HUMAN RIGHTS-BASED ANALYSIS OF KENYA'S BUDGET 2022/2023

What do the numbers tell us?

UNITED NATIONS
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CONTENTS

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EXECUTIVE SUMMARY

The Kenya budget for the fiscal year 2022/23 is geared towards returning the economy to recovery following a sharp decline in growth following the COVID-19 pandemic. This brief seeks to analyse the 2022/23 budget from a human rights perspective to support progress against the Sustainable Development Goals (SDGs), *leaving no one behind*.

The analysis indicates that the share of social spending (health, education, social protection, and water and sanitation) to total budget is 23.06%, and 6.06% of GDP for the fiscal year 2022/23, continuing a downwards trend since 2019. This investment is relatively low in comparison to international and regional recommendations on minimum levels of social expenditure. Low investment in the social sectors is partly driven by the shrinking fiscal space resulting from increased debt servicing costs and reduced domestics revenues. Debt servicing alone accounts for 42% of the total budget and 57% of total domestic revenues, limiting the ability of Government to sustainably finance social spending.

In this recovery period, the Government will need to continue taking steps that are progressively geared towards realising universal access to social services, including education, health, social protection and water and sanitation, in line with human rights commitments and the Agenda 2030, with a particular focus on those at risk of being left behind. This will require a renewed social contract between the Government and the people to safeguard social spending that guarantees the realisation of economic and social rights of all and minimises the socio-economic impacts of the COVID-19 pandemic, drought and elevated global fuel and food prices.

For Government to sustainably finance social spending, expanding fiscal space is critical. The Government should consider increasing domestic resource mobilisation, particularly by exploring policy options such as progressive tax measures on income and wealth, improving fiscal transparency and accountability in revenue generation and the budget cycle, reducing tax expenditures, fighting tax evasion, and eliminating illicit financial flows. In addition, the government could take advantage of the increased liquidity of the new Special Drawing Rights (SDR) allocated by the International Monetary Fund (IMF) to increase social spending.

The international community, including the United Nations (UN) and International Financial Institutions (IFIs), can play a critical role in underlining the importance of adequate investments in social spending, and promoting fiscal transparency, accountability, and participation to expand fiscal space. Advocacy for increased investment is social sectors, in order to reduce poverty and inequalities, would support the implementation of Kenya's Vision 2030 and the UN Sustainable Development Cooperation Framework 2022-2026, which focuses on inequalities that hinder achievement of the SDGs.

Photos: Demonstrations against rising food prices in Kenya (Nairobi, May 2022).

1. INTRODUCTION

This brief analyses Kenya's 2022/23 fiscal year budget from a human rights and sustainable development perspective1. The focus is on national budget allocations and expenditure in social sectors that are key to the realisation of economic, social, and cultural (ESC) rights and attainment of the Sustainable Development Goals (SDGs). The analysis offers insights from past expenditure for a better understanding of trends in Government investments in the social sectors. Lastly, it proffers policy options on how to enhance public spending towards the attainment of the SDGs, including the utilisation of maximum available resources to advance the progressive realisation of ESC rights, in line with international obligations.

The analysis draws on information from specific budget documents and reports, including the programme-based budget, budget summary of revenues and expenditures, the National Government Budget Implementation Review report, Estimates of the Revenue, Grants and Loans Book, and Quarterly Economic and Budgetary Outlook. In addition, the analysis benefitted from review of other reports from human rights mechanisms, Kenya National Bureau of Statistics (KNBS), Central Bank of Kenya (CBK), National Treasury, World Bank, International Monetary Fund (IMF), UNICEF, UN Women, and the Voluntary National Review 2020.

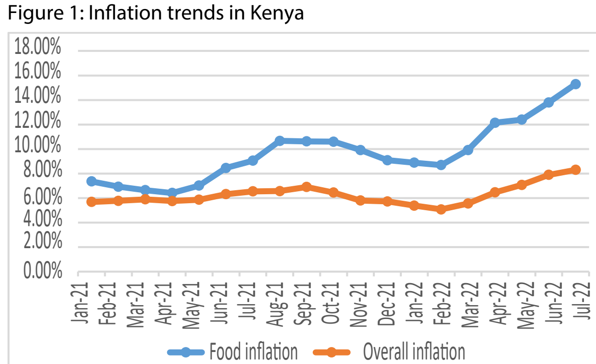
1.1 Macro-Economic Context

The 2022/23 national budget is geared towards returning the economy to a growth trajectory after a sharp decline resulting from the pandemic. The budget is titled "Accelerating Economic Recovery for Improved Livelihood," and is geared towards improving the welfare of Kenyans through accelerating implementation of the "Big Four" Agenda and the third Economic Stimulus Program for sustainable growth. This is against the backdrop of limited fiscal space, projected slow global growth2 and inflation due to the global shocks brought about by the pandemic and the Russia-Ukraine war.3

In 2021 the Kenyan economy expanded by an estimated 7.5%, largely driven by a strong recovery in the services sector, and growth in the manufacturing sector.[4] However, in 2022 it is estimated that growth-will slow to 5.7%[5] as the country faces major risks emanating from deepening drought, the ongoing pandemic, elevated global fuel and food prices and related trade shocks.

