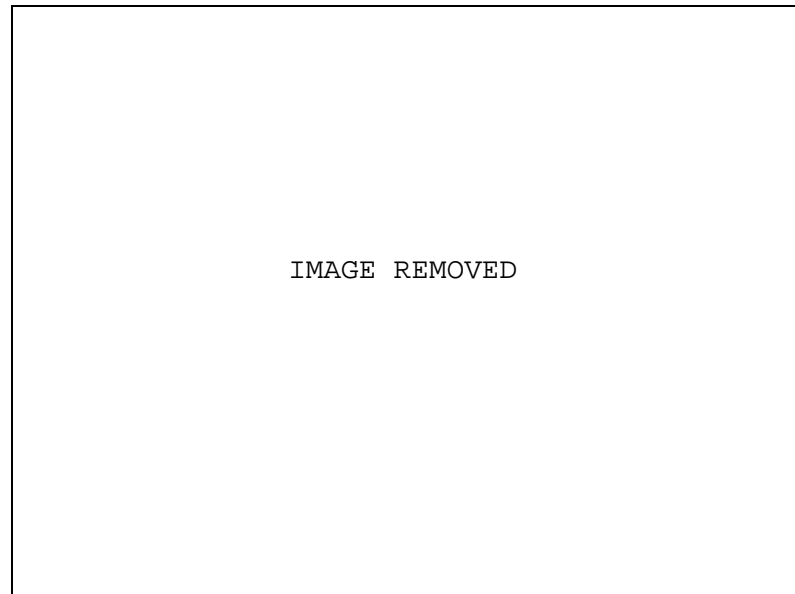
As outlined in the KESSP, MoEST plans to establish 10 mobile schools in 10 districts by 2008. These are scheduled to be phased in over three years starting with 2005-06 school year.⁴⁷ The Arid Lands Resource Management Project, a World Bank funded project of the Office of the President, and UNICEF initiated five mobile schools in Wajir in June 2005. The two organizations are currently in the process of establishing five more mobile schools in Garissa District, which are scheduled to start in January 2006.⁴⁸

Institutionalizing a public mobile school system presents significant challenges, including identifying teachers who are willing to move, paying salaries to teachers in remote locations, the possibility of community dispersion in times of drought, and the potential for communities to move across the borders to Ethiopia or Somalia.⁴⁹ However, these challenges, while requiring considerable discussion and planning, do not seem insurmountable.

Issue 2: Addressing Access Barriers for Girl Children

Kenya has made great strides towards achieving gender parity in primary school enrollment nation-wide. A 2005 survey conducted by UNESCO estimated that girls constituted 49.1% of primary school students, and that girls' net enrollment rates exceeded those of boys in most regions of the country.⁵⁰

Nonetheless, there remain areas of the country – including Kwale and Garissa - where significant gender disparities in enrollment endure. Overall net enrollment rates for girls in Kwale, for example, lagged 9% behind those of boys in 2005.⁵¹ While enrollment rates for girls in Garissa district increased 14% from 2002 to 2005, there continues to be a 10% gap in gross enrollment rates.⁵² In Garissa, many of the single-sex boarding schools created by MoEST to enhance girls' access to primary school operate below



A poster inside this Nairobi school raises awareness of gender disparities.

capacity, a fact which underscores that there exist more than just physical barriers to girls' access.

The causes of these enduring pockets of gender inequality in enrollment are multi-faceted, complex, and apparent to most or all of the national and local government officials with whom we spoke. The first cause is the role that female children play in the household: among other tasks, girls are expected to care for younger siblings, clean, assist in the preparation of meals, and collect water. The importance of girls' contributions to the household appears to be greater in rural and poorer areas. In Kwale, for example, only 23% of households have access to piped water, which

increases the intensity of labor required to collect necessary water supplies and thus household dependence on the contributions of girls. In Garissa, the demands of the household are such that many families feel they can only send one or two children to school – in this case, they often choose to send boys rather than girls.

The second cause of remaining gender disparities stems from perceptions about the safety of girls' school attendance. This is a particular concern in nomadic communities, where school attendance frequently requires children to lodge at boarding schools or stay with relatives in town. Both of these options are considered unsafe by many parents, who prefer to keep their girl children at home. These fears are not unfounded: for example, at one boarding school visited, students recounted that their safety had been endangered through the encroachment of wild animals on the premises, which lacked a perimeter fence.⁵³

Economic and attitudinal barriers are the third major cause of asymmetry in girls' and boys' enrollment rates. Some parents simply do not see value in primary school education for their daughters, or believe that formal primary education is otherwise incompatible with the other duties of female children. In Garissa, for example, parents prefer their daughters to attend Koranic schools, in part because the latter are designed to accommodate the time devoted to household activities.

Girls' access to education is also hampered by disparities in rates of retention. While there has been substantial progress in closing the gap between boys' and girls' primary school completion rates – the gender disparity in completion rates nationwide dropped from an average of 5% between 1994 and 2001 to 0% in 2002 – certain districts also continued to demonstrate significant disparities. In Kwale, for example, there was a 20% gap in enrollment rates between boys and girls in Standard 8, with the latter constituting only 40% of students at that level.

Gender disparity in retention appears to be largely driven by a significant increase in the dropout rate for girls at the time of puberty. This phenomenon is, in turn, fueled by several factors, including:

- *Early marriage:* In some regions, girls are removed from school in order to fulfill marital obligations.
- *Teenage pregnancy:* Pubescent girls are perceived to be at higher risk for pregnancy than girls who remain at home.
- *Inadequate sanitation facilities:* While advances have been made to improve toilet facilities – most recently through a one-time MoEST grant of 50,000 KSH to schools designed to ensure a minimum of one toilet per school⁵⁴ – many students, teachers, and community members reported that toilet facilities remained inadequate for the needs of menstruating girls. A lack of running water and/or sanitary pads creates additional challenges for menstruating girls. KESSP provides for the future improvement of sanitation – including the provision of sanitary materials – in schools, but such improvements are likely to be subject to resource availability. An NGO in Garissa that provides training to girls to make their own sanitary pads using reusable low-cost materials could serve as a useful model for the provision of cost-effective sanitary materials.⁵⁵
- *Female genital cutting:* The practice of female genital cutting, which has a 98% prevalence rate in the North East province,⁵⁶ results in higher dropout rates for girls. UNICEF's community advocacy activities in the area of female genital cutting, which are focused in this province, have the potential to mitigate the impact of this practice.
- *Lower probability of attending secondary school:* That girls are less likely than boys to attend secondary school – a trend which is itself the result of a variety of factors – constitutes a disincentive for them to complete primary school. KESSP provisions include a bursary for girls' secondary school, but this is also subject to the availability of resources.

There exists some anecdotal evidence to suggest that girls' higher attrition rates may also reflect lower academic performance. However, a systematic collection and analysis of standardized test score data would be required to quantify or substantiate this claim.

Issue #3: Addressing Access Barriers to Children from Informal Settlements

The informal settlements surrounding Nairobi pose unique challenges to accessibility. In Nairobi there are about 400 Non Formal Schools (NFSs) and 200 formal schools, with approximately 40,000 children attending NFSs. Despite the FPE initiative, in 2004 there were significant numbers of children who were unable to access formal schools in Nairobi District.⁵⁷ For example, according to an Oxfam survey, 37.3% of children in the Kibera informal settlement remain out of school and the majority of those in school—approximately 70%—attend non-formal schools.⁵⁸

The government has set the laudable goal of “removing all barriers to disadvantaged groups” of children who wish to attend primary school.⁵⁹ To this end, it is important to explore the costs that children and their families bear despite the elimination of formal school fees.

One significant “hidden” cost which is particularly prohibitive to the pockets of poor in non formal settlements is the cost of school uniforms, ranging from 500 Ksh. to 1000 Ksh. (approximately USD 6.50 to USD 13.00) and above. Although uniforms are not required for school attendance, many students and teachers cited this as a practical necessity to prevent students from feeling ostracized and effectively prohibited from attending. The cost of uniforms, particularly for orphans and vulnerable children, then, is a significant barrier to enrollment and retention. Another potential cost to enrollment is that of additional fees for school lunch programs in both formal and non formal schools. Some schools charge children 50 Kshs (USD 0.65)/month for school meals, as a requirement for attending. Children who were not able to pay reported being sent home until they could.⁶⁰ This could feed the perception that school is in fact not free and reduce students’ ability to attend.

Field research also revealed anecdotal examples of payment as punishment. For example, one student recounted a story in which he accidentally broke a classroom window. The teacher barred his attendance until the student paid for repairs.⁶¹ While there should, of course, be punishment for infractions as a disincentive for unruly behavior, it is easy to see how a scenario such as this could lead to indefinite suspension and attrition of students who are unable to pay.

Transportation costs may constitute another barrier to enrollment. For example, the children who attend Moi Primary travel by bus or are dropped off by their parents. Moi Primary is an example of a well-performing school, but many children cannot attend because the cost of bus fare is prohibitive. In general, the further a school is from the community, both physically and socially, the less likely students are to attend.⁶² Children reported walking for hours to attend school, even “neighborhood” slum schools. Though these students were obviously not deterred by the long walk, other students who are perhaps too young, ill, or are physically disabled would certainly be kept out of school.

Compounding this issue is the extreme difficulty of acquiring land for schools in informal settlement areas due to property right disputes and the physical space limitations created by population density. Before resources are allocated to building infrastructure or further developing established schools in poor areas, the investment should be secure. One example of this difficulty is Oxfam’s experience with a school located on land donated by the Kenyan Assembly of God Church. School administrators thought the title was secure and began building school infrastructure on the property, but it was later ruled not to be in their possession, and the school was eventually closed.⁶³ Other non-formal schools, such as Makina Baptist Primary, are in constant threat of closure for similar reasons.



Classroom at Makina Baptist Primary, an NFS in Kibera

The presence of non formal schools in some areas may divert students away from formal schools and thus constitute a type of barrier to access. Most agree that school lunch programs constitute a primary driver for school attendance. An array of NGOs provide these services in non formal school environments, while some government-run formal schools are either unable to provide meals or charge a fee for doing so. Currently, for example, the World Food Programme provides free lunch and mid-morning porridge to 73,000 children in 100 NFSs in the informal settlements of Nairobi.⁶⁴ The Government is committed to expanding school feeding programs and partnering with community organizations to see that the neediest children are supported.⁶⁵

More generally, the Government is providing support to non-formal schools that comply with the Ministry's accountability requirements.⁶⁶ NFSs have expanded access in informal settlements, and MoESTs financial allocations to these schools help ensure continued provision of services. In as much as NFSs are on the path toward becoming mainstreamed and eligible for MoEST funding, increased enrollment in NFSs through the expansion of school feeding programs in formal schools is desirable.

There are various myths about formal schools that may also lead students to choose to enroll in lower quality NFSs, and thus lower enrollment rates in formal schools. The first myth pertains to the whether or not formal schools are really free of cost. Many students pay to attend an NFS - , usually about 50Kshs (USD .65) per month - and some families assume that public schools also charge fees.⁶⁷ Another popular misconception is that formal school culture is undisciplined and corrupt. One student attending an NFS quipped that formal schools allow students to play cards during school – proof to him that the students there were unruly. Some families perceive NFSs as akin to private schools, with the attendant positive environment.⁶⁸

Other Accessibility Concerns Noted

Addressing access to education for the estimated 650,000 children, or 4.3% of Kenyan children, who have lost one or both their parents due to HIV/AIDS was a particular concern noted by the team but that we were not able to focus on during our visit. The current draft policy on Orphans and other Children made Vulnerable by HIV/AIDS (OVCs) together with the UNICEF-sponsored pilot programs to provide subsidies for families who have taken in OVCs both represent promising means of addressing the needs of this group of children.⁶⁹ We further recommend exploring the possibility of targeting feeding programs to OVCs in schools that do not otherwise benefit from feeding programs in order to create incentives for their attendance.

