



NGEC
National Gender and
Equality Commission

STATUS OF EQUALITY AND INCLUSION IN KENYA



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Published by
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ISBN: 978-9966-100-67-2

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This report is prepared by the National Gender and Equality Commission with Technical Support from the Kenya Institute for Public Policy Research and Analysis (KIPPRA)

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ABBREVIATIONS AND ACRONYMS

AIDS	Acquired Immunodeficiency Syndrome
ASALs	Arid and Semi-Arid Lands
BOM	Board of Management
CBS	Central Bureau of Statistics
CEC	County Executive Committee
CEDAW	Convention to Eliminate All Forms of Discrimination Against Women
CIC	Commission for the Implementation of the Constitution
CRA	Commission on Revenue Allocation
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of People with Disabilities
CSOs	Civil Society Organizations
CT-OVC	Cash Transfers to Orphans and Vulnerable Children
DB	duty-bearers
EAC	East African Community
ECD	Early Childhood Development
ECDE	Early Childhood Development and Education
EFA	Education for All
EMIS	Education Management Information Systems
EPR	Employment to Population Ratio
EPSEM	Equal Probability Selection Method
ERS	Economic Recovery Strategy
FBO	Faith-based Organization
FdSE	Free Day Secondary Education
FGD	Focused Group Discussion
FPE	Free Primary Education
GDP	Gross Domestic Product
GER	Gross Enrolment Ratio
GOK	Government of Kenya
HELB	Higher Education Loans Board
HIV	Human Immunodeficiency Virus
HR	Human Rights
HSNP	Hunger Safety Net Programme
ICCPR	International Covenant on Civil and Political Rights

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESR	International Covenant on Economic and Social Rights
ICMW	International Convention on the Protection of the Rights of Migrant Workers and Members of their Families
ICT	Information Communication Technology
IEBC	Independent Electoral and Boundaries Commission
ILO	International Labour Organization
JAB	Joint Admissions Board
KANU	Kenya African National Union
KATTI	Kenya Association of Technical Training Institutes
KCPE	Kenya Certificate of Primary Education
KCSE	Kenya Certificate of Secondary Education
KDHS	Kenya Demographic and Health Survey
KEPSA	Kenya Private Sector Alliance
KICD	Kenya Institute for Curriculum Development
KIHBS	Kenya Integrated Household Budget Survey
KII	Key Informant Interviews
KILM	Key Indicators of the Labour Market
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KNBS	Kenya National Bureau of Statistics
KNEC	Kenya National Examination Council
KUCCPS	Kenya University and Colleges Central Placement Service
MCAs	Members of County Assemblies
MDAs	Ministries Departments and Agencies
MDGs	Millennium Development Goals
MoE	Ministry of Education
MoEST	Ministry of Education, Science and Technology
MPER	Ministerial Public Expenditure Review
NEET	Not in Education, Employment or Training
NER	Net Enrolment Rate
NFE	Non-formal Education
NGEC	National Gender and Equality Commission
NGO	Non-Governmental Organization

NHIF	National Hospital Insurance Fund
NSPP	National Social Protection Policy
OCOB	Office of the Controller of Budget
OECD	Organization for Economic Cooperation and Development
OOS	Out-of-School
OPCT	Older Persons Cash Transfer
OVC	Orphaned or Vulnerable Child
OVC-CT	Orphans and Vulnerable Children-Cash Transfer
PPOA	Public Procurement Oversight Authority
PSC	Public Service Commission
PTR	Pupil Teacher Ratio
PWDs	Persons with Disabilities
PWSD	Persons with Severe Disability
PWSD-CT	People with Severe Disability Cash Transfer
RH	Rights Holders
SDG	Sustainable Development Goals
SIG	Special Interest Group
SMART	Specific Measurable Attainable Realistic and Time bound
SMC	School Management Committees
SME	Small and Medium Enterprises
SNE	Special Needs Education
SPF	Social Policy Framework
TSC	Teachers Service Commission
TTC	Teacher Training College
TVET	Technical Vocational Education and Training
UDHR	Universal Declaration on Human Rights
UFS-CT	Urban Food Subsidy Cash Transfer
UN	United Nations
UNCHR	United Nations High Commissioner for Refugees
UNGEI	United Nations Gender Education Initiative
UNICEF	United Nations International Children's Emergency Fund
UN-SDG	United Nations-Sustainable Development Goals
UPR	Universal Periodic Review
WFP	World Food Programme



FOREWORD

The development of this report on the Status of Equality and Inclusion, coincided with an important international event – the end of the Millennium Development Goals (MDGs), ushering in the Sustainable Development Goals (SDGs), which offer new global benchmarks for fostering the development agenda. The report was produced at the end of the five years of implementation of Kenya’s Constitution which was promulgated in August 2010. The Constitution provides for a devolved system of governance that aims to take public services closer to intended beneficiaries. In so doing, the Constitution provides pathways to the realization of human rights targeted by its substantive Bill of Rights, whereby the 47 county governments can focus on securing access to basic services.

While equality and inclusion concerns cover the whole population, the report intentionally focuses on the four sectors because of their influence on the equality and inclusion agenda in relation to the six Special Interest Groups (SIGs) identified by the Constitution, i.e. women, youth, persons with disabilities, older members of society, children and the marginalized and minority groups.

This report explores the extent to which the principles of equality and inclusion have been implemented in a) employment, b) political representation, c) social protection and d) education, at the National and County government levels, as well as in the rest of the public and private sectors. While equality and inclusion concerns cover the whole population, the report intentionally focuses

on the four sectors because of their influence on the equality and inclusion agenda in relation to the six Special Interest Groups (SIGs) identified by the Constitution, i.e. women, youth, persons with disabilities, older members of society, children and the marginalized and minority groups. The employment sector provides opportunities for a decent life; political representation may disenfranchise SIGs in political participation and subsequent decision-making processes, while social protection could enhance access to livelihoods securities targeting severely vulnerable groups in the society. Education provides the basic framework of systematic address to inequalities over the special interest groups.

The study is critical to Kenya, particularly policy makers and practitioners, as it provides the opportunity to measure the performance of service delivery based on global concerns dating back to the World Summit for Social Development in Copenhagen in March 1995 into the Millennium Development Goals in 2000. Kenya has shown great commitments to the global development benchmarks encapsulated in the MDGs to 2015, and subsequently revisited by the Sustainable Development Goals to 2030. These commitments have been reflected in the design of national policies and strategies developed against the backdrop of the long-term development blue-print, Kenya Vision 2030, which has to date spawned two successive Medium Term Plans 2008-2 and 2013-17.

The development of this report entailed extensive consultations at the NGECS secretariat level and among its policy makers. It also involved consultations with stakeholders in the human rights sectors, and in the four selected sectors mentioned above. Data collection covered a selection of National government ministries, departments and agencies, County governments, the non-government sector, and

While equality and inclusion concerns cover the whole population, the report intentionally focuses on the four sectors because of their influence on the equality and inclusion agenda. The development of this report entailed extensive consultations at the NGECC secretariat level and among its policy makers. It also involved consultations with stakeholders in the human rights sectors, and in the four selected sectors.

households across the 47 counties. The breadth of consultation was designed to ensure participation, acceptance, review and validation of the report's findings.

This inaugural *Status of Equality and Inclusion Report* focusing on SIGs in four sectors complements various databases on the same areas, including the periodic Kenya National Human Development Reports and the Kenya National Bureau of Statistics' annual Economic Surveys and Statistical Abstracts. It also complements related publications of non-government stakeholders, such as Society for International Development's 2013 publication, *Exploring Kenya's Inequality: Pulling Apart or Pooling Together*.

Besides its rich data, the report provides extensive recommendations on how to close the existing equality and inclusion gaps relating to SIGs in the four sectors of focus.

The extensive consultations over this report, and the well-known problem of access to data in developing countries, has meant that the development of the report took slightly over a year since its commissioning in 2015. I am, however, confident that it will be useful for policy as well as human rights based programme practitioners at the national and county levels in both the public and private sectors in Kenya. In particular, it provides baseline data with which to design timely and appropriate policies and programmes that will form a foundation for enhancing equality and inclusion in Kenya. Besides providing multiple indicators for monitoring equality and inclusion in the selected areas, the report also provides indices that enable comparisons across domains – such as counties, SIGs and sectors, and it consequently provides the benchmark for the comparison of performance over time.

Winfred Lichuma, EBS
Chairperson
National Gender and Equality Commission

ACKNOWLEDGEMENTS

We appreciate all the stakeholders who participated in data collection and the regional consultations, which included efforts to verify the contents of this report at the time of writing. However, the authors alone retain responsibility for the accuracy of the views expressed and the evidence presented.

The development of this report on the *Status of Equality and Inclusion in Kenya* is the culmination of the combined efforts of researchers, academic institutions, government ministries, departments and agencies at the National and County levels, and non-government stakeholders, including Kenyan households. Special thanks go to the Ministry of East Africa Community (EAC), Labour and Social Protection, Ministry of Public Service, Youth and Gender Affairs, and Ministry of Education, Science and Technology for their active participation in the provision of various data and for contributing valuable information that forms a larger proportion of the report.

We would like to thank the Kenya Institute for Public Policy Research and Analysis (KIPPRA) for providing professional technical guidance throughout the whole process, from the development of data collection tools, to pre-testing, data collection, analysis and the final preparation of the report. Specifically, we wish to thank KIPPRA's Ag. Executive Director, Dr. Dickson Khaingwa and Prof. Germano Mwabu, of the University of Nairobi, for guiding the study process. We would also like to thank the entire KIPPRA technical team comprising Dr Eldah Onsomu, Dr. Nancy Nafula, Mr. Boaz Munga, Dr Douglas Kivoi, Ms Melap Sitati, Mr Arthur Odima, Mr Phares Mugo, Dr Bernadette Wanjala, Mr. Benson Kiriga, Dr Othieno Nyanjom (Consultant), and Rtd. Justice Violet Mavisi (Consultant).

Special thanks go to the Kenya National Bureau of Statistics for designing the study sample and for the technical review and validation of the equality and inclusion indices. In particular, we thank the Director General Mr. Zachary Mwangi for coordinating the technical team comprising Mr. Macdonald Obudho, Mr. Robert Nderitu, Mr. Samuel Kipruto and Mr. James Nganga. We wish to extend special gratitude to the Commission Chairperson Ms. Winfred Lichuma (EBS), Vice Chairperson Mr. Simon Ndubai, and Commissioners Dr. Florence Nyokabi and Dr. Gumato Yattani for their strategic and policy guidance throughout the whole process of the study. Similarly, we wish to acknowledge the NGEN secretariat under the technical leadership of Ms. Jackline Nekesa and Mr. Fred Lumiti (Monitoring and Evaluation Department) for tirelessly coordinating the numerous phases of this study.

We appreciate all the stakeholders who participated in data collection and the regional consultations, which included efforts to verify the contents of this report at the time of writing. However, the authors alone retain responsibility for the accuracy of the views expressed and the evidence presented.



Mr. Paul Kuria
Ag. Commission Secretary



EXECUTIVE SUMMARY

Children, the youth, women, minorities and marginalized groups and communities, older members of society, and persons with disability (PWDs) – hereafter referred to, Special Interest Groups (SIGs) – remain among the groups that have suffered most from historical marginalization and discrimination in Kenya. Anachronistic traditions that subordinate children and the youth, that perceive women as being inferior to men, equate disabilities with curses, associate the elderly with retrogressive experiences, and deny opportunities to minorities and marginalized groups, still prevail. These SIGs suffer discrimination and marginalization in many spheres of their lives, but the scope of this report is with respect to their equality and inclusion – or the lack of it, as pertains to education, employment, social protection, and political participation.

At various points, the Constitution of Kenya (2010) guarantees equality and inclusion, and mandates Parliament to legislate for the operationalization of such guarantees. The Constitution also requires that policies and strategies be aligned with its imperatives. The mandate to ensure compliance was given to the Commission for the Implementation of the Constitution (CIC) – now defunct. Much has been done in terms of establishing policy and legal frameworks for mainstreaming equality and inclusion, but much less has been done in terms of operationalizing the frameworks. In order to inform its work with respect to equality and inclusion, the National Gender and Equality Commission (NGEC) engaged the Kenya Institute for Public Policy Research and Analysis (KIPPRA) to establish the status of SIGs in the context of the new constitutional dispensation in respect to equality and inclusion. NGEC decided to focus on four sectors: Education, Employment, Political Participation, and Social Protection. The conceptualization of the task involved review of global

literature on equality and inclusion issues, and of government publications, which activities also provided substantial secondary data for use in the baseline study. Primary data was collected through September to October 2015 countrywide fieldwork targeting households and public institutions, including ministries, departments and agencies and the county governments. Other data collection engaged private sector institutions, and countrywide focus group discussions and key informant interviews.

Anachronistic traditions that subordinate children and the youth, that perceive women as being inferior to men, equate disabilities with curses, associate the elderly with retrogressive experiences, and deny opportunities to minorities and marginalized groups, still prevail.

Of the report's ten chapters, the first one provides the background information to the concerns, objectives and significance of the study, while Chapter 2 highlights the concepts and legal frameworks relating to equality and inclusion. Chapter 3 reviews equality and inclusion framework indicators, leading to Chapter 4's presentation of the methodology of the study and data collection. Chapter 5, 6, 7 and 8 respectively present the findings and discussion on equality and inclusion in Education, Employment, Social Protection, and Political Participation. Chapter 9 presents and discusses the equality and inclusion indices at the national and county levels, while Chapter 10 presents the conclusion and overall recommendations of the study.

KEY FINDINGS

Over two-thirds of the respondents proposed attention to the design and institutionalization of appropriate capacity building programmes to enhance quality in the current education delivery approaches, and hence increase equality and inclusion. This is consistent at all education levels, but slightly more in urban than rural areas.

1. Education

The education sector in the country has recorded substantial expansion in basic education since the 2003 launch of the Free Primary Education (FPE) programme, and the subsequent launch of the Free Day Secondary Education (FdSE) programme in 2008. Additionally, focus has extended to Early Childhood Development Education (ECDE), which prepares children for primary education. Despite the expansion, there are various challenges to the sector, key among them inequalities, unsatisfactory levels of education quality, and poor access to post-primary education for low income groups. These challenges have negative implications for the country's accumulation of human capital, and are likely to affect the country's aspired transition to middle-income status by 2030. The survey data on reasons why school-age children are not in school show that school-related costs are responsible for 49 per cent of those not attending school, which is of great concern given the Government's continuing investments in the FPE and FdSE programmes since 2003 and 2008, respectively.

Over two-thirds of the respondents proposed attention to the design and institutionalization of appropriate capacity building programmes to enhance quality in the current education delivery approaches, and hence increase equality and inclusion. This is consistent at all education levels, but slightly more in urban than rural areas. The other proposed changes with good support included the adoption of collaborative multi-sector approaches (71% approval), needs-based funding (65% approval) and targeted budgeting for special interest groups (57% support). Only 19 per cent supported the transfer of primary and secondary education functions to counties,¹ with no support for this at all among universities and special needs institutions.

Regarding the strategies in place for equitable access for children at risk of not enrolling or completing education, respondents pointed out that the strategies currently in place ranged between 69 per cent for flexibility in school days and calendars to 90 per cent for community mobilization and participation in school management. When respondents were asked if the strategies in place were effective, the largest support (90%) was for community awareness on girls' education while the lowest approval (31%) went to community level support. For three policies, rural perceptions of effectiveness were greater than urban perceptions:

¹ The Constitution gives responsibility for primary and secondary education to the National Government, while County Governments cover pre-primary education.

expansion of ECDEs; second chance opportunities, and community awareness of girls' education; infrastructure expansion, and low cost boarding schools.

Training on disability mainstreaming received the lowest acknowledgement. Ensuring a safe and conducive environment had the highest acknowledgement rate. The perceived effectiveness of the various aspects of teacher development varied greatly across the different categories of respondents, which ranged between 53 per cent for training on disability mainstreaming to 85 per cent for schools ensuring safe and conducive environment.

Budget allocations to the sector show the dominance of the recurrent budget over the development budget. This is because (i) the recurrent budget covers teachers' salaries, which are a major expenditure item in delivering education, and (ii) the construction of schools has traditionally been the responsibility of communities. These factors explain the high growth in the recurrent budget – 91 per cent period change – compared to the modest 9 per cent period change in the development budget.

Less than half of the respondents (47%) reported that budgeting for capacity building in relation to equality and inclusion is effective. Those in urban areas reported a higher proportion compared to their counterparts in rural areas. More than half of the institutions dealing with special education had an effective budget for capacity building, while half of university level institutions do not.

Only 43 per cent of institutions indicated that budget allocations for equality and inclusion were effective. Institutions with expenditures for SIGs spend effectively, according to the budget. The survey results further show that a lower proportion of institutions in rural areas spend effectively for SIGs as allocated compared to those in urban areas. All university institutions spend effectively as allocated for SIGs.

Families of SIGs rely on the services and assistance offered by the government, religious organizations and NGOs. A rights-based approach to the marginalized implies that these families need to be empowered and supported with livelihood options that allow them to be self-sufficient and meet not only their basic needs, but also on the special needs of SIGs. A lack of accurate prevalence data and low registration rates for SIGs results in inadequate planning by the government; county governments together have a strong and increasing community of scholars and institutions working on expanding SIGs rights.

The study recommends that both national and county levels of government and other stakeholders in the education sector should ensure the integration of practical tools to support education and training programmes to address equitable access, retention and transition in education for SIGs, with the inclusion of formal and informal education. There is need to promote equity by designing specific special affirmative action programmes for the youth, PWDs, ASALs and slum areas, and abolishing all levies that discriminate against poor households.

Education and training should be made relevant by undertaking major curricula reviews, preceded by research and needs assessment to establish the challenges posed by the 2010 Constitution and skills needed for achieving Vision 2030. Learning materials should be reviewed and revised to conform to the new curricula. Redesigning teacher education curriculum and training programmes to prepare teachers for implementing the new curricula is necessary. The government also needs to put special focus on marginalized areas and disadvantaged communities by operationalizing the Nomadic Education Policy Framework to address the challenges in the provision of education. Lastly, there is need to integrate gender awareness components into pre- and in-service teacher training for teachers.

2. Employment

There are numerous laws that support the SIGs in employment. One of the overriding challenges facing some of these regulations is weak enforcement. In other cases, establishments, especially the informal establishments, may not be able to afford to implement the regulations. A typical example is the provision for the 3-month paid maternity leave, and the 10-day paid paternity leave. Only about half of the informal sector firms reported granting three months paid maternity leave.

It is difficult to collate data disaggregated for each of the SIGs on relevant issues on employment across establishments, especially in the public sector, because it is rarely kept in a format that is easily retrievable and shareable.

A high proportion of Kenyans as well as persons across all the SIGs hold vulnerable jobs. These jobs are mainly own account and contributing family workers, and are characterized by informal working arrangements, lack of adequate social protection, and in most cases low productivity, and low earnings or pay.

Within the formal sector, there was an increase in casualization during the 2013 to 2014 period for both sexes, with 27 per cent females and 23 per cent males employed as casual workers. It can be inferred that there was deterioration in the quality of wage employment following the increase in the share of casual employment in 2014.

Children: Despite the importance of education in enhancing the probability of employment, a high proportion of children aged 5 to 17 (nearly 12% in 2009 and 15% in 2015) were reported to have “never attended school” despite the FPE and FdSE policies. This is bound to limit prospects for gainful employment of these children in future, and suggests the need to support the on-going FPE policy with other concurrent measures.

Child labour is a significant problem in Kenya. The 2015 survey indicates that about 10 per

cent of children were engaged in child labour, mostly in own family business and own family agricultural holding.

Youth: The youth employment to population ratio was about 45 per cent relative to the 58 per cent employment to population ratio of individuals aged 15 to 64 years in 2015. This is indicative of the relative disadvantage of the youth population in accessing employment. Most of the employed youth are engaged in vulnerable jobs, mainly in rural areas.

Youth unemployment stood at 22.7 per cent for the 15 to 34 year olds, which was larger than the overall unemployment rate for those aged 15 to 64 years (16.4%). The proportion of inactive youths (schooling and homemaking activities, etc) is larger than the unemployed youths.

Although many studies indicate that education attainment is strongly correlated with more productive forms of employment, its access by the youth is unsatisfactory, with about 11 per cent of those aged 18-34 having never attended school in 2009. About 21 per cent of the youth are non-utilized based on not being in education, employment, or training (NEET) in 2015.

Women: A slightly larger proportion of females never attended school relative to males. Also, a larger proportion of females are inactive compared to the males. Although there are as many females as males, the female share of total wage employment was about 37 per cent of the total wage employment in both 2013 and 2014 – indicating their relative under-representation in formal employment – or in better quality jobs.

The employment to population ratio (EPR) for females is lower than that of males for all age groups above 15 years. This suggests that females are disadvantaged in accessing employment. In addition, NEET ratio is higher for females. Females between the ages of 20 to 29 years had NEET ratios of about 33 per cent relative to the male rates of 21 to 23 per cent.

Females and males also differ on the sector of employment. Males tend to outnumber females by between 2 to 5 times in the sectors/industries that are deemed to be more lucrative, such as manufacturing and professional, scientific and technical activities. Many more females than males are engaged in vulnerable employment. Females also are more likely to be engaged in casual wage jobs relative to the males.

Available evidence indicates that the pay gap exists, although Kenya ratified the Equal Remuneration Convention in 2001. Women were likely to earn about 67 to 70 per cent of the salary of men in 2005 and 2014.

About 70 per cent of MDAs meet the two-thirds gender rule in overall distribution of employment by sex. However, within the upper job groups R to T and lower job groups A to D cadres of the public service, the constitutional threshold is rarely met.

Persons with Disabilities: The EPR of persons with disability (PWDs) is lower than that of the overall population, 35 per cent and 57 per cent, respectively.

Compared to other groups and the overall population, a lower proportion of PWDs are employed within the formal sector, indicating their relative disadvantage in accessing good quality jobs. This outcome is usually associated with the difficulty of PWDs in accessing education, among other factors.

Elderly Persons and Marginalized groups: Compared to the overall population in general, persons who are at least 60 years old are more likely to be engaged in informal employment. Generally, marginalized groups (such as minority ethnic groups) are under-represented in employment.

3. Social Protection

Social protection in Kenya is guided by the Constitution, Kenya Vision 2030, and the National Social Protection Policy (NSPP) 2011. The NSPP is founded on the commitment of

the State to reduce poverty and vulnerability, whereas the Constitution contains a comprehensive Bill of Rights in chapter four. Article 43 of the Constitution guarantees Kenyans economic and social rights while Article 44 guarantees language and cultural rights. It affirms the right to social security and commits the State to provide appropriate social security to persons who are unable to support themselves and their dependants. Moreover, a Sessional Paper on Social Protection (2014) is being developed. Similarly, the Social Policy Framework (SPF), which was endorsed by African Heads of State in 2009 and echoed in the United Nation's Social Protection Floor Initiative, commits governments to progressively realize a minimum package of basic social protection that covers: (i) essential health care, and (ii) benefits for children, informal workers, the unemployed, the elderly, and PWDs. The Social Assistance Act 2013 has also played a key role in enhancing the welfare of Kenyans. Currently, beneficiaries are paid Ksh 2,000 per household irrespective of the number of its affected individuals across all the five-cash transfer (CT) programmes.

A review of the status of the various groups using the 2015 survey data shows that there is inadequate provision, leading to high levels of inequality and social exclusion. All the 6 groups are discussed in the next sections.

Children

There are approximately 18.5 million children aged below 18 years. Out of this, 5.4million are aged 5 years and below. The number of orphans and vulnerable children (OVCs) is 4.9million. The State has shown commitment by domesticating the Convention on the Rights of the Child, and the African Charter on Rights and Welfare of the Child, by enacting a Children's Act 2001. In particular, the Convention guarantees the child the right to education under Article 29(1); the right to welfare; and the right to social security and employment. Further, Article 53 of the Constitution also protects the right of every child.

The State is also expected to undertake all appropriate legislative, administrative and other measures for the implementation of these rights. The State has made some progress in as far as protecting the rights of the child is concerned. However, a critical mass of children still lives in deprivation. For instance, 18.6 per cent of children live in households that sleep hungry. Only 60 per cent of children live in households that can afford three meals a day.

Only 2 per cent of children live in households that have previously received CT resources. The CTs, which target OVCs only are not adequate to benefit all the OVCs in need. About 14.4 per cent of children benefit from membership in health insurance schemes. According to county government budgeting, there are no special funds targeting children and, where they exist, they are negligible.

Women

Women aged 18 years and above number about 16.7 million of the total population. While various milestones have been achieved in addressing the plight of women, some sections still face challenges that require the attention of the State. For instance, 16.4 per cent live in households that go without food at least once a week; about 0.5 per cent cannot afford one meal in a day while 89 per cent are not members of any health insurance scheme.

Older persons

There are about 4.4 million older persons in Kenya. It is the responsibility of the State to ensure that older persons live a dignified life and receive reasonable care and assistance from their families, and State. However, majority of the older persons face unacceptable challenges in addition to their rights being violated. For instance, while only an average of 12.7 per cent receive a pension, and only about 5 per cent receive cash transfers, nearly 20 per cent of older persons live in households that sleep hungry at least once in 7 days. About 0.4 per cent live in households that cannot afford even

a single meal in a day. Despite these economic realities, only 16.5 per cent are insured in as far as their health is concerned. The National Hospital Insurance Fund (NHIF) requires premium payment of Ksh 500 a month to access health services. This fee is unaffordable for majority of the older persons. Moreover, many older persons live in poverty and yet they do not have access to government cash transfers. Where some have access, they need to travel for long distances to access the cash. Additionally, older persons face many social threats in their communities. For instance, in Kilifi, some cultural practices promote killing (burning) of older persons, who are often accused of practicing witchcraft.

Youth

According to the Social Assistance Act (2013), an unemployed person qualifies for social assistance if they are classified as youth, have no source of income, and their lack of a source of income is not due to negligence.

There is no social assistance programme targeting unemployed youth. The “*Kazi kwa Vijana*” programme, which had targeted the youth a few years ago, barely achieved its objective.

Persons with Disability

Like all the SIGs, PWDs should be treated with dignity and accorded respect. They should enjoy all the rights accorded to the people of Kenya, such as the right to education, food, shelter, life, etc. However, according to the survey, nearly 46 per cent of PWDs cannot afford to eat three meals a day, while at least 9 per cent cannot afford a meal a day. The national budgetary allocation for PWD-CT is very small. Only 8.7 per cent have ever received social assistance from the government. These could be as a result of the targeting, which only caters for People with Severe Disabilities (PWSD). Access to health insurance remains a challenge to PWDs, with only 12.7 per cent having a cover.

Marginalized/Minorities

Article 260 of the Constitution provides no definition for ‘minorities’, but provides a very elaborate definition for ‘marginalized communities’ and ‘marginalized groups’. However, most such people likely reside in the arid and semi-arid lands (ASALs), as well as in rural areas and urban informal settlements. They include children, youth, older persons, PWDs and women. Article 56 of the Constitution demands that the State should put in place affirmative action programmes to ensure that minorities and marginalized groups participate and are represented in governance and other spheres of life, are provided special opportunities in educational and economic fields, and are provided special opportunities for access to employment.

The marginalized/minority communities are in most cases affected by hunger and drought. The government has put in place mechanisms to avert food insecurity during crisis period, with mixed outcomes. However, there is need for sustainable solutions to avert extreme hunger at all times.

4. Political Representation

Women currently form 19.7 per cent of membership of the National Assembly in the 11th Parliament (2013-17), including 47 County Women Representatives. No woman was elected in the 47 Senate seats, but sixteen (16) women were nominated from party lists, and two more were nominated to represent youth and PWDs, bringing the number of nominated female Senators to 18.

No female candidate was elected Governor in any of the 47 counties. In the 47 county assemblies, women won only 82 out of 1,450 elected seats during the 2013 elections. This represented 5 per cent of elected ward representatives. An additional 680 women were nominated by political parties that had won seats in the assemblies, in order to meet the two-thirds gender rule as per Article 177 of the Constitution. As a result, there are 762 women in county assemblies, forming 34 per

cent of membership. Thus, county assemblies do meet the gender quotas set out by Article 27 and 81 of the Constitution.

The Constitution sought to mitigate historical political marginalization and discrimination against women, PWDs, other SIGs, and the minority communities. However, inadequate progress has been made since the Constitution was promulgated. The Constitution did not expressly provide for mechanisms to fulfill gender quotas in the National Assembly and Senate, as it did for county assemblies. The Attorney General sought an advisory opinion of the Supreme Court on how to implement the two-thirds gender representation at the National Assembly and Senate. In a majority ruling, the Supreme Court ruled that the legislative measures for giving effect to the one-third-to-two-thirds gender principle, under Article 81(b) of the Constitution and in relation to the National Assembly and Senate, should be enacted by 27 August 2015. Article 100's provision requiring that the National Assembly enacts legislation to promote the representation in Parliament of women, PWDs, youth, ethnic, and other minorities and marginalized communities, has yet to be realized.

This study recommends that the National Assembly deliver on the constitutional imperative of Article 100. Political leaders and the Executive should show goodwill to efforts geared towards empowering SIGs and furthering their political representation at all levels of government. Government policies should aim at programmes that will ensure that political, economic and socio-cultural factors that impede women and persons with disability from political representation in electoral process are addressed.

5. Equality and Inclusion Index for Kenya

The overall Equality and Inclusion Index comprised six components, namely: development, health, education, social justice and civic engagement, gender equality,

and labour force participation. The index measured the level of equality and inclusion in the respective sectors. The national Equality and Inclusion Index was estimated at 58.9 per cent. This implies that over 42.1 per cent of the population was excluded from benefiting from various services. Generally, the highest index at the national level was the Social Justice Index (70%). This finding indicates that recent government initiatives towards promoting social justice have created some impact in society. The lowest index was in the Development Index (44%), whose significant elements included regional distribution of public goods such as paved roads, access to electricity and economic well-being. The Development Index indicates that over 66 per cent of the Kenya population is not accessing critical economic services such as clean water, paved roads and electricity, and there are variations across counties.

The Health Index stood at 67 per cent and had the second highest average score among the six dimensions. There were, however, major inequalities across counties, with a deviation of 26 per cent points between the highest Health Index measure of 68.7 per cent (Kirinyaga County) and a least recorded index of 40.3 per cent (Turkana County). The health dimension comprised life expectancy, access to improved sanitation, proportion of children delivered through skilled provider assistance, and proportion of children not stunted.

The Education Index was captured through education attainment levels across counties, average years of schooling, level of aggregate enrolment for all levels and proportion of the population that had attained secondary education and above. The Education Index stood at 61 per cent, implying that 39 per cent of the population was excluded from education opportunities at various levels. There were major variations in accessing education opportunities across counties as depicted by the variance of 22 per cent across the counties. About 17 counties recorded a mean of 60 per cent and above. All the other

counties recorded indices between 39 per cent and 59 per cent.

The Labour Force Participation Index was 64 per cent with a range from a high of 74 per cent (in Nairobi and Mombasa counties) to a low of 44 per cent in Turkana County.

The Gender Equality Index was 38 per cent, implying that over 62 per cent were being excluded from various economic activities, partly due to gender differences.

Recommendations

Education

i) Access and Equity

Expand access to ECDE by:

- (i) Attaching pre-primary component to each primary school.
- (ii) Providing capitation grant to ECDE level.
- (iii) Training, employing and deploying more ECDE teachers.

Expand access to primary schools by:

- (i) Reviewing FPE grants to be used efficiently.
- (ii) Investing in school infrastructure maintenance.
- (iii) Ensuring equitable distribution of teachers and their efficient utilization.
- (iv) Ensuring all learning institutions have adequate learning materials.
- (v) Addressing challenge of household costs of basic education.

Expand access to secondary schools by:

- (i) Promoting private investments in education, especially post-basic education.
- (ii) Enforcing school fees guidelines.
- (iii) Building additional schools where there is established demand for school.

Enhancing quality of education at all levels by:

- (i) Training head teachers in skills of quality assurance, finance and human resource management.
- (ii) Training, deploying and supporting quality assurance officers to do their work effectively.
- (iii) Providing adequate learning materials.

Promote equity by:

- (i) Designing specific special affirmative action programmes for girls, PWDs, ASALs, and slum areas
- (ii) Abolishing all levies that discriminate against poor households.

Make education and training relevant by:

- (i) Undertaking major curricula reviews preceded by research and needs assessment, to establish the challenges posed by the 2010 Constitution and skills needed for achieving Vision 2030.
- (ii) Reviewing and revising core learning materials to conform to the new curricula.
- (iii) Redesigning teacher education curricula and training programmes to prepare teachers for implementing the new curricula.

Special focus on marginalized areas and disadvantaged communities should:

- (i) Operationalize the Nomadic Education Policy Framework to address the challenges in the provision of education.
- (ii) Ensure regular data collection to enable monitoring and impact assessment of the various interventions.

Improvements in institutional management

There is need to develop a policy framework on institutional management and clear provisions on:

- (i) Open and competitive processes for identification and appointment of institutional managers.
- (ii) Clear job descriptions and a competitive scheme of service for institutional managers.
- (iii) Minimum qualifications in terms of education attainment, skills, competencies and values, with basic training in financial management, strategic leadership, quality assurance and mentorship.
- (iv) Minimum set of professional standards for school managers, which include but not limited to standards for effective leadership, integrity, respect to national

values and declaration of wealth as provided for in the Constitution.

- (v) Appraisal mechanism for teachers and education managers be based on performance and achievements of set objectives and targets.
- (vi) Clear definition of roles, responsibilities and expectations of all stakeholders at institutional level, with attendant reporting lines and accountability structures.
- (vii) The scheme for institutional managers to be efficiently managed by the Teachers Service Commission (TSC).

Employment

- (i) On data capture, storage and sharing, there is need to sensitize both the public and private sector establishments on the need to identify, collect, and keep data on the specific indicators that capture all the legal or regulatory requirements on equality and inclusion, e.g. employment data by age, sex, ethnicity and disability status. Success of ongoing efforts in promoting the equality and inclusion of SIGs hinges crucially on data availability and its management. The NGECE and other relevant stakeholders, such as the Public Service Commission, can develop and promote prescribed formats for capturing and storing data, with online approaches offering much promise.
- (ii) For effective implementation of regulations and laws, penalties should be introduced for failure to meet requirements such as the two-thirds gender rule in elective and appointive public offices.
- (iii) To curb the growing informality of jobs, and their increasing vulnerability, the quality of existing jobs can be enhanced by implementing existing laws and regulations, including international conventions. As an example, the requirement to register workers for social security can be introduced progressively. It is also important to expand the reach of social protection programmes.

(iv) The right of every child to basic education is bestowed by the Constitution. Education is critical for the quality of life of an individual, including their future employment prospects. Guardians/parents whose children are out of school should be penalized. This will require that more resources are invested in monitoring and enforcement programmes. Against the backdrop of rising costs of living, it is necessary to enforce the school fees guidelines introduced by the Ministry of Education to enhance access to education.

The Youth need more employment opportunities. To this end, the government and other stakeholders need to:

- (i) Expand economic opportunities, especially in regions previously considered “low potential”, such as the ASALs, and remove barriers to education of the poor by reducing the costs for households and/or expanding bursaries and other transfers.
- (ii) Encourage out-of-school youth to re-enter general education, e.g. through subsidized ‘second chance programmes’ that are flexible. The ongoing rehabilitation of youth polytechnics should be sustained and popularized among the youth.
- (iii) Increase quality and relevance of education at all levels.

Women participation and outcomes in employment can be improved by enhancing the enforcement of policies (such as maternity leave), and the protection of the girl child from early marriages to promote labour participation and employability of females. Another effective initiative would be to enhance subsidies in training opportunities for females (and males), for example by increasing access to Technical Vocational Education and Training (TVET).

Within the public sector, equality and inclusion goals or targets can be achieved by:

- (i) Requiring Ministries, Departments and Agencies (MDAs) to define specific,

measurable, achievable, realistic and time-bound (SMART) goals that target their requirements relating to the equality and inclusion of SIGs in employment.

- (ii) Improving data management, by for example requiring MDAs to keep and submit data relevant for analyzing and monitoring indicators that relate to equality and inclusion.
- (iii) Promoting an inclusive and representative public service, especially with respect to age, ethnic and disability diversities. This can be achieved progressively by using affirmative action initiatives.

In collaboration with private sector umbrella bodies such as the Kenya Private Sector Alliance (KEPSA), NGECC can:

- (i) Roll out massive sensitization programmes on the need to enhance equality and inclusion (as a legal requirement and as a business case). There is need to encourage initiatives that drive the private sector to self-management over these issues through awards (e.g. on best performance in diversity management or best performance in inclusion with respect to disability, etc).
- (ii) Encourage initiatives within private establishments that track indicators, and compute indices for monitoring progress and identifying good performers. Some examples of possible indices that can be tracked include: (i) a Disability Equality Index and (ii) a Workplace Diversity Index.

Social protection

To ensure social protection:

- (i) Every county should set aside substantial funds to cater for programmes targeting children, according to the Social Pillar of Vision 2030, Medium Term Plan 2013-2017, SDG 2016-2030 and the County Integrated Development Plans.
- (ii) There is need to progressively enhance the budgets for OVC-CT to reach more households with OVCs.

- (iii) Health insurance schemes should be enhanced to cover all children irrespective of whether their parents are working or not; and the vulnerable in society.
- (iv) There is need to enhance the health insurance scheme to cover households living in poverty.
- (v) Older persons should have access to free health insurance covers.
- (vi) Both county and national governments should develop milestones for the progressive realization of rights of the older persons as enshrined in the Constitution.
- (vii) The National Government should progressively increase the Older Persons CT budget in order to reach out to older people living in extreme poverty.
- (viii) There is need for both County Governments and National Government to avert extreme hunger and poverty among the older persons of society.
- (ix) Put in place social assistance programmes that target the youth who are not in employment.
- (x) Review and re-design the “Kazi kwa Vijana” programme to benefit the target group.
- (xi) Progressively increase the overall budget to cater for PWDs living in extreme poverty.
- (xii) Consider free hospital insurance cover for all PWDs.
- (xiii) Target to eradicate extreme hunger for all persons with disabilities.
- (xiv) Put in place sustainable solutions to the problem of extreme hunger at all times.
- (xv) Enhance the NHIF outreach to provide free medical cover to the marginalized and minorities living in poverty.

Political Representation

- (i) **Quotas for Women:** The National Assembly should be encouraged to deliver its obligation relating to Article 100 of the Constitution to promote representation of marginalized groups. This would help mitigate the under-representation of

women in the Legislature. Other country experiences show that gender quotas will work as an incubator towards enhancing women participation and representation in political processes.

- (ii) **Capacity Building Forums:** Capacity building for women politicians should be an on-going process to build into the community participatory framework or institutions at community levels. Non-government organizations have immense capacity for grassroots mobilization, and should spearhead this exercise in partnership with other organizations and the civil society.
- (iii) **Political Goodwill:** Political leaders and the Executive should show goodwill towards efforts geared at empowering women and other SIGs, and furthering their political representation at all levels of government. The National Assembly (Parliament) should enact the necessary legislation that will provide a road map for increasing the representation of women and other SIGs in the political arms of government.
- (iv) **Minority Champions:** There is need for the creation of role models and champions from minority and marginalized groups and communities in politics, academia, religion, business and all other spheres of life, so as to motivate and mentor future leaders from these groups to enable them compete equally with the more dominant groups in the country.
- (v) **Civic Education Targeting PWDs:** The Independent Electoral and Boundaries Commission (IEBC) should partner with community and faith-based organizations to provide adequate civic education to PWDs. IEBC should also ensure that PWDs are registered as voters. Moreover, civic education should be carried out in a language that PWDs understand, and IEBC should ensure that the electoral process is user-friendly for PWDs and other SIGs.

Efforts to empower women have been advanced mainly through projects such as Uwezo Fund, Women Enterprise Fund, The Parliamentary Women Representatives Affirmative Action Fund, and the 30% preferential procurement reserved for women, youth and PWDs under Access to Government Procurement Opportunities Program (AGPO), where women are advanced loans to start small scale businesses. However, this does not translate to an increase in their political representation.

- (vi) Consistency in networking between SIGs leaders, at the national, county and community levels.
- (vii) Capacity building of SIGs to enhance their engagement in political life and increase chances for their improved representation.
- (viii) Aggressive awareness creation of youth's rights.
- (ix) Mentorship programmes for youth and PWDs.
- (x) Proper countrywide profiling of PWDs.
- (xi) Provide and develop capacities of IEBC staff on the use of Braille and sign language to enable them to assist PWDs effectively during elections.
- (xii) **Affirmative Action:** Efforts to empower women have been advanced mainly through projects such as Uwezo Fund, Women Enterprise Fund, The Parliamentary Women Representatives Affirmative Action Fund, and the 30% preferential procurement reserved for women, youth and PWDs under Access to Government Procurement Opportunities Program (AGPO), where women are advanced loans to start small scale businesses. However, this does not translate to an increase in their political representation. Also, the government has advanced loans to the youth to start businesses. There is need to intensify affirmative action policies that are geared towards increasing the representation of women in political institutions, and other decision making organs of governance.
- (xiii) **Agents for Change:** Faith-based institutions are critical in fighting gender stereotypes against women and women PWDs. The leadership of major religions in the country has been traditionally patriarchal, with limited opportunities for women to participate in key decision-making positions. Thus, given the great influence religion has in many Kenyan communities, it is important that stakeholders engage religious institutions to help fight the perception that leadership is a domain for men. 1.1 Background

Address data limitations: During the course of this survey, the research team encountered a number of challenges especially in sourcing data on political representation of SIGs. Firstly, government institutions that ought to be custodians of data do not have the records needed. Secondly, county governments were unable to provide the data SIGs requested from their respective counties. It was almost impossible to get data on the representation of PWDs, youth and marginalized both at the national and county government level. There is need to address data challenges across all sectors and at both levels of government.

INTRODUCTION

NGEC's role is focused in promoting inclusion in development and all spheres of life of Special Interest Groups (SIGs), that include women, persons with disabilities (PWDs), youth, older members of society, minority and marginalized groups and communities, and children.

The National Gender and Equality Commission (NGEC) is the principal organ responsible for promoting gender equality and freedom from discrimination in all aspects of life in Kenya.² The mandate of NGEC extends to ensuring the government's compliance with all international treaties and conventions that Kenya has ratified relating to equality and non-discrimination, including concerns with equality and freedom from discrimination. NGEC's role is focused in promoting inclusion in development and all spheres of life of Special Interest Groups (SIGs), that include women, persons with disabilities (PWDs), youth, older members of society, minority and marginalized groups and communities, and children. While the concern of NGEC touches on the circumstances of SIGs in general, this report focuses on their performance in a) education, b) employment, c) political participation, and d) social protection.

Since the World Summit for Social Development held at Copenhagen from 5-12 March 1995, attention has increased on the usefulness of the concept of economic and social exclusion to concerns with poverty, inequality and social injustice in the developing and developed country contexts. The conference's essence was the creation of an inclusive society – “a society for all” as one of the key goals of social development. A key outcome of the Summit was the ‘Copenhagen Declaration on Social Development and the Programme of Action of the World Summit for Social Development’, which pledged, among other things, to make the eradication of poverty, attainment of full employment and social integration the overriding objectives of development.³ Member states committed to promote social integration by fostering inclusive societies that are stable, safe, just and tolerant, respecting diversity, equality of opportunity and participation of all people, including disadvantaged and vulnerable persons and groups.

Those policy commitments were packaged during the follow up Millennium Summit five years later, as the Millennium Declaration

² NGEC is rooted in Article 27 of the Constitution of Kenya and the resulting National Gender and Equality Act of 2011.

³ For the Declaration, go to http://hdrnet.org/528/1/copenhagen_declaration.html Accessed on 20-08-2016.

of 2000, which spawned the Millennium Development Goals (MDGs).⁴ Accession to the Millennium Declaration reflected the Government of Kenya's commitment to a set of goals and targets whose attainment would enhance equality and inclusion. The MDGs were succeeded by the United Nations Sustainable Development Goals (UN-SDGs) adopted in October 2015 to guide the global development agenda for the next 15 years to 2030.

Among the underlying concerns of Kenya's Constitution of 2010 are issues of equality and inclusion as they affect pockets of the national population. In the context of such concerns, the government has previously ratified various specific international treaties and conventions touching on inclusion and equality.⁵ Besides the constitutional provisions, Kenya's Vision 2030 (hereafter V2030) also aspires for equal rights and opportunities between men and women for their enjoyment of a high quality of life. There are also various policy and legislative provisions that guide the participation of SIGs in education, employment, social protection and political representation. The effective delivery of NGEK's mandate requires a good understanding of the status of equality and inclusion in the country, at the national and county levels, and in the public and private sectors.

Despite the foregoing international and national frameworks, challenges have persisted over equality and inclusion, especially for the SIGs, calling for more elaborate understanding of the nature and extent of inequalities and exclusion in various spheres. To address some of these challenges, NGEK commissioned a study to assess the extent of integration of the principles of equality and inclusion in all national,

county policies, laws and programmes, and in private sector operations. The assignment covered equality and inclusion in employment, political representation, social protection and education. At that very time, the government was in the process of developing a policy and action plan on Human Rights (HR) issues, including a comprehensive framework for their monitoring.⁶ It is therefore not surprising that, to date, equality and inclusion issues have been handled in an ad hoc manner, especially in the private sector.

1.2 Human Rights Approach to Equality and Inclusion

International conventions and treaties are designed to approach development issues from an HR perspective. The United Nation's Universal Declaration on Human Rights (UDHR) defines HR as 'natural entitlements beyond dispute, which are in accord with natural and moral law (and) co-exist to redress injustices.' Such rights go beyond the 'first generation' civil and political rights, to 'second generation' social, economic and cultural rights, and on to 'third generation' collective rights. However, all these rights are universal, indivisible, inter-dependent and interrelated. As expected, the rights appear in various other conventions and treaties at the international, regional and national levels.

The HR framework distinguishes 'rights holders' (RH) and 'duty-bearers' (DB). Broadly, RH largely constitutes citizens among whom are the SIGs. DBs are the state and non-state actors who should address the adversities faced by the RHs. However, the espousal of people participation also places a DB burden on citizens, such as in planning and budgeting.

The RH/DB paradigm arises from a State's ratification of various international frameworks for delivering ordinary citizens (*wananchi*) out of poverty and marginalization. Such frameworks take on a number of formal labels, such as 'agreement', 'charter', 'convention', 'covenant',

4 On MDGs, see <http://www.unfoundation.org/what-we-do/issues/mdgs.html> Accessed 04-07-2015

5 Appendix Table A-XX lists Kenya's status with respect to various treaties and conventions.

6 See Republic of Kenya (2013).

‘declaration’, ‘protocols’, and ‘optional protocols’.⁷

1.3 Policy Relevance

It is important that NGEC made a decision to explore the status of equality and inclusion in Kenya, issues dating back to the 1995 Copenhagen Summit, which led to the MDGs, and eventually to the SDGs. Like many other countries, Kenya’s implementation of the MDGs occurred in the context of various policy and strategy orientations, which have been critical for addressing equality and inclusion.⁸ Between 2003 and 2007, the Economic Recovery Strategy (ERS) was the blueprint for development interventions incorporating Kenya’s international commitments, such as the MDGs. In 2008, the government launched its long-term development blueprint, Kenya Vision 2030, which to date has been implemented through successive Medium Term Plans – 2008-12 and 2013-17.

Meanwhile, August 2010 had seen Kenya promulgate a new constitution that devotes a substantive chapter to the Bill of Rights, even as it devolves key elements of service delivery to 47 distinct governments whose mandates relate in significant ways to the circumstances of the SIGs. Devolution present opportunities for the delivery of equality and inclusion at County level in compliance with the international human rights instruments and the UN’s Universal Periodic Review (UPR) to which has subscribed. The

⁷ In general discussion, this report will use these terms interchangeably, but will refer to the appropriate label in a specific discussion. An elaboration on these and other related terms is available at https://treaties.un.org/Pages/overview.aspx?path=overview/definition/page1_en.xml Accessed 29-06-2015.

⁸ For Kenya’s progress with the MDGs, see Ministry of Devolution and Planning (2014).

UN’s Universal Review recently assessed Kenya’s compliance⁹ with the international instrument including principles of equality and inclusion. As a signatory to the Sustainable Development Goals (SDGs) whose agenda is grounded in the UDHR and other international human rights treaties, the framework will greatly influence the direction of global and national sustainable development policies for the next 15 years.

Despite the progress, Kenya has made with the treaties so far, the UPR does not provide much detail on the specifics, such as by respective SIGs, or by sectors. This has led NGEC to desire some baseline information on the status of equality and inclusion in the country, against which the progress generated by interventions could be monitored.

The development of a baseline index would enable monitoring over time as well as across elements of interest, such as the SIGs and the various sectors. The terms of reference of the study reported here are expounded in the next sub-section.

1.4 Objectives of the Study

The broad objectives of this study were: (i) to examine indicators of equality and inclusion, and; (ii) develop a national status report at the national and county levels.

Objective I: Develop indicators for measuring equality and inclusion focusing on selected parameters at the national and county levels in both the public and private sectors

Indicators for measuring equality and inclusion are necessary for assessing the extent of integration of their principles in all national and county policies, laws and programmes, and in the activities of the private sector. The indicators should apply for both international and national instruments on equality and inclusion.

⁹ See UN General Assembly, Human Rights Council Twenty-ninth session Agenda item 6, Universal Periodic Review Report of the Working Group on the Universal Periodic Review* Kenya, 29th March 2015.

The study assessed the extent to which the national and county governments' laws, policies, regulations and programmes, and those of the private formal and informal sectors, have considered issues of equality and inclusion for SIGs in employment, social protection, political representation and education.

Article 27 of the Constitution makes provisions for the principles of equality and freedom from discrimination. The realization of these rights requires specific legislation and measures such as affirmative action. As declared by Article 260: "... the State shall take legislative and other measures, including but not limited to affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups as a result of past discrimination." Article 260 defines children as those under 18, youth as those between the ages 18 and 34, and older persons as those over the age of 60. Part 3 of the Bill of Rights also imposes specific affirmative action requirements on the State in relation to groups with particular characteristics, including the youth and marginalized groups.

Further, Articles 53, 55 and 57 provide specific rights for children, youth and older persons in the society, respectively, including guaranteeing the right to access education (children and youth), access to employment (youth) and to receive reasonable care and assistance from their family and the State (older persons).

Article 54 focuses on the rights of persons with disabilities, who must be treated with dignity and respect. Article 260 follows the UN Convention on the Rights of Persons with Disability in defining disability to include physical, sensory, mental, psychological or other impairments that affect a person's "ability to carry out ordinary day-to-day activities".

Article 56 provides additional rights and protections for 'Minorities and Marginalized Groups', with the latter defined in Article 260

as all those disadvantaged by discrimination on one or more of the grounds provided in Article 27(4). The Article requires the State to undertake affirmative action (positive discrimination) and other measures to ensure the participation of these groups in governance, education and employment, to have access to water, health services and infrastructure, and to develop their cultural values, languages and practices.

Kenya's ratification of various international HR treaties¹⁰ has provided the impetus for instituting various laws, policies, regulations and programmes focusing on the protection of people's rights, including those of SIGs. The Millennium Declaration and the SDGs embodied the social inclusion and equality principles, as well as the objectives and goals set out in the Copenhagen Declaration. The issue of social inclusion/exclusion was not only imperative in the attainment of MDG Goal 1 on "eradicating extreme poverty", but also for all the other Goals.

Objective II: Develop a country status report on equality and inclusion at the national and county government levels and public and private sectors

Based on the indicators derived from objective I, and the national (existing policies and legal framework), regional and international provisions, this report assessed the extent to which the Government of Kenya has domesticated the principles of equality and inclusion. Specifically, the report focused on employment, political representation, social protection and education at the national and county levels, both in the public and private sectors.

a) Assessing equality and inclusion in education

Inclusion in education can be seen as a process of addressing and responding to the diversity of needs of learners through increased participation in access to schooling,

¹⁰ See appendix Box A-1 for a sample of such treaties.

learning processes, learning outcomes, cultures and communities.¹¹ This involves changes and modifications in content, approaches, structures and delivery strategies, with an objective of covering all children of the appropriate age. More equitable and inclusive education is about giving all eligible persons an equal chance of engagement, and responding to the diversity of needs, such as easily accessible facilities for PWDs.

The study assessed aspects of inequalities and exclusion at all levels of education delivery, policy and legislation frameworks, and outcomes. The assessment focused on disadvantaged groups, which include girls and in some cases the boy child, youth, PWDs, and the marginalized and minority groups.

b) Assessing the status of equality and inclusion in employment

More equitable and inclusive employment is about giving all eligible persons an equal chance of engagement, and also responding to the diversity of needs, such as easily accessible facilities for PWDs. The study provided an assessment of the extent of integration of the principles of equality and inclusion in employment at national and county levels, and in the formal private and informal sectors. In the latter instance, its exceptional employment growth, especially in light of the comparative stagnation of private formal sector employment growth, provides an important area of investigation. The study also identified challenges and probable interventions for promoting equality and inclusion in Kenya.

c) Assessing equality and inclusion in social protection

Social protection consists of laws, policies, affirmative action and programmes designed to reduce poverty and vulnerability by protecting against the vagaries of free labour and other markets, diminishing people's exposure to risks, and enhancing their capacity to manage economic and social risks, such as

unemployment, exclusion, sickness, disability and old age. Other dimensions of social protection include preventive, promotive and transformative social protection. Having a more equitable and inclusive social protection policy would ensure that all have an equal opportunity of receiving assistance irrespective of sex, age, ethnicity, among other things, while also catering for SIG needs.

There is evidence that social protection systems can assist countries to fulfill their obligations under national, regional and international human rights laws, and to ensure the enjoyment of minimum essential levels of economic, social and cultural rights. Specifically, social protection systems have the potential to assist in the realization of the right to an adequate standard of living – including the right to adequate food and housing, the rights to social security, education and the highest attainable standards of health. Such lofty objectives require adequate attention to both the content and processes of social protection laws, policies and other measures.

The human rights approach to social protection has numerous advantages, such as in building social consensus and mobilizing durable commitments at the national and international levels, facilitating a more efficient use of resources by promoting access to information and fighting corruption, and ensuring participation of beneficiaries at all stages of the programmes.

The analysis focused on indicators measuring the effectiveness of social protection interventions, policy gaps and policy suggestions for ensuring that social protection programmes are inclusive and that they benefit the target groups, including the poor, vulnerable and marginalized groups.

d) Assessing equality and inclusion in political representation

Political inclusion/representation entails the right to political participation and representation by all groups, including the SIGs. For

11 UNESCO (2005)

Political inclusion/representation entails the right to political participation and representation by all groups, including the SIGs. For example, implementation of the not more than two-thirds gender rule in elective and appointive public offices would ensure that women, who presently have less political representation, have a greater chance of being included in politics and decision making.

example, implementation of the not more than two-thirds gender rule in elective and appointive public offices would ensure that women, who presently have less political representation, have a greater chance of being included in politics and decision making.

This study assessed the level of political inclusion in both national and county governments. It also evaluated the extent to which various legislative and policy frameworks have integrated and mainstreamed various principles of inclusion and equality, and proposed strategies for improved political representation for SIGs in decision making processes at national, county and institutional levels, and in the private and informal sectors.

This assessment sets up the baseline against which the national government and the county governments can be audited regarding their mandate to ensure that there is equality and non-discrimination in employment, education, social protection and political participation. The Constitution and the various conventions and treaties require that the State should put in place laws, policies and other measures including affirmative action to guarantee the enjoyment of these rights by women, children, the youth, minorities, persons with disabilities and the marginalized in the identified areas. With regard to economic social rights in Article 43, such as education and social protection, the Constitution requires the government to set standards to achieve the progressive realization of these rights. Such standards are measured against the constitutional requirements and what is provided for in the conventions. In this regard, the report seeks to answer or determine whether indeed the national and county governments have fulfilled their mandate.

The rest of this report is organized as follows: Chapter 2 highlights the pertinent concepts and legal frameworks. Chapter 3 reviews some global indicators of equality and inclusion for SIGs, in the contexts of the sectors of the study's interest; i.e. education, labour, social protection, and political participation. Chapter 4 details methodological approaches to the study. Chapters 5 to 8 focus respectively on the equality and inclusion status for SIGs in education, employment, social protection, and political participation. Chapter 9 estimates national and county level, and sectoral indices of equality and inclusion. The final chapter summarizes the issues arising and offers some recommendations.

CONCEPTS AND REVIEW OF POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK

Social exclusion can be seen as a process through which individuals or groups are wholly or partially excluded from fully participating in all aspects of the life of the society they live in, based on their social identities such as age, sex, race, ethnicity, culture or language, and/or physical, economic, social disadvantages. Social exclusion may imply the lack of voice, recognition, or capacity for active participation, or exclusion from decent work, assets, land, opportunities, access to social services and/or political representation.

2.1 Definition and Discussion of Key Concepts

This chapter discusses various key concepts used in this report. In doing so, it reviews the various policies, and legal and institutional frameworks that govern the State and other stakeholders in the execution of obligations in the promotion of equality and inclusion, with a specific focus on the SIGs interaction in education, employment, political participation, and social protection.

Political exclusion includes the denial of citizenship rights, such as that to political participation and to personal security, the rule of law, freedom of expression, and equality of opportunity. Political exclusion also involves the notion that the State, which grants basic rights and civil liberties, is not a neutral agency, but a vehicle of a society's dominant classes, and may thus discriminate between social groups.

Economic exclusion, on the other hand, could include lack of access to labour markets (employment), credit and other forms of capital assets.

Social exclusion can be seen as a process through which individuals or groups are wholly or partially excluded from fully participating in all aspects of the life of the society they live in, based on their social identities such as age, sex, race, ethnicity, culture or language, and/or physical, economic, social disadvantages. Social exclusion may imply the lack of voice, recognition, or capacity for active participation, or exclusion from decent work, assets, land, opportunities, access to social services and/or political representation.

Social inclusion, on the other hand, is understood as a process by which deliberate efforts are made to ensure equal opportunities for all, regardless of their socio-economic backgrounds, so that they can achieve their full potential in life. It is a multi-dimensional process aimed at creating conditions that enable the full and active participation of every member of the society in all aspects of life,

including civic, social, economic, and political activities, as well as participation in decision-making processes.¹²

Discrimination means “distinction, exclusion or restriction based on the victim’s social, economic and political characteristics, such that it impairs or nullifies the recognition, enjoyment or exercise by the victim, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹³ This definition also applies for any victim category, including the SIGs.

Equity entails ‘fairness’ and ‘justice’ between and within groups and individuals among them. In certain instances, it can be attained through positive discrimination; that is, affirmative action measures aimed at promoting the representation of one individual or group relative to another or others. Expressed differently, equity entails treating equals equally (horizontal equity), and unequals *appropriately* unequally (vertical equity).

Equality is linked closely with inclusion. An equal society recognizes people’s different needs, situations and goals and removes the barriers that limit what people can do, and what people can be.¹⁴ Equality is based on the concept of ‘sameness’ or ‘impartiality’ in the treatment of a member of one group, relative to another member of the same group. Equal treatment involves much more than simply treating everyone alike; it requires recognition that some individuals and groups have particular, specific – and therefore different – needs that must be met if they are to enjoy equal access to the opportunities that others are enjoying.

Gender refers to the roles and responsibilities that are expected of men and women as members of a society. These roles and relationships are not determined by the biological

differences between men and women, but are instead socially defined and shaped by traditions and beliefs and change over time.¹⁵

Gender and development represent the growing recognition that women are an integral part of their societies, and that sustainable development must include the full and equal participation of women. Gender-focused development recognizes that gender is an organizing principle of society that affects both women and men in all activities and relationships, and consequently influences the outcomes of development interventions, including schooling, political participation, the need for social protection, and labour market outcomes.

Gender perspective refers to the distinction between what is natural or biological, and what is socially and culturally constructed. What is biologically determined is relatively inflexible, but what is socially constructed is relatively transformable. Society assigns roles based on a person’s sex. Some of these roles are arbitrarily assigned, and some are shaped by history, ideology, culture, religion and economic development.

Affirmative Action includes any deliberate measure designed to overcome or ameliorate an inequity – i.e. unfair or unjust inequality, or the systemic denial or infringement of a right or fundamental freedom.

Special Interest Groups (SIGs): In providing key safeguards regarding participation and inclusion, the Constitution 2010 distinguished the need to focus especially on SIGs in society, namely women, children, the youth, PWDs, older persons, and minorities and marginalized groups. Article 260 defines the SIGs as presented in Box 2.1.

12 See United Nations (2007).

13 Government of Kenya (2010).

14 See Sen (2010).

15 Boadu (2000).

Box 2.1: Definition of SIGs

Disability: Any physical, sensory, mental, psychological or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities.

Child: An individual who has not attained the age of 18 years.

Youth: Means the collectivity of all individuals in the Republic who: (i) Have attained the age of 18 years; but (ii) Have not attained the age of 35 years.

Older member of society: A person who has attained the age of 60 years.

Marginalized groups: The Constitution provides that 'marginalized groups' refer to a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination.

Marginalized community: Means (a) A community that, because of its relatively small population or for any other reason, has been unable to fully participate; (b) A traditional community that, out of a need or desire to preserve its unique culture and identity from assimilation, has remained outside; (c) An indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy; or (d) Pastoral persons and communities, whether they are - (i) nomadic; or (ii) a settled community, that because of its relative geographic isolation, has experienced only marginal participation in the integrated social and economic life of Kenya as a whole.

2.2 Policy, Legal and Institutional Framework**2.3 International frameworks**

Various international instruments guide countries in the implementation of the HR agenda. Such instruments have a variety of formal title types, including 'agreement', 'charter', 'convention', 'protocol', and 'treaties', and all are signed exclusively between State parties.

However, the HR framework provides 'Optional Protocols' that allow non-state actors with interests in particular aspects of HR to engage States with respect to adherence to treaty provisions.¹⁶ In effect, therefore, while treaties have specific independent monitoring committees, the Optional Protocols provide an additional—often in-country—monitoring facility, except in the instance of the Optional Protocol to the Convention against Torture, which establishes a committee of experts for that purpose. Both processes feed into the UPR framework.¹⁷

The UN system defines a set of nine 'Core' HR instruments to include several treaties, some of which are supplemented by Optional Protocols dealing with specific concerns under respective treaties. These core HR treaties include:

- (i) Universal Declaration of Human Rights (UDHR);

¹⁶ For example, Kenyan civil society organizations have been at the forefront in ensuring the government delivers on its HR commitments, and consequently also make submissions to international monitoring bodies, such as the March 2014 UPR. See UN General Assembly (2015).

¹⁷ For the rationale, objectives and modes of the UPR process, see <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> Accessed 05/07/2015

- (ii) International Covenant on Economic and Social Rights (ICESR);
- (iii) International Covenant on Civil and Political Rights (ICCPR);
- (iv) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- (v) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- (vi) Convention on the Rights of the Child (CRC);
- (vii) Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)¹⁸; and Convention on the Rights of People with Disabilities (CRPD).

For ratified instruments, State parties should present a status report within two years, and should thereafter submit two to five-year periodic progress reports on adherence to the instrument's principles, as provided by respective monitoring committee frameworks. Monitoring committees evaluate country performance and, where necessary, provide appropriate guidance on improved performance. Kenya's reporting status with respect to the nine instruments and single optional protocol it has acceded to is that only two treaties out of the seven ratified have not yet been complied with, i.e. ICERD and CEDAW and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict (OP-CRC-AC): Ratified 2002 (details are presented in Appendix Table A-2).

¹⁸ Kenya has not yet *ratified* this treaty despite being a major host of refugees on the continent. Ratification means national ownership of a framework, which should go along with the appropriate alignment of the domestic frameworks – the constitution, laws, policies, institutions, and strategies – for the delivery of the obligations under the said conventions.

2.3.1 International instruments: Treaties and conventions

The international standards are legal instruments drawn up by governments, employers and workers. They are either *conventions*, which are legally binding international treaties that may be ratified by member States, or *recommendations*, which serve as non-binding guidelines. Ratifying countries commit themselves to applying the convention(s) in national law and practice, and to reporting on their application at regular intervals. Kenya has ratified a number of conventions that seek to promote gender equality and non-discrimination, and Article 2(6) of the Constitution makes them part of national laws.

a) Economic Social and Cultural Rights

This treaty requires States to ensure that men and women enjoy equal rights in all their economic social and cultural rights,¹⁹ including the rights to work,²⁰ social security (which includes social insurance), and paid leave or leave with adequate social security benefits (which in the case of working mothers includes reasonable period before and after childbirth).²¹ Additionally, the right to education should ensure its availability in sufficient quantities, accessed without discrimination, or physical and economic impediments (so that it is affordable, acceptable and adaptable) at the primary, secondary and higher education levels.²²

b) Convention on the Rights of Persons with Disabilities

The purpose of the disability convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all PWDs, and to promote respect for their inherent dignity.²³

¹⁹ Article 3

²⁰ Article 6 and 7

²¹ Article 10

²² Article 13 and 14

²³ Article 1

For this to be realized, governments are expected to adopt appropriate legislative, administrative and other measures for the implementation of the rights recognized in the convention, and to take all appropriate measures to eliminate discrimination based on disability by any person, organization or private enterprise.²⁴

In order to promote equality and eliminate discrimination, the State is expected to take all appropriate steps to ensure that reasonable accommodation is provided for all PWDs, and to take other specific measures to accelerate or achieve *de facto* equality of PWDs, which measures shall not be considered discrimination under the terms of the present convention.²⁵ The convention guarantees the rights of PWDs with respect to education,²⁶ employment,²⁷ social protection,²⁸ and in participation in political and public life.²⁹

c) Convention on Civil and Political Rights

The rights to be enjoyed under this convention include the right to take part in the public affairs by both men and women.³⁰ These rights have to be enjoyed equally and without discrimination.³¹

d) Convention on the Rights of the Child

Article 29 (1) of the convention guarantees the child the right to education, and also the rights to welfare,³² social security,³³ and from economic exploitation.³⁴ The State has the obligation to ensure that the enjoyment of these rights is done without discrimination,³⁵ and should undertake all appropriate legislative, administrative and

other measures for the implementation of these rights.³⁶

e) Convention on Elimination of All Forms of Discrimination Against Women

This is the main convention that promotes equality and non-discrimination against women in political, economic, social, cultural, civil or any other fields.³⁷ This protection must also include women in rural areas;³⁸ and States must ensure there are legal and policy measures to guarantee such rights.³⁹ The rights protected include in the areas of political and public life,⁴⁰ representation,⁴¹ education,^{42,43} and economic and social benefits.⁴⁴

f) International Labour Organizations Conventions

The Governing Body of the International Labour Organization (ILO) has identified eight conventions as “fundamental” and another four as “priority.” The Priority Conventions are also referred to as ‘Governance Conventions’, since they cover governance issues. The Fundamental Conventions cover essential or elemental principles and rights at work, and it is ILO’s aim that they be universally ratified.