Rising inflation. In Kenya, overall inflation and food inflation have increased from 5.08% to 8.3% and 8.69% to 15.3%, respectively, for the period February to July 2022 (see Figure 1). Increased inflation is primarily driven by the high global commodity prices and a depreciating exchange rate due to the tightening of monetary policies in high-income economies. The significant increase in inflation is having dire consequences for poor and vulnerable households as they are experiencing reduced real incomes. More vulnerable households are being forced to make painful trade-offs, such as reducing food purchases, reducing nutritious items, skipping meals, or eating smaller portions, which could potentially affect health and education outcomes and exacerbate existing inequalities, including gender inequality. From a human rights perspective, there are concerns that inflation and increased food and fuel prices will set back the realisation of ESC rights and advancement of the SDGs, and entrench inequalities for those most left behind.

Figure 1: Inflation trends in Kenya



Source: Central Bank of Kenya (2022)

The country is at high risk of debt distress.[6] Public debt has increased significantly over the past four years, caused by high fiscal deficits, and partly driven by spending on large infrastructure projects, and the pandemic shock. The fiscal deficit increased from 7.5% to 8.2% of GDP between 2019 and 2021, while the debt to GDP ratio increased from 63.0% to 68.2% in the same period,[7] which is above the thresh-

1 This analysis is anchored in human rights norms and standards relevant to the international human rights framework and a human rights-based approach, as well as human rights guidance, such as those of the UN human rights mechanisms (treaty bodies, universal periodic review, and the special procedures). Also, the analysis is also anchored in Kenya's sustainable development commitments, particularly the 2030 Agenda and the Agenda 2063.

2 From an estimated 6.1% in 2021 to 3.6% in 2022 and 2023: IMF, World Economic Outlook: War Sets Back the Global Recovery, April 2022.

3 Ibid: expected to reach 8.7% in emerging and developing markets, 2.8 percentage points higher than projected at the start of 2022.

4 KNBS, Kenya Economic Survey 2022.

5 Above note 1.

6 World Bank/IMF Joint Debt Sustainability Assessment 2020.

7 National Treasury, Annual Public Debt Report Fiscal Year 2020/2 (2021).

old for sustainable debt levels.[8] The share of debt service costs to revenues increased by 17 percentage points from 40% in 2019 to 57% in 2021.[9] Domestic debt servicing stands at 69.9% of total debt service, more than double that of the external debt service at 30.1%, mainly due to high domestic interest rates. However, external debt servicing is subject to exchange rate fluctuations. For example, between June 2021 to June 2022, the Kenyan shilling depreciated against the US dollar by approximately 8%.[10] Its continued depreciation will likely increase the external debt servicing costs.[11] In the medium term, Kenya will face heightened liquidity vulnerabilities and reduced fiscal space, as it is estimated that the total debt service costs (interest and principal due) as a share of government revenues will exceed 70%.[12] In the absence of policy decisions to ring fence and/or increase investments in social spending, debt service costs will reduce the fiscal space for social spending. Social spending is essential for the realisation of ESC rights and achievement of the SDGs.

Unemployment remains a key concern. Under-employment has increased by 4 percentage points from 8.3% in 2020 to 12.3% in 2021, and unemployment rates increased by 1.4 percentage points from 5.2% to 6.6% during the same period. Total employment contracted by approximately 4% from 18.1 million workers in 2019 to 17.4 million workers in 2020.[13] In the formal sector, wage employment contracted by 6.4%[14]. The informal sector, which accounts for 83.4% of total employment, contracted by 3.6%, particularly impacting women who are overrepresented in this sector. According to UN Women and KNBS, more women (20%) compared to men (12%) were impacted by loss of jobs and income during the COVID-19 crisis.[15]