Recommendations to Expand Educational Access

Addressing Access Barriers to Children from Nomadic Communities:

- Develop an education policy for nomadic communities that includes the design and implementation of strategies to increase access to education. While discussions of the ASALs and nomadic communities have been integrated into KESSP, addressing the specific access barriers to education of nomadic children likely calls for the development of a specific policy along the lines of the current draft gender and development and OVC policies. Such a policy should build on best practices from NGO and pilot programs as well as include specific plans for enhancing the capacity of relevant actors to meet the needs of communities in ASAL regions.
- Expand mobile schools more rapidly: The Government of Kenya should work in close association with local and international development organizations to expand the mobile school programs more rapidly, with a goal of ensuring that every child from nomadic community enrolls in school by 2010. Special incentives in the form of higher hardship allowances would be useful to address the barriers to hiring and retaining teachers in such an expansion plan.

Addressing Access Barriers to Girls:

- Explore the possibility of making secondary education free of charge for girls – or, at a minimum, continuing to enhance the availability of scholarships as an added incentive for girls to remain in school through Standard 8. Also, consider making early childhood education free for girls in those districts where girls' enrollment continues to lag behind that of boys'.
- Improve the hospitability and safety of school environments for adolescent girls through the further improvement of sanitation facilities, including toilets and the availability of sanitary pads, and/or through the placement of women counselors/mentors within schools. It would also be useful to consult parents, teachers and students to devise low-cost ways to enhance the safety of day and boarding schools.
- Expand and reinforce existing governmental and non-governmental initiatives designed to promote girls' education, especially those that focus on sensitizing parents and community members to the importance of educating girls and discouraging the practice of child household labor.

Addressing Access Barriers to Children in Informal Settlements:

- Seek donor partnerships to expand the coverage of school feeding in formal schools, and ensure that students and parents are aware that this is not an additional cost.
- Expedite and facilitate NFS mainstreaming. For example, the government can use its expertise in negotiating property disputes so that more schools can be established in informal settlement areas, satisfying one requirement of the mainstreaming process.
- Consider an inexpensive education campaign to dispel myths about formal school among students attending the poorest non formal schools. Allaying fears about quality and cost could compel students to attend formal schools, and raise the overall enrollment rates. This could be done in conjunction with quality assurance and non-formal school mainstreaming visits.

ACCEPTABILITY

Core Concept of Acceptability

Acceptability emphasizes the need for a quality, as well as culturally-relevant, learning experience. Within the 5-A framework, acceptability highlights the right of children to achieve reasonable learning outcomes and acquire knowledge, skills, and principles that help them play a positive and productive role in society. Undoubtedly, quality is at the center of how well students learn and how thoroughly students obtain the fundamental benefits gained from participation in the primary education system.

Acceptability mandates that the form and substance of education, including curricula and teaching methods, have to be of good quality, relevant, and culturally appropriate for children and within the approved standards of the state.⁷⁰

The definition of acceptability is rooted in international legal agreements, Kenyan Sessional Papers, the KESSP, and national legislation, and is implicit in the MDGs. Kenya has acceded to several international agreements that explicitly suggest that children have the right to a **quality** education. Whereas the comments to several treaties explicitly state that education must be “acceptable (e.g. relevant, culturally appropriate and of good quality),”⁷¹ comments of other treaties suggest that education is directed at “the holistic development of the full potential of the child.”⁷² These international agreements also include the obligation to “**eliminate discrimination against women**”⁷³ in the field of education and to eliminate “stereotyped concept[s] of the roles of men and women...in all forms of education.”⁷⁴

Development literature also suggests that quality is an essential component of education. For example, these *obligations* state that “all children...must be given the opportunity to achieve and maintain an acceptable level of learning.”⁷⁵ In reference to girls’ education, this literature reaffirms the commitment to “eliminate[e] gender disparities”⁷⁶ in education and explicitly states that “the most urgent priority is to ensure access to, and improve the quality of, education for girls.”⁷⁷

Although the MDGs make no explicit reference to educational quality, quality is an essential component of educating students. Additionally, it is a prominent aspect of international development frameworks as well as national legislation; thus one can infer a quality requirement implicit in MDG goals 2 and 3.⁷⁸ This inference is further supported by the literacy indicator for MDG goal 2; because a quality education is essential to achieving literacy, quality is implicit in MDG goals 2 and 3. Furthermore, MDG goal 2 requires that a full cycle of primary education be completed by 2015. This implies that the education be of an acceptable quality to parents and students because if education was not acceptable, then there would be little motivation for parents to require their children, or for students themselves, to complete a full cycle.

In an attempt to meet these international and national obligations, the MoEST embarked on reform by developing Sessional Paper No. 1 of 2005, which states that “The long-term objective of the Government is to provide every Kenyan with basic quality education.” Additionally, MoEST developed the Kenya Education Sector Support Program (KESSP) in order to implement the policy framework contained in the Sessional Paper using a sector-wide approach to planning.⁷⁹ In terms of national legislation, the 2001 Children’s Act Cap 586 Laws of Kenya provide that every child is entitled to quality free and compulsory basic education.⁸⁰

In addition to the government’s commitment to current and future interventions to increase the quality of education, it is important to note that Kenyan children, parents, and teachers who were interviewed also identified the need for a quality education as a component of self-realization. These stakeholders explained that a high-quality education was not only a source of inspiration for the future, but was essential to the achievement of their goals.⁸¹ Specifically, primary school students recognized the connection between educational quality, learning, and life goals, which included supporting themselves and their families in the future.

Achievements and National Trends

The Government of Kenya has clearly demonstrated its commitment to providing a quality education to all children in Kenya. As described above, the acknowledgement of the importance of relevant and meaningful educational experiences is a central component of Kenya's poverty reduction strategy. Furthermore, considering Kenya's significant resource allocation to the education sector, MoEST is continually working to improve the education system to provide a quality education for all children.

Throughout the KESSP, the education sector has identified strategies and resources necessary for increasing the acceptability of primary education. In particular, the education sector has allocated resources to increase the monitoring and evaluation of educational outcomes, as well as to implement monitoring and evaluation in standards 1-4.⁸² Additionally, MoEST has transformed the role of the former district evaluators into quality assurance officers. Further diffusion of quality assurance officers at the district and school level, particularly in high-need and remote districts, will likely result in increased quality improvements in the classroom learning environment.

In addition to the creation of a quality assurance organization, MoEST and its education development partners have instituted, or plan to institute, a variety of noteworthy interventions designed to increase the quality of teaching and learning in primary schools. For example, they have provided instructional materials and science kits to improve learning. Free textbooks are currently being distributed, with the ultimate goal of providing one textbook, for every subject, to every Kenyan child by 2010.⁸³ Furthermore, the 2003-2004 curriculum revisions coupled with phased-in training programs will provide critical support to teachers as they continue to improve the educational outcomes of all children in Kenya.

Issues in Focus

The following issues were identified, through field research and background reading, as some of the key issues challenging the acceptability of Kenya's primary educational system following the launch of free primary education:

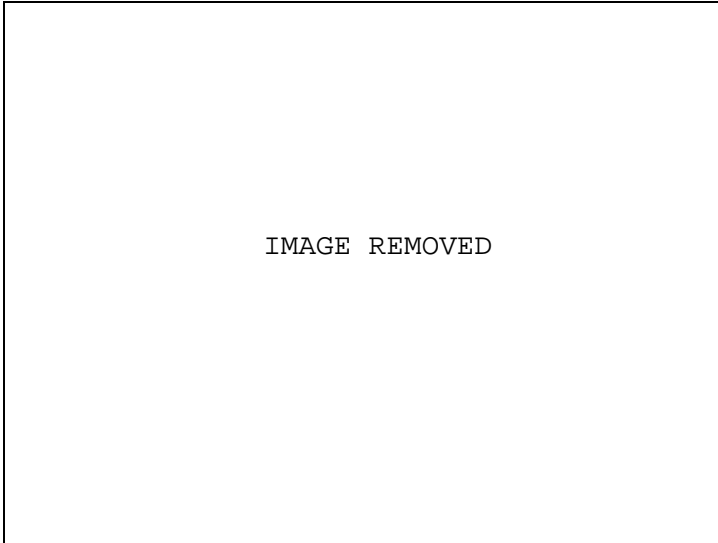
1. Enlarged classes, particularly in urban centers, and a lack of child-friendly teaching materials are compromising the teaching and learning process.
2. Girl children often face gender bias in classrooms and curricula that impede their ability to obtain a quality education.
3. Early childhood education and development programs are not reaching the neediest children and are not necessarily evaluated for quality and efficacy.

Issue 1: *Enlarged classes, particularly in urban centers, and a lack of child-friendly teaching materials are compromising the teaching and learning process*

Following the January, 2003 launch of free primary universal education in Kenya, an estimated 1.2 to 1.5 million non-enrolled children entered primary schools – with drastic and consequential results on class sizes and pupil-teacher ratios. While Kenya's national pupil/teacher ratio is 40:1, pupil/teacher ratios vary greatly by region. For example, the average pupil/teacher ratio in the Northeast province is 60:1; in Kwale, the average pupil/teacher ratio is 55:1; and, in Nairobi, the average pupil/teacher ratio is upwards of 80:1⁸⁴. Furthermore, there is significant variation in the pupil/teacher ratios for upper and lower standards. Many schools offer lower primary schools classes with more than 70 pupils per teacher while upper primary school classes may have as few as 20 pupils per teacher. Such high pupil/teacher ratios negatively impact teachers, students, the learning process, and the acceptability of the education offered.

Undoubtedly, the teacher hiring freeze severely limits the availability of solutions to this problem. While MoEST estimates that 30,000 additional teachers are needed to decrease pupil/teacher ratios, the

Teachers' Service Commission estimates that 60,000 additional teachers are needed.⁸⁵ Rather than fixating on or targeting an exact ratio, in the short term, MoEST should continue to invest in alternative strategies which will alleviate some of the pressures of high teacher-pupil ratios and deliver significant returns on the acceptability of primary education classrooms. In the medium-term, assuming that the hiring freeze continues, MoEST should consider policies which might redistribute the teaching corps so that the various regions have a more equitable and adequate level of certified teachers.



This classroom is overflowing with young minds

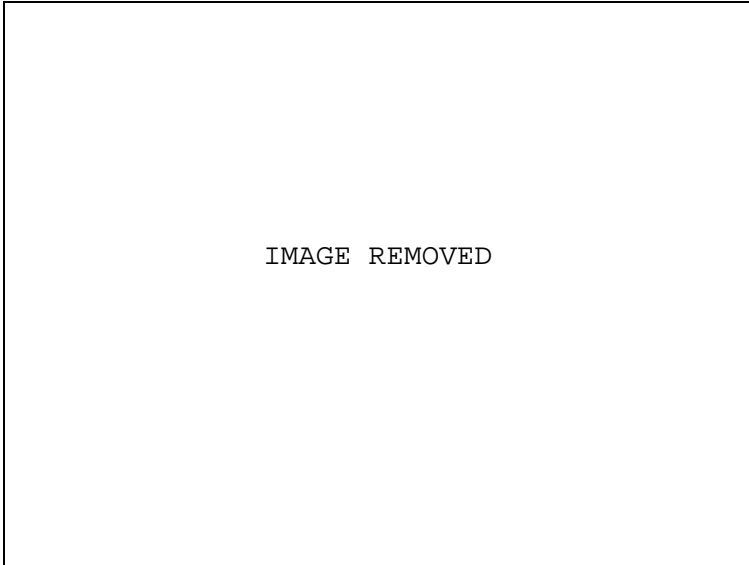
Research has demonstrated that increased class sizes negatively effect knowledge and skill acquisition; recent anECEDotal testimonials provided in field interviews confirmed such a trend in Kenyan primary school classrooms. With the introduction of free primary education and the subsequent increase in class sizes, the variation of abilities and ages within the Kenyan classroom has increased, thus it is very difficult for one teacher to effectively teach, and provide specialized attention when necessary, to each child. As a Garissa district primary school teacher noted, "a class period is too short to even give each child one minute of individual attention;" a Kibera Primary School teacher noted, this "results in teaching

to those who are first to learn" because "reaching every child is impossible." For many teachers, the responsibility of knowing that they cannot adequately serve every child results in decreased morale; while fundamentally supportive of FPE, many teachers interviewed noted feeling as though they "carry the burden of FPE."⁸⁶

Given the impact of enlarged classrooms on the quality and relevance of the educational experience of pupils, utilizing teacher aides, who may be volunteers, older students, or part-time professionals, in the lower classes will allow for more individualized instruction and an increase in the quality of instruction. Specifically, aides could assist with literacy, which is one of the best predictors of longer-term learning achievement, as well as arithmetic.⁸⁷ During existing MoEST's in-service training sessions, facilitators could also focus on the benefits of, and methodologies for small group learning exercises. In particular, training could focus on techniques that encourage the use of classroom leaders and peer teaching as a means for improving instruction and educational quality. In schools with particularly high pupil/teacher ratios, head-teachers should consider alternative scheduling strategies and and/or multiple classroom shifts to offer more, yet shorter, classes. However, it should be noted that there is a tradeoff between longer classes and shorter classes with a reduced pupil/teacher ratio.