As is evident from Table 2.1, Kenya has ratified all the Fundamental Conventions except for the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87). That convention protects the right of workers’ and employers’ organizations to organize locally and internationally. The Convention also protects workers’

24 Article 4.

25 Article 5.

26 Article 24.

27 Article 27.

28 Article 28(2).

29 Article 29.

30 Article 25 and 29.

31 Article 2 and 3.

32 Article 23.

33 Article 26.

34 Article 32.

35 Article 2.

36 Article 4.

37 Article 1

38 Article 14

39 Article 2, 3 and 4

40 Article 7

41 Article 8

42 Article 10

43 Article 11

44 Article 13

and employers' organizations from dissolution or suspension by administrative authorities. Even though Kenya has not ratified the Convention, the Labour Relations Act 2007 adequately provides for the provisions contained in the Convention. However, the Act is not explicit on protection from dissolution through administrative action – a provision that is prominent within the Fundamental Convention on Freedom of Association and Protection of the Right to Organize Convention 1948. This may be a drawback, since it is likely that the mere threat of an administrative dissolution may limit some forms of association.

Table 2.1: ILO's fundamental conventions and their ratification status by Kenya

	Year of ratification	Status
Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)	Not ratified	Not in force
Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	1964	In force
Forced Labour Convention, 1930 (No. 29)	1964	In force
Abolition of Forced Labour Convention, 1957 (No. 105)	1964	In force
Minimum Age Convention, 1973 (No. 138)	1979	In force
Worst Forms of Child Labour Convention, 1999 (No. 182)	2001	In force
Equal Remuneration Convention, 1951 (No. 100)	2001	In force
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	2001	In force

Source: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103315, Accessed 29-08-2016

The ratification of the Minimum Age Convention 1973 (No. 138) obliges a country to pursue a national policy designed to ensure the effective abolition of child labour. Kenya's Employment Act 2007 provides adequate provisions for the protection against child labour. Kenya also ratified the Worst Forms of Child Labour Convention 1999 (No. 182) obliging the country to take immediate and effective measures to secure prohibition and elimination of the *worst forms of child labour*. 'Worst forms of child labour' comprise all forms of slavery, pornographic acts, drug trafficking, and work that are harmful to the health, safety or morals of children.

As its name suggests, the Equal Remuneration Convention 1951 (No. 100) obliges ratifying members to promote and ensure application to all workers of the principle of equal remuneration for men and women workers for work of equal value. The Discrimination (Employment and Occupation) Convention 1958 (No. 111) obligates ratifying members to "declare and

pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to the elimination of any discrimination." Discrimination includes "any distinction, exclusion or preference made on the basis of color, sex, religion, or social origin."

In addition to these Fundamental Conventions, member States to the ILO are encouraged to ratify the Governance Conventions because of their importance in the functioning of the international labour standards system. The Governance Conventions are: the Labour Inspection Convention 1947 (No. 81); Employment Policy Convention 1964 (No. 122); Labour Inspection (Agriculture) Convention 1969 (No. 129); and the Tripartite Consultation Convention 1976 (No. 144). Kenya has ratified three out of the four Governance Conventions. The fundamental, priority and technical conventions ratified by Kenya are summarized in Appendix Table A-2.

As noted earlier, the regional and national levels replicate the international HR conventions. Thus, at the Africa regional level, the pertinent frameworks include the African Commission on Human and Peoples' Rights (1987), African Charter on Human and Peoples' Rights – Banjul Charter 1981, effective 1986, and the African Court on Human and Peoples' Rights (2004). Others include African Charter on the Rights and Welfare of the Child (1990), Maputo Protocol (2003), and Africa Youth Charter (2006).

g) African Charter on Human and Peoples Rights

The Charter requires states to take up legislative and other measures to give effect to the rights found in the Charter.⁴⁵ This includes ensuring non-discrimination⁴⁶ and equality in participating in government and right to work.⁴⁷

The MDGs, and now the SDGs, were couched very much along the lines of HR-based approaches to development. Such an approach seeks to empower the disadvantaged, so the nature of disempowerment should shape the domestication of the international frameworks, involving *meaningful* participation of the victims (prospective beneficiaries). The framework realizes that various factors - e.g. human and financial resource constraints - may only allow the progressive realization of human rights. However, inaction - no action - is unacceptable of a ratifying State; priority and investment switching can overcome resource constraints, enabling attainment of minimum levels of interventions. The process must identify the duty-bearers' (DB) core obligations and focus resources therein. The international community is also beholden to promote equality and inclusion. In particular, the 2030 Agenda has 17 goals for sustainable development and 169 targets. There are 11 explicit references to PWDs in the 2030

Agenda, and disaggregation of data by disability is a core principle. It is expected that the 2030 Agenda and the SDGs will influence the direction of global and national policies relating to sustainable development for the next 15 years. All plans of action must have clear, measurable medium and long-term targets, benchmarks and indicators.

The Bill of Rights under Chapter Four of the Constitution also makes several provisions in relation to the SIGs. The Constitution recognizes that it is the fundamental duty of the State and all its organs to observe, respect, protect, promote and fulfill the rights and fundamental freedoms of these groups, as found in the Bill of Rights.

2.3.2 Domestic legal and institutional frameworks

Given Kenya's commitment to these international and regional frameworks, their undertakings should reflect in various national policies, laws, administrative actions and legislations, as well as related strategic plans. That the Constitution has a strong Bill of Rights is itself a major basis upon which to develop the rest of the initiatives targeting the SIGs. Article 2(5) and (6) of the Constitution 2010 oblige the country to honour the provisions of such international and regional frameworks, meaning Kenyan policies, legislation and strategic planning should incorporate the provisions of such commitments.

45 Article 1.

46 Article 2.

47 Articles 13 and 15.

Through wide consultations with stakeholders, Kenya developed Sessional Paper No. 3 of 2014, which has the National Policy and Action Plan on Human Rights.⁴⁸ The Policy identified the following key priority areas:

- (i) *Civil and Political Rights* - the right to life, liberty, and security of person; access to justice; and the right to political participation;
- (ii) *Economic and Social Rights* - the right to the highest attainable standard of health; the rights relating to property; the right to housing; the right to food; the right to clean and safe water in adequate quantities; the right to education; and the right to a clean environment; and
- (iii) *Group Rights* - the rights of specific vulnerable groups, including women, children, PWDs, the youth, older persons, marginalized and minority groups, internally displaced persons, and refugees.

The policy and action plan recognizes the following universally accepted HR principles:

- i) **Universality and Inalienability:** All human beings are born free and equal in dignity. All human rights inherently belong to each individual by birth, and cannot be taken away.
- ii) **Indivisibility:** All human rights have equal status. Denial of one right invariably impedes the enjoyment of other rights.
- iii) **Interdependence and Interrelatedness:** The fulfilment of one right often depends, wholly, or in part, upon the fulfilment of other rights.
- iv) **Equality and non-discrimination:** All individuals are equal as human beings and by virtue of the inherent dignity of each human person.
- v) **Participation and empowerment:** All persons are entitled to active, free, and meaningful participation and access to information relating to the decision-making processes that affect their lives and well-being.

- vi) **Accountability, transparency, and rule of law:** The State, its organs and its officials are the primary duty bearers in the fulfilment of human rights and are answerable for the observance of human rights. This means complying with legal norms and standards, including accountability and transparency in this regard.

1. The Constitution

The Constitution of Kenya (2010) has provisions committing the country to the principles of equality and non-discrimination. In order to give effect to the realization of the rights protected under Article 27 (right to equality and non-discrimination), the Constitution mandates the State under Article 27(6) to take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

The Preamble to the Constitution lists equality as one of the essential values upon which to base governance. This is given legal force and emphasis by Article 10 of the Constitution, which provides the national values and principles of governance, which include, among others:

- (i) 10(2a) the rule of law, democracy and participation of the people; and
- (ii) 10(2b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized.

These provisions have several key safeguards regarding participation and inclusion of SIGs in the society, namely: women, children, youth, PWDs, older persons, marginalized groups and communities.

The Bill of Rights under Chapter Four of the Constitution also makes several provisions in relation to the SIGs. The Constitution recognizes that it is the fundamental duty of the State and all its organs to observe, respect, protect, promote and fulfill the rights and fundamental

⁴⁸ See Office of the Attorney General and Department of Justice (2014).

freedoms of these groups, as found in the Bill of Rights.⁴⁹ To that end, the State is obligated to take legislative, policy and other measures to ensure the enjoyment of these rights. Where the duty of government is to protect the rights under economic and social rights, such as the right to education under Article 43, the State is expected to set standards to achieve the progressive realization of these rights.⁵⁰

Article 21(3) places a duty on all State organs and all public officers to address the needs of vulnerable groups within society, including women, older members of society, PWDs, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities.

Article 27 is the principal provision on equality and non-discrimination. Some of these provisions relate to the rights of the SIGs and include:

27(1) every person is equal before the law and has the right to equal protection and equal benefit of the law.

(2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.

(3) Women and men have the right to equal treatment, including the right to equal opportunities, in political, economic, cultural and social spheres.

(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

(5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified in 27(4).

(6) To give full effect to the realization of

the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies, designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

Article 260 interprets “affirmative action” to include “any measure designed to overcome or ameliorate an inequity or the systemic denial or infringement of a right or fundamental freedom”.

(8) In addition to 27(6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

Further, Articles 53, 54, 55, 56 and 57 provide specific provisions for the rights of children, PWDs, youth, minorities and marginalized groups and older people, respectively.

Article 53 protects the right of every child to free and compulsory basic education; basic nutrition, shelter and health care; parental care and protection; and protection from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.

Article 54(1) guarantees the rights for PWDs and provides that a person with any disability is entitled to be treated with dignity and respect; and to be addressed and referred to in a manner that is not demeaning. Such a person should access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person; and have reasonable access to all places, public transport and information. Where

⁴⁹ Article 21(1).

⁵⁰ Article 21(2).

applicable, they should be enabled to use Sign language, Braille or other appropriate means of communication, and access materials and devices to overcome constraints arising from the person's disability. Article 54(2) further provides for the progressive implementation of the principle that at least five per cent of the members of the public in elective and appointive bodies are PWDs.

Article 55, which deals with the youth, requires the State to take measures, including affirmative action programmes, to ensure that the youth have access to relevant education and training; opportunities to associate, be represented and participate in political, social, economic and other spheres of life; and access employment.

With regard to the minorities and marginalized groups, Article 56 also requires the State to put in place affirmative action programmes designed to ensure that minorities and marginalized groups participate and are represented in governance and other spheres of life; are provided special opportunities in educational and economic fields; and are provided special opportunities for access to employment.

Article 57 mandates the State to take measures to ensure the rights of older persons to fully participate in the affairs of society; to pursue their personal development; to live in dignity and respect and be free from abuse; and to receive reasonable care and assistance from their families and the State.

Article 43 of the Constitution guarantees economic and social rights, which include, among others, the right to social security and the right to education. The Constitution also guarantees every person the right to fair labour practice, including fair remuneration and reasonable working conditions.⁵¹

The Constitution provides the principles of the electoral system, which include the freedom of citizens to exercise their political rights

given under Article 38. In order to ensure the participation of women, the youth, PWDs, the minorities and the marginalized groups, the Constitution provides that not more than two-thirds of the members of elective public bodies shall be of the same gender, and that there should be a fair representation of PWDs.⁵² However, in order to give effect to this provision, Parliament shall enact legislation to promote the representation therein of women, PWDs, youth, ethnic and other minorities, and marginalized communities.⁵³ This principle also applies with regard to representation in the county assemblies, which shall consist of the number of special seat members necessary to ensure the gender balance, and to secure minimum representation for marginalized groups, including PWDs and the youth.⁵⁴ This gender provision also applies to the County Executive Committee (CEC) members.⁵⁵ The Supreme Court in Petition No. 12 emphasized the need for the implementation of the constitutional requirement of gender representation, ordering that appropriate legislation be passed.

The foregoing rights and freedoms cannot be limited, but they also cannot be enjoyed in abstraction. They must be given effect through national laws and policies instituted by the government, including affirmative action directed at at-risk groups. It is therefore imperative that the government at the national and county levels move towards these ends. The Constitution also requires the government to set up standards to measure the progressive realization of economic rights such as education and social security. Kenya has ratified a number of treaties and conventions that have a bearing to the enjoyment of these rights by vulnerable groups; Article 2(6) domesticates those by declaring that any ratified treaty becomes part of our national law.

⁵² Article 81 (b).

⁵³ Article 100.

⁵⁴ Article 177.

⁵⁵ Article 197.

⁵¹ Article 41.

2. National Legislations ~ Acts of Parliament

In addition to the provisions of the Constitution, there are various national legislations covering the realms of interest of this report, as shown in Appendix Table A–4. This sub-section uses a sample of such legislation to illustrate the extent of Kenya's commitments.

a) Employment Act 2007

The Employment Act (Cap 266) addresses discrimination in employment under section 5, which obliges the Cabinet Secretary in charge, labour officers and the labour courts to promote equality of opportunity in employment. This would eliminate discrimination in employment both for Kenyan citizens, and for a person who is a migrant worker, or a member of the family of the migrant worker, who is lawfully in Kenya. Employers should also promote equal opportunity in employment, and strive to eliminate discrimination in any employment policy or practice. Employers should also not discriminate directly or indirectly against an employee or prospective employee, or harass an employee or prospective employee on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status. This is in respect to recruitment, training, promotion, terms and conditions of employment, termination of employment, or other matters arising out of the employment. These provisions give effect to Article 27 of the Constitution on discrimination.

The Act further clarifies conditions that do not qualify as discrimination, such as: taking affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace; and distinguishing, excluding or preferring any person on the basis of an inherent requirement of a job. Others are employing a citizen in accordance with the national employment policy; or restricting access to limited categories of employment where it is necessary in the interest of State security. Further, employers should pay

employees equal remuneration for work of equal value.⁵⁶

b) National Youth Employment Authority Act 2015

This Act was passed in 2015, but has not taken effect. It aims to give effect to Article 55(c), which seeks to ensure access to employment for the youth, and Article 56(c), which requires that special measures be undertaken to ensure employment access for minorities and marginalized groups. The Act applies to the national and county governments, and for the private formal sector and informal sectors.

Some of the objects of the Act include:

- (i) Providing a framework to facilitate increased employment of the youth in the national government, county government, State organs, and other public entities;
- (ii) Providing a framework for, and facilitation of employment of the youth in the private sector;
- (iii) Facilitating and promoting equity and diversity and eliminating discrimination in the employment of the youth; and
- (iv) Giving effect to the constitutional values and principles in so far as employment of the youth is concerned.

The Act establishes the National Youth Employment Authority to oversee the employment of the youth in formal, informal or any other form of employment, locally and internationally, as well as facilitating the implementation of national government policies and county government policies on youth employment.

c) Persons with Disabilities Act 2003

The Persons with Disabilities Act No. 14 of 2003 – now under revision – has a number of provisions regarding the rights and privileges of PWDs. Section 15 of the Act prohibits discrimination by both the public and private

⁵⁶ This provision operationalizes ILO Convention No 100.

employers in all areas. No employer shall discriminate against a PWD in relation to the advertisement of employment, recruitment, and determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits. Additionally, discrimination is not allowed over the choice of persons for posts, training, advancement, apprenticeships, transfer, promotion or retrenchment, and in relation to the provision of facilities related to or connected with employment. No person can be denied opportunities for suitable employment because of their disability.⁵⁷ A qualified employee with a disability should be subject to the same terms and conditions of employment and the same compensation, privileges, benefits, fringe benefits, incentives or allowances as qualified able-bodied employees, despite being exempt from tax on all employment incomes. The Act tasks the National Council for Persons with Disabilities with securing the reservation of five per cent of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities. Special workplace facilities or modifications, whether physical, administrative or otherwise, should be in place to accommodate persons with disabilities. The Act sets the minimum retirement age for persons with disabilities at 74 years.

The Persons with Disabilities Act also prohibits discrimination in admission to learning institutions, and in access to services and amenities. Section 18(1) prohibits

all persons and learning institutions from denying admission to any course of study to any person on the basis of their disability, if that person has the ability to acquire substantial learning in that course. Learning institutions are also expected to take into account the special needs of PWDs with respect to, inter alia, entry requirements, curricula, and the use of facilities.

Article 43 of the Constitution guarantees economic and social rights, which include, among others, the right to social security and the right to education. The Constitution also guarantees every person the right to fair labour practice, including fair remuneration and reasonable working conditions.

However, the law allows for the establishment of special schools and institutions, especially for the deaf, blind and mentally retarded. The Act also sets out a range of measures intended to promote equal participation in elections. Sections 29 and 30, respectively, provide that PWDs are entitled to assistance from any person they choose in order to enable them to vote, and that polling stations should be made accessible for PWDs, including through the provision of assistive devices.

d) Children Act 2001

The Act states that no child “shall be subjected to discrimination on the grounds of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection.”⁵⁸

e) HIV and AIDS Prevention and Control Act 2006

This law prohibits discrimination on the basis of actual, perceived or suspected HIV status, in employment including access to employment, transfer, and denial of promotion or termination of employment.⁵⁹ However, one can be discriminated against where the employer can prove that the requirements of the employment in question are that a person be in a particular state of health or medical or clinical condition.

⁵⁷ Section 12 of the Persons with Disabilities Act.

⁵⁸ Section 5 Children Act.

⁵⁹ Section 31 HIV and AIDS Prevention and Control Act.

f) Basic Education Act (2013)

The Basic Education Act No. 14 of 2013 regulates the provision of basic education and adult basic education in the country. It deals with primary, secondary, tertiary, adult and continuing education in Kenya. It also clarifies the roles of the National and County governments in education as set out in the Fourth Schedule of the Constitution.

The guiding principles of basic education include:

- (i) Provision to every child;
- (ii) Equitable access for the youth to basic education and equal access to education or institutions;
- (iii) Protection of every child against discrimination within or by an institution on any ground whatsoever;
- (iv) Promotion of peace, integration, cohesion, tolerance and inclusion as an objective;
- (v) Elimination of gender discrimination, corporal punishment, or any form of inhuman and cruel treatment; and
- (vi) Non-discrimination, encouragement and protection of the marginalized, persons with disabilities, and those with special needs.

This principle on non-discrimination is further emphasized in Section 34(2) of the Act, which requires a school, or a person responsible for admission, not to discriminate against any child-seeking admission on any ground, including ethnicity, gender, sex, religion, race, colour or social origin, age, disability, language or culture. However, gender discrimination is permitted where a school is registered for a particular gender.

It is the government's responsibility to ensure that the marginalized, vulnerable or disadvantaged groups are not discriminated against, and are not prevented from pursuing and completing basic education.⁶⁰ The government also has the responsibility of providing special education and training facilities for talented

and gifted pupils, and those with disabilities, and this includes having special schools, and ultimately to ensure compulsory admission, attendance and completion of basic education by every pupil.

The objective of this policy is to protect vulnerable populations using innovative and cost-effective safety nets linked to long-term development. This particular policy informed the development of programmes such as the Urban Food Subsidy Programme, and is geared towards addressing both poverty and food insecurity.

g) Political Parties Act (2011)

The Political Parties Act has various provisions that aim at ensuring that party membership reflects Kenya's diversity. A party can only be registered if its membership and the composition of its governing body reflect regional and ethnic diversity, gender balance, and representation of minorities and marginalized groups.⁶¹ The law further requires that not more than two thirds of the members of its governing body be of the same gender.⁶² The Act establishes the Political Parties Fund, which is allocated to registered political parties after meeting the set requirements, but it should also be used to promote representation in Parliament and the County Assemblies, of women, PWDs, the youth, ethnic and other minorities, and marginalized groups.⁶³

The Code of Conduct for Political Parties, which all parties must sign up to, requires them to respect the right of all persons to participate in the political process, including the youth, and minorities and marginalized groups, and to respect and promote gender equity and equality, human rights and fundamental

⁶⁰ Basic Education Act Section 39(c).

⁶¹ Political Parties Act 2011: section 7(2) (b) and (c).

⁶² Ibid section 7(2) (d).

⁶³ Ibid section 26(1) (a).

freedoms.⁶⁴ The Code further requires parties to respect, uphold and promote human dignity, equity, social justice, inclusiveness, non-discrimination, and protection of the marginalized,⁶⁵ and to respect, uphold and promote human rights and the rule of law.⁶⁶

h) Electoral Code of Conduct 2011

This Code establishes a level playing field for candidates in competitive elections. It sets out provisions that promote an atmosphere and culture of tolerance, courtesy and respect, all of which are beneficial to women's engagement in politics.

i) Social Assistance Act (2013)

This Act provides for conditions for the provision of social assistance to persons in need, as stated in Section 19(1). Section 17(3) defines persons in need to include orphans and vulnerable children, poor elderly persons, unemployed persons, PWDs, and widows and widowers.

Sections 20, 21, 22 and 23, respectively, provide interpretations of children, elderly persons, unemployed, and PWDs who qualify for social assistance. A child qualifies for social assistance if he/she is orphaned and is without a caregiver; is under the care of a person with long-term ailment or disability; is abandoned; or is under the care of parents who are unable to provide for the child's basic needs. An elderly person qualifies for social assistance if he has attained the age of 65 and has been abandoned or neglected without ascertainable means of support, or lives or begs on the street for a living. An unemployed person qualifies for social assistance if they are a youth, have no source of income and the lack of a source of income is not due to negligence. A PWD is eligible for social assistance if the person suffers from severe mental or physical disability, and the disability makes them incapable of catering for their needs.

64 Political Parties Code of Conduct section 5 (a) and (b).

65 Ibid section 6(d).

66 Ibid section 6E

j) National Social Security Fund Act (2013)

This Act establishes the National Social Security Fund, which provides basic social security for its members and their dependants, and brings in self-employed persons to have access to such social funds. The Act also establishes the Provident Fund and the Pension Fund. The benefits that accrue out of these funds include: retirement pension; Invalidity pension; Survivors benefit; Funeral grant; and Emigration benefit. The Act also envisages making payments out of the Provident Fund, which include age benefits, survivors' benefits, invalidity benefits, withdrawal benefits and emigration benefits.

k) National Hospital Insurance Fund Act (1998)

The National Hospital Insurance Fund (NHIF) Act was established to provide for contributions into a common insurance pool, and for the payment of benefits from that pool. NHIF registration is open to all eligible persons who have attained the age of 18 years. Members include those working in formal and informal sectors as well as retirees. Membership is mandatory for all formal sector employees, with membership contributions graduated by income, while it is voluntary for the self-employed. The Fund provides both in-patient and out-patient covers for the contributor, declared spouse and children.

Currently, the lowest income earners pay Ksh 150 per month while the highest earners pay Ksh 1,700. Those in informal sector and unemployed pay Ksh 500 per month. Discussions are underway to re-establish NHIF as a fully-fledged comprehensive national health insurance scheme.

l) Public Service Superannuation Act (2012)

The objective of this Act is to pay retirement benefits to members of the government pension scheme. The Act is also meant to ensure that every member of the scheme receives his/her retirement benefits as and when they become

due. The Act ensures that members save in order to cater for their livelihoods during retirement. It has therefore established rules, regulations and standards for the administration and payment of benefits to members of the scheme, to improve the social security of the members once they retire, and of their nominated dependents when a member dies.

3. National Policies

There are several policies relating to equality and non-discrimination that have been developed and adopted.

a) Kenya Vision 2030

This is Kenya's long-term development blueprint. It recognizes the importance of non-discrimination and harmony across the various social divides in the country. The aim of the Vision is to transform Kenya into a newly industrializing middle-income country with a high quality of life for all citizens living in clean secure environments. The theme of the Vision's Social Pillar is 'Investing in the People of Kenya', an aspiration which should eliminate poverty and hunger, secure universal primary education and gender equality, improve maternal and child survival, and promote health insurance to subsidize health care for all, including the poor, older persons, and PWDs, among others. The Vision envisages the development of strategies aimed at increasing the participation of women in all economic, social and political decision making processes, improving access to education for all disadvantaged groups, minimizing vulnerability by prohibiting retrogressive practices, and training PWDs and those with special needs.⁶⁷

b) Sessional Paper No.3 on National Policy and Action Plan on Human Rights 2014

The aim of this policy is to enhance the realization of human rights in Kenya by providing a framework for the integration and mainstreaming of human rights in development planning, implementation and evaluations in all sectors.

The policy is based on key human rights principles that include equality and non-discrimination. Some of the key issues it addresses include discrimination against women, abuse of children's rights, and limited access to services by PWDs, and youth unemployment.

c) National Policy on Older Persons and Aging 2009

The goal of the policy is to promote the older persons' participation towards the achievement of national development targets. It recognizes the older persons as part of the national population, whose rights should be recognized and respected, and focuses its concerns on legislation for older persons' rights, poverty and sustainable development, health, nutrition and food security, and housing and related amenities. Other concerns include the effect of culture, including gender, welfare, employment and social security, and the effects of conflict and disaster.

d) National Social Protection Policy 2011

One aim of this policy is to ensure that all Kenyans live in dignity and exploit their human capabilities for their own social and economic development by protecting individuals and households from the impact of adverse shocks to their consumption. Other aims include: supporting individuals and households to manage adverse shocks in ways that do not trap them in poverty; cushioning workers and their dependents from the consequences of income threatening risks, such as sicknesses; promoting key investments in human capital and the physical assets of households; and promoting synergies and integration among social protection providers.

e) National Policy on Gender and Development and its Plan of Action for 2008–2012

This policy is currently under review. The 2008/2012 policy has general objectives that include guaranteeing Kenyan men and women equality before the law, and enabling

⁶⁷ Vision 2030 Sections 5.6 and 5.7.

equal access to economic and employment opportunities for men and women. The specific objectives of the policy include:

- (i) Facilitating the review of laws that hinder women's control over economic resources;
- (ii) Enhancing measures that guarantee equity and fairness in access to employment opportunities, in both the formal and informal sectors; and
- (iii) Developing and improving the vocational and technical skills of disadvantaged groups, notably the unemployed youth, disabled women, poor urban and rural women, and street dwellers, for improved access to employment opportunities.

f) Sessional Paper No. 2 of 2006 on Gender, Equality and Development

This provided a framework for gender mainstreaming, including the establishment of a substantive gender ministry, the National Commission on Gender and Development, and gender officers in ministries, parastatals, institutions of higher learning, and officers at the district and sub-district levels.⁶⁸ The Sessional Paper recognizes the social cultural attitudes held by men and women, and that the socialization process is important in determining the unequal status between men and women. The development process also impacts differently on men and women.

g) Policy Framework for Education and Training 2012

The policy guides reforms in the education sector to align it with the prerogatives of the Constitution, notably its Bill of Rights and the devolved government, as well as the skills and competency needs of Kenya Vision 2030. The policy's recommendations, which cut across the entire education sector, are being implemented through the development of complementary policies and strategies to address institutional reforms, the management and financing of education, the curriculum, teacher education, development and management, and strategies for bringing digital technology within the reach

of every Kenyan child. Thus, for example, the policy aspires to make pre-primary education for four and five year olds free and compulsory to complement the subsidies of the primary and secondary levels.

h) National Special Needs Education Policy Framework 2009

This framework addresses some of the critical issues that determine the delivery of quality and relevant education to learners with special needs, in keeping with the provisions of the UN Convention on the Rights of Persons with Disabilities. It also addresses issues of equity, facilities, stigma, taboos and improvement of learning environments in all Special Needs schools. This ensures that inclusive education is a reality, and consequently improves the participation and involvement of people with special needs in national development in general. To improve the availability of opportunities for education, the government has supported the construction and rehabilitation of existing facilities, and the provision of boarding and mobile schools in arid and semi-arid lands (ASAL) areas.

i) Public Sector Workplace Policy on HIV and AIDS 2005

Revised in May 2010, this national policy aims at establishing structures to promote programmes to ensure non-discrimination and non-stigmatization of those living with HIV and AIDS, while also reviewing related legislation, addressing persisting new infections.

It also seeks to promote delivery of adequate integrated quality services to the affected and infected, among other interventions. The policy guarantees equal terms and conditions of work stipulated in the terms and conditions of service. It also requires that no employee should be discriminated against in terms of access or continued employment, training, promotion and employee benefits, based on their actual or perceived HIV and AIDS status.

⁶⁸ See Osiro (2015: 9).

j) Kenya National Youth Policy 2006

This policy identifies the most important issues needing attention to include youth participation in community and civic affairs towards national development, alongside unemployment and under-employment, education and training, sports and recreation, arts and culture, the environment, the media, and empowerment. It is underpinned by the principles and values of equity and accessibility, gender inclusiveness, and good governance, while also appreciating that the youth also include PWDs, HIV and AIDS victims, dropouts, and street youth.

k) Kenya Universities and Colleges Central Placement Services: Placement Policy 2014

The policy deals with the placement of successful Form Four candidates into universities and colleges. Under section 4 of the policy, placement to universities and their constituent colleges as candidates is open to all persons who have applied and qualified for placement. The Board is mandated to place them without distinction of race, tribe, place of origin or residence or other local connections, political opinion, colour, creed or sex; and no barrier based on such distinction should be imposed upon any person as a condition for being placed into any institution. The placement policy allows the service to apply affirmative action criteria for the marginalized and disadvantaged applicants.

In addition to the legal provisions, there are some national regulations that are aimed at enhancing the participation of SIGs in the economy. Key among them is the affirmative action that requires that a share of government tenders be ring-fenced for the youth, women and PWDs. This is the Public Procurement (Preference and Reservations) (Amendment) Regulations, which reserve 30 per cent of all government contracts for women, the youth, and PWDs without competition from established firms. The *Uwezo* Fund was then set up to enable women and the youth access to grants and interest-free loans to take advantage of the 30 per cent share of government tenders.

l) National Food Security and Nutrition Policy

The objective of this policy is to protect vulnerable populations using innovative and cost-effective safety nets linked to long-term development. This particular policy informed the development of programmes such as the Urban Food Subsidy Programme, and is geared towards addressing both poverty and food insecurity.

2.4 Emerging Issues and Gaps in Legislations

Parliament is under obligation to make legislation and policies and other measures, including setting standards that will enhance equality and non-discrimination and achieve the progressive realization of the rights guaranteed in Article 43 of the Constitution, among other aspects of the Bill of Rights.⁶⁹ The State is also obligated to enact legislation to enable it fulfill its international obligations ratified in respect of human rights and fundamental freedoms, which can promote equality and inclusion. Additionally, Article 2(5) and (6) oblige Kenya to honour the provisions of such international and regional frameworks, meaning Kenyan policies, legislation and strategic planning should incorporate the provisions of such commitments. In light of the above requirements, the State has not yet fulfilled its mandate in the following areas:

- (i) Article 21(2): provides that the State shall take legislative, policy and other measures including setting up of standards to achieve the progressive realization of the rights guaranteed under Article 43.
- (ii) Article 27 (6) provides that the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individual groups because of past discrimination and provide for benefits.

⁶⁹ Article 21 (2) constitution

In addition to the legal provisions, there are some national regulations that are aimed at enhancing the participation of SIGs in the economy. Key among them is the affirmative action that requires that a share of government tenders be ring-fenced for the youth, women and PWDs. This is the Public Procurement (Preference and Reservations) (Amendment) Regulations, which reserve 30 per cent of all government contracts for women, the youth, and PWDs without competition from established firms.

- (iii) Article 54(2) requires the State to ensure the progressive implementation of the principle that PWDs account for at least five per cent of the members of public elective and appointive bodies.
- (iv) Article 55(c) declares that the State shall take measures, including affirmative action programmes, to ensure that the youth access employment. It will be important to monitor the implementation of this law to ensure that the youth and the marginalized communities are guaranteed employment. While the law has been passed, the same has not taken effect.
- (v) Article 56 requires the State to put in place affirmative action programmes to ensure that minorities and marginalized groups:
 - a) Participate and are represented in governance and other spheres of life;
 - b) Are provided with special opportunities in educational and economic fields; and
 - c) Are provided with special opportunities for access to employment.
- (vi) The State is required to take measures to ensure the rights of older persons, including their receipt of reasonable care and assistance from their families and the State. There is need to operationalize the social safety and protection funds through bodies as established in the law.
- (vii) Article 100 requires Parliament to enact legislation to promote the representation therein of women, PWDs, the youth, ethnic and other minorities, and marginalized communities. The law is yet to be enacted and a bill is pending before parliament.
- (viii) Article 185 provides that the County Assembly may make any laws necessary for or incidental to the effective performance of the functions under the Fourth Schedule.
- (ix) Article 197 requires Parliament to enact legislation to prescribe mechanisms to protect minorities within counties, and to provide for how communities and cultural diversity of the county is reflected in the County Assembly and County Executive Committees.
- (x) There is need to develop and implement up to date action plans for the enforcement of the various policies and laws.

REVIEW OF EQUALITY AND INCLUSION FRAMEWORK OF INDICATORS

Equality in education implies securing education as a right for all learners and supporting the learners to exploit their full potential and aspirations, regardless of their socio-economic backgrounds. It also involves implementing and institutionalizing interventions and arrangements towards achieving the set goals.

3.1 Review of Equality and Inclusion Framework of Indicators

This chapter reviews the status of the four sectors the study has focused on – Education; Employment; Political Participation; and Social Protection, to see what the implications are for equality and inclusion analyses. It does this by scouring the various HR frameworks discussed in chapter 2 to assess the indicators suggested for monitoring, and settles on a set for each sector that are explored in the later chapters using secondary and primary data sources.

3.2 Equality and Inclusion in Education: Rights and Indicators

3.2.1 Right to equality and inclusion in education

Equality in education implies securing education as a right for all learners and supporting the learners to exploit their full potential and aspirations, regardless of their socio-economic backgrounds. It also involves implementing and institutionalizing interventions and arrangements towards achieving the set goals.

Inclusion in education refers to the extent to which education service delivery responds to the diversity of needs and learners, according to the UN Girls Education Initiative (UNGEI).⁷⁰ Specifically, UNGEI defines ‘inclusion’ to entail “providing all learners at all levels, including those with significant disabilities, equitable opportunities to receive effective educational services, with the needed supplementary aids and support services, in age appropriate classrooms in their neighborhoods, in order to prepare students for productive lives as full members of society”.

Inclusion also means increasing access to and participation in learning, cultures and communities, and in reducing exclusion from and within education. This process may involve changes in education content, approaches, structures, interventions and strategies. At the centre of inclusion is the human right

70 UNGEI (2010).

to education as contained in the Universal Declaration of Human Rights (UDHR) of 1948, and the UN Convention on the Rights of the Child (CRC) of 1989, which together aver the right of all children to education without any discrimination whatsoever. Other considerations in these provisions include gender mainstreaming and equity. Part 1 of CRC (1990) covers the rights and welfare of the child, with Article 11 stating that: “Every child shall have a right to education”. It adds that the education of a child shall be directed to “the promotion and development of the child’s personality, talents and mental and physical abilities to their fullest potential”.

Further, it shall “foster respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples’ rights and international human rights declarations and conventions”.

According to Guideline 8 of the Charter on the Right to Education, the exercise of the right is instrumental for the enjoyment of many other human rights, such as the rights to work or labour market participation, health and political participation. Equality and non-discrimination are important aspects of the right to education, and the government should give priority to equal access for vulnerable groups, such as the girl child, vulnerable boy children, children with disabilities, as well as children from minority groups. Equally important is the quality of education, which should be directed to the development of the full potential of the child’s personality, talents and abilities. In effect, education should prepare the child for a responsible life in a free society, in a spirit of improving learning achievements, tolerance and respect for human rights, the natural environment, the child’s parents and cultural identity, and civilizations different from his or her own.

Guideline 7 of the UNCHR defines the right to education as the right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of education.

The right includes both the quality of basic education and the underlying determinants of its provision, availability, accessibility, affordability and quality and relevance.

All levels of education have multiple outcomes, such as cognitive achievement (what do the pupils know/achieve), affective achievement (attitudes such as whether the pupils like going to school or like subjects such as science, reading or mathematics), and behavioral values (such as civic responsibility and good moral values such as respect and social work). Other aspects of focus were gender dimensions, including access to all levels of schooling, and whether it is boys or girls who perform better. Gender dimensions also focused on education management (education managers and management boards) and teaching (teachers), among others. The aspects of inclusion and equality discussed above form the fundamental principles of the Education for All (EFA) commitment of 1990, and SDG No. 4 on quality education.

Article 43(1) (f) of the Constitution guarantees the right to education. Further, Part II of the Children Act 2010 provides Safeguards for the Rights and Welfare of the Child, with Section 7 on the Right to Education stating that: “Every child shall be entitled to education the provision of which shall be the responsibility of the Government and the parents”. It adds that “every child shall be entitled to free basic education, which shall be compulsory in accordance with Article 28 of the United Nations Conventions on the Rights of the Child”.

In the context, Section 2.1.2.2 (c) discusses the provisions of the Persons with Disabilities Act (2003), emphasizing physical accessibility into institutions, as well as the imperative of providing for children with Special Needs.

According to the Policy Framework for Nomadic Education in Kenya,⁷¹ and to the National Council for Nomadic Education in Kenya’s Strategic Plan

⁷¹ See Ministry of Education (nd).

2015/16–2019/2020, the Government’s commitment to and future plans for education are informed by the post-2015 education agenda, whose global goal is to “ensure inclusive and equitable quality education and long life learning for all by 2030”. The global commitment is that future education development priorities must pay more attention to education for all, ‘with particular attention to gender equality, to girls and women and the most marginalized’ – the latter defined as nomadic communities. While Kenya’s education sector has made impressive strides in general, nomadic communities have lagged behind since independence in 1963. Even greater investments are necessary towards

universal access to basic education, and for improving completion, equity and quality at the pre-primary, primary and secondary levels. The situation is even more demanding at tertiary and university levels.

Assessing equality and inclusion in education also involves the consideration of social, economic, political and cultural dimensions. Some of the indicators used to assess the status of equality and inclusion will be derived from existing secondary data sources at the national and international levels. However, the study also developed instruments for collecting information from which other indicators would be derived.

3.3 Indicator Framework for Equality and Inclusion in Education

Education is the primary vehicle by which people, including vulnerable, poor children and poor adults, can lift themselves out of poverty, and out of any forms of social, cultural, political and economic exclusion. Indicators for assessing the status of equality and inclusion in education in this study focused on 10 broad areas, as listed in Table 3.1.

Table 3.1: Indicators for measuring equality and inclusion in education

Dimension	Indicators	Data Source/Key respondents
i) Access and participation across regions and levels by special interest groups (SIGs); and equality in schooling	<ul style="list-style-type: none"> (i) Access to education across all levels (gross and net enrolment rates) by sex, age religion, disability status, ethnicity, wealth status (ii) Proportion of children currently excluded from school by sex, age, disability, religion, ethnicity, location, and income quintile (iii) Education participation rates by income group, among persons with special needs and for marginalized groups (iv) Attrition and dropout rates by sex, age, disability status, ethnicity, wealth status (v) Incidence of child labour by sex, age, disability status, ethnicity, wealth status (vi) Learning achievements (KCPE and KCSE scores) by sex, age, disability status, ethnicity, wealth status 	<ul style="list-style-type: none"> ▪ Education Management Information System (EMIS) ▪ Secondary sources, e.g. 2009 Population Census ▪ Recent surveys ▪ Study survey
ii) Barriers to equity and access	<ul style="list-style-type: none"> (i) Factors contribution to the levels of the various education outputs (enrolment, attendance, completion, learning outcomes) (ii) Incidents of and complaints about issues such as bullying, racism, harassment, etc (iii) Factors affecting school participation and completion by SIGs 	<ul style="list-style-type: none"> ▪ Study survey/head teachers ▪ Stakeholders

Dimension	Indicators	Data Source/Key respondents
iii) Learning environment	<ul style="list-style-type: none"> (i) Existence of clearly defined equality and inclusion policies, legislation and/or strategies, e.g. on gender, right to education, etc (ii) Assessment of levels of awareness and implementation of, and compliance with policies; monitoring; and adequacy of review processes (iii) Availability of appropriate (safe) school facilities which are accessible to all (iv) Existence of mechanisms through which pupils and parents can readily access various specialist support services (v) Existence of remedial classes in schools 	<ul style="list-style-type: none"> ▪ Study survey/ head teachers
iv) Effectiveness of current interventions for addressing inequality and exclusion	<ul style="list-style-type: none"> (i) Assessment of existing and effectiveness of interventions aimed at increasing equality and inclusion 	<ul style="list-style-type: none"> ▪ Study survey/ education managers ▪ Stakeholders
v) Institutional arrangements, policy capacity issues	<ul style="list-style-type: none"> (i) Assessment of effectiveness of current institutional arrangements to address inclusion and equality in education issues at national, county and institutional levels (ii) Level of institutionalization of key equality and inclusion indicators (iii) Proportion of schools with special facilities for SIGs (iv) Nature of support provided to schools by national and county governments and other stakeholders, to help them become more inclusive (v) Level of parent and community involvement in promoting and progressing equality and inclusion (vi) Nature of training provided for teachers as part of overall capacity development in relation to inclusion and equality in education (vii) Strategies in place to increase access to education for children still out of school (viii) Strategies in place to increase access to education for children at risk of not completing primary education (ix) Arrangements in place to assess how budget allocations and expenditure reflect and support priorities in improving equality and inclusion (x) Proportion of education budget (by level) currently allocated to initiatives to enhance equality and inclusion (xi) Number of research and evaluation studies on aspects of equality and inclusion in education 	<ul style="list-style-type: none"> ▪ Study survey/ heads of institutions
vi) Management of education at national, county and institutional levels	<ul style="list-style-type: none"> (i) Status of affirmative action and gender mainstreaming in the education sector (policy and strategy; interventions; effectiveness) (ii) Education management indicators, e.g. membership of school committees, Parents Associations, Board of Management and county education boards by diversity 	<ul style="list-style-type: none"> ▪ Study survey/ MoEST, counties ▪ Institutional heads, SDI 2012

Dimension	Indicators	Data Source/Key respondents
vii) Community participation	<ul style="list-style-type: none"> (i) Level of parents, children and community involvement in schools; and pupils' learning processes (ii) Existence and involvement of school management committees and parents' associations in promoting inclusion and equality in education (iii) Involvement of local civil societies in promoting inclusion and equality in education (iv) Pupil participation in decision making including in agreeing on school and class rules (v) Effectiveness of communication between school and parents 	<ul style="list-style-type: none"> ▪ Study survey/ institutional heads ▪ SMC or PA discussions
viii) Quality of teaching and learning processes and outcomes	<ul style="list-style-type: none"> (i) Extent to which pre- and in-service teacher training equip teachers to support inclusion and equality in education (ii) Level of satisfaction amongst pupils, parents, teachers and public regarding the quality of education (iii) Gap between the highest and lowest levels of learning outcomes within and across counties (iv) Attainment levels among learners with special needs (v) Competence levels amongst pupils in core skills and talents (vi) Transition within levels, between levels and between education and labour market (vii) Awareness levels amongst learners at various levels of the education objectives, including patriotism, citizenship, personal and social development, knowledge and understanding of various stages of pupil development, (viii) Level of participation in broad non-academic activities, such as extra-curricular activities, sports, informal and lifelong learning, community service and entrepreneurship activities 	<ul style="list-style-type: none"> ▪ Study survey/ MOEST teacher training department; Sample teacher training institutions ▪ HH survey
ix) Quality and effectiveness of curriculum implementation	<ul style="list-style-type: none"> (i) Extent to which the curriculum integrates issues affecting special interest groups (ii) Effectiveness of curriculum delivery in promoting inclusion and equality (iii) Scope of existing interventions towards revising curriculum with aim of improving equality and inclusion (ii) Proportion of schools providing special education curriculum for persons with disabilities (iv) Extent of access for all pupils to a broad and balanced curriculum, with a range of programmes which are effectively matched to the needs of all pupils 	Study survey/ Kenya Institute for Curriculum development; Kenya Institute for Special Education
x) Budgeting and mainstreaming equity and inclusion interventions in education	<ul style="list-style-type: none"> (i) Available information on unit costs of specific interventions aimed at addressing equality and inclusion (ii) Budgetary allocation to specific interventions aimed at addressing equality and inclusion (iii) Extent to which related strategies are being costed (iv) Cost-effectiveness and sustainability of the strategies (v) Percentage of learners by special interest groups receiving bursaries, scholarships and loans 	Study survey/ MoEST, Counties

Source: Author's conceptualization based on NGEI, 2010

The study uses a selection of indicators to compute an Equality and Inclusion Index (section 9), which allows for comparison of attainments across counties, as well as over time. The final indicators that were used to compute the Equality and Inclusion Index included: (i) average years of schooling; (ii) the proportion of population aged 15-64 years who had attained secondary education and above; and (iii) aggregate enrolment rate (all levels of education). The choice of the variables was informed by the availability of data at national and county levels.

3.4 Equality and Inclusion in Employment: Rights and Indicators

3.4.1 Right to equality and inclusion in employment

The International Labour Organization (ILO) is the United Nations specialized agency with an overarching mandate on labour matters, promoting rights at work, encouraging decent employment opportunities, enhancing social protection and strengthening dialogue on work-related issues.⁷² The ILO seeks to promote “social justice and internationally recognized human and labour rights...” and it develops international minimum standards of basic labour rights, such as those covering the right of labour to organize, and equality of opportunity and treatment. The international labour standards have several benefits, including providing a path to decent work, ensuring a fairer and stable globalization, and ensuring a level playing field in the global economy.

The Right to Organize and Collective Bargaining Convention 1949 (No. 98) binds ratifying members to protect workers against acts of anti-union discrimination. The Convention also obliges those ratifying to protect workers’ and employers’ organizations against interference by each other. By ratifying the Forced Labour Convention 1930 (No. 29), Kenya undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period. In June 2014, ILO members adopted the Protocol of 2014 to the Forced Labour Convention 1930. Besides requiring members to suppress forced labour, the Protocol obliges each member to take effective measures to provide protection

and access to remedies – for the victims of forced labour.

Each member is required to develop a national policy and plan of action for the effective and sustained suppression of forced or compulsory labour. Some of the measures to prevent forced or compulsory labour are: educating and informing individuals/households; educating and informing employers; ensuring adequate legal coverage; and labour inspection. On the other hand, each ILO member that ratified the Abolition of Forced Labour Convention 1957 (No. 105) undertakes to suppress and never employ any form of forced or compulsory labour. For Kenya, the Employment Act 2007 mainstreams these principles.

Overall, Kenya has domesticated a number of labour conventions and recommendations in its domestic regulatory framework.⁷³ As a brief overview, and with respect to the SIGs, the Constitution in Articles 53, 54, 55, and 56 provides specific provisions for the rights of children, PWDs, the youth, as well as minorities and marginalized groups, respectively. Specifically, Article 53 declares that (among other forms of protection) every child has a right to be protected from hazardous or exploitative labour. Article 54(2) provides that PWDs will over time account for at least five per cent of elective and appointive posts. In Article 55 (c), the State shall take measures, including affirmative action programmes, to ensure that the youth have access to employment.

⁷² See <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm> Accessed 20-07-2016

⁷³ Kenya has ratified 7 out of 8 Fundamental Conventions, 3 out of 4 Governance/Priority Conventions, and 40 out of 177 Technical Conventions. Of the 50, 41 are in force while 9 have been denounced. See http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:4022424701462838:::P11200_INSTRUMENT_SORT:2 Accessed 20-08-2016.

The Employment Act 2007 provides regulations with regard to terms of employment. Section 5 prohibits discrimination in employment. The Act forbids employers from either harassing or discriminating directly or indirectly against employees or prospective employees, on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status.

Article 56(c) provides for similar affirmative action interventions targeting minorities and marginalized groups. In addition, Article 41 on labour relations provides that every worker has a right to fair remuneration, reasonable working conditions, and to form, join or participate in the activities and programmes of a trade union. Similar rights are extended to employers.

The Employment Act 2007 provides regulations with regard to terms of employment. Section 5 prohibits discrimination in employment. The Act forbids employers from either harassing or discriminating directly or indirectly against employees or prospective employees, on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status. The Act also provides that an employer should pay his employees equal remuneration for work of equal value. Article 232 of the Constitution provides that for principles of employment that include the balance of merit with gender, ethnicity, and disability among others to promote diversity in employment sectors.

Member countries have an obligation to report annually on ratified conventions, as provided by Article 22 of the ILO Constitution. Anecdotal evidence indicates that Kenya does not submit all due annual reports on its ratified conventions.⁷⁴ The timely submission of annual reports should form part of the

country's reform agenda. Timely reporting has the potential to focus attention to meeting the obligations contained within the international instruments.

A key issue regarding the actual status of workers and employers has to do with the implementation of provisions contained in various laws, which is typically weak. As an example, although there are persisting violations on the Minimum Age Convention across Kenya, human and financial resource constraints undermine attention to such violations.

3.5 Indicator Framework for Equality and Inclusion in Employment

Global, regional and national initiatives and programmes have identified employment indicators that can provide the basis for assessing the status of equality and inclusion in employment.

Examples of global initiatives include the UN World Youth Programme of Action⁷⁵ and the Commonwealth Youth Development Index.⁷⁶ Regional initiatives include the African Union's Youth Charter, which lists 25 intervention areas.⁷⁷ The focus on the youth reflects their relative disadvantage in employment outcomes.

⁷⁴ The evidence remains anecdotal since several attempts to obtain the status of submission of this report were futile. During the process of conducting this study, it emerged that sharing of data and information across public sector MDAs is poor.

⁷⁵ See <http://www.un.org/esa/socdev/unyin/documents/wp2010.pdf> Accessed 25-08-2016.

⁷⁶ See <http://youthdevelopmentindex.org/views/index.php#OVER> Accessed 25-08-2016.

⁷⁷ See http://www.un.org/en/africa/osaa/pdf/au/african_youth_charter_2006.pdf Accessed 25-08-2016.

The indicators adopted or adapted for the present study should fit the local context and inform policy decisions at the national and county levels. In particular, they should feed into the national monitoring and evaluation frameworks, with the agency responsible for reporting clearly indicated. Such indicators should facilitate comparisons across realms and over time.

This study proposes indicators for monitoring equality and inclusion in employment at the national and county levels that are common globally. Some of them are generated by local agencies, such as the KNBS and KIPPRA; but others are rarely reported due to data constraints. The indicators this study settles on for assessing the status of equality and inclusion in employment are:

- (i) Youth employment-to-population ratio**—also computed for other SIGs. One disadvantage of the measure is that there is no predetermined optimal level.
- (ii) Vulnerable employment rate** ~ vulnerable employment is the share of workers who are own-account or contributing family workers. This is the share of the workforce in less-formal conditions, with limited access to social security and formal benefits. Comparisons of shares across the SIGs provide the relative disadvantage faced by, say, the youth, women and PWDs.
- (iii) Working poor** – these are employed persons living in poverty. Their shares among the SIGs reflect inequalities in access to gainful employment.
- (iv) Relative unemployment gap** – is the ratio computed to unpack absolute unemployment, such as the ratio of unemployed men to women, or among the SIGs. A common measure is the ratio of youth to adult unemployment. Labour force surveys are the main source of information on this, but general household surveys can also provide some pointers.

To address some of the limitations of the absolute and relative employment gap, the literature proposes other related measures, including:

- (v) Youth not in education, employment or training (NEET)** ~ captures the non-utilized working potential of the youth population. NEET can be based on data from labour force surveys.
- (vi) The share of inactive who want to work** as an indicator of hidden unemployment can be computed across various groups, such as by sex or disability status.
- (vii) The share of employed individuals who are underemployed** (say among the youth, elderly, men versus women, etc).

Indicators on the quality of employment are also important in analyzing equality from a SIG perspective, since equality in employment has both quantitative and qualitative dimensions. These “quality” indicators would be important in Kenya’s context given that there is recognition of the need to create not only more, but also better, jobs. The proposed indices are from the literature.

Gaps in contract type and hours worked

These indicators may provide measures of absolute and relative disadvantage among SIGs. Examples include:

- (i) Gender gap in fixed-term contracts, defined as the share of women on fixed-term contracts in all female employees divided by the share of men on fixed-term contracts in total male employees.
- (ii) Gender gap in short-hours of work, for example, less than 28 hours per week. Similar indicators can be computed for the other SIGs, such as by age (youth) – resulting in the youth gap in fixed term contracts.

Indicators on Segregation

Segregation of the labour market is a common phenomenon across the globe. It is marked by differences in patterns of representation of various groups within occupations (classified by industries and professional status), and within different employment status and employment contract groups. Segregation might mean that the SIGs tend to work in different occupations, sectors, or contractual terms and conditions. A common measure is the Index of Dissimilarity (ID), reflecting the share of persons in employment, which would need to change jobs in order to remove segregation.

Indicators on Gaps in Pay and Income

The pay gap reflects the different pay status of varied groups, for example men compared to women. These differences relate to diversities in age, education, working-time and employment contracts (and related tax policies). A particularly important dimension in this respect is the gender dimension, whose pay and income gaps can be measured by, among other indicators:

- (i) the ratio of women's annual (or monthly) net earnings to men's comparable earnings;
- (ii) the ratio of women's hourly gross pay to men's comparable payments;
- (iii) the proportion of full time female workers earning less than two-thirds of the median annual earnings of male full-timers; and
- (iv) the ratio of women's average annual total income to men's, covering all working-age population.

3.5.1 Public and private sectors

An additional set of indicators and approaches would be necessary to address equality and inclusion dynamics in the public sector compared to the private sector. Within the public sector, the set of indicators is guided by national objectives contained in the Constitution, international conventions, laws, and regulations, such as are highlighted below.

3.5.2 Public sector

The public sector includes the National Government and county governments, and their Ministries, Departments and Agencies. Its performance indicators are based on global best practices.

- (i) Share by sex in elective and appointive posts (not to exceed two-thirds of either gender).
- (ii) Share of employment by ethnic and other social diversity bases, to gauge the extent of inclusivity.
- (iii) Minority representation in government jobs.

Besides workplace equality and inclusivity, contractor/supplier (procurement) diversity and community relations were important dimensions in determining the extent of equality and inclusion over opportunities. The allocation of procurement contracts is expected to have a big impact on equality and inclusivity in employment and overall well-being. It is therefore useful to track and monitor diversity in such allocations:

- (i) Inclusion of small and medium enterprises, minority groups, youth and women-owned businesses in public procurement.
- (ii) Capacity development of the disadvantaged groups (affirmative action).
- (iii) Any other indicators that were identified.

Community relations focused on the presence of charitable organizations giving towards disadvantaged segments of the society. Other elements that were tracked include strategic alliances with minority groups, economic empowerment initiatives, scholarships and volunteerism.

Further, the study developed additional variables based on primary data collection tool (i.e. structured questionnaire):

- (i) Proportion of institutions with a diversity or inclusion policy or statement in employment.
- (ii) Proportion of institutions with a gender mainstreaming policy.

- (iii) Proportion of institutions with a disability mainstreaming policy.
- (iv) Proportion of organizations with SMART goals (e.g. in strategic plans) towards enhancing inclusivity (and equality) in employment.
- (v) Proportion of organizations with action plans (or strategies) to achieve equality and inclusivity goals.
- (vi) Proportion of institutions with provision for inclusion reviews (and monitoring and evaluation) within the workplace.
- (vii) Proportion of organizations providing diversity training of the workforce.
- (viii) Existence and use of diversity audits.
- (ix) Proportion of institutions with affirmative action regulations/goals.

3.5.3 Private sector

Private sector indicators may not relate to national laws because of their inward looking policies. Following global best practice, identification of indicators should include computation of indices that can be the result of longer-term collaboration between NGEK and the private sector associations in Kenya, such as the Kenya Private Sector Alliance. Some examples of possible indices include a Disability Equality Index, and a Workplace Diversity Index. It is possible to pilot (and thereafter sustain) the use of indices that rank private sector firms. Some of the more specific indicators include:

- (i) Proportion of employment by diversity, e.g. sex, age, ethnicity, religion, disability, and race.
- (ii) Proportion of SIGs in total employment per institution.
- (iii) Proportion of organizations with facilities for SIGs (e.g. PWDs).
- (iv) Proportion of institutions with a diversity or inclusion policy or statement in employment.
- (v) Proportion of institutions with a gender mainstreaming policy.
- (vi) Proportion of institutions with a disability mainstreaming policy.
- (vii) Existing informal employment practices.
- (viii) Proportion of organizations with SMART goals (e.g. in strategic plans) towards the achievement of inclusivity (and equality).
- (ix) Proportion of organizations with action plans (or strategies) to achieve equality and inclusivity goals.
- (x) Proportion of institutions with provision for inclusion reviews (and monitoring and evaluation) within the workplace.
- (xi) Proportion of organizations providing diversity training of the workforce.
- (xii) Presence and use of diversity audits.
- (xiii) Proportion with affirmative action regulations/goals.
- (xiv) Rates of progression, retention, exit compensation across grade by diversity.

3.6 Cross-cutting Issues in Public and Private Sectors

Indicators relating to reconciling work and family life

Indicators relating to reconciling work and family life would form an important subset of the monitoring indicators. In many instances, inclusion is greatly influenced by the workplace environment, and it should be possible to identify appropriate ones. These set of indicators can be captured for the public and private sector workspace environments. Some examples of indicators include:

- (i) Proportion of organizations providing facilities for childcare.
- (ii) Proportion with flexible hours of work for lactating mothers.
- (iii) Proportion of organizations with facilities for PWDs, e.g. ramps and lifts (split).

Informal sector

The informal economy is relatively large in Kenya. This implies that an attempt to map equality and inclusivity would be incomplete without reining the informal economy. Some of the indicators proposed above, such as the vulnerable employment rate, are indicative of the extent of informality in employment within the economy. The intention was to get a representative sample of informal establishments from the randomly selected households. This provided a representative sample of establishments associated with the household-based sample of those engaged in the informal economy.

Social protection programmes by themselves are unlikely to solve long-term development challenges. They need to support, and be supported by complimentary social policies as well as appropriate macroeconomic, labour market, education and health policies.

Possible data sources

Most of the indicators proposed above can be computed using labour force survey data, as well as from census data. One of the main challenges is that these data are collected after a long period of time (usually 10 year intervals).

Consequently, the study explored efficient and innovative ways of collecting representative data required to compute these indices more frequently.

In order to have rich data on some of the identified SIGs – such as PWDs – this particular assignment conducted a survey. Most of the data required was gathered from:

- (i) Relevant agencies of the National Government and county governments (including the Public Service Commission and the County Public Service Boards) providing secondary data.

- (ii) Institutional survey covering a representative sample of public and private firms using a structured questionnaire.
- (iii) Survey of a representative sample of households.
- (iv) Community level inquiries, such as through focus group discussions.

As alluded to earlier, secondary data sources were useful, including periodic reports to the ministry in charge of labour, statistical reports by national statistical agencies, and surveys and research conducted by international development organizations.

3.7 Equality and Inclusion in Social Protection: Rights and Indicators

3.7.1 Right to equality and inclusion in social protection

By definition, social protection is redistributive, consequently reducing (income) inequality and promoting inclusive social and economic development. An inclusive approach to social protection would ensure subsistence to all people who need it, whenever they need it, and not just for a ‘fortunate few’. An inclusive approach would also recognize that some drivers of poverty and vulnerability are structural rather than individual in origin, and therefore require innovative interventions, and/or linkages to other policies and sectors that can address the deeply rooted economic and social inequalities.⁷⁸ Social protection programmes by themselves are unlikely to solve long-term development challenges. They need to support, and be supported by complimentary social policies as well as appropriate macroeconomic, labour market, education and health policies.

There are several international instruments that champion the right to social protection as previously discussed. These include: Universal Declaration on Human Rights; International Covenant on Economic, Social and Cultural

⁷⁸ See Institute of Development Studies (2013).

Rights; African Charter on Human and People's Rights; Employment Injury Benefits Convention; and Equality of Treatment (Social Security) Convention No. 118. Others are: Employment Promotion and Protection Against Unemployment Convention No. 168; Maintenance of Social Security Rights Convention No. 157; Social Security (Minimum Standards) Convention No. 102; and ILO Convention 202 (Social Protection Floors).

The Constitution declares basic rights to be inalienable to the citizen. Social protection is guaranteed under Articles 43 and 44, which address Economic, Social and Cultural Rights, Article 53 addresses Children's rights, Article 54 makes reference to persons with disability, Article 55 speaks of the youth, Article 56 of minorities and marginalized groups, while Article 57 looks at older persons. In addition, Chapter 11 on devolution makes provision for devolved governments to provide for the well-being of all in the country. Article 43(1) states that every person has a right to social security, which is non-discriminatory in nature, speaking to universal provision and access to social security. Article 43(3) goes further to make provisions for those that are unable to support themselves and their dependants, which falls in line with the specific categorization of social safety nets for vulnerable groups.

The government developed a National Social Protection Policy in 2011, which was aimed at building on the Constitution's Bill of Rights that provides for the "right for every person... to social security and binds the State to provide appropriate social security to persons who are unable to support themselves and their dependents". Amongst the priorities outlined in the National Social Protection Policy (NSPP) is the government's intention to enhance social assistance by developing the necessary institutions and strengthening operational systems, while expanding the coverage of such programmes. To realize this policy objective, the government proposed the establishment of a National Safety Net Programme (NSNP) by

creating a framework for coordination and harmonization among the five-principle cash transfer programmes. The government is also in the process of developing a Sessional Paper on Social Protection.

3.7.2 Indicator framework for equality and inclusion in social protection

Social protection has recently gained prominence and political support in the context of development and poverty reduction discourse particularly in developing countries. There is broad international consensus among policy makers that social protection is a powerful way of reducing extreme poverty in the short term, and the subsequent reduction in overall poverty in the long term, while also promoting inclusive growth. This consensus is clearly articulated in the African Union's Social Policy Framework (SPF), which was endorsed by African Heads of State and governments in 2009, and echoed in the United Nation's Social Protection Floor Initiative. The SPF commits governments to progressively realize a minimum package of basic social protection that covers: (i) essential health care; and (ii) benefits for children, informal workers, and the unemployed, the elderly, and PWDs.

Kenya has a long history of investing in social protection. The various existing forms include: formal social security provisions (social security and social health insurance); safety net programmes targeting the poor and vulnerable populations (Cash Transfers (CT) for OVC, Older Persons and People with Severe Disabilities); and response to emergency and disaster situations, food distribution, grants and public works opportunities for the youth. Other programmes exist in the health, education and agriculture sectors. One of the shortcomings of these programmes is that they are limited in scope, and above all characterized by poor targeting and duplication of efforts. The Government has five main CT programmes: (i) Older Persons Cash Transfer (OPCT); (ii) Cash Transfers to Orphans and Vulnerable Children (CT-OVC); (iii) Hunger Safety Net Programme (HSNP); (iv) Urban Food Subsidy Cash Transfer

(UFS-CT); and (v) Persons with Severe Disability Cash Transfer (PWSD-CT).

The CT-OVC was launched in 2005 in response to the growing levels of poverty and vulnerability caused by the increasing numbers of OVCs. For the purposes of the programme, OVCs are defined as children who have lost one or both parents, are chronically ill, or who have a caregiver who is chronically ill, and/or live in child headed households due to being orphaned. The programme aims at improving such children's welfare while supporting poverty reduction and income distribution among the poorest in society.

The HSNP is an unconditional cash transfer programme that aims to reduce poverty in northern Kenya by delivering regular cash transfers to extremely poor households in four (districts) of northern Kenya. The programme was launched in 2007 in response to the growing levels of chronic food insecurity found especially in the arid, and to a lesser extent, semi-arid lands. The OPCT was launched in 2006 following the recognition that older persons constitute a sizeable share of the poor population, are often poorer than other age groups, and are likely to remain poor in their old age. The programme targets extremely poor households that include a member aged 65 years or older, who is not already receiving a pension.

The PWSD-CT aims at providing support to those with severe disabilities who are unable to look after themselves and require the constant attention of caregivers. Beneficiaries include those who need permanent care, which includes but is not limited to feeding and hygienic care, and require protection from themselves, others, and the environment. The objective of the programme is to provide immediate relief to PWSD from extreme poverty while enhancing their basic rights. The programme was piloted in 2010 with 10 households per constituency, and later up scaled to 70 households per constituency in 2012.

The UFS-CT was launched in 2011 as a response

to extremely high levels of food price inflation. The objective of the programme is to improve the livelihood security of the most vulnerable residents of urban informal settlements, with a focus on increased access to food by vulnerable households in the short- and long-term. A number of initiatives have been implemented under UFS-CT by the World Food Programme, Oxfam and Concern.

In order to assess the status and multidimensional nature of social exclusion and inequity, various indicators are useful. Potential indicators under social protection include:

- (i) Poverty head count: Indicates the proportion of individuals in the population living below the poverty line, i.e. the poor expressed as a proportion of the population. This incidence of poverty, however, does not indicate how far below the poverty line the poor are.
- (ii) Poverty gap: the average income shortfall of the poor ($P_{\alpha=1}$), which gives the proportional shortfall of the average poor person from the poverty line. It can give an estimate of the resources that would be required to bring the expenditure of every poor person up to the poverty line, thereby eradicating poverty. The poverty gap is, however, insensitive to the effect of income redistribution among the poor on poverty.
- (iii) Poverty severity: Is the third measure that overcomes the insensitivity of poverty gap to redistribution among the poor. This measure reflects the degree of inequality among the poor.⁷⁹
- (iv) Gini Coefficient: a measure of income inequality in the population.
- (v) Proportion of OVC receiving cash transfer as a proportion of the OVC in the population.

79 See Foster et al. (1984); and Mwabu et al. (2000).

- (vi) Proportion of the elderly receiving cash transfer as a proportion of the elderly in the population.
- (vii) Proportion of persons receiving cash transfers by SIG.
- (viii) Proportion of women who give birth in health facility.
- (ix) Proportion of the population with access to social security insurance (NSSF).
- (x) Proportion of children aged <6 years stunted.
- (xi) Proportion of children aged <6 years wasted.
- (xii) Proportion of aged <6 years underweight.
- (xiii) Percentage of population with access to clean and safe water.
- (xiv) Per cent of population with access to reliable income (casuals versus permanent).
- (xv) Per cent of population with access to food (afford 3 meals a day).
- (xvi) Per cent of population with access to primary health services.
- (xvii) Per cent of population with access to health insurance (NHIF, medical insurance).
- (xviii) Proportion of the working population contributing pensions.
- (xix) Proportion of retirees (age 65+) receiving pensions.
- (xx) Total annual budget resources allocated to cash transfers by SIGs.
- (xxi) Overall spending on social protection as a percentage of GDP.
- (xxii) Institutional and legal frameworks for long term strategies for social protection.
- (xxiii) Strategies to increase access to health services.
- (xxiv) Mechanisms for health subsidies for the poor.
- (xxv) Proportion of children fully immunized.
- (xxvi) Adequacy of legislations to protect the rights of OVCs.
- (xxvii) Adequacy of legislations to protect persons living with HIV/AIDS.
- (xxviii) Protective services for children who are orphaned and vulnerable living outside adult care.