1.2 Socio-Economic Context

High levels of inequalities. Kenya was ranked 143 out of 189 countries in the UNDP Human Development Index in 2019,[16] and came in at 95 out of 156 countries globally (and 16 out of 35 in Sub-Saharan Africa) in the Global Gender Gap ranking of gender equality in 2021.[17] Income inequality as measured by the Gini Index stands at 0.408; with the share of income for the top 10% standing at 30.3% compared to 16% for the bottom 40%.[18] Inequalities in the distribution of growth, income, and socio-economic indicators remain key policy concerns in Kenya. In 2022, the UN in Kenya identified geographic areas and groups at greatest risk of being left behind, driven by exclusion, marginalisation, and intersecting factors of discrimination.[19]

Poverty remains pervasive. More than half (53%) of the population – 23.4 million Kenyans – are multi-dimensionally poor and deprived in the realisation of at least three basic needs, services, and rights.[20] Of the multi-dimensionally poor, 54% are female, while children comprise the largest share (48%), followed by youth (25%). Multi-dimensional poverty incidence in rural areas is more than twice (67%) that in urban areas (27%), implying geographic inequalities in accessibility to, and availability of, quality public services. In monetary terms, more than 1 in every 3 Kenyans (36% or 15.9 million) live below the poverty line and more than 27% of the population are both poor in monetary and multi-dimensional terms.[21] The pandemic increased the national poverty rate by 4 percentage points (or an additional 2 million people) in 2020 due to sharp decreases in income and employment.[22]

Rising food insecurity and food prices. Food insecurity affects one third of households in Kenya and continues to rise due to worsening drought and rising staple food prices. The share of households unable to access staple food has increased to 36%, with over half citing price increases as the reason.[23] Some 26% of Kenyan children aged under 5 suffer from chronic malnutrition, with serious implications for the rights to health and education. Food insecurity disproportionately affects vulnerable populations in Arid and Semi-Arid Lands (ASAL) areas and informal settlements, who have been identified at the greatest risk of being left behind. For example, using the Integrated Food Security Phase Classification (IPC), it is estimated that around 3.2 million Kenyans (out of 13.6 million) living in ASAL counties are food insecure, a 48% increase since August 2021.[24]

Table 1: Selected key socio-economic indicators in Kenya.

Indicator	Value (disaggregated as appropriate)	Year
Inequality	0.485	2018
Monetary poverty	35.7% (35.6% women and 35.8% men)	2018
Multi-dimensional poverty	53% (54% women and 52% men)	2018
Adult literacy	81.5% (78.2% women and 85% men)	2018
Gross primary enrolment	99.6% (101.7% girls and 97.6% boys)	2019
Gross secondary enrolment	71.2% (72.6% girls and 69.9% boys)	2019
Under-5 mortality	52 deaths per 1000 births	2015
Life expectancy	66.99 (69.60 women and 64.60 men)	2020

Sources: Compilation from KNBS, UIS, MOE and World Bank.

7 IMF considers debt levels under 60% of GDP as sustainable.
8 OHCHR, Human Rights-Based Analysis of the Kenya's Budget 2021/22: What do the numbers tell us? (August 2021)
9 Central Bank of Kenya (2022). Monthly Economic Indicators.
10 According to Central Bank Statistics (2021), the share of external debt to total debt is 50.9% and out of which 66% is denominated in US dollar.
11 IMF Country Report No. 21/275 (2021).
12
13 KNBS, Quarterly Labour Survey Report and Economic Survey (2021).
14 Ibid
15 UN Women and KNBS, An Assessment of the Gendered Effects of the Covid-19 Pandemic on Households (2021).
16 UNDP, The Next Frontier—Human Development and the Anthropocene: Human Development Report (2020)
17 World Economic Forum, Global Gender Gap Report 2020.
18 KNBS, Inequality Trends and Diagnostics in Kenya 2020: A Joint Report of the KNBS on Multidimensional Inequality (2020).
19 United Nations Kenya, Leave No One Behind Peace and Conflict Analysis: Through the Eyes of those at Risk of Being Left Behind (2022).
20 KNBS, Comprehensive Poverty Report: Children, Youth, Women, Men & Elderly from National to County (2020).
21 Ibid.
22 World Bank, Kenya Economic Update: Navigating the Pandemic (2020).
23 World Bank, Kenya Economic Update, June 2022.
24 Food Security and Nutrition Working Group (FEWSNET) KENYA Food Security Outlook report, July 2022.