Kenya's large class sizes are compounded by the insufficient of basic teaching aids and learning materials in many classrooms; this compromises the quality of the education as learning stimulation is minimized and attentiveness is diminished. While many teachers recognize that their use of out-dated teaching methodologies encourages rote and passive learning, they tend to default to such techniques due to large class sizes and the resulting classroom management challenges.⁸⁸ MoEST, in conjunction with UNICEF-Kenya has rolled-out training sessions on child-centered approaches to teaching and learning. Teachers who have completed these sessions credit the training with having had a significant impact on their teaching abilities and the students' learning. Additionally, the positive feedback loop associated with child-centered approaches – training teachers to be child-centered motivates children's learning and satisfaction which motivates teachers to improve teaching – may serve to enhance teacher moral issues

following FPE as well as levels of classroom instructional quality. In partnership with UNICEF-Kenya, MoEST should quickly promote, and where needed, provide for, learning resource centers (LRC) in clustered groups of schools to allow for sharing of materials and best practices across schools and teacher corps. When the Kibera Primary School recently closed its LRC due to the need for classroom space, many of the teachers saw it as a loss of support and innovation.



The wall of this school functions as a low-cost teaching aid

Given that better inputs, like textbooks and classroom materials, can have a cancellation effect on increases in class size, MoEST should provide low/no-cost, locally produced materials to create stimulating classrooms, specifically in the lower primary standards.⁸⁹ Head teachers and quality assurance coaches should encourage the use of these resources to increase current levels of instructional quality in primary schools. On-going dialogue between quality assurance managers, teachers, and school officials will also serve to identify acceptability gaps and generate reforms so that all children benefit from a quality education.

Issue 2: *Girl children often face gender insensitivity in classrooms and curricula that impede their ability to obtain a quality education.*

Nationwide, there is an insufficient level of gender-sensitive teachers to serve as role models for girls. In rural regions of the country, such as the NE province, there are very few female teachers. For example, in the Garissa district, only 5% of all teachers are female.

Recognizing that this low number of female teachers is problematic, the government should provide incentives to encourage more females to enter the teaching profession. These incentives may include allowing women to attend Teachers College with tuition waivers or reduced tuition. Additionally, the government should provide additional incentives for females who are willing to work in rural areas. Financial incentives could include hardship allowances or housing allowances. Other incentives may include encouraging females to commit to teaching in rural areas in exchange for allowing these teachers to state a preference as to which Teachers College they attend, promising to approve the teacher's transfer request after a specified number of years, or providing additional training for these teachers. Additionally, the government could require that all teachers, including females, serve in schools designed to address children of special needs for at least one school year.

This lack of female teachers is exacerbated by the fact that in both rural and urban regions, many male teachers are unaware of teaching methods which address the unique needs of girl pupils.⁹⁰ As a result, teachers frequently perpetuate male patriarchies in schools,⁹¹ thereby causing girl pupils to feel inferior and self-conscious.⁹² Additionally, girl students often feel uncomfortable discussing gender-specific needs, like menstruation and toilets, with teachers who are not gender-sensitive. This results in an inability of girl students to effectively communicate their needs and concerns to teachers and administrators. An inability to convey one's needs and concerns to appropriate school officials negatively impacts the quality of the education girl children receive. One way to address this problem is by installing "suggestion boxes" in primary schools, which allow girl students to anonymously communicate

their concerns and questions about the quality of their educational experience to the appropriate school officials. This intervention has proven fairly successful in Kenyan schools where it has been implemented because it essentially requires teachers and school officials to serve as de facto parental figures for students, which is necessary to safeguard the interests of girls in school.

In recognition of the fact that *all* teachers have the potential to be gender-sensitive, MoEST and UNICEF should provide mandatory gender-awareness training for all teachers. This training should focus on regionally-specific problems that the girl child faces, as well as strategies teachers can employ to overcome these obstacles in an attempt to increase the quality of education for all girl children.

Curricula, teaching aids, and learning materials often reinforce gender inequality and stereotypes, which is another barrier for girl students in Kenya.⁹³ School Management Committees receive little, if any, training on selecting textbooks and learning materials. This often contributes to, if not causes, the selection of a curriculum that is gender-biased and lacks adequate positive representation of female role models. Additionally, there is no national gender education policy to reaffirm the government's commitment to gender equity. Because the national government selects general curricula guidelines for all primary schools, the omission of a national gender education policy makes it more difficult to mandate School Management Committees to select gender-sensitive textbooks and learning materials.

In an effort to eliminate gender-bias in curricula, teaching aids, and learning materials, as suggested in the KESSP, MoEST should adopt a national gender education policy that affirms its commitment to gender equity in Kenya.⁹⁴ MoEST should also adopt general curriculum guidelines that require gender-sensitivity in all textbooks, teaching materials, and learning aids. Following, MoEST and NGO partners should train SMC's able to select textbooks that are gender-sensitive and provide examples of positive female role models.

Issue 3: *Early Childhood Education and Development (ECED), Evaluation, and Transitions*

Kenya's history of promoting early childhood education and development programs is recognized internationally;⁹⁵ this commitment is also widely recognized in the Sessional papers and the KESSP. As more Kenyan children enter the formal primary education system, it is critical that high-quality ECED programs be offered to the neediest and/or most vulnerable children to boost their future learning outcomes. After all, research has proven that these children are likely to receive the greatest benefit from ECED.⁹⁶

As noted above, large class sizes in lower standards often results in the neediest students being overlooked. Furthermore, the lack of individual attention that is necessary for learning. Lower primary teachers at Moi Avenue Primary School noted significant problems with the influx of pupils following the launch of FPE, who present teaching challenges and classroom issues as a result of their lower level of school-readiness. They noted, "when students are not ready for Standard 1 upon entry, teaching becomes remedial, very stressful." Undoubtedly, ECED programs targeted at high-need early learners will enhance the learning environment for both participants and classmates as well as alleviate some of the burden of larger class sizes in lower standards.

Given Kenya's desire for increased enrollment in ECED programs, MoEST should review primary and secondary fund allocations to determine if shifting resources to ECED will alleviate wastage rates in higher grades due to ill-preparation for learning. The importance and desire for high quality ECED was recognized in a meeting with Head Teachers from the Kwale district where eleven out of eleven head teachers said they would willingly accept a reduction in per pupil allocations (Accounts 1 and 2) in exchange for one year of free ECED.

It should be noted that practitioners and district officials in Kwale voiced concern that significant wastage problems arise from the lack of high quality ECED programs a lack of alignment between pre-primary ECED and primary school curriculums.

When national standards for ECED are rolled out, as noted in the KESSP, particular attention should be focused on building ECED implementation and monitoring capacities in districts and communities. Ongoing evaluations of ECED's impact may justify further budgetary allocations and address transitional issues arising from a student's entry in primary school.

Other Acceptability Concerns Noted

Additional data is needed in order to evaluate the impact of HIV/AIDS on the educational system, in terms of teacher absenteeism and attrition, student attendance, and parental involvement. If necessary, the MoEST should focus on supporting teachers through the disease process while maintaining a strong focus on quality instruction. The Education Sector Policy on HIV and AIDS should continue to play a critical role in directly educating students about HIV/AIDS in all regions of Kenya; schools that have successfully incorporated this into the curriculum need to be recognized and used as best-practice models.

In addition, primary schools and pupils should be better prepared for the challenges associated with overage students. The role of these students, which increased exponentially with the introduction of FPE, has raised several concerns that need to be examined further, including the age-appropriateness of the curriculum, teachers' ability to control the classroom environment, and the comfort level of both the older and younger students in the classroom. Programs such as the "Rapid Readiness" pilot should be scaled up to high-need areas to better prepare over-age students to enter close-to-age grade levels.

Recommendations to Increase Acceptability

Addressing large class sizes:

- Provide additional support, training, and resources, where possible, to prepare teachers to address quality issues resulting from increased class sizes. In-service training sessions should focus on techniques for individualizing instruction in the context of larger classrooms and the adaptation of "active learning" instructional methodologies. MoEST, in conjunction with its development partners, should strive to provide every classroom with low-cost learning materials to aid instructional quality and student learning. Standards one through four should receive priority for training and resources.

Addressing Gender Insensitivity:

- Provide financial or other incentives to encourage females to enter the teaching profession, especially in rural areas. MoEST should also mandate gender-sensitivity training for all teachers in Kenya, with priority going to teachers in predominantly male teaching environments.
- Adopt curriculum guidelines that require gender-sensitivity in all textbooks, teaching materials, and learning aids. In conjunction with these guidelines, MoEST should train SMC's to select gender-sensitive textbooks.

Addressing Early Childhood Education and Development:

- Actively promote and provide for the provision of high-quality ECED programs in high-need communities as well as communities with significantly higher levels of poverty.

ADAPTABILITY

Core Concept of Adaptability

The adaptability of an education system to the social, cultural and economic conditions of society is critical to the realization of Universal Primary Education.

Adaptability requires that “education has to be flexible so that it can adjust to different and changing communities and societies and respond to the education needs of children within their diverse social and cultural settings”⁹⁷

Many groups or communities may not be in a position to access primary education due to the limitations that are defined by their religious, linguistic, occupational or cultural context. MDG 2 inherently makes it necessary for States to treat underserved communities with special attention in order to realize the goal.

International Human Rights Laws and Covenants duly recognize adaptability as an essential feature for ensuring children's right to education. These laws also make States responsible for providing **equal education opportunities** to children of ethnic, religious or linguistic minorities or persons of indigenous origin, as well as the ability to enjoy his or her own culture or to use his or her own language.⁹⁸ The need to address the educational requirements of underserved communities and to provide them equal treatment and access was reiterated in The World Declaration of Education for All (WDEA), held in Jomtiem, Thailand in 1990 and subsequently in Dakar, Senegal in 2000. The declaration states that “an active commitment must be made to removing educational disparities. Underserved groups: ... rural and remote populations; nomads; ... indigenous peoples; ethnic...minorities...and people under occupation, should not suffer any discrimination in access to learning opportunities.”⁹⁹ The importance of cultural values and traditions and the environment is also recognized in these laws, which urge States to develop education policies that respect the child's own cultural identity, language, values and natural environment.¹⁰⁰

In the case of Kenya, the Islamic religion of Somali refugees and natives Muslims and the nomadic lifestyle of pastoral communities in the North Eastern province figure prominently in the demand for an education system that is adapted to their social and cultural needs. Religious and occupational adaptation of education is an extremely challenging task, as it requires innovative approaches and substantial financial and technical resources. Remoteness and illiteracy add to the difficulty in addressing the adaptability issue in Kenya.

Achievements and National Trends

The Government of Kenya has made commendable progress toward developing policies that facilitate the adaptation of education to the specific needs of minority communities such as religious minorities and nomads living in ASAL districts. Several innovative initiatives have also been taken to enhance the primary school enrollments of children from these communities, as described in Section IIIA (Accessibility). However, further progress in policy development and practice will be necessary in order to meet the 2015 MDG deadline.