3.8 Equality and Inclusion in Political Representation: Rights and Indicators

3.8.1 Right to equality and inclusion in political representation

Parliament is under obligation to make legislation and policies and other measures, including setting standards that will enhance equality and non-discrimination and achieve the progressive realization of the rights guaranteed in Article 43 of the Constitution.⁸⁰ The State is also obligated to enact legislation to fulfill its international obligations in respect of human rights and fundamental freedoms. Kenya is also a signatory to various international and regional treaties and conventions that are pertinent for equality and inclusion. Additionally, Article 2 (5) and (6) of the Constitution (2010) obliges the country to honour the provisions of such international and regional frameworks, meaning Kenyan policies, legislation and strategic planning should incorporate the provisions of such commitments.

3.8.2 Indicators for equality and inclusion in political representation

Political representation indicators relate the proportion or number of a given category of population who are engaged in a given political activity, as contained in the implementation of the United Nations Security Council Resolution 1325 on the impact of conflict on women and their role in peace-building— development of effective national women's machinery; Gender equitable decision-making, including support for electoral quotas and gender mainstreaming in all government ministries and departments.

Political empowerment indicators include:

- (i) Percentage of SIGs in private and public sector leadership position (Cabinet Secretaries, Principal Secretaries, Directors, and Heads of institutions).

⁸⁰ Article 21(2) of the Constitution of Kenya 2010.

Political representation indicators relate the proportion or number of a given category of population who are engaged in a given political activity, as contained in the implementation of the United Nations Security Council Resolution 1325 on the impact of conflict on women and their role in peace-building—development of effective national women’s machinery; Gender equitable decision-making, including support for electoral quotas and gender mainstreaming in all government ministries and departments.

- (ii) Percentage of SIGs in political positions (Members of Parliament, Senators, Governors, Members of County Assemblies, nominated members, representatives of various interest groups).
- (iii) Percentage of registered SIGs voters and per cent that voted in last general elections.
- (iv) Percentage of SIGs in other political decision making processes (e.g. political parties).
- (v) Types of assistance to SIGs during voting by IEBC.
- (vi) Factors barring participation of SIGs in political representation.

3.9 Mainstreaming the Needs of SIGs in Selected Legal Frameworks and Regulations

The analysis will include a review of the extent to which institutions and governments have adhered to the set laws, regulations and guidelines regarding the needs of the SIGs, and consequently mainstreamed inequality and inclusion in their interventions. Some of the indicators that can be used to assess the extent to which the government and organizations adhere to the laws and regulations include:

- (i) Whether the national/county budgets have mainstreamed the needs of the SIGs.
- (ii) Proportion of institutions with gender mainstreaming policy at national/county level.
- (iii) Proportion of institutions with special needs mainstreaming policy.
- (iv) Proportion of institutions with gender-based violence policy.
- (v) Proportion of institutions with affirmative action policy.
- (vi) Proportion of women in total employment.
- (vii) Proportion of procurement expenditure allocated to SIGs.
- (viii) Proportion of institutions that have integrated paternity and maternity leaves.
- (ix) Level of know-how, implementation level of the institutional policies.

METHODOLOGY AND DATA

The survey targeted households, education institutions, and both the public and private institutions at national and county levels. The selected samples reflected the final indicators chosen for each of the dimensions, i.e. education, employment, social protection and political representation.

4.1 Introduction

This section discusses how the survey was conducted, the target population, the sampling frames, sample sizes, data collection tools, data collection procedure, data analysis and the report-writing process. The survey targeted households, education institutions, and both the public and private institutions at national and county levels. The selected samples reflected the final indicators chosen for each of the dimensions, i.e. education, employment, social protection and political representation.

4.2 Data and Sample Determination

4.2.1 Data type and sources

Given the set of proposed indicators, some of the data was obtained from secondary sources. The collection of secondary data, such as the net enrolment rate (NER) by sex, or the proportion of elected women representatives, were obtained from relevant institutions and publications, such as government publications. Some of these include the Economic Survey, Statistical Abstracts, and the Kenya Economic Report, which are all produced annually. Other indicators were computed from nationally available datasets, including the Kenya Integrated Household Budget Survey 2006/06 (KIHBS), several issues of the Kenya Demographic and Health Surveys (KDHS), and the Housing and Population Census 2009. There were a number of indicators that were computed based on primary data collected during the survey, such as employment by diversity across private sector institutions.

For primary data, five distinct instruments were designed, including a county questionnaire, institutional questionnaire for public and private establishments, educational institution questionnaire, household questionnaire, and focused group discussions (FGDs) and key informant interview (KII) guide. The questionnaires captured information on the four dimensions of the study.

4.2.2 Sampling frame for households

The county questionnaire was administered in all the 47 counties. The institutional and employee questionnaire for the public sector was administered to a representative sample of public sector bodies, including selected state corporations. The sampling frame was developed by the KNBS.

To enable a selection of representative samples for the institutional and employee questionnaires in the private sector, this study also used the KNBS sampling frame. These KNBS sample frames ensure nationally representative samples.

The Equality and Inclusion household survey used the fifth National Sample Survey and Evaluation Programme (NASSEP V) frame, which is a household-based sampling frame developed and maintained by the KNBS. The frame was implemented using a multiple-tier structure, in which a set of 4 sub-samples (C1, C2, C3, C4) each containing 1,340 clusters were developed. NASSEP V is based on the list of enumeration areas

(EAs) from the 2009 Kenya Population and Housing Census. The frame is first stratified by counties, and then into rural and urban components.

During the 2009 population and housing census, each sub-location was sub-divided into census EAs, i.e. small geographic units with clearly defined boundaries. The primary sampling unit for NASSEP V master sampling frame, adopted by the Equality and Inclusion survey, was a cluster constituting one or more EAs, with an average of 100 households per cluster.

The survey used two-stage stratified cluster sampling design, where the first stage selected 328 clusters from NASSEP V. The second stage randomly selected a uniform sample of 15 households in each cluster from a roster of households in the cluster using systematic random sampling method.

4.3 Sample Size and Selection

A sample of 4,920 households was estimated for the survey. This sample was distributed first to the counties, and then to rural and urban strata of the counties using the square root allocation method. Table 4.1 shows the distribution of the sample to the counties.

Table 4.1: Distribution of the equality and inclusion survey (2015) sample

County	Clusters			Households			County	Clusters			Households		
	Rural	Urban	Total	Rural	Urban	Total		Rural	Urban	Total	Rural	Urban	Total
Nairobi	0	13	13	0	195	195	Narok	5	2	7	75	30	105
Nyandarua	4	2	6	60	30	90	Kajiado	4	4	8	60	60	120
Nyeri	5	3	8	75	45	120	Marsabit	3	1	4	45	15	60
Kirinyaga	5	2	7	75	30	105	Isiolo	2	2	4	30	30	60
Murang'a	6	3	9	90	45	135	Meru	7	2	9	105	30	135
Kiambu	5	7	12	75	105	180	Tharaka Nithi	3	2	5	45	30	75
Kisii	6	3	9	90	45	135	Embu	4	2	6	60	30	90
Nyamira	4	2	6	60	30	90	Kitui	5	2	7	75	30	105
Siaya	5	2	7	75	30	105	Machakos	4	5	9	60	75	135
Kisumu	4	5	9	60	75	135	Makueni	5	2	7	75	30	105
Homa Bay	5	2	7	75	30	105	Kakamega	7	3	10	105	45	150
Migori	4	3	7	60	45	105	Vihiga	4	3	7	60	45	105
Turkana	4	2	6	60	30	90	Bungoma	6	3	9	90	45	135
West Pokot	4	1	5	60	15	75	Busia	5	2	7	75	30	105

County	Clusters			Households			County	Clusters			Households		
	Rural	Urban	Total	Rural	Urban	Total		Rural	Urban	Total	Rural	Urban	Total
Baringo	4	2	6	60	30	90	Garissa	3	2	5	45	30	75
Elgeyo Marakwet	3	1	4	45	15	60	Wajir	3	2	5	45	30	75
Trans Nzoia	5	3	8	75	45	120	Mandera	4	2	6	60	30	90
Uasin Gishu	4	4	8	60	60	120	Tana River	3	1	4	45	15	60
Nandi	5	2	7	75	30	105	Lamu	2	1	3	30	15	45
Samburu	3	1	4	45	15	60	Mombasa	0	7	7	0	105	105
Kericho	4	3	7	60	45	105	Kwale	4	2	6	60	30	90
Bomet	5	2	7	75	30	105	Kilifi	5	3	8	75	45	120
Laikipia	4	2	6	60	30	90	Taita Taveta	3	2	5	45	30	75
Nakuru	6	6	12	90	90	180	Total	195	133	328	2,925	1,995	4,920

The baseline survey was conducted within the National Government and county governments and involved the public and private sector institutions (covering about 500 respondents) as well as the citizenry. During the survey, the following sectors were engaged: Public sector; Private sector; and Informal sector.

The clusters were selected using the Equal Probability Selection Method (EPSEM). The clusters were selected systematically from NASSEP V frame with equal probability independently within the counties and urban-rural strata. The EPSEM method was adopted since, during the creation of the frame, clusters were standardized so that each could have one Measure of Size defined as having an average of 100 households.

4.4 Household Selection

From each selected cluster, a uniform sample of 10 households was selected systematically, with a random start. The systematic sampling method was adopted as it enables the distribution of the sample across the cluster evenly and yields good estimates for the population parameters. During data collection, there was allowance for replacement of non-responsive households.

4.5 Education Institutions Sampling Frame, Sample Size and Allocation

The sampling frame for the institutions sample was the list of all education institutions, which was obtained from the Ministry of Education, Science and Technology. The sampling frame was categorized by type of institution, i.e. Primary, Secondary, Tertiary College or University. These were further stratified by ownership, whether private or public. The primary school had a third stratum composed of Special Needs schools.

A sample size of 822 institutions was estimated to be sufficient to provide reliable estimates for the desired indicators. This sample was drawn using the systematic random sampling method and was distributed as shown in Table 4.2 below.

Table 4.2: Distribution of the institutions sample

S/No	Category	Private	Public	Total
1	Primary	96	418	514
2	Secondary	46	141	187
3	Tertiary College	42	28	70
4	University	20	31	51
Total		204	618	822

4.6 Public and Private Institutions Sampling Frame

The baseline survey was conducted within the National Government and county governments and involved the public and private sector institutions (covering about 500 respondents) as well as the citizenry. During the survey, the following sectors were engaged: Public sector; Private sector; and Informal sector.

4.7 Indicator Determination and Measurement of Equality and Inclusion Index

Measurement of the Equality and Inclusion index addresses part of this study's first objective of identifying indicators for measuring equality and inclusion. The approach used to generate the Equality and Inclusion index was identical to the methods used in practice by well-established indices such as the Human Development Index and the Gender Equality Index of the United Nations. The procedure of estimating Equality and Inclusion Index entailed the following steps:

Step 1

The first step involved identification of the "components" of the equality and inclusion index based on its definitions. As indicated in the introductory chapter of this report, "an equal society recognizes people's different needs, situations and goals and removes the barriers that limit what people can do and can be". Consequently, even though exclusion plays an important role in the reproduction of

inequality, it is also itself the result of inequalities in access to resources, employment, education and public services. For example, educational and health status, and particularly illiteracy and low health outcomes, can be an important cause of exclusion from the labour market. Applying the social exclusion approach, we estimate the Equality and Inclusion Index for Kenya.

The indicators were conveniently clustered into six key components, namely: (i) Development; (ii) Health; (iii) Education; (iv) Social Justice and Civic Participation; (v) Gender Equality and (vi) Labor force participation. From the literature, social justice may entail all forms of inclusion in development as partially explained by the other components, but for the purpose of distinction, social justice in these computations is used to refer to levels of protection of human rights, and inclusivity of the marginalized and special interest groups in various development activities.

Step 2

Since the five components represent broad areas, the next logical step was to identify indicators under each of the five components. The primary source of the indicators of each of the five components was available attribute data across all counties. As an example, among the indicators identified under the social justice component were levels of inclusion of marginalized and special interest groups, protection of the Bill of Rights, and civic engagement such as through voting,

among others. Development component was measured through non-poverty headcount, proportion of population with access to improved water, proportion of population with access to electricity and proportion of paved roads across counties. These indicators are important in explaining levels of economic development across regions.

Step 3

All the indicators except life expectancy (years) were measured in comparable scale of 0 to 100 per cent from their various sources. The life expectancy indicator was thus transformed into a comparable proportional scale before its inclusion in computing the relevant sub-index. In particular, the life expectancy data was converted into a standardized range of 0 to 100 per cent, where 100 per cent was the best possible score by dividing the observed

life expectancy (in years) by the maximum number of years an individual can live, according to the recent World Health Organization indicators, then multiplied by 100 per cent to convert the indicator to life expectancy index measured in a scale of 0 to 100.

Step 4

The fourth step was the actual computation of the indices. Each sub-index score was a simple average of all the respective indicator scores across all counties. In turn, the Equality and Inclusion Index score was the average of its five sub-index scores. All the indices were computed at county level. In total, there were 24 indicators grouped into the five clustered sub-components of Equality and Inclusion Index. A complete list of the sub-indices and their respective indicators is presented in Table 4.3.

Table 4.3: Equality and inclusion index, sub-indices and indicators

Components/Sub-indices	Indicators
1) Development Index	<ul style="list-style-type: none"> (i) Non-poverty headcount (ii) Proportion of households with improved water (iii) Proportion of households with access to electricity (iv) Proportion of paved roads as a percentage of total road network (v) Per capita Gross Domestic Product (GDP)
2) Health Index	<ul style="list-style-type: none"> (i) Life expectancy (years) (ii) Percentage of births delivered in a health facility (iii) Percentage of births delivered by a skilled provider (iv) Proportion of children fully vaccinated
3) Education Index	<ul style="list-style-type: none"> (i) Literacy rate (ii) Proportion of population aged 15-64 years who had attained secondary education and above (iii) Aggregate enrolment rate (pre-primary, primary, secondary and tertiary education)
4) Social Justice and civic engagement	<ul style="list-style-type: none"> (i) Protection of human rights (ii) Level of inclusion in economic activities (iii) Proportion of citizens aged 18 years and above who were registered voters (hence had identification cards) (iv) Proportion of citizens aged 18 years and above who voted during the last general elections (v) Proportion of the population strongly satisfied with life (vi) Level of fairness in a society (vii) Protection of the marginalized (viii) Perceptions of overall level of social justice (ix) National identity and Identification as Kenyan
5) Labour force participation	<ul style="list-style-type: none"> (i) Employment to population ratio (ii) Proportion of population aged 15-24 years who are in education and employment (iii) Proportion of population aged 15-64 who are not in vulnerable employment

FINDINGS AND DISCUSSIONS ON EDUCATION

Net Enrolment Rate (NER) is a better indicator of inefficiencies in the system. It refers to total school enrolment as a proportion of the school going-age population. Primary completion rates and transition rates into high school stood at about 82.7 per cent and 82.3 per cent, respectively, in 2015, while the 2015 secondary school completion rate was estimated at 86 per cent.

5.1 Equality and Inclusion in Education

This chapter focuses on the status of equality and inclusion in education, with particular emphasis on the levels and gaps towards attaining the international and national commitments over education.

5.2 Assessment of Status of Equality and Inclusion in Education

Access and Participation in Schooling

In education, ‘access’ relates closely to ‘enrolment’, but the issues around them are distinct. Access refers to the existence of an enabling environment offering equal opportunities for all who should be in education regardless of their socio-economic backgrounds, while enrolment measures actual up-take of those opportunities.

Since 2003 when Kenya launched Free Primary Education (FPE) programme, and subsequent launch of the Free Day Secondary Education (FdSE) programme in 2008, there has been substantial expansion in basic education. In particular, Gross Enrolment Rate (GER) in primary school increased from 6 million in 2002 to 10.1 million in 2015, with GER in secondary education growing from 0.845 million to 2.6 million during the same period. GER in pre-primary increased from 2.6 million learners in 2011 to 3.2 million learners in 2015. Participation (GER) refers to school enrolment irrespective of the child’s age. This indicator does not depict inefficiencies in the education system. Instead, Net Enrolment Rate (NER) is a better indicator of inefficiencies in the system. It refers to total school enrolment as a proportion of the school going-age population. Primary completion rates and transition rates into high school stood at about 82.7 per cent and 82.3 per cent, respectively, in 2015, while the 2015 secondary school completion rate was estimated at 86 per cent.

The increases in the basic school enrolment are partially attributable to the sector reforms implemented during the period 2003-2015, including emphasis on universal primary schooling in the Economic Recovery Strategy for Wealth and Employment Creation (2003-2007) and implementation of the education sector MDG. Apart from the increase in participation rates, FPE

and FdSE also support the expansion of physical infrastructure in public schools and provide per capita grants for teaching and learning materials, operations and maintenance, and emoluments for the non-teaching staff.

Despite the expansion in access to schooling and the high rates of participation in basic education, substantial gaps still exist in the sector.

The education inequity is signified by unsatisfactory levels of quality of education, and poor access to post-primary education for low income groups. These challenges have negative implications for the country's accumulation of human capital and development agenda of transiting to a middle-income status by 2030.

Early Childhood Development Education (ECDE)

ECDE had until 2006 received limited focus, to the extent that it was not a prerequisite for transitioning to primary school. This was the status quo despite the government being a signatory in various international commitments and outcomes, including the CRC (1989), African Charter on the Rights and Welfare of the Child (1990), and the 2000 Millennium Development Goals. Kenya had participated in, and endorsed the deliberations of Jomtien World Conference on EFA (1990) and the 2000 World Education Forum (Dakar, Senegal). At the national level, various legislative frameworks were in place to promote the development of children, such as the Children Act (2001).

The interventions in ECDE were highly fragmented until Sessional Paper No. 1 of 2005, the Policy Framework on Education, Training and Research recommended the development of a comprehensive approach to ECDE. As a result, the National Early Childhood Development Policy Framework (2006) was launched. The framework distinguishes ECDE roles for parents, communities, government ministries, departments and agencies (MDAs), universities and research institu-

tions, non-government organizations (NGO), faith-based organizations (FBOs), community-based organizations, the private sector, and bilateral and multi-lateral development partners.⁸¹

As presented in Figure 5.1, ECDE budgetary resources were scanty and interventions especially in rural areas were left to the private sector, and NGO and FBO initiatives. The policy framework's goal was to enhance access, equity and quality services for all children from conception up to 8 years, which enables children to realize their full potential, build on a good foundation that safeguards their rights and welfare through coordinated quality partnerships using holistic approaches. Data from the Ministry of Education show that between 2003 and 2008, GER in ECDE was just below 60 per cent on average, with a marginal gap in favour of boys.⁸²

Figure 5.1 shows the national pre-primary GER and NER trends between 2010 and 2014, based on data from a review of the Second Medium Term Plan 2013-17.⁸³ GER that remains far below 100 per cent suggests the exclusion of large numbers of children, even if both GER and NER are rising. Given that these 2010-2014 data seem to build progressively on the 60 per cent averages of 2003-2008, it is likely the modest enrolment gap between boys and girls has persisted. Despite low enrolment in ECDE it is not clear why County Governments, whose responsibility it is to promote ECDE, have not set out standards towards meeting the requirements of both national and international commitments in this sector. It is evident that a substantial proportion of ECDE school-going age children are not in school, hence there is an urgent need for both the National and County governments in collaboration with other stakeholders to ensure that deliberate efforts go into setting up standards that enable the progressive realization of the

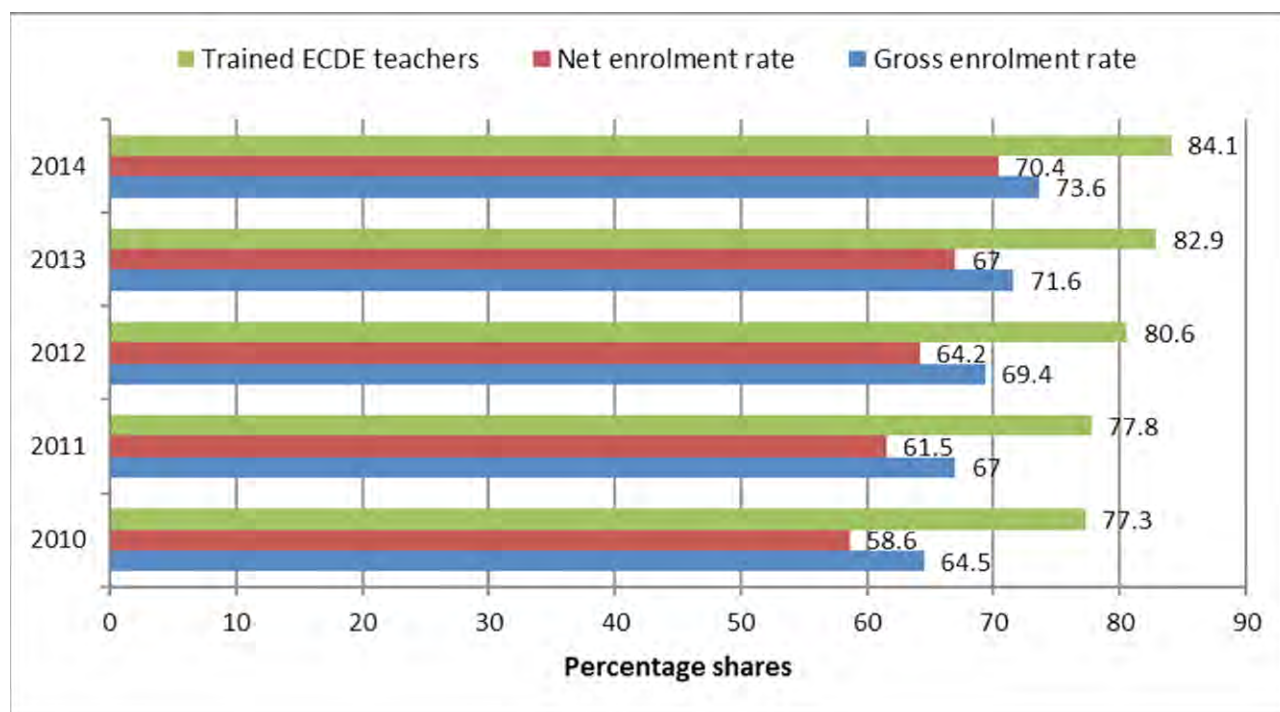
81 See Republic of Kenya (2006).

82 See Keno, Lynette (2009).

83 Republic of Kenya (2015: 112-115).

rights of the child. Figure 5.1 also presents the trends in teacher training over the same period, whose coverage is also improving.

Figure 5.1: Trends in ECDE enrolment and teacher training, 2010 to 2014(%)



Source: Republic of Kenya (Various)

Table 5.1 shows the average enrolment age per county. While the recommended enrolment age in ECDE is 4 years, it is evident that due to regional inequalities, children in some counties are disadvantaged. For instance, children in Wajir County enroll at an average age of 7 years, while those in Mandera, Isiolo and Marsabit enroll in school at an average age of 6 years. Those in Lamu, Meru, Tharaka, Embu, Busia, Kakamega, Laikipia, Kajiado, Kericho and Nandi enroll at age 4. Due to disparities in the region, the national average enrolment age is 5 years. This is an indication that there are issues around access to ECDE that need to be addressed by all stakeholders.

Table 5.1: Average ECDE enrolment age by county

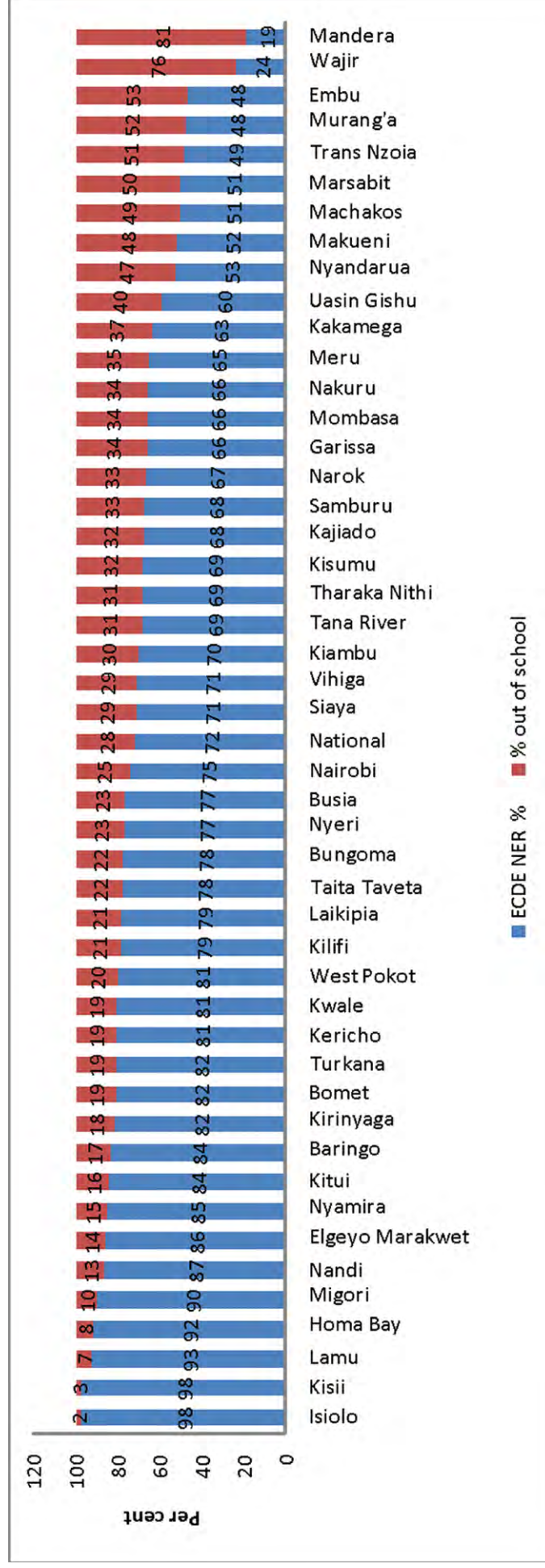
County	Average Age	County	Average Age
Nairobi	4	Kisumu	4
Nyandarua	5	Migori	4
Nyeri	4	Homa Bay	5
Kirinyaga	5	Kisii	4
Murang'a	5	Nyamira	4
Kiambu	5	Turkana	4
Mombasa	4	West Pokot	4
Kwale	5	Samburu	5
Kilifi	4	Trans Nzoia	4
Tana River	5	Baringo	5
Lamu	4	Uasin Gishu	5
Taita Taveta	5	Elgeyo Marakwet	5

County	Average Age	County	Average Age
Marsabit	6	Nandi	4
Isiolo	6	Laikipia	4
Meru	4	Nakuru	5
Tharaka	4	Narok	5
Embu	4	Kajiado	4
Kitui	5	Kericho	4
Machakos	5	Bomet	5
Makueni	5	Kakamega	4
Garissa	5	Vihiga	5
Wajir	7	Bungoma	5
Mandera	6	Busia	4
Siaya	5	National	5

Source: Equality and Inclusion Survey (2015)

The 2014 school census data of Figure 5.2 provides some plausible explanations for the enrolment gaps evidenced in Figure 5.1. Mandera and Wajir counties have NER's below 30 per cent. The physical count shows only 9 counties out of the 47 counties have NERS below 60 per cent. The low NERs for Mandera and Wajir are not surprising, since they are in arid and semi-arid lands (ASAL) with modest socio-economic attainments, which consequently makes ASAL county Isiolo's leading score quite surprising. Conversely, the poor performances of high socio-economic status counties such as Embu and Murang'a are just as surprising. However, it would appear that some ASAL county governments have invested extensively in ECDE; for example, anecdotal information asserts that Turkana has built 180 centres in three years of devolution, the likely new problem being how to cope with the transition to primary school.

Figure 5.2: County distribution of ECDE NER, 2014



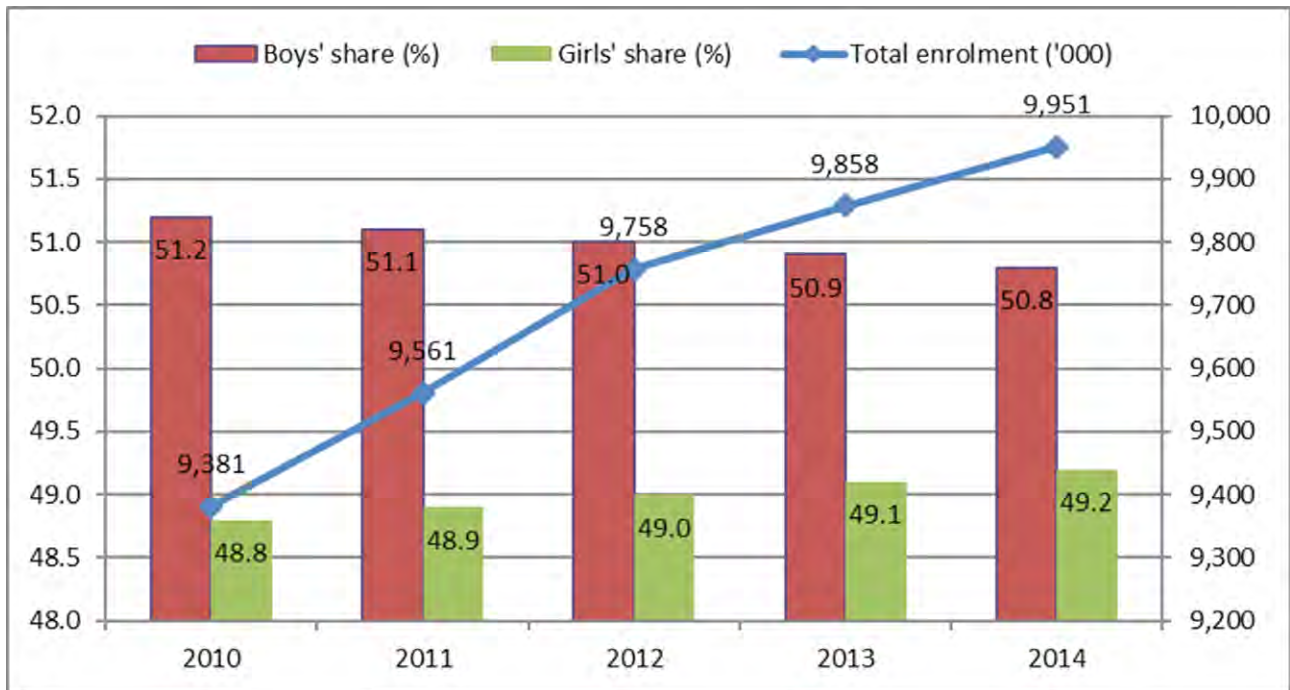
Source: Republic of Kenya (2015)

The county analysis shows glaring gaps of children who were school-going age but were out of school.

Primary education

The current primary education targets are provided in the Medium-Term Plan II, and involve enhancing transition rates to secondary education to a level of 81.5 per cent overall, with a girls' rate of 89.7 per cent and a boys' rate of 79.3 per cent, targets requiring sustained registration through the school cycle.

In terms of overall enrolment, Figure 5.3 shows that total enrolment rose from 9.4 million in 2010 to 10 million in 2014. The boys' share of total enrolment dropped slightly, from 51.2 per cent in 2010 to 50.8 per cent in 2014, meaning the enrolment share for girls rose by a marginal 0.4 per cent.

Figure 5.3: Primary school enrolment and shares in enrolment by sex, 2010 to 2014

Source: Republic of Kenya (2015)

Public and private primary school enrolment by class and sex for the period 2010 to 2014 is presented in Table 5.2. The total enrolment rose marginally from 9.9 million in 2013 to 10.0 million in 2014, with 8.6 million of those enrolled being in public schools. Enrolment in Standard 1 increased marginally from 1.37 million pupils in 2013 to 1.372 million pupils in 2014, with the change for girls (1.14%) comparing favorably to that for boys (0.75%). The retention rate from class 1 to 5 for girls was 96.7 percent compared to that of boys at 89.9 percent. During the review period, enrolment at Standard 7 was 1.2 million pupils compared to 898,700 pupils in Standard 8. Indeed, these data reveal disturbing attrition rates: 320,000 students are lost by the time the Standard 4 group of 2010 become the Standard 8 group of 2014.⁸⁴ Enrolment inequities are also evident. Table 5.2 also presents a Gender Parity Index or Ratio, which shows the advantage of boys over girls.

⁸⁴ This analysis ignores repeaters, new enrolments, and any other 'disturbances'.

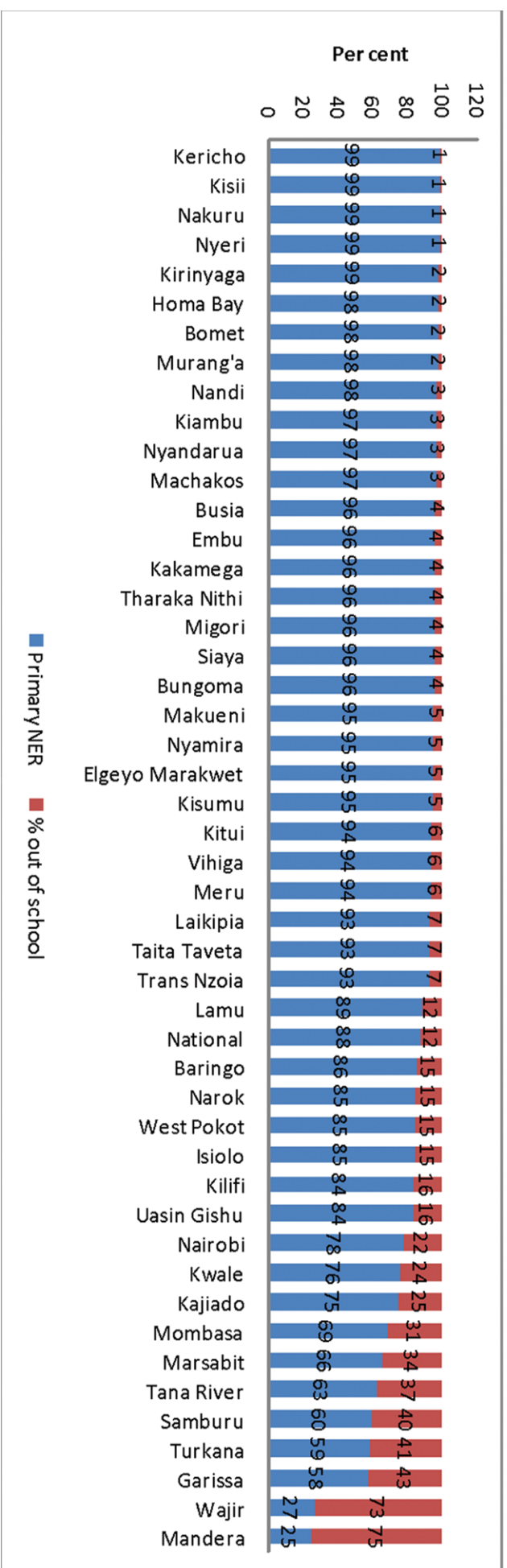
Table 5.2: Primary school enrolment by class and sex, 2010-2014 (student '000s)

	2010		2011		2012		2013		2014	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Standard 1	715.6	655.1	713.9	656.8	712.2	658.1	710.5	659.1	708.9	663.4
Standard 2	681	649.8	679.4	651.8	677.8	654.9	676.2	639.8	674.6	640.9
Standard 3	679.4	640.6	677.6	646.5	676	648.6	676.1	652	673.9	632.9
Standard 4	630.6	590.1	676	637.4	674.2	643.3	672.6	645.3	675.4	651.3
Standard 5	589.3	572.6	603	579.3	646.5	625.7	644.8	631.5	643.3	633.5
Standard 6	536.7	519.5	575.5	560.9	589	567.5	631.4	613	629.7	618.6
Standard 7	503.9	513.4	510.2	512.9	547.2	553.9	560	560.3	600.3	605.3
Standard 8	453.3	422	451.6	428.1	449.8	433	448.1	436.8	446.3	452.4
Total	4,789.8	4,563.1	4,887.2	4,673.7	4,972.7	4,785.0	5,019.7	4,837.8	5,052.4	4,898.3
Grand Total	9,352.8		9,561.1		9,757.6		9,857.6		9,950.7	
Parity index (girls/boys)	0.95		0.96		0.96		0.96		0.97	

Source: Republic of Kenya (2015)

Figure 5.4 provides county-level NER data. That the performance here is much better than for the ECDE level (Figure 5.2) is likely evidence of the effectiveness of FPE programme in keeping children in school. NER stands above 90 per cent for all but 19 counties, the surprising low performing counties being Nairobi and Mombasa, which also fall below the national average of 88 per cent. It is not surprising that 8 of the 10 worst NER rates belong to the pastoralist ASAL counties with poor socio-economic indicators in general. But additional cause for concern should arise from the extreme differentiation among the poor performers: the NER's for Mandera and Wajir counties are less than half the rates for the rest of the bottom 10.

Figure 5.4: County distribution of primary level NER, 2014

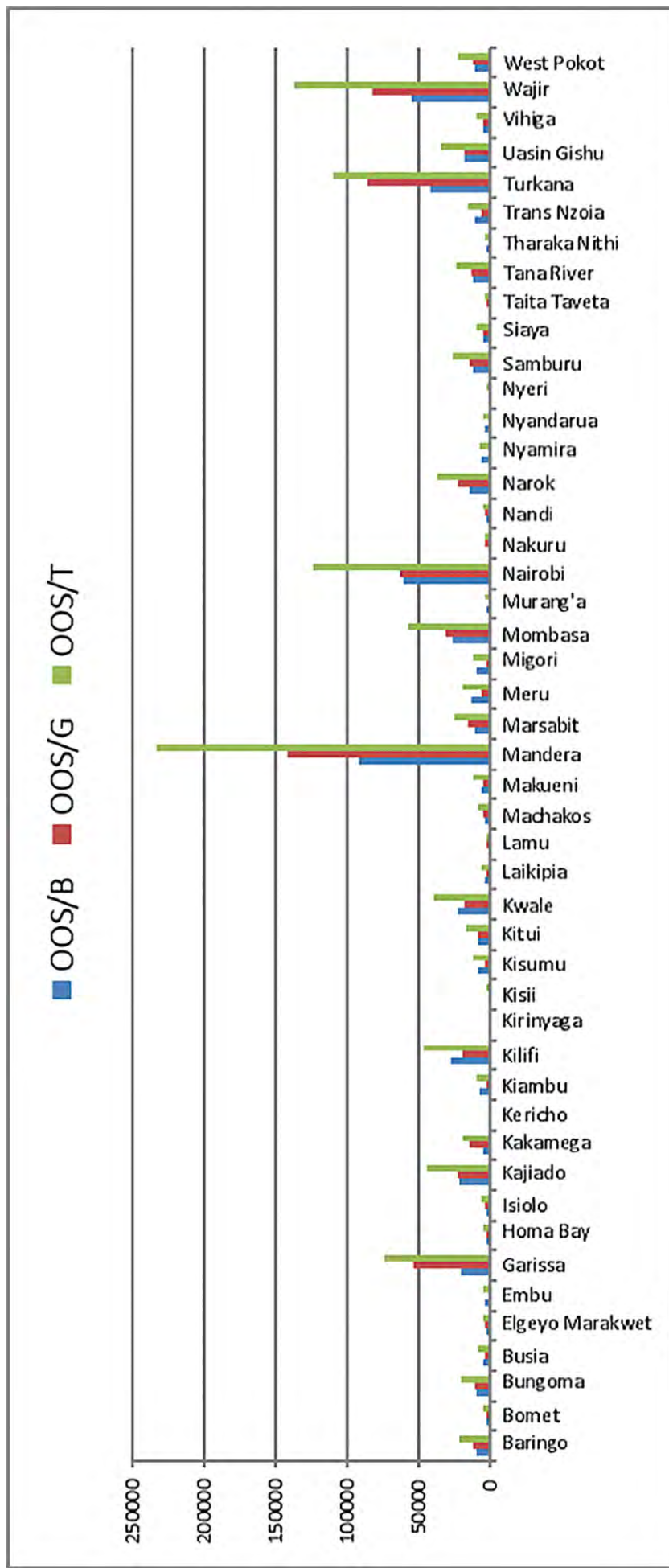


Source: Republic of Kenya (2015)

Figure 5.5 analyses the status of out-of-school (OOS) children by sex across the counties. The data show ASAL counties to dominate the phenomenon, as one would expect from the other analyses: Garissa, Mandera, Turkana, and Wajir.

However, the figure also highlights an interesting reality: exclusion is also an urban phenomenon, as illustrated by the OOS rates of Kenya's two largest cities, Nairobi and Mombasa city-counties. Additionally, the data show that OOS is a distinctly girl-child phenomenon, significantly exceeding the OOS boys where the numbers are greatest – Garissa, Mandera, Turkana and Wajir. The numbers are modest in the 10 counties in which boys dominate.

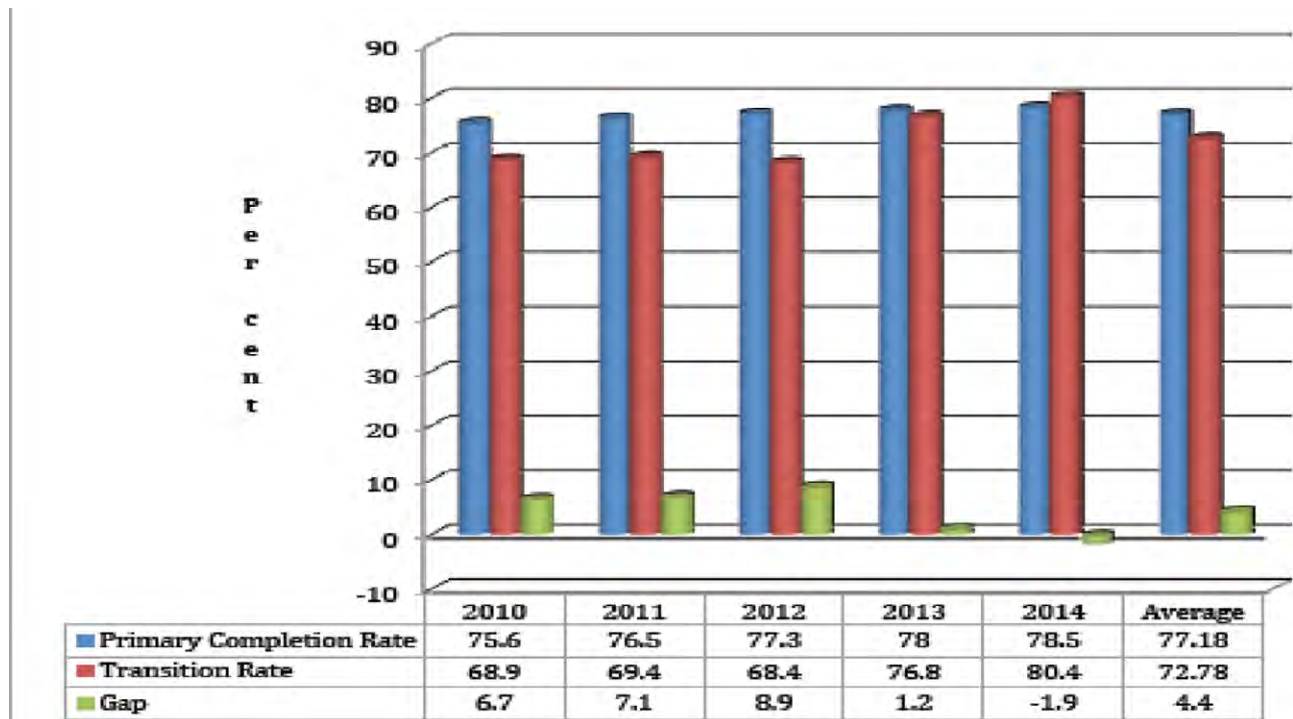
Figure 5.5: Numbers of out-of-school children by sex and county, 2014



Source: Republic of Kenya (2014)

As noted in Table 5.1, drop-out rates are high at nearly 25 per cent between the Standard 4 group of 2010, which became the Standard 8 group of 2014. Figure 5.6 provides a related analysis of continuity. The primary completion rate rose 3 percentage points between 2010 and 2014. As in the case of the ECDE-to-primary transition, the rate out of primary education started at a lowly 69 per cent for 2010, but rose to 80, marginally above the completion rate, thereby suggesting delayed admission to Form 1. Overall, however, the data show an improvement between completion and transition. While county completion and transition data are not presented, the NER disparities of Figure 5.4 are likely evident.

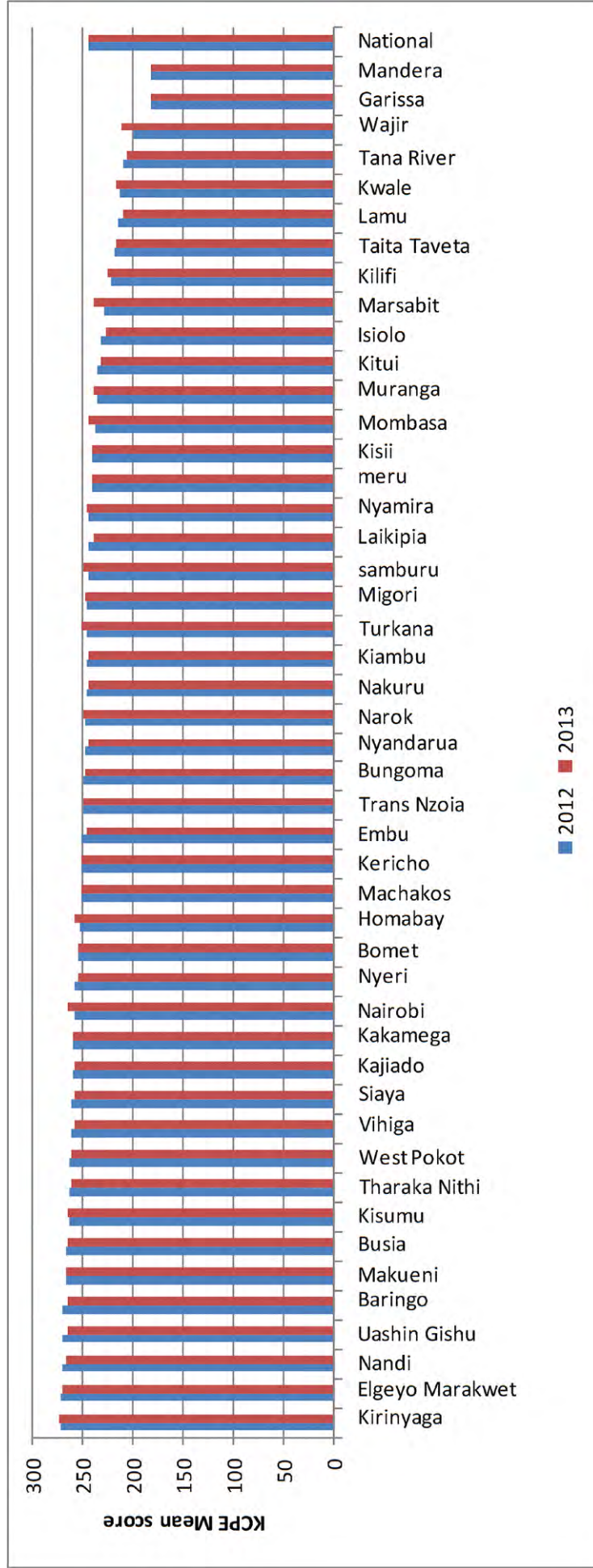
Figure 5.6: Primary completion and transition rates, 2010 to 2014



Source: Republic of Kenya (2015), MTP II review

Concerning primary education outputs, there were substantial disparities in the KCPE performance between 2012 and 2013, as shown in Figure 5.7. About 20 counties had a mean score of over 250 for both years, with the national mean being just slightly below that level. The KCPE performance index varies from large percentage increases in Nairobi, Homa Bay, Turkana, Samburu, Mombasa, Marsabit, Kwale and Wajir counties, to large reductions in Nandi, Uasin Gishu, Baringo, Vihiga, Nyandarua, Laikipia, Tana River, Kitui and Isiolo counties (Figure 5.7). The smallest declines in absolute terms occurred in Elgeyo Marakwet, Busia, West Pokot, Kericho and Bungoma counties. As in previous analyses, the performances were worst among ASAL counties, which dominated the bottom slots. However, Marsabit, Kilifi, Kwale and Wajir recorded marked improvements, even as the performances of Isiolo, Lamu and Tana River declined.

Figure 5.7: KCPE performance by county, 2012 and 2013



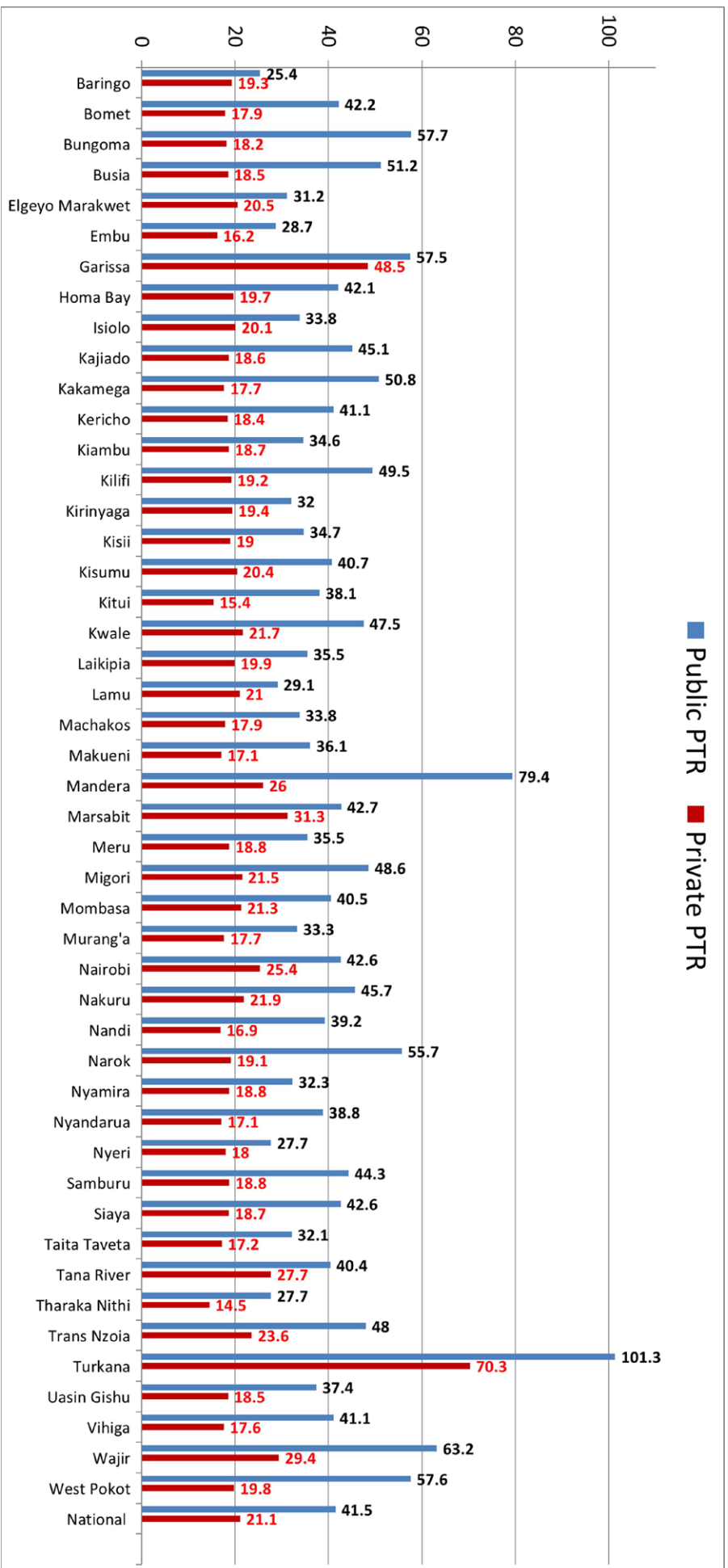
Source: KNEC (2014)

Among the factors that are significant for examination performance specifically, and education output in general, is the workload carried by teachers, an aspect of which Figure 5.8 analyses across the public/private school divide. At the national level, the public-school teachers' average 42 pupils burden is twice that of private school teachers.⁸⁵ While public sector pupil/teacher ratios range from Baringo's 25:1 to Turkana's 100:1, the range in the private sector is more modest, from Tharaka Nithi's 14:1 to Turkana's 70:1.⁸⁶ Turkana's teacher burdens are greatest for both sectors, but the lowest disparity is Baringo's 15-point range. Eleven out of the 23 counties whose public-school ratios are above the norm of 40 are ASAL counties, and ASAL counties of Turkana and Garissa alone breach the norm among private schools.

⁸⁵ Higher average private school pay is a further disadvantage for public school teachers who often undertake private tuition to augment their meager salaries.

⁸⁶ Besides Baringo, Nyeri also has a low public school P/T ratio.

Figure 5.8: County level pupil/Teacher ratio (2014)

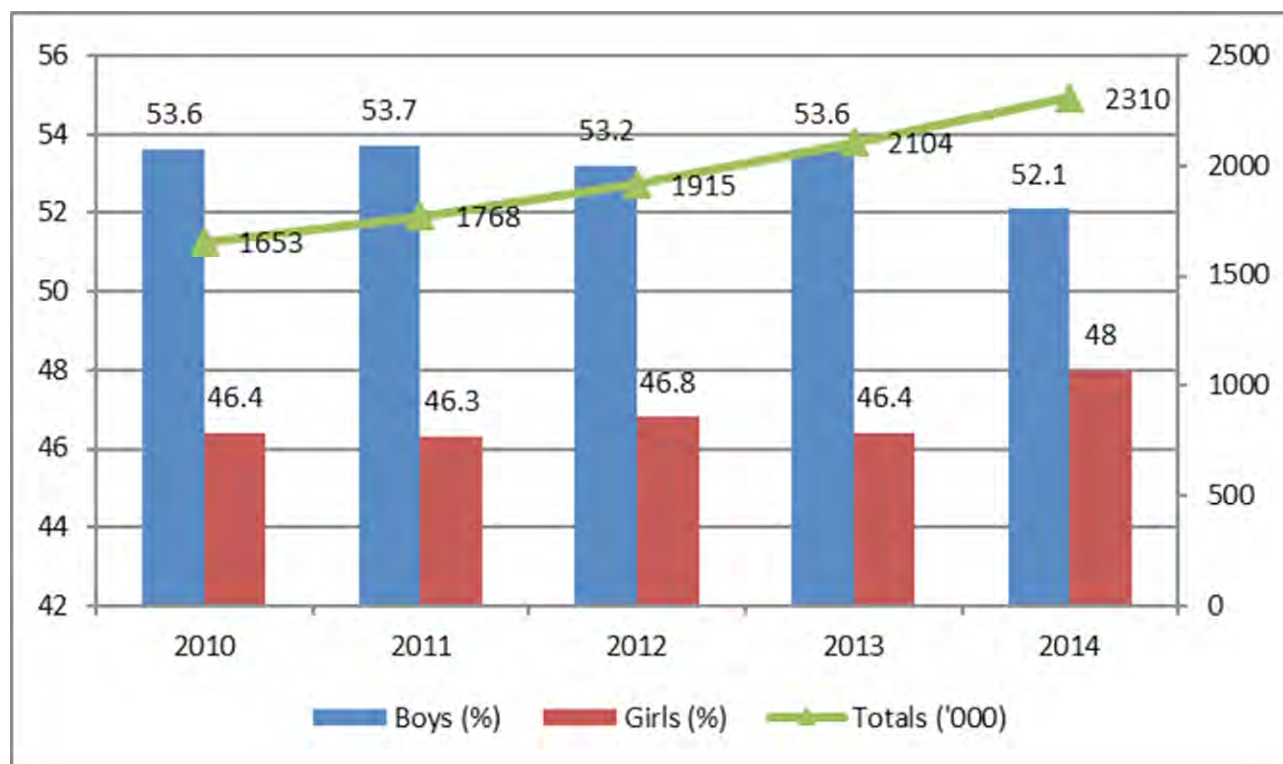


Source: Republic of Kenya (2015)

Secondary Education

Between 2010 and 2014, secondary school enrolment grew by 40 per cent to close the period at 2.3 million, as shown in Figure 5.9. The male/female share of secondary students wavered marginally, and while boys averaged a 53 per cent share, the girls' share closed a stronger 48 per cent.

Figure 5.9: Secondary school enrolment and share by sex, 2010 to 2014



Source: Republic of Kenya (2015)

Enrolment in secondary schools by class and sex for the period between 2010 and 2014 shows that the totals for public and private secondary schools rose by 9.5 per cent from 2.1 million in 2013 to 2.3 million in 2014 (Table 5.3). Total enrolment of girls increased by over 10 per cent from 976,565 in 2013 to 1.1 million in 2014. That for boys grew by 6.6 per cent. It is fair to assume that the Form 1 students of 2011 continued to become the Form 4 students of 2014. Consequently, one could conclude that the dropout among the boys' stands at 29,428, while that for girls is 30,576, giving respective survival rates of 89.4 per cent and 87.5 per cent.

Table 5.3: Enrolment in secondary schools by class and sex, 2010-2014 ('000)

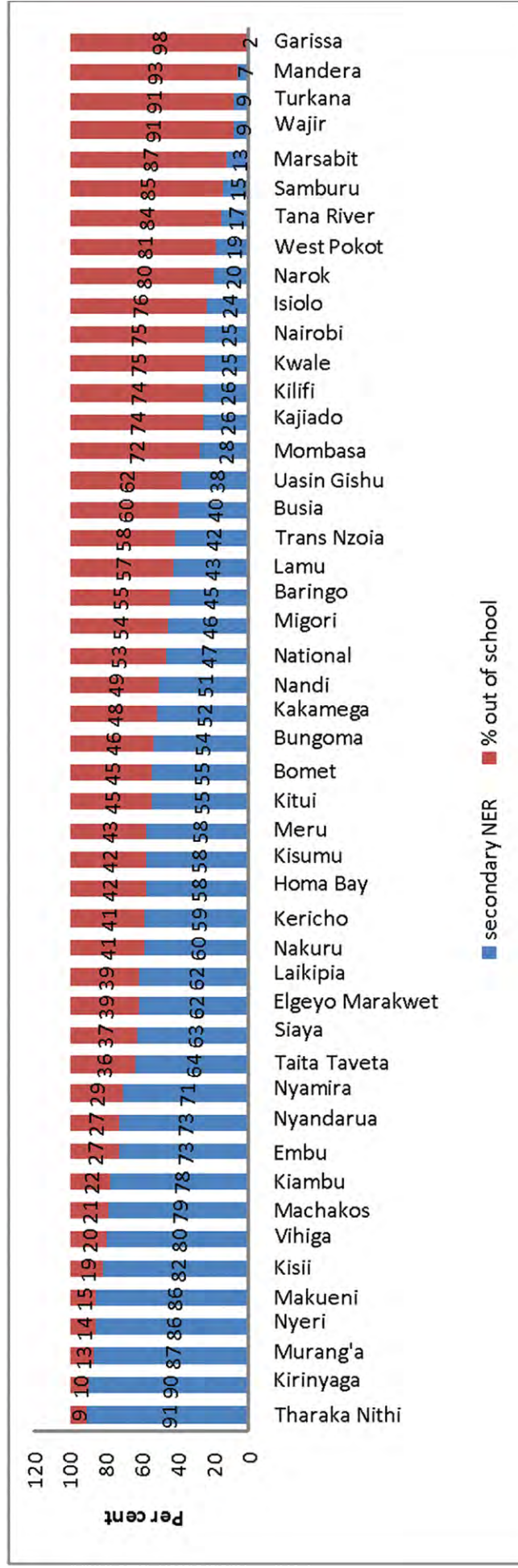
	2010		2011		2012		2013		2014	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Form 1	266,707	232,226	276,965	244,636	282,555	249,573	327,775	289,753	339,134	328,017
Form 2	232,145	211,799	240,552	219,469	274,195	239,743	288,238	253,739	324,143	304,455
Form 3	216,786	181,823	224,637	188,408	239,149	218,278	267,221	228,869	291,440	261,088
Form 4	169,899	141,999	206,552	166,501	223,132	188,198	244,463	204,204	247,537	214,060
Total	885,537	767,847	948,706	819,014	1,019,031	895,792	1,127,697	976,565	1,202,254	1,107,620
Grand Total	1,653,384		1,767,720		1,914,823		2,104,262		2,309,874	
Parity Index (girls/boys)	0.87		0.86		0.88		0.87		0.92	

Source: KNBS (2015), *Economic Survey*

The distinct difference between county primary NER (Figure 5.4) and that at the secondary level (Figure 5.10) is their distributions. At the primary level, there was enrolment parity among several clusters of counties, unlike the secondary level where parity is rare. A likely explanation for both the higher primary level NERs across the counties and the greater clustering is the leveling effect of FPE. The FdSE does not have such an effect, since it only covers some secondary schools. Consequently, county secondary NER likely correlates closely to county socio-economic status. The lowest 10 NERs belong to ASAL counties,

with 4 counties recording an OOS rate of at least 90 per cent. However, the NERs of the two largest cities, Nairobi and Mombasa, are remarkably low, respectively at 25 per cent and 28 per cent, meaning an OOS level of at least 75 per cent. A comparison of these county NER data with those for 2009 reveals great improvements; whereas only 13 counties' NERs were above 30 per cent in 2009, the number is 32 for 2013. Further, while 10 counties in 2009 had an NER of 10 per cent or less, this was the case with only 4 counties in 2013. Finally, 26 counties' NER scores for 2013 are greater than 2009's top NER of 50 per cent.

Figure 5.10: County distribution of secondary level NER, 2014

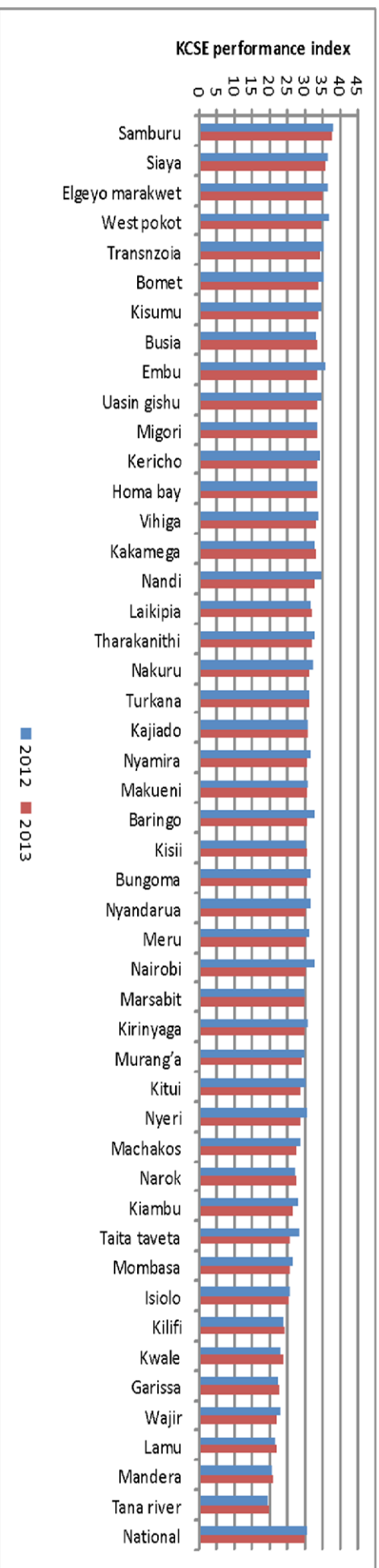


Republic of Kenya (2015)

The national average KCSE output measure of 35 per cent, and the scores across the counties with a maximum below 40 per cent, are low for 2012 and 2013, as shown in Figure 5.1. About 72 per cent of the KCSE candidates did not achieve minimum grade for admission in university or other middle level colleges, notably the grade C+ benchmark.⁸⁷ The data further show that the mean 2013 scores for some 30 counties were worse than that for the previous year. Other data show that the mean score was lower for female candidates across both years relative to their male counterparts.

87 For more information on university education eligibility, go to http://kuccps.net/sites/default/files/Placement_Processing_16042014_v1.pdf Accessed 20/03/2016

Figure 5.1.1: KCSE performance index, 2012 and 2013



Source: KNEC (2014)

Technical Vocational Education and Training

The Kenya Association of Technical Institutions (KATTI) is the body that coordinates the activities of technical training institutions all over the country. KATTI assists students who are interested in joining technical institutions to get access to any institution of their choice and guide them where best to get the education they need. The association also advises authorities responsible for formulation, development and implementation of TVET policy on professional issues.

Table 5.4 shows enrolment in TVET institutions from 2013 to 2015. The total enrolment in TVET institutions rose by 4.7 per cent from 148,142

in 2014 to 155,176 in 2015. The increase is attributed to expansion of TVET institutions in the country. Student enrolment in national polytechnics and technical universities declined by 5 per cent from 23,583 in 2014 to 22,403 in 2015. However, the enrolment of females in these institutions increased by 17.4 per cent compared to a decrease of 18.6 per cent from males. Enrolment in youth polytechnics has been growing since 2013. It grew by 5.1 per cent from 73,695 in 2014 to 77,465 in 2015 mainly due to the expansion of the youth polytechnics and infrastructure development by the county governments.

Table 5.4: Student enrolment in technical institutions by sex, 2013-2015

Institution	2013		2014		2015	
	Male	Female	Male	Female	Male	Female
Technical University of Kenya	4,814	2,607	4,432	2,769	3,911	2,517
Technical University of Mombasa	3,048	1,506	3,250	1,708	2,835	1,633
Kenya Technical Teachers College	-	-	858	597	913	1,119
Kisumu Polytechnic	2,223	1,267	2,926	1,872	2,078	2,422
Eldoret Polytechnic	3,081	1,949	3,194	1,977	2,189	2,786
Sub-Total	13,166	7,329	14,660	8,923	11,926	10,477
Other TIVET Institutions						
Technical and Vocational Colleges	31,956	23,989	29,632	21,232	32,221	23,087
Youth Polytechnics	42,942	28,627	45,473	28,222	47,625	29,840
Sub-Total	74,898	52,616	75,105	49,454	79,846	52,927
TOTAL	88,064	59,945	89,765	58,377	91,772	63,404

Source: Republic of Kenya (Various)

University Education

Placement in universities in Kenya is the function of the Kenya Universities and Colleges Central Placement Service (KUCCPS,) which in 2014 assumed a broadened function of the Joint Admissions Board (JAB).

Created by the Education Act of 2012, KUCCPS places students into all universities registered by the Commission on University Education, all universities with Letters of Interim Authority, and all colleges registered by the Technical Vocational Education and Training Authority. While JAB oversaw entry into public universities alone, KUCCPS' expanded role to include private universities and technical and vocational colleges recognizes that public universities cannot cope with the demand for university education, which the government has an obligation to make accessible. Appropriately, therefore, the funding mandate of the Higher Education Loans Board (HELB) has over time extended beyond public universities to private ones and colleges at home and abroad.