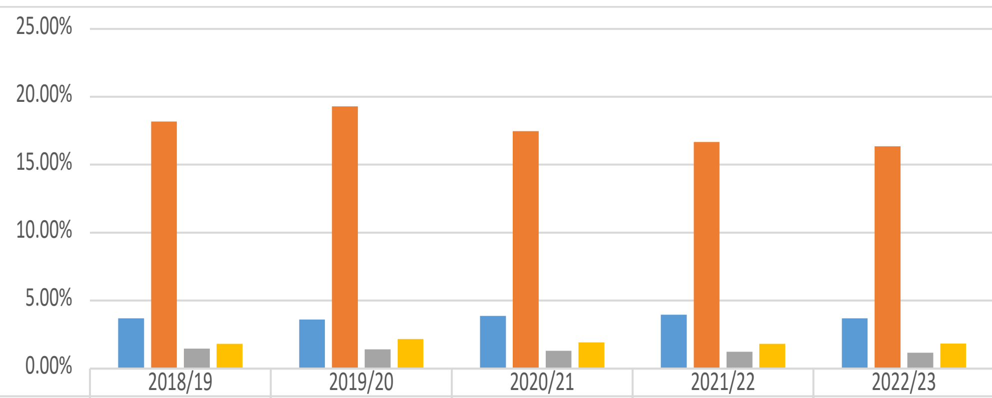
2. SOCIAL SECTOR SPENDING

Social sector spending is crucial for the fulfillment of economic and social rights, reducing inequalities and attaining the SDGs. The obligation to ensure the realisation of ESC rights through adequate public spending is contained within key human rights treaties.[25] It is also articulated in Agenda 2030—key indicator 1.a.2, *the proportion of total government budgets allocated to social spending (defined as education, health, and social protection spending*).

In 2022/23, the Government has allocated 23.06% of its total budget to social sector investment (health, education, social protection, and water and sanitation), which represents 6.06% of GDP. Since 2019, the share of social spending to total budget decreased from 26.49% to 23.06% in 2022, and as a share of GDP decreased from 7.3% in 2019 to 6.06% in 2022 (see Figure 2). In nominal terms, the total investment in the social sectors increased by 25% from Ksh. 612.2 billion in 2018/19 to Ksh. 766.3 billion in 2022/23, however the share of total budget has decreased.[26] Expressed as a share of the total budget in 2022/23, allocations to the health sector account for 3.69%[27], while education is 16.36%, social protection is 1.17%, and water and sanitation is 1.84%.

While there is no binding international benchmark for social spending, current investments in Kenya fall below some of the international and regional recommendations on minimum levels of social expenditure. For the health sector, the Abuja Declaration and the World Health Organisation (WHO) stipulate investments of 15% of the national budget and 5% of GDP, respectively. For education, the Incheon Declaration stipulates an investment of 20% of the total budget and/or an investment of 6% of GDP. For social protection, the International Labour Organisation (2020) estimates that low- and middle-income countries suchas Kenya need to invest 3.3% of GDP in order to provide a universal package of social protection.[28] The low investment in social sectors has implications for the realisation of the 2030 Agenda and African Union Agenda 2063. In 2016, the Committee on Economic, Social, and Cultural Rights (CESCR) recommended that Kenya needs to progressively increase investments in the social sector to ensure the realisation of ESC rights in a timely, effective, and transparent manner. In 2020, Kenya accepted Universal Periodic Review (UPR) recommendations to increase investment in social sectors.[29]

Figure 2: Budget Allocation to Social Sectors, 2018-2021 (Share of National Budget)



	2018/19	2019/20	2020/21	2021/22	2022/23
Share of Health sector allocation	3.70%	3.61%	3.87%	3.97%	3.69%
Share Education Sector allocation	18.18%	19.29%	17.47%	16.68%	16.36%
Share social protection allocation	1.46%	1.42%	1.31%	1.23%	1.17%
Share Wash allocation	1.82%	2.17%	1.93%	1.81%	1.84%

Share of Health sector allocation Share Education Sector allocation Share social protection allocation Share Wash allocation

Source: Author's computation from the Programme Based Budget 2018/19-2022/23

25 UDHR, art. 22; CRC, art. 4; ICESCR, arts. 11, 12, 13.
26 These estimates are based on the programme-based budget analysis.
27 This only represents allocation at the national level and does not include county allocations to health. Total health expenditure (national and county) is discussed in detail in the health expenditure analysis.
28 This covers the following benefits: children, maternity, disability, old age, as well as administrative costs. This benchmark refers to basic social protection measures only and does not represent the full cost of social security coverage.
29 For example: 142.189 Continue the implementation of poverty eradication programmes, including by allocating sufficient national budget for those programmes that impact directly on the lives of vulnerable groups (South Africa); 142.207 Continue to increase investment in education, and improve education in rural areas (China); 142.47 Enhance mobilization of resources for the realization of the Big Four national plan (Ethiopia); 142.180 Continue to elaborate the development plan of the country and dedicate the resources necessary to improve the living standards of Kenyans, particularly in the areas of health and housing (Barbados); 142.183 Strengthen and expand existing policies and resources aimed at alleviating poverty (Zimbabwe).