MoEST has consciously adopted policies designed to accommodate the special needs of marginalized communities, as is evident from multiple policy documents. The policy framework recognizes the challenges of making education available in ASAL districts, and enlists strategies to improve outreach to children in these regions, which are predominantly inhabited by pastoralists and Somali Muslim communities.¹⁰¹ Notable policy attention has been paid to the concern of **relevance**, and the GOK has committed itself to an education system that guarantees the right of every learner to a relevant education.¹⁰² The adaptability component of a rights-based framework is served by the policy goal of

relevance and due recognition of the challenges involved in reaching all the communities with suitable customization of educational system is highly appreciable.

Some of the specific initiatives undertaken by the GOK to realize the goal of adaptability have been described in Section IIIA (Accessibility). These include enhanced support for school infrastructure in the North Eastern province with increased budget allocations, especially from the Department of Primary Education, and USAID funds¹⁰³, the Basic Education Project that has been funded by GoK/OPEC and the Arid Lands Resource Management Project funded by World Bank.

Boarding schools and school feeding programs have also been expanded to increase the feasibility of school attendance for children from pastoral communities. The mobile school program MoEST plans to pilot over the next three years, with funding from DFID, should enable children deemed too young to live away from home to attend school¹⁰⁴. These schools are expected to replicate 'dugsis' in form but use a standard primary school curriculum. Within five years, the GOK plans to expand the mobile school program to 100 schools in 10 ASAL districts.

The Government of Kenya has taken initiatives to enhance the enrollment rates of girls through the construction of single-sex schools and the use of school cluster approaches for in-service training of teachers and school managers in child-centered and gender-sensitive teaching.¹⁰⁵ Affirmative action for girls in post-primary school education and the award of bursaries and scholarships were also instituted. In 2003, the government developed the Gender and Education Policy to provide a framework for the implementation of gender responsive education programs.¹⁰⁶ This policy is aimed at addressing major gender concerns in education, increasing the enrollment of girls and reducing drop-out rates.

Initiatives were also taken to increase the enrollment of children with special needs. Additional capitation grants are provided to physically challenged children enrolled in special education institutions¹⁰⁷ and special education units have been provided financial support for the procurement of necessary educational materials. Teachers are also being trained in special education, which helps make the school atmosphere conducive to the education of special needs children.

Issues in Focus

The following issues have been identified as key concerns related to the adaptability of FPE:

1. Cultural or religious needs of children in majority Muslim areas
2. Education relevant and adaptable to the lifestyles of pastoral nomadic communities

Issue 1: Cultural or Religious Needs of School Children in Muslim Majority Areas

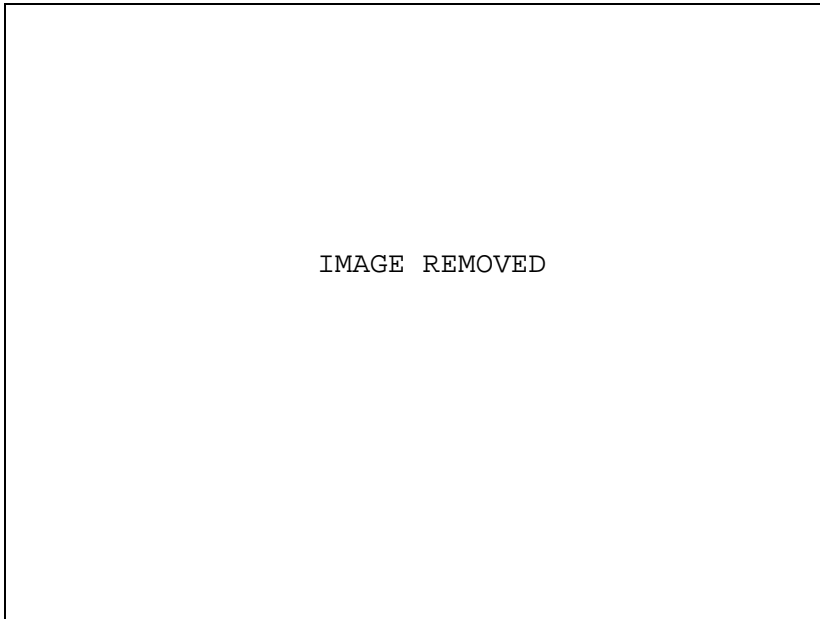
The World Fact Book 2005 reports that Muslims constitute approximately 10% of the total population of Kenya. Muslims are concentrated mostly in the North Eastern and Coastal Provinces, and include the Somali refugees in the NE province. Enrollment rates among children in Muslim communities are often lower than the national average, due to concerns related to the compatibility of schools with Islamic beliefs.¹⁰⁸ The tradition of Koranic schools (madrasas) organized is still widespread among such communities. Strong adherence to religious beliefs and norms, as well as a high affinity towards an Islamic education system, often prevents families from enrolling their children in formal schools. Moreover, Koranic schools are perceived by many parents to provide a desirable learning environment for young children because they provide a high level of personalized care, little risk of alienation from parents, a culturally non-intrusive approach and a high degree of community participation.¹⁰⁹ Although the PU Team was unable to gather reliable data, it is believed that enrollment rates in Koranic schools often exceed those in formal public schools.¹¹⁰

"Pastoralists value education. They send their kids to Koranic schools...Dugsi enrollments are high, with equal number of girls and boys. Education should be flexible." - Project Officer, Arid Lands Resource Management Project.

Policies that encourage the inclusion of religion in the curriculum and integration of formal schools with Islamic schools could be very beneficial. International Human Rights Laws also support such strategies¹¹¹. Hence it may be pertinent to work towards designing schools and curriculum, wherever necessary, around the religious or cultural beliefs and values of Muslim communities. In addition, it would be useful to work with Islamic leaders to identify points of complementarity between madrasas and public schools, in order to better enable students to switch from one to the other if desired.

Issue 2: Education Relevant and Adaptable to the Lifestyle of Pastoral Nomadic Communities

It is estimated that Pastoral Nomads constitute about 15% of total population of Kenya with most of them concentrated in North Eastern province.¹¹² Pastoral nomads move with their households and animals, mostly camels, goats and donkeys, in search of pasture.¹¹³ Due to the mobile nature of their lives, these communities are generally not characterized by high rates of attainment in formal education. However, it has been reported that most pastoralist children receive a religious education from Islamic teachers who belong to the same community and move with them.¹¹⁴ This system of mobile religious schools is locally referred to as '*dugsi*'. Traditional dugsi provide spiritual teaching but do not serve the additional basic education needs of the children of pastoralists. Expanding these mobile Koranic schools to include a formal primary school curriculum would make best use of the existing traditional system.



Saka Primary School, a boarding school in Garissa.

Boarding schools can also address the issue of mobility. However, field interviews with parents and teachers reveal that neither parents nor children like to be separated from one other, especially at early ages.¹¹⁵ Parents do not feel comfortable with the idea that their children would have to take care of themselves or depend on someone unfamiliar to them, and doubt the cultural and moral integrity of the custodians in boarding schools.¹¹⁶ The crucial factor for the success of boarding schools in this context is thus the perceived quality of life at these schools.¹¹⁷ A friendly and culturally-relevant

environment with adequate security provisions would make boarding schools more acceptable to nomadic communities. In this regard, Kenya may be able to draw useful lessons from the experience of Mongolia.

"How can we leave too-young kids who are 6 - 8 yrs old on their own in boarding schools? They are not secure, no teacher quarters and no fence." - Parent in Saka Primary School, Garissa District.

Mongolia implemented compulsory primary education in 1940, at which point the majority of its population was nomadic and could not enjoy the benefits of the free education through a conventional system. To address this concern, the government created extensive infrastructure in the form of boarding facilities. Schools were staffed adequately with highly motivated and well-paid teachers, most of whom came from the nomadic communities themselves. The culture in schools was accepted with little resistance by parents because it was compatible with nomadic culture, which was reflected profoundly in the curriculum and welcoming environment created by the staff. Within 20 years Mongolia witnessed a

surge in literacy, from 2% to 90%, and by 1990 almost everyone in the country received a basic education.¹¹⁸

A fear of cultural alienation appears to prevent some pastoralist parents from sending their children to formal schools. A study by UNICEF in Somalia observed that Nomadic communities often view schools as alien institutions that separate children from parents and the rest of society.¹¹⁹ The design of a relevant curriculum that enhances the cultural identity of these communities and, more importantly, the adoption of a teaching and learning methodology that is compatible with cultural values might help address this concern. For example, a teaching and learning approach that is similar to traditional patterns of herding training¹²⁰ may be useful.¹²¹ It may also be useful to design an inclusive curriculum that features nomadic culture and the virtues of conserving the natural environment. The success of the School Camel Program in Samburu, Kenya, where camel husbandry is taught to students using camels as learning aids, makes a very good case for this strategy.¹²²

It is important to note, however, that curriculum or teaching technology may not be necessary or sufficient to dramatically increase school enrollment rates in nomadic communities. In the case of Mongolia, for example, high literacy rates were achieved using a standard curriculum and teacher-centered approach. In this case, creating a responsive and friendly environment played major role.

The PU Team also observed during field visits to schools where the majority of students come from Somali pastoralist communities that the food is not considered palatable by students because it differs significantly from their traditional diet. For example, school meals do not include camel milk, which is an essential part of their regular diet¹²³. In such cases school feeding programs do not serve as incentives for school attendance, and they might even act as a deterrent.

Other Adaptability Concerns Noted

There are 1.8 million orphans in Kenya that require explicit policy attention if they are to claim their right to free primary education. In addition, the education needs of working children and pregnant girls have to be met with special provisions, such as flexibility in school schedules. These issues are no less important than those described above, but do not constitute focus issues in this report because the PU Team did not collect significant data on them.

Recommendations for Increasing Adaptability

Addressing Cultural or Religious Needs of School Children in Muslim Majority Areas

- Increase integration of formal primary education with Madrasa/Islamic schools: In order to address specific issues of mobility and a preference for religious education by pastoralist and Islamic communities, it may be appropriate to structure schools that are adaptable to traditional habits and norms.
- Improve collaboration with Koranic school teachers: In order to ensure the success of an integrated education approach, local officials should work closely with Koranic educators to identify gaps in the existing system and to incorporate the elements necessary for a complete primary education. These teachers can also be used as change agents for promoting the virtues of formal basic education among Muslim communities.
- Relax school schedules and curriculum: Integrating formal schools with Islamic schools would require increasing the flexibility of the schedule and curriculum to enable students to attend both traditional and formal schools and learn relevant course material. Flexible timing and relevant curriculum might also result in increase in enrollments of girls among these communities.

Addressing Relevant and Adaptable Education for Pastoral and Nomadic Communities

- Create a friendly and culturally relevant environment: Teachers and school administration should be oriented to the cultural sensitivities of these communities and provide adequate support in creating a school environment where parents feel confident sending their children.
- Design a curriculum compatible with the lifestyle of communities: Due to their unusual lifestyle and greater association with nature, nomadic communities are likely to appreciate a curriculum that revolves around their lives. Curricula that depict the history and life of nomadic communities and their relationships with nature greatly help convince parents of the usefulness and relevance of education, and make learning more enjoyable for children.
- Provide additional benefits to the children of pastoralists: Providing material incentives, such as school uniforms or scholarships, might help attract these children to schools.
- Create incentives for teachers in mobile schools: Incentives, such as greater hardship allowance or prospects for subsequent placement in a big town, could encourage teachers to work with nomadic communities in public schools. Such incentives should preferably be used to attract teachers from the local community.
- Promote education through public media: Public radio can be an effective tool in promoting basic education among pastoralists, and would help ensure community awareness of mobile schools. Radio can also be used as a direct channel for informal education; airing regular classes during evenings may help some children who work during the day to follow classes.
- Make food compatible with the eating habits of communities: Incorporating local food preferences into the choice of food for schools, especially in ASALs, could maximize the use of feeding programs resulting to increase enrollment and reduce dropouts.

AVAILABILITY

Core Concept of Availability

The availability of free and compulsory primary education is an important obligation.

Availability requires that the state provide students with adequate infrastructure for educational attainment. This includes physical infrastructure such as classrooms, electricity, and adequate water and sanitation, but also encompasses community capacity to realize children's right to education.