As noted above, the minimum grade for entry into Kenyan universities through KUCCPS is C+. The trend has been that the numbers qualifying outnumber available spaces as reflected in Table 5.5. For example, while 97,134 qualified for admission in 2011/12, JAB admitted only 33.6 per cent, which was nonetheless an improvement on the previous years.

Table 5.5: Students qualifying for and admitted into public universities, 2007/08 to 2011/12

Academic Year	Number Qualified (C+ and above)	Joint Admissions Board	Per cent admitted
2007/08	68,040	12,261	18.0
2008/09	62,853	16,134	25.7
2009/10	72,590	20,073	27.07
2010/11	81,000	24,216	33.4
2011/12	97,134	32,648	33.6

Source: Education Sector 2013/14-2015/16 Medium Term Expenditure Framework

A constraint to admitting a greater share of qualified students to university has been the number of bed spaces available. The response to this has been an expansion in the numbers of private and public universities, as well as in the spread of individual universities into constituent colleges across the country. The public universities have also introduced Module II programmes – also dubbed ‘parallel’ or self-sponsored degree programmes, which enable people in full employment to advance their studies through evening and weekend classes.^{88 89}

Table 5.6 shows a 200 per cent growth in the number of public universities between 2011/12 and 2014/15, while private universities have grown 15 per cent to close at 31. Overall, the change in the number of universities during the period has been 59 per cent. A challenge arising from this rapid expansion has been the issue of quality.

Table 5.6: Growth in public and private universities, 2011/12 to 2014/15

Year	Number of Universities		
	Public	Private	Total
2011/12	7	27	34
2012/13	8	27	35
2013/14	22	30	52
2014/15	22	31	53
2015/16	23	30	53

Source: Republic of Kenya (Various)

Despite the expanded opportunities for university education referred to above, access and participation remains low (Table 5.6). Consequent to the low access and costly alternatives, there is no equity for education and training as the university level tends to favour those from wealthy backgrounds. In fact, those from wealthy backgrounds in most cases do not take up their offers to join the “regular” degree programmes, and instead they join the “module two” degree programmes or in some cases join private universities. A question arises as to who fills up such vacancies foregone by the wealthy? An affirmative action for recommendation would be to reserve such vacancies for Orphans and Vulnerable Children who have attained the minimum university entry requirements but due to limited spaces, they were left out.

Statistics available show gender disparity in university enrolments (Table 5.7), especially in engineering and technology-based programmes. The data show that the numbers of male, female and total students doubled during the four-year period, but the starting and closing figures for the female students were much lower. The disparity between the male and female students is captured by the gender parity index; that it is diminishing means the gap between the male and female enrolment levels is widening. The other notable feature of Table 5.7 is growing share of public university students, which rises from 74 per cent in 2011/12 to 82 per cent in 2014/15.

88 Among others, analysts have argued that the generous direct payments received by lecturers in such ‘moonlighting’ roles cause them to overlook their Module I responsibilities. For the issues arising, see Mwiria, et al. (2007).

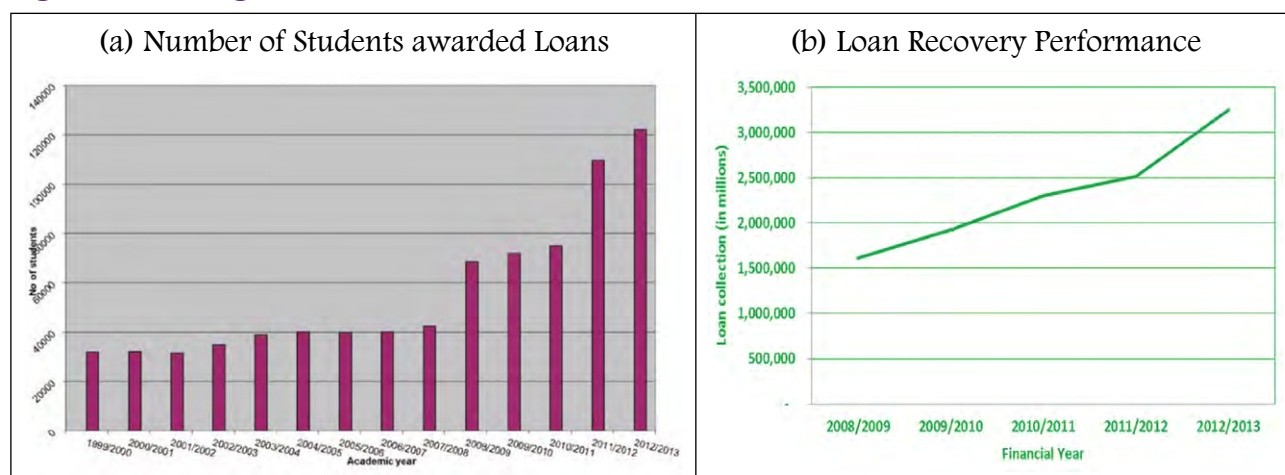
89 A 2010 publication estimates parallel students to account for 40 percent of the total university population in Kenya. See Otieno (2010).

Table 5.7: University enrolments by gender, 2011/12 to 2014/15, ('000)

	2011/12			2012/13			2013/14			2014/15		
	Male	Female	Total ('000)	Male	Female	Total ('000)	Male	Female	Total ('000)	Male	Female	Total ('000)
Public	59.8	40.2	167.8	56.5	43.5	202.8	60.7	39.3	299.6	60.4	39.6	373.9
Private	54.5	45.5	60.7	54.3	45.7	54.5	55.8	44.2	71.6	52.8	47.2	80.5
Total ('000)	133.4	95.0	228.4	144.1	113.1	257.3	221.8	149.4	371.3	268.2	186.2	454.3
% shares	58.4	41.6	100.0	56.0	44.0	100.0	59.8	40.2	100.0	59.0	41.0	100.0
Gender Parity Index	0.71			0.78			0.67			0.69		

Source: Republic of Kenya (Various)

In recognition of the financial difficulties prospective and actual university students face, and as part of the Bretton Woods prescribed cost-sharing reforms of the 1980s, the government introduced an ad hoc University Students Loan Scheme in the mid-1970s, which was superseded by the Higher Education Loans Board (HELB) in 1995. Presently, HELB offers loans, bursaries, and scholarship funds, and has a training revolving fund and an Afya Elimu Fund.⁹⁰ The (a) part of Figure 5.12 shows the growth in the number of student loanees, rising from about 30,000 in 1999/00 to about 120,000 in 2012/13, with a sharp rise in the numbers during 2007/08. Part (b) of the figure shows trends in loan recoveries, growing from just over Ksh 1.5 million in 2008/09 to over Ksh 3 million in 2012/13. These data say little about how much is actually lent; however, estimates place university students' funding needs at US\$ 666, but HELB currently gives at least US\$ 380 with a ceiling of US\$ 555.

Figure 5.12: Higher education loans, 1999/2000 to 2012/13

Source: HELB (2012), Annual Book and Financial Statements

Special Needs Children and OVCs

The earliest initiatives serving persons with special needs and disabilities came through faith-based organizations, which spawned government-subsidized non-government organizations, such as Kenya Society for the Blind, Association for the Physically Disabled of Kenya, Kenya Society for the

90 For the history and operation of HELB, go to <http://www.helb.co.ke/about-helb/history/> Accessed 25/03/2016.

Mentally Handicapped, and the Kenya Society for Deaf Children.⁹¹

Meanwhile, independent Kenya inherited and acquired commitments to various international benchmarks with attention to special needs and disabilities, dating back to the UN Declaration on Human Rights of 1948. The stock of global conventions eventually included the UN Convention on the Rights of the Child (1989), African Charter on the Rights and Welfare of the Child (1990), Salamanca Statement (1994), and the Framework for Action on Special Needs Education (1999). The Millennium Development Goals (MDGs) and Education for All (EFA) by 2015 followed in 2000, and the UN Convention on the Rights of Persons with Disabilities in 2006 and now the SDGs 2015.

These global initiatives elicited national responses, evidenced by succeeding education policy consultations, including the Committee on Care and Rehabilitation of the Disabled (1964), Kenya Education Commission (1964), and National Education Commission on Education Objectives and Policies (1976).

Other consultations included The Presidential Working Committee on Education and Training for the next Decade and Beyond (1988), Commission of Enquiry into Education Systems, officially The Totally Integrated Quality Education and Training Taskforce (1999), Framework for Action on Special Needs Education (1999), and the Task Force on Special Needs Education (2003). Additionally, Sessional Paper No. 1 of 2005 – “A Policy Framework for Education, Training and Research” – consolidated the foregoing concerns, leading to the 2009 National Special Needs Policy Framework.

The 2003 launch of the Free Primary Education (FPE) programme opened the

doors for children eligible for education but hitherto excluded by diverse circumstances, most notably the interface between poverty and cultural obligations. Alongside the various obligations driving attention to special needs and disabilities, such as the Children Act of 2001, FPE attracted hitherto excluded child groups, calling for the development of a framework for their management within the education system.

The definition of ‘special needs’ has evolved over time with the National Special Needs Education Policy Framework including hearing, visual and physical impairments, cerebral palsy, epilepsy, mental handicaps, down syndrome, autism, and emotional and behavioral disorders. Other conditions include learning disabilities, speech and language disorders, multiple handicaps, albinism, and other health impairments. Additional concerns include children with gift and talents, orphans, abused, living in streets, heading households, belong to nomadic or pastoralist households, or are internally displaced. The issues surrounding special needs and SNE include access, equity, quality, relevance, attitude, stigma, discrimination and cultural taboos. Others include skills, physical environment, physical facilities and poverty.

Among the underlying constraints to a viable Kenyan SNE context were the lack of data on the extent of demand among children with special needs and with disabilities, and the consequent lack of comprehensive mainstreaming policies, strategies and skills for timely interventions. Additionally, there was inadequate physical infrastructure, teaching skills and materials with which to engage inappropriately with children with special needs and disabilities.

Among the measures enhancing attention in education for children with special needs include the passage of the Disability Act of 2003, and preparation of the report of the Task Force on Special Needs Education of 2003–dubbed the ‘Kochung’ report’, Additionally, increased funding has led to the Kenya

⁹¹ This background information on special needs is obtained from Republic of Kenya (2009), The National Special Needs Education Policy Framework. Final Draft. Nairobi: Ministry of Education

Institute of Special Education's (KISE) training of more teachers. Alongside SNE teacher training, the Kochung' report recommended enhanced investment in Educational Assessment and Resource Centre, the conduct of a related national SNE survey to establish the demand and supply contexts, and factors determining access to existing resources.

Table 5.8 provides data on the distribution of orphans and vulnerable children (OVC) and special needs children at primary and secondary education levels across counties. The data show that the national level share of OVCs and Special needs children in primary schools to be 13.4 per cent, while the secondary school-share of OVCs and special needs children stand, respectively, at 11.2 per cent and 0.6 per cent. The data reveal wide variations in these categories at the primary education level across the counties, ranging from Kirinyaga's 5.3 per cent to Homa Bay's 27.6 per cent. Across secondary level education, the share of OVCs is markedly higher than that of special needs education, the former's range running from 4.4 per cent to a high 27.2 per cent, while OVCs' share only rising above 1 per cent in Busia, Kisii, Kisumu, Mandera, Uasin Gishu and Wajir.

Table 5.8: Percentage shares of special needs children and OVCs in total enrolment

County	OVCs and special needs primary schools	OVCs secondary schools	Special needs secondary total	County	OVCs and special needs primary schools	OVCs secondary schools	Special needs secondary schools
Kirinyaga	5.3	5.7	0.2	Lamu	12.2	6.5	0.5
Kericho	5.7	7.1	0.6	Mombasa	12.6	8.7	0.7
Bomet	6.6	5.8	0.4	Machakos	12.9	10.9	0.4
Nyeri	6.9	5.4	0.5	Garissa	13.0	14.6	0.8
Nyandarua	7.1	6.0	0.2	Kilifi	13.4	12.5	0.6
Murang'a	7.3	5.7	0.3	Tana River	14.3	14.8	0.2
Narok	7.4	6.8	0.3	Bungoma	15.0	11.2	0.8
Elgeyo Marakwet	8.0	8.4	0.2	Tharaka Nithi	15.3	7.5	0.4
Nandi	8.3	6.7	0.6	Kakamega	16.2	12.6	0.5
Nakuru	8.5	8.9	0.7	Makueni	16.3	9.9	0.5
Embu	8.6	6.9	0.5	Nyamira	17.0	12.1	0.6
Kitui	9.5	10.7	0.2	Marsabit	17.7	14.1	0.4
Kajiado	9.5	8.1	0.3	Turkana	17.7	11.5	0.4
Laikipia	9.6	7.9	0.6	Busia	18.5	17.6	1.1
Kiambu	9.6	6.6	0.7	Samburu	20.7	16.4	0.6
Uasin Gishu	10.0	6.5	1.2	Wajir	21.3	13.8	1.1
Nairobi	10.2	11.8	0.8	Vihiga	21.3	14.7	0.4
Baringo	10.5	9.5	0.7	Isiolo	21.3	18.7	0.5
Meru	10.7	8.2	0.7	Migori	21.6	21.4	0.8
Kwale	11.1	8.2	0.1	Mandera	23.5	13.9	1.4
Taita Taveta	11.5	12.2	0.2	Siaya	24.2	20.3	0.6
Trans Nzoia	11.6	11.6	0.5	Kisumu	25.4	27.2	1.0
West Pokot	11.8	7.6	0.9	Homa Bay	27.6	26.5	0.7
Kisii	11.8	11.6	1.1	National	13.4	11.2	0.6

Source: Republic of Kenya (Various)

Table 5.9 provides data on the percentage distribution of those in school by age and county. The data show that the national level share of those aged between 6-13 years and those aged 10-13 years to be 93 per cent, while those aged 4-5 and 14-17 to be 80 per cent and 90 per cent, respectively. The data reveal wide variation in these categories.

Table 5.9: Percentage in school by county and age

County	4-5yrs	6-13yrs	14-17yrs	County	4-5yrs	6-13yrs	14-17yrs
Nairobi	96	97	100	Kisumu	67	83	79
Nyandarua	78	97	96	Migori	78	98	93
Nyeri	67	100	100	Homa Bay	84	98	91
Kirinyaga	85	100	100	Kisii	91	96	87
Murang'a	63	96	93	Nyamira	93	98	97
Kiambu	86	92	97	Turkana	39	79	59
Mombasa	82	81	70	West Pokot	53	95	91
Kwale	70	87	89	Samburu	63	95	95
Kilifi	72	97	84	Trans Nzoia	69	92	88
Tana River	52	91	90	Baringo	100	96	100
Lamu	81	100	94	Uasin Gishu	87	93	92
Taita Taveta	82	86	85	Elgeyo Marakwet	100	93	100
Marsabit	0	82	76	Nandi	99	98	99
Isiolo	58	92	83	Laikipia	100	90	94
Meru	81	96	98	Nakuru	75	77	52
Tharaka	100	100	2	Narok	92	100	94
Embu	100	98	86	Kajiado	58	89	83
Kitui	91	99	96	Kericho	77	77	83
Machakos	92	100	100	Bomet	93	99	97
Makueni	100	73	72	Kakamega	82	97	99
Garissa	52	35	65	Vihiga	49	99	97
Wajir	11	77	64	Bungoma	82	98	97
Mandera	18	63	39	Busia	91	95	92
Siaya	77	100	95	National	80	93	90

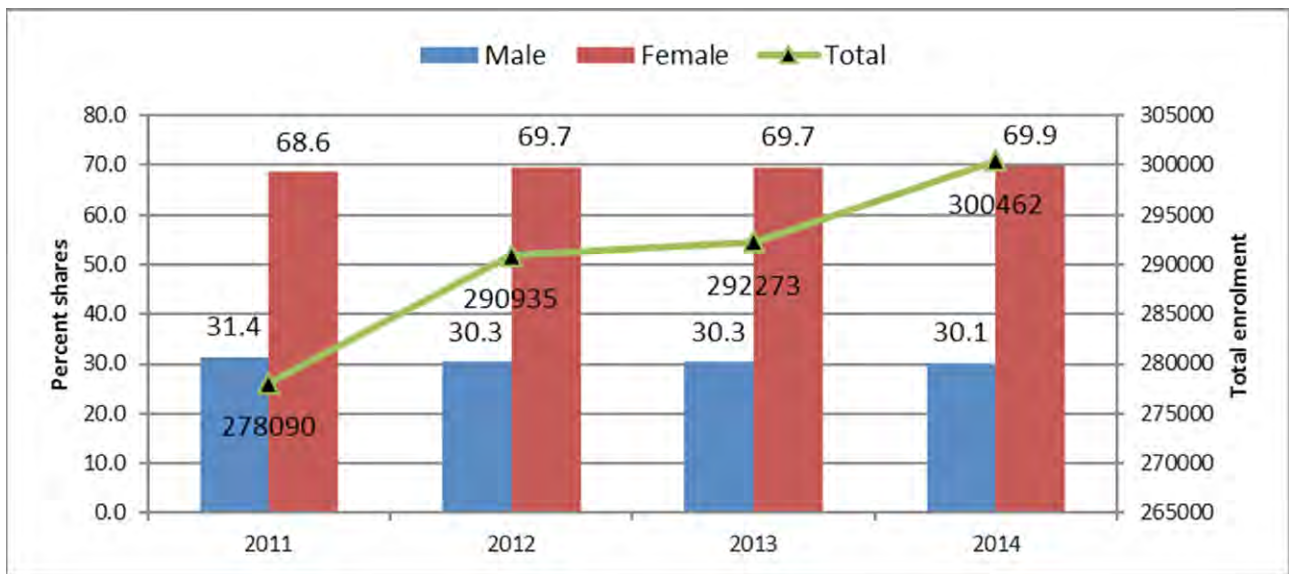
Source: Equality and Inclusion Survey (2015)

Adult and Continuing Education

The OOS data at various education levels above (e.g. Figures 5.5 and 5.10) – reflecting the influences of poverty and well-known cultural constraints, for example – mean that some Kenyans reach adulthood while illiterate. The government has continued to invest in adult and continuing education. Figure 5.13 shows a closing total enrolment, which is some 8-percentage point higher than the 2011 level. However, the most striking feature of the data is that female enrolment is not only consistently higher than that for males, but that it is consistently more than double that for males. This greater female enrolment suggests there are obstacles to education participation in earlier life.

These initiatives partially contribute to the status of literacy in the general population, with a rate of 94.4 per cent for ages 15 to 24, and 49 per cent for ages 45 to 49.

Figure 5.13: Enrolment in adult and continuing education and shares by sex 2011-2014

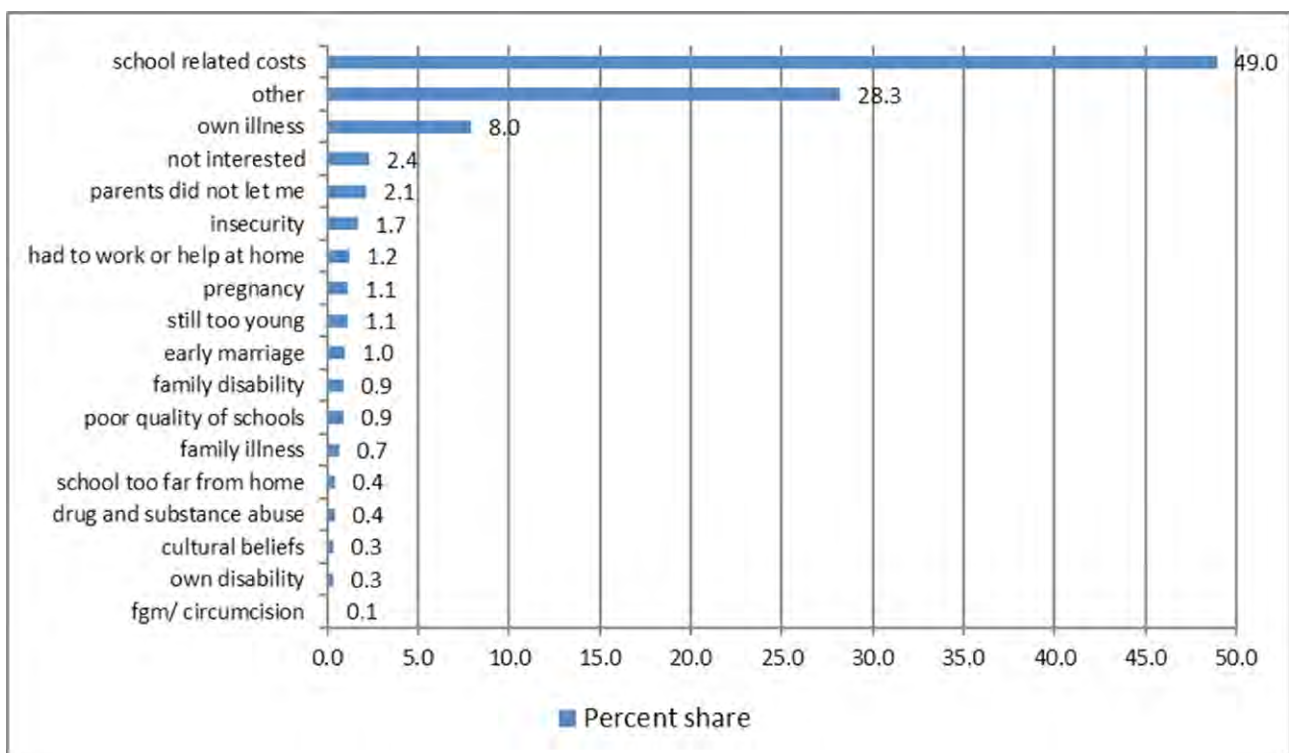


Source: Government of Kenya (2016), Economic Survey

Barriers to equity and access

As noted above, ‘access’ is a more comprehensive concept of service delivery than ‘enrolment’, which simply refers to uptake; but successful attention to access issues can improve enrolment. Equity, on the other hand, refers to “fairness”. The baseline survey reported here inquired into the social, educational and infrastructure barriers to access. Figure 5.14 reports survey data for 2015 on reasons why school going-age children are not in school. It is of great concern that in the FPE and FDSE era, school-related costs should be responsible for 49 per cent of those not attending school. The other reasons given are as diverse as are the socio-economic characteristics of the Kenyan society.

Figure 5.14: Reasons for not attending school, 2015



Source: Equality and Inclusion Survey (2015); FGM represents Female Genital Mutilation

The Equality and Inclusion survey sought to establish the factors that affect enrolment, attendance and completion of education across regions. Results presented in Table 5.10 indicate the instances where the various factors were considered a major problem. Overall, infrastructure for children with disabilities was perceived as a major problem by the largest share of respondents – 34 per cent, while the condition of school facilities had the lowest subscription (18%). While infrastructure for children with disabilities led the urban complaints, the pre-eminent rural complaint was clean and safe water and sanitation (29% against 17%). Across levels of the education system, a large proportion (44%) of pre-primary respondents flagged infrastructure for children with disabilities, while another 35 per cent pointed to seasonal factors such as rains and floods. Infrastructure for the disabled children was also the dominant ‘major problem’ for all the other levels of education – rising to 50 per cent for special education. While none of the university respondents perceived it as such, it is possible that PWDs do not get the opportunity to study up to the level of university.

Table 5.10: Percentage who admit that barriers to schooling exist, by level of Education, 2015

Barriers	All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special Education
Distance to school	22.1	21.4	23.1	23.8	19.7	14.6	35.3	25.0	16.7
Transportation to school	21.0	20.9	21.2	26.9	18.0	14.7	33.3	25.0	16.7
Clean and safe water and sanitation at school	24.5	29.2	17.2	25.9	25.3	18.6	22.2	0.0	16.7
Infrastructure for children with disabilities	33.7	32.7	35.5	44.4	32.0	25.5	38.9	0.0	50.0
Condition of school facilities	17.5	18.8	15.3	26.9	18.4	13.6	22.2	25.0	16.7
Seasonal factors such as rains and floods	24.1	24.5	23.5	34.6	27.8	21.6	11.1	0.0	33.3
Arid and semi-arid conditions	18.7	22.0	13.5	12.0	20.4	16.3	16.7	25.0	33.0
Accommodation and/or boarding facilities	20.9	24.3	15.6	28.0	17.5	21.2	17.6	50.0	33.0

Source: Equality and Inclusion Survey (2015)

The main problem facing equity and access to university is accommodation and boarding facilities. This is tied to the fact that regular admission to public universities is pegged on bed capacity. It is important that this criteria is repealed to increase access to university education.

The baseline survey report inquired reasons for not attending school or being out of school for those aged between 6-13 years and 14-17 years. Table 5.11 reports survey data for 2015 on reasons why school going-age children are not in school. As mentioned earlier school related costs is a major hindrance for those aged between 6-13 and 14-17 accounting for 50.3 per cent and 40.8 per cent respectively. The other reason given was lack of interest (11.8 per cent and 16.8 per cent) in primary and secondary education. Those aged 14-17 were not interested in education perhaps in order to work to help at home or due to pregnancies

Table 5.11: Reasons for not attending school/out of school for 6-13 years and 14-17 years

Reasons	6-13 yrs. (%)	14-17 yrs. (%)
Drug and substance abuse	4.8	0.7
School related costs	50.3	40.8
Own illness	0.3	1.0
Own disability	3.4	1.2
Family illness	1.4	1.5
Family disability	4.2	3.3
Not interested	11.8	16.8
Parents did not let me	6.3	2.2
Had to work or help at home	2.5	7.0
Pregnancy	2.1	6.9
Early marriage	0.4	3.4
Cultural beliefs	0.8	1.0
Other	11.8	14.1

Source: *Equality and Inclusion Survey (2015)*

The baseline survey report inquired into reasons for not attending school or being out of school for those aged between 6-13 years and 14-17 years. Table 5.11 reports survey data for 2015 on reasons why school going-age children are not in school. As mentioned earlier, school-related costs is a major hindrance for those aged 6-13 and 14-17 years. The other reason given was “not interested in education”. Those aged 14-17 years were not interested in education perhaps in order to work to help at home or due to various reasons, such as pregnancies.

Management of education frameworks

The education and training sector has been quite vibrant in response to emerging issues such as the rapid growth in enrolment in response to

the introduction of FPE and FdSE. Indeed, the effective management of the sector is critical for the realization of the goals of *Kenya Vision 2030*, and its Medium-Term Plans, as well as global goals such as Education for All and SDG No. 4 on quality education. The overriding sector blueprint is Sessional Paper No. 1 of 2005, whose implementation involved adjustments in the context of the new Constitution of 2010, resulting in new legislation covering the management of education in general, as well as of teachers and examinations.

Frameworks for managing equality and inclusion

The survey explored the existence and effectiveness of various indicators of equality and inclusion in the education sector, with findings reported in Table 5.12. Overall, 69 per cent of the respondents acknowledged the existence of indicators to monitor enrolment by socio-economic characteristics. However, perceptions varied on their effectiveness, which only 54 per cent of the respondents acknowledged. Perceptions of their effectiveness was greater among rural than urban respondents (55% against 53%), and perceived effectiveness declined as one moved up the education ladder. On pupil participation in learning processes by economic background, only 67 per cent of the respondents acknowledged related indicators, their effectiveness standing at 53 per cent. The outstanding findings on this issue were among special needs institutions, that: (i) no indicators for learning achievements were effective; and (ii) that only 17 per cent felt indicators for ECDE coverage by socio-economic background were effective.

Table 5.12: Perceptions on indicators for monitoring equality and inclusion

Monitoring Indicators exist	Exists and Effective								
	All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special Education
Enrolment in school by socioeconomic characteristics									
68.5	53.8	54.6	52.6	64.0	55.1	56.2	71.4	33.3	50.0
Pupil participation in learning process by economic background									
67.2	53.3	54.1	51.9	56.0	53.0	55.7	71.4	33.3	50.0
Learning achievements									
87.5	68.9	69.1	68.5	76.0	68.1	69.2	75.0	100.0	0.0
ECDE coverage by socioeconomic background									
67.8	49.8	50.4	48.7	52.2	55.8	47.8	53.8	66.7	16.7
Per cent age of teachers trained in equality and inclusion issues									
62.3	46.4	46.3	46.4	59.1	47.0	47.1	53.3	33.3	50.0
Adequate infrastructure									
65.8	40.7	42.9	37.0	64.0	38.9	40.7	50.0	66.7	50.0

Source: *Equality and Inclusion Survey (2015)*

The survey inquired into quality enhancing changes necessary in the current education delivery approaches to increase equality and inclusion. Over three-quarters of the respondents proposed attention to the design and institutionalization of appropriate capacity building programmes, as seen in Table 5.13. This support was consistent for all education levels, but slightly more in urban than rural areas. The other proposed changes with good support included the adoption of collaborative multi-sector approaches (71% approval), needs based funding (65% approval) and targeted budgeting for special interest groups (57% support).

Interestingly, only 19 per cent supported the transfer of primary and secondary education functions to counties, with no support for this at all among universities and special needs institutions.

Table 5.13: Changes to enhance equity in education management (%), 2015

All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special Education
Design and institutionalize appropriate capacity building programmes								
76.8	73.7	81.6	78.6	75.3	77.5	88.8	66.7	80.0
Transfer primary and secondary education functions to counties								
19.3	19.1	19.6	25.9	19.3	16.7	11.1	0.0	0.0
Ensure targeted budget allocation for special interest groups								
57.1	56.5	58.1	65.3	55.6	52.0	72.2	33.3	40.0
Adopt needs based funding approach to education financing								
65.2	63.8	67.4	64.3	63.1	61.9	83.3	66.7	80.0
Adopt collaborative approach between education and other sectors, e.g. health, agriculture, public works, communities, civil society, NGOs, etc								
70.8	72.7	67.7	71.4	70.3	66.3	83.3	199.0	40.0

Source: *Equality and Inclusion Survey (2015)*

In most instances, support for the proposed changes was greater in urban than rural education facilities, except in the instance of increased collaboration across sectors. There was a mixed picture of responses across the different levels of the education system, but support for the changes seemed greater at the base of the system. While special education respondents supported several of the changes, they joined university respondents in not supporting the transfer of primary and secondary education to the counties.

When asked for changes in the current education system to improve equality and inclusion, there was strong support for all the proposals put to respondents, as shown in table 5.14. Special needs education respondents were unanimous on all issues except the elimination of hidden costs. The universities did not favour attention to stigmatization attitudes towards marginalized children. Across the proposals, urban support was generally greater than rural support except for provision of school meals/nutrition and provision of second chance/re-entry programmes.

Table 5.14: Changes in current system for improved equality and inclusion (%), 2015

All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special Education
Increase capitation grant and ensure the resources are utilized efficiently								
93.9	92.8	95.7	92.8	93.0	98.0	94.1	100.0	100.0
Eliminate hidden costs such as uniform, books, development								
75.9	74.5	78.1	77.8	70.4	82.0	88.9	50.0	50.0
Community mobilization								
92.9	92.8	93.0	85.7	90.7	96.1	100.0	66.7	100.0
Support bridging programmes for returning children after child labour, giving birth								
90.5	90.2	90.9	92.6	88.2	95.1	94.4	50.0	100.0
Address stigmatization attitudes in school towards marginalized children								
88.9	87.6	90.9	92.6	86.9	91.2	100.0	33.3	100.0
Provide school meals/nutrition								
93.7	94.8	91.9	100.0	93.2	93.1	94.4	100.0	100.0
Provide school health services e.g. de-worming, vitamin supplements								
96.4	96.7	95.9	100.0	96.3	97.1	94.4	100.0	100.0
Provide cash transfers for vulnerable children								
91.6	91.4	91.8	92.6	89.3	95.1	94.1	66.7	100.0
Provide second chance/re-entry programmes								
93.2	94.7	90.6	92.8	92.5	96.0	100.0	50.0	100.0

Source: *Equality and Inclusion Survey (2015)*

Community participation and committees

Of the areas for which inquiry was made on the existence of frameworks for parent and learners involvement in promoting equality and inclusion, Table 5.15 shows that the approval rating was at least 80 per cent. However, perceptions on the effectiveness of such frameworks varied greatly across respondent groups. Frameworks had an effectiveness score of 80 per cent for participation in management bodies, and in school and co-curricular activities. However, the effectiveness scores for utilization of local knowledge, participation in training and advocacy, provision of infrastructure and awareness campaigns dropped to the 50 per cent and 60 per cent.

Table 5.15: Involvement of parents and learners in promoting equality and inclusion in education (%), 2015

Framework for parents and learners involvement exists	Framework exists and is effective								
	All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special Education
Involvement in parents associations/parents teachers association and board of management/board of governors									
97.2	83.4	83.5	83.2	89.3	81.7	81.8	87.5	66.7	100.0
Provision of infrastructure									
78.9	58.2	56.8	60.2	52.0	56.5	60.0	66.7	66.7	66.0
Awareness campaigns on issues affecting children with disabilities, HIV; child labour, child health and nutrition; child developmental issues									
80.9	65.5	63.1	69.3	53.8	61.7	66.3	68.7	100.0	83.3
Participation in school clubs, co-curricular activities that promote inclusion and equality									
91.5	79.7	78.4	81.7	78.6	79.2	79.6	81.3	66.7	100.0
Participation in training and advocacy on equality and inclusion among school management committees, parents association and board of management									
83.9	65.4	65.3	65.6	68.0	58.9	62.9	68.7	100.0	60.0
Utilization of local knowledge and existing community practices									
78.7	61.9	58.2	67.8	68.0	65.0	59.1	60.0	50.0	60.0

Source: *Equality and Inclusion Survey (2015)*

Quality and effectiveness of curriculum implementation

Respondents were asked to evaluate whether education curricula integrated equality and inclusion, and whether such support was effective. Table 5.16 shows that such integration was perceived to be weak, with affirmation ranging from 34 per cent on the availability of instructional material and visuals aids in alternative formats, to 53 per cent for sensitivity to gender, culture and diversity. On effectiveness, too, overall perceptions were divergent, ranging from 39 per cent for assistive and adaptive technology devices, to 72 per cent for sensitivity to gender, culture and diversity issues. Across the education institutions, university respondents were most positive on effectiveness: but none of them perceived effectiveness in instructional materials and visual aids are available in alternative formats.

Table 5.16: Issues on curriculum integration of equality and inclusion issues (%), 2015

Curriculum exists and integrate equality and inclusion	Existing curriculum is Effective									
	All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special Education	
Curriculum is sensitive to gender cultural identity and diversity issues	52.5	72.4	74.8	68.8	80.0	72.8	67.7	46.7	100.0	100.0
Curriculum is relevant and adaptive to the needs of all children	50.8	67.8	70.5	63.7	61.5	71.6	62.4	66.7	50.0	83.3
Curriculum allows for local adaption and flexibility	49.8	66.3	71.3	58.9	75.0	70.6	61.1	60.0	50.0	66.7
Curriculum addresses the needs for persons with special needs	48.2	58.1	59.1	56.5	66.7	60.3	54.4	42.8	100.0	60.0
KNEC examination and learning assessment methods allow for variations for all children	50.0	66.4	70.9	58.8	68.0	68.1	63.7	46.7	100.0	60.0
Instructional materials and visual aid are available in alternative formats	33.9	51.2	53.4	47.6	54.2	49.6	56.8	31.3	0.0	50.0
Life skills curriculum	50.0	60.0	60.6	59.1	72.0	64.6	51.6	42.9	50.0	20.0
Abilities based learning and education support	44.4	54.3	55.9	51.8	65.2	54.2	48.9	42.9	50.0	60.0
Provision of assistive and adaptive technology devices	35.1	39.1	40.2	37.3	54.6	41.9	38.6	9.1	0.0	0.0

Source: *Equality and Inclusion Survey (2015)*

Table 5.17: Proportion satisfied with the quality of education (%), 2015

Category	Per cent
National	90
Children	97
Youth	88
Women	70
PWDs	89
Elderly	40
Minority	84

Source: *Equality and Inclusion Survey (2015)*

Respondents were asked to evaluate whether they were satisfied with the quality of education being taught in Kenyan schools. Table 5.17 shows that children are more satisfied with the quality of education than all other SIGs. The elderly reported the least on the quality of education in Kenyan schools compared to the other SIGs who scored above 70 per cent. As shown in Table 5.18 Nyandarua, Marsabit, Isiolo, Meru, Kitui, Siaya, Baringo, Narok and Busia counties are all satisfied with the quality of education taught in Kenyan schools.

Table 5.18: Proportion satisfied with the quality of education taught in Kenya by county

County	Level of Satisfaction (%)	County	Level of Satisfaction (%)
Nairobi	94	Kisumu	84
Nyandarua	100	Migori	89
Nyeri	67	Homa Bay	98
Kirinyaga	73	Kisii	92
Murang'a	74	Nyamira	90
Kiambu	91	Turkana	71
Mombasa	71	West Pokot	88
Kwale	93	Samburu	69
Kilifi	79	Trans Nzoia	88
Tana River	86	Baringo	100
Lamu	99	Uasin Gishu	79
Taita Taveta	96	Elgeyo Marakwet	77
Marsabit	100	Nandi	97
Isiolo	100	Laikipia	40
Meru	100	Nakuru	91
Tharaka	97	Narok	100
Embu	100	Kajiado	89
Kitui	100	Kericho	78
Machakos	99	Bomet	82
Makueni	73	Kakamega	93
Garissa	90	Vihiga	96
Wajir	98	Bungoma	98
Mandera	99	Busia	100
Siaya	100	National	90

Source: Equality and Inclusion Survey (2015)

5.3 Learning Environment

Learning environment is generally shaped by policies, legislations and strategies that are put in place to support a particular action. In the previous chapters, we have reviewed policies and legislations that have been put in place to support equality and inclusion in education. These instruments range from international conventions and protocols to national policies and affirmative action. Similarly, for the instruments to be effective, it is important that they are disseminated widely across all the stakeholders.

Table 5.19 provides the returns for awareness of various education policies, which was above 80 per cent for all policies. Indeed, the coverage of the listed policies is such that effective implementation would significantly reduce inequality and exclusion. In terms of dissemination of the same policies, however, there were wide disparities in perceptions, reflecting a bias in favour of the national level, compared to the county and community levels. For example, dissemination of the

right to education policy stood at 81 per cent for the national level, compared to 9 per cent and 10 per cent, respectively for the other two levels. Interestingly, community level dissemination was better than the county level for all policies, except ECDE, school health and nutrition and school entry policy.

Table 5.19: Effectiveness of policies on the learning environment (%), 2015

Policies/Legislations	Awareness of education policies	Are policies disseminated at:			Effectiveness of monitoring implementation
		National	County	Community	
The right to education	99.7	80.7	9.0	10.3	61.9
Inclusive education	96.3	79.0	19.7	9.7	56.5
Gender and education	98.1	80.1	9.8	10.0	67.9
Children living with or affected by HIV/AIDs	93.8	71.5	13.4	14.7	57.9
Children with disabilities	96.6	74.7	11.3	13.6	49.6
Child labour	92.6	70.3	11.4	17.9	48.4
Marginalized, arid and semi-arid areas	80.3	72.4	16.4	11.2	44.0
Language of instruction	91.9	77.7	10.3	11.7	68.2
ECDE	96.2	50.0	42.2	7.8	78.8
Support for orphans and vulnerable children	80.9	0			41.0
Children out of school/street children	73.2				42.0
School health and nutrition	90.6	64.0	23.1	12.3	55.0
School safety, sexual harassment and violence	94.4				71.0
HIV work place policy	88.9	77.1	8.8	13.7	52.0
Teachers' code of conduct	99.1				54.0
School re-entry policy	86.4	77.8	12.2	9.5	50.0

Source: Equality and Inclusion Survey (2015)

During the survey, respondents were asked to identify strategies that were in place for equitable access for children at risk of not enrolling or completing education, with responses presented in Table 5.20. The acknowledgement that strategies were currently in place ranged between 69 per cent for flexibility in school days and calendars, to 90 per cent for community mobilization and participation in school management. When respondents were asked if the strategies in place were effective, the largest support (92.2%) was for community awareness on girls' education while the lowest approval (31%) went to Community level support. For only 5 policies were rural perceptions of effectiveness greater than urban perceptions, including expansion of ECDEs, Second chance opportunities, and Community awareness of girls' education, Infrastructure expansion, and Low cost boarding schools.

Table 5.20: Existence and effectiveness of strategies for equitable access to enrolment and completion risk children (%), 2015

Strategies currently in place	Effectiveness of such strategies								
	All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special Education
Free and compulsory early childhood care									
78.2	42.3	38.9	47.7	45.8	38.5	44.1	61.5	0.0	80.0
Universal measures e.g. abolishing school fees									
74.6	42.3	38.9	47.7	45.8	38.5	44.1	61.5	0.0	80.0
Flexibility in school days and calendars									
69.1	41.7	41.6	41.8	58.8	36.6	42.7	35.7	33.3	25.0
School construction and refurbishments									
75.4	35.9	35.3	37.1	30.8	34.3	40.9	38.5	33.3	16.7
Community level support									
77.6	30.9	30.3	31.9	24.0	31.9	40.0	46.2	33.3	0.0
Targeted interventions such as scholarships for girls and the marginalized									
76.1	37.4	35.6	40.2	29.6	39.7	38.9	35.7	33.3	0.0
Social protection tools such as cash transfers for vulnerable groups									
69.1	36.2	33.1	40.9	26.9	32.2	44.3	50.0	0.0	0.0
Incentives for teachers to work in rural areas									
69.9	42.5	38.4	48.9	32.0	40.3	46.5	66.7	33.3	16.7
Creation of an inclusive curriculum									
88.1	47.6	45.6	50.5	38.5	45.4	52.2	53.3	33.3	33.3
Inclusion of local content in curriculum									
70.2	67.9	67.1	74.2	70.4	69.8	69.4	64.7	100.0	66.7
School health, feeding and nutrition programmes									
82.9	88.5	83.9	85.4	88.9	82.1	82.6	82.3	100.0	83.3
Increasing female participation in teaching and school management									
83.9	84.9	83.9	86.6	85.2	86.1	82.6	82.3	100.0	83.3
Teacher education and equity issues and inclusive education									
88.7	90.6	90.6	90.7	96.3	89.3	84.7	100.0	100.0	83.3
Community mobilization and/or participation in school management									
90.3	91.6	88.9	95.5	96.0	88.3	91.9	100.0	100.0	66.7
Curriculum review to include gender, disability and HIV issues									
86.4	86.6	85.2	88.7	92.0	85.4	85.1	93.7	100.0	66.7
Instructional materials and books have integrated aspects of equality and inclusion									
89.8	90.2	88.9	92.1	92.0	88.9	89.7	93.7	100.0	83.3
Bursaries for girls and marginalized groups									
77.5	80.3	78.7	80.6	72.7	77.9	78.2	73.3	100.0	66.7
Expansion of ECDE for particularly vulnerable children									
74.7	75.7	77.4	72.9	68.0	76.6	73.3	66.7	100.0	80.0

Strategies currently in place	Effectiveness of such strategies								
	All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special Education
Second chance opportunities									
88.9	91.3	91.7	90.8	88.0	90.1	85.8	100.0	100.0	80.0
Targeting resources/teachers deployment incentives for disadvantaged remote schools									
79.6	80.8	79.1	83.5	83.3	80.9	75.3	86.7	66.7	60.0
Community awareness on girls' education									
91.8	92.2	95.5	87.4	100.0	90.8	91.8	86.7	100.0	80.0
Higher education loans									
86.6	87.7	88.2	87.1	86.9	85.3	90.2	78.6	66.7	80.0
Infrastructure expansion									
85.7	86.3	89.4	81.6	88.0	83.8	86.9	93.3	66.7	80.0
Mobile schools									
59.1	59.3	59.1	59.5	62.5	54.7	65.5	60.0	66.7	40.0
Low cost boarding schools									
81.3	82.8	85.5	78.6	83.3	81.0	79.5	78.6	66.7	100.0
Capacity building on inclusion and equality for teachers									
79.5	80.2	80.1	80.2	76.0	73.9	84.9	86.7	100.0	100.0
Capacity building on inclusion and equality for learners									
77.2	77.4	77.1	77.2	84.0	72.5	79.7	86.7	100.0	60.0
Capacity building on inclusion and equality for communities and parents									
74.7	77.4	76.7	77.0	68.0	70.6	79.5	80.0	100.0	80.0

Source: *Equality and Inclusion Survey (2015)*

Table 5.21 presents those strategies whose effectiveness respondents evaluated. For all of these, the acknowledgement rate was at least 70 per cent, with creation of an inclusive curriculum leading with a rate of 88 per cent. Largely, respondents felt that all these strategies were effective, with perceptions of ineffectiveness ranging between 11 per cent and 27 per cent.

Table 5.21: Evaluating strategies for equitable access to enrolment and completion risk children (%), 2015

	Strategies currently in place	Status of such strategies		
		Effective	Moderately effective	Not effective
Free and compulsory early childhood care	78.2	42.8	36.6	20.7
Universal measures e.g. abolishing school fees	74.6	41.5	36.2	22.3
Flexibility in school days and calendars	69.1	48.4	28.9	22.6
School construction and refurbishments	75.4	35.8	44.7	19.5
Community level support	77.6	33.2	47.1	19.7
Targeted interventions such as scholarships for girls and the marginalized	76.1	37.3	41.4	21.4
Social protection tools such as cash transfers for vulnerable groups	69.1	35.2	37.9	26.8
Incentives for teachers to work in rural areas	69.9	41.6	33.5	25.0
Creation of an inclusive curriculum	88.1	46.8	41.9	11.3

Source: Equality and Inclusion Survey (2015)

Quality of Teaching and Learning Processes and outcomes

Respondents were asked to rate the existence and effectiveness of aspects of teacher development, with the findings reported in Table 5.22. The perception of at least 60 per cent of all respondents was that all the frameworks exist, with training on disability mainstreaming receiving the lowest acknowledgement at 61 per cent, while schools ensuring safe and conducive environment had a high 97 per cent acknowledgement rate. As one would expect, the perceived effectiveness of the various aspects of teacher development varied greatly across the different categories of respondents. Across the various aspects of teacher development, perceived effectiveness ranged between 53 per cent for training on disability mainstreaming to 85 per cent for schools ensuring safe and conducive environment. Largely, university respondents affirmed the effectiveness of the measures, but the picture was mixed across the other education levels.

Table 5.22: Issues relating to teacher development (%), 2015

Teacher development framework exists and is effective										
All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special Education		
Teacher recruitment and deployment in the country takes into account equality and inclusion considerations										
77.8		59.5	60.2	58.4	47.8	63.2	59.6	50.0	100.0	33.0
Pre-service training includes special education and inclusion issues										
76.2		63.2	62.9	63.5	47.8	67.4	60.0	60.0	100.0	50.0
Training on HIV/AIDs										
78.2		66.4	65.9	67.0	45.8	70.4	60.4	80.0	100.0	40.0
In-service training on gender, equality and inclusion										
71.1		56.2	55.8	56.8	57.1	56.5	50.0	50.0	100.0	25.0
Training on disability mainstreaming										
60.9		53.5	56.4	49.4	35.0	52.2	54.2	46.7	0.0	50.0
Training on social issues such as sexual harassment										
77.5		62.8	64.7	60.0	63.6	61.3	60.2	70.6	50.0	25.0
Teachers are encouraged to promote team work, cooperate with parents, learners; teach interactively										
95.5		84.0	83.8	84.4	88.3	89.3	77.9	88.2	100.0	66.7
Teachers and support staff are supported to develop their knowledge, skill and attitudes regarding inclusion; and they are encouraged to cater for needs of all learners										
84.8		67.8	70.0	64.4	69.6	71.5	68.1	75.0	66.7	80.0
Schools ensure safe and conducive environment										
97.7		84.8	83.3	87.2	84.0	88.5	82.1	88.9	100.0	83.3
Change school management to support teachers										
76.9		74.7	72.2	78.4	60.0	80.9	74.5	76.5	66.7	83.3
Boost number of female teachers										
73.8		73.3	71.5	76.0	79.2	74.8	72.3	72.2	100.0	83.0
Provides incentives to improve teachers deployment in remote areas										
67.1		67.6	68.1	67.0	56.0	61.3	82.6	52.9	100.0	50.0
Existence of professional courses and professional development opportunities to enhance teacher pedagogical skill in inclusion and equality aspects										
78.6		76.6	77.1	75.8	75.0	81.8	80.8	50.0	100.0	66.7

Source: *Equality and Inclusion Survey (2015)*

Respondents were asked to prioritize various quality enhancement changes necessary in the current delivery approaches in order to attain greater equality and inclusion (Table 5.23). The most prominent issue for nearly three-quarters of all respondents – 74 per cent – was the need to ensure adequate staff at national and county level to monitor implementation of policies. Also, prominent among the response was the need to improve school facilities (74%) and to provide clean water and sanitation for boys and girls (71%). The data show that rural respondents felt more strongly than urban respondents for just about all the listed issues, except targeting marginalized populations and regions, and the review of teacher development policy for the workplace. Generally, support for the proposed changes grew up the education system, a notable feature being the strong support for the measures listed by university respondents.

Table 5.23: Quality enhancing changes to increase equality and inclusion by location and level of education (%), 2015

All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special Education
Enhance pre and in-service teacher training in knowledge and skill related to inclusive learning institutions/education								
68.5	69.5	67.0	67.8	71.4	69.0	82.0	66.7	66.6
Improve school facilities								
74.2	76.8	70.1	67.8	75.9	72.3	88.2	100.0	50.0
Develop child friendly schools and classrooms								
67.4	70.3	68.0	75.0	72.0	68.0	82.3	100.0	83.3
Provide clean drinking water and sanitation for girls and boys								
71.4	74.2	67.0	78.6	74.7	69.3	94.1	100.0	83.3
Ensure that the curriculum promotes inclusion								
70.6	70.3	71.1	82.1	72.2	66.3	100.0	100.0	50.0
Implement targeted interventions for marginalized populations and regions								
62.2	60.6	64.6	75.0	67.0	57.0	88.2	66.7	50.0
Review teacher policy development to address work place issues								
62.7	61.3	64.9	78.6	65.4	56.4	94.1	100.0	16.7
Ensure inclusion and equality policies are implemented								
72.2	73.5	70.1	78.6	75.3	63.0	100.0	66.7	33.3
Ensure provision of adequate staff at national and county level to monitor implementation of policies								
74.4	75.9	71.9	85.7	74.5	70.7	88.2	100.0	83.3

Source: *Equality and Inclusion Survey (2015)*

5.4 Budgeting and Mainstreaming Equity and Inclusion Interventions

Under the new constitutional dispensation, pre-primary and youth polytechnic education are devolved to County Governments, while all the other education levels remain National Government functions. This divide should reflect significantly in budgets since the March 2013 accession of County Governments.

Government budgets

Table 5.24 presents the trends in the budgetary allocations to the education and training sector for the decade to financial year 2014/15. The data show that the total allocation grew by 335 per cent between the first and last year of the review period. The total budget grew from one fiscal year to the other, except for the inaugural year of devolution, i.e. 2013/14, when resources were set aside for the County Governments. However, the great change into 2014/15 suggests some compensation for the low budget of the previous year. The other notable feature of the budget allocations is the dominance of the recurrent budget over the development budget. This is not surprising since: (i) the recurrent budget covers teachers' salaries, which is a major expenditure item in delivering education; and (ii) the construction of schools has traditionally been the responsibility of communities. These factors explain the high growth in the recurrent budget – 91 per cent period change – compared to the modest 9 per cent period change in the development budget.

Table 5.24: Budget allocations to education and training sector, 2005/06 to 2014/15 (Ksh million)

	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	Period change (%)
Education											
Recurrent (Ksh million)	74,609	93,296	95,746	105,734	116,878	159,687	186,328	233,103	237,215	297,571	298.8
Percentage share	95.7	92.3	91.3	92.1	90.0	89.2	89.8	89.6	94.4	87.8	91.2
Development (Ksh million)	3,330	7,836	9,095	9,021	13,049	19,313	21,132	27,020	13,998	41,508	1146.5
Percentage share	4.3	7.7	8.7	7.9	10.0	10.8	10.2	10.4	5.6	12.2	8.8
Total	77,939	101,132	104,841	114,755	129,927	179,000	207,460	260,123	251,213	339,079	335.1

Source: Republic of Kenya (Various)

Education sector spending has averaged about 6 per cent of GDP, and has continually accounted for about one-quarter of total government spending – compared to 6 per cent for health, for example. Recurrent education spending also accounts for nearly one-third of all government recurrent spending. The sector also receives some external funding amounting to about 5 per cent of its total spending. Primary education generally dominates the education budget with a share of about 50 per cent, with secondary education and university education accounting for respective shares of about 20 per cent and 12 per cent. Pre-primary education is a devolved function, and therefore its allocations have been comparatively small – under 2 per cent, but have grown rapidly with a recent attention to this area.

The inequities favouring the less poor are further illustrated through analyses of household survey data reported in Table 5.26. The benefit incidence of education spending is skewed against lower income groups. Lower income groups benefit less from tertiary education compared to high and medium income groups, but more from primary education. The gains for poorest welfare group at primary level are estimated at 24.7 per cent, 9.5 per cent for secondary and 1.9 per cent for tertiary education. Gains for the richest quintile are 27.2 per cent and 70 per cent, at secondary and tertiary education, respectively. This indicates the need to increase access to post-primary education among the low-income groups. This is particularly so because while increasing access to primary education is critical in laying the foundation for entry to higher education, primary education is not sufficient in itself in reducing poverty, ensuring sustainable development, and meeting the skill needs identified in Vision 2030.

Table 5.25: Benefits incidence of public spending on education (%)

	Primary	Secondary	Tertiary	All Education
Poorest Quintile	24.7	9.5	1.9	17.4
Quintile 2	25.2	15.9	2.0	19.3
Quintile 3	21.6	21.9	7.0	19.4
Quintile 4	18.2	25.5	19.1	20.2
Richest Quintile	10.2	27.2	70.0	23.7

Source: Demery and Gaddis (2009) based on the KIHBS dataset of 2005/06

The survey also focused on the availability of information on the costs of specific interventions for equality and inclusion in the education sector, with the findings reported in Table 5.27. The results show that 54 per cent of information on unit costs of specific interventions aimed at addressing equality and inclusion is available. The survey findings also show that 71 per cent of the current policy on education financing allows schools to respond to the needs of all learners. The unit cost information that is least available was that on budgets for minority language textbooks, acknowledged by only 40 per cent of the respondents.

Table 5.26: Availability of costing for interventions in addressing equality and inclusion

	Proportion indicating information was available (%)
Availability of information on unit costs of specific interventions aimed at addressing equality and inclusion	53.6
Policy on education financing allows schools to respond to the needs of all learners	71.0
Costed strategies targeting special interest groups	58.3
Gender mainstreamed in the budgeting process	58.5
Budget for capacity building in relation to equality and inclusion	59.7
Current budget allocation supports equality and inclusion	61.9
Budget for providing textbooks in minority languages	39.3
Expenditure for special interest groups are spent as allocated	52.4
Established guidelines and eligibility criteria for learners with special needs	60.2
Rules and Procedures related to allocation of resources to all types of leaning institutions are easily understood by general public	64.3
Parents have significant influence on identification and provision of education for learners' needs	66.9
Ability of assistive technologies	47.1
Policy on education financing allows schools to respond to needs of all learners	68.3
Essential needs for inclusive education are adequately funded	52.5
Established guidelines and eligibility criteria for funding learners with special needs	59.0
Rules and procedures related to allocation of resources are easily understood by general public	56.9
Parents have significant influence on identification and provision of learners needs	69.8

Source: Equality and Inclusion Survey (2015)

On the effectiveness of the available unit cost information, 42 per cent of the respondents felt the case for costs and interventions in addressing equality and inclusion was effective, as seen in Table 5.28. The perceived effectiveness of this information stood at 42 per cent for rural respondents compared to 43 per cent for urban respondents. Looking at the different education levels, only the university level reported that information on unit costs are the most effective.

Table 5.27: Effectiveness of costs and interventions in addressing equality and inclusion by location and level of education (%), 2015

	All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special education
Unit costs of intervention									
	42.3	42.0	42.7	45.5	37.3	37.3	21.4	100.0	66.7
Policy on financing									
	54.6	54.6	54.7	58.3	46.9	46.9	53.3	50.0	50.0
Cost strategies targeting special interest groups									
	38.4	37.9	39.0	54.2	43.2	43.2	13.3	50.0	66.7

Source: *Inequality and Inclusion Survey (2015)*

The survey findings show that 55 per cent of respondents felt that policies on education financing were effective in responding to the needs for equality and inclusion. Looking at the rural-urban divide, both reported the same score as the national level. A half of those in special education and those in university level reported the policy not being effective in allowing schools to respond to needs of all learners. The study results show that 38 per cent of respondents felt that cost strategies targeting special interest groups exist and are effective. As shown in Table 5.28, a slightly higher proportion of those in urban areas (39%) reported that there exist effective cost strategies targeting special interest groups compared to rural areas, which reported 38 per cent. Those in special education level reported the highest 67 per cent compared to tertiary level institutions that reported 13 per cent.

The study findings show that 44 per cent of respondents felt that gender mainstreaming in the budget process was effective at the overall level (Table 5.29). A higher proportion in rural areas (45%) reported it to be effective compared to urban areas (43%). At education levels, all universities reported an effective budget in mainstreaming gender, with 67 per cent and 40 per cent reporting an effective budget in special education and tertiary levels, respectively.

Table 5.28: Effectiveness of budgets and interventions in addressing equality and inclusion by location and level of education (%), 2015

	All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special education
Gender mainstream	44.1	45.2	42.5	47.6	38.1	38.1	40.0	100.0	66.7
Capacity building	46.5	42.9	51.9	57.1	42.2	42.2	33.3	50.0	60.0
Support for equality and inclusion	42.7	42.4	43.0	68.2	39.5	39.5	28.6	50.0	50.0
Textbooks in minority languages	29.5	29.3	29.7	35	30.4	30.4	23.1	0.0	33.3

Source: *Equality and Inclusion Survey (2015)*

Less than half of the respondents (47%) reported that budgeting for capacity building in relation to equality and inclusion is effective. Those in the urban areas reported a higher proportion (52%) compared to their counterparts in rural areas (43%). More than half of the institutions (60%) dealing with special education have an effective budget for capacity building, while half of university level institutions do not have an effective budget for capacity building.

Only 43 per cent of institutions indicated that current budget allocations to support equality and inclusion are effective. 42 per cent and 43 per cent of these institutions are in rural and urban areas, respectively. A half of university and special education do not have effective budgets that support equality and inclusion. Thirty (30) per cent of all sampled institutions reported that their budgets for providing textbooks in minority languages are effective. The same proportion was reported in rural and urban institutions as well as for primary and secondary institutions. None of the universities reported to have an efficient budget that provides the same for minority language.

About 39 per cent of Institutions with expenditures for special interest groups spend effectively according to the budget

Only 43 per cent of institutions indicated that current budget allocations to support equality and inclusion are effective. 42 per cent and 43 per cent of these institutions are in rural and urban areas, respectively. A half of university and special education do not have effective budgets that support equality and inclusion.

(Table 5.30). The survey results further show that 36 per cent of institutions in rural areas spend effectively on special interest groups as allocated compared to 43 per cent in urban areas. All university institutions spend effectively as allocated for special interest groups.

Table 5.29: Effectiveness of budgets and interventions in addressing equality and inclusion, by location and level of education (%), 2015

	All	Rural	Urban	Pre-primary	Primary	Secondary	Tertiary	University	Special education
Spending on special interest groups as allocated									
	38.6	35.9	42.7	54.5	33.3	33.3	18.2	100.0	33.3
Eligibility criteria for learners with special needs									
	47.3	44.7	51.3	50.0	44.4	44.4	33.3	100.0	66.7

Source: Equality and Inclusion Survey (2015)

The survey results show that 47 per cent of institutions have established guidelines and eligibility for learners with special needs. Those institutions in rural areas (45%) have guidelines and eligibility criteria compared to 51 per cent in urban areas. As expected, all university institutions had guidelines and criteria. One notable finding was that county budgets were not disaggregated to SIG levels; instead, they operate block budgets such that there is no information specific to expenditures on special interest groups.

Emerging issues

Drawing on the focus of the survey, Table 5.31 presents some insights into the areas of attention prioritized by respondents of the survey. Respondents strongly supported the listed interventions, the issue of targeting the boy child receiving the lowest support, a nonetheless high 88 per cent score.

Table 5.30: Areas identified for improvement (%), 2015

	Areas identified to be improved
Policy formulation	92.3
Policy implementation that support equality, inclusion and allow for decentralized decision making	94.0
Enhance policy dissemination and enforcement	92.5
Preparation and implementation of inclusion and equality guidelines for education sector	94.7
Training and awareness raising on policies	90.6
Monitoring and evaluation policy implementation	95.9
Provision of ECDE	88.6
Targeting boy child	87.5
Supportive and effective leadership	94.0
Involvement of parents in decision making	91.5
Engaging learners in decision making	95.5
Adopting flexible curriculum that respond to individual learners' needs	91.3
Provision of cash transfers	88.9

Source: *Equality and Inclusion Survey (2015)*

Emerging issues in access and equity

ECDE

- (i) Quality assurance services at the ECDE level are weak.
- (ii) The curricular offered at this level is not standard across all schools.
- (iii) Learners in ECDE level do not receive capitation grants like is the case for primary and secondary education, despite being part of basic education.

Primary

Notwithstanding the introduction of Free Primary Education in 2003, there are still issues and challenges relating to access, equity, quality and relevance.

a) Access

In regards to access, not all children who should be in schools are in school because:

- (i) School levies charged on parents are exorbitantly high.
- (ii) Seasonal factors such as too much rain leading to floods.
- (iii) Lack of clean and safe water and poor sanitation in schools.

- (iv) Inadequate infrastructural facilities, especially for learners with special needs.
- (v) Other factors include lack of self-interest and drugs and substance abuse among teachers and learners.

b) Equity

- (i) While gender parity index generally averages close to one, there is variation in equity when considering the ASALs and urban slums vis a vis the rest of the country.
- (ii) There was also lack of equity in the distribution of various resources, especially teachers, who resist posting to ASALs (hardship areas).
- (iii) Lack of targeted interventions such as scholarships for girls and the marginalized.
- (iv) Inadequate social assistance for vulnerable groups.

c) Quality

- (i) There was severe inequality in distribution of teachers across

the country, which combined with inadequate learning materials and poor infrastructure undermine the quality of schooling. In particular, teacher training on disability mainstreaming and gender mainstreaming needs to be enhanced.

- (ii) There was lack or inadequate quality assurance services due to a combination of factors, among them shortage of quality assurance and standards officer, and inadequate relevant training on quality assurance.

Despite the challenge of limited data, it is known that a substantial proportion of children have special needs. Inconsistent definition of disability and the lack of disaggregated data on disability have hampered adequate efforts to formulate informed policies and programmes. Most disabilities result from preventable causes, such as lack of access to basic nutrients, birth attendance services and poor road safety.

Secondary education

The issues and challenges at secondary level were essentially similar to those at primary level, in addition, the following were noted:

- (i) There was gender disparity in the enrolments at this level, demonstrating inequitable access.
- (ii) Due to variations in supporting infrastructure, access to ICT services was inequitable.
- (iii) There were variations in quality of education and training services because of differing quality of management in schools.
- (iv) Inadequate number of secondary schools to ensure high transition rates from primary and hence, limited access.

- (v) Extreme poverty in slum urban areas and ASAL regions, militating against equity.
- (vi) High cost of secondary education, especially boarding, was mitigating against access and equity, even with Free Day Secondary Education grant.
- (vii) Disparities in resource allocations especially teachers, to different categories of schools, which constrains the attainment of equity in education.

Special Needs Education

Emerging issues under special needs education include:

- (i) Limited access because of scarcity of special needs education institutions at all levels, and across counties.
- (ii) Due to multiplicity of disabilities, teachers with relevant skills are in short supply, leading to poor quality and standards.
- (iii) Short supply of relevant learning materials and assistive and adaptive technological devices.

Tertiary level

Emerging issues under special needs education include:

- (i) Low levels of investment and funding at tertiary level has led to limited access to persons needing training at tertiary level.
- (ii) Difficulty in accessing tertiary education and training institutions that are not available in many regions and tend to be concentrated in large urban centres, whereas not all have boarding facilities.
- (iii) Gender disparity in enrolments in tertiary institutions due to a combination of factors, amongst them poor performance of girls in mathematics and sciences at secondary level.
- (iv) Low access for students in ASAL regions.
- (v) Lack of curriculum tailored to persons with special needs.

Teacher Training Education

- (i) The public teacher training colleges are few, leading to a proliferation of private colleges.

- (ii) The current teacher training curriculum has not been reviewed to incorporate emerging issues and hence not adequately relevant.
- (iii) Lack of curriculum to address the needs of persons with special needs.
- (iv) Lack of instructional materials and visual aids in alternative formats.
- (v) Lack of effective life skills curriculum.
- (vi) Lack of assistive and adaptive technology devices.

Adult and Continuing Education

- (i) There was no systematic and planned investment in adult education centres, hence low access.
- (ii) Even when communities and individuals open the centres, many adults are reluctant to join the classes mainly because of other preoccupations, negative attitude and lack of understanding of the value of adult education. Therefore, only a small number of adults access education and training.
- (iii) Due to uncoordinated approach, not every region is properly targeted, leading to low equity.
- (iv) There is no quality assurance at this level, with few trained and employed teachers, leading to poor quality service delivery.
- (v) Adults with disabilities rarely attend adult classes because of genuine challenges and stigmatization.

Education and gender

The education sector has been rated as the most progressive towards achieving gender equality in all aspects. However, challenges still remain that require policy and legislative measures to address:

- (i) Despite the increased number of girls joining schools at the primary level, there is considerable reduction in transition to high school and beyond due to a number of obstacles, such as early pregnancies leading to school dropout, and forced early marriages.
- (ii) Harmful cultural practices still affect girls disproportionately, such as early

and forced marriages, female genital mutilation, gender based violence and negative cultural stereotypes.

- (iii) Child labor, mainly in agricultural areas where children are withdrawn from schools to pick tea, coffee and even khat (miraa), and in fishing zones as well as tourist zones along the coastal region of the country, keeps children away from schools.
- (iv) Although the number of women joining the teaching profession at the primary school level is increasing, only a few women are joining secondary school teacher colleges and universities.

5.5 Conclusions and Recommendations

Conclusions

Despite the challenge of limited data, it is known that a substantial proportion of children have special needs. Inconsistent definition of disability and the lack of disaggregated data on disability have hampered adequate efforts to formulate informed policies and programmes. Most disabilities result from preventable causes, such as lack of access to basic nutrients, birth attendance services and poor road safety.

Unlike other people, SIGs are often subject to abuse and discrimination and are excluded from family life, their neighborhoods, peer interactions, school life and integration into the larger community, which in turn affects their schooling.

Many SIGs in Kenya lack access to quality education, due to factors including the failure of schools to be accessible and inclusive. This includes not only issues pertaining to infrastructure, location, and negative attitudes towards SIGs, but also the unsupportive learning and teaching practices that deny SIGs their right to education.