Social sectors can only be sustainably financed through domestic resources. However, this has been a challenge, largely due to shrinking fiscal space for discretionary spending resulting from increased debt servicing costs. Non-discretionary spending (debt service and salaries) increased dramatically by 95% from Ksh. 805.77 billion in 2019 to Ksh. 1,571.81 billion in 2022, mainly driven by an increase in debt servicing (see Table 2). In 2022/23, the share of debt service to total budget is 41.9% (Ksh. 1.39 trillion), with domestic debt service accounting for 30.53% of total budget, while external debt service accounts for 11.38% of total budget. The share of debt service cost to total revenue is 57.05%, implying reduced fiscal space for government expenditures at national and county levels.

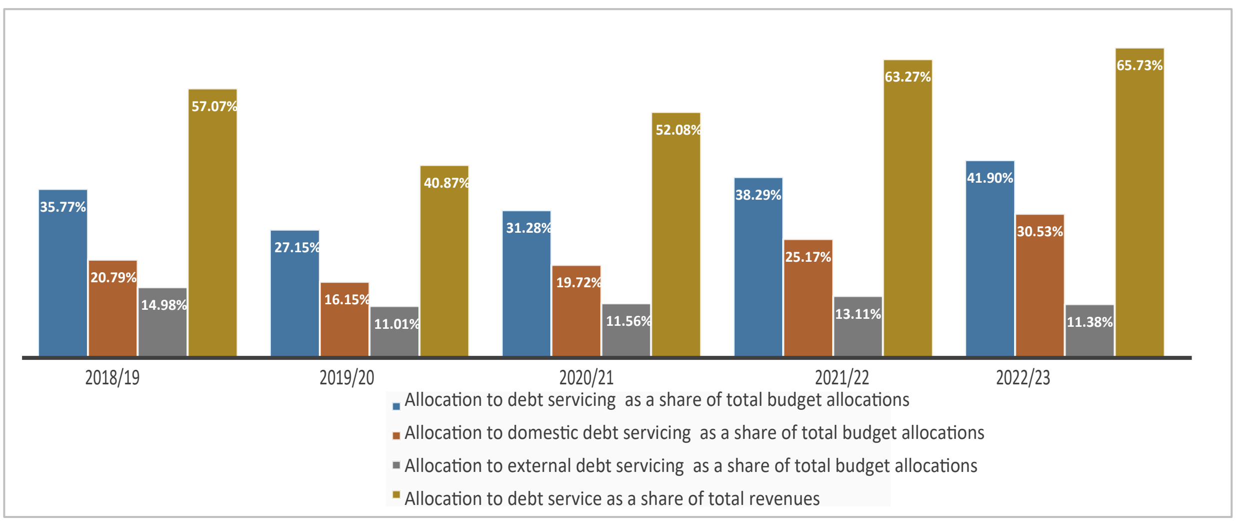
The increase in debt levels have significantly reduced fiscal space, resulting in low investments in social sectors (see Figure 3), potentially increasing the risk of additional people being left behind and rising poverty and inequalities. In addition, the current fiscal consolidation measures implemented under the IMF economic program,[30] in order to reduce debt vulnerabilities through efforts centred on raising tax revenues and tightly controlling spending, are likely to narrow the fiscal space for social spending. From a human rights perspective, the growing debt service costs and austerity measures will significantly reduce the available fiscal space[31] for social spending, which is essential for the progressive realisation of ESC rights and attainment of the SDGs.

Table 2: Shrinking Fiscal Space

	2019	2020	2021	2022*
Domestic revenue	Ksh. 1,737	Ksh. 1,848	Ksh. 2,038.6	Ksh. 2,447.0
Non-discretionary spending	Ksh. 805.77	Ksh. 1,028.06	Ksh. 1,327.22	Ksh. 1,571.81
Debt service [Principal & Interest payments on debt]	Ksh. 696.55	Ksh. 904.70	Ksh. 1,169.17	Ksh. 1.396.12
Salaries, Pensions, Allowances and Others	Ksh. 109.22	Ksh. 123.36	Ksh. 158.05	Ksh. 178.69
Discretionary spending from domestic revenues	Ksh. 932	Ksh. 819.94	Ksh. 711.38	Ksh. 875.19
Discretionary spending as % of domestic revenues	53.7%	44.4%	34.9%	35.77%
Debt servicing costs as % of domestic revenues	40.1%	48.96%	57.35%	57.05%

Source: Author's computation from the programme-based budget 2019-2022.