A key component of education availability is the aspect of **adequate infrastructure**, and physical infrastructure in particular. It is the duty of government, according to international human rights norms, to provide primary education to all children free of charge. As such, the government is obligated to provide the infrastructure necessary to enable all students to attend school, without requiring parents or students to share the costs of such infrastructure. However, as the state continues to build capacity, it may employ the concept of **progressive realization** as an interim measure.¹²⁴ International human rights law and practice acknowledge that governments with constrained financial resources must seek to deliver on their obligations by taking all possible provisional measures.¹²⁵ Governments may, to that end, pursue additional sources of voluntary support; through, for instance, appeals to parental or community groups. While parents and community groups have no obligation under international law to provide the physical infrastructure for their children's education, they may, as an interim policy, be encouraged by the government to do so. This dovetails with the concept of **participation**, through which parents may involve themselves in the decision-making processes of the school and thus fulfill the concept of accountability discussed in the following section (IIIE).¹²⁶

Achievements and National Trends

The Government of Kenya has made significant progress in making primary education available to all children. The existence of over 18,000 public primary and non-formal schools throughout the country, enabled in part by large budgetary allocations to the education sector, constitute the extensive infrastructure upon which the implementation of UPE is predicated. Recent successes include the Arid and Semi Arid Lands projects targeted at Garissa and the North Eastern Province, which had the objective of building 215 classrooms by September 2005, and support for community projects such as through the Local Authority Trust Fund and the Constituency Development Fund. The GoK has also successfully acknowledged the importance of school meals through the provision of such meals to 1.1 million pre-primary and primary school children in 29 ASAL districts and Nairobi slums; programs aimed at deworming; and by making mid-day meals available on a targeted basis to socio-economically weaker sections of the student body, in particular girls.

Issues in Focus

Although Kenya has made significant progress in making primary education available to all students, further measures can be taken. This section will focus on the following issues:

1. Further improvements to physical infrastructure
2. Clarification of the shared responsibility of parents

Additional availability concerns, such as dissemination of best practices and merit scholarships for girls, will be discussed briefly at the end of this section.

Issue 1: Further Improvements to Physical Infrastructure

While it is evident that considerable strides have been made to make primary education universally available, the GOK nonetheless believes that more can be done, particularly in the field of infrastructure. According to KESSP, “there has been a major backlog of infrastructure provision and a shortage of permanent classrooms, particularly in poor communities.”¹²⁷ This backlog has ensued largely from the greater numbers of enrolled students following the implementation of the new policy.

IMAGE REMOVED

A Nairobi school advertises its recent infrastructure improvements

The GoK has rightly marked infrastructure as a salient focus area for its education strategy.¹²⁸ In addition to the construction of classrooms, however, we have identified the following areas of particular infrastructural concern: water and sanitation, latrines, plumbing, electricity, buildings, and fences. In the poorer areas of Kwale district, for instance, some students are compelled, for want of physical infrastructure, like roofing sheets for protection from rain, to study under trees or make use of temporary shelters.¹²⁹ A related concern is the shortage of such classroom and instructional materials as chairs, desks, pens, and chalks. While UNICEF’s

contributions toward a child-centered learning environment have been appreciated, much remains to be done to tackle overcrowding of classrooms and also make the learning experience more gender-sensitive. An especial consideration that arises with respect to gender-sensitivity is the lack of single-sex latrines in many schools in both Garissa and Kwale districts; this poses a particular hardship to girls in the menstrual period, the more so when the available latrines lack closable doors to ensure privacy. Moreover, the inadequacy of sufficient sanitation also hinders the enrollment and retention of both female students and teachers in these schools.

While the sufficiency of classrooms is an area of prime concern, a still further emphasis can be given to these infrastructure issues through the four-pronged strategy of *school improvement grants, new primary school construction, management and capacity building, and monitoring and evaluation*. Any such intervention should ideally be region-specific: our members visiting Garissa, for instance, were made cognizant of a lack of adequate fencing to deter wild animals from the boarding schools in that region. Given the nomadic lifestyle of many of the parents of those students, it would be difficult for them to take a localized interest in the functioning and financing of the school.

Issue 2: Clarification of the Shared Responsibility of Parents

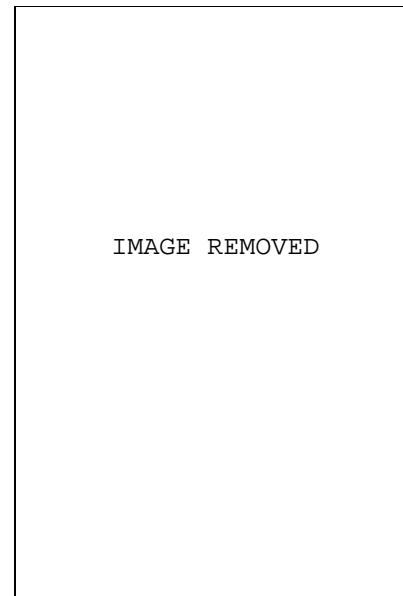
Paradoxically, an unintended consequence of the FPE initiative has been to foster a belief among parents that all of the costs of primary education – not only tuition fees, but also physical infrastructure by way of classrooms,¹³⁰ electricity, water and sanitation facilities – are now to be borne by the state. This consequence was made apparent to the PU Team through discussions with both policy makers and community members. There is thus an urgent need to articulate the principle of shared responsibility to parents and other community members. It is important, then, to create awareness among parents and the larger community that the abolition of school fees has not meant that the responsibility of parents to provide instructional and other materials has altogether been eliminated.

At present, MOEST relies on its “blue book” to inform parents of their rights and obligations under the policy of FPE. The blue book refers generally to parental obligations, and urges them generally to “play a significant role in their children’s education and preparation for life.”¹³¹ While the blue book enumerates 14 distinct expectations of parents, the only reference to infrastructure is contained in the sixth point, which states that parents will “build and maintain learning facilities.” This statement follows other, less tangible expectations, such as the first one, which states that parents are to “have a positive attitude towards education and participate in decision-making on FPE.”¹³² While the government has highlighted the necessity of “mobilizing communities, parents, community-based organizations and other stakeholders to provide support in improving and maintaining existing infrastructure” in the KESSP, the blue book does not contain a commensurate emphasis on the ongoing obligation of community members to contribute to the maintenance and improvement of infrastructure.¹³³ As such, it is not entirely effective in communicating to parents their role in realizing national policy goals in education over the next five years.

The insufficiency of the blue book to inform parents of their responsibilities appears not to be limited to its phrasing or format. Conversations with local officials and community members revealed a consistent sentiment that this message would be more effective if it were articulated at the national level. At present, local officials are almost solely responsible for sensitizing parents to their role under FPE. It may be helpful, for this message to be communicated by MPs or other officials at the national level.

Other Availability Concerns Noted

Much good work has been done by both the GoK and various NGO and CSO groups in making UPE fully available. To minimize, however, the potential for overlap between the governmental and non-profit sectors, we recommend a nodal point for various stakeholders – governmental and communitarian – to identify and articulate their own perspectives on a rights-based approach in the context of free primary education. Such an information-sharing network would require a still greater emphasis on learning visits paid by district officials from one region to another as well as on seminars and conferencing between representatives of the government and of NGOs. This would, in turn, help to meet the current need to *document best practices* and disseminate them among peer organizations and officials. In non-urban areas, other methods of fostering awareness of rights and responsibilities are art forms like music and theater, and also debates and exhibitions.



The “Blue Book” on shared rights and duties.

In clarifying the shared responsibility of the government and parents it is vital, then, to ensure as well that the secondary educational needs of children as to infrastructure and building materials are adequately satisfied. In addition to the general interventions articulated above, certain measures aimed at encouraging parental participation can be adopted on a *pilot basis*. To secure a degree of parental support for the funding of classroom and other materials, it may be useful to pilot merit scholarship programs for academically gifted girls: Recent research in Kenya suggests that merit scholarship programs for girls not only benefit those who are targeted directly, but have external benefits for both boys who are not qualified and other girls with lower test scores.¹³⁴

Recommendations for Increasing Availability

Addressing Key Physical Infrastructure

- Prioritize the construction of single-sex latrines equipped with adequate water and sanitation: While the provision of latrines is of general benefit to all students, teachers and staff, it is particularly useful for fostering the retention of girls in schools, especially after puberty. Care should be taken to ensure that these are furnished with doors to safeguard the privacy of the occupant.
- Enhance the protection of students by providing perimeter fencing to vulnerable schools: Especially in outlying and nomadic schools, such as those in Garissa, it is essential to provide adequate fencing for schools to safeguard them from animals.
- Emphasize the importance of physical infrastructure to child-centered primary education: At present, the construction of new classrooms is stressed by KESSP; while this is appropriate, a special emphasis needs also to be given to the provision of roofing sheets, latrines, sanitation, electrification, and fencing for existing schools. Infrastructure development could effectively be approached using a four-pronged strategy of school improvement grants, new primary school construction, management and capacity building support, and monitoring and evaluation.

Addressing Clarification of Shared Responsibility

- Integrate awareness of shared responsibility with respect to latrines, water and sanitation, and other facilities into school curricula: To facilitate awareness of such rights and responsibilities relating to the availability of primary education, UNICEF-distributed and other curricular materials, such as the blue book, should contain references to the fact that free primary education is a right to which every Kenyan child is entitled. Mention should also be made of the importance of community participation and support in the realization of this right, through the construction of physical infrastructure such as suitable latrines, sanitation, electricity, and fencing
- Continue to promote awareness of the importance of infrastructural concerns such as electricity, sanitation, and fencing to achieving UPE among government officials and members of School Management Committees: The creation of such an enhanced understanding will help further extend the functions of oversight and accountability in the public sphere, with SMCs,¹³⁵ CSOs and NGOs playing a key role in evaluating the rights-based outcomes of primary education budgets and primary education prioritizations. Moreover, it is necessary to clarify that provisional measures encouraging community-based participation are not an abdication of the government's obligations.

ACCOUNTABILITY

Core Concept of Accountability

This report places special emphasis on the issue of accountability. It is identified as a separate component of an integrated framework, with cross-cutting implications. Without accountability, gains in the other components of the 5-A framework will not be realized.

Accountability demands that mechanisms be established to allow claim holders (children and others) to monitor and discipline duty bearers (government institutions and educational providers) so as to improve educational outcomes. These mechanisms must allow local-level participation, including in decisions that pertain to the allocation of resources.

There are three critical features of an enduring system of accountability.

First, accountability mechanisms must provide **guidance for action** to relevant actors. This feature is largely derived from a practical conception of human rights. A human right is a fundamentally practical idea: it is designed to be *action guiding*. This action guiding function depends upon the clear establishment of connections between a rights holder and duty bearers. The essence of accountability lies in the response of duty bearers to that claim.

Second, in order to be action-guiding, accountability mechanisms must delineate a **pattern of relationships between actors**. Accountability is largely about the *relationships* between a series of actors: government institutions (at the central, district and local levels), schools, teachers and communities; children and parents. Building stronger relationships between these actors enhances the policymaking process by making it transparent and more responsive to people's actual needs. It also leads to better policy implementation. These relationships typically deteriorate via top-down approaches to designing and implementing policies and programs. As a result, it is now widely accepted that successful development must also incorporate suitable bottom-up, participatory processes.

The third feature, which follows on the principle of empowerment, dictates that individuals must **participate prominently in the development process**. This notion of empowerment and "accountability through participation" is derived largely from human rights. A conception of human rights that stresses the dignity of all individuals requires participatory processes. Exclusionary processes constitute an affront to individual dignity. Importantly, according individuals the ability to direct their own development creates sophisticated systems of accountability.

Achievements and National Trends

Considerable emphasis on accountability issues is found in Kenya's current policies and practices. One of the key features of FPE is the rapid disbursement to primary schools of SIMBA and GPA funds, which are calculated on a per pupil basis for particular line items (e.g. textbooks, stationary, and support staff wages).

SMCs are charged with managing the funds, although national guidelines govern the expenditure of those funds for particular line items. The Kenyan government has implemented international best practices in accountability by requiring each primary school to publicly display the sources and uses of funds received (see photo right). This allows parents to hold the SMCs and Head Teachers accountable for relevant school expenditures. (There may be a need to improve the transparency in this financial reporting obligation. The schools visited in Garissa district did not display these SIMBA and GPA statements on walls or notice boards.)