In addition, there is a serious shortage of rehabilitation services and early childhood identification and interventions to address the after-effects of illness and trauma. SIGs with

communication and sensory impairments are particularly disadvantaged, as they rarely receive the assistive devices and rehabilitation they require to develop to their full potential in education and in society.

A majority of SIGs in Kenya lack access to early childhood services, which is also a reflection of an overall lack of early childhood assistive devices, which impacts on the possibility of early intervention. Where early interventions are lacking, the opportunity to improve the cognitive, emotional and social skills of young children is lost, exposing children to further delays or secondary complications.

Families of SIGs continue to rely on the services and assistance offered by the government, religious organizations and NGOs. A rights-based approach to the marginalized implies that these families need to be empowered and supported with livelihood options that allow them to be self-sufficient and meet not only their basic needs, but also the special needs of SIGs.

Lack of accurate prevalence data and low registration rates for SIGs result in inadequate planning by the government, but county governments together have a strong and increasing community of scholars and institutions working on expanding SIGs right to access education.

Recommendations

Both national and county levels of government and other stakeholders in the education sector and curriculum development must ensure the integration of practical tools to support education and training programmes to address equitable access, retention and transition in education for SIGs, with the inclusion of formal and informal education.

Specifically, the government must enhance quality of education at all levels by:

- (i) Training head teachers in skills of quality assurance, finance and human resource management with special focus on SIGs.

- (ii) Training, deploying and supporting quality assurance officers to effectively deliver on quality assurance services.
- (iii) Provide adequate learning materials across all levels of schooling, while taking into account needs for SIGs.

Promote equity by:

- (i) Designing specific special affirmative action programmes for girls, PWDs, ASALs and slum areas.
- (ii) Abolishing all levies that discriminate against poor households.

Make education and training relevant by:

- (i) Undertaking major curriculum review preceded by research and needs assessment to establish the challenges posed by the Constitution and skills-needs for achieving Vision 2030.
- (ii) Reviewing and revising core learning materials to conform to the skills development needs.
- (iii) Redesigning teacher education curriculum and training programmes to prepare teachers for implementing the new curricula. The government also needs to pay special attention on marginalized areas and disadvantaged communities.
- (iv) Operationalizing the Nomadic Education Policy Framework to address the challenges in the provision of education in ASALs and marginalized areas.
- (v) Integrating gender awareness components into pre- and in-service teacher training for teachers. Incorporate gender considerations into activities to develop curricula and learning materials. Capture sex disaggregated data in all aspects of education.
- (vi) Developing practical tools to support programming staff in designing, implementing, reporting on, and evaluating programmes that address equitable access and quality from a gender perspective.

Both national and county levels of government and other stakeholders in the education sector and curriculum development must ensure the integration of practical tools to support education and training programmes to address equitable access, retention and transition in education for SIGs, with the inclusion of formal and informal education.

- (vii) Inculcating gender responsiveness, patriotism and nationalism in education and training. Consequently, education and training should integrate social responsibility, including nurturing reproductive health, combating drugs, substance abuse and violence in schools.
- (viii) Ensuring community mobilization and sensitization in support of the girl child as a basis for influencing socio-cultural and household dynamics to overcome the differential treatment of girls and boys.
- (ix) Ensuring deliberate action to promote or appoint qualified women to decision-making positions or position of power and influence in the education sector.
- (x) Ensuring efficient utilization of funds disbursed to schools as part of the free education programme, and increasing allocation for the purchase of sanitary pads to shield girls from the effects of menstruation on their school attendance.
- (xi) Deepening the scope of bursary funds for bright girls from poor families and marginalized communities.

FINDINGS AND DISCUSSIONS ON EQUALITY AND INCLUSION IN THE LABOUR MARKET

As of 2015, out of the 15.5 million children aged 5 to 17 years, about 15.1 per cent had “never gone to school.” For these 2.3 million children, their status contravened Article 53 of the Constitution, which provides that “every child has a right to free and compulsory basic education.”

6.1 Introduction

The chapter discusses the status of employment with respect to the special interest groups (SIGs), i.e. children, youth, women, persons with disabilities (PWDs), marginalized groups and marginalized communities, and the elderly. The distinctions between the public and private sectors (including the informal economy) are also discussed. The focus will be on indicator scores that can be used to gauge progress towards ensuring full compliance with the provisions envisaged to enhance equality and inclusion.

6.2 Assessing the Status of Equality and Inclusion in Employment

6.2.1 Status of children in the labour market

This sub-section summarizes the status of children in Kenya focusing on employment indicators. The datasets or reports used include the 2009 census data, the Kenya Child Labour Baseline Survey of 2010, and the Equality and Inclusion Survey 2015. Indicators used in analyzing the status of children in relation to employment include schooling status of children, labour activities, and hours worked – all of which have significant implications on the future labour market prospects of children.

Schooling status of children

The schooling status of children is important for employment since it has major ramifications on whether Kenya’s future youth will have the potential for gainful employment or not. Education has been shown to influence employment, incomes, and the welfare of individuals and households. Higher levels of education usually open the doors to higher productivity jobs and hence higher earnings.

As of 2015, out of the 15.5 million children aged 5 to 17 years, about 15.1 per cent had “never gone to school.” For these 2.3 million children, their status contravened Article 53 of the Constitution, which provides that “every child has a right to free and compulsory basic education.” With respect to the counties, Mandera and Garissa counties had more than half of their children reporting never having gone to school (Table 6.1). Although relatively cosmopolitan, Nairobi and Mombasa had about one in ten children who reported having “never gone to school.” Based on the proportions and the

projected population of the counties, the approximate number of children aged 5 to 17 years who were reportedly not to have gone to school are computed for each county.

Table 6.1: Percentage share and number of children aged 5 to 17 years who never went to school, by County, 2015

County	Share (%)	Number	County	Share (%)	Number
Baringo	43.8	358,183	Marsabit	28.4	110,692
Bomet	5.8	14,576	Meru	7.4	29,646
Bungoma	5.6	12,935	Migori	17.4	72,891
Busia	6.3	10,666	Mombasa	9.5	45,108
Elgeyo Marakwet	42.7	149,563	Murang'a	22.4	54,637
Embu	4.6	24,401	Nairobi	10.3	43,196
Garissa	53.8	145,473	Nakuru	42.2	103,283
Homa Bay	4.5	12,174	Nandi	5.1	5,085
Isiolo	28.1	131,840	Narok	6.5	23,100
Kajiado	17.3	18,240	Nyamira	9.2	23,590
Kakamega	13.7	5,520	Nyandarua	5.7	19,398
Kericho	23.6	24,495	Nyeri	29.3	46,955
Kiambu	12.9	16,925	Samburu	27.3	84,148
Kilifi	13.0	7,599	Siaya	6.5	10,471
Kirinyaga	15.3	77,939	Taita Taveta	32.6	203,410
Kisii	10.5	14,098	Tana River	7.4	27,344
Kisumu	7.0	13,341	Tharaka	2.3	5,781
Kitui	5.7	25,825	Trans Nzoia	17.3	41,320
Kwale	21.9	91,298	Turkana	37.2	144,030
Laikipia	24.3	93,417	Uasin Gishu	27.5	194,172
Lamu	6.0	17,957	Vihiga	9.5	22,289
Machakos	6.7	23,748	Wajir	36.0	215,961
Makueni	6.6	38,241	West Pokot	11.3	36,971
Mandera	54.4	187,550	Total	15.1	2,337,194

Source: Authors' computations from the Equality and Inclusion Survey, 2015

Despite the free primary education (FPE) and Free Day Secondary Education (FdSE) policies, a large proportion of children neither access primary nor secondary education. Evidently, the success of the policies is undermined by other factors facing households from which the children come. The implication is that the removal of user fees (implemented in 2003 for the FPE) should be enhanced and/or supported by other interventions to enhance access to basic education, as discussed earlier.

Labour activities of children

This sub-section discusses the extent of child labour. A significant number of children aged 5 to 17 years are engaged in some form of work, based on data from both the Equality and Inclusion Survey, 2015 and the 2009 census results. Nevertheless, not all these children's involvement amounts to either 'child labour' or 'worst forms of child labour.'

Table 6.2 shows the economic activities of the group of children who were not in school. The largest proportion worked in own-family agriculture holdings (34%) while 26 per cent worked in own family business, but 17 per cent worked for pay.

Table 6.2: Last 7 days economic activity of out-of-school children aged 5 to 17 years, 2015

Economic activity	Percentage share
Own-family agriculture holding	34.3
Own family business	26.4
Worked for pay or on leave	16.6
Volunteer, intern/apprentice	-
Incapacitated	6.7
Other	16.0
Total	100

Source: Authors' computations from the Equality and Inclusion Survey (2015)

In the last 12 months, about 80 per cent of out-of-school children were engaged in mainly family/individual enterprises, as seen in Table 6.3, while the informal sector employed close to 12 per cent.

Table 6.3: Main employer in the last 12 months of out-of-school children aged 5 to 17 years, 2015

Main Employer	Per cent
Individual/family enterprise	79.8
Informal sector employment	11.6
Private sector company	7.0
Government (county)	0.5
Government (national)	0.5
NGOs	0.7
Total	100%(1.8 million)

Source: Authors' computations from the Equality and Inclusion Survey (2015)

The focus group discussions (FGDs) and key informant interviews (KIIs) revealed that the forms of work or economic activities that children are likely to be engaged in varies by region.

For example, in Nyamira County children are likely to be engaged in brick-making or tea-picking, while in Migori County they are likely to be engaged in mining. In Busia, Homa Bay, Migori, Kilifi, Lamu, and Kwale, children are likely to be lured into fishing activities. In most of these counties, higher poverty rates are a likely driver of children into premature employment.

However, in some parts of Meru County, with comparatively good development indicators, boys apparently perform poorer than girls in basic education, the problem here being that most boys are lured to the lucrative trade on *Khat*.

Across the country, it is also common for parents/guardians in poorer regions to offer their children, especially girls, as "house-helps", premature wives, or even sex workers. Demand for house-helps is mainly high in cities and a lot of in-migration is from the predominantly rural counties. It emerged from the FGDs that the predominant driver of the potentially harmful child labour activities is poverty.

Child labour in Kenya

To provide an estimate of child labour, we adapt the measurement framework for child labour used by ILO and KNBS (2012). Child labour was structured around two main elements, namely: (i) the age of the child; and (ii) the productive activities by the child, including their nature, the conditions under which these were performed, and the hours of work. Because of data limitations on the nature and conditions of work, only the time criterion is used for the second element.

This report considers that a child is engaged in child labour if they are:

- (i) aged 5 to 12 years, and were engaged in an economic activity during the last 7 days, irrespective of the time taken up by the engagement; or
- (ii) aged 13 to 15 years and worked for 14 hours or more; or

(iii) aged 16 to 17 years and worked for more than 42 hours in the last one week.

Using the above criteria, about 10 per cent of the 15.5 million children aged 5 to 17 years were engaged in child labour in 2015, as shown in Table 6.4. The respective percentages of the 5 to 12 and 13 to 15-year-old children engaged in child labour were 10.6 per cent and 9.2 per cent. About 8.4 per cent of the 16 to 17 year olds were engaged in child labour.⁹² The share of males engaged in child labour is slightly larger than that of females for the 5 to 12 and 16 to 17 year olds.

Table 6.4: Proportion of children engaged in child labor in Kenya by age group and sex, 2015

Age and hours of work	Male (%)	Female (%)	Total (%)	Total number in age group*
5 to 12 years (1 or more hours)	11.9	9.2	10.6	10,241,505
13 to 15 years (14 hours or more)	8.1	10.4	9.2	3,272,037
16 to 17 years (42 hours or more)	9.7	7.2	8.4	1,964,565

Source: Authors' computations from the Equality and Inclusion Survey (2015) based on extrapolations

Table 6.5 summarizes the economic activities of child labourers across the various age groups. Own-family agriculture holding and own-family business account for the largest share of children's economic activities. These proportions suggest that household-based interventions would be important in stemming child labour in the country.

Table 6.5: Economic activity in the last 7 days of children in child labour by age groups, 2015

	5 to 12 years (%)	13 to 15 years (%)	16 and 17 years (%)
Own-family agriculture holding	63.5	76.2	59.4
Own-family business	10.2	13.8	20.7
Worked for pay	15.8	6.0	16.6
Other	10.4	4.0	3.3
Total	100.0	100.0	100.0

Source: Authors' computations from the Equality and Inclusion Survey (2015)

The main employers of child labourers were the individual or family enterprises ranging from about 28 per cent to 39 per cent for the various age categories (Table 6.6). This further reaffirms the potential of household-based interventions in stemming child labor.

Table 6.6: Main employer of children in child labour by age categories, 2015

Main Employer	5 to 12 years (%)	13 to 15 years (%)	16 and 17 years (%)
Individual/family enterprise	28.1	39.1	33.2
Informal sector employment	2.8	1.6	3.2
Private sector company	2.5	0.36	2.5
Government (county)	0.1	0.5	0.6
Government (national)	0.8	0.9	1.2
Other	65.7	57.5	59.3
Total (%)	100.0	100.0	100.0

Source: Authors' computations from the Equality and Inclusion Survey (2015)

⁹² The 8.4 per cent estimate would increase significantly if the weekly 42 hours of work is adjusted downwards.

Status of equality and inclusion of the youth in the labour market

There are various definitions of who the youth are. The Constitution defines the youth as individuals aged under 35 years but are at least 18 years old. In many international settings, the youth are usually defined to include individuals aged 15 to 24 years. This report considers the youth to age from 15 to 34 years. The lower age of 15 years is used in adherence to the international norm, and to enhance comparability across countries. That lower age also incorporates the age range permitted within the Employment Act, 2007 of Kenya.

Kenya is committed to international initiatives that concern the youth, including the World Programme for Action for Youth, the Commonwealth Plan of Action for Youth, the African Youth Charter (2006) and its related Decade Plan of Action for Youth Development and Empowerment (2009-2018). The broad objectives of these initiatives are to accelerate youth empowerment and development.

At the domestic level, Article 55 (c) of the Constitution provides for affirmative action programmes to ensure that the youth have access to employment. Further, there various national pieces of legislation, policies and/or initiatives that relate to aspects of equality and inclusion of the youth, which include the National Youth Policy, National Youth Council Act, National Action Plan on Youth Employment, and Employment Act 2007. The latter provides regulations with regard to terms of employment, with Section 5 mandating the Minister, labor officers and the Industrial Court to promote equality of opportunity in employment to eliminate discrimination in employment.

More recently, Parliament passed the National Youth Employment Bill to provide various opportunities for job seekers and to give effect to Article 55. When assented to, the Bill will require all public entities to provide internship and employment opportunities to the youth. It will also centralize the control of job seekers database. Even so, as evident below, job matching may not be the underlying problem as assumed by the Bill. A more fundamental challenge is that of creating good quality job opportunities, which requires additional interventions.

The allocation of 30% of all government procurement to youth, women and PWDs have to a great extent increased levels of self-employment among youth. Youth led and managed business have expanded and new ones emerged since AGPO program came into effect. There are however multiple challenges from youth and government side for optimal uptake of the AGPO incentives including prompt payment of services, goods or works delivered, and enhanced entrepreneurial skills among youth.

Sectoral distribution of youth employment

Table 6.7 outlines a broad overview of the distribution of the working age group (those aged 15 to 64) as well as the youth by main employer. About half of the nearly 9 million employed youth were engaged in individual/family enterprises (self-employment) and an additional 10 per cent are employed within the informal sector. The formal private sector employed just under 13 per cent of the total employed youth, while the public sector (including the National and County governments, Constitutional Commissions/Independent Offices, and other state-owned enterprises) employed 4 per cent of the total employed youth.

Table 6.7: Employment by main employer, the working age group and the youth, 2015

Main Employer	Working age group (15-64 years)	Youth (15 to 34 years)
Individual/family enterprise	55.8	50.4
Private sector company	12.5	12.6
Informal sector employer	9.7	10.1
National government	3.7	1.9
County government	2.2	1.7
International organization	0.4	0.5
Non-governmental organization	0.4	0.4
State-owned enterprise	0.4	0.3
Constitutional commission	0.2	0.1
Other	14.6	21.9
Total (%)	100.0	100.0

Source: Authors' computations from the Equality and Inclusion Survey (2015)

A more or less similar pattern is observable across the 47 counties. Employment in informal sector activities and in agriculture dominates the total employment of the youth, as seen in Table 6.8. Informal sector employment is especially large within arid and semi-arid lands (ASALs) counties, ranging between 52 per cent and 63 per cent in Garissa, Kitui, Mandera, Wajir and West Pokot. It is also large within some of the more densely populated counties, with modest investments in industrial activity counties such as Kisumu. Employment of youth in small-scale agriculture and pastoralism is proportionately small or entirely absent in the largely urban counties such as Nairobi and Mombasa, which meanwhile have the largest concentrations of formal private sector employment.

Table 6.8: Main employer of the youth (18 to 34 years) by county, 2009 – (% shares)

	Formal Private Sector	Public Sector	NGOs, FBOs and Self-Modern	Informal Sector (including self-employed)	Small Scale Agriculture and Pastoralist	Private Household	Other	Total (number)
Baringo	9.1	4.5	2.5	42.7	38.3	2.8	0.0	85,700
Bomet	12.1	2.7	1.6	39.0	42.6	1.9	0.1	195,520
Bungoma	6.5	2.7	1.8	40.3	46.3	2.3	0.1	269,800
Busia	5.4	3.0	2.6	33.8	53.5	1.7	0.1	140,920
Elgeyo Marakwet	7.8	4.7	1.7	42.3	40.0	3.4	0.1	61,700
Embu	11.2	3.9	2.0	39.4	37.0	6.1	0.4	116,190
Garissa	4.2	3.3	3.1	63.4	25.4	0.6	0.0	75,980
Homa Bay	6.7	3.1	2.1	45.0	41.8	1.4	0.1	176,510
Isiolo	8.0	8.3	3.0	48.4	30.8	1.4	0.1	26,310
Kajiado	26.8	5.5	5.4	42.0	14.8	5.4	0.2	142,410
Kakamega	9.8	3.1	2.0	42.1	40.3	2.6	0.2	303,080
Kericho	19.4	3.4	2.6	38.1	33.5	2.9	0.1	132,340

	Formal Private Sector	Public Sector	NGOs, FBOs and Self-Modern	Informal Sector (including self-employed)	Small Scale Agriculture and Pastoralist	Private Household	Other	Total (number)
Kiambu	29.4	5.3	4.4	37.1	15.5	8.1	0.1	376,740
Kilifi	24.3	3.6	4.2	42.5	21.4	3.9	0.2	170,690
Kirinyaga	9.6	2.6	2.2	35.9	44.9	4.6	0.2	137,430
Kisii	8.5	2.9	2.0	36.0	49.3	1.1	0.2	239,010
Kisumu	14.4	5.3	4.5	56.2	16.8	2.7	0.1	181,610
Kitui	8.0	4.2	6.4	56.5	17.1	7.6	0.2	143,540
Kwale	14.1	3.2	3.0	39.5	37.4	2.7	0.1	95,500
Laikipia	18.5	5.3	2.8	40.9	28.0	4.2	0.2	75,950
Lamu	8.6	6.5	3.2	40.0	36.5	4.1	1.2	20,950
Machakos	19.8	4.1	4.3	46.2	16.9	8.4	0.3	195,510
Makueni	13.2	4.6	4.2	43.0	23.5	11.4	0.1	117,670
Mandera	1.3	1.8	1.8	56.2	37.8	0.9	0.2	120,220
Marsabit	2.8	4.7	1.9	42.6	46.3	1.6	0.0	50,370
Meru	11.1	2.4	2.5	41.2	38.6	4.0	0.2	301,940
Migori	7.7	3.2	1.7	37.8	48.8	0.7	0.1	184,750
Mombasa	40.7	6.3	5.0	41.3	1.4	5.1	0.2	222,460
Murang'a	12.8	3.1	2.4	31.3	43.7	6.5	0.2	176,800
Nairobi	38.9	6.1	5.6	44.1	-	5.2	0.2	935,830
Nakuru	26.1	5.4	3.7	39.0	22.7	3.0	0.1	345,470
Nandi	17.1	3.3	1.8	41.4	31.3	5.0	0.2	148,690
Narok	7.8	2.3	2.3	45.0	41.3	1.2	0.1	170,710
Nyamira	7.1	2.6	2.1	29.8	56.5	1.8	0.0	128,340
Nyandarua	12.4	1.8	2.1	25.5	54.9	3.2	0.1	117,000
Nyeri	16.5	4.6	2.6	35.0	35.9	5.4	0.1	141,440
Samburu	3.7	4.2	2.0	42.4	46.6	1.0	0.1	39,110
Siaya	6.8	3.0	2.5	45.9	39.0	2.7	0.2	153,700
Taita Taveta	12.6	4.5	4.1	41.9	31.7	4.9	0.4	53,810
Tana River	4.0	3.0	2.4	43.1	45.5	1.8	0.1	36,710
Tharaka Nithi	8.5	3.8	2.3	33.6	46.2	5.6	0.1	75,870
Trans Nzoia	15.2	4.2	3.5	39.7	33.6	3.7	0.1	145,980
Turkana	1.5	1.3	2.1	49.0	45.7	0.4	0.1	164,130
Uasin Gishu	20.9	7.3	4.7	48.0	13.6	5.3	0.2	165,540
Vihiga	9.2	4.2	3.2	49.4	30.5	3.2	0.2	78,790
Wajir	1.5	2.2	0.8	52.2	42.4	0.7	0.3	81,420
West Pokot	3.6	2.8	1.6	53.3	37.8	1.0	0.0	85,440

Source: Authors' computations from the 2009 Kenya Population and Housing Census data

Youth employment to population ratio

Kenya's employment to population ratio (EPR) by age group is presented in Table 6.9. The EPR for the population aged 15-64 years was nearly 58 per cent in 2015. If none of the age groups is overly disadvantaged, the EPR should be just about equal across all age groups. For the youths aged 15-34, the EPR was about 45 per cent. The lower youth EPR (relative to the working age group) is indicative of the relative disadvantage of the youths in accessing employment. Even so, the ratio should be interpreted with care since a higher proportion of the youths (especially those aged 15-24) are actually in school.

Table 6.9: Employment to population ratio (EPR) per cent by age group and sex, 2015

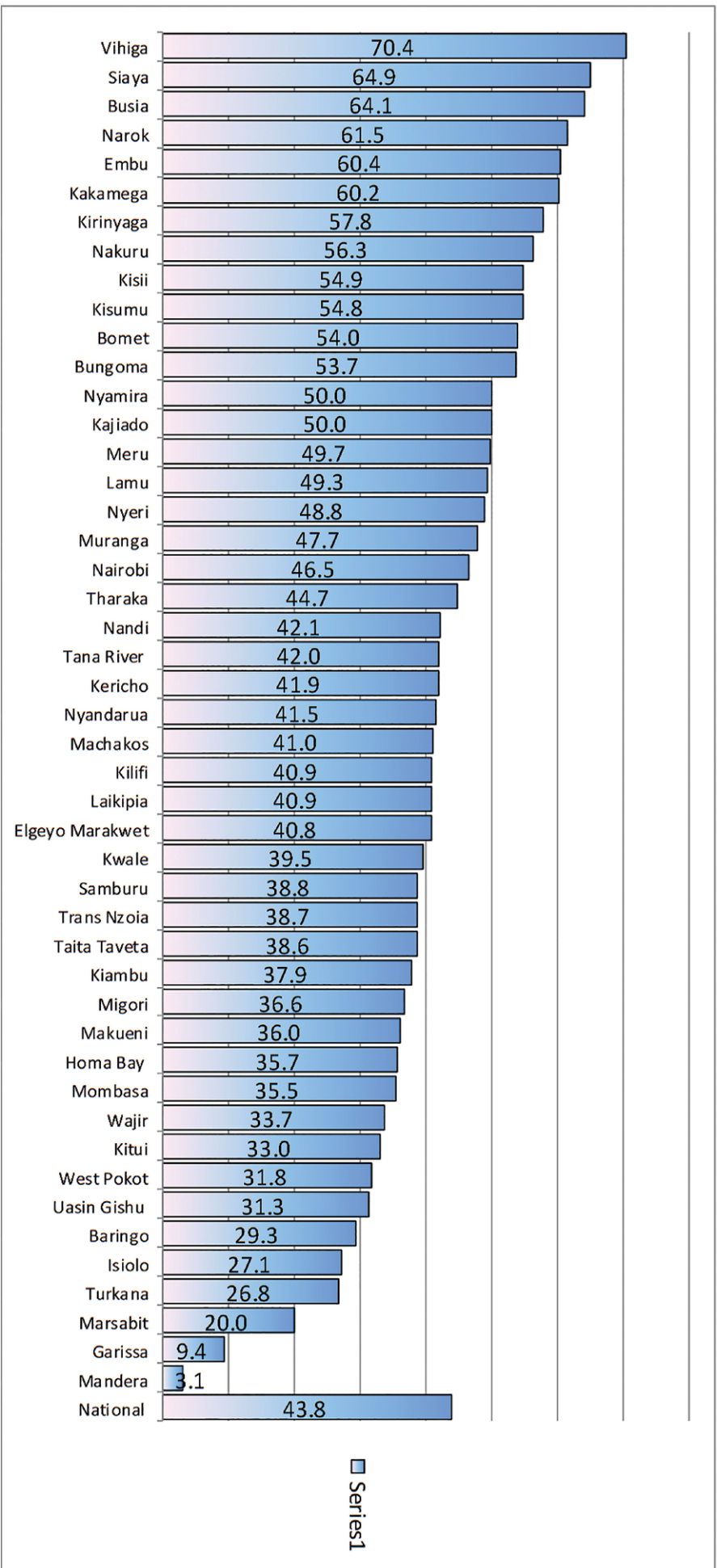
Age group	Male	Female	Total
15-34 (youth)	46.8	43.4	45.0
35-64	82.4	73.1	77.6
15-64 (working age group)	60.8	54.9	57.8

Source: Authors' computations from the Equality and Inclusion Survey (2015)

The EPR by sex indicates that the female ratios are all below the male rates for the selected age groups in 2015. The relatively lower rates for females can be explained by a number of factors. One explanation is that there is a tendency to undercount females who do not consider their domestic work as employment. A second explanation is that the responsibility of females to take care of household chores may prevent them from seeking paid employment, especially where family friendly policies and programmes are not in place, or where there are negative socio-cultural attitudes.

The EPR across counties shown in Figure 6.1 provides at least one pattern. The ASAL counties, such as Turkana, Marsabit, Garissa and Mandera seem to have relatively lower EPRs relative to more agro-ecologically favourable counties such as Vihiga and Siaya. Urbanized counties such as Nairobi and Mombasa are among the low performers, indicating that agricultural activities are important in providing employment across Kenya's counties.

Figure 6.1: Youth (15-34 years) employment to population ratio by County, 2015



Source: Authors' computations from the Equality and Inclusion Survey (2015)

Youth not in education, employment or training (NEET)

A complementary indicator that can be used to gauge the labour market status of the youth, given that a large share of youth could be in school is the youth not in education, employment, or training (NEET). NEET is a good indicator to capture the non-utilized working potential of the youth population, with a focus on ages 15 to 24, which is a common definition of youth across the globe.⁹³ In Kenya, this age group coincides with individuals who should be in secondary school or tertiary education.

For the overall youth population (ages 15 to 34), about 21 per cent are non-utilized based on not being in education, employment or training in 2015, as shown in Table 6.10. The youth groups aged 20 to 24 and 25 to 29 were most affected, with NEET return of more than one quarter in 2015.

These rates were higher than the 15.8 per cent rate for OECD countries for the youth aged 15 to 29, but comparable to other developing regions such as Latin America and the Caribbean, where the youth NEET were estimated at 19.8 per cent for individuals aged 15 to 29 in 2008.⁹⁴

Table 6.10: Share not in education, employment, or training (NEET) by age and sex, 2015

Age in years	2015		
	Male	Female	Total NEET
3 to 14	5.2	5.1	5.2
15 to 19	10.7	13.1	11.8
20 to 24	20.8	33.3	27.2
25 to 29	22.7	32.5	28.3
30 to 34	16.7	28.8	22.9
15 to 34	16.7	25.8	21.4
Population (3 to 34 years)	11.3	16.6	13.9

Source: Computed from the Equality and Inclusion Survey (2015)

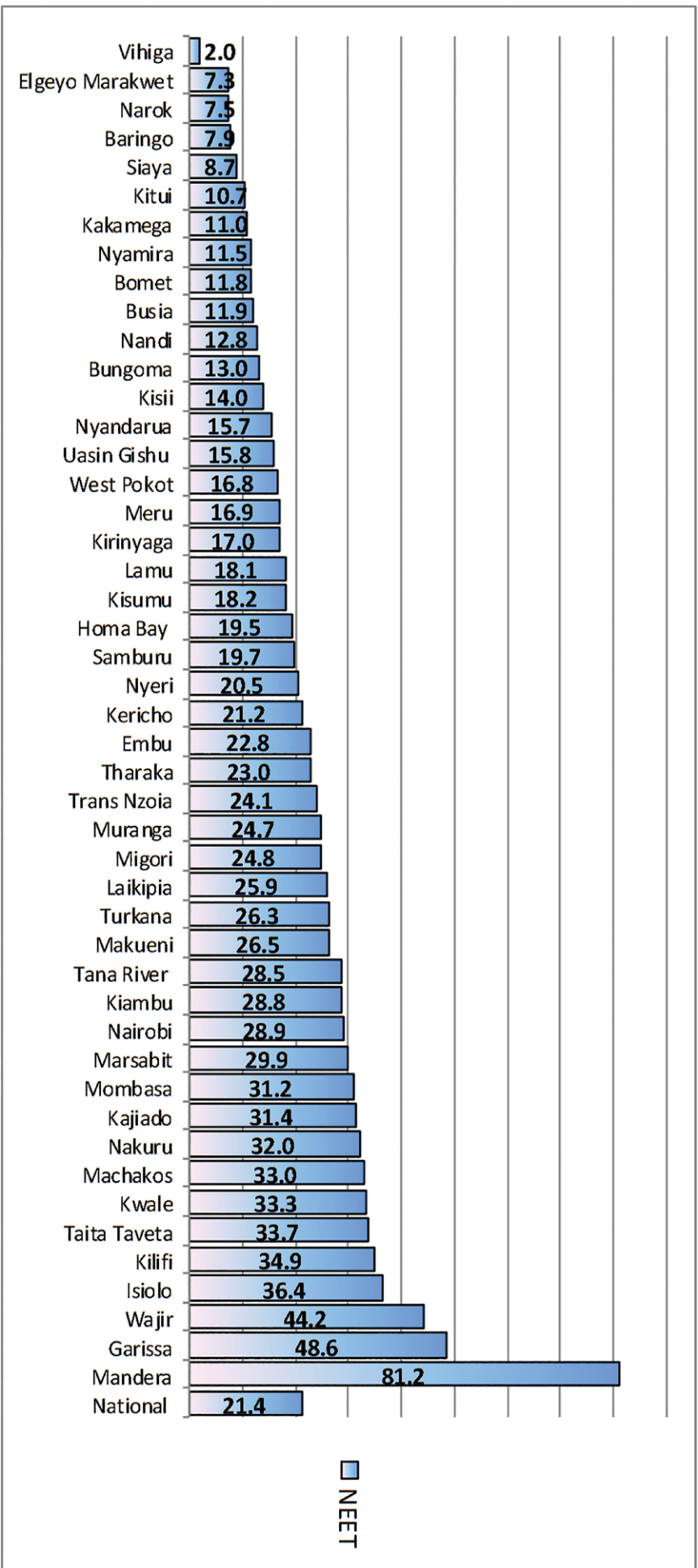
The NEET share is significantly higher for females relative to males across ages 20 to 34. More than one third of females aged 20 to 24 who typically should be in training or tertiary education are NEET, as seen in Table 6.10. In addition, about 5 per cent of children aged 3 to 14 years were not in school (or employment) in 2015. The implication is that a relatively large population of future youth will not be equipped to compete effectively in the labour market.

The NEET status of youths aged 15 to 34 by county is presented in Figure 6.2. With a few exceptions, the more agro-ecologically favourable counties such as Vihiga, Bomet and Nyamira tend to have lower NEET percentages. Elgeyo Marakwet and Narok's relatively lower NEET ratios could be explained by abundance of livestock-related activities for its youth. However, all counties need to be targeted with interventions to reduce the proportion and number of unemployed out-of-school youth.

⁹³ The youth are defined as those aged 15 to 24 by the UN Secretariat, UNESCO, ILO, UNICEF, WHO and UNFPA. The African Youth Charter defines the youth as those aged 15 to 35 years while UN Habitat uses 15 to 32 years.

⁹⁴ ILO (2013).

Figure 6.2: Youth aged (15-34) years not in employment, education or training, by County, 2015



Source: Computed from the *Equity and Inclusion Survey (2015)*

A country or an economy should be concerned with NEET, a status associated with a number of documented challenges. Being NEET for an extended period of time may result in difficulties in getting employment later in life. It may also lower subsequent earnings and introduce adverse effects on mental and physical health. There is also a higher risk of engaging in anti-social activities, such as illicit drug consumption and crime. The youth radicalization emerging in many developing nations

(especially in the Middle East and Africa), can also be aggravated by a NEET status. Given these challenges, Kenya needs to enhance current youth employment programmes to meet the promises of the Constitution, whose Article 55 states that “the State shall take measures, including affirmative action programmes, to ensure that the youth – access relevant education and training; and access employment.”

Youth in vulnerable employment

Vulnerable employment is marked by informal working arrangements, lack of adequate social protection, and in most cases low productivity, and hence low earnings or pay.

Globally, nearly half of the employed people are in vulnerable employment, but in many low-income countries this share is much higher.⁹⁵ About 65 per cent of persons aged 15 to 64 were in vulnerable jobs either as own-account workers (38%) or contributing family worker (27%), as seen in Table 6.11. For the youths aged 15 to 34, about 62 per cent were in vulnerable employment.

Table 6.11: Status in employment, by age group, 2015

Age group	Paid employee	Working employer	Own-account worker	Unpaid family worker	Other
15-34	28.7	1.8	33.5	28.9	7.2
15-64	26.9	2.2	38.1	27.1	5.8

Source: Computed from the Equality and Inclusion Survey (2015)

Generally, the proportion of the female youth in vulnerable employment is larger than that of the males across the age categories, as shown in Table 6.12. For the male youth, the vulnerable employment rate is highest for those aged 15 to 19, and declines to about 41 and 47 per cent for the 25 to 29 age group and the 30 to 34 age groups, respectively.

Table 6.12: Proportion of vulnerable workers by age groups and sex, 2015

Age groups	Male	Female	Total
15-19	75.8	80.5	77.9
20-24	52.8	60.3	56.5
25-29	41.3	61.4	52.2
30-34	46.3	67.1	56.1
15-34 (youth)	51.3	65.3	58.2
35-39	48.3	72.6	60.3
40-44	48.7	74.2	61.8
45-49	51.3	68.2	58.3
50-54	47.7	79.1	63.3
55-59	63.4	85.8	73.8
60-64	58.1	84.2	70.8

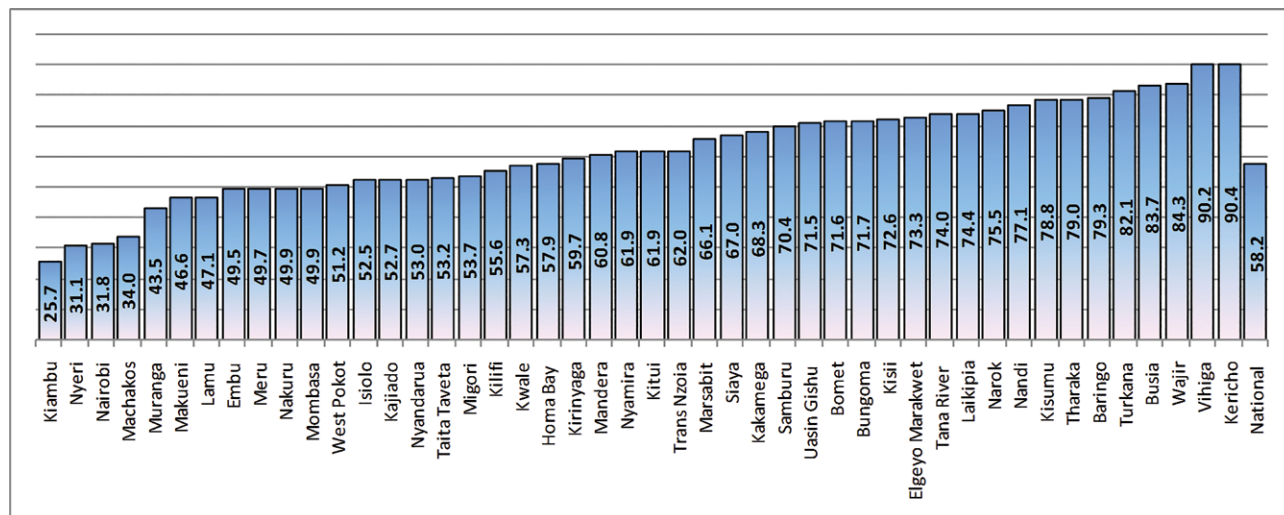
Source: Authors' computed from the Equality and Inclusion Survey (2015)

The relatively high rates in own account workers and contributing family workers are indicative of a large agricultural sector and low growth in the formal economy. The dominance of these forms of employment suggests there is likely to be little job growth within the economy, and consequently poor development. These jobs are also associated with higher incidences of poverty. The higher proportions of females in vulnerable employment imply their relative disadvantage with respect to overall welfare. This suggests the need to focus on creation of not only more jobs, but also jobs of better quality. It is also suggestive of the need to enhance the quality of existing jobs.

The proportion of vulnerable jobs differs quite markedly across the 47 counties with Kiambu County having the lowest proportion (26%) while Vihiga and Kericho have about 90 per cent each (Figure 6.3). Generally, the largely rural counties have high rates of vulnerable employment, while the more urbanized counties such as Nairobi, Machakos and Mombasa have relatively lower rates of

vulnerable employment. It is noteworthy that counties that had high EPRs, such as Busia and Vihiga (as highlighted in Figure 6.1), have some of the highest proportions of vulnerable jobs.

Figure 6.3: Proportion of vulnerable employment to total employment, 15-34 years by county, 2015⁹⁶



Source: Authors' computed from the Equality and Inclusion Survey (2015)

Youth unemployment, absolute and relative unemployment gap

The unemployment rate is the quotient resulting from dividing the total number of unemployed by the corresponding labour force. The labour force is the sum of the total persons of employment age (given laws) who are employed and unemployed, and forms the economically active portion of a group or population. In the Equality and Inclusion Survey, 2015 an individual in the working age group was deemed to be employed if he worked for pay, was on leave, worked in own family business, or worked in own family agricultural holding. The unemployed individuals were those of working age who reported to be seeking work but had not found it, and those not seeking (doing nothing).

Unemployment for the working age population, i.e. those aged 15 to 64 years, was 16.4 per cent in 2015, as shown in Table 6.13. The youths aged 15 to 19 and 20-24 had unemployment rates of nearly 36 per cent and 30 per cent, respectively, which were about twice as large as the overall unemployment rate.

There were also differences by sex, with female unemployment rates generally higher than those of the males as indicated by Table 6.13's negative absolute gender gap (male minus female rate), as well as the relative unemployment gap (male to female ratio) which was mostly less than 1.

96 Garissa County was omitted due to its apparent outlier status – with a rate of 2.4 percent

Table 6.13: Total and urban unemployment rates and gaps (%) by age group and sex, 2015

	Total	Male	Female	Absolute gap	Relative gap
Total (rural + urban)					
15-19	35.5	29.6	41.6	-12.0	0.7
20-24	30.3	29.6	30.9	-1.3	1.0
25-29	18.5	18.7	18.4	0.3	1.0
30-34	11.7	10.9	12.6	-1.7	0.9
15-34 (youth)	22.7	21.2	24.1	-2.9	0.9
15-64 (working age)	16.4	15.5	17.4	-1.8	0.9
Urban*					
15-19	50.1	33.7	57.0	-23.3	0.6
20-24	45.4	47.0	44.4	2.6	1.1
25-29	21.5	14.0	25.5	-11.5	0.5
30-34	9.1	11.4	5.9	5.5	1.9
15-34 (youth)	27.1	21.9	30.8	-8.9	0.7
15-64 (working age)	17.5	12.6	22.0	-9.5	0.6

Source: Authors' computed from the Equality and Inclusion Survey, 2015

*Urban only includes Nairobi, Mombasa and Kisumu counties

Urban areas usually tend to have higher unemployment rates, as shown for Nairobi, Mombasa and Kisumu. The unemployment rate for these urban centres is slightly higher for the working age population. For the youths aged 15 to 34, the urban rates are significantly larger by about 4 per cent. Urban youths in the 15 to 19 and 20 to 24 age groups have particularly much larger unemployment rates of 50 per cent and 45 per cent, respectively.

Educational attainment and employment

On the schooling status of the youth, it is evident that a relatively large proportion never went to school, with nearly 11 per cent of those aged 18 to 34 years, or about 1.2 million individuals, fitting in that category in 2009 (Table 6.14). These youths are likely to remain uncompetitive in the labour market, and even if engaged, are likely to work in low productivity jobs. One of the implications for policy is the need to enhance status uplifting programmes such as the Kenya Youth Empowerment Programme, and also provide second chance programmes to young adults to receive some basic numeracy and literacy skills.

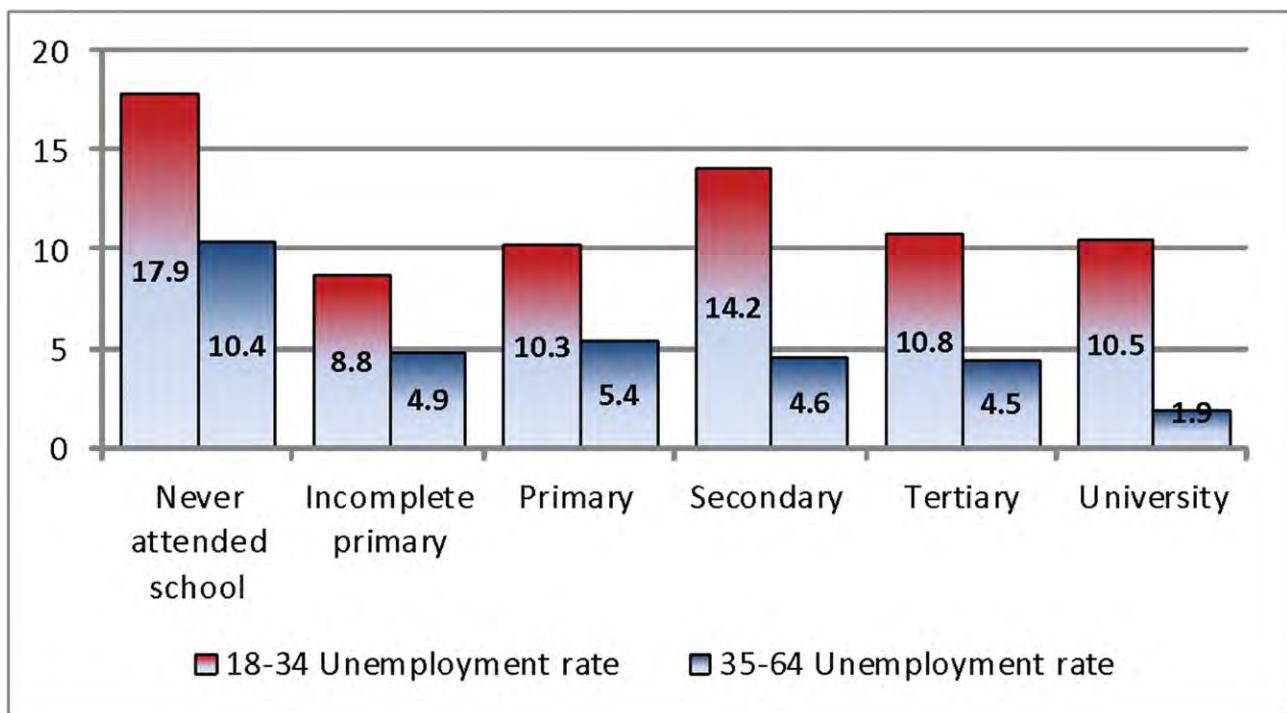
Table 6.14: Schooling status of youth, 2009

	At School	Left School	Never Went to School	Don't know	Total
3-17	77.7	3.6	17.0	1.8	15,602,250
18-34	16.9	71.7	10.8	0.6	10,996,550
35-64	2.2	75.6	21.4	0.8	6,990,200

Source: Authors' computations from the 2009 Kenya Population and Housing Census data

Figure 6.4 summarizes the schooling status vis-à-vis employment outcomes of different age groups in 2009. The youth (aged 18 to 34 years) who never attended school are the most disadvantaged with respect to unemployment. Nearly 18 per cent are unemployed relative to a ratio of 8 per cent who are unemployed in 2009. Unemployment also seems to decline with age, perhaps suggesting that older persons take up whatever jobs are available as family and other responsibilities set in. Youth with incomplete primary education and those with complete primary education are not any less likely to be unemployed relative to the other education groups. However, the less educated youth are likely to be engaged in vulnerable jobs. The relatively comparable unemployment rates across youths with varying education levels can partly be attributed to the fact that for all the groups, any employment is better than unemployment.

Figure 6.4: The unemployment rates for various levels of education attainment, 2009



Source: Authors' computations from the 2009 Kenya Population and Housing Census data

6.3 Status of Equality and Inclusion of the Women in the Labour Market

Sectoral distribution of employment by sex

The females in the labour force, i.e. those aged 15 to 64, are compared with the males of the same category (Table 6.15). The overriding observation is that a larger proportion of employed females (nearly 64%) than males (48%) are engaged in self-employment (or individual/family enterprises). However, formal employment (represented by private and public sector engagement) has a larger proportion of males.

Table 6.15: Employment by main employer for the working age group and by sex, 2015

Main Employer	Male (15-64 years)	Female (15-64 years)	Working age group (15-64 years)
Individual/family enterprise	48.1	63.6	55.8
Private sector company	16.8	8.2	12.5
Informal sector employer	11.9	7.5	9.7
National government	4.6	2.8	3.7
County government	2.6	1.7	2.2
International organization	0.5	0.3	0.4
Non-governmental Organization	0.4	0.3	0.4
State-owned enterprise	0.2	0.7	0.4
Constitutional commission	0.3	0.0	0.2
Other	14.4	14.9	14.6
Total (%)	100.0	100.0	100.0
Total (number)			

Source: Authors' computed from the Equality and Inclusion Survey (2015)

Women employment to population ratio

The employment to population ratio (EPR) by sex is presented in Table 6.16. The female EPRs were all below the male rates for all the selected age groups in 2015. This is indicative of the relative disadvantage of females in accessing employment.

Table 6.16: Employment to population ratio by age group and Sex, 2015

Age group	Employment to population ratio	
	Male	Female
15-19	21.5	17.5
20-24	41.8	39.2
25-29	64.0	57.6
30-34	81.3	64.5
35-39	80.6	68.0
40-44	85.2	72.0
45-49	89.8	70.4
50-54	86.3	78.8
55-59	81.2	70.2
60-64	76.5	65.7

Source: Authors' computed from the Equality and Inclusion Survey, 2015

Women not in education, employment, or training (NEET)

The NEET indicator was covered for both males and females in the sub-section on youth. Persons not in education, employment or training (NEET) – is higher for females relative to males.

Status of women in wage employment

There were 2,283,000 and 2,370,000 wage employees in 2013 and 2014, respectively.⁹⁷ Out of

97 See KNBS (2015).

these, about 838,000 and 866,000 were females in wage employment in 2013 and 2014, respectively. While national population data indicate near parity between males and females, the female share of total wage employment was about 37 per cent of the total wage employment in 2013 and 2014, as shown in Table 6.17. Most female wage employees were employed in the services, and agriculture or agricultural-related activities. The largest share was employed in the education sector, accounting for about 27 per cent of total female wage employment, followed by agriculture, forestry and fishing, which accounted for about 13 per cent of total female employment. However, a larger share of men is engaged in the more lucrative industries such as manufacturing and professional, scientific, and technical activities.

Table 6.17: Wage Employment by industry and sex, 2013 and 2014, '000

	Male		Female		Total	
	2013	2014*	2013	2014*	2013	2014*
Agriculture, forestry and fishing	217.8	220.6	124.7	112.7	342.5	333.3
Mining and quarrying	7.7	10.8	1.7	2.0	9.4	12.8
Manufacturing	228.5	234.4	50.9	53.0	279.4	287.4
Electricity, gas, steam and air conditioning supply	10.4	11.1	4.2	4.2	14.6	15.3
Water supply; sewerage, waste management and remediation activities	6.3	7.0	3.1	3.4	9.4	10.4
Construction...	106.7	117.1	23.1	26.6	129.8	143.7
Wholesale and retail trade; repair of motor vehicles and motorcycles	159.1	164.7	53.1	55.5	212.2	220.2
Transportation and storage	55.7	58.3	20.4	21.4	76.1	79.7
Accommodation and food service activities	49.9	49.0	23.6	24.1	73.5	73.1
Information and communication	58.1	61.9	34.3	37.2	92.4	99.1
Financial and insurance activities	39.2	40.4	26.1	27.1	65.3	67.5
Real estate activities	2.8	2.9	1.0	1.0	3.8	3.9
Professional, scientific and technical activities	45.3	46.4	19.9	20.2	65.2	66.6
Administrative and support service activities	4.2	4.3	0.6	0.6	4.8	4.9
Public administration and compulsory social security	141.6	147.6	80.8	85.9	222.4	233.5
Education	202.1	215.4	221.2	234.6	423.3	450.0
Human health and social work activities	45.3	47.7	67.0	70.7	112.3	118.4
Arts, entertainment and recreation	4.5	4.6	2.1	2.1	6.6	6.7
Other service activities	18.9	18.6	10.3	11.9	29.2	30.5
Activities of households as employers; undifferentiated goods- and services-producing activities of households for own use	40.6	40.3	69.2	71.8	109.8	112.1
Activities of extraterritorial organizations and bodies	0.8	0.8	0.3	0.3	1.1	1.1
TOTAL	1,445.5	1,503.9	837.6	866.3	2,283.1	2,370.2
Of which: Regular	1,129.0	1,162.6	677.7	684.3	1,806.7	1,846.9
Casual	316.5	341.3	159.9	182.0	476.4	523.3

Source: Kenya National Bureau of Statistics, 2015

Women in Vulnerable employment

Generally, the proportion of females in vulnerable employment is larger than that of males for all the age groups within the working age population as discussed earlier at Table 6.12.

Gaps in contract type

The main contract types discussed in this sub-section are regular jobs (or fixed term contracts), as opposed to casual jobs. Casual wage employment accounted for an average 21 per cent of total wage employment for 2013 and 2014 (Table 6.17). Between 2013 and 2014, casual wage employment increased by about 9.8 per cent to about 523,000.

This was over three times the 3 per cent increase in regular jobs. This implies that there was increased rate of casualization within the formal sector between 2013 and 2014. A larger share of females (between 26% and 27%) was employed as casual workers, compared to less than 23 per cent for males in 2013 and 2014. Casual employment of males increased by 7.8 per cent whereas that of females increased by 13.8 per cent (from 159,900 in 2013 to 182,000 in 2014). Thus, females were increasingly over-represented in casual jobs, which tend to have lower benefits, no training opportunities, and less attractive career prospects, if any. If contract type is used as a measure of the quality of jobs, then the implication is that the quality of wage employment declined, especially for females.

Pay gaps between men and women

Although most countries across the globe have ratified the Equal Remuneration Convention, with Kenya ratifying in 2001, there are still significant pay gaps between males and females in nearly all countries. Evidence from various studies reveals significant pay gaps between males and females for work of equal value. As an example, the Global Gender Gap (2013) estimates that in Kenya, women are likely to earn 67 per cent of the salary of men. There seems to be no sustained unidirectional improvement over time given that in 2005, 2007 and 2014, the female to male ratio in wages was 68 per cent, 84 per cent and 70 per cent, respectively, relative to the ideal ratio of 100 per cent.⁹⁸ The Equality and Inclusion survey 2015 collected data on the last month's basic salary of workers, which are summarized in Table 6.18. Although not corrected for age, education, and cadre, the median wages are indicative that males earn more than females, except in international organizations, which had parity. The mean wages were much larger for males, indicating a higher incidence of males on the upper part of the wage distribution.

Table 6.18: Median wages/salaries earned in the last one month by major employer and sex, 2015

Main employer last 12 months	Male	Female	Female/Male (%)
Private sector company	12,000	10,000	83.3
Individual/family enterprise	3,000	2,000	66.7
Government (county)	24,000	13,500	56.3
Government (national)	29,000	23,000	79.3
Constitutional commission	16,500	9,000	54.5
Informal sector employment	5,000	3,000	60.0
International organization	2,000	2,000	100.0
State owned enterprise	6,200	20,000	322.6
Non-governmental organization	50,000	17,210	34.4

Source: Authors' computed from the Equality and Inclusion Survey (2015)

98 See World Economic Forum (2008; 2015).

Absolute and relative unemployment gap

The total absolute gender gap (male minus female rate) for the working age population (15-64) was -1.8 in 2015 (Table 6.19). The relative unemployment gap indicates a relatively balanced scenario. As an example, the total unemployment rate was 1.1 times higher for females than males in 2015. The relative rate was 0.9 in 2015.

Table 6.19: Total per cent unemployment rates and gaps by age group and sex, 2015

Age brackets	Unemployment			Absolute gap	Relative gap
	Total	Male	Female		
15-19	35.5	29.6	41.6	-12.0	0.7
20-24	30.3	29.6	30.9	-1.3	1.0
25-29	18.5	18.7	18.4	0.3	1.0
30-34	11.7	10.9	12.6	-1.7	0.9
35-39	11.4	14.2	8.4	5.8	1.7
40-44	9.4	9.4	9.5	0.0	1.0
45-49	6.7	3.4	10.9	-7.5	0.3
50-54	7.0	9.2	4.6	4.6	2.0
55-59	13.9	13.5	14.5	-1.0	0.9
60-64	12.4	7.8	16.8	-9.0	0.5
15-34 (youth)	22.7	21.2	24.1	-2.9	0.9
Total (15-64)	16.4	15.5	17.4	-1.8	0.9

Source: Authors' computed from the Equality and Inclusion Survey (2015)

The absolute and relative unemployment rates by gender for urban and rural areas indicate that in urban areas, male unemployment is lower in absolute terms. On the other hand, male unemployment is generally larger in absolute terms in rural areas.

6.4 Status of Equality and Inclusion of the Persons with Disabilities in the Labour Market

In 2015, about 2.1 per cent of Kenyans in sampled households were reported to be handicapped. Table 6.20 summarizes the status of PWDs in Kenya in 2009, showing that about 3.5 per cent of Kenyans were affected by at least one form of disability. Visual and physical disability each accounted for about 1 per cent of disability cases. Given the share of the disabled, and assuming minimal under reporting, the 5 per cent quota for persons with disabilities to elective and appointive posts is in all likelihood adequate.

Table 6.20: Persons with disability by type of disability, 2009

Disability	Number of persons	Per cent
Visual	331,740	0.9
Hearing	187,890	0.5
Speech	163,560	0.4
Physical	337,300	0.9
Mental	135,340	0.4
Self-Care	77,110	0.2
Others	99,680	0.3
Total PWD	1,332,620	3.5
None	37,078,480	96.5
Total	38,411,100	100.0

Source: Authors' computations from the 2009 Kenya Population and Housing Census data

Sectoral distribution of persons with disability in employment

Relative to the employed PWDs, a larger proportion of the employed PWDs are likely to be in informal employment or agriculture. By implication, a lower proportion of PWDs are employed within the formal sector – indicating their relative disadvantage in accessing good quality jobs (Table 6.21). This outcome is usually associated with the PWDs difficulty or discrimination (owing to cultural issues) in accessing education, amongst other obstacles. The FGD sessions across the country indicated that many households still fail to expose their PWDs to the opportunities available, for example, for accessing education and employment. It also emerged that many learning institutions and work stations are also hostile environments for PWDs.

Table 6.21: Percentage distribution of the employed persons, PWDs and persons without disabilities, 2009

	Disabled	Not disabled	Total
Private Sector	9.8	14.7	14.6
Local Authorities	0.5	0.6	0.6
Central Government	1.1	1.7	1.7
TSC	1.3	1.7	1.7
State-owned Enterprise	0.8	1.1	1.1
International NGO	0.3	0.3	0.3
Local NGO	0.3	0.4	0.4
Faith-Based Organization	0.6	0.6	0.6
Self-Modern	1.6	1.9	1.9
Informal Sector ('Jua Kali')	10.8	9.6	9.7
Self Employed – Informal	33.4	31.0	31.1
Small Scale Agriculture	3.6	3.6	3.6
Self-Small Scale Agriculture	29.1	25.1	25.2
Pastoralist Employed	0.2	0.2	0.2

	Disabled	Not disabled	Total
Self-Pastoralist	3.8	3.9	3.9
Private Household	2.7	3.3	3.3
Other	0.1	0.1	0.1
Total	476,860	13,759,890	14,236,750

Within the public sector, the PSC review indicated that out of the 243 MDAs they evaluated, only 3 per cent met the constitutional threshold of 5 per cent of employment for PWDs.⁹⁹ About 13 per cent of MDAs do not have any PWDs in their workforce. This implies that the public sector needs to make significant improvements with respect to representation of PWDs in employment. Indeed, Table 6.21 shows the private sector with a 10 per cent share of PWDs in its employment to do considerably better than the public sector.

Employment to population ration for persons with disabilities

With respect to their status, the employment to population ratio (EPR) for PWDs was about 35 per cent, which is relatively lower than that of the overall population (57%), as shown in Table 6.22. PWDs are therefore disadvantaged relative to the rest of the population with respect to accessing employment opportunities.

Table 6:22: Persons with disability aged 15-64 years, employment to population ratio (EPR), 2009

	EPR (PWD)	EPR (working age group)
Male	32.7	60.9
Female	36.8	52.9
Total	34.5	56.8

Source: Authors' computations from the 2009 Kenya Population and Housing Census data

Vulnerable employment rate for PWDs

The aim of computing an indicator relating to vulnerable employment and PWDs was to gauge if PWDs tend to be more engaged in vulnerable employment than otherwise. Table 6.23 shows that the vulnerable employment rate for PWDs for the working age group stands at about 87 per cent, which is clearly much higher than that of the overall population (about 61%). The other age categories also show that PWDs are at a disadvantage in accessing decent jobs, and the situation is worse for female PWDs compared to male PWDs.

Table 6.23: Proportion of vulnerable workers for persons with disability by age groups and sex, 2015

Age groups	Male PWD	Female PWD	Total PWD	Overall population
15-34	75.6	90.6	78.6	58.2
35-64	85.2	95.3	91.4	63.0
15-64	79.9	94.5	86.7	60.7

Source: Authors' computed from the Equality and Inclusion Survey, 2015

99 See PSC (2015).

6.5 Status of Equality and Inclusion of the Elderly Persons in the Labour Market

The elderly persons – “older members of society” – are defined as those who are at least 60 years old. About 62 per cent of all sampled elderly persons were employed (or in self-employment) in 2015. The respective percentages for employed (or self-employed) elderly males and females were 55 per cent and 68 per cent, respectively.

Compared to the working age group (15-64 years) and the youth, larger proportions of the elderly worked in agriculture related activities in 2009. A large share of the elderly was also engaged in the expanding informal sector. The position remains the same in the data collected in 2015. This can be explained by the fact that most of the elderly are actually retired from the formal private sector and the public sector, as Table 6.24’s data show.

The engagement in agricultural production (including pastoralist activities), of a larger share of the elderly persons (about 48%) than of the youth (about 30%) or the working age group (33%) is indicative of the crucial contribution of elderly persons in food security in the country.

Table 6.24: Employment by main employer for the working age group, youth and the elderly, 2009

	Main employer	Working age group (15 to 64 years)	Youth (18 to 34 years)	Elderly (60 years and above)
Mainly formal	Private Sector	14.6	17.0	4.6
	Local Authorities	5.1	4.0	0.9
	Central Government			
	Teachers Service Commission			
	State-owned enterprises			
	International NGO			3.2
	Local NGO			
	Faith-based Organization			
	Self-Modern			
	Mainly informal	Informal Sector (Jua Kali)	40.8	42.0
Self Employed – informal				
Small Scale Agriculture		32.9	29.6	48.4
Self-Small Scale Agriculture				
Pastoralist Employed				
Self-Pastoralist				
Private Household		3.3	3.9	1.3
Other		0.1	0.1	0.1
Total (number = 100%)	14,236,750	7,605,580	1,353,200	

Source: Authors’ computations from the 2009 Kenya Population and Housing Census data

The 2009 Census findings are in tandem with the findings from the Equality and Inclusion Survey 2015, as shown in Table 6.25. Employed elderly persons are more likely to be in self-employment (individual/family enterprise) (65%) compared to the proportion for the working age group (56%). For the elderly population too, there is an evident bias against females; they are more likely to be in individual or family enterprises, and are consequently less likely to be in formal employment.

Table 6.25: Employment by main employer for the working age group and the elderly by sex, 2015

Main Employer	Elderly Male	Elderly Female	All Elderly Persons	Working age group
Individual/family Enterprise	61.5	69.7	65.1	55.8
Private Sector Company	9.2	2.5	6.2	12.5
Informal Sector Employer	7.7	4.5	6.3	9.7
National Government	2.3	2.4	2.3	3.7
County Government	2.3	1.2	1.8	2.2
International Organization	-	-	-	0.4
Non-Governmental Organization	-	-	-	0.4
State-owned Enterprise	0.2	0.8	0.5	0.4
Constitutional Commission	-	-	-	0.2
Other	16.9	18.8	17.7	14.6
Total (number = 100%)				

Source: Authors' computations from the Equality and Inclusion Survey, 2015

Employment to population ratio for the elderly

The employment to population ratio (EPR) for the elderly presented in Table 6.26 shows that a larger proportion of this age group is in employment compared to the working age group and the youth.

Indeed, the data reflect the perpetual lament of the youth that employers want experience, which by virtue of their being youths, they do not have. Thus, EPR evidently increases with age (categories).

Table 6.26: Employment to population ratio for the elderly by sex, 2015

	Male	Female	Total
15 -34 (youth)	46.8	43.4	45.0
15 -64 (working age)	60.8	54.9	57.8
60+ (elderly)	67.8	54.8	61.9

Source: Authors' computed from the Equality and Inclusion Survey (2015)

Although a larger proportion of the elderly are in employment as suggested by their larger EPR, a larger share of their engagement is in vulnerable employment (over 70%), i.e. own account and contributing family workers, as reflected in Table 6.27. This proportion compares to about 58 per cent of youth and 61 per cent for the working age group. The disadvantage of females is evident in their greater shares in vulnerable employment for all the age categories listed.

Table 6.27: Proportion of vulnerable workers by age groups and sex, 2015

Age groups	Male	Female	Total
15 – 34 (youth)	51.3	65.3	58.2
15 – 64 (working age group)	51.3	70.6	60.7
60+ (elderly)	66.8	78.3	71.5

Source: Authors' computations from the Equality and Inclusion Survey, 2015

6.6 Status of Equality and Inclusion of the Marginalised Group and Marginalised Community in the Labour Market

With respect to employment, the Constitution 2010 does not provide a threshold for the accommodation of marginalized groups or marginalized communities, as is the case with PWDs and gender. One of the issues surrounding marginalized groups or communities as special interest group is their definition and identification. The Constitution defines marginalized group as “a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds in Article 27(4).”

These grounds include “race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.” The Constitution also defines “marginalized community” in much greater detail, relating their disadvantage to their comparatively small numbers, traditional conservativeness, hunter-gatherer existence, nomadic pastoralism, or geographical isolation.

These definitions mean that the marginalized are quite malleable rather than a specific group, their status depending on some contexts but not others, unlike the perpetual characteristics of the other SIGs. Such malleability adds to other challenges that complicate the implementation of the

constitutional provision regarding minorities and marginalized persons. These challenges and their proposed interventions are highlighted in Table 6.28.

Common and easily discernible grounds for discrimination in Kenya include sex, ethnicity, age, disability, or social background. Less visible but potentially dangerous forms of discrimination include those based on ethnicity and assumed or stated political opinion. In a way, these latter two forms of discrimination have heightened the stakes for political competition in Kenya at both the National and County government levels.

Table 6.28: Challenges to implementing constitutional provisions on marginalized groups and communities with respect to employment

	Challenges	Possible remedies
1	<ul style="list-style-type: none"> There are inadequate efforts to identify “marginalized group(s)” or “marginalized communities”, with some counties denying their existence. 	<ul style="list-style-type: none"> Enforce the policies and laws requiring the identification of, and positive discrimination or affirmative action for, marginalized groups and communities. From the FGDs discussions, this seems to be an ongoing process in most counties.
2	<ul style="list-style-type: none"> Even when efforts towards adhering to the constitutional provisions are observable, focus is usually on the more visible diversities, such as sex, youth and disability. There is inadequate focus on some diversities (in some cases) such as ethnic or social origin, yet these present a major source of feelings of disenfranchisement across Kenya’s counties. 	<ul style="list-style-type: none"> Besides requiring that appointed officers represent the diversity of a county, there is need to introduce: (i) Specific objectives on achievement of diversity as envisaged in the Sessional Paper No. 9 of 2013 on National Cohesion and Integration; and, (ii) introduce specific penalties in case administrative and/or legal provisions are not met.
3	<ul style="list-style-type: none"> There has been poor data on socio-economic variables for individuals and households to enable objective comparisons of the marginalized vis-à-vis the non-marginalized groups. This undermines the planning, budgeting, implementation and monitoring of interventions especially at the county level. 	<ul style="list-style-type: none"> Develop innovative data collection methods through increased collaboration with the national statistical agency (the KNBS), whose 2015 household budget survey data will be most welcome for devolution and Basic Rights. Sensitize stakeholders on the importance of collecting and keeping data Spell out minimum data requirements to be collected and kept at the devolved levels Introduce penalties for failure to ensure the right of access to information held by the State
4	<ul style="list-style-type: none"> The typical public service employee appears not to embrace diversity management as (i) the right thing to do, and (ii) important for performance. 	<ul style="list-style-type: none"> Train and sensitize managers and workers (especially within the public sector) on the importance and benefits of embracing diversity Propagate the publishing and publicizing of information on marginalized groups and marginalized communities

It emerged that some counties are in the process of formally identifying marginalized persons. Most of the counties do not have readily available data on the numbers of marginalized persons. It is thus difficult to perform a nationwide analysis of the employment status of marginalized persons, but the ongoing analysis of the 2015 Kenya Integrated Household Budget Survey should provide very welcome data.

The Public Service Commission’s 2015 evaluation of implementation of national values and principles of governance covered nearly 185,000 public sector employees, among whom nearly 2 per cent were reported to be from minority and marginalized groups. In their analysis, 60 per cent of the 3,892 marginalized groups occupied the lower cadre jobs within the public sector (i.e. Job Groups A to D and E to H). Only 4 per cent occupied the leadership and executive job cadres, R-T and U and above. This suggests the need for more inclusion of the minority and marginalized groups in the public service and in specific advantaged positions therein.