Figure 3: Evolution of debt servicing cost and social spending



Source: Author's computation from the Programme Based Budget 2018-2022

30 Austerity measures being implemented under the Extended Credit Facility Programme.

31 From a human rights perspective, fiscal space is defined as the resources available to governments, through domestic revenue generation, in addition to unconditional/concessional loans and development aid, to ensure that the necessary resources are available to respect, protect and fulfill human rights as well as remedy for human rights violations.

3. SECTOR SPECIFIC ALLOCATIONS

3.1 Budgeting for the Right to Social Security

Article 9 of the International Covenant on Economic Social and Cultural Right (ICESCR) provides that, "*the States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.*" The right to social security is of central importance in guaranteeing human dignity. Article 43 of the 2010 Constitution guarantees all Kenyans a range of ESC rights, including to social security. The 2030 Agenda, Kenya Vision 2030 and other poverty reduction policy documents also recognise the role of social protection in improving the quality of life for all Kenyans.[32] The Government's commitments for the sector include protecting individuals and households from shocks that are likely to push them into poverty, reducing social exclusion, and supporting vulnerable groups.[33]

The National Safety Net Programme (NSNP) is the main Government-led social protection scheme and aims to achieve SDG 1 – eradicating poverty in all its forms,[34] particularly target 1.3.[35] The programme targets orphans and vulnerable children; older persons; persons with severe disabilities; and provides food cash transfer that targets vulnerable households in counties of Turkana, Wajir, Mandera and Marsabit. The existing social protection scheme does not guarantee the right to social security to everyone. The emphasis has been on 'safety net' programmes, narrowly targeting the poorest people, rather than comprehensive social protection floors, as envisaged in the SDGs. From a human rights perspective, investments in social protection should focus on defining floors to provide essential levels of goods and services in line with Kenya's minimum core obligations, and the progressive realisation of the right to social security.

In the 2022/23 budget, a total of Ksh. 38.79 billion has been allocated to social protection – equivalent to 1.17% of the total budget and 0.31% of GDP. This represents a 3.6% increase from the 2021/22 allocation of Ksh. 37.4 billion – 1.23% of total budget and 0.33% of

Ksh. 37.4 billion – 1.23% of total budget and 0.33% of GDP (see Figure 4). This is welcome; however, it remains lower than global and regional allocations. For example, for the period 2018-2022, Kenya invested an average of 0.36% of GDP on social safety nets,[36] compared to an average of 2.1% of GDP in Sub-Saharan African countries.[37] While there is no internationally agreed benchmark for social protection, ILO estimates show that low-and middle-income countries, including Kenya, should spend at least 3.3% of GDP to provide a universal package of social protection benefits that covers the following benefits: children, maternity, disability, old age, as well as administrative costs.[38] Based on the ILO estimate for the universal social protection floor, Kenya would need to increase the current investment by 3 percentage points of GDP, which translates to a financing gap of approximately Ksh. 378.74 billion.

Despite an increase in nominal allocations to social protection from 2018 to 2022, actual expenditure deviates from the planned expenditure. The budget execution rates — defined as the share of actual spending in the total approved budget — have significantly decreased from 98.05% in 2018/2019 to 92.25% in 2020/2021 (see Figure 4).[39] Low execution rates imply that planned allocations are not utilised for the intended purpose, with impacts on access to social protection for the poor and vulnerable groups who are most in need of social security.

The low investment in social protection programmes coupled with low budgetary execution rates, will likely affect the ability of Government to safeguard livelihoods and protect the most vulnerable. The UN Secretary-General in the Common Agenda[40] has called for increased investment that covers the minimum essential levels and provides access to health care for all and basic income security for children, women, and older persons. The gradual integration of the informal sector into social protection frameworks is also

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32 For example, SDGs: 1.3 Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable; and 10.4 Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality
Ministry of Gender, Children and Social Development, Kenya National Social Protection Policy (2011).

33 Republic of Kenya, Second Voluntary National Review on the implementation of the Sustainable Development Goals (June 2020).

34 Target 1.3 relates to implementing nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieving substantial coverage of poor and

35 vulnerable people.

36 Calculation based on the approved budget for the period 2018-2022.

37 ILO (2021). World Social Protection Report 2020–22: Social protection at the crossroads in pursuit of a better future International Labour Office – Geneva.