District Commissioners and District Education Officers (DEOs) are responsible for auditing all of the primary school receiving SIMBA and GPA funds in their districts. Random monitoring is conducted at the district level. There have been participation gains to fund oversight as well. In conjunction with SMCs, Parent Teacher Associations (PTAs), facilitate direct parental involvement in schools.

Issues in Focus

The establishment of comprehensive accountability mechanisms has been a significant part of the effort to achieve UPE. However, the Kenyan government recognizes the need for further reforms in the KESSP, which contains a detailed accountability structure for implementation of the plan.¹³⁶ The need for reform runs from MoEST to the community level. This structure is described as combining both “vertical and horizontal accountability mechanisms, build[ing] on international best practices in the delivery of essential basic services, such as education and health, as outlined in the recently published World Development Report 2004.”¹³⁷ Implementation of this accountability infrastructure would bring further progress. We have identified a number of areas where aspects of the current approach could be strengthened:

1. Expanding existing and planned accountability mechanisms
2. Increasing the scope for schools, communities, parents and children to participate in the education system
3. Engaging in the necessary capacity building efforts at the district and community levels to enable the improvements in (1) and (2) above to be realized

Issue 1: Expanding existing and planned accountability mechanisms

Despite the accountability structure contained in the KESSP, the policy document remains focused on the national level.¹³⁸ This appears to be at odds with one of the key themes of the KESSP: a strong policy preference for decentralization to the district and local levels.¹³⁹ The corollary of this policy preference should be a set of mechanisms that allow lower level actors to exert upward pressure and leverage. However, the vertical accountability mechanisms outlined in the KESSP appear predicated on the establishment of clear guidelines for the flow of information from the district level to the national level of government, which emphasizes the accountability of the districts to the national government. To the extent that this reflects unease about the decentralization process and a strong desire to ensure a supply of good information to MoEST, it is understandable. Nonetheless, the need for an *upward* flow of information to MoEST need not preclude an increase in the volume and quality of *downward* information flow to the district levels, which could ensure that district officials understand better what the KESSP expects of them.¹⁴⁰

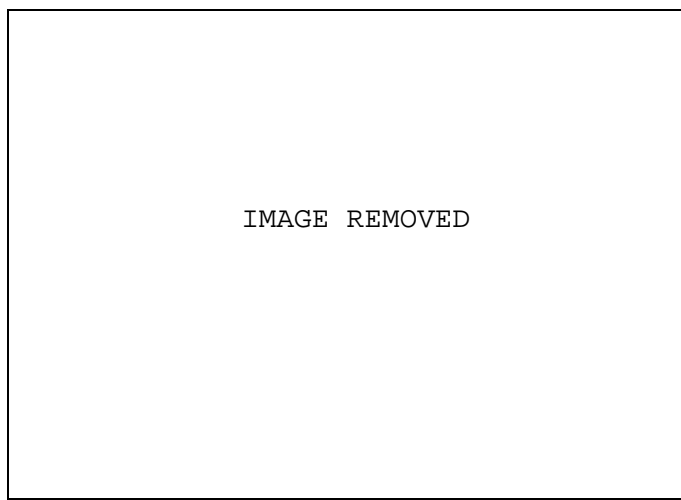
KESSP also refers to creating horizontal accountability mechanisms, such as those between schools and communities, parents and children. These horizontal mechanisms are critical for the exchange of information necessary to leverage human resources. According to the World Bank, “perhaps the most powerful means of increasing the voice of poor citizens in policymaking is better information.”¹⁴¹ The publication of SIMBA and GPA allocations is an important start—it arms communities with information that can be used to hold schools and teachers to account—but it is not enough. The current policy preference towards decentralization is an acknowledgement—whether implicit or explicit—of Kenya’s diverse social and cultural settings. One of the best strategies for improving educational outcomes among heterogeneous communities is to involve them in the policy design process.¹⁴² Deepening these horizontal channels to allow greater community-based participation will enrich the quality of information exchange and lead to greater accountability.

Issue 2: Increasing opportunities for participation

Providing avenues for greater participation at the community level constitutes a significant challenge for the GOK. This report identifies four core areas of opportunity for greater and more meaningful participation.

(i) The SIMBA and GPA accounts.

These accounts are paid directly to primary schools and managed by SMCs. This is a significant step toward allowing greater community participation in the planning and implementation process. However, use of the funds is dictated by strict national guidelines, many of which are based on a per pupil allocation formula, which can only be overridden by appeal to the District Education Board. These guidelines are inherently inflexible and prevent administrators from responding to the particular needs of their school.¹⁴³



SIMBA and GPA account details displayed outside a school in Nairobi

This inflexibility also characterizes the current national constituency fund, which allocates the same amount to each constituency in Kenya regardless of need, and which the World Bank has suggested be made more flexible.¹⁴⁴

Greater flexibility with the SIMBA and GPA accounts would facilitate greater stakeholder participation under the current system. However, it does not go far enough; more participation-inducing reforms are required to keep pace with the promised decentralization process under KESSP.

(ii) Direct participation in planning processes.

Ensuring that communities have substantive input into the policy design process should be a key goal of MoEST. Improvements in the quality of primary education (i.e. acceptability) are often due to greater parental and community participation. Even “illiterate parents can tell if their children are learning to read and write.”¹⁴⁵ Parents are often better able to monitor, for example, teacher attendance, the impacts of HIV/AIDS on local schools and sanitation requirements. Harnessing this potential for better identification of individual school needs would inject dynamism and responsiveness into the policy planning and design processes.

The advantages of a more flexible process were evident during the PU Team’s field research in Garissa, Kwale and Nairobi’s informal settlements. The varied obstacles to UPE prevalent in these diverse districts translate into different community, parental and student preferences regarding education services. A participatory process is required to provide the flexibility necessary to accommodate these differing preferences and improve educational outcomes. However, harnessing this potential will not be easy. Participation in the planning process will only yield real benefits if matched with participation in allocating resources.

(iii) Direct participation in the budgeting processes.

High-quality work is being undertaken in Kenya to devise a mechanism that would facilitate local input into the national budgetary process. The Kenya Institute for Public Policy Research and Analysis (KIPPRA) is spearheading a social budgeting initiative, including an assessment in Kwale district. UNICEF-Kenya is also deeply involved in social budgeting. Without seeking to define social budgeting,

this report equates it with a desire to rationalize the budget allocations in a way that “creates a mechanism whereby the claim holder questions our behavior as duty bearers.”¹⁴⁶ In other words, the “process is supposed to balance the dual budgeting process that brings together the macroeconomic framework and the human development needs and rights framework.”¹⁴⁷ Rationalizing the process entails matching budgetary allocations in the education sector with the needs dictated by social trends.

The key to the social budgeting proposal being put forward by KIPPRA (via the Ministry for Planning) is that it is consistent with the national MTEF budgetary process while also providing an opportunity for real community participation in identifying local needs in the education sector (as well as other social sectors such as health and water). In addition, it offers a prospect for correcting the inefficiencies associated with the “lack of harmonization in planning, targeting, and implementation of social activities” that afflicts many districts. Given that up to 40% of the national budget is directed to the education sector, with an increasing proportion now directed at primary education, the opportunity to eliminate efficiencies in the provision of primary education should be taken. It could pay significant dividends for MOEST to work closely with KIPPRA and UNICEF-Kenya on developing a social budgeting approach to primary education.

(iv) Monitoring and evaluation.

The other branch of the “accountability through participation” approach is to ensure the adequacy of monitoring of all aspects of the education cycle. Adopting a participatory approach that broadens the scope of actors engaged in the monitoring function will yield dividends. The SMCs are fulfilling some of this requirement. Extending the audit function currently performed by the District Commissioners and DEOs to include input from independent participants (e.g. NGOs) would be one good option. At the local level, the institutional infrastructure is already in place. The community bazara could do more in this area, though care needs to be exercised to ensure bazaras are not overly politicized.¹⁴⁸ And strengthening other horizontal monitoring mechanisms is possible by directly tasking parents to become active monitors.

It is also important to avoid defining the audit function too narrowly. At present, there is a strong focus on the utilization of SIMBA and GPA funds. While this is important, the audit process should also review access, acceptability and adaptability issues. A framework for quality assurance monitoring is in place. However, anecdotal evidence suggests that insufficient capacity exists at the district level to carry out this monitoring function.¹⁴⁹ A broader audit function could significantly assist in improving the quality of Kenya’s schools.

Accountability through participation will only work if the relevant actors have sufficient capacity to act. The report considers this issue now.

Issue 3: *Capacity building*

Creating sufficient capacity to deliver on the promises of participation is critical. The KESSP notes the need to engage in capacity development at the lower levels: “The Government will improve the capacity and effectiveness of the MOEST and its institutions, especially at the district and school levels where most education activities and resources will be concentrated.”¹⁵⁰ The decentralization process itself is important, as it may give district-level authorities the incentive to build regulatory capacity. While this would take time, it would also provide the government with an opportunity to harness the momentum created by decentralization to strengthen local government institutions. Close coordination with NGOs and religious organizations will be necessary during this process. NGO and CBO provision of education services (such as to Nairobi’s informal settlements and ASALs) is an integral part of the educational landscape in Kenya. While often very effective, it can create incentives for district authorities to neglect their education responsibilities, which weakens their capacity in the long term. Managing the re-

absorption of regulatory responsibility from NGOs and CBOs as part of the decentralization process should constitute an important part of capacity development efforts.

Developing the capacities of community actors, such as parents, is also necessary for the creation of virtuous accountability cycles, robust monitoring and participation in social budgeting initiatives. Building up the capacities of parents will benefit girls. It will increase parental understanding of the positive long-term benefits of girls' education and help address some of the accessibility issues outlined earlier in this report.¹⁵¹

Other Accountability Concerns Noted

There are two less important issues that were evident during our field research.

- First, the government needs to continue its work to enhance the transparency in teacher recruitments and transfers.
- Secondly, there is a relatively urgent need to improve channels for the systematic collection of school data (enrollment, expenditure) and its conversion into an electronic resource. This step is considered critical to facilitate better responses to local needs (i.e. adaptability) and many of the accountability gains discussed above. It will also bring significant efficiency gains.

Recommendations to Expand Accountability

Expanding accountability mechanisms and improving the level of participation at the local level, including in resource allocation decisions, generate the following recommendations:

- Build on the envisaged decentralization process outlined in the KESSP by improving channels for information flow, between all stakeholders in both directions: vertical (e.g. MOEST—districts) and horizontal (e.g. schools—communities). Increasing the frequency and automatic nature of information flow is critical. All this is necessary because information is empowering and a critical ingredient of accountability.
- Under the current framework, permit the SMC's greater flexibility in deciding how to allocate both the SIMBA and GPA funding streams. For example, allowing 10 – 25% on each line item to be allocated according to the SMC's discretion would better enable specific needs to be met. An alternative would be the creation of a third account, one that is completely discretionary. In any event, SMC's should be able to hire a new teacher if this would meet a more critical need than hiring support staff.
- Creating mechanisms for community actors to have direct, meaningful input into the education policy planning process at the district and local levels. Kenya's planning process is sophisticated at the national level, but deficient at the district and local levels. Participation can remedy these deficiencies.
- Creating means for community actors to have direct, meaningful input into the budgetary process. The MOEST should consider seizing the opportunity to engage with the social budgeting initiative being developed by KIPPRA for the Ministry of Policy and Planning. The education sector could benefit substantially from such initiatives.
- Expanding the scope of monitoring (audit) activities carried out at the district and community levels. Deputizing new actors to engage in monitoring (including NGOs, community leaders and parents) could assist in carrying out a broader monitoring mandate.
- Build capacities at the district and community levels to permit absorption of the participatory opportunities and challenges presented in the recommendations above.