6.7 Assessing the Status of Equality and Inclusion in Public and Private Sector Employment

The public sector includes the National and County governments (and their Ministries, Departments and Agencies). In assessing equality and inclusion, the selected indicators are based on the legislative frameworks, as well as global best practices. Article 232 of the Constitution outlines the Values and Principles of Public Service. Some of these values and principles are in consonance with the principles of equality and inclusion. For example, the Constitution states that the Values and Principles of Public Service include ...“(h) representation of Kenya’s diverse communities; and (i) affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service, of— (i) men and women; (ii) the members of all ethnic groups; and (iii) persons with disabilities.”

These Values and Principles of Public Service apply to public service in— “(a) all State organs in both levels of government; and (b) all State corporations.” The Constitution envisaged that Parliament legislates to give full effect to this Article; which has given rise to the Public Service (Values and Principles) Act. The Constitution also establishes the Public Service Commission (PSC), whose mandate includes the promotion of the Values and Principles referred to in Articles 10 and 232. The PSC is also given the express authority to “evaluate and report to the President and Parliament on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the Public Service...”

It is against this background that the PSC produced the Evaluation Reports on Public Service Compliance... in 2013, 2014 and 2015. The reports are a key source of information on the extent of equality and inclusion of the SIGs in the public sector. It would be judicious for NGEK to work closely with the PSC in their areas of mutual interest, to create synergies in enhancing the principles of equality and inclusion within the public service. NGEK, just like all the other stakeholders, can be informed by the annual PSC reports on the extent of equality and inclusion within the Public Service.

Workplace equality and inclusion policies in private and public sectors

This sub-section highlights the status of equality and inclusion in relation to the workplace infrastructure in place. Table 6.29 summarizes some of the main process indicators specific to both public and private sector firms. For the public sector, some of the relatively high scores for the process indicators that relate to inclusion of the SIGs include the proportion of establishments with a gender mainstreaming and HIV/AIDS policies (above 80%). This is in most likelihood a result of the focused and consistent interventions within the public sector to put these policies in place, including the performance contracting process. However, there is comparatively weak performance within the public sector regarding diversity audits and inclusion reviews, which had been conducted by less than 60% of public sector establishments.

Table 6.29: Equality and inclusion process indicators for the public and private sectors, 2015

Process Indicator	Public sector (%)	Private sector (%)
Proportion of institutions with a diversity or inclusion policy or statement in employment	77.1	64.7
Conducted (or conducted by other agency) a diversity audit within the last 2 years	55.1	39.9
Conducted an inclusion review ¹⁰⁰ or audit within the workplace within the last 2 years	59.4	39.8
Proportion of institutions with a gender mainstreaming policy	85.5	55.8
Proportion of establishments with a gender based violence policy	69.1	51.8
Proportion of institutions with a disability mainstreaming policy or guidelines	79.7	33.8
Proportion has a HIV/AIDS policy	84.1	35.6
Provided diversity training for its staff within last 1 year	69.6	46.0
Hiring goal(s) for achieving equity in workplace diversity		
With respect to gender	75.0	62.8
With respect to youth versus non-youth	71.2	60.7
With respect to disability	77.6	43.0
With respect to ethnicity	70.2	48.5

Source: Computed from the Equality and Inclusion Survey, 2015

Process indicator scores show that the formal private sector lags behind the public sector. In particular, the private sector is relatively weak with respect to policies that relate to disability mainstreaming, HIV/AIDS and the use of diversity audits and inclusion reviews. A key observation is that about one in two of public sector establishments and three in five private sector establishments may not have strong mechanisms of monitoring their progress with respect to establishing a diverse workforce.

In other related findings, the PSC evaluation of 2015 found that the national average score for public sector organizations with diversity management policies was 24 per cent in 2013/14, and increased to 55 per cent in 2014/15. It is likely that there will be further improvements following the PSC's development of the Diversity Management Policy for the Public Service (2015). Its effective implementation by all stakeholders, including NGEC, will be important in enhancing equality and inclusion within the public service.

¹⁰⁰ Inclusion reviews – An assessment of the extent of fairness and respect... with respect to diversity in the workplace

Workplace equality and inclusion for the youth and women

Most of the indicators reported in this sub-section will be outcome and perception indicators. Specifically, the broad indicator framework encompasses five themes as outlined in Table 6.30 below:

Table 6.30: Indicator framework themes and examples

Framework themes	Examples of indicators
<ul style="list-style-type: none"> ▪ Workplace diversity 	<ul style="list-style-type: none"> ▪ Proportion of employees by diversity (age, sex, etc) ▪ Minority representation in the workplaces
<ul style="list-style-type: none"> ▪ Workplace discrimination 	<ul style="list-style-type: none"> ▪ Perceptions on discrimination by diversity (age, sex, etc)
<ul style="list-style-type: none"> ▪ Workplace inclusion 	<ul style="list-style-type: none"> ▪ Proportion of establishments that grant paid 3 month maternity leave ▪ Proportion of establishments with day care centres
<ul style="list-style-type: none"> ▪ Supplier diversity 	<ul style="list-style-type: none"> ▪ Inclusion of SMEs in procurement (youth, women, minorities)in procurement
<ul style="list-style-type: none"> ▪ Capacity development 	<ul style="list-style-type: none"> ▪ Number of initiatives

Workplace diversity

Workplace diversity is characterized by a variety of differences between people in an organization, encompassing age, gender, ethnic group, abilities, personality, religious beliefs and education. Embracing diversity (age, ethnic, religious, etc) in employment is considered something to be valued, and has a well-documented business case.

Appreciation of diversity is the hallmark of successful establishments and nations, and is certainly less costly than discrimination and possible conflict.¹⁰¹ According to the Equality and Inclusion Survey 2015, institutions do not keep diversity-related data in accessible formats, and this limits the ability to compute outcome indicators such as proportion of employees by age and sex, and makes monitoring and evaluation difficult.

Nevertheless, within the public and private sectors, about 71 per cent and 74 per cent of respondents agreed that their establishment “usually has a diverse workforce with respect to inclusion of the youth”, as seen in Table 6.31. The proportion for the informal sector is lower, with about 57 per cent perceiving their establishments to incorporate a balance with respect to age.

Table 6.31: Perception of public, private and informal sector institutions on workplace diversity, 2015

	Informal	Public	Private
Your establishment usually has a diverse workforce with respect to ...youth (18–34 years) versus non-youth	57.1	70.8	73.8

Source: Computed from the Equality and Inclusion Survey, 2015

In its evaluation conducted in 2014/15, the PSC found that 70 per cent of MDAs met the two-thirds gender rule if focus is on the aggregated public service employees. However, the lower level cadres (job groups A to D) and the leadership level positions (job groups R to T) failed to meet the constitutional requirement in 2014/15.

Workplace discrimination

Common and easily discernible grounds for discrimination in Kenya include sex, ethnicity, age, disability, or social background. Less visible but potentially dangerous forms of discrimination

¹⁰¹ See ILO (2003).

include those based on ethnicity and assumed or stated political opinion. In a way, these latter two forms of discrimination have heightened the stakes for political competition in Kenya at both the National and County government levels.

For both public and private sector establishments, most individuals seem to hold the perception that there is no discrimination based on diversity (including age and sex) in their establishments, as the data in Table 6.32 show. The perception of no discrimination was lower in the informal sector compared to the formal sector. All public-sector respondents and about 82 per cent of their private sector counterparts described their establishment as being inclusive workplaces, compared to only 62 per cent of those in the informal sector.

Table 6.32: Perception of public, private and informal sector institutions on discrimination in their workplaces

Your establishment ... does not discriminate workers by:	Informal	Public	Private
Sex	62.5	88.0	80.4
Age	76.4	92.0	76.7
Ethnicity	73.6	92.0	82.7
Religion	76.4	92.0	82.7
Is an inclusive workplace ²⁰⁰	62.0	100.0	81.55

Source: Computed from the Equality and Inclusion Survey (2015)

Workplace inclusion

‘Workplace inclusion’ refers to the extent to which the workplace culture is welcoming, and everyone – especially the youth and women – is treated with respect and dignity, and feels valued.

Even though the labour laws in Kenya support family friendly policies – such as the 3-month paid maternity and 10 days paid paternity leave, implementation faces a number of challenges. Only about half of the informal sector establishments reported granting 3 months paid maternity leave, as seen in Table 6.33. This was significantly lower than the 94 per cent reported by public establishments, and the 76 per cent for the private formal establishments. The unavailability of paid maternity leave may limit the participation of women in some forms of employment.

Table 6.33: Share of establishments that reconcile work and family life in the workplace – public, private and informal establishments, 2015

	Public (%)	Private (%)	Informal (%)
▪ Provides flexible hours for workers in need (e.g. lactating mothers and employees in education)	85.7	74.1	76.0
▪ Provides facilities for childcare (e.g. a day care centre)	10.1	11.8	11.4
▪ Grants 3 months paid maternity leave	94.3	76.4	50.6
▪ Grants 10 working days paid paternity leave	91.4	56.6	31.2
▪ Has sanitation facilities that are suitable for women (e.g. hooks for handbags)	48.6	63.5	54.4

Source: Computed from the Equality and Inclusion Survey (2015)

102 Inclusive - The workforce is representative of the local community or customers (or if not, under-represented groups are encouraged to apply. Presence of a welcoming workplace culture where everyone is treated with respect and dignity and everyone feels valued.

In the FGD forums, it emerged that the non-implementation of the maternity rule by firms reflects several factors, such as weak enforcement of existing laws, inadequate vigilance by employees/employers on employee rights, and the inability of some establishments, especially informal establishments, to afford to extend the benefit of pay while a worker is on an extended leave. These factors point to the vulnerable nature of the jobs some employed persons (especially those in the informal sector) are involved in.

Supplier diversity

Besides workplace equality and inclusivity, supplier diversity (procurement) and community relations are important dimensions in determining the extent of equality and inclusion over opportunities in Kenya. The allocation of procurement contracts is expected to have a big impact on equality and inclusivity in employment and overall well-being. It is therefore useful to monitor the extent to which public establishments embrace supplier diversity. Based on the survey findings, only about 49 per cent of public sector establishments and about 42 per cent of private sector establishments had a supplier diversity programme.

Workplace equality and inclusion indicators for PWDs

(i) Workplace diversity and discrimination

Table 6.34 summarizes perception on workplace discrimination for the PWDs. The key finding is that most individuals perceive that public and private sector establishments do not discriminate workers by disability. For the informal sector, about 40 per cent of the respondents perceived discrimination by disability. Meanwhile, only 44 per cent of public sector employees perceived their establishment to usually have a diverse workforce with respect to disability, with private sector and informal sector perceptions being much lower.

Table 6.34: Employee perceptions on diversity and discrimination in public, private and informal sector institutions

	Informal	Public	Private
Your establishment usually has a diverse workforce with respect to disability	18.3	44.0	36.3
Your establishment does not discriminate workers by disability	59.7	92.0	75.5

Source: Computed from the Equality and Inclusion Survey (2015)

With respect to inclusion, Article 54(2) of the Constitution requires that at least 5 per cent of public appointments must be reserved for PWDs. However, the PSC evaluation of 2014/15 found that only 3 per cent of the 243 evaluated MDAs met this threshold.

Supplier diversity

Even though the administrative action on procurement seeks to expand opportunities for the PWDs, less than half of public sector establishments had a supplier diversity programme. More interventions are necessary to improve access of PWDs to these opportunities.

Workplace equality and inclusion indicators for ethnicity

The ideal situation is to have a public sector that mirrors the face of Kenya with respect to employment. However, as documented by the PSC, the public service is characterized by over-representation of some ethnic groups, compared to their respective shares of the national population. The over-representation of the five largest ethnic groups increased in the last one year to 2014/15.

About 80 per cent of MDAs thought they had a diverse workforce with respect to ethnicity. The corresponding scores for the private and informal sectors were about 52 and 42 per cent, respec-

tively. In addition, most individuals seem to hold the perception that discrimination based on ethnicity is absent within their establishments. This was the case for 92 per cent of public sector establishments and nearly 83 per cent for the formal private establishments. Within the informal establishments, about 74 per cent thought there was no discrimination based on ethnicity.

6.8 Emerging Issues in Employment

Crosscutting issues

Across MDAs, it is difficult to collate data on relevant issues on employment by SIGs. MDAs rarely keep data in a format that is easily sharable. As an example, few establishments were willing to share their own employment data disaggregated by age or ethnicity. This can undermine effective monitoring and evaluation of progress towards achieving equality and inclusion of the SIGs. In this light, it is important that the President has just assented to the Freedom of Information Act, even if other legislation undermining access to information, remain in the statute books, such as the Official Secrets Act.

Recommendations:

Establishments, especially public sector establishments, need sensitization on the need to:

- i) Uphold the constitutional and other regulatory provisions on equality and inclusion.
- ii) Identify and collect data on the specific indicators that capture all the legal or regulatory requirements on equality and inclusion, e.g. employment across age groups or by ethnic origin.
- iii) Keep and share information that is of a public nature (to actualize the right of access to information by every citizen). To enhance access to information as envisaged by the Constitution, the government should introduce penalties for failure to share information of a public nature.

- iv) NGECE and other related Commissions could establish an online system that allows all MDAs to provide data on labour and other indicators in a pre-structured template to enhance data accessibility.

Data sets indicate that a high proportion of Kenyans and a high proportion of persons across all the SIGs are in vulnerable employment. These are mainly own account and contributing family workers. These jobs are characterized by informal working arrangements, lack of adequate social protection, and in most cases low productivity and hence low earnings or pay.

Recommendations:

- i) Enhance the implementation, monitoring and evaluation of existing laws and regulations including international conventions on labour and employment.
- ii) Expand the formal economy and formalize informality especially in the largely rural regions.
- iii) Expand the reach of social protection.

Children

Child labour is a potentially significant challenge in Kenya. Nearly 23 per cent of the out-of-school children worked for 40 hours or more in the week before the Survey. The relatively long hours of work suggest that these children were likely to be out of school to provide themselves and their families with basic needs. This seems to be worse among communities living in the ASALs. It is highly likely that the children are driven to work mainly due to poverty.

Recommendations:

- i) Enforce the law that gives children a right to basic free and compulsory education.
- ii) Address the need to work for survival by enhancing the cash transfer programmes (with respect to more effective targeting).
- iii) Sensitize households on the right of children to access education.

About 9 per cent of children aged 3 to 14 years were not in school in 2009. The implication is that a relatively large population of future youth will not be equipped to compete effectively in the labour market. There is need to complement the FPE policy with other programmes, such as well targeted bursaries and school feeding programmes.

- i) It is apparent that existing transfers and bursaries may still be missing the poorest households and there is need to improve targeting, and monitoring and evaluation mechanisms.
- ii) Social transfers may need to increase given the high poverty rates.
- iii) Lower the cost of living and cost of attending school (uniforms, shoes, transport).

Youth and Women

The youth unemployment rate is generally larger than the overall rate for the working age population, by as much as two times. Many more youths are inactive than are unemployed, but youth unemployment and youth inactivity are dwarfed by the number of youths engaged in vulnerable (or poor quality) jobs, mainly in rural areas. Although education attainment is strongly correlated with more productive forms of employment, access to it is unsatisfactory. A relatively large proportion of the youth (about 11% of those aged 18-34) never went to school.

In addition, about 21 per cent of those aged 20 to 24 years were not in education, employment, or training (NEET) in 2009.

Recommendations:

- i) Expand economic opportunities in regions previously considered “low potential regions”, such as the ASALs.
- ii) Remove barriers to education for the poor, by reducing costs for households and/or expanding bursaries and other transfers.
- iii) Encourage out of school youth to re-enter general education, e.g. through flexible subsidized second chance programmes.
- iv) Make non-formal education attractive and accessible, and ensure formal recognition of learning achievements.

- v) Increase quality and relevance of education.

In employment and employment outcomes, females are disadvantaged in many ways. A larger proportion of females are not employed, or are inactive given their lower employment to population ratio (EPR), which is lower than that of males. The female share of total wage employment was about 37 per cent of the total wage employment in both 2013 and 2014. Generally, the proportion of females in vulnerable employment is larger than that of males for all the age groups within the working age population. A larger share of females (between 26% and 27%) were employed as casual workers compared to under 23 per cent for males in 2013 and 2014. Females were also increasingly over-represented in casual jobs in 2014 relative to 2013.

Recommendations:

- i) Enhance the enforcement of family friendly policies (such as maternity leave) and address socio-cultural impediments.
- ii) Increase access to more education especially for the disadvantaged.
- iii) Increase access to TIVET. This can be achieved through subsidization.

Persons with Disabilities

Based on the share of PWDs in the total population, the five per cent quota for persons with disabilities to elective and appointive posts is in all likelihood adequate. However, this modest quota has not been met, with the PSC estimating that only 3 per cent of MDAs met the constitutional threshold of 5 per cent of employment of PWDs. Other findings indicate that a lower proportion of PWDs are employed within the formal sector – indicating their relative disadvantage in accessing good quality jobs. This outcome is usually associated with the PWDs difficulty (or discrimination) in access to education, among other factors.

Recommendations:

- i) Support PWDs education to enhance their labour market competitiveness. This can be achieved through more sensitization, and ensuring mainstreaming with formal educational institutions to remove access barriers.
- ii) Expand the number of special schools (or specialized units within schools) and enhance their quality.
- iii) Train more specialized teachers – especially at secondary and tertiary levels of education.
- iv) Ensure compliance with the constitutional requirement on reserved percentage employment for PWDs through affirmative actions and programmes.

About 9 per cent of children aged 3 to 14 years were not in school in 2009. The implication is that a relatively large population of future youth will not be equipped to compete effectively in the labour market. There is need to complement the FPE policy with other programmes, such as well targeted bursaries and school feeding programmes.

Public and private sectors**Public sector**

To make meaningful progress in achieving equality and inclusion in employment, it is imperative to have in place clear and specific goals to achieve diversity and inclusion among establishments. It is also important to keep and/or collect and monitor data on a continual basis through evaluations similar to that of the PSC. These processes are envisaged in the Sessional Paper No. 9 of 2013 on National Cohesion and Integration. In the Sessional Paper, the government commits to “build an

inclusive public service that reflects Kenya’s diversity” (page 36). This is to be achieved using diversity audits, and “establishing goals for equity in diversity in all national and county government institutions such as ministries, agencies, and departments.”

Recommendations

- i) Each MDA should be tasked to establish specific, measurable, attainable, realistic and time bound (SMART) goals that target to meet the requirements specified in the laws that relate to equality and inclusion in employment.
- ii) Improve data capture and management within MDAs, e.g. by requiring MDAs to keep and submit data relevant for analyzing and monitoring indicators that relate to equality and inclusion using an online-based system.
- iii) Promote an inclusive representative public service. This can be achieved quickly using affirmative action initiatives targeting females in low and high job cadres, ethnic minorities, and youth.

Private sector

NGEC should form stronger partnerships with the private sector umbrella to push for adoption of best practices in equality and inclusion in employment. This should include initiatives to compute and self-report on equality and inclusion indices across establishments.

Recommendations

In partnership with other stakeholders:

- i) Champion the computation and reporting of a Disability Equality Index
- ii) Champion the computation and reporting of a Workplace Diversity Index.
- iii) Champion the computation and reporting of any other relevant Index/Indices.

The ultimate objective of the reporting should be to improve performance.

FINDING AND DISCUSSIONS ON EQUALITY AND INCLUSION IN SOCIAL PROTECTION

Data obtained from the Kenya Social Protection Single Database Registry (KSPSR) shows that direct disbursements to beneficiary households have progressively increased from Ksh 1 billion in 2009/10 to Ksh 20 billion in 2014/15, as presented in Figure 7.1.

The increase is associated with the upward adjustment of per capita payments from Ksh. 500 to Ksh. 2,000, and the increase in the numbers of beneficiary households from 142,000 to 661,000. In terms of specific programmes, the Cash Transfer- Orphans and Vulnerable Children (CT-OVC) accounts for the highest disbursement, growing from Ksh 0.55 billion to Ksh 7.49 billion over the same period.

7.1 Assessing the Status of Equality and Inclusion in Social Protection

The Kenya National Social Protection Policy defines ‘social protection’ as:

“Policies and actions, including legislative measures, that enhance the capacity of and opportunities for the poor and vulnerable to improve and sustain their lives, livelihoods, and welfare that enable income-earners and their dependants to maintain a reasonable level of income through decent work, and that ensure access to affordable healthcare, social security, and social assistance.”¹⁰³

The Policy adopts four approaches to social protection, including:

- i) Provision of “cash transfers, food aid, affordable health charges, child protection services, and responses to life-threatening emergencies to enhance coping mechanisms of vulnerable groups”;
- ii) Prevention through “strengthening social security and health insurance schemes through unemployment, healthcare, sickness, maternity, and other relevant benefits and pensions, as well as services to support communities and other subsidized risk-mitigation mechanisms to prevent deprivation or destitution”;
- iii) Promotion of “interventions aimed at enhancing livelihoods and productivity, such as conditional cash transfers, public works programmes, food for work, and school feeding programmes in order to reduce households’ susceptibility to social risks”; and
- iv) Transformation through improved policies on “social protection, the statutory minimum wage, maternity benefits, inheritance rights, anti-discrimination legislation, anti-stigma campaigns, anti-corruption legislation, policies on fee-free education, and regulations on safe classroom environments (to avoid exclusion of vulnerable children and girls).”

¹⁰³ See Republic of Kenya (2011: 2-3).

7.2 Social Protection Programmes at the National Level

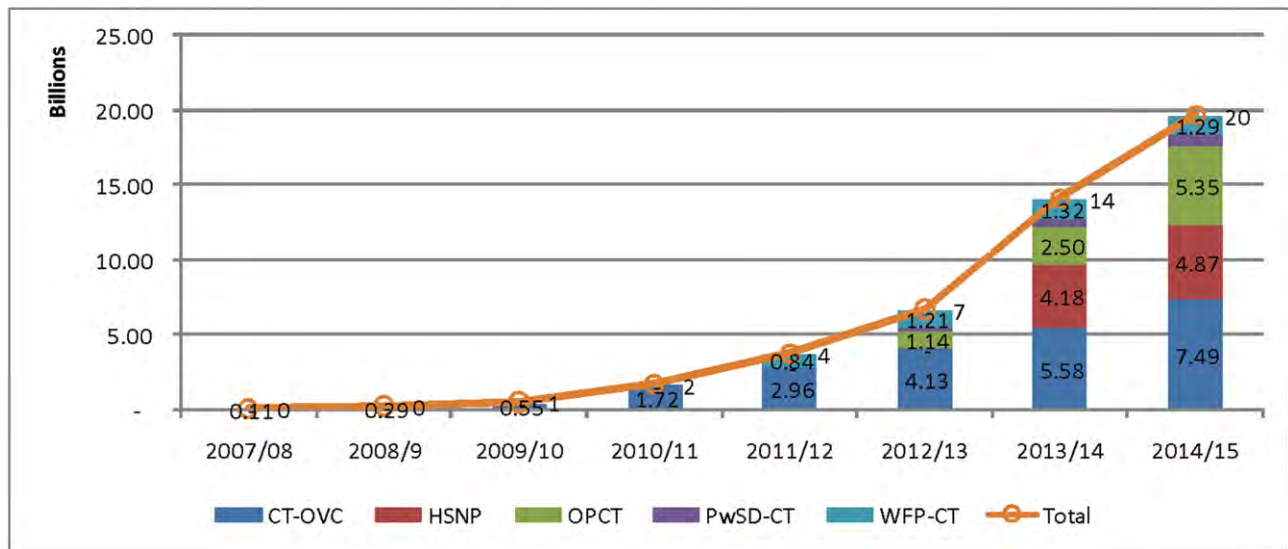
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The increase is associated with the upward adjustment of per capita payments from Ksh.500 to Ksh 2,000, and the increase in the numbers of beneficiary households from 142,000 to 661,000. In terms of specific programmes, the Cash Transfer- Orphans and

Vulnerable Children (CT-OVC) accounts for the highest disbursement, growing from Ksh 0.55 billion to Ksh 7.49 billion over the same period. The Hunger Safety Net Programme (HSNP), which began in 2013/14 is second largest, rising from Ksh 4.18 billion to Ksh 4.87 billion in 2014/15.

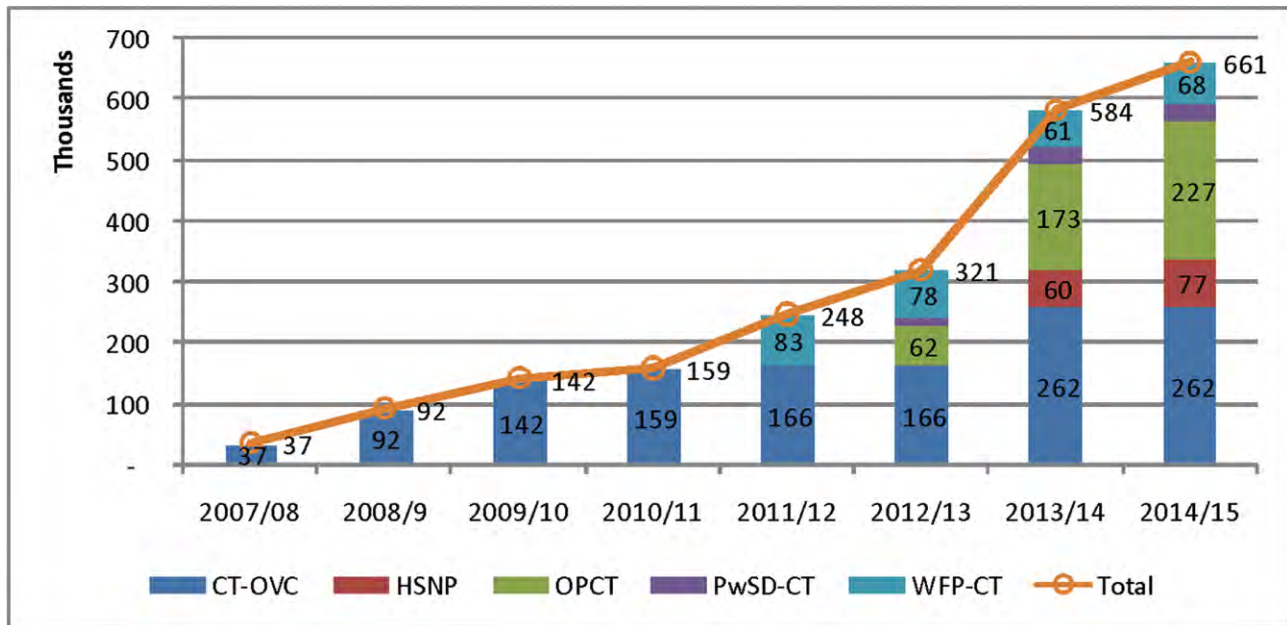
The Older Persons Cash Transfer (OPCT) has also increased credibly from Ksh 1.14 billion in 2012/13 to Ksh 5.35 in 2014/15. The World Food Programme-Cash Transfer (WFP-CT) has grown to Ksh 1.3 billion in 4 years, outpacing the growth in cash transfer for People with Severe Disability (PwSD-CT).

Figure 7.1: Disbursements to households by programme (Ksh billion)



Source: KSPSR (2016)

The number of beneficiary households increased from 37,000 in 2007/8 to 661,000 in 2014/15, as shown in Figure 7.2. CT-OVC accounts for the highest number of beneficiary households; they rose from 159,000 in 2010/2011 to 262,000 in 2014/15. Another programme that is growing very fast is the OPCT, which began in 2012/13 with 62,000 households but has since registered 227,000 households.

Figure 7.2: Number of beneficiary households

Source: KSPSR (2016)

Further, the KSPSR has been set up to improve transparency, accountability and reduce costs, with 10 counties already being linked to the registry by beginning of 2016. Social Assistance Committees have been established in all the 290 constituencies, comprising local leaders, Members of Parliament and Faith-Based Organizations' to ensure a more inclusive targeting of beneficiaries.

Over the medium term, the Government targets empowering PWDs for self-reliance through training, developing the Community Development Integrated Management Information System, and sensitizing the public on matrimonial property and succession laws and policies.

It also targets providing educational support to OVCs, providing children with family tracing and reunification services, and increasing the number of CTP beneficiaries from 717,000 in 2015/16 to 1,707,000 in 2018/19. The composition of the increase in coverage is as follows: 310,000 to 760,000 households with older persons supported; 360,000 to 810,000 OVC households; and 47,000 to 137,000 PwSDs supported.

As per the Constitution of Kenya, the provision of social security is a national-level function but most County Governments are also providing resources, which may result in double payments.

7.3 Social Protection Programmes at the County Level

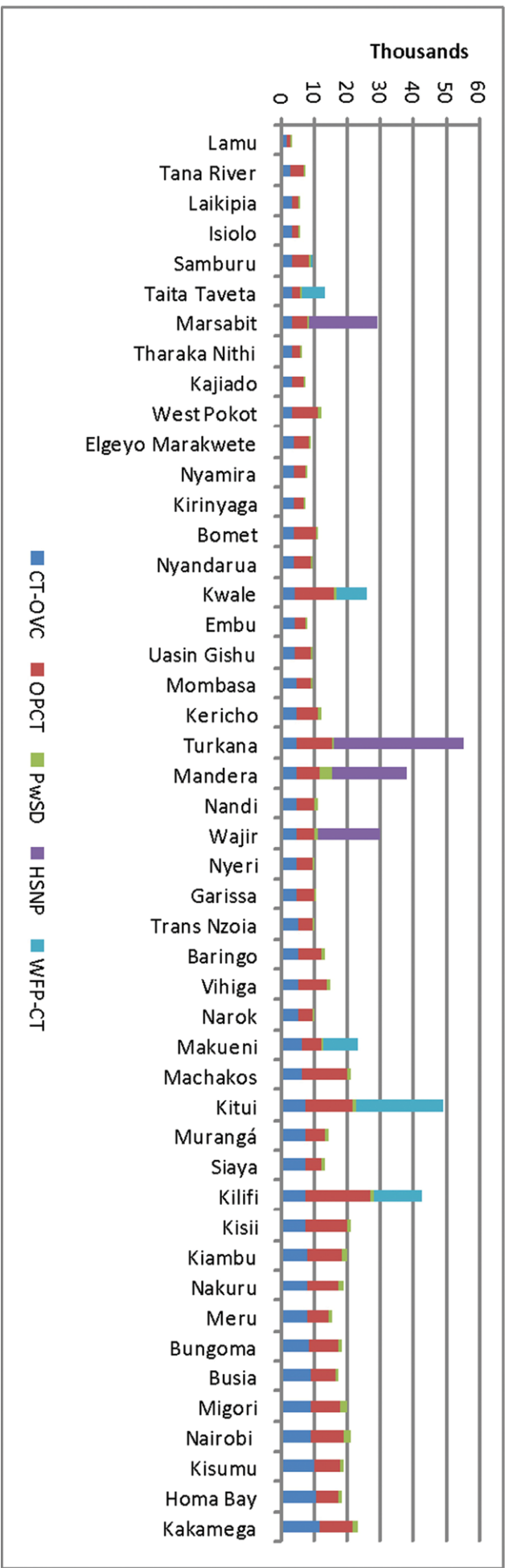
The Government launched social protection (SP) as a pilot programme with the intention of expanding progressively to eventually reach beneficiaries in all the districts. However, devolution transferred some government functions from the National Government to County Governments, also necessitating the transfer of funds with which to deliver the devolved functions.

This provided the opportunity for County Governments to launch SP programmes alongside those of the National Government.

Figure 7.3 shows the distribution of SP beneficiary households across Kenya's 47 counties. The CT-OVC and OPCT programmes have the widest outreach with presences in all the counties. Typically, the CT-OVC programme should have a greater presence in the counties with high rates of AIDS deaths, explaining the

positions of Busia, Migori, Kisumu and Homa Bay. Conversely, the OPCT should be dominant in counties with the higher life expectancies – which should exclude the counties with higher AIDS deaths. That these CTs are concurrently high in the same counties suggests some inefficiency in the programmes. Given a national PWD prevalence of between 4 per cent and 5 per cent,¹⁰⁴ the low PWSO outreach is understandable. But the poor across-county distribution of the two food deficiency focused programmes, HSNP and WFP-CT, is disturbing. The country has eight (8) arid counties that should be the reasonable focus of the two programmes, even if they operate selectively in the 20 semi-arid counties.¹⁰⁵ Yet, HSNP only covers four arid counties, and WFP-CT ignores all arid counties and focuses only on five semi-arid counties.

Figure 7.3: Numbers of households receiving social assistance, by county 2015



Source: KSPSR (2016)

Among the County Governments' innovative SP initiatives is Bomet's health cover for older persons, and the older persons CT targeting the age 70 plus who are neither under the national OPCT programme nor covered by the National Social Security Fund (NSSF). In addition, the county has domesti-

¹⁰⁴ Kenya's 2009 population placed the figure at 3.6 per cent while National Coordinating Agency for Population and Development (2009) places it at 4.6 per cent.

¹⁰⁵ The arid counties are Garissa, Isiolo, Mandera, Marsabit, Samburu, Tana River, Turkana, and Wajir. For a map, go to <http://www.devolutionplanning.go.ke/wp-content/uploads/2015/04/DRAFT%20ASAL%20POLICY.pdf> Accessed 20-08-2016

cated the National Policy on Older Persons and Ageing, and also developed the Bomet County Support for the Needy Act (2014).

The county is also making efforts to link National Hospital Insurance Fund (NHIF) with OPCT. Kakamega County has also initiated additional SP programmes, such as its shelter improvement for the elderly poor, free maternity care and support for poor mothers, and bursaries for needy students.

Notwithstanding the growing SP outreach across the counties, the share of the beneficiaries remains small, as reflected in Table 7.1 for counties for which survey data was available.¹⁰⁶ The table shows that Wajir, Trans Nzoia, Narok and Bomet are the counties with the highest shares of OVC beneficiaries, in sharp contrast to the data of Figure 7.3. For older persons, Nyandarua, Kilifi, Wajir, and Kajiado counties had the highest shares of beneficiaries. According to the FGDs, quite a number of older persons aged 60 plus do not live in dignity. In Kilifi and Kisii, for example, older persons risk being burnt alive and denied rights to land ownership. Others are associated with negative vices in society. Older persons often have to travel long distances to collect their money, which undermines the benefits derived.

Table 7.1: Percentage shares of SIGs receiving cash transfers by county

County	Share of OVC	Share of elderly	Share of disabled
Nairobi	5.1		29.3
Nyandarua	5.4	16.8	
Nyeri		9.7	
Kirinyaga		3.7	
Kiambu		4.4	
Mombasa	4.9		
Kilifi		23.1	
Tana River		7.6	
Marsabit		10.3	
Isiolo		13.3	
TharakaNithi			100.0
Kitui			32.8
Makueni		12.2	
Wajir	22.0	42.8	
Siaya		2.3	32.0
Kisumu		3.6	
Migori	5.2	4.0	
Homa Bay		8.0	
Kisii	7.2	5.0	
Nyamira	6.8		28.9
Turkana	1.3	7.1	
West Pokot			21.0

¹⁰⁶ Indeed, it is notable that Bomet alone had data for the three CT categories.

County	Share of OVC	Share of elderly	Share of disabled
Samburu		8.1	
Trans Nzoia	22.5	5.6	
UasinGishu			50.0
ElgeyoMarakwet			46.6
Nandi		5.7	27.3
Laikipia			7.9
Narok	28.6		
Kajiado		16.0	
Kericho			50.0
Bomet	18.3	1.6	46.6
Kakamega		12.6	27.3
Vihiga		2.8	7.9
Bungoma	1.2	1.9	
Busia		3.8	
Totals	1.98m=879	734	

Source: Equality and Inclusion Survey 2015. Missing information dot (.)

On average, a high proportion of the population suffers from some form of disability, yet SP programmes only target people with severe disabilities (PWSD). Table 7.1 shows that coverage of PWSDs is more intense than that of the other two CT programmes. All PWSDs are covered in Tharaka Nithi, and coverage stands above 30 per cent in nine (9) counties. The FGDs identified several challenges facing PWDs, including some cases being locked away in houses or homes, which means they cannot access education and/or employment opportunities. Where PWDs access social opportunities, there are often no facilities to meet their specific needs. These findings have been elaborated at length in chapter 5 and 6.

7.4 Types of Social Protection Instruments

As the Social Policy declares, there are various approaches to delivering social protection. The following sub-sections look at some of the modes of delivery.

7.4.1 Social assistance

‘Social assistance’ refers to cash benefits received by selected beneficiaries. According to current statistics and given the budget constraints, cash benefits are given to only a few cases, despite the very many needy cases requiring government assistance. According to the FGDs for this report, the CTs only target select individuals and groups, with some communities reporting to have only heard of the programmes, without ever seeing anyone receive the cash. Table 7-2 shows that less than 10 per cent have ever received social assistance from the government.

In particular, social assistance has apparently only reached about 9 per cent of PWDs, 5 per cent of the older persons, 3 per cent of the marginalized, 2 per cent of the children, 2 per cent of the youth, and 1 per cent of women.

Table 7.2: Percentage shares ever received social assistance by SIGs

Special Interest Groups	Per cent share
Children	2.1
Youth	1.9
Women	1.4
PWDs	8.7
Older Persons	4.8
Marginalized	2.9

Source: *Equality and Inclusion Survey (2015)*

In order for the programme benefits to reach a larger group, it is important for the government to continually increase its budget allocations to CT programmes to fulfill constitutional obligations and international commitments. Currently, the government is paying out Ksh 2,000 per household irrespective of the number of needy cases in a household.

There are cases of households who reported that they could not afford a meal in a day. Table 7-3 shows that 18 per cent of the population interviewed had slept without food for at least 1 day in the last 7 days. It is useful to relate the regional distribution of these hunger victims with the distribution of the uptake of HSNP and WFP-CT of Figures 7.3 (see below).

Table 7.3: Percentage of individuals who slept without food for at least 1 day in the last 7 days (N=15080)

Response	Percentage share
Yes	18.2
No	81.8

Source: *Equality and Inclusion Survey 2015*

Sleeping without food for 1 day in the last 7 days is an indicator of extreme hunger and poverty. According to Table 7-4, members of all the SIG have fallen victim of such hunger, the greatest incidence being among the marginalized groups or communities (32%) and PWDs (22%). The table shows that the incidence of hunger among the other SIGs is not much lower: 20 per cent for older persons, 19 per cent for children, and 16 per cent for women and the youth.

Table 7.4: Percentage share of SIG members who slept hungry for at least 1 day during the last 7 days (N=13464)

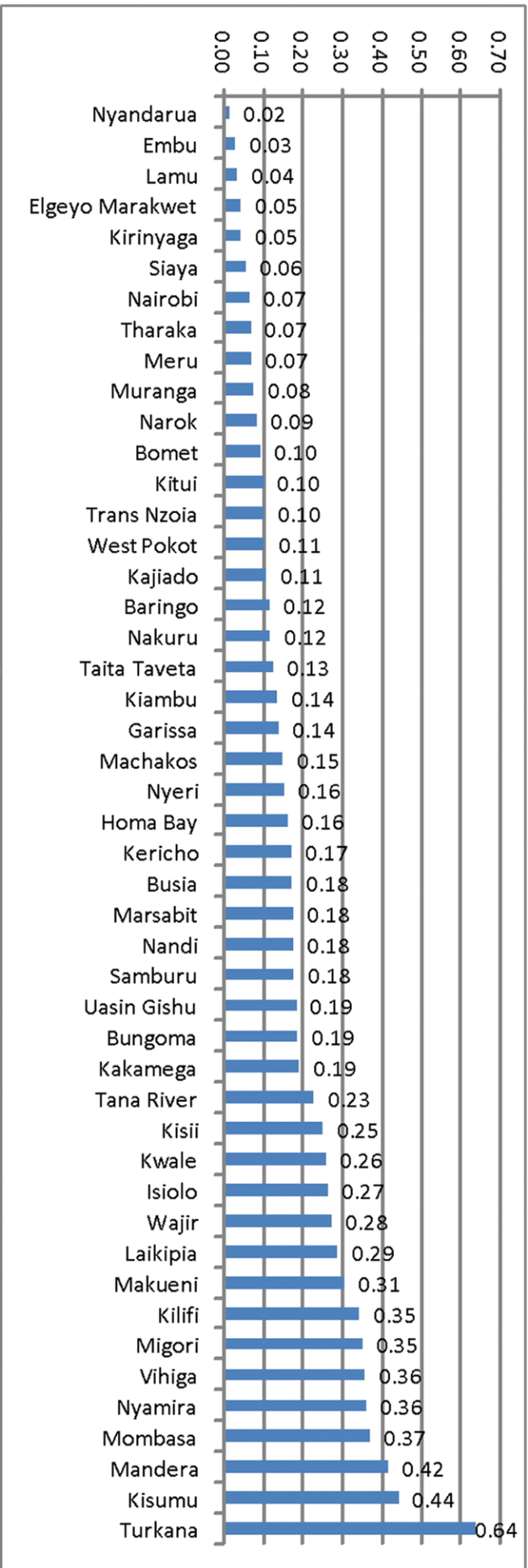
Special Interest Groups	Proportion
Children	18.6
Youth	15.7
Women	16.4
PWDs	21.6
Older Persons	19.8
Minority/Marginalized	31.8

Source: *Equality and Inclusion Survey (2015)*

Figure 7.4 shows the regional distribution of hunger victims at the county level. Some counties are more affected than others; for instance, 64 per cent of Turkana respondents were victims of such hunger, closely followed by Kisumu (44%) and Mandera (42%). But there were some 11 counties for whom less than 10 per cent of their population had slept hungry for at least 1 day in the last 7 days. These included Nyandarua (2%), Embu (3%), Lamu (3%), Elgeyo Marakwet (5%) and Kirinyaga (5%), among others. Interestingly, only 5 of the top 10 counties suffering such hunger were from the ASAL parts of the

country, including Turkana, Mandera, Kilifi, Makeni and Laikipia. Equally interesting, cosmopolitan Mombasa and Kisumu were among the hungriest 5 counties. But there were also ASAL counties among the 10 lowest hunger counties, including Lamu, Elgeyo Marakwet, and Tharaka Nithi. These counter-intuitive realities suggest that some households have effective strategies for mitigating hunger despite their agro-ecological disadvantage, while some agro-ecologically favourable counties' households have no such strategies.

Figure 7.4: Per cent share of individuals who slept hungry for at least 1 day in the last 7 days by County (N=15080)



Source: Equality and Inclusion Survey (2015)

Table 7.5 shows that about 58 per cent of the population can afford at least three meals a day, including breakfast, lunch and supper. Whereas 99.5 per cent of the population can afford at least one meal a day, 0.5 per cent cannot afford even a single meal.

Table 7.5: Per cent share of individuals by affordable frequency of meals (N=14528)

No. of Meals	Per cent share
None	5.0
Once a day	8.8
Twice a day	32.5
Three times a day	58.2

Source: Equality and Inclusion Survey (2015)

The SIG most affected by the inability to afford regular meals is the marginalized communities, 1.6 per cent of whom are victims, as shown in Table 7.6. While 38 per cent of them can afford 3 meals a day, 32 per cent can only afford 2 meals a day, and 29 per cent can only afford a single meal a day.

A higher proportion of women, children and the youth – roughly 60 per cent each, can afford three meals in a day, while less than 1 per cent of each of the groups cannot afford a single meal a day. Just over half the PWDs and older persons have 3 meals a day.

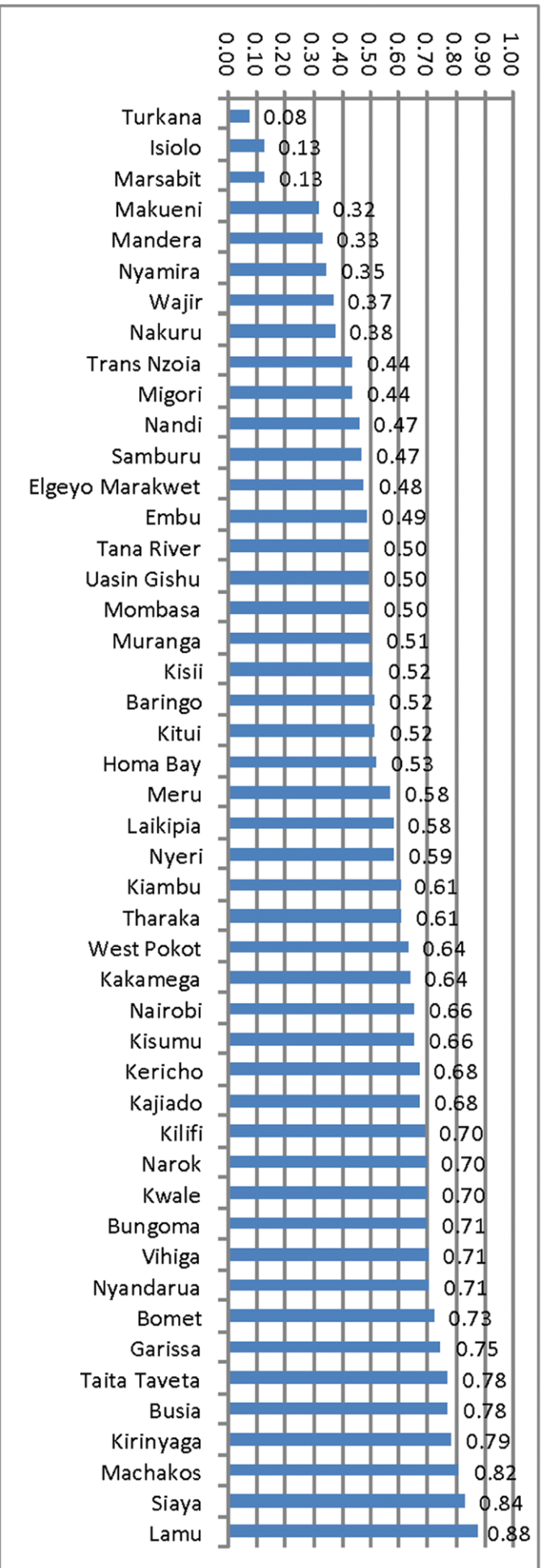
Table 7.6: Proportion of individuals who can afford to eat by SIGs and number of meals

Special Interest Groups	None	Once a day	Twice a day	Three times a day
Children	.005	.078	.317	.599
Youth	.004	.077	.342	.578
Women	.005	.078	.326	.591
PWDs	.009	.091	.354	.546
Older Persons	.004	.089	.367	.539
Marginalized	.016	.286	.320	.378

Source: Equality and Inclusion Survey (2015)

The analysis in Figure 7.5 shows very wide variations in the ability to access a single meal a day across counties, with less than 15 per cent of households doing so in Turkana, Isiolo and Marsabit, compared to over 80 per cent of the households of Lamu, Siaya and Machakos. Six ASAL counties are among the 10 with the weakest capacity to afford a single meal, yet ASAL county Lamu has the highest rate of affordability countrywide. For 14 of Kenya's 47 counties, at least 50 per cent of the households cannot afford to eat 1 meal a day. The remarkable reality is that 9 of these counties are not beneficiaries of either the HSNP scheme, or the WFP-CT scheme.

Figure 7.5: Proportion of individuals who can afford a meal a day by county



Source: *Equality and Inclusion Survey (2015)*

7.4.2 Social security

Social security in Kenya is guided by the International Covenant on Economic, Social and Cultural Rights, as well as the Constitution. The right to social security covers the right to access benefits through a system of social security in order to secure adequate income security, access to health care and family support. Social security membership

is compulsory for formal sector employees and voluntary for the rest of the population. The monthly contributions are made by the employee, with a co-payment by their employer. The long-term objective is to redirect personal liabilities to employers; enhance retirement, sickness and maternity benefits; and improve the scope of compensation for employee injuries and disease benefits.

However, the majority of the older persons face unacceptable challenges, meaning their rights are violated. For instance, while only an average of 12.7 per cent receive a pension, and only about 5 per cent receive cash transfers, nearly 20 per cent of older persons live in households that have slept hungry at least once in previous 7 days. Just below half per cent live in households that cannot afford even a single meal in a day.

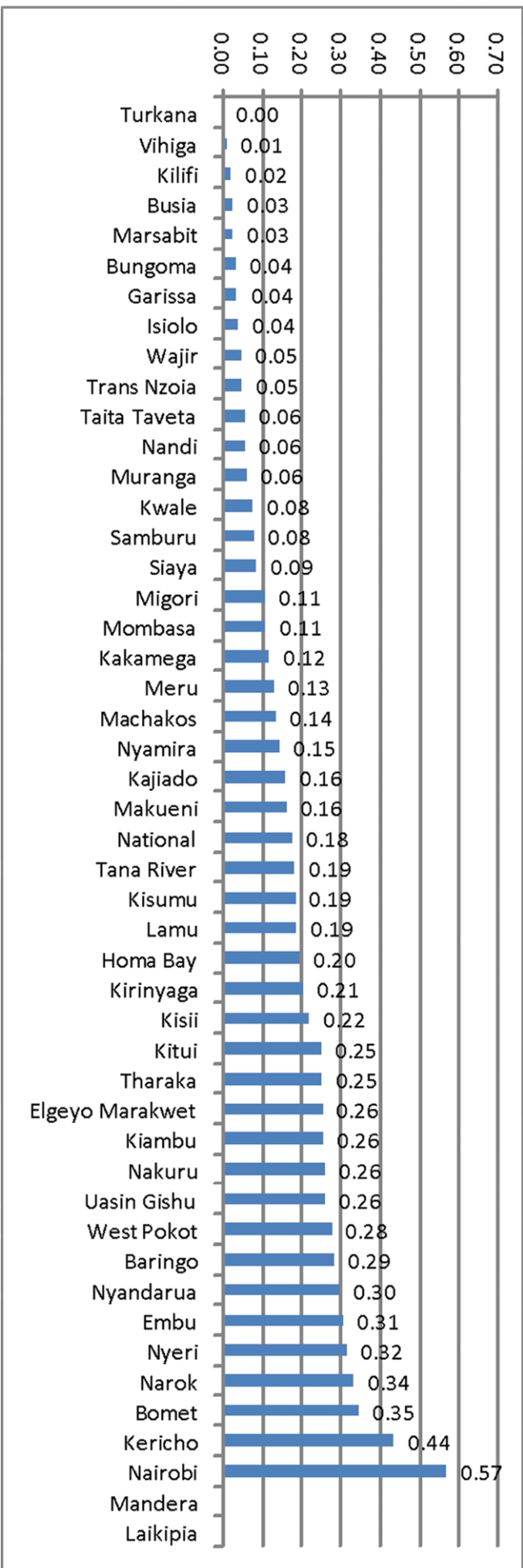
7.4.3 Health insurance

Health insurance cover in Kenya is either private or public. The public health insurance is offered exclusively by the National Hospital Insurance Fund (NHIF), whereas there is a wide variety of private health insurers, some formal and others informal.¹⁰⁷ NHIF contributions are compulsory for formal sector workers, but are optional for those in informal/self-employment sector, including those who have retired. The NHIF rates for the self-employed, retirees and the unemployed, were recently increased from Ksh160 to Ksh 500. The rates for those in the formal sector are graduated based on earning levels, ranging from Ksh 150 to Ksh 1,700 for the lowest and highest paid, respectively.

According to the survey 2015 data presented in Figure 7.6, only 18 per cent of the population have some form of health insurance cover. Nairobi County is leading with 57 per cent of the population having acquired some form of health insurance. The other counties with commendable coverage include Kericho (44%), Bomet (35%), Narok (34%) and Nyeri (32%). At least 16 counties have an insurance coverage of less than 10 per cent of their respective populations, among them Turkana (0.00%), Vihiga (1%), Kilifi (2%), Busia and Marsabit (3% each), and Bungoma, Garissa and Isiolo (4% each). While ASAL counties dominate the poorest 10, high HIV and AIDS prevalence western Kenya counties also feature prominently.

¹⁰⁷ Most insurance companies have a medical insurance department.

Figure 7.6: Proportion of membership in health insurance schemes by county (N=8135)



Source: Equality and Inclusion Survey (2015)

Of particular interest is evidence on access to health insurance for the SIGs, as shown in Table 7.7. This ranges from 9.4 per cent for the minorities and marginalized communities, to 24 per cent for the youth, which should be viewed against the backdrop of 18 per cent national coverage noted in Figure 7.6. The older persons are also disadvantaged, such that only 16 per cent have access to health insurance. Women and Youth account for comparatively higher proportions across all the groups.

Table 7.7: Proportion of membership in health insurance schemes by SIGs (N=7314)

Special Interest Groups	Proportion
Children	.145
Youth	.236
Women	.212
Disabled	.127
Older Persons	.165
Minority	.094

Source: *Equality and Inclusion Survey (2015)*

The low access to health insurance is likely to be associated with the high cost of accessing the service. A rate of Ksh 500 per month is too high especially for someone who is unemployed or is a retiree. Additionally, 45 per cent of Kenyans live in poverty. NHIF and other insurers have realized the need for inclusivity, and are championing new membership approaches, especially among *jua kali* workers and other self-employed persons.

7.4.4 Pension

Pension is a form of payment advanced to individuals upon retirement at the predetermined age. The pension scheme with the highest membership is that of the civil service, which is currently financed entirely from the national budget. Plans to reform the scheme have recently been concluded. The contributions into the pension fund are to be shared between the government and its employees.

In the survey 2015, less than 14 per cent of the population in their old age receives a pension, as reflected in Table 7.8. However, the data suggest that pension coverage is improving greatly, moving from 3.5 per cent of the few Kenyans still alive at age 80, to 15.3 per cent of the 60-64 age group.

Table 7.8: Proportion of older persons receiving pension by age group (N=1046)

Age group	Proportion
60-64	0.153
65-69	0.186
70-74	0.130
75-79	0.062
80 plus	0.035
Total	0.127

Source: *Equality and Inclusion Survey (2015)*

While pensions are critical during old age, a number of the older persons are excluded from the benefit, partly due to pension schemes lacking a wide presence in the private sector. Majority of the beneficiaries are likely to have been employees of the government. These findings justify the roll out of the older persons CT scheme. Output of the FGDs also show that, in some cases, there are older persons who are still energetic and contribute to building the nation where possible, without compromising the opportunities for the youth. There is need to create a database to capture such skills to be utilized when the need arises. The resulting incomes would complement the livelihood of the older persons.

7.5 Emerging Issues in Social protection

While the State has made some progress in protecting the rights of the child, many children still live in deprivation. For instance, 18.6 per cent of children live in households that sleep hungry, and only 60 per cent live in households that can afford 3 meals a day.

Only 2 per cent of children live in households that have previously received cash transfers. The cash transfers, which target OVCs only, are not adequate to benefit all the OVCs in need. About 14.4 per cent of children benefit from membership in health insurance schemes. According to County Government budgeting, there are no special funds targeting children and, where they exist, they are negligible.

While various milestones have been achieved in addressing the plight of women, women still face challenges that require the attention of the State. For instance, 16.4 per cent of women still live in households that go without food at least once a week. About 0.5 per cent of women cannot afford to eat even 1 meal a day. Similarly, 89 per cent of women are not members of any health insurance scheme.

However, the majority of the older persons face unacceptable challenges, meaning their rights are violated. For instance, while only an average of 12.7 per cent receive a pension, and only about 5 per cent receive cash transfers, nearly 20 per cent of older persons live in households that have slept hungry at least once in previous 7 days. Just below half per cent live in households that cannot afford even a single meal in a day. Given their economic situation, only 16.5 per cent are insured against medical spending. The NHIF requires that an upfront fee – premium – of Ksh 500 a month be paid per month to access the health service; a fee that is unaffordable for many of the older persons. Moreover, many older persons live in poverty; they do not have access to cash transfers from the government, and in some cases they must travel long distances to access the cash. Additionally, older persons face

society-based risks; in Kilifi, for example, some cultural practices promote killing (burning) of elder persons, often accused of witchcraft.

There is no social assistance programme targeting unemployed youth. “*Kazi kwa vijana*” programme, which initially targeted the youth did not achieve its objective. However, the Youth Enterprise Development Fund launched in 2006 aspires to increase economic opportunities for, and participation of the youth, by providing easy and affordable financial and business development support services. Its objective is to make the youth into job creators rather than job seekers. The Women Enterprise Fund also provides similar opportunities for female youths.

The survey further shows that nearly 46 per cent of PWDs cannot afford to eat three meals in a day, while 9 per cent cannot afford a meal a day. The national budgetary allocation for PWD-CT is very small. Only 8.7 per cent have ever received social assistance from the government. This could be as a result of the targeting, which only caters for People with Severe Disabilities (PWSD).

Access to health insurance remains a challenge to PWDs, with only 12.7 per cent having access to health insurance. Further, the access to catalytic funds directly correlated with mainstream social protection programs such as preferential and reservation procurement is dismal among most vulnerable groups. To date very few government agencies have allocated PWD more than 2%¹⁰⁸ of their total value of procurement to PWDs

The marginalized/minority communities are in most cases affected by hunger and drought. The government has put in place mechanisms to avert food insecurity during crisis period, but there is need for a sustainable solution to avert extreme hunger at all times.

¹⁰⁸ The threshold set for PWDs in the operational guidelines for the AGPO

FINDINGS AND DISCUSSIONS ON EQUALITY AND INCLUSION IN POLITICAL REPRESENTATION

A key objective of the Constitution (2010) is to place governance in the hands of the people, with Article 1 declaring that “All sovereign power belongs to the people of Kenya (who) may exercise their sovereign power either directly or through their democratically elected representatives.” Consequently, the theme of participation, of including people in decision-making, reverberates through the Constitution, and national policies, laws and the strategies for development implementation.

8.1 Assessing the Status of Equality and Inclusion in Political Representation

After decades of central, top-down governance, a key objective of the Constitution (2010) is to place governance in the hands of the people, with Article 1 declaring that “All sovereign power belongs to the people of Kenya (who) may exercise their sovereign power either directly or through their democratically elected representatives.” Consequently, the theme of participation, of including people in decision-making, reverberates through the Constitution, and national policies, laws and the strategies for development implementation. Such a novel approach to governance will require transformational leadership that accepts to be the servant of the people, and will meet overt and covert resistance. But opportunities for such participation will be even more limited for special interest groups (SIG) – children; the youth; women; people with disabilities (PWDs); older members of society; and minorities and marginalized groups – who have hitherto survived on the periphery of society. This chapter reviews the status of political participation for the SIGs.

The survey established that the following percentages of SIGs reflected in Table 8.1 have acquired the national identity card (ID). The possession of that card makes the holder eligible to participate as a voter or candidate, in elections to the Presidency, Senate, National Assembly, and County Assembly. The data show that the scope for political participation is not universal, one year to the second general election under the people-focused Constitution. Large shares of the SIGs may not register as voters and, consequently, may not present themselves as candidates, in violation of Article 38.¹⁰⁹

¹⁰⁹ While a passport can substitute a national ID card for the purposes of registering as a voter and voting or contesting, passports are even shorter in supply than IDs.

Table 8.1: Percentage of SIGs having national identity cards

Category	Percentage share
Youth	73.9
Women	85.1
PWDS	51.1
Elderly	97.8

From Table 8.1, the greatest likelihood of not having an ID is among the PWDS, who therefore face the further disadvantage of poor physical access to ID and voter registration centres, and to polling centres. The data also suggest that (i) women are more disadvantaged as a category, and (ii) availability of IDs increases with age.

The survey also established that the following shares of the SIG populations with national IDs had registered as voters (Table 8.2). Of the SIGs with national IDs, the PWDS had the lowest share of registered voters (46%), followed by the youth (58%). As with possession of IDs, possession of the voter card improves with age, and women appear to have a disadvantage.

Table 8.2: Proportions of SIGs registered as voters (%)

Category	Percentage(%) of SIGs registered Voters
Youth	58.2
Women	73.2
PWDS	46.4
Elderly	95.6

In the 2013 general elections, the shares among the SIGs that voted are reflected in Table 8.3. The PWDS were most disadvantaged; in effect only 41 per cent of the 46 per cent registered as voters, thus enjoyed the right to participation. In effect, therefore, only about 10 per cent of the PWDS voted in the 2013 general elections.¹¹⁰ This shows that this

category is largely denied its constitutional right to participation. Conversely, 86.4 per cent of the elderly persons voted in the 2013 general elections. For the youth and women, respectively, only 23.3 per cent and 42.6 per cent of the survey sample voted.

Table 8.3: Shares of SIGs registered voters who voted in 2013 general elections (%)

SIG Category	Percentage
Youth	54.2
Women	68.4
PWDS	40.9
Elderly	92.4

8.2 Status of Political Representation of the Marginalized/Minorities

There is no universally accepted definition of ‘minorities’, partly because of the diverse contexts in which they exist. In Kenya, minorities are categorized as religious, ethnic, racial, gender and other disparate groupings that have experienced historical disempowerment and discrimination owing to their political, economic and social positioning within the society. But Article 260 of the Constitution characterizes ‘marginalized community’ as being numerically small, traditional, indigenous, nomadic pastoralist, and/or geographically isolated. ‘Marginalized group’ is one of victims of any form of discrimination on the grounds listed in Article 27. From a participation perspective, minorities and marginalized groups are likely to have experienced poor access to political power and economic resources since independence.

Political representation of the minority/marginalized communities in decision-making is a key pillar of the type of democratic society that Kenya’s Constitution envisages. Lack of political representation has been a major concern of ethnic minorities in the country since independence, forcing them to form coalitions with dominant ethnic groups or key political actors within formal decision-making bodies, where such minorities nonetheless

¹¹⁰ That 10 percent is arrived at by multiplying 0.51 by 0.46 by 0.41, giving 0.096186, roughly 0.10, or 10 percent.

typically continue to have a weak voice.¹¹¹ According to the 2009 Kenya National and Housing Census, the 22 communities listed in Table 8.4 each numbered less than 100,000, and totaled roughly half a million.¹¹² Viewed differently, more than half of Kenya's 42 ethnic communities account for a mere 1.3 per cent of the national population.

Table 8.4: 2009 housing census results of select communities

	Community	Total in numbers
1	Ilchamus	27,288
2	Njemps	5,228
3	Burji	23,735
4	Dasenach	12,530
5	Gabra	89,519
6	Galla	8,146
7	Gosha	21,864
8	Konso	1,758
9	Orma	66,275
10	Rendile	60,437
11	Sakuye	26,784
12	Waat	6,900
13	Galjeel	7,553
14	Kenyan Arabs	40,760
15	Kenyan Asians	46,782
16	Kenyan Europeans	5,166
17	Kenyan Americans	2,422
18	Isaak	3,160
19	Leysan	5,941
20	Taveta	20,828
21	Walwana	16,803
22	Nubi	15,463

Source: KNBS (2009)

The low numbers of ethnic minorities typically means they have great difficulty winning elective offices in open contests through popular vote. For example, the Ogiek are

spread over five constituencies, reducing their chances of winning an elective position in any constituency. Similarly, administrative boundaries have spread the Sengwer into Elgeyo Marakwet, Trans-Nzoia and West Pokot counties, while the Endorois are also similarly spread across several counties. These realities undermine these communities' chances of having one of their own in an elected office, since Kenyan voting is often along ethnic lines. This makes them unable to make any meaningful contribution in their respective counties' political decision-making.

It was due to the relevance of political participation and representation of the ethnic minorities, for instance in 2004, that the Ilchamus community sought redress in the High Court so as to improve their political representation. The High Court ruled that:

“Minorities such as the Ilchamus have the right to participate and influence the formation and implementation of public policy, and to be represented by people belonging to the same social cultural and economic context as them.

For a political system to be truly democratic, it has to allow minorities a voice of their own, to articulate their distinct concerns and seek redress and thereby lay a sure base for deliberative democracy. Only then would a nation such as ours, truly claim to be a rainbow democracy.”¹¹³

The Constitution provided that the National Assembly should legislate to ensure that the SIGs also participate and are able to be represented politically at all levels of government, thereby operationalizing Article 100. However, Parliament is yet to pass this legislation to guarantee political representation of the SIGs.

¹¹¹ For example, see Githuku (2013).

¹¹² The 100,000 benchmark is arbitrary.

¹¹³ Ilchamus community v Electoral Commission of Kenya and Attorney General of Kenya, Nairobi High Court Miscellaneous Civil Application NO.305 of (2004)13.

During an FGD session in TaitaTaveta County, it emerged that the minorities and marginalized in Taita Taveta county are the Watha (Waliangulo), who do not intermarry with the Taita, and are not represented in the County Government or political position. This exclusion is because they are considered social outcasts who are a source of evil, and should therefore be avoided at all costs.

During a Nakuru FGD, it emerged that minorities within the County do not have a voice. All SIGs basically argue that they do not enjoy their rights in the County because they are not adequately involved in all issues. In Laikipia County, participants argued that both the National and County governments do not comply with the relevant constitutional requirements on equality and inclusion. All groups said that they are inadequately represented in various forums, contrary to constitutional provisions.

The respondents agreed that equality and inclusion were not being practiced in the county. For example, the Bajuni of Lamu, an agro-fishing community, constitute a significant share of the population of their county, but their poverty levels militate against their effective political representation. They do not control any resources – especially land and fishing grounds – meaning that even when elected, such representatives serve the interests of the economically dominant groups in the county; that is, Arabs, Asians and Barawas. This is because winning an electoral contest requires considerable financial resources, and a Bajuni candidate will invariably rely on the economically dominant mercantile groups for funding. The lack of campaign financing has been a major blow to the minorities. In Nairobi County also, minority communities, such as the Nubians, lack a strong enough voice to advocate for their rights and needs.

Kenyan elections are of great significance since the political institutions, namely the National Assembly, Senate and County Assemblies,

should enact laws that protect the rights of minorities, and further their political participation and representation. Many citizens especially from minority and/or marginalized groups view the State as accessible to only those with either economic might, or strong affiliations with holders of political power. The Constitution prohibits the exclusion of whole regions of the country from the benefits of State-sanctioned development, and the specific targeting of entire communities. For many, the greatest sense of belonging and security derives not from the State itself, but through the mediation of the ethnic networks to which they belong. Minorities and indigenous people in the country have suffered most from exclusion. While political participation alone does not lead to inclusion, it is the necessary first step in the long process towards bringing in the voices of communities and improving their capabilities.

The national values and principles of governance in the Constitution include equity, inclusiveness, equality, non-discrimination, and protection of the marginalized. These principles require the representation of ethnic and other minorities and marginalized communities in elective and appointive positions at the national and county levels. In the 2013 elections, minority and marginalized groups did not fare well at the ballot in the County Assembly elections, with not one of them elected across all 47 counties. While this may be the result of their small numbers, it could also be because they do not offer themselves as candidates. Consequently, the minorities and marginalized groups were given nominated slots across all the 47 counties, as shown in Table 8.5.

Nonetheless, this study could not establish whether the nominees were bona fide members of minorities and marginalized groups, and which specific communities they represented in their respective counties.