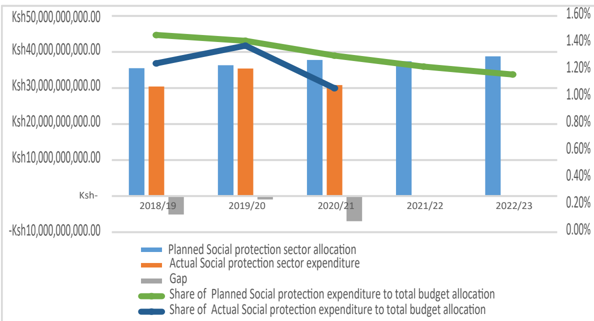
38 Ibid.

39 2020/2021 is the latest year with complete annual expenditure data sourced from the Office of Controller of Budgets National budget implementation report.

40 https://www.un.org/en/un75/common-agenda

essential if the country is to move towards universal coverage and improve the livelihoods of women who are over-represented in the informal sector with no social security. In 2016, the CESCR recommended that the Government intensify its efforts to ensure that the cash transfer programmes cover all eligible beneficiaries and increase and regularly adjust the amount of benefits to ensure a decent living for beneficiaries. It also recommended that Kenya extends the coverage of the National Social Security Fund and the National Health Insurance Fund to all employees in the formal and informal economy and the self-employed, to ensure the realisation of the right to social security.

Figure 4: Budget Allocations to and Expenditure on Social Protection 2018-2022



Source: Author's computation from the Programme Based Budget 2018-2022 and Budget Implementation review report 2018-2021.

3.2 Budgeting for the Right to Health

The right to health is guaranteed in Article 12 of the ICESCR. The CESCR[41] notes that the right to health entails *ensuring: (i) availability of health care facilities; (ii) accessibility of health care without any form of discrimination; (iii) acceptability, which implies that health services, facilities and goods should be gender and child sensitive and respectful of culture; and (iv) good quality of health care.* The right to health is a fundamental human right guaranteed in the Constitution of Kenya.[42]

Through the Kenya Health Policy, the government has committed to ensuring the highest possible standard of health through the provision of equitable, affordable, and high-quality health and related services for all citizens. However, financial constraints remain the main barrier to equitable access to quality health care in Kenya, with only 19.9% of Kenyans having access to health insurance coverage.[44] Household out-of-pocket spending accounts for 27% of health expenditure—almost twice the recommended WHO target of 12-15%.[45]

Direct out of pocket expenditure is an inequitable way to finance a health system because it burdens vulnerable groups. High out-of-pocket health spending exacerbates inequalities and household indebtedness.

The Government is implementing a social protection programme in the health sector as one of the interventions to realise universal health coverage (UHC). It is providing health insurance subsidies and free primary health care to vulnerable households. Investment in this programme decreased by 30.8% from Ksh. 13.9 billion in 2021 to Ksh 9.6 billion in 2022. This decreased investment is likely to affect access to health insurance, especially for households experiencing multiple and persistent forms of discrimination who finance healthcare through out-of-pocket expenditure. Even prior to the pandemic, approximately 10.7% of Kenyans incurred catastrophic health expenditure[46] in 2018, and approximately one million Kenyans were pushed into poverty because of catastrophic health expenditures.[47] High catastrophic expenditure affects the realisation of UHC as stipulated in SDG 3 and the realisation of right to health.[48] If Kenya is to achieve UHC by 2030, additional interventions are needed to protect the most vulnerable population groups from healthcare costs. In 2016, the CESCR recommended that the government expand the coverage of the National Health Insurance Fund (NHIF), especially for marginalised individuals and vulnerable groups.

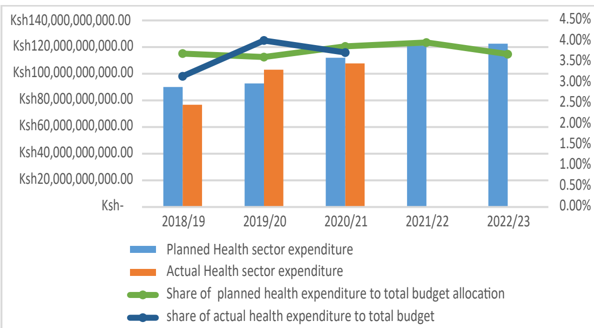
In the 2022/23 budget, the health sector at the national level was allocated a total of Ksh. 122.52 billion – 3.69% of total budget and 0.97% of GDP (see Figure 5). In nominal terms, the allocation increased by 1.18% from Ksh. 121.09 billion in 2018/19 to Ksh. 122.52 billion in 2022/23. However, the share of the health sector to total budget reduced from 3.97% in 2021/22 to 3.69% in 2022/23, and as a share of GDP reduced from 1.08% in 2021/22 to 0.97% in 2022/23. Despite the significant increase in health sector allocations in nominal terms over the last five years (36% increase from Ksh.90 billion to Ksh. 122.52 billion), health sector allocations as a share of the total national budget and GDP have slightly reduced from 3.70% to 3.69% and 1.06% to 0.97%, respectively.

On the expenditure side, in 2020/21 the execution rate was 82%, a slight decrease from the 2018/19 execution rate that stood at 85%. In 2019/20, the execution rate

41 See General Comment 14, UN Committee on Economic, Social, and Cultural Rights on Article 12.
42 Article 43 (1) (a) of the Constitution provides that every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.
43 Ministry of Health, Kenya Health Policy (2014–2030).
44 KNBS, Kenya Household and Health Expenditure and Utilization Survey 2018 (2020).
45 Ministry of Health, Kenya national health accounts 2015/2016 (2019).
46 The ration between expenditures and the total (or non-food) expenditure. The calculation is based on the Kenya Health Expenditure and Utilization Survey for 2013 and 2018.
47 Salari, P., Di Giorgio, L., Ilinca, S., & Chuma, J., The catastrophic and impoverishing effects of out-of-pocket healthcare payments in Kenya, 2018. BMJ global health, 4(6), e001809,
48 https://doi.org/10.1136/bmjgh-2019-001809 (2019).
49 Ibid.

surpassed 100% due to the COVID-19 pandemic that resulted in the redirection of budget resources to the health sector. However, the social protection programme that is critical to realising UHC witnessed a low execution rate during the pandemic (FY 2020/21); only 77% of the allocation was spent. This low execution rate affects healthcare service delivery, especially for the poor and vulnerable groups who finance their healthcare through out-of-pocket expenditures, as well as the realisation of UHC by 2030 and right to health for all Kenyans.

Figure 5: National Budget Allocations and Expenditures to the Health Sector (2018-2022)

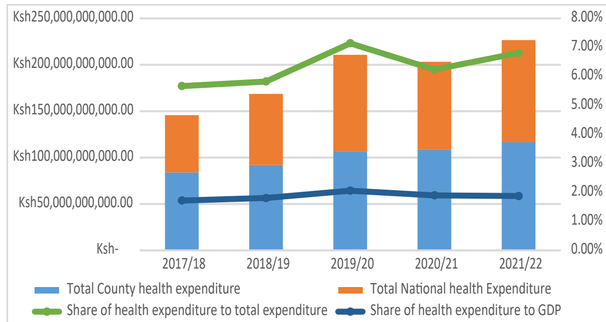


Source: Author's computation from the Programme Based Budget 2018-2022 and Budget Implementation review report 2018-2021.

Given that the health sector in Kenya is a devolved function, the share of total health expenditure (national and county governments) to total budget has increased from 5.67% in 2017 to 6.81% in 2021, and as a share of GDP increased from 1.72% in 2017 to 1.87% in 2021 (see Figure 6). Despite the increases in health sector expenditure over the last five years, the current expenditure trend still falls below the Abuja Declaration wherein the Government pledged to invest at least 15% of total expenditure to the health sector. The Government would need to increase current investment in the health sector by approximately Ksh. 272.65 billion – more than double the current investment – to attain the Abuja Declaration target.

The current health sector expenditure also falls significantly below the recommended investment to realise UHC. The WHO estimates that for low- and middle-income countries, including Kenya to realise UHC, a minimum 5% of GDP investment in the health sector is required — the equivalent of Ksh. 623.6 billion. Therefore, if Kenya is to realise UHC for all by 2030 it would have to increase its current investment by Ksh. 378.23 billion —more than 1.5 times the current investment. In 2016, the CESCR recommended that the Government take concrete measures to enhance access to health services, particularly for disadvantaged and marginalised individuals and groups, including through increasing budgetary allocation to the health sector. In 2020, Kenya accepted UPR recommendations related to the right to health.[49]

Figure 6: National and county government expenditure on health services



Source: Author's Computation from Kenya Economic Survey 2022.

3.3 Budgeting for the Right to Education

The right to education is guaranteed in article 13 of ICESCR. The CESCR general comment 13 (1999) notes that education is a basic human right and an indispensable means of realising other human rights. Education empowers individuals facing persistent and multiple forms of discrimination to lift themselves out of poverty and participate fully in their communities. The right to education is also covered in SDG 4, ensuring inclusive and equitable quality education, and promoting lifelong learning opportunities for all. The 2010 Constitution recognises that "every person has the right to education" (Article 43.1.) and stipulates that "every child has the right to free and compulsory education" (Article 53.1.). To this end, the Government has