CONCLUSION

This report attempts to concisely articulate some of the steps that may be taken to build upon the successes of FPE. FPE has placed Kenya well on the path toward realizing universal primary education and achieving the millennium development goals that pertain to education. All of the actors involved in FPE, particularly the policymakers in the Kenyan Government and UNICEF-Kenya, should be lauded for the impressive gains already made. The contention of the PU Team, however, is that FPE alone will not deliver UPE; it is also necessary to complement current policies with concepts borrowed from human rights practice. Strengthening the right to education will help achieve UPE and thereby further Kenya's efforts to eradicate poverty.

The areas of most pressing concern continue to be the special needs of children of nomadic communities, girl children, and children in non-formal settlements. It is important to note that the recommendations made in this report, although structured in the 5-A framework, are interdependent. This suggests that addressing each component of the 5-A framework simultaneously will likely yield the most positive results. Similarly, working toward the expansion of one "A" will have positive repercussions throughout the other categories of the framework. Perhaps the greatest progress in these areas of concern is dependent upon building more accountability—through participatory mechanisms—into the education system.

Embracing all of the recommendations contained in this report will require decisive policymaking. The Kenyan Government has already demonstrated its capacity to take bold decisions; certainly, the very enactment of FPE exemplifies such boldness. Indeed, some of the recommendations contained in this report are already receiving attention by the Kenyan government. Importantly, the strong cooperative relationships between the Kenyan government, its development partners such as UNICEF-Kenya, and community-based organizations are conducive to innovative policymaking in the education sector. We are confident that the collective energy, ideas and collaborative spirit evident in our dealings with these actors will continue to propel Kenya towards UPE.

ACKNOWLEDGEMENTS

We are deeply grateful to the many people in both the United States and Kenya who made the development of this report an inspiring, rewarding and educational process. While we cannot name them all here, we would like to mention those to whom we owe the largest debt of gratitude.

At MoEST, we would like to thank Education Secretary George Godia, Director of Basic Education Mary Njoroge, and Director of Education of the Nairobi City Council Margaret Thiong'o. Many thanks also to the Arid Lands Resource Management Project, run by the Office of the President, for the use of their vehicle for the trip to Garissa and the services of the driver, Paul Langat. We extend a special thanks to Paul himself, who was an invaluable resource and who possessed an inexhaustible reserve of patience.

At UNICEF-Kenya, we would like to thank A.K.M. Kamaluddin, Chief of the Basic Education and Youth Section, as well as Bonee Wasike, Connie Nyatta, and consultant James Irvine. We are also grateful to Zeinab Ahmed and Abdikadir Ore Ahmed of the Garissa Sub-Office for their extraordinary assistance. We also thank Samuel Momanyi from UNICEF Headquarters for his invaluable help, and Pilar Aguilar from UNICEF Headquarters and John Mosoti from the Kenyan Mission to the U.N. for their assistance. We also greatly appreciate the willingness of the Global Policy Section at UNICEF Headquarters to host our presentation and thank Kassech Alley and Noreen Khan in particular for their roles in making the necessary arrangements.

We would like to extend our particular gratitude to the former Special Rapporteur on the Right to Education Katarina Tomasevski for the 4-A Framework that provided the departure point for our own analysis, as well as Aram Schvey of the Crowley Project in International Human Rights at Fordham Law School, Chandrika Bahadur of the UN Millennium Project, and Paolo Galizzi of Imperial College London and the Fordham University School of Law.

At Princeton University, we would like to thank Dean Anne-Marie Slaughter for her valuable support, Dale Sattin and Melissa Lee for enabling us to use our presentation to generate substantive dialogue between Kenyan education officials and the Princeton community, Mahiri Mwita for a valuable introduction to Swahili and Kenyan culture, and Jennifer Widner for providing needed background on history and current events in Kenya.

We would also like to recognize the extraordinary assistance of Elias Noor, Project Education Officer at UNICEF-Kenya, in facilitating all the necessary arrangements for our field visit. We consider him to be an honorary team member.

The students on the team would also like to thank Professor Martin Flaherty for his guidance and insight, as well as for all of the hard work he put in on our behalf.

Lastly, we would like to thank all those who so generously shared their time and insights with us during our time in Kenya, including government officials, UN agency staff, NGO and CBO representatives, teachers, parents and especially the primary school students whom we had the privilege to meet. To all, we say ASANTE SANA.

ITINERARY

Nairobi	Garissa	Kwale/Mombasa
<p>Ministry of Education, Science and Technology UNICEF-Kenya Country Office Office of Director, Nairobi City Education Oxfam GB Ministry of Planning KIPPRA Moi Avenue Primary School ASAL FAWE Kenya Director of Children's Services CARE DFID UNESCO UNDP CIDA Kibera Schools Korogocho Schools Kenya Alliance for the Advancement of Children USAID Action Aid Kenya National Commission on Human Rights</p>	<p>UNICEF Garissa Sub-Office: Child Protection Officer (Gender) and Health Officer District Government: Senior District Officer, District Education Officer, District Adult Education Officer, District Children's officer, Deputy DEO Provincial Director of Education, Northeast Province & Curriculum Officer Women Concern, Woman Kind, & Pastoralist Girls Initiative Handicap International Education for Marginalized Children in Kenya (EMACK) Saka Primary School Sankuri Primary School Garissa Primary School Arid Lands Resource Management Project Garissa Teachers' Training College</p>	<p>Office of Provincial Director of Education, Coast region Education for Marginalized Children in Kenya (EMACK) District Education Office, Kwale Primary Schools, Kwale (4) Vakaat Primary Schools, Kwale (2) Madrasa Early Childhood Development Center, Kwale Deneny Orphanage</p>

ENDNOTES

- ¹ John Murphy, "Free education hits hurdles in Kenya," *BBC Radio 4*, May 7, 2003. http://news.bbc.co.uk/1/hi/programmes/crossing_continents/3006889.stm
- ² A recent example of the literature that may be overly alarmist is Philip Alston's "Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals," *Human Rights Quarterly* 27 (2005) pp 755 – 829. Alston suggests that the human rights movement and the development community are "ships passing in the night." In building his case, Alston's points to the infrequent references to human rights in countries MDG reports, and the rare references to development discourse in the deliberations of the international treaty monitoring bodies. In contrast, this report argues that it is necessary to go beyond the formal lexicons of both disciplines and identify substantive similarities and convergence. If you look hard enough, the similarities are evident.
- ³ Kenya acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 1 May 1972 and the Convention on the Rights of the Child (CRC) on 26 January 1990. Both these treaties implement the right to education expressed in Article 26 of the Universal Declaration of Human Rights.
- ⁴ "African [Banjul] Charter on Human and Peoples' Rights," 21 Oct 1986, Art 17.
- ⁵ Article 7, *Children's Act 2001*. This provision also places responsibility to provide education on parents. Articles 41 and 62 of the proposed new Kenyan Constitution would have implemented the right to education in similar terms to that contained in the Convention on the Rights of the Child.
- ⁶ "Convention on the Rights of the Child," 4 Oct 1990, Art. 28; "International Covenant on Economic, Social and Cultural Rights," 3 Jan 1976, Art. 14.
- ⁷ World Bank, "Achieving Universal Primary Education by 2015 (Achieving UPE)," 31 Aug 2003, p 116.
- ⁸ See "International Covenant on Economic, Social and Cultural Rights," 3 Jan 1976, Article 2(2).
- ⁹ World Bank, "World Development Report 2006: Equity and Development (WDR 2006)," Sep 2005, p xi
- ¹⁰ World Bank, "World Development Report 2004: Making Services Work For Poor People (WDR 2004)," Sep 2003, p 1
- ¹¹ The causal link between education and poverty was highlighted in the Kenyan media following the release of this Poverty Report. See, for example, *The Daily Nation* and *The Standard*, 2 Nov 2005.
- ¹² Stephen Wainaira, Kenyan Ministry of Planning, Personal Interview, 1 Nov 2005
- ¹³ Kenya, Ministry of Education, Science and Technology (MoEST), *Sessional Paper No. 1 of 2005 On a Policy Framework for Education, Training, and Research (Sessional Paper)*, (Nairobi: MoEST, 2005), para 1.2.; Kenya, Ministry of Education, Science and Technology, *Kenya Education Sector Support Programme 2005-2010 (KESSP)*, (Nairobi: MoEST 2005), p iii, which states: "The broad objective is to give every Kenyan the right to quality education and training no matter his/her socio-economic status."
- ¹⁴ Integrated frameworks along these lines have previously been developed. For example, the former UN Special Rapporteur on the right to education has proposed a 4-A scheme similar to the first four A's above. The Committee on Economic, Social and Cultural Rights has subsequently endorsed this scheme in its General Comment No. 13, 8 December 1999. This gives the first four A's significant weight. The fifth A is new and represents a key innovation. By underpinning each of the other A's, it strengthens each of them.
- ¹⁵ Kenya and UNDP Kenya, "Achieving Millennium Development Goals in Kenya," 2005.
- ¹⁶ *Ibid.*, p 2.
- ¹⁷ The "gross enrollment ratio" is the ratio of the number of all students enrolled (regardless of age) to the number of school-aged children eligible to attend school. The "net enrollment ratio" is the ratio of children attending school *who are of primary school age* to the number of school-aged children eligible to attend school. Gross enrollment ratios can exceed 100 percent because many students are above the standard age for primary school.
- ¹⁸ OWN & Associates: Centre for Research and Development, "Monitoring of the Free Primary Education and Establishing the Unit Cost Primary Education in Kenya," Aug 2004, p 18.
- ¹⁹ *Ibid.*, p vii.
- ²⁰ "Millennium Development Goals Report," p. 62. This is an increase from 35% of the public sector recurrent budgets in 2000 to 40% in 2004. *Id.*
- ²¹ Monica Muthwii, "Free Primary Education: The Kenyan Journey Since Independence," 22 Sep 2004, p 12. The World Bank contributed Ksh. 3.7 billion, the UK Department for International Development gave Ksh. 1.6 billion, the Organisation of Petroleum Exporting Countries (OPEC) provided Ksh. 1.2 billion, the Swedish government Ksh. 430 million, and UNICEF Ksh. 250 million. *Ibid.*
- ²² Mary Njoroge, Director of Basic Education, Ministry of Education, Science and Technology, Personal Interview, 28 Oct 2005: See also KESSP, p 93-94.
- ²³ KESSP, p iii.
- ²⁴ This definition of accessibility and its key elements is based upon the Committee on Economic, Social and Cultural Rights (CESCR), General Comment 13, para 6 (2003). The Committee, in turn, drew upon the preliminary report of the Special Rapporteur on the right to education, Submitted to the Commission on Human Rights, 55th Session (Jan. 13 1999), para 50, 57-61.
- ²⁵ United Nations, UN Millennium Project 2005, Task Force on Education and Gender Equality (MDG Task Force), "Toward Universal Primary Education: Investments, Incentives, and Institutions," p 54-55; see also Achieving UPE, p 116.
- ²⁶ MDG Task Force, p 54; Achieving UPE, p 58.
- ²⁷ ICESCR, Art 13(2)(a); CRC, Art 28(1)(a).
- ²⁸ CESCR, Gen. Comment 11, para. 7.
- ²⁹ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 13 October 1982, Art 2, 3, 10; International Convention on the Elimination of All Forms of Racial Discrimination (CERD), 3 September 1981, Art 1, 5; CRC, Art 2.
- ³⁰ CEDAW, Art 4.
- ³¹ *E.g.*, MDG Task Force, p 26.
- ³² KESSP, p 91.