Table 8.5: Total nominated MCAs representing marginalized groups in 47 counties

	Name of County	Nominated Marginalized			Name of County	Nominated Marginalized	
		Male	Female			Male	Female
1	Baringo	2	2	25	Marsabit	2	2
2	Bomet	2	2	26	Meru	4	0
3	Bungoma	2	0	27	Migori	2	2
4	Busia	2	0	28	Mombasa	3	1
5	ElgeyoMarakwet	2	2	29	Murang'a	2	2
6	Embu	2	2	30	Nairobi	3	1
7	Garissa	2	2	31	Nakuru	2	2
8	Homa bay	3	1	32	Nandi	2	2
9	Isiolo	3	1	33	Narok	1	3
10	Kajiado	2	0	34	Nyamira	4	0
11	Kakamega	2	2	35	Nyandarua	1	2
12	Kericho	2	2	36	Nyeri	1	2
13	Kiambu	2	2	37	Samburu	2	2
14	Kilifi	3	1	38	Siaya	2	2
15	Kirinyaga	1	3	39	TaitaTaveta	3	1
16	Kisii	2	2	40	Tana river	2	2
17	Kisumu	2	2	41	TharakaNithi	1	3
18	Kitui	2	2	42	Trans Nzoia	2	2
19	Kwale	2	2	43	Turkana	1	3
20	Laikipia	1	3	44	UasinGishu	2	2
21	Lamu	3	1	45	Vihiga	3	1
22	Machakos	2	2	46	Wajir	0	4
23	Makueni	2	2	47	West Pokot	2	2
24	Mandera	2	2		Totals	97	83

Source: Commission for the Implementation of the Constitution (2014)

8.3 Status of Equality and Inclusion in Political Representation among Women

The Kenyan society is patriarchal, with power and resources concentrated in the hands of men. Gender inequality, which is a form of oppression against women, is manifest in the following anachronistic practices in Kenya, some of which are patently unconstitutional.

- i) Retrogressive cultural practices directed at women, such as FGM, which robs women of their dignity
- ii) Food taboos (denying women certain choice foods)
- iii) Early girl child marriages
- iv) Forced girl child prostitution for families' economic survival
- v) Forced girl child labour
- vi) Male child preference over the girl child

- vii) Unequal access to education (girl child education denied among some communities)
- viii) Denial of property inheritance rights to the girl child/ daughter
- ix) Wrongful widowhood practices—such as inhuman and degrading treatment of women who have lost their husbands
- x) Exclusion of women from governance and socio-economic policy planks
- xi) Denial of reproductive health rights to women
- xii) Sexual and other forms of domestic influence, including marital rape
- xiii) Political marginalization of women in Senate, National assembly and County Assemblies (lack of commitment by male politicians to affirmative gender rights in political appointments)
- xiv) Electoral violence against women during electioneering period
- xv) Patriarchal dogma and biased interpretation of Africa cultural cosmology and ontology of gender equality in songs where only women are castigated and ridiculed.¹¹⁴

Also, given the secrecy with which some of these unconstitutional cultural practices are conducted, such as female genital mutilation (FGM) and early girl child marriages, it is difficult for law enforcement agencies to apprehend culprits.

In many communities, traditions and customs such as the ones above continue to emphasize women's primary roles as mothers and housewives and to restrict them to those roles. These retrogressive traditional values militate against the advancement, progression, participation and representation of women in the country's political institutions of governance.

Thus, the marginalization of women and other special interest groups from political and other decision making structures in Kenya is a result of many multiple structural and functional factors that vary in different social contexts across the newly established 47 counties.¹¹⁵

8.4 Status of Political Representation of Women at National Level

Out of the eleven (11) general elections in Kenya since independence, the March 2013 election was significant because it exploited the Constitution's framework for promoting gender equality. This saw 47 women elected as Women County Representatives, one for each of the 47 counties, 16 women were nominated to represent 16 constituencies across the country, and 5 women were nominated by various political parties to represent diverse interest groups in Parliament. This is the highest number of women in Parliament ever.

However, in comparison to their male counterparts, the representation of women in Parliament remains small in comparison to the 81 per cent share for men in the National Assembly, and 73 per cent share in the Senate. Even if the 19.7 per cent share of women in the National Assembly is an improvement on the 9.9 per cent share in 2007, it still does not meet the constitutional minimum threshold for the minimum one-third gender requirement. The Constitution created an affirmative action National Assembly seat for women in each of the 47 counties and provided for 18 nominated women in the Senate, with two representing the SIGs.

¹¹⁴ See Ani (2013)

¹¹⁵ See Kivoi (2014).

Table 8.6: Women representation in Parliament, 1963-2013

Term/Period	Total no. of Constituencies	Number of elected...		Nominated		Total elected and nominated...		
		Men	Women	Men	Women	Men	Women	Total
1 st Parliament, 1963-1969	158	158	0	2	0	160	2	160
2 nd Parliament, 1969-1974	158	157	1	10	1	167	2	169
3 rd Parliament, 1974-1979	158	154	4	14	2	168	6	174
4 th Parliament, 1979-1983	158	154	4	11	1	165	5	170
5 th Parliament, 1983-1988	158	156	2	9	1	165	3	168
6 th Parliament, 1988-1992	188	186	2	10	0	196	2	198
7 th Parliament, 1992-1997	188	182	6	12	1	194	7	201
8 th Parliament, 1997-2002	210	206	4	9	5	215	9	224
9 th Parliament, 2002-2007	210	200	10	4	8	204	18	222
10 th Parliament, 2007-2013	210	194	16	6	6	200	22	222
11 th Parliament, 2013-2017	290	274	63	7	5	281	68	349

Source: Republic of Kenya (various)

The 2013 general elections registered the highest voter turnout ever, and ushered in the devolution of resources, power and accountability to 47 counties under a governance model intended to promote equitable development, and to create opportunities for new economic growth centres. A synopsis of the 2013 general elections reveals the following outcomes in terms of the number of women who were elected at various levels of government (Table 8.7).

Table 8.7: Total women elected in the 4 March 2013 general elections

Seat	Total Number of Women Elected	Total Number of Seats (Nationally)	Percentage of Women elected (%)
Constituency Members National Assembly	16	290	5.51
County Women Representatives	47	47	100
Member County Assemblies	82	1450	5.7
Deputy Governors (indirect)	9	47	19.1
Governors	0	47	0
Senators	0	47	0

Source: Republic of Kenya (various)

The creation of the Women County Representative's seat increased the number of women in Parliament, as shown in Table 8.8. However, the fact that no female was elected Governor or Senator means that more needs to be done to ensure that women have representation at all levels of political representation, instead of their presence relying on nominations, as reflected in Table 8.6.

Table 8.8: Women representation in the National Assembly

Seat	Total Number of Women Elected	Total Number of Seats (Nationally)
Constituency Members National Assembly	16	290
County Women Representatives	47	47
Nominated	5	12
Totals	68	349

Source: Republic of Kenya (various)

After the March 4th 2013 general elections, the National Assembly had 68 female legislators compared to 281 male legislators. The progressive rights-based Constitution provides the legal framework for the Government to fulfill basic rights, and for marginalized and vulnerable groups, especially women and children, to claim their rights. Provisions in the Constitution articulate some of the fundamental rights and freedoms.

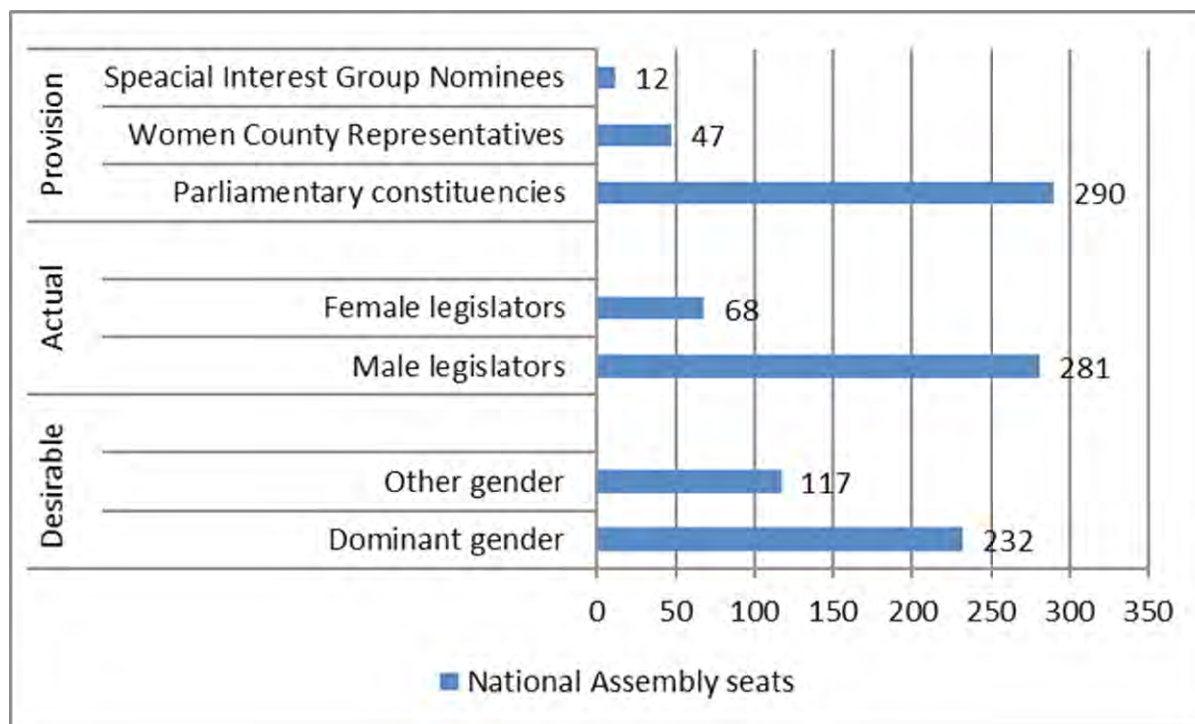
The country has not met the constitutional requirement of Articles 27 (8) and 81(b) that not more than two-thirds of the members of elective or appointive bodies be of the same gender.

Article 100 directs Parliament to legislate for the promotion of the representation of marginalized groups, including women. The current policy debate concerns how to implement the requirement in the face of too few women being elected in 2013 general elections and falling below the minimum one third gender

requirement in both the National Assembly and Senate.

Article 97 of the Constitution, which establishes the National Assembly, sets the number of legislators at 349 seats, 290 of who are for those elected directly from Kenya's 290 constituencies, 47 are for women elected to represent each county, and 12 seats for nominated individuals to represent youth, persons with disabilities and workers (Figure 8.1). However, the current composition of the National Assembly does not meet the stipulated constitutional requirement, with its 68 female legislators compared to 281 male legislators. The constitutional requirement is for the minimum gender to have 117 legislators against 232 for the majority gender, but women are still under-represented in the National Assembly, and are consequently marginalized politically despite their immense contribution to politics and the economy.

Figure 8.1: National Assembly Seats: constitutional provisions, actual and desirable numbers



Source: Republic of Kenya (2010) and other sources

Women are also under-represented in the Senate. Despite offering themselves as candidates, no county elected a female senator. Article 98 of the Constitution in provision for affirmative action seat stipulates that 47 senators are elected directly from the 47 counties whereas 20 senators are to be nominated, 16 of whom should be women.

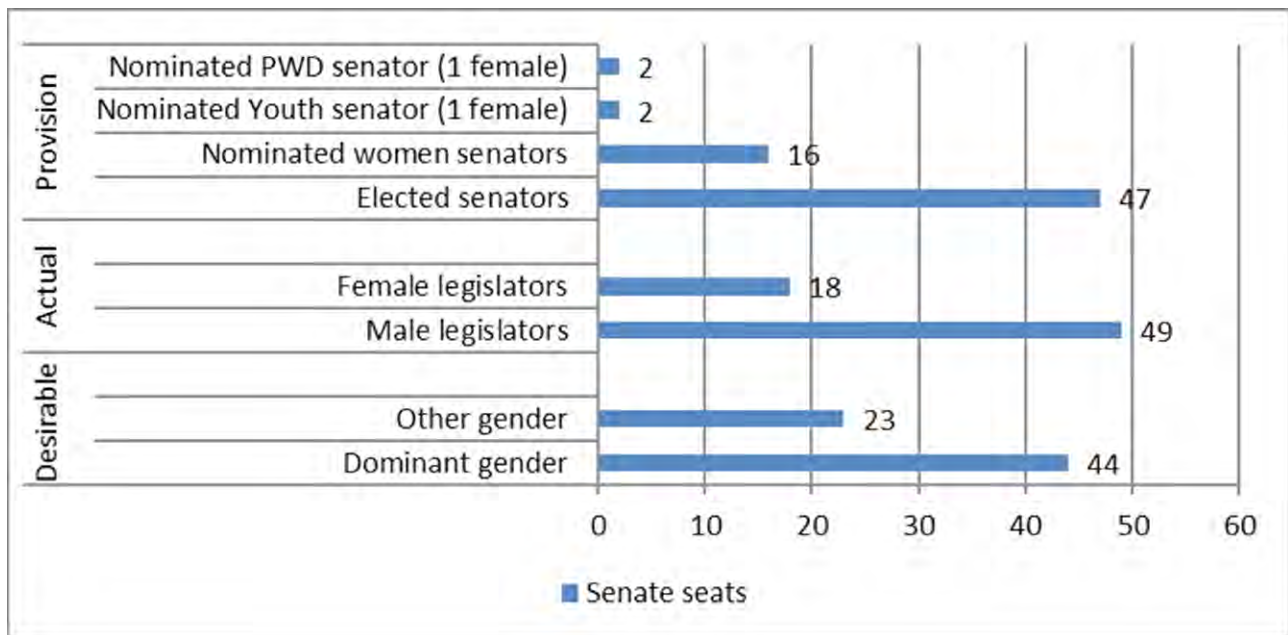
The additional nomination of two youth senators and two PWDs, one of each being a female, adds another 2 Senate seats for women, as shown in Table 8.9. In thus locking up the maximum Senate membership at 67, the Constitution assumes that the two-thirds gender rule will be met through the direct election to the Senate of at least 3 women, giving them a total of at least 23 seats.

Table 8.9: Composition of the Senate as per Article 98 of the Constitution

	Members Elected by Counties	47
1	Nominated Women Senators	16
2	Nominated Youth Representatives	2 (one man, one woman)
3	Nominated Disabled Persons Representatives	2 (one man, one woman)
	Totals	67

Source: The Constitution of Kenya

However, the current composition of the Senate leaves women under-represented. Of great concern is that no single female senator was elected from the 47 counties, meaning that all the current 18 female senators shown in Figure 8.2 have been nominated by various political parties to represent different interest groups. Therefore, both the National Assembly and Senate do not meet the minimum one third gender representation requirement.

Figure 8.2: Senate Seats: Constitutional provisions, actual and desirable numbers

Source: The Constitution of Kenya (2010) and *Inter-Parliamentary Union* at <http://www.ipu.org/wmn-e/classif.htm>

A comparison of Kenyan women's representation in Parliament with neighbouring countries shows that Kenya still lags behind despite its progressive Constitution, as seen in Table 8.10. While Kenya's share of women is a mere 21 per cent, Rwandan women dominate their Parliament with a 58 per cent share. Meanwhile, women in the other three EAC countries have at least one-third of the representation.

Table 8.10: Representation of Women in Parliaments in East Africa Community 2015

	Country	Female Representation (%)	Male Representation (%)	Total (%)
1	Burundi	35	65	100
2	Rwanda	58	42	100
3	Tanzania	36	64	100
4	Uganda	35	65	100
5	Kenya	21	79	100

Source: *Inter-Parliamentary Union* at <http://www.ipu.org/wmn-e/classif.htm>

The 1995 Beijing conference advocated for 30 per cent women's parliamentary representation globally. The *Convention to Eliminate All Forms of Discrimination against Women* (CEDAW) demands a 30-35 per cent representation of women in all governance structures. Kenya is the only country in the East African Community that has not achieved the one third minority gender representation in its National Assembly as seen in Table 8.10.

Countries that have embraced gender quotas for women in their legislative assemblies have made greater strides in enhancing political representation, especially for women (Table 8.11). Countries such as Rwanda and Denmark embraced gender quotas, and soon those quotas will no longer be necessary if those women's stay in Parliament impacts positively on their societies, enabling them to compete favourably against male candidates. For example, gender quotas for Danish women parliamentarians worked, and it is no longer necessary to have special seats allocated for women.

Table 8.11: Comparative perspectives on gender representation in select countries

	Rwanda	Uganda	Denmark
Size of Parliament	106	338	179
Number of Women in Office	61	135	68
Percentage Women	58	35	38
Constituency Reserved Seats	YES	YES	NO

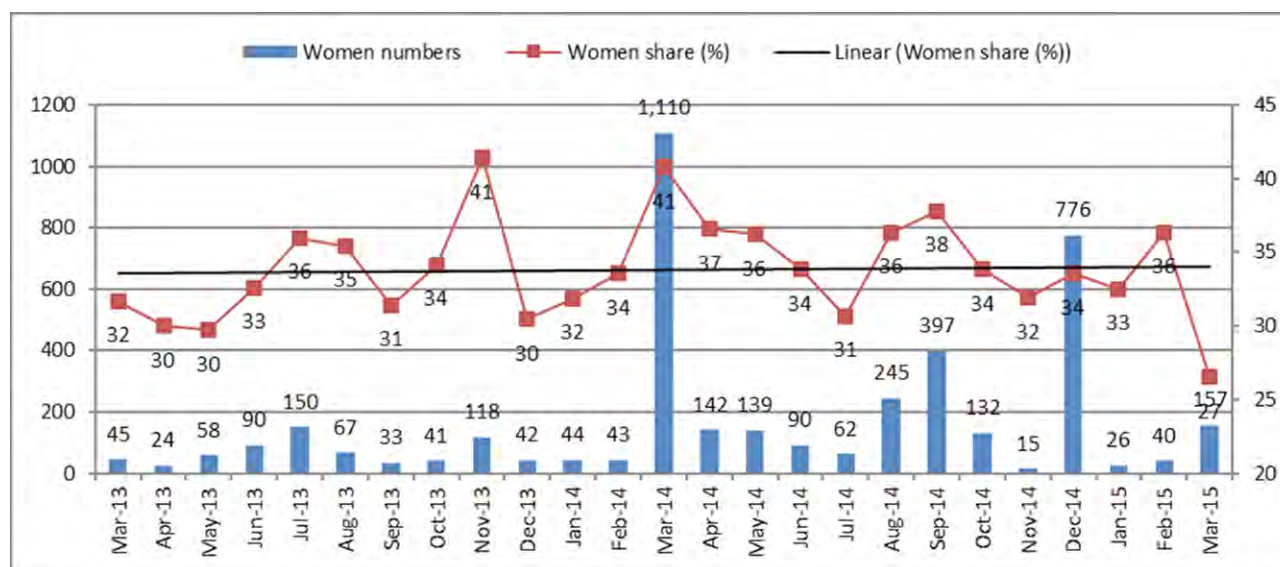
Source: Inter-Parliamentary Union at <http://www.ipu.org/wmn-e/classif.htm>

Research conducted in Latin America, Eastern Europe and elsewhere on women's political representation, indicates that democratization outcomes have not benefited women in any particular way and may even be negatively correlated with women's political representation.¹¹⁶

Other studies have found that democracy does not influence *levels* of women's political representation, but it does influence the *growth* of women's representation over time.¹¹⁷ Therefore, care should be taken not to strive for growth in women's numbers for their own sake.

Political Appointments at National Level

In terms of political appointments that have been done by the Executive between March 2013 and March 2015, Kenya Gazette data presented in Figure 8.3 shows that men have had a greater share of the appointments made at the national level. The data show that women's shares of the appointments ranged between 27 per cent and 41 per cent, with a trend line averaging about 33 per cent throughout the period.

Figure 8.3: Appointed positions held by women, March 2013 – March 2015

Source: The Kenya Gazette at http://kenyalaw.org/kenya_gazette/

The inclusion of women, minority and vulnerable in decision-making bodies is a realization of the Constitution to further the participation of all citizens in governance and political representation. Inadequate or lack of a solid financial base, political violence targeting female candidates,

¹¹⁶ See Tripp (2012).

¹¹⁷ See Paxton et al. (2010).

demeaning and derogative language used by male candidates and their supporters, negative stereotypes, and anachronistic socio-cultural beliefs are some of the factors that militate against the participation of women in politics. The Supreme Court decision to postpone the implementation of the gender quota coincided with a lack of interest in the male-dominated National Assembly over the necessary legislation for the one-third minimum gender provision. This is a pointer to the lack of political will to implement gender equality principles in Kenya. The Constitution of Kenya (Amendment) (No 4) Bill 2015, presented in the National Assembly seeking to ensure at least one third of either gender is represented in parliament faced defeat in two attempts. A similar initiative by senate to introduce a similar bill on the same subject has faced similar hindrances and has since 2016 not been voted on. The legislature arm of government therefore has a critical and urgent role to play to ensure that the gains Kenya has made over gender equality and inclusion in political representation are not eroded and that not more than two thirds gender principle is realized during the 2017 elections.

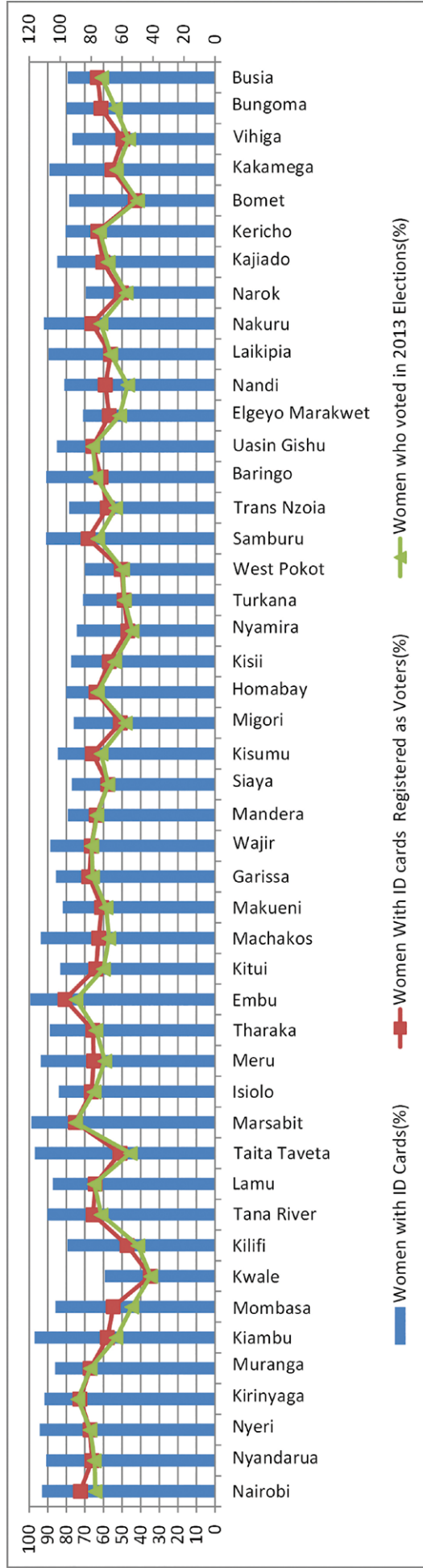
Gender disparities affect and manifest themselves in development, and attention to them is the first step in promoting empowerment. The Kenyan cabinet has 5 women among the 21 Cabinet Secretaries, amounting to a 23.8 per cent share. This further highlights the disadvantage of women.

Political Representation of Women County Assembly

The provisions of Articles 27(8) and 177(1) (b) on the two-third of one gender in elective positions was not realized in the 2013 general elections in the country's 47 county assemblies. For one to participate in an election either as a candidate or as a voter, a national identity (ID) card is required for voter registration. The survey shows the percentages of women reflected in Figure 8.4 to have had a national ID card, registered as voter, and voted in the 2013 elections. While Embu had a 99.4 per cent ID coverage, Kwale's 59.2 per cent share was the lowest nationwide. For Kwale, only 41.8 per cent of the women with IDs registered as voters, and only 37 per cent of the latter category actually voted. Thus, in Kwale, a mere 9.2 per cent of the women captured by the survey expressed their constitutional right to vote.¹¹⁸

118 As illustrated in previous sub-sections, this share voting is arrived at by multiplying the share with IDs by the share of those who registered as voters, by the share who actually voted, i.e. $0.592 \times 0.418 \times 0.37 = 0.0916$

Figure 8.4: Percentages of women with ID cards, against those registered as voters vs those voted in the 2013 elections per county



On the election of women to County Assemblies, the bias at the national level recurs, with 19 counties – 40 per cent of all – not having a single elected woman, as seen in Table 8.12. The counties with the highest number of women elected as MCAs include Nakuru (8), Kisumu (7), Kitui and Bungoma (6 each), and Meru (5). Of the total 1,450 elected MCAs, 1,370 (94%) are men, while only 80 (6%) are women, meaning the gender balance anticipated by the Constitution was not met. Consequently, some 592 women were nominated based on affirmative action, while 83 came on board as representatives of marginalized groups. The table shows that affirmative action in favour of women raises their total share of MCAs countrywide to 34 per cent, with all counties attaining a 33 per cent share, except for Busia (31%) and Kilifi (32%).

Table 8.12: Members of county assemblies in 2013 general elections

County	No of Elected MCAs			No of Nominated MCAs				Total MCAs (elected and nominated)				
	M	F	Total	Marginalized		Affirmative Action for Women	Total	Total	Male		Female	
				Male	Female				No.	%	No.	%
Baringo	30	0	30	2	2	14	18	48	32	67	16	33
Bomet	21	4	25	2	2	6	10	35	23	66	12	34
Bungoma	39	6	45	2	0	16	18	63	41	65	22	35
Busia	34	1	35	2	0	15	17	52	36	69	16	31
Elgeyo Marakwet	18	2	20	2	2	6	10	30	20	67	10	33
Embu	20	0	20	2	2	9	13	33	22	67	11	33
Garissa	30	0	30	2	2	14	18	48	32	67	16	33
Homa bay	39	1	40	3	1	19	23	63	42	67	21	33
Isiolo	10	0	10	3	1	6	10	20	13	65	7	35
Kajiado	25	0	25	2	0	14	16	41	27	66	14	34
Kakamega	56	4	60	2	2	22	26	86	58	67	28	33
Kericho	28	2	30	2	2	13	17	47	30	64	17	36
Kiambu	56	4	60	2	2	23	27	87	58	67	29	33
Kilifi	33	2	35	3	1	14	18	53	36	68	17	32
Kirinyaga	18	2	20	1	3	5	9	29	19	66	10	34
Kisii	44	1	45	2	2	22	26	71	46	65	25	35
Kisumu	28	7	35	2	2	10	14	49	30	61	19	39
Kitui	34	6	40	2	2	13	17	57	36	63	21	37
Kwale	20	0	20	2	2	9	13	33	22	67	11	33
Laikipia	14	1	15	1	3	4	8	23	15	65	8	35
Lamu	10	0	10	3	1	6	10	20	13	65	7	35
Machakos	37	3	40	2	2	15	19	59	39	66	20	34
Makueni	29	1	30	2	2	13	17	47	31	66	16	34
Mandera	30	0	30	2	2	14	18	48	32	67	16	33
Marsabit	20	0	20	2	2	9	13	33	22	67	11	33
Meru	40	5	45	4	0	20	24	69	44	64	25	36
Migori	39	1	40	2	2	17	21	61	41	67	20	33
Mombasa	27	3	30	3	1	11	15	45	30	67	15	33
Murang'a	32	3	35	2	2	12	16	51	34	67	17	33
Nairobi	82	3	85	3	1	38	42	127	85	67	42	33
Nakuru	47	8	55	2	2	15	19	74	49	66	25	34
Nandi	30	0	30	2	2	14	18	48	32	67	16	33
Narok	30	0	30	1	3	13	17	47	31	66	16	34
Nyamira	18	2	20	4	0	9	13	33	22	67	11	33
Nyandarua	25	0	25	1	2	12	15	40	26	65	14	35
Nyeri	30	0	30	1	2	14	17	47	31	66	16	34

County	No of Elected MCAs			No of Nominated MCAs				Total MCAs (elected and nominated)				
	M	F	Total	Marginalized		Affirmative Action for Women	Total	Total	Male		Female	
				Male	Female				No.	%	No.	%
Samburu	15	0	15	2	2	7	11	26	17	65	9	35
Siaya	30	0	30	2	2	14	18	48	32	67	16	33
TaitaTaveta	20	0	20	3	1	11	15	35	23	66	12	34
Tana River	15	0	15	2	2	7	11	26	17	65	9	35
Tharaka Nithi	15	0	15	1	3	5	9	24	16	67	8	33
Trans Nzoia	24	1	25	2	2	10	14	39	26	67	13	33
Turkana	30	0	30	1	3	13	17	47	31	66	16	34
Uasin Gishu	27	3	30	2	2	10	14	44	29	66	15	34
Vihiga	23	2	25	3	1	10	14	39	26	67	13	33
Wajir	29	1	30	0	4	11	15	45	29	64	16	36
West Pokot	19	1	20	2	2	8	12	32	21	66	11	34
Totals	1370	80	1450	97	83	592	772	2222	1467	66	755	34

Source: Commission for the Implementation of the Constitution (2014) and various

Legislation capped the formation of the County Executive Committees (CEC), therefore the variation in sizes across the counties was modest, ranging from 7 in Isiolo and Lamu to 10 for 31 counties. The CECs also reflect a distribution by gender in favour of men, as shown in Table 8.13. Out of the total 448 members appointed in all the 47 counties, 33.7 per cent are females, but across the individual counties, the women share ranged between the 22.2 per cent in Elgeyo Marakwet, Meru and Tana River, to 60 per cent share for Kiambu. Indeed, 28 counties –nearly 60 per cent of all – had women shares below 33 per cent.

Table 8.13: Distribution of County Executive Committees (CECs) by counties by gender

County	Total	Male CECs	Female CECs	Female CEC share (%)
Baringo	10	7	3	30.0
Bomet	10	6	4	40.0
Bungoma	10	7	3	30.0
Busia	10	7	3	30.0
ElgeyoMarakwet	9	7	2	22.2
Embu	10	7	3	30.0
Garissa	10	7	3	30.0
Homa Bay	10	7	3	30.0
Isiolo	7	5	2	28.6
Kajiado	10	7	3	30.0
Kakamega	9	5	4	44.4
Kericho	10	6	4	40.0
Kiambu	10	4	6	60.0

County	Total	Male CECs	Female CECs	Female CEC share (%)
Kilifi	10	6	4	40.0
Kirinyaga	9	6	3	33.3
Kisii	10	6	4	40.0
Kisumu	10	6	4	40.0
Kitui	10	7	3	30.0
Kwale	10	7	3	30.0
Laikipia	8	4	4	50.0
Lamu	7	4	3	42.9
Machakos	10	5	5	50.0
Makueni	9	5	4	44.4
Mandera	10	7	3	30.0
Marsabit	10	7	3	30.0
Meru	9	7	2	22.2
Migori	10	7	3	30.0
Mombasa	10	7	3	30.0
Murang'a	8	6	2	25.0
Nairobi	10	7	3	30.0
Nakuru	9	6	3	33.3
Nandi	10	7	3	30.0
Narok	10	7	3	30.0
Nyamira	10	7	3	30.0
Nyandarua	9	6	3	33.3
Nyeri	8	8	2	25.0
Samburu	9	6	3	33.3
Siaya	10	7	3	30.0
TaitaTaveta	10	7	3	30.0
Tana river	9	7	2	22.2
TharakaNithi	8	5	3	37.5
Trans Nzoia	9	5	4	44.4
Turkana	10	6	4	40.0
UasinGishu	10	7	3	30.0
Vihiga	10	6	4	40.0
Wajir	10	7	3	30.0
West Pokot	10	7	3	30.0
Totals	448	297	151	33.7

Source: Commission for the Implementation of the Constitution (2014)

8.5 Status of Equality and Inclusion in Political Representation of the Youth

The earlier sections of this report discussed the diversity in the concept of ‘youth’, which Kenya’s Constitution defines as individuals who have attained the age of 18 years but have not reached the age 35 years. Since independence in 1963, the youth have been relegated to the lower echelons of political representation, meaning they have not had meaningful impact on political representation. For instance, the KANU youth wing operated as a militia to protect party loyalists and mete out violence to those who opposed the viewpoints of KANU political leaders. As seen in Table 8.14, the youth represent a significant share of the country’s population, underscoring the need for their inclusion in political leadership. However, this survey was unable to get a comprehensive list of the numbers of youths in the County Assemblies.

Table 8.14: Population trends among Kenya’s youth (1969-2009)

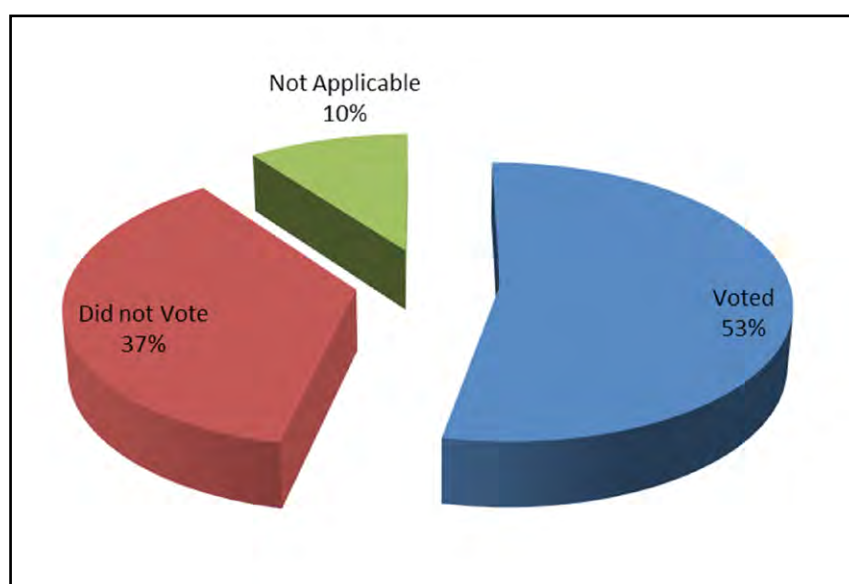
Age group	1969	1979	1989	1999	2009
15 – 19	110,499	1,741,845	2,378,896	3,403,178	4,169,545
20 – 24	878,111	1,327,404	1,702,934	2,832,918	3,775,103
25 – 29	760,839	1,055,712	1,629,761	2,259,503	3,201,226
30 – 34	580,189	818,079	1,159,424	1,685,922	2,519,506
Total 15 - 34	2,329,638	4,943,040	6,871,015	10,181,521	13,665,380
Share of national population (%)					

Source: Youth Fact Book (2010)

These numbers have not translated into meaningful political representation in key decision making organs at both the national and county levels. The Kenyan youth are associated with unemployment, and are often linked to political hooliganism, thuggery and violence at the behest of politicians. The youth bulge consistently demands more resources to meet their social and economic needs, and to enable their survival and reasonable livelihood.

In the 2013 general elections, only 53.0 per cent of youths registered as voters participated during the elections (Figure 8.5)

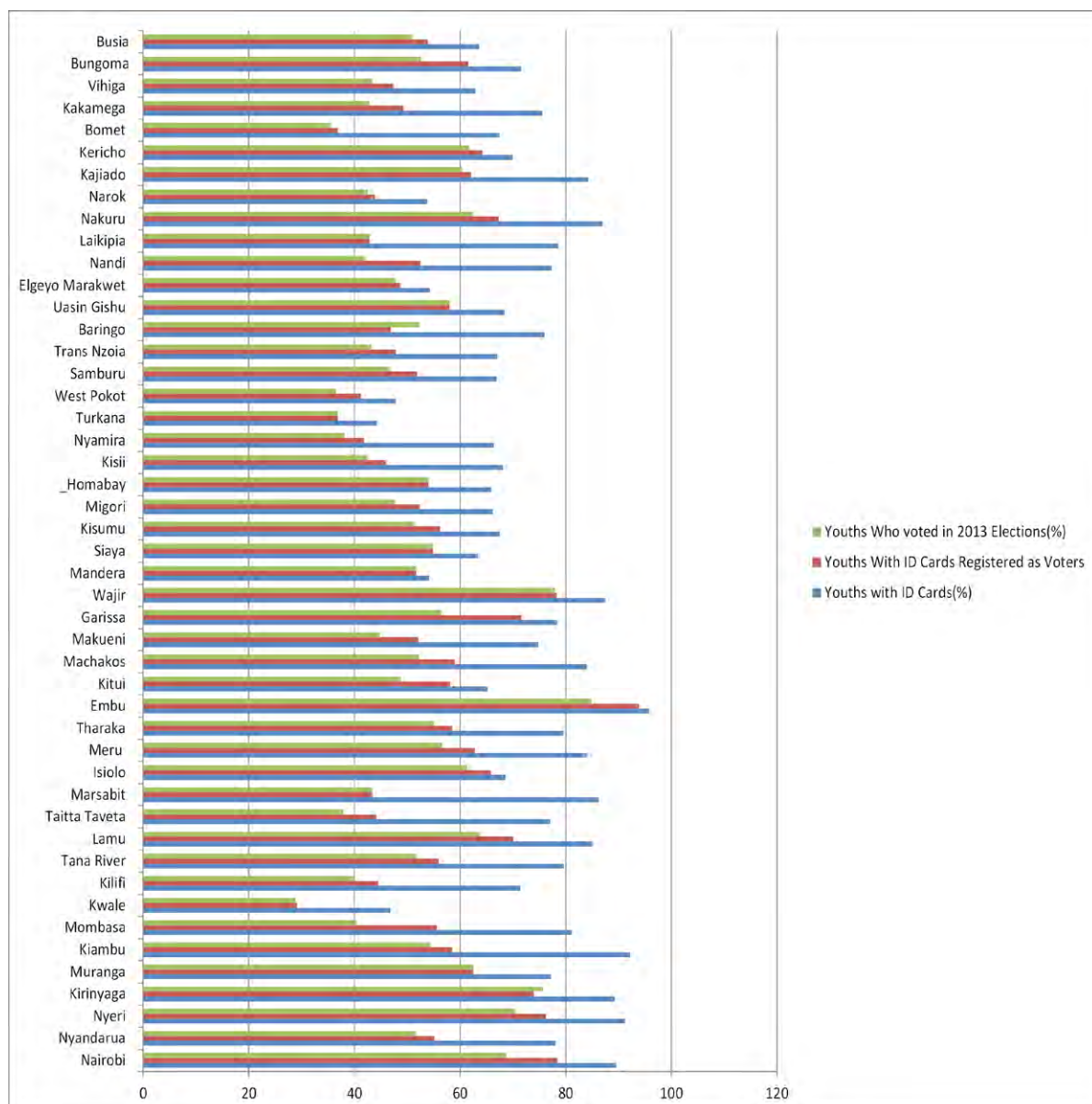
Figure 8.5: National percentage of youths registered as voters who voted in 2013 general elections



Current efforts to ensure youth representation within the country's development arena – much of which emerged from the country's National Youth Policy – have been shrouded in mystery due to lack of transparency and political manipulation. During the FGDs, it emerged that majority of the youth are either unaware of the existence of the National Youth Policy, or are misinformed on how it relates to them. This fundamental challenge undermines youth-focused initiatives, especially since the youth constituency is diverse and dynamic.

The FGDs also complained of difficulties for the youths in obtaining national ID – or passport – an imperative especially for first time applicants. As stated previously, possession of a national ID – or passport – is an imperative for registration as a voter (and political candidate), and eventual participation in balloting. Turkana County had the lowest share of youths with national IDs among the respondents in this survey, with West Pokot and Kwale also having less than 50 per cent of their youths with IDs, as shown in Figure 8.6. Meanwhile, Embu had over 90 per cent of its youths with IDs, the highest share across the counties, with another 12 counties also having shares above 80 per cent. These disparities in county level registration should be of great concern as they reflect disparities in the potential to influence the direction of national development.

Figure 8.6: Percentages of the youth with ID cards, registered as voters, and those actual voters in the 2013 elections, by county



On registration of youths with IDs as voters, Embu led the stakes with a level of over 90 per cent, with Nairobi, Nyeri, Kirinyaga, Lamu and Garissa following with levels above 70 per cent (Figure 8.8). The lowest was Kwale with 29.1 per cent of its youth with IDs registering as voters. Turkana and Bomet were the other two counties with less than 40 per cent of their ID holding youths registering as voters.

At 28.9 per cent, Kwale also had the lowest share of youth registered as voters, who actually voted. Another five counties – Taita Taveta, Nyamira, Bomet, Turkana and West Pokot – had less than 40 per cent of their registered youth voters actually taking part in the 2013 ballot. Embu led in the shares of registered voters, with actual voting standing at 84.9 per cent, with Kirinyaga and Wajir also having voting rates above 70 per cent.

Some analysts have argued that youth frustration in Kenya is a result of the failure to participate in political and economic life within society.¹¹⁹ The consistent exclusion and marginalization of the youth from decision making on matters of national development also undermines the likely effectiveness of government youth policies. Most of the youth in the country are not seen as an economic resource; rather, they are associated with problems such as insecurity, drunkenness, abuse of drugs and narcotics, and crime. Youth policies in Kenya have disproportionately emphasized formal channels of youth decision-making and ignored critical informal channels and spaces.

The persistent threat of insecurity in Kenya's urban communities and some pastoral regions interprets youth as both victims and suspects. There have been numerous media reports of security officers targeting and harassing youth under the pretext of fighting crime, while the proliferation of illegal groupings and organized crime have also ensnared youth who, ultimately, become easy prey due to unemployment and lack of proper channels to air their grievances. Over time, the youth have lost trust in Kenya's political institutions and social structures and in their leaders' willingness and/or ability to protect them.¹²⁰ This has resulted in their marginalization from formal institutions and their subsequent reliance on militias and gangs for protection, especially in informal settlements.

In an FGD in Nyeri County, it emerged that the youth are used to get politicians what they want. Even though the Constitution has helped incorporate many individuals from the youth council into politics, more still needs to be done as youth representatives are mainly handpicked by certain political leaders. In Makueni County, an FGD noted that the youth have talents that are not tapped. There is no fair treatment as those who have committed crime and have been imprisoned are always discriminated against in society, and lack opportunities and have no access to services.

Political leadership in Kenya needs to include new youthful leadership by exploiting leadership mentorship programmes. The youth bulge is the biggest source of labour force for economic growth, and this has to be aligned with the relevant government policies.

8.6 Status of Equality and Inclusion in Political Representation of Persons with disability (PWDs)

Kenya is a signatory to a number of international conventions and treaties relating to disability, including the 2006 Convention on the Rights of Persons with Disabilities. The Persons with Disabilities Act 2003 prohibits any disempowering discrimination. The preamble of the Constitution recognizes the aspirations of all Kenyans for a government based on the essential values of

119 See Fredricksen (2010).

120 See Educational Development Center/USAID (2009).

human rights, equality, freedom, democracy, social justice and the rule of law. PWDs are therefore supposed to enjoy all rights and freedoms in equal measure with people without disabilities. Poor inclusion of PWDs in public affairs is a significant governance challenge facing Kenya. Many citizens –especially from minority groups – view the State as being accessible to only those with either economic might or strong affiliations with holders of political power.

PWDs have been discriminated against in the country’s electoral processes; their political representation being both minimal or totally absent because of various cultural and structural barriers. Political representation of PWDs during the March 2013 general elections was minimal in ways that undermine the spirit of the Constitution. For example, no PWD contested the Senate or governorship.

According to the Kenya National Population Census 2009, the disability rate in Kenya stands at 3.5 per cent, meaning that there are 1,330,312 million PWDs in the country. Physical impairment accounts for the largest share of PWDs, involving 413,698 persons, followed by visual impairment with 331,594 persons, as presented in Table 8.15. The census data show that disability afflicts females marginally more than males, the latter dominating only one of the five listed categories in the table.

Table 8.15: Population by type of disability and sex as of 2009

Disability	Total	Male	Female	Percentage women
Visual	331,594	153,783	177,811	53.6
Hearing	187,818	89,840	97,978	52.2
Speech	161,803	86,783	75,020	46.4
Physical	413,698	198,071	215,627	52.1
Mental	136,093	75,139	60,954	44.8
Others	99,306	44,073	55,233	55.6
Total	1,330,312	647,689	682,623	51.3
Percentage With Disability	3.5	3.4	3.5	-

Source: KNBS (2009)

While PWDs account for 3.5 per cent of the country’s population, their political representation and contribution in governance had hitherto received inadequate attention. However, Article 81 of the Constitution requires the electoral system to comply with, among other principles, the fair representation of PWDs. Further Article 82(2) requires the National Assembly to enact legislation that ensures that voting is simplified, transparent and factors in the needs of PWDs and all other SIGs. Article 54(2) makes it a mandatory requirement that 5 per cent of members of the public in elective and appointing bodies be set aside for PWDs. However, the Government has been slow in institutionalizing the political representation of PWDs.

As with all citizens, PWDs need a national ID card to register and participate as voters, and also run as candidates at various levels of government. As can be seen in Figure 8.7, the percentage of PWDs with the national ID card varies across the counties, including some counties having no single case of a PWD with a national ID card, including Kwale, Mandera and Laikipia counties. In another 13 counties, less than 50 per cent of the PWDs had ID cards. Conversely, for Trans Nzoia, Kiambu, Nakuru, Kajiado, Isiolo, Lamu and TaitaTaveta counties, all PWDs had national IDs.

Figure 8.7: Percentage PWDs with ID cards, registered as voters, and actual voters in the 2013 elections (%)

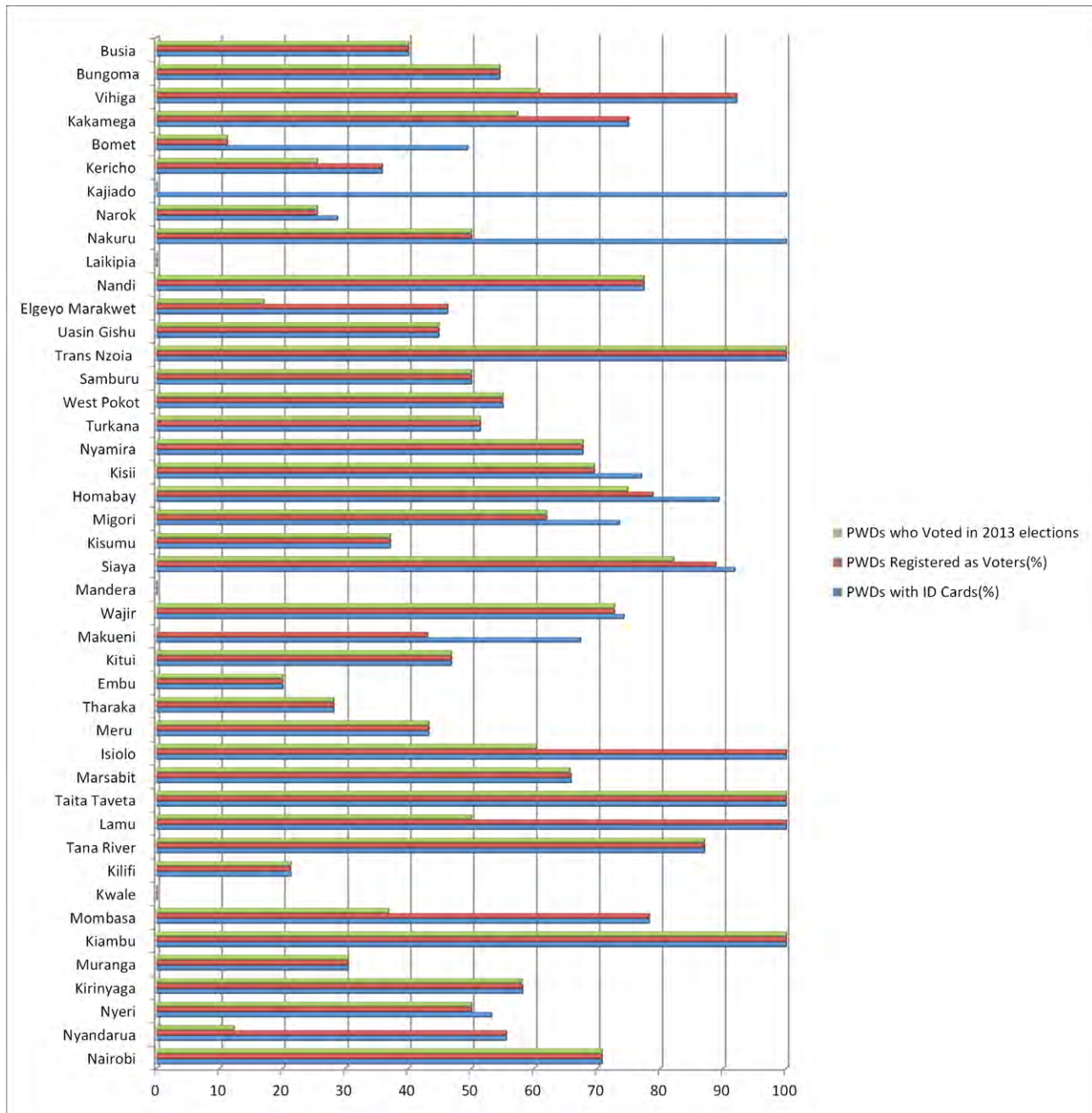


Figure 8.7 also shows the share of PWDs with IDs who registered as voters across all the 44 counties to enable them participate as voters and also run as candidates. In this respect, Kajiado presents a curious case in that while all its PWDs had IDs, none of them registered as voters. Of the other counties whose PWDs all had IDs, all PWDs registered as voters, except Nakuru where only 50 per cent registered as voters. Another 14 counties had less than 50 per cent of the PWDs with IDs registering as voters.

On actual voting, the performances of Kiambu, Taita Taveta and Trans Nzoia were remarkable: all PWDs had ID, registered as voters, and actually voted. For Isiolo and Lamu, which had 100 per cent IDs and registration, their respective voter rates were 60 per cent and 50 per cent. For Kajiado, Laikipia, Mandera and Kwale, there were of course no voters since no PWDs had registered to vote. Bomet County had the lowest turnout of PWDs voting in 2013 with a share of 11.2 per cent

During a Nairobi County FGD, participants said that good policies exist regarding SIGs, but the latter's ignorance impedes their participation in economic opportunities. Also because SIGs, especially PWDs, do not voice their rights, some people purport to support them but that is not always the case. The PWDs lack champions who can advocate for their rights and needs. For example, at the recently concluded Global Entrepreneurship Summit, no PWDs were mentioned because of lack of representation, even though some of them had been highly innovative. In Mombasa County, PWDs are not involved in decision making process and have been sidelined in almost all arenas of governance.

Some people have negative attitude towards PWDs, which also contributes in hindering SIGs' enjoyment of their full rights. PWDs are viewed as being inferior or a burden to society, to an extent that the PWDs wonder why people bother to educate the mentally disabled, for example. During an FGD in Nyandarua County, an MCA without disabilities was nominated to represent PWDs in the County Assembly, and the Supreme Court has taken too long to determine a case related to these nominations. The petitioning PWDs are unable to attend court hearings for lack of finances. Already, there are 3 MCAs with disabilities, but they do not represent the interests of PWDs. Also, when county budgets are done, PWDs are usually not involved. PWDs have been having difficulties in getting county jobs and the justification given is that they do not apply.

Public participation by PWDs is usually difficult. For example, there are few sign language interpreters, Braille facilities, and similar aids. Banks, hospitals and other institutions in the entire Nyandarua County do not have desks to cater for PWDs. In the

Tharaka Nithi County FGD, it emerged that there were no interventions targeting PWDs, with the National Government only focusing on children with severe disabilities. On employment, the county does not set aside slots for PWDs, who consequently have to compete with people with higher education levels and work experience. The county does not have essential institutions for PWDs: the two available institutions serve the mentally disabled and those with impaired hearing, but the fees are not affordable for many parents. Children with other forms of disability have to get admission to institutions in other counties, which is even more unaffordable. Such circumstances are one reason why many children with severe disabilities are locked up inside houses and/or homesteads.

A synopsis of the political representation of PWDs in the three legislative institutions in Kenya – Senate; National Assembly; and County Assemblies – shows this to be at best modest, as evident in Table 8.16.

Across all the legislative bodies, only a single woman PWD was elected to the National Assembly in 2013. On the other hand, a male PWD was elected to the Senate, five to the National Assembly, and 10 to County Assemblies. Subsequently, nominations remedied the situation somewhat, with a male and female in the Senate, 2 females and a male to the National Assembly, and 30 females and 31 males to County Assemblies. Thus, the Senate has 3 PWDs of its 67 members, and Parliament has 9 PWDs of its 349 members, while for County Assemblies, it is 71 of 2,222 members. These figures represent PWD rates, respectively, of 4.5 per cent, 2.6 per cent, and 3.2 per cent, meaning that only the Senate meets the constitutional benchmark of prioritizing PWDs.

Table 8.16: Representation of PWDs in select positions at County and National Assemblies

	Senate		National Assembly		County Assembly	
	Female	Male	Female	Male	Female	Male
Elected Representatives	0	1	1	5	0	10
Nominated Representatives	1	1	2	1	30	31

Source: Various

A Nyeri county FGD revealed that the County Government has regional offices for the various programmes meant to mainstream equality, gender and inclusion. However, there are no sign language interpreters. There is weak formulation of policies as the mentally impaired are not covered in the election process. Braille voter cards were made available in the 2013 general elections, but due to poor political representation, the presiding officers were not able to read the votes in Braille.

8.7 Emerging issues in Political Representation

Impediments to Political Participation and Representation of SIGS

SIGs seeking political leadership in Kenya have faced many barriers, key among them being:

- i) Indifferent and male chauvinistic societies and communities that are yet to acknowledge the contribution of SIGS in leadership
- ii) Violence and brutality targeting SIGs political aspirants
- iii) Negative stereotypes skewed against women and other SIGs, which undermine their participation in leadership
- iv) Irregularities in political party primaries that lock SIGs out especially in party stronghold areas
- v) Inadequate and/or lack of funding for mobilization and campaigns by candidates from SIGs given their long historical marginalization
- vi) Lack of political goodwill in support of SIGs candidates.
- vii) Failure to implement electoral rules in party nominations, thus giving way to anarchy and lawlessness to the detriment of SIGs candidates

- viii) Male domination of influential decision-making structures in most political parties, giving them an edge over their female counterparts
- ix) Indifference from media houses, which only cover negative headlines, for example when female candidates are attacked by hired male goons during nominations thus discouraging other potential SIGs candidates
- x) Negative cultural attitudes: Some cultural traditions still emphasize women's primary roles as mothers and housewives. Therefore, their participation in leadership is frowned upon and those who attempt are castigated and labeled prostitutes. Also, some cultural norms prohibit women from speaking in public and campaigning in public places or addressing men in a public gathering. Some husbands may also bar their wives from engaging in politics because of how their peers (men) will think. Part of the stigma may stem from perceptions that women politicians are loose women, irresponsible mothers and wives who are unable to run a household.
- xi) Poverty: Many members from the SIGs lack access to means of production due to cultural beliefs and historical marginalization. They do not have funds to launch successful campaigns in an election, and this has a direct negative impact on their representation. For instance, women in many Kenyan communities are not allowed to inherit land from their parents (despite this being a constitutional right). Most marginalized communities do not own land title deeds. For example, the Nubians in Nairobi County have no

The progress made on equality and inclusion since the Constitution was promulgated in 2010 has been below expectations, but the situation after the 2013 elections is much better than it was during the aftermath of 2007 general elections. The National Assembly should take seriously the need to legislate for the inclusion of women and other marginalized groups in political representation as is envisaged in the Constitution.

ownership documents for the land that they have occupied for generations, while others encounter insurmountable problems when seeking legal documents such as the national ID card and the Kenyan passport.

Key Findings

This study established the following:

- i) Despite progressive laws being put in place to ensure that SIGs are represented at all levels of government, a lot needs to be done to ensure that SIGs enjoy their rights in the Constitution. The youth and PWDs are still marginalized in leadership and political representation both at county and national levels, although there was reluctance by various agencies and offices to provide data on their representation in decision making as stipulated in the Constitution
- ii) PWDs are often stigmatized, and in some communities they are hidden from the public due to their disability. Their basic rights are being violated, in some marginalized communities they have been stigmatized by dominant communities where they reside. Moreover, PWDs have not been properly profiled in some counties. Many PWDs have not been registered across all the counties. In some counties, there is no data on the number of PWDs with identity cards. It is like they are the nonexistent population
- iii) Kenya has yet to meet the 1995 Beijing Declaration commitment of over 30 per cent women's parliamentary representation, and is the only country in the East African Community that is yet to achieve the one third minority gender representation in its National Assembly.
- iv) The share of youth with national ID cards but have not subsequently registered as voters in some counties is too high. In some counties, some SIGs have a 100 per cent score with IDs but they are not registered as Voters, and therefore they cannot participate in national elections

8.8 Conclusion and Recommendations

The Constitution of Kenya seeks to mitigate the historical political marginalization and discrimination against the SIGs, including women, persons with disability, special interest groups and the minority and marginalized communities. The progress made on equality and inclusion since the Constitution was promulgated in 2010 has been below expectations, but the situation after the 2013 elections is much better than it was during the aftermath of 2007 general elections. The National Assembly should take seriously the need to legislate for the inclusion of women and other marginalized groups in political representation as is envisaged in the Constitution.

FINDINGS AND DISCUSSIONS ON EQUALITY AND INCLUSION INDEX FOR KENYA

The current chapter focuses on estimation of an overarching Equality and Inclusion Index for Kenya, its components and link with the government revenue transfers. First, the section presents estimates and analysis of the five Equality and Inclusion sub-indices (dimensions) before presenting the overall index, and its link to county revenue allocations.

9.1 Determination of the Equality and Inclusion Index

The previous chapters have focused on assessing the status of equality and inclusion in the four sectors that were the main focus of this study, i.e. education, employment, social protection and political representation. However, to facilitate objective monitoring of progress made towards the achievement of equality and inclusion in the country, it is important to compute a measure of the various components of equality and inclusion for the country. The current chapter focuses on estimation of an overarching Equality and Inclusion Index for Kenya, its components and link with the government revenue transfers. First, the section presents estimates and analysis of the five Equality and Inclusion sub-indices (dimensions) before presenting the overall index, and its link to county revenue allocations. The dimensions are selected based on the sectors of interest in this study. The six computed sub-indices include: i) Development Index; (ii) Health Index; (iii) Education Index; (iv) Social Justice and Civic Participation Index; (v) Gender Equality Index, and (vi) Labour Force Participation Index.

9.2 Components of Equality and Inclusion Index

9.2.1 Development index

Sustained development is a potential outcome of equality and inclusion, and an indicator of equality across regions. However, the relationship is not obvious. Development can coexist with inequalities depending on the environment. In this study, the Development Index was computed based on the following indicators: non-poor headcount; proportion of households with improved water; proportion of households with access to electricity; and per capita gross domestic product (GDP).

Interpretation

The Development Index can be interpreted on a relative basis with a careful reference to its indicators. A development sub-index score of 100 per cent for a jurisdiction can be interpreted to mean that all households within that jurisdiction are non-poor, have access to electricity and improved water, and paved roads.

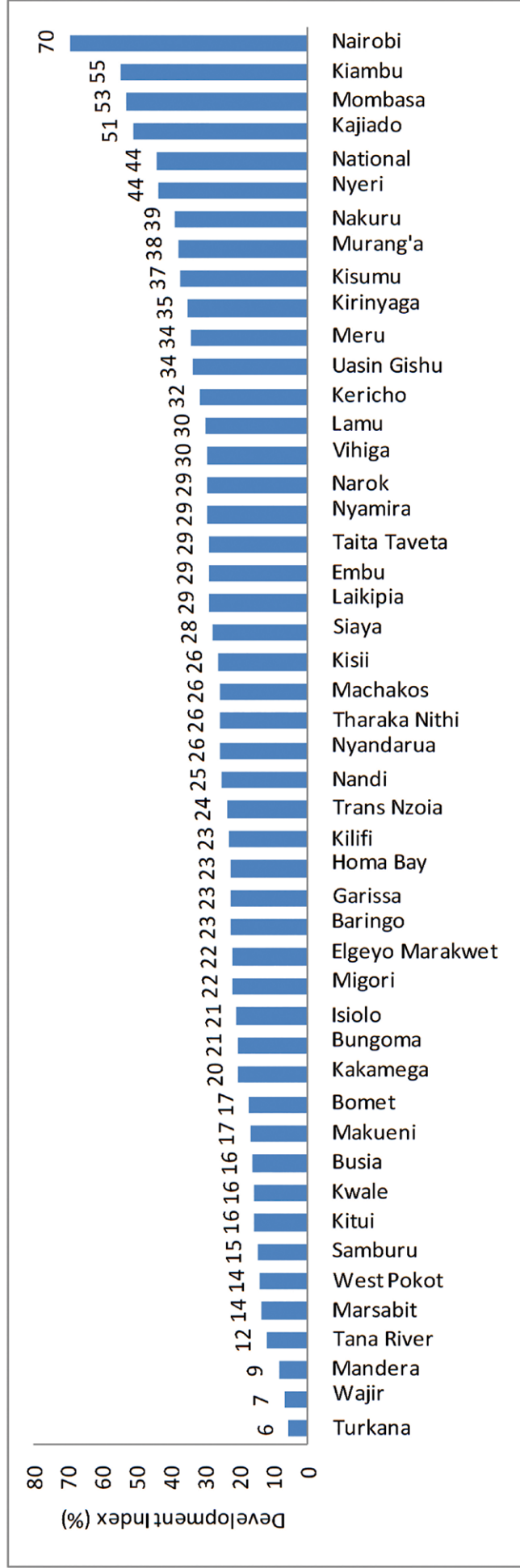
Findings

According to the estimation results presented in Figure 9.1, the overall Development Index was 44 per cent out of a possible ideal score of 100 per cent on “development” – measured by the four indicators (proportion of the non poor, access to improved water and electricity, and per capita GDP). This means that 66 per cent of the Kenya population is not accessing critical services such as clean water, paved roads and electricity. There are variations across counties.

Nairobi County recorded the highest Development Index score of 70 per cent while Turkana had the lowest score of 6 per cent. Only six (6) counties had an index of above 40 per cent while 35 counties recorded an index of 30 per cent and below. The remaining 7 counties recorded an index of between 30 per cent and 40 per cent. Nairobi County’s highest index score can be interpreted to mean that despite having major social and economic inequalities between the high income and informal settlements, and substantial numbers of poor people in the informal settlements, the county has the largest proportion of households who are not poor, have access to electricity and paved roads, *relative to* the other counties. The county also has the highest levels of economic development.

Education attainment is an important enabler of improved equality and inclusion in various social and economic activities. Education is important at both institutional and society levels because it enables the development of skills and the inculcation of values and attributes that embrace inclusion and non-discrimination. When individuals are educated, transaction costs are likely to be low, and sustainable development is enhanced. Education benefits both individuals and society at large. Conversely, when individuals are not educated, there is a higher likelihood of marginalization and deep rooted generational inequalities. Lack of quality education is likely to increase exclusion from economic activities during the productive age.

Figure 9.1: Development index by county, 2015 (%)



9.2.2 Health index

Health outcomes are important social development measures; a healthy nation is a wealthy nation. A healthy nation is not only associated with productive labour force but also improved development indicators. For the Health Index, the indicators considered included life expectancy, proportion of children delivered through skilled provider assistance, proportion of households with access to improved sanitation, and proportion of children not stunted. As a good attribute of social relations, equity in health care service delivery makes people feel included. These indicators also capture aspects of quality health care service delivery. County level Health indices are presented in Figure 9.2.

Interpretation

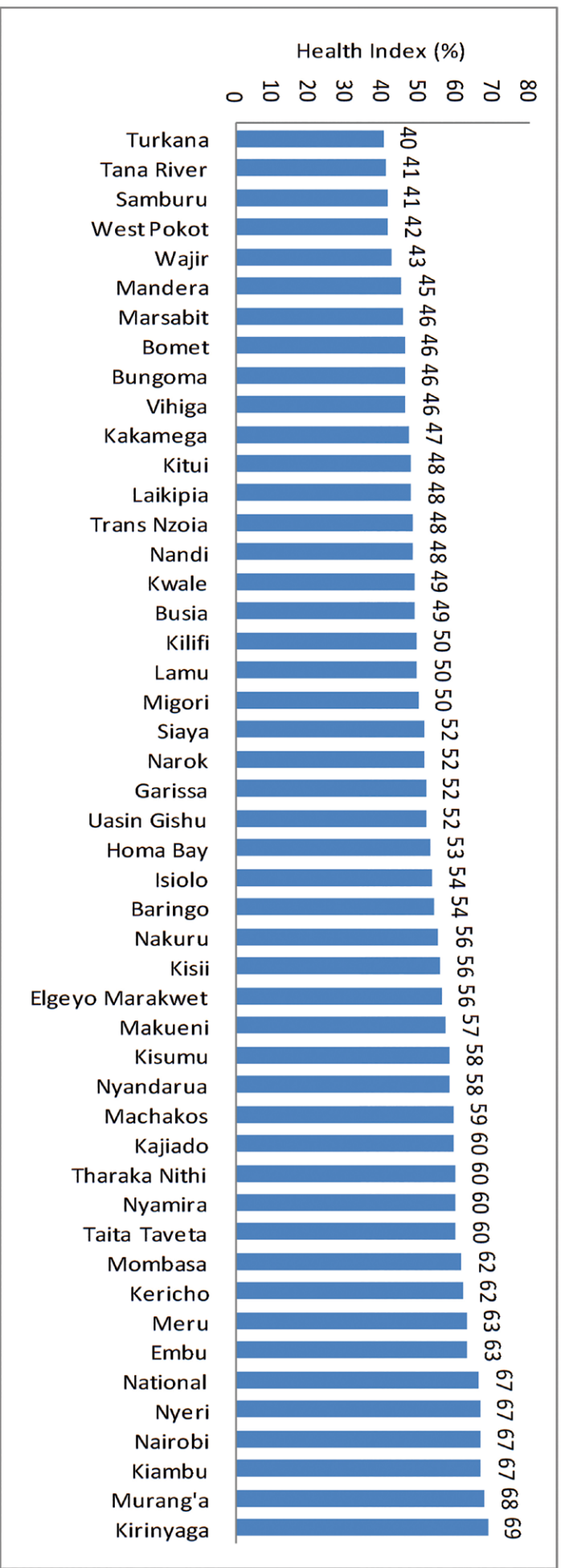
The Health Index is interpreted on a relative basis using its four indicators. A jurisdiction with a health index score of 100 per cent implies that households within that jurisdiction simultaneously had the highest average life expectancy score; had all births in a health facility and assisted by a skilled provider; had high proportion of households with access to improved sanitation and a large proportion of children were not stunted. A score of zero would be on the opposite extreme end.