- ³³ Roy Carr-Hill, "The Education of Nomadic Peoples in East Africa," (France: African Development Bank, International Institute for Educational Planning, UNESCO, 2005), p 59; Kenya, Provincial Director of Education, North Eastern Province (Nairobi: Ministry of Education, Science and Technology, May 2005).
- ³⁴ Kenya, Kwale District Education Office, "FPE Report," Jan 2003-2005.
- ³⁵ Sessional Paper, p 24.
- ³⁶ KESSP, p 31.
- ³⁷ North East Province Education Office, North Eastern, Province, North Eastern Province Statistics as of May 2005.
- ³⁸ The corresponding drop rates for other districts are as follows: Wajir, 7%; Mandera, 7%; Ijara, 43%. Osiemo Wanyonyi, Provincial Director of Education, North Eastern Province, Personal Interview, 1 Nov 2005.
- ³⁹ Dr. Mohammed Keynan, Support to Local Development Officer and Saadi Noor, Community Development Project Officer, Arid Lands Management Resource Project-Garissa, Personal Interview, 2 Nov 2005.
- ⁴⁰ The government has constructed 160 low-cost boarding schools in 11 ASAL districts. Kenya, MoEST, *Development of Education in Kenya*, (Nairobi: MoEST, 2004), p 17.
- ⁴¹ Elias Noor, Project Officer, UNICEF-Kenya, E-mail correspondence, 27 Dec 2005.
- ⁴² UNICEF, "Strategic Boarding Schools," (undated).
- ⁴³ Head teachers at Saka Primary and Sankuri Primary, Personal Interviews, 2 November 2005.
- ⁴⁴ Parents, Saka Primary School, Personal Interviews, 2 Nov 2005; Noor e-mail.
- ⁴⁵ Students in Standard 2, Sankuri Primary School, Personal Interview, 2 Nov 2005.
- ⁴⁶ Jedidah Mujidi, Education Specialist, Education for Marginalized Children in Kenya (EMACK), Personal Interview, 1 Nov 2005; Ian Leggett, "Learning to Improve Education Policy for Pastoralists in Kenya," in *Beyond Access: Transforming Policy and Practice for Gender Equality in Education*, Oxfam GB, 2005 (Sheila Aikman and Elaine Unterhalter, Eds.),
- ⁴⁷ KESSP, p 131.
- ⁴⁸ Noor e-mail.
- ⁴⁹ Keynan and Noor interview.
- ⁵⁰ UNESCO, "Challenges of Implementing FPE in Kenya," March 2005.
- ⁵¹ "Education Statistics: Kwale District", compiled by District Education Office with support from UNICEF-Kenya, November 2005.
- ⁵² North East Province Education Office, North Eastern Province Statistics as of May 2005; UNICEF, Brief: "Girls Education in Garissa District."
- ⁵³ Interview with students at Saka Boarding School, Nov. 2, 2005.
- ⁵⁴ Wanyonyi interview.
- ⁵⁵ Fatuma Kinse, Pastoralist Girls Initiative, Personal Interview, 1 November 2005.
- ⁵⁶ UNICEF Kenya Country Office, Annual Report 2004, Dec. 23, 2004, p 18 (internal document).
- ⁵⁷ KESSP, p 26.
- ⁵⁸ Oxfam, Kenya: One Year On (undated), available at http://www.oxfam.org.uk/press/downloads/wbl_kenya.pdf.
- ⁵⁹ Sessional Paper, p 42.
- ⁶⁰ Student at Kibera Primary, Personal Interview, 3 November 2005.
- ⁶¹ *Id.*
- ⁶² Students may be hesitant to attend schools located outside of their communities. For example, Kibera is surrounded by middle class schools, so poorer students might be hesitant to attend them due to speculation about increased costs, general distrust, as well as cultural differences. This may explain why some neighboring schools, like Olympic Primary, are not overenrolled.
- ⁶³ Mercy Gichuhi, Oxfam, Personal Interview, 31 October 2005.
- ⁶⁴ World Food Programme, "Glimmer of Hope in Nairobi Slums," Dec. 7, 2005, at <http://www.wfp.org/english/?ModuleID=137&Key=1952>.
- ⁶⁵ Sessional Paper, p 42.
- ⁶⁶ See Sessional Paper.
- ⁶⁷ Jenny Yavtsi, Head Teacher, Makina Baptist Community School, Personal Interview, 3 November 2005. This is easy to understand if the practice described earlier of charging students for meals in formal schools is pervasive.
- ⁶⁸ Parents, Makina Baptist, Personal Interview, 3 November 2005.
- ⁶⁹ Government of Kenya, "Draft Policy on Orphans and Other Children made vulnerable by HIV/AIDS," Oct. 2005. UNICEF, Pilot Project Overview, Direct cash subsidy to orphans and other children made vulnerable by HIV/AIDS (pilot project) (2004).
- ⁷⁰ ICESCR Gen. Comment 13(2)(6)(c).
- ⁷¹ ICESCR Gen. Comment 13(6)(3).
- ⁷² CRC Art 29(1)(a); Gen. Comment 1 on Art 29.
- ⁷³ CEDAW Art 10 (a-f).
- ⁷⁴ CEDAW Art 10(c).
- ⁷⁵ United Nations Educational, Scientific, and Cultural Organisation (UNESCO), "World Declaration on Education For All," 1990, Art 3(1-3), 4.
- ⁷⁶ UNESCO, "Dakar Framework for Action on Education for All," April 2000, Art 5, 6.
- ⁷⁷ World Declaration, Art 3(3)
- ⁷⁸ Goal 2: Ensure that all boys and girls complete a full course of primary schooling by 2015. Goal 3: Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015.
- ⁷⁹ MoEST website.
- ⁸⁰ *Id.*
- ⁸¹ Students and teachers, Personal Interviews, Moi Avenue Primary, 31 October 2005; Kibera Primary, 3 November 2005.
- ⁸² KESSP, p 190-92.

- ⁸³ KESSP – I didn't bring it home with me – but it's in there! Sorry! Let's chat about the sections where it might be found.
- ⁸⁴ Interviews with MoEST (Professor Godia, Mrs. Mary Njroge), Nairobi City Council, and district officials in Kwale and Garissa.
- ⁸⁵ DFID interview, 3 November 2005.
- ⁸⁶ Teachers, Moi Avenue Primary School, and Ayeni Primary School, Personal Interviews, 3 November 2005.
- ⁸⁷ Education for All: The Quality Imperative (Full Report), pg. 3. Published by UNESCO Publishing as a part of the EFA Global Monitoring Reports series. 2004.
- ⁸⁸ Students, and teachers, Personal Interviews, Moi Avenue Primary, 31 October 2005; Kibera Primary, 3 November 2005.
- ⁸⁹ Education for All: The Quality Imperative (Executive Summary), p 11. Published by UNESCO Publishing as a part of the EFA Global Monitoring Reports series, 2004.
- ⁹⁰ FAWE interview, 1 November 2005.
- ⁹¹ FAWE interview, 1 November 2005.
- ⁹² Students at Garissa Primary, Personal Interviews, 2 November 2005.
- ⁹³ Executive Director Mukuru, FAWE-Kenya, Personal Interview, 1 November 2005.
- ⁹⁴ KESSP, p 225.
- ⁹⁵ Pence, Alan. "ECED Policy and Implementation in Africa." UNESCO Early Childhood and Family Policy Series N° 9. pg. 9. November, 2004.
- ⁹⁶ Education for All: The Quality Imperative (Executive Summary), pg. 21. Published by UNESCO Publishing as a part of the EFA Global Monitoring Reports series. 2004.
- ⁹⁷ ICESCR, Art 13(2).
- ⁹⁸ CRC, Art 30.
- ⁹⁹ WDEA 2000, Art 2(4).
- ¹⁰⁰ CRC, Art 29(c) and 29(e).
- ¹⁰¹ KESSP 2005-2010, July 2005.
- ¹⁰² Sessional Paper No. 1, para 1.8 and para 1.10.
- ¹⁰³ KESSP.
- ¹⁰⁴ KESSP, p 131-132.
- ¹⁰⁵ KESSP, p 219.
- ¹⁰⁶ KESSP, p 219.
- ¹⁰⁷ KESSP, p 40.
- ¹⁰⁸ Field interviews with NGOs in Garissa.
- ¹⁰⁹ Kratili, S (2000) 'Education Provision to Nomadic Pastoralists: A Literature Review', Brighton: Institute of Development Studies.
- ¹¹⁰ Field interviews with NGOs in Garissa.
- ¹¹¹ ICESCR: Art 2(b), Art 13(3) and General Comment on Art 13.
- ¹¹² New Internationalist 'Nomads – The Facts', New Internationalist, No 266, April 1995.
- ¹¹³ New Internationalist 'Nomads – The Facts', New Internationalist, No 266, April 1995
- ¹¹⁴ Field interviews with NGOs in Garissa
- ¹¹⁵ Saka Primary School, Garissa
- ¹¹⁶ MoEST (1999) 'Report on Formal and Non-Formal education in parts of Samburu, Turkana, Marsabit And Moyale Districts', MOEST and CIDA - Canadian International Development Agency, Nairobi.
- ¹¹⁷ Kratili, 2000.
- ¹¹⁸ Demberel and Penn, cited in Kratili, 2000.
- ¹¹⁹ Kratili, 2000.
- ¹²⁰ Herding training is based on individual assignments and supervision, responsibility and discipline, as opposite to the individualism and achievement emphasized within formal education.
- ¹²¹ Kratili, 2000.
- ¹²² MoEST, 1999.
- ¹²³ Saka Primary School, Garissa dist
- ¹²⁴ See e.g. Articles 2(1), 14, 22, International Covenant on Economic, Social and Cultural Rights, 1966. See also the World Declaration on Education for All, 1990.
- ¹²⁵ See *supra* note 1, ICESR, 1966. The concept of progressive realization has been validated in the African context by the Dakar Framework for Action.
- ¹²⁶ See discussion on accountability at pp. 30-34
- ¹²⁷ KESSP, p. 1.
- ¹²⁸ KESSP, p. 3-12.
- ¹²⁹ Interview with Mr Washi Yachuri, DEO, Kwale, November 1, 2005.
- ¹³⁰ It is further estimated in the 2003 school census that the backlog with respect to classrooms has been to the extent of 43,000.
- Id.*
- ¹³¹ Blue book p. 11
- ¹³² Blue book p. 11-12
- ¹³³ See KESSP, p. 5.
- ¹³⁴ Kremer, M., Miguel, E., & Thornton, R. "Incentives to Learn," Berkeley, October 2005.
- ¹³⁵ We recommend separately that SMCs should enjoy a greater discretion over funding allocations; this freedom of spending would not, however, preclude the promulgation of guidelines stipulating the central importance of these identified issues of infrastructural concern.
- ¹³⁶ KESSP. p xxii.

¹³⁷ KESSP, p xxxi.

¹³⁸ It was suggested to members of the Nairobi team that the district level is seldom reflected in the KESSP. For example, Lousie Banham, UK DfiD, Personal Interview, 2 November 2005.

¹³⁹ The four central themes of the KESSP are stated to be: "(i) transparency; (ii) decentralization; (iii) team work; and (iv) performance-based management and accountability." KESSP, p xvi.

¹⁴⁰ It was suggested to the Nairobi team that there was still uncertainty about what the KESSP was asking of the districts—see note 138 above.

¹⁴¹ WDR 2004, p 7.

¹⁴² WDR 2004, p 13.

¹⁴³ There were good reasons for that initial inflexibility. Strict, centrally-controlled expenditure guidelines were considered necessary to avoid local mismanagement. However, recent annual audits of primary schools demonstrate that over 92% of schools are utilizing the SIMBA and GPA accounts appropriately. This suggests that it may be time to provide greater flexibility into the system.

¹⁴⁴ This was criticized in the media following release of Kenya's 2005 Poverty Map. For example, see *The Daily Nation* and *The Standard*, 2 Nov 2005.

¹⁴⁵ WDR 2004, p 64.

¹⁴⁶ Dr. Moses Ngware, Kenya Institute for Public Policy Research and Analysis (KIPPRA), Personal Interview, 1 Nov 2005.

¹⁴⁷ KIPPRA Social Budgeting Initiative: A Case of Kwale District, KIPPRA (October 2005).

¹⁴⁸ Gladys Mwangi, Care Kenya, Personal Interview, 4 Nov 2005.

¹⁴⁹ Two interview subjects in Nairobi suggested that there were insufficient vehicles and fuel available to visit schools, meaning that virtually no quality assurance monitoring was being undertaken. OxFam stated that it assists the government "fill the gaps" by providing vehicles for monitoring activities. Personal Interview, 31 Oct 2005.

¹⁵⁰ KESSP, p xii.

¹⁵¹ Bonee Wasike, UNICEF, Presentation, 31 Oct 2005.