Findings

County level Health indices are presented in Figure 9.2. The Health Index was 67 per cent and had the second highest average score among the

six dimensions of the overall Equality and Inclusion Index. It suggests that about three quarters of Kenyans have access to the aforementioned services or achieved relatively high scores on the indicators. However, it further implies that 33 per cent of the population was excluded from benefiting from various health services as per the indicators above. There were, however, major inequalities across the counties with a range of 29 percentage points between the highest recorded measure of 69 per cent (Kirinyaga County) and a least recorded index of 40

per cent (Turkana County). There were noticeable regional variations within counties in the northern part of the country, with the ASALs recording the lowest health indices. This suggests that historical marginalization and retrogressive socio-cultural factors play an important role in influencing health outcomes. Since health is one of the devolved functions, the counties with a low health index will need to address the factors contributing to the low levels of health outcomes.



9.2.3 Education index

Education attainment is an important enabler of improved equality and inclusion in various social and economic activities. Education is important at both institutional and society levels because it enables the development of skills and the inculcation of values and attributes that embrace inclusion and non-discrimination. When individuals are educated, transaction costs are likely to be low, and sustainable development is enhanced. Education benefits both individuals and society at large. Conversely, when individuals are not educated, there is a higher likelihood of marginalization and deep rooted generational inequalities. Lack of quality education is likely to increase exclusion from economic activities during the productive age.

Measurement and interpretation

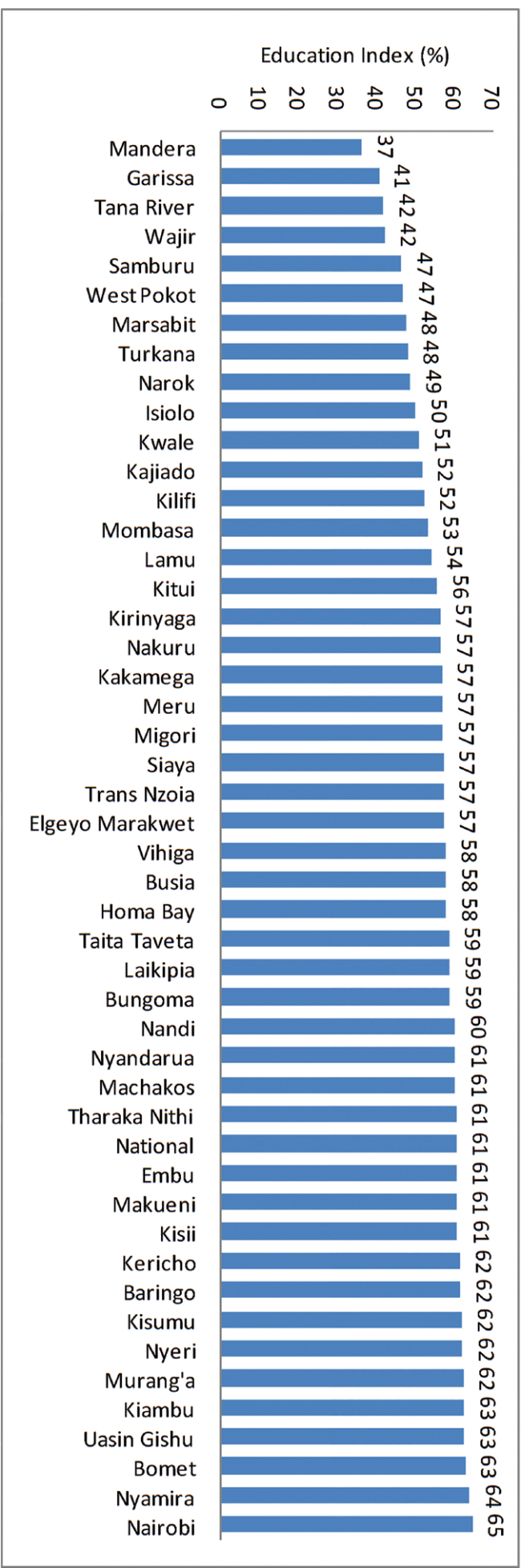
The Education Index was captured using two indicators: the education attainment levels across counties and the average years of schooling, and is interpreted on a relative basis. For a jurisdiction to have an education index score of 100 per cent implies that households within that jurisdiction simultaneously had

the highest education attainments and highest average years of schooling relative to all the other jurisdictions.

Findings

Based on estimated results presented in Figure 9.3, the national Education Index stood at 61 per cent, implying that 39 percent of the population was excluded from Education opportunities at various levels. However, there were major variations of 28 percentage points across counties. Only 17 counties recorded a mean of 60 per cent and above, while 30 counties recorded scores of between 30 per cent and 59 per cent. The index ranged between a high of 65 per cent in Nairobi County and a low of 37 per cent in Mandera County. Generally, the measured Education Index levels were low. This is partly because despite the relatively high literacy and primary education enrolment rates, the overall education attainment levels are low with only about 25 per cent of the population having attained secondary education and above. Further, the national average years of schooling was estimated at 8.2 years in 2014.

Figure 9.3: Education index by county, 2015 (%)



9.2.4 Social justice and civic participation index

Protection of Bill of Rights constitutes a fundamental provision of the Constitution and forms the basis of upholding human rights. According to the Constitution, human rights are essential freedoms and inherent entitlements that should reflect the dignity and worth of every individual. Kenya is also a signatory to the fulfillment of fundamental rights under various international commitments. Human rights enable citizens to maximize their potential in all aspects of life and involve treating people in such a way that the outcome for each person maximizes their potential. It also entails ensuring that every individual has access to resources and the right to participate in decision-making processes,

while at the same time benefiting from reduced poverty, inclusion, and efficient and effective utilization of resources.

Measurement and interpretation

Most of the indicators identified under this component were not directly measurable, such as human dignity and protection of human rights, causing resort to proxies. The Social Justice and Civic Participation Index – hereafter SJCP, is based on perceptions on the protection of human rights, levels of inclusion in economic activities, and shares of citizens aged 18 years and above who were registered voters (hence had identification cards) and voted during the last general elections.

The results on the Labour Force Participation Index are presented in Figure 9.5. The national Labour Force participation Index was 64 per cent, implying that 36 per cent were excluded from labour force participation basing on the population and subsequent indicators above. The index ranged from a high of 74 per cent (in Nairobi and Mombasa counties) to a low of 44 per cent in Turkana County.

SJCP is also based on the share of the population strongly satisfied with life, perceived levels of fairness in a society, protection of the marginalized, and of overall level of non-discrimination.

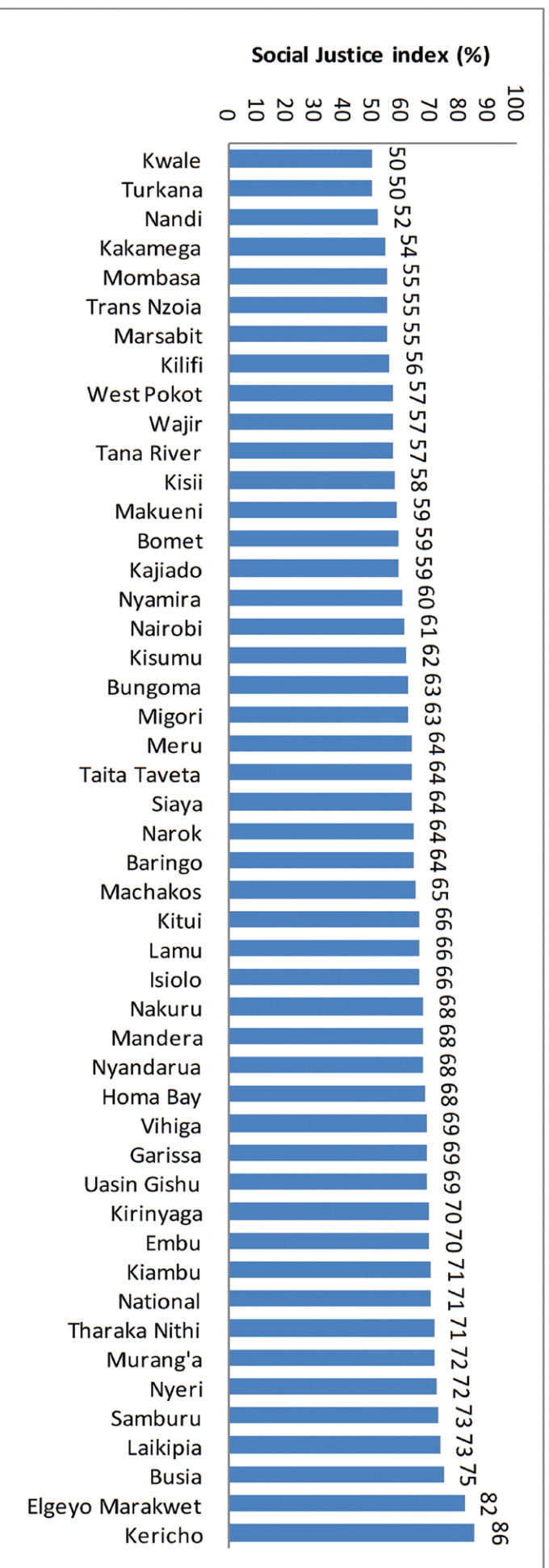
The SJCP sub-indicators were captured through responses to the questions on protection of the marginalized, society's level of inclusiveness and non-discrimination in the society one lives in, and the extent to which individuals exercised fairness and social justice in the society they lived in. The indicator's data were generated from the responses of household members in the survey. SJCP is interpreted in a similar fashion to the earlier indices.

Findings

The SJCP results are presented in Figure 9.4. The SJCP Index was the highest among the five indices, and was estimated at 71 per cent, meaning that 29 per cent of the population was excluded from Social Justice and Civic Participation opportunities. The Index ranged from a high of 86 per cent for Kericho County to a low of 50 per cent for Kwale County, meaning that all counties recorded a moderate measure of above 50 per cent.

The relatively high score implies that the country's performance with respect to protecting the Bill of Rights is above average. Perhaps this can be attributed to the various reforms the country has put in place, including devolution, institutionalization of protection of human rights in the Constitution, and the development and implementation of the various legislative frameworks that promote inclusion and non-discrimination among all groups in society.

Figure 9.4: Social justice and civic participation index by county, 2015 (%)



9.2.5 Labour force participation index

The Labour Force Participation Index measures economic inequalities in access to employment. The strength of labour force dimension of equality and inclusion is related to perceived complementarities that productively engaged people contribute to society while reducing, and/or eliminating inequalities. Broadly, the Labour Participation Index focuses on the positive dimension of economic engagement.

Measurement and interpretation

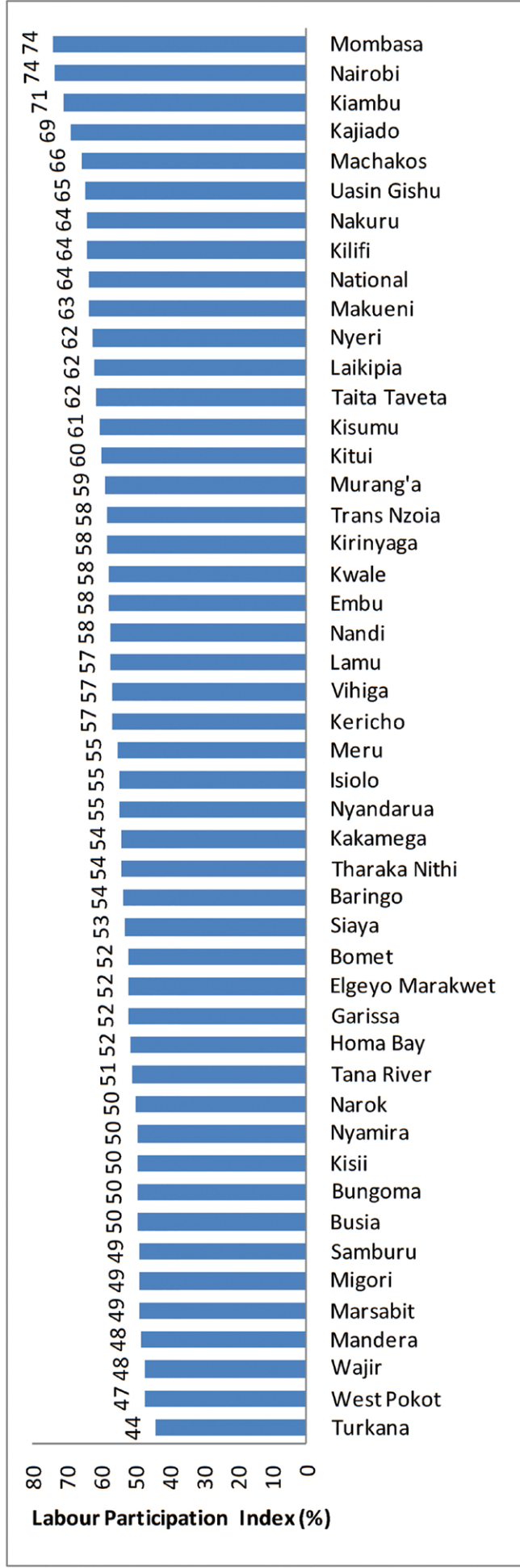
The labour force participation index was measured using three indicators, that is, the proportion of the employed as a ratio of total population aged 18-64 years; proportion of youth aged 15-24 years who are either employed or in education or in training; and the proportion of the

labour force that is not in vulnerable employment. If a jurisdiction had a score of 100 percent, it would imply the highest relative scores for these indicators. A score of zero would suggest the lowest relative score for these employment indicators.

Findings

The results on the Labour Force Participation Index are presented in Figure 9.5. The national Labour Force participation Index was 64 per cent, implying that 36 percent were excluded from labour force participation basing on the population and subsequent indicators above. The index ranged from a high of 74 per cent (in Nairobi and Mombasa counties) to a low of 44 per cent in Turkana County.

Figure 9.5: Labour index by county, 2015 (%)



9.2.6 Gender equality index

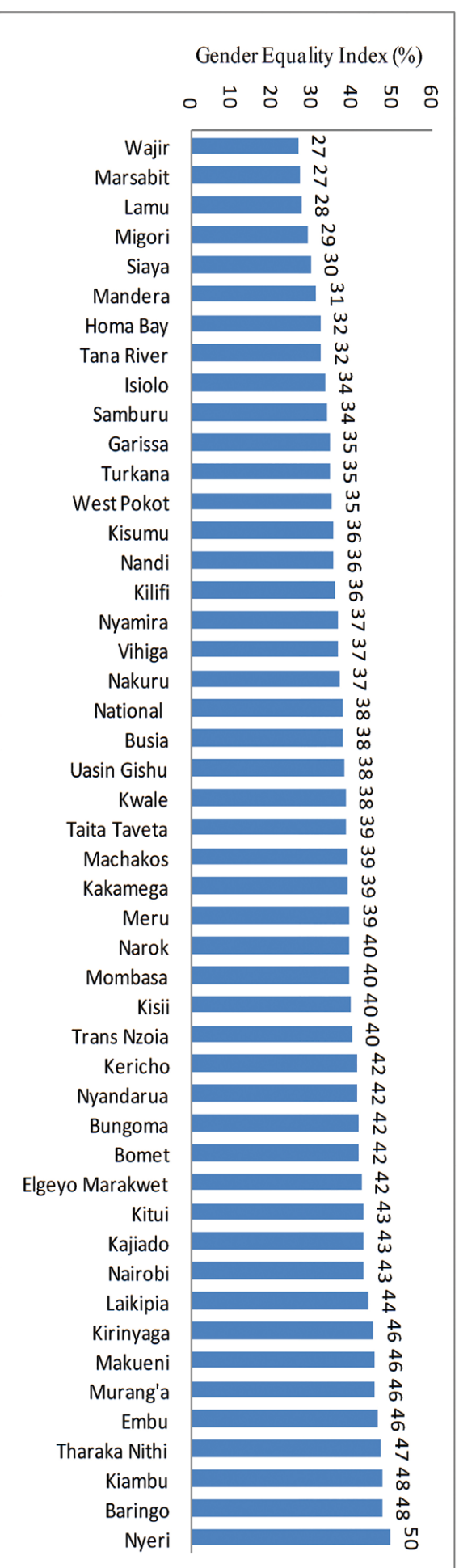
Gender inequality has remained one of the major obstacles to sustained human development in Kenya. Although the country has made major strides towards improving women participation in various sectors of the economy (as described in various sections of this report), persisting disadvantages facing women and girls tend to worsen the status of inequality in the country. This is mainly because women and girls are often disadvantaged in access to various opportunities such as education, employment and political participation due to their socio-economic characteristics.

In this report, the levels of gender equality were captured through the Gender Equality Index, which represents the difference between the

maximum level-100 per cent, and the computed Gender Inequality Index, which was provided by the KNBS. The Gender Equality Index consists of three critical aspects of human development: reproductive health, empowerment and economic participation. Reproductive health was measured through maternal mortality ratio and adolescent birth rates. Women empowerment consists of proportion of parliamentary seats occupied by women, proportion of adult female and male aged 25 years and older with at least some secondary education and above while women economic status is measured by labour market participation for population aged 15 years and older. Consequently, a higher GII value means more disparities or higher gender gap in human development dimensions.

Overall, the national GEI was estimated at 38 per cent, with a minimum of 27 per cent (Wajir and Marsabit Counties) and a high of 50 per cent (Nyeri County) (Figure 9.6). This means that 62 per cent of the population was excluded from the coverage of reproductive health service, empowerment and economic participation partly due to gender differences. Apparently, no county has attained gender equality in the country. The country needs to address gender inequalities both within and across all counties to promote equality and inclusion.

Figure 9.6: Gender equality index by county, 2014 (%)

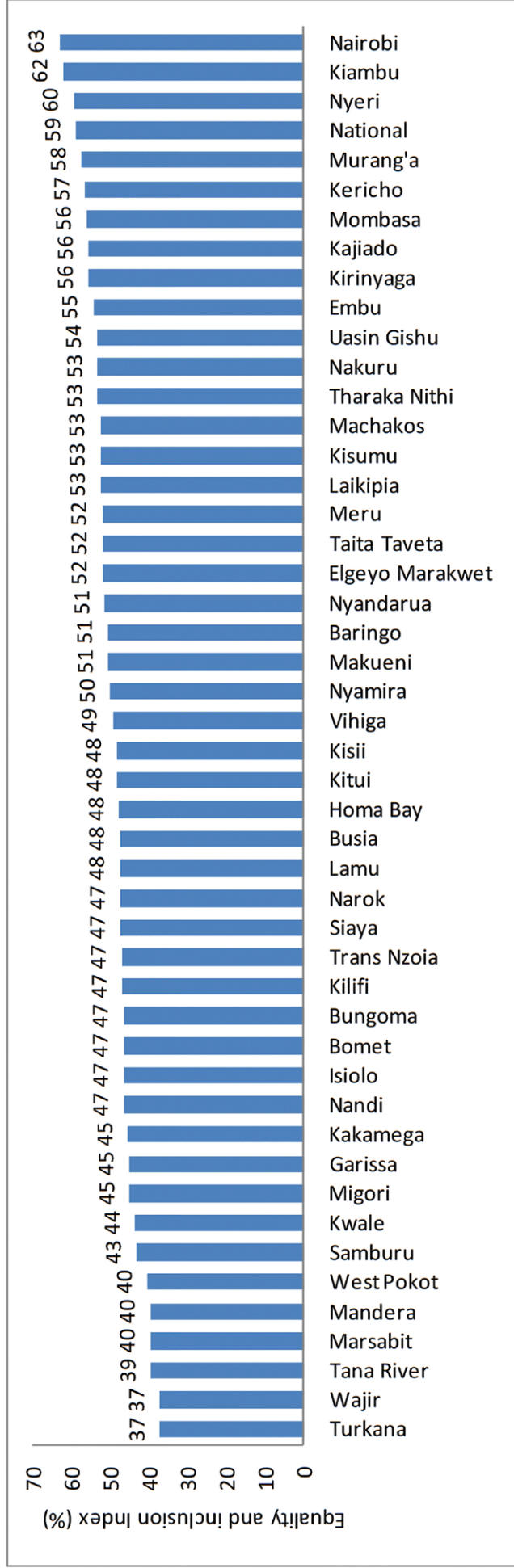


9.2.7 Overall equality and inclusion index

The overall Equality and Inclusion Index comprised five components, namely: the Development, Health, Education, Social Justice and Civic Participation, Labour Force Participation, and Gender Equality indices. The national Equality and Inclusion Index was estimated at 58.9 per cent. This implies that 41.1 per cent of the population was excluded from benefiting on various components as described above. Generally, the highest sub-index at the national level was the Social Justice Index (71%), whose critical elements included responses on protection of the marginalized, society's level of inclusiveness and non-discrimi-

nation in the society one lives in, and the extent to which individuals exercised fairness and social justice in the society they lived in. This can also be attributed to the ongoing implementation of the 2010 Constitution, which upholds the tenets of devolution and human rights. The lowest index was in the Development Index (44%), whose significant elements included regional distribution of public goods such as paved roads, access to electricity, and economic well-being. The Equality and Inclusion Index varied across counties as shown in Figure 9.7.

Figure 9.7: Equality and inclusion index by county, 2015 (%)



The highest county Equality and Inclusion Index was that of Nairobi County (63%) followed by Kiambu County (62%). Meanwhile, the lowest score was the joint 37 per cent for ASAL counties, Turkana and Wajir. The skewed distribution of county Equality and Inclusion Index – with a range of 25 percentage points – underscores the severity of inequalities between Kenyan counties. Obviously, these county averages hide equally serious inequalities *within* counties.

9.3 Link between Equality and Inclusion Index and National Government Transfers

The Constitution (2010) mandates the transfer of at least 15 per cent of the most recently audited national revenues collected by the Kenya Revenue Authority to County Governments. This lump sum is shared equitably among the County Governments based on a formula developed by the Commission on Revenue Allocation (CRA). Additional transfers include conditional grants such as rebates under the Free

Maternity Services scheme, and resources for counties hosting Level 5 hospitals, the former Provincial General Hospitals. Some 17 counties that CRA adjudges to be most marginalized will also receive shares of the Equalization Fund based on one-half per cent of ordinary revenues (yet to be operationalized).¹²¹ County Governments augment these resource inflows with locally-generated revenues.¹²² The main objective of the transfers is to reduce regional inequalities across counties while ensuring sustained development.

The County Governments use these resources to deliver the functions devolved by the Fourth Schedule of the Constitution: i) County health services; ii) Control of air pollution, noise pollution, other public nuisances and outdoor advertising; iii) Cultural activities, public entertainment and public amenities; iv) Control of drugs and pornography; v) Animal control and welfare; vi) County transport; vii) Trade development and regulation; viii) County planning and development; ix) Ensuring and coordinating the participation of communities and location in governance at the local level; x) Pre-primary education, village polytechnics, home craft centres and child care facilities; xi) Implementation of specific national government policies on natural resources and environmental conservation; xii) County public works and services; and xiii) Fire-fighting services and disaster management. During the fiscal year 2014/15, for instance, the National Government (based on CRA formula) transferred about Ksh 226.7 billion to the 47 counties, representing 87.6 per cent of the County Governments' resources, compared to local revenues amounting to Ksh 38.9 billion (12.4%).

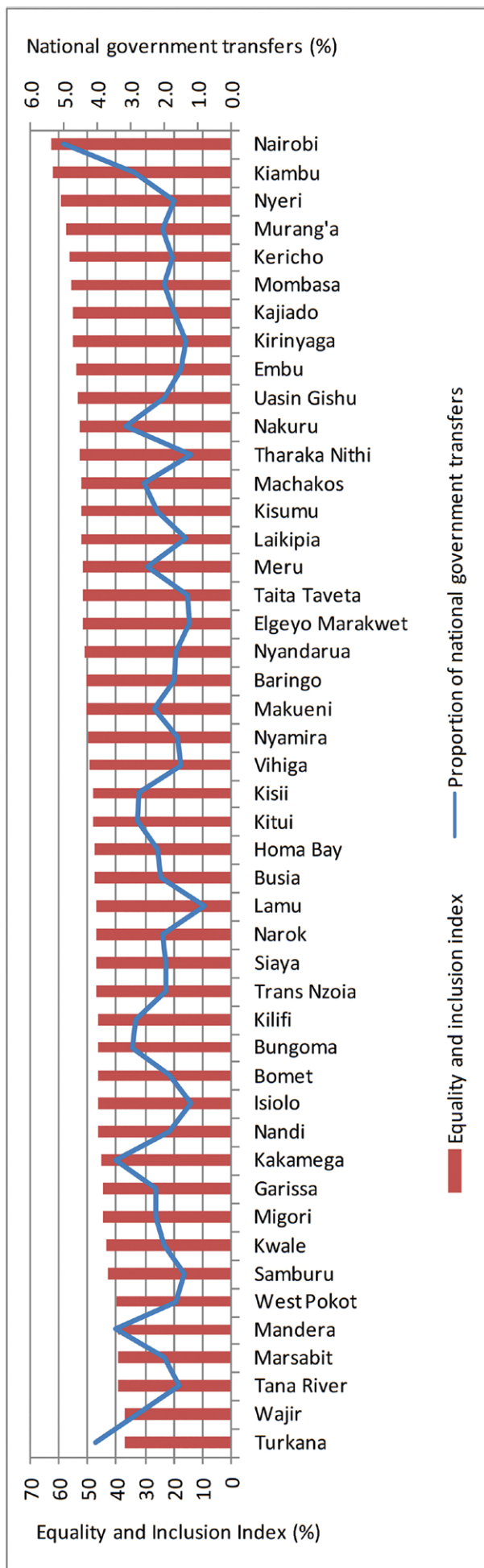
Nairobi County received the largest share of the revenue, followed by Kakamega and Turkana counties. Perhaps this is because the CRA formula has to date emphasized population, poverty and land area, while ignoring other factors that contribute to regional inequalities. Starting with the 2016/17 fiscal year, the formula will include a development component with a weight of about 1 per cent. Whereas this is a step towards addressing some of the regional inequalities, it will be important for CRA to consider other forms of inequalities, such as are captured by the Equality and Inclusion Index.

Figure 9.8 provides analysis on the link between the national government transfers and the equality and inclusion index. The analysis indicates that there is no direct correlation between the county Equality and Inclusion Indices and equitable share CRA allocates to the counties. Nairobi County received the largest share of the revenue, followed by Kakamega and Turkana counties. Perhaps this is because the CRA formula has to date emphasized population, poverty and land area, while ignoring other factors that contribute to regional inequalities. Starting with the 2016/17 fiscal year, the formula will include a development component with a weight of about 1 per cent. Whereas this is a step towards addressing some of the regional inequalities, it will be important for CRA to consider other forms of inequalities, such as are captured by the Equality and Inclusion Index.

121 For the sharing of the Equalization Fund, see Commission on Revenue Allocation (2014).

122 For an analysis of these local revenues, see Office of the Controller of Budget (2016).

Figure 9.8: Link between equality and inclusion index and national government transfers, 2015 (%)



CONCLUSION AND RECOMMENDATIONS

The analysis covered the following objectives: developing indicators for measuring equality and inclusion focusing on selected parameters at the national and county levels in both the public and private sectors, and developing a country status report on equality and inclusion at the national and county levels and public and private sectors. Four sectors were of interest to this study, i.e. employment, political representation, social protection and education.

The broad objectives of this study were: (i) to examine indicators of equality and inclusion, and based on these indicators; (ii) develop a national status report focusing on the national and county levels. The analysis covered the following objectives: developing indicators for measuring equality and inclusion focusing on selected parameters at the national and county levels in both the public and private sectors, and developing a country status report on equality and inclusion at the national and county levels and public and private sectors. Four sectors were of interest to this study, i.e. employment, political representation, social protection and education.

The overall Equality and Inclusion Index comprises six sub-indices, namely the Development, Health, Education, Social Justice and Civic Participation, Gender Equality, and Labour Force Participation indices. The national Equality and Inclusion Index was estimated at 58.9 per cent. Generally, its highest sub-index was the Social Justice and Civic Participation Index (71%), while the lowest sub-index was in the Development Index (44%), the latter's elements including regional distribution of public goods such as paved roads, access to electricity, and economic well-being. The Health Index was 66 per cent and had the second highest average score among the six dimensions. The health component comprised of life expectancy, proportion of deliveries by skilled provider, and proportion of households with access to improved water and sanitation. The Education Index was captured through education attainment levels across counties, mean years of schooling, and level of aggregate enrolment for all levels and proportion of the population that had attained secondary education and above. The national mean education index was 61 per cent. The Labour Participation Index was estimated at 64 per cent, while the Gender Equality Index stood at 38 per cent.

Recommendations

This survey makes the following recommendations across the various sectors:

Education

Both the national and county levels of government, as well as other stakeholders in the education sector and in curriculum development, must ensure the integration of practical tools to support programmes that address the equitable access to, and retention and transition in, education for SIGs with the inclusion of formal and informal education.

Specifically, the national Government must enhance the quality of education at all levels by:

- i) Training head teachers in skills of quality assurance, finance and human resource management;
- ii) Training, deploying and supporting quality assurance officers to do their work effectively; and
- iii) Providing adequate learning materials.
- iv) Guarantee right to free and compulsory education

The Government must also promote equity by:

- (i) Designing specific special affirmative action programmes for girls, PWDs, ASAL regions and slum areas;
- (ii) Abolishing all levies which discriminate against poor households;
- (iii) Making education and training relevant by undertaking a major curriculum review preceded by research and needs assessment, to establish the challenges posed by the Constitution and the skills needs for achieving Vision 2030;
- (iv) Reviewing and revising core learning materials to conform to the impartation of problem solving skills;
- (v) Redesigning teacher education curricula and training programmes to prepare teachers for implementing the new curricula. The Government also needs to pay special attention to marginalized areas and disadvantaged communities;
- (vi) Operationalizing the Nomadic Education Policy Framework to address the challenges in the provision of education;
- (vii) Integrating gender awareness components into pre- and in-service teacher training. It is further necessary to incorporate gender considerations into activities to develop curricula and learning materials, and to capture sex-disaggregated data in all aspects of education;
- (viii) Developing practical tools to support programming staff in designing, implementing, reporting on, and evaluating programmes that address equitable access and quality from a gender perspective;
- (ix) Employing education and training to inculcate gender responsiveness, patriotism and nationalism. Thus, education and training should integrate social responsibility, including nurturing, reproductive health, combating drugs, substance abuse, and violence in schools;
- (x) Ensuring community mobilization and sensitization in support of the girl child as a basis for influencing socio-cultural and household dynamics to overcome the differential treatment of girls and boys;
- (xi) Ensuring deliberate action to promote or appoint qualified women to decision-making positions or position of power and influence in the education sector;
- (xii) Increasing the funds disbursed to schools as part of the free education programme, towards the purchase of sanitary pads so as to shield girls from the effects of menstruation on their school attendance; and
- (xiii) Establishing bursary funds for bright girls from poor families.

Labour

- (i) Uphold the constitutional and other regulatory provisions on equality and inclusion.
- (ii) Identify and collect data on the specific indicators that capture all the legal or regulatory requirements on equality and inclusion (e.g. employment across age groups or by ethnic origin).
- (iii) Keep and share information that is of a public nature (to actualize the right of access to information by every citizen). To enhance access to information as envisaged by the Constitution, the governments should introduce penalties for failure to share information of a public nature.

- (iv) NGENC and other related commissions can establish an online system that allows all ministries, departments and agencies to provide data on labour and other indicators in a uniform and accessible format.
- (v) Enhance the quality of jobs by enhancing the implementation, monitoring and evaluation of existing laws and regulations, including international conventions on labour and employment.
- (vi) Expand the formal economy and formalize informality especially in the largely rural regions.
- (vii) Expand the reach of social protection.
- (viii) Enforce the law that gives children the right to basic education.
- (ix) Address the need to work for survival by enhancing the cash transfer programmes (with respect to more effective targeting).
- (x) Sensitize households on the right of children to access education.
- (xi) Expand economic opportunities in regions previously considered “low potential regions”, such as the ASALs.
- (xii) Remove barriers to education for the poor by reducing costs for households, and/or expanding bursaries and other transfers.
- (xiii) Encourage out of school youth to re-enter general education, e.g. through subsidized second chance programmes that are flexible.
- (xiv) Make non-formal education attractive and accessible, and ensure formal recognition of learning achievements.
- (xv) Increase quality and relevance of education.
- (xvi) Enhance the enforcement of family friendly policies (such as maternity leave) and address socio-cultural impediments.
- (xvii) Increase access to more education especially for the disadvantaged.
- (xviii) Increase access to TIVET. This can be achieved by subsidization.
- (xix) Support PWDs education to enhance their labour market competitiveness. This can be achieved through more sensitization, and ensuring mainstreaming with formal educational institutions to remove access barriers.
- (xx) Expand the number of special schools (or specialized units within schools) and enhance their quality.
- (xxi) Train more specialized teachers – especially at secondary and tertiary levels of education.
- (xxii) Ensure compliance with the constitutional requirement on reserved percentage employment for PWDs.
- (xxiii) Specify specific, measurable, attainable, and realistic and time bound (SMART) goals within MDAs that target to meet the requirements specified in the laws that relate to equality and inclusion in employment.
- (xxiv) Improve data capture and management within MDAs, e.g. by requiring MDAs to keep and submit data relevant for analyzing and monitoring indicators that relate to equality and inclusion using an online based system.
- (xxv) Promote an inclusive representative public service. This can be achieved quickly using affirmative action initiatives.

Social protection

- (i) Every county should set aside substantial funds to cater for programmes targeting children, according to the Social Pillar in the Vision 2030, Medium Term Plan 2013-2017, Sustainable Development Goals 2016-2030, and the County Integrated Development Plans.
- (ii) There is need to progressively enhance the budget for cash transfers for OVCs in order to reach more households with OVCs.

- (iii) Enhance the public health insurance scheme to cover all children irrespective of whether their parents are working or not.
- (iv) Eliminating extreme poverty and hunger should be goal number one for both the County and National governments.
- (v) There is need to enhance the health insurance scheme to cover households living in poverty.
- (vi) Older persons should have access to free health insurance cover.
- (vii) Both the County and National governments should develop milestones for the progressive realization of rights of the older persons as enshrined in the Constitution.
- (viii) The National government should progressively increase the Older Persons Cash Transfer budget to reach the elderly people living in extreme poverty.
- (ix) There is need for both the County and National governments to avert extreme hunger and poverty among the elderly.
- (x) Put in place social assistance programmes that target the youth who are not in employment.
- (xi) Review and re-design “*Kazi kwa Vijana*” programme to benefit the target group.
- (xii) Progressively increase the overall budget to cater for PWDs living in extreme poverty.
- (xiii) Consider free hospital insurance cover for all PWDs.
- (xiv) Target to eradicate extreme hunger for all PWDs.
- (xv) Put in place sustainable solutions to the problem of extreme hunger at all times.
- (xvi) Enhance the National Hospital Insurance Fund to provide free medical cover to the marginalized and minorities living in poverty.

Political Representation

From the findings of this survey and other available secondary data as shown in this report, the following recommendations can be made:

- (i) **Quotas for Women:** The National Assembly should reserve through legislation at least 33 per cent of seats in Parliament for women. This is just one of the ways to mitigate the under-representation of women in the Legislature. Gender quotas will work as an incubator towards enhancing women participation and representation in political processes.
- (ii) Political parties should ensure that SIGs participate in the electoral process, including in the national executive councils of political parties, as required by the law, especially for women. They should waive nomination fees, which are prohibitive for women and other SIGs, and should institute affirmative action and deliberate efforts to ensure representation of all the SIGs in the party nominations.
- (iii) **Capacity Building Forums:** Capacity building for women politicians should be a perpetual activity build into the community participatory framework or institutions at community levels.
- (iv) **Political Goodwill:** Political parties, political leaders and the Executive should show goodwill over efforts geared towards empowering women and other SIGs, and furthering their political representation at all levels of government. The National Assembly should enact the necessary legislation that will provide a road map for increasing the representation of SIGs in the political arms of government. Since nomination fees for candidates are prohibitive especially for all SIGs, political parties should lower their nomination fees to increase the numbers of candidates from these groups. Political parties should ensure that party nominations consider all SIGs.
- (v) **Minority champions:** There is need to create role models and champions from minority groups in the field of politics, academia, religion, business and all other spheres of life, to motivate and mentor future leaders from these minority groups, enabling them to be more competitive against the dominant groups in the country.
- (vi) **Civic education targeting PWDs:** The Independent Electoral and Boundaries Commission (IEBC) together with community-based organizations and faith-based organizations should

provide adequate civic education to persons with disabilities. IEBC should also ensure that PWDs are registered as voters, civic education carried out in a language that PWDs understand, and make sure that polling stations are friendly to them.

- (vii) Consistency in networking between SIG leaders at the national, county and community levels.
- (viii) Capacity building for SIGs to enhance their engagement in the political life, and increase the chances for their increased representation.
- (ix) Aggressive awareness-creation on youth rights.
- (x) Mentorship programmes for the youth and PWDs.
- (xi) Proper countrywide profiling of the SIGs.
- (xii) Aggressive registration and issuance of ID cards to SIGs across all counties to ensure they register as voters and also run as candidates in future elections.
- (xiii) Train IEBC staff on the use of Braille and sign language to enable them assist PWDs effectively during electioneering and election period.
- (xiv) IEBC should keep disaggregated data and records on the age, gender minority, disability of voters and also on elected and nominated political representatives at all levels of government. This is because currently IEBC does not have disaggregated records of registered voters and elected political representatives.
- (xv) The IEBC and the Registrar of Political Parties should ensure that all parties adhere to the dictates of gender equality, including affirmative action.
- (xvi) **Agents for change:** Faith-based institutions are critical in fighting gender stereotypes against women and PWDs. Leadership of major religions in the country has been traditionally patriarchal with limited opportunities for women to participate in key decision-making positions. Thus, given the great influence religion has in many Kenyan communities, it is important to engage religious institutions in fighting the perception that leadership is a domain for men.
- (xvii) **Address data Limitations:** During the course of this survey, the research team encountered a number of challenges especially on getting data for political representations of SIGs. Firstly, government institutions that ought to be custodians of data do not have the records of information the survey needed. Secondly, county governments were unwilling to provide some of the data requested on SIGs. It was almost impossible to get data on the representation of PWDs, youth and marginalized both at the National and County government levels. There is need to address data challenges across all sectors and at both levels of government.



REFERENCES

- Ani, C. K. C. (2011), *Rethinking Gender and Women Empowerment in Africa*. Ndola: TAISS Publishers.
- Ani, C. K. C. (2013), *Redefining the Concept of Women Empowerment: The Vision and Quest for Equality and Partnership in the Post 2015 Development Era*. Special Gender and Development Publication, New York: United Women (UNIFEM).
- Boadu, E.A. (2000), *Gender Disparities in Education, Health, and Labour Force Participation in Ghana*. University of Ghana, Population Impact Project.
- Cameron, Jenny and Katherine Gibson (2005), *Representing Marginalization: Finding New Avenues for Economic and Social Intervention*. Available at <http://www98.griffith.edu.au/dspace/bitstream/handle/10072/13157/gov11a.pdf?sequence=1> Accessed 20-07-2016.
- Commission for the Implementation of the Constitution (2014), *Assessment of the Implementation of the System of Devolved Government: From Steps to Strides*. Nairobi: CIC.
- Educational Development Center/USAID (2009), *Cross-sectoral Assessment for at-risk Youth in Kenya*. Available at <http://www.equip123.net/docs/e3-kenyawidefinal.pdf> Accessed 20-08-2016.
- Foster, J. E., Greer, J. and Thorbecke, E. (1984), A Class of Decomposable Poverty Measures. *Econometrica*, 52(3), 761-766.
- Frederiksen, B. (2010), “Mungiki, Vernacular Organization and Political Society in Kenya”, *Development and Change*, 41 (6), pp. 1065–1089.
- Githuku, Nicholas (2013), “Votes that Bind: Ethnic Politics and the Tyranny of Numbers. *African Perspectives*. Available at <http://africanperspectives.co.ke/ethnic-politics-in-kenya-and-the-tyranny-of-numbers/> Accessed 20-08-2016
- Government of Kenya (Various). *Economic Survey*, Nairobi: Government Printer.
- Institute of Development Studies (2013), *Promoting Inclusive Social Protection in the Post 2015 Framework*. *Policy Briefing*, Issue 39.
- Kivoi, Douglas (2014), “Factors Impeding Political Participation and Representation of Women in Kenya”, *Humanities and Social Sciences*. Vol.2, No.6: 173-181.
- KNBS (2009), *National Census*. Nairobi: Government Printer
- Muthee, M. (2010), *Hitting the Target, Missing the Point: Youth Policies and Programmes in Kenya*. *Woodrow Wilson International Center for Scholars*. Available at: <http://www.wilsoncenter.org/publication/hitting-the-target-missing-the-point-youth-policies-andprogrammes-kenya>.
- Mwabu, G., Wafula, M., Gesami, R., Kirimi, J., Ndeng’o, G. and Kiriti, T. (2000), *Poverty in Kenya: Profile and Determinants*. Nairobi: University of Nairobi and Ministry of Finance.
- National Coordinating Agency for Population and Development (2009), *Kenya National Survey for Persons with Disabilities – Preliminary Report*. Nairobi: NCAD.

- Njonjo, K. S. (2010), *Youth Fact Book: Infinite Possibility or Definite Disaster?* Elite PrePress Limited.
http://www.ieakenya.or.ke/publications/doc_download/16-kenya-youth-fact-book
- Nzomo M. (ed) (2003), *Perspective on Gender Discourse, Women in Politics: Challenges of Democratic Transition in Kenya*, Nairobi: Heinrich Böll Foundation.
- Office of the Controller of Budget (2016), *County Revenue Baseline Study 2015*. Nairobi: Office of the Controller of Budget.
- Okengo, Lynette (2009), *The Scaling-up of Early Childhood Development Provision in Kenya Since Independence*. Early Childhood Matters.
- Oloo, A. (2007), *Minority Rights and Transition Politics*. In Wanyande, P., Omosa, M., and L. Ludeki (eds), *Governance and Transition Politics in Kenya*. Nairobi: University of Nairobi Press.
- Ongoya, Z.E. and Otieno, W. (2012), *A Handbook on Kenya's Electoral Laws and System: Highlights of Electoral Laws and System Established under the Constitution of Kenya 2010 and other Statutes*. Nairobi: Electoral Institute for Sustainable Democracy in Africa.
- Otieno, Wycliffe (2010), Kenya. In Pundy Pillay (ed), *Higher Education Financing in Eastern and Southern Africa*. Cape Town: Centre for Higher Education Transformation.
- Paxton, Pamela, Melanie M. Hughes and Matthew Painter (2009), *Growth in Women's Political Representation: A Longitudinal Exploration of Democracy, Electoral System, and Gender Quotas*. *CSD Working Papers*. Available at <http://escholarship.org/uc/item/7fw4g5tw>
- Public Service Commission (2015), *Evaluation Report on Public Service Compliance with the Values and Principles in Articles 10 & 232 of the Constitution for the Year 2014/2015*.
- Republic of Kenya (2006), *National Early Childhood Development Policy Framework*.
- Republic of Kenya (2009), *The National Special Needs Education Policy Framework*. Final Draft. Nairobi: Ministry of Education.
- Republic of Kenya (2011), *Kenya National Social Protection Policy*. Nairobi: Ministry of Gender, Children, and Social Development
- Republic of Kenya (2013), *Sessional Paper No.3 of 2014, National Policy and Action Plan on Human Rights*. Office of the Attorney General and Department of Justice.
- Republic of Kenya (2015), *First Annual Progress Report 2013-2014 on the Implementation of the Second Medium Term Plan (2013-2017) of the Kenya Vision 2030*. Nairobi: Ministry of Devolution and Planning – Monitoring and Evaluation Department.
- TrippAili. (2012), *Regime Type and Gender*. In *Oxford Handbook on Gender and Politics*, Georgina Waylen, Karen Celis, Johanna Kantola and Laurel Weldon (eds), Oxford: Oxford University Press.
- TrippAili (2012), *Women's Movements in Africa*. In David A. Snow, Donatella Della Porta, Bert Klendermans, and Doug McAdam (eds), *Blackwell Encyclopedia of Social and Political Movements*. Blackwell.
- UN General Assembly (2015), *Human Rights Council, Twenty-ninth session, Agenda Item 6. Report of the Working Group on the Universal Periodic Review: Kenya (March)*.

UNESCO (2005), *Guidelines for Inclusion: Ensuring Access to Education for All*. Paris: UNESCO. Available at <http://unesdoc.unesco.org/images/0014/001402/140224e.pdf> Accessed 20-08-2016

United Nations (2007), *Human Development Report*. New York: UNDP.

World Economic Forum (2008), *Global Gender Gap Report 2015*. Geneva: WEF

World Economic Forum (2015), *Global Gender Gap Report 2015*. Geneva: WEF.



APPENDICES

Table A-1: Evaluating Kenya periodic reporting

Treaties	
	Reporting Status
	Outstanding Issues
1. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD): Ratified 2001	
	Not compliant: Submitted initial Book and four (4) periodic Books as one document in 2010. Yet to submit the 5 th – 7 th periodic Books that were due in 2014.
	<ol style="list-style-type: none"> 2. Absence of information on sanctions for acts of racial discrimination in the Kenyan Book. 3. Kenyan laws have left out areas of public life where decimation occurs e.g. housing and hence are not broad enough to cover treaty obligations. 4. lack of awareness of the protections accorded to individuals by the treaty 5. Laws enacted to combat hate speech are too narrow and would not meet the objectives of the treaty. 6. Victims of Post-election violence have not received reparations 7. Investigations and prosecutions for alleged PEV perpetrators are not progressing well. 8. Members of ethnic minorities like Somalis, Indians, Nubians and others are arbitrary prevented from accessing Kenyan identity documents 9. Lack of information on affirmative measures
▪ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. (OP-CRC-AC): Ratified 2002	
	Not compliant: Initial Book was due in 2004 and periodic Books every five years thereafter. None of the Books has been submitted.
▪ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Ratified 1984	
	Not compliant: Submitted the initial and 8 periodic Books. Its 9 th Book was due in 2015 but has not been submitted.
	<ol style="list-style-type: none"> 10. Kenya had taken partial measures to implement the Family Protection Bill 2007 – renamed the Protection against Domestic Violence Bill 2013. 11. Country has partially implemented criminalization of marital rape 12. Partially implemented the development of a coherent and multi-sectoral action plan to combat all forms of violence against women. 13. Failed to enact the Equal Opportunity Bill 2007 14. Failure to repeal Section 38 of the sexual Offences Acts. (Section criminalizes acts of those who present non-incriminating allegations of sexual violence)
15. International Covenant on Economic Social and Cultural Rights (ICESCR): Ratified 1972	
	Compliant (submitted last Book in 2013)

	<p>16. The following areas were singled out for remedial action by the Committee:</p> <p>17. Intensify anti-corruption efforts by reviewing the sentencing polices.</p> <p>18. Assess the possible impact of the Economic Partnership Agreement and other agreements to ensure that they do not affect the treaty rights.</p> <p>19. To address disparities in accessing and enjoyment of economic, social and cultural rights including access to land.</p> <p>20. Issue work permits to refugees</p> <p>21. To progressively extend the scope of the National Hospital Insurance Fund to include informal sector workers.</p> <p>22. Absence of laws criminalizing domestic violence, spousal rape</p> <p>23. Enact laws to prevent the practice of harmful customary practices e.g. wife-inheritance, FGM and ritual cleansing of widows by male relatives after the death of her husband.</p> <p>24. Enact anti-FGM laws</p> <p>25. Criminalize human trafficking for purposes of sexual exploitation</p> <p>26. Strengthen the enforcement of the Children's Act 2001 especially in relation to child labor and sexual exploitation of children.</p> <p>27. Monitor school attendance for children affected or infected with HIV/AIDS.</p> <p>28. To allocate sufficient funds to agencies that can support the Child's development and welfare.</p>
<p>1. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (CAT): Ratified 1997</p>	
	<p>Compliant (Submitted Book in 2013)</p>
	<p>29. The Committee made the following recommendations for Kenya:</p> <p>30. To ensure that public officers are charged for torture and not other crimes when evidence for torture is available.</p> <p>31. Investigate incidences of excessive use of police force and prosecute suspects</p> <p>32. To accord arrested suspects the right to access legal representation at all levels.</p> <p>33. To prevent sexual exploitation of detainees and punish those found responsible for such acts.</p> <p>34. Strengthen efforts to reduce the backlog of cases.</p> <p>35. Investigate and prosecute those suspected to have lynched people on suspicion of practicing witchcraft.</p> <p>36. To strengthen the witness protection program.</p> <p>37. Reform laws to simplify torture litigation and compensation to victims of torture.</p> <p>38. Train police officers the importance of HRs.</p> <p>39. Enhance efforts to eradicate FGM</p> <p>40. To find efforts to end forceful post-delivery detentions of mothers for non-payment of fees even by private institutions.</p> <p>41. Amend the law to allow rape and incest victims procure abortion.</p> <p>42. Prosecute those responsible for forceful sterilization of women with HIV/AIDS and women with disabilities.</p> <p>43. Strengthen complaints, follow-up and protections of children who have been tortured.</p>
<p>44. Convention on the Rights of the Child (CRC): Ratified 1990</p>	
	<p>Compliant</p>

	<p>45. NOTE: Kenya submitted its last Book in 2013, one year late and has not received concluding remarks from the Committee on how far it had addressed matters that arose from the previous Books. Some of the matters that it needed to address included:</p> <p>46. Accord children who are witnesses to crimes the necessary protection</p> <p>47. Enhance budgetary allocations to children related matters.</p> <p>48. Strengthen cooperation with non-state actors working with children.</p> <p>49. Review marriage laws to provide the minimum marriage age for boys and girls to be 18.</p> <p>50. To ensure that the principle of the best interest of the child is taken into account in programs, policies and decisions that concern children.</p> <p>51. To promote and implement facilities that will promote the inclusion and respect of children's views at home, schools, community, judicial/administrative procedures that deal with children matters.</p> <p>52. Ensure free-of charge birth registration at all stages.</p> <p>53. Review maternity laws to protect mothers working in the private sector.</p>
54. Convention on the Rights of Persons with Disabilities (CRPD): Ratified 2008	
Compliant	
	<p>55. Kenya submitted the initial Book to the committee highlighting legal, policy and administrative steps it had taken to promote and guarantee rights for persons with disabilities. The Committee is yet to respond and point out areas that need further action.</p>
56. International Covenant on Civil and Political Rights (ICCPR): Ratified 1972	
Compliant (submitted Book 2012)	
	<p>57. Some of the issues that the country was asked to address are:</p> <p>58. To legislate on the clarity the status of the Treaty and other HRs treaties in domestic law. This status is ambiguous despite enjoying constitutional recognition. -domestication of the treaty</p> <p>59. To implement the two third gender rule as a matter of priority.</p> <p>60. To provide disaggregated statistical data on the representation of women in the private sector.</p> <p>61. Take concrete measures to prohibit polygamous marriages.</p> <p>62. Revise succession law to provide for equality between men and women in devolution and succession of property after the death of a spouse.</p> <p>63. Decriminalize homosexuality, take steps to end social stigmatization of homosexuality, and send a clear message that it does not tolerate any form of harassment, violence and discrimination against gender or sexual orientation.</p> <p>64. Take concrete measures to end discrimination against people living with HIV/AIDS.</p> <p>65. Consider abolishing the death penalty.</p> <p>66. Pursue all cases related to PEV and ensure that all HR abuses are thoroughly investigated.</p> <p>67. Implement the recommendations of the Commission of Inquiry into Post-election Violence</p> <p>68. Thoroughly implement the Sexual Offences Act 2006, investigate and prosecute perpetrators of FGM.</p> <p>69. Strengthen efforts to combat human trafficking.</p> <p>70. Enhance police reforms</p> <p>71. Enact a legal aid law</p> <p>72. Enact laws to guide evictions</p> <p>73. Develop laws to protect indigenous communities that may be affected by the states development and conservation programmes.</p>

Table A–2: International and regional conventions ratified by Kenya

- Additional Protocols I and II to the Geneva Conventions (23 February 1999)
- African Charter on Human and People’s Rights (23 Jan 1992)
- African Charter on Human and Peoples’ Rights (ACHPR, Banjul (1992)
- African Charter on the Rights and Welfare of the Child (2000)
- African Charter on the Rights and Welfare of the Child (25 Jul 2000)
- AU African Youth Charter (2008)
- AU Cultural Charter for Africa (1981)
- Convention against Torture (21 February 1997)
- Convention on specific aspects of refugee problems in Africa (1992)
- Convention on the Elimination of All Forms of Discrimination against Women (9 Mar 1984)
- Convention on the Elimination of all forms of Racial Discrimination (13 September 2001)
- Convention on the Rights of persons with Disabilities (2008)
- Convention on the Rights of the Child (31 July 1990/11 Dec 1995)
- Geneva Conventions (20 September 1966)
- International Covenant on Civil and Political Rights (1 May 1972)
- International Covenant on Economic, Social and Cultural Rights (1 May 1972)
- Maputo Protocol (3 Oct 2010)
- Protocol on the establishment of an African Court on Human and People’s Rights (2003)
- Protocol on the Rights of Women in Africa (2005)
- Refugee Convention (16 May 1966)
- The African Convention on Human and Peoples Rights (10 February 1992)

Table A–3: Kenyan policies and strategies relating to HR of SIGs

- Breast-milk Substitutes control Bail
- Child Survival and Development Strategy
- Draft National Policy on Human Rights 2010
- Economic Recovery Strategy and Employment Creation, 2003-2007
- Food Security and Nutrition Strategy
- Gender Policy July 2011
- Integrated Management of Childhood Illness (IMCI) strategy
- Kenya Health Policy 2012-2030
- Kenya Nutrition and HIV/AIDS Strategy 2007 to 2010
- Kenya Vision 2030 and its five-year Medium Term Plans (MTP I & II)
- Millennium Development Goals, 2000-2015
- National Children Policy
- National Children Policy 2010
- National comprehensive school health policy
- National Education Sector Plan 2013-2018
- National Education Sector Plan 2015
- National Food and Nutrition Security Policy
- National Food and Nutrition Security Policy 2011
- National Health Sector Strategic Plan I and II
- National Nutrition Action Plan 2012 - 2017
- National Plan of Action for Nutrition
- National Policy for Orphans and Vulnerable Children 2005
- National policy for the sustainable development of arid and semi-arid lands of Kenya
- National Poverty Eradication Plan, 1999-2015
- National strategy on infant and young child feeding
- Policy Guidelines on Control and Management of Diarrhea Diseases in Children Below Five Years in Kenya
- Poverty Reduction Strategy Paper, 2000-2002
- Second Annual Progress Book on the Implementation of the First Medium Term Plan (2008-2012)
- Sessional Paper No 1 of 2006 on Non- Governmental Organizations
- Sessional Paper No. 1 of 1986 on Economic Management and Renewed Growth
- Sessional Paper No. 1 of 1994: Recovery and Sustainable Development to the Year 2010
- Sessional Paper No. 10 of 1965 on African Socialism and Its Application in Kenya
- Sessional Paper No. 10 of 1973 Employment
- Sessional paper No. 10 of 2012 On Kenya Vision 2030
- Sessional Paper No. 14 of 2012 A Policy Framework For Education And Training: Reforming Education and Training in Kenya
- Sessional paper no. 2 of 2005 on development of micro and small enterprises for wealth and employment creation for poverty reduction
- Sessional Paper No. 2 of 2012 on National Cohesion and Integration
- Sessional Paper No. 3 of 1999 on Poverty Eradication
- Sessional Paper No. 3 of 2004 on National Housing Policy for Kenya
- Sessional Paper No. 3 of 2009 on National Land Policy
- Sessional Paper No. 8 of 2012 on National Policy for the Sustainable Development of
- Northern Kenya and other Arid Lands 'Releasing Our Full Potential'
- Social Protection Policy 2012

Table A–4: Relating legislation to SIGs in focus sectors

	Education	Employment	Political participation	Social Protection
Minorities and marginalized persons	<ul style="list-style-type: none"> ▪ Basic Education (No. 14 Of 2013) ▪ Board of Adult Education (Cap. 223) ▪ Education (Cap. 211) ▪ Higher Education Loans Board (Cap. 213a) ▪ Kenya Society for The Blind (Cap. 251) ▪ Malaria Prevention (Cap. 246) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Pensions (Cap. 189) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) ▪ Trustee (Cap. 167) ▪ Truth, Justice and Reconciliation (No. 6 Of 2008) ▪ Widows' and Children's Pensions (Cap. 195) 	<ul style="list-style-type: none"> ▪ Employment (Cap. 226) ▪ Labour Relations (Cap. 233) ▪ Micro and Small Enterprises (No. 55 Of 2012) ▪ Microfinance (Cap. 493d) ▪ Kenya Society for The Blind (Cap. 251) ▪ Malaria Prevention (Cap. 246) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Pensions (Cap. 189) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) ▪ Truth, Justice and Reconciliation (No. 6 Of 2008) 	<ul style="list-style-type: none"> ▪ Election Campaign Financing (No. 42 Of 2013) ▪ Elections (Cap. 7) ▪ Independent Electoral and Boundaries Commission (Cap. 7a) ▪ Political Parties (Cap. 7b) ▪ Registration of Persons (Cap. 107) ▪ Kenya Society for The Blind (Cap. 251) ▪ Persons with Disabilities (Cap. 133) ▪ Sexual Offences (Cap. 62a) ▪ Truth, Justice and Reconciliation (No. 6 Of 2008) 	<ul style="list-style-type: none"> ▪ Births and Deaths Registration (Cap. 149) ▪ Children (Cap. 141) ▪ HIV And Aids Prevention and Control (Cap. 246a) ▪ Kenya Society for The Blind (Cap. 251) ▪ Law of Succession (Cap. 160) ▪ Narcotic Drugs and Psychotropic Substances (Control) (Cap. 245) ▪ National Gender and Equality Commission (Cap. 5c) ▪ Sexual Offences (Cap. 62a) ▪ Social Assistance (No. 24 Of 2013) ▪ Trustee (Cap. 167) ▪ Truth, Justice and Reconciliation (No. 6 Of 2008) ▪ Registration of Persons (Cap. 107) ▪ Refugees (Cap. 173) ▪ Widows' and Children's Pensions (Cap. 195) ▪ Malaria Prevention (Cap. Narcotic Drugs and Psychotropic Substances (Control) 246) ▪ Pensions (Cap. 189) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) ▪ Social Assistance (No. 24 Of 2013) ▪ Widows' and Children's Pensions (Cap. 195) ▪ Trustee (Cap. 167) ▪ Truth, Justice and Reconciliation (No. 6 Of 2008)

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Women</p>	<ul style="list-style-type: none"> ▪ Kenya Society for The Blind (Cap. 251) ▪ Malaria Prevention (Cap. 246) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Sexual Offences (Cap. 62a) 	<ul style="list-style-type: none"> ▪ Employment (Cap. 226) ▪ Labour Relations (Cap. 233) ▪ Micro and Small Enterprises (No. 55 Of 2012) ▪ Microfinance (Cap. 493d) ▪ Kenya Society for The Blind (Cap. 251) ▪ Malaria Prevention (Cap. 246) ▪ Pensions (Cap. 189) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) 	<ul style="list-style-type: none"> ▪ Election Campaign Financing (No. 42 Of 2013) ▪ Elections (Cap. 7) ▪ Independent Electoral and Boundaries Commission (Cap. 7a) ▪ Political Parties (Cap. 7b) ▪ Kenya Society for The Blind (Cap. 251) ▪ Registration of Persons (Cap. 107) ▪ Sexual Offences (Cap. 62a) 	<ul style="list-style-type: none"> ▪ Births and Deaths Registration (Cap. 149) ▪ HIV And Aids Prevention and Control (Cap. 246a) ▪ Kenya Society for The Blind (Cap. 251) ▪ Law of Succession (Cap. 160) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Pensions (Cap. 189) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) ▪ Social Assistance (No. 24 Of 2013) ▪ Widows' and Children's Pensions (Cap. 195) ▪ Trustee (Cap. 167) ▪ Truth, Justice and Reconciliation (No. 6 Of 2008)
<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Youth</p>	<ul style="list-style-type: none"> ▪ Basic Education (No. 14 Of 2013) ▪ Board of Adult Education (Cap. 223) ▪ Higher Education Loans Board (Cap. 213a) ▪ Education (Cap. 211) ▪ Kenya Society for The Blind (Cap. 251) ▪ Malaria Prevention (Cap. 246) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) ▪ Social Assistance (No. 24 Of 2013) 	<ul style="list-style-type: none"> ▪ Employment (Cap. 226) ▪ Labour Relations (Cap. 233) ▪ Micro and Small Enterprises (No. 55 Of 2012) ▪ Microfinance (Cap. 493d) ▪ Kenya Society for The Blind (Cap. 251) ▪ Malaria Prevention (Cap. 246) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Persons with Disabilities (Cap. 133) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) ▪ Truth, Justice and Reconciliation (No. 6 Of 2008) 	<ul style="list-style-type: none"> ▪ Election Campaign Financing (No. 42 Of 2013) ▪ Elections (Cap. 7) ▪ Independent Electoral and Boundaries Commission (Cap. 7a) ▪ Political Parties (Cap. 7b) ▪ Registration of Persons (Cap. 107) ▪ Kenya Society for The Blind (Cap. 251) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Registration of Persons (Cap. 107) 	<ul style="list-style-type: none"> ▪ Births and Deaths Registration (Cap. 149) ▪ HIV And Aids Prevention and Control (Cap. 246a) ▪ Kenya Society for The Blind (Cap. 251) ▪ Law of Succession (Cap. 160) ▪ Malaria Prevention (Cap. 246) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) ▪ Social Assistance (No. 24 Of 2013)

Persons with disabilities	<ul style="list-style-type: none"> ▪ Kenya Society for The Blind (Cap. 251) ▪ Malaria Prevention (Cap. 246) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) ▪ Social Assistance (No. 24 Of 2013) ▪ Widows' and Children's Pensions (Cap. 195) ▪ Trustee (Cap. 167) 	<ul style="list-style-type: none"> ▪ Employment (Cap. 226) ▪ Labour Relations (Cap. 233) ▪ Micro and Small Enterprises (No. 55 Of 2012) ▪ Microfinance (Cap. 493d) ▪ Kenya Society for The Blind (Cap. 251) ▪ Malaria Prevention (Cap. 246) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) ▪ Social Assistance (No. 24 Of 2013) 	<ul style="list-style-type: none"> ▪ Election Campaign Financing (No. 42 Of 2013) ▪ Kenya Society for The Blind (Cap. 251) ▪ Elections (Cap. 7) ▪ Independent Electoral and Boundaries Commission (Cap. 7a) ▪ Political Parties (Cap. 7b) ▪ Registration of Persons (Cap. 107) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Sexual Offences (Cap. 62a) 	<ul style="list-style-type: none"> ▪ HIV And Aids Prevention and Control (Cap. 246a) ▪ Kenya Society for The Blind (Cap. 251) ▪ Law of Succession (Cap. 160) ▪ Malaria Prevention (Cap. 246) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Pensions (Cap. 189) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Sexual Offences (Cap. 62a) ▪ Widows' and Children's Pensions (Cap. 195) ▪ Trustee (Cap. 167) ▪ Truth, Justice and Reconciliation (No. 6 Of 2008)
The elderly	<ul style="list-style-type: none"> ▪ Board of Adult Education (Cap. 223) ▪ Higher Education Loans Board (Cap. 213a) ▪ Kenya Society for The Blind (Cap. 251) ▪ Law of Succession (Cap. 160) ▪ Malaria Prevention (Cap. 246) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) 	<ul style="list-style-type: none"> ▪ Micro and Small Enterprises (No. 55 Of 2012) ▪ Microfinance (Cap. 493d) ▪ Kenya Society for The Blind (Cap. 251) ▪ Law of Succession (Cap. 160) ▪ Malaria Prevention (Cap. 246) ▪ Pensions (Cap. 189) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Retirement Benefits (Cap. 197) 	<ul style="list-style-type: none"> ▪ Election Campaign Financing (No. 42 Of 2013) ▪ Kenya Society for The Blind (Cap. 251) ▪ Elections (Cap. 7) ▪ Independent Electoral and Boundaries Commission (Cap. 7a) ▪ Political Parties (Cap. 7b) ▪ Registration of Persons (Cap. 107) ▪ Truth, Justice and Reconciliation (No. 6 Of 2008) 	<ul style="list-style-type: none"> ▪ Births and Deaths Registration (Cap. 149) ▪ HIV And Aids Prevention and Control (Cap. 246a) ▪ Kenya Society for The Blind (Cap. 251) ▪ Law of Succession (Cap. 160) ▪ Law of Succession (Cap. 160) ▪ Malaria Prevention (Cap. 246) ▪ Narcotic Drugs and Psychotropic Substances (Control) ▪ Pensions (Cap. 189) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Widows' and Children's Pensions (Cap. 195) ▪ Trustee (Cap. 167) ▪ Truth, Justice and Reconciliation (No. 6 Of 2008)

<p style="writing-mode: vertical-rl; transform: rotate(180deg);">Children</p>	<ul style="list-style-type: none"> ▪ Basic Education (No. 14 Of 2013) ▪ Board of Adult Education (Cap. 223) ▪ Higher Education Loans Board (Cap. 213a) ▪ Education (Cap. 211) ▪ Children (Cap. 141) ▪ Kenya Society for The Blind (Cap. 251) ▪ Law of Succession (Cap. 160) ▪ Malaria Prevention (Cap. 246) ▪ National Gender and Equality Commission (Cap. 5c) ▪ National Hospital Insurance Fund (Cap. 255) ▪ Pensions (Cap. 189) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Widows' and Children's Pensions (Cap. 195) ▪ Trustee (Cap. 167) 	<ul style="list-style-type: none"> ▪ Employment (Cap. 226) ▪ Labour Relations (Cap. 233) ▪ Micro and Small Enterprises (No. 55 Of 2012) ▪ Microfinance (Cap. 493d) ▪ Children (Cap. 141) 		<ul style="list-style-type: none"> ▪ Births and Deaths Registration (Cap. 149) ▪ Children (Cap. 141) ▪ HIV And Aids Prevention and Control (Cap. 246a) ▪ Kenya Society for The Blind (Cap. 251) ▪ Kenya Society for The Blind (Cap. 251) ▪ Law of Succession (Cap. 160) ▪ Malaria Prevention (Cap. 246) ▪ National Gender and Equality Commission (Cap. 5c) ▪ National Hospital Insurance Fund (Cap. 255) ▪ Pensions (Cap. 189) ▪ Persons with Disabilities (Cap. 133) ▪ Public Health (Cap. 242) ▪ Refugees (Cap. 173) ▪ Registration of Persons (Cap. 107) ▪ Retirement Benefits (Cap. 197) ▪ Widows' and Children's Pensions (Cap. 195) ▪ Trustee (Cap. 167)
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Published by
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Solution Tech Place, 1st Flr, Longonot Road,
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Garissa town

ISBN 978-9966-100-67-2



9 789966 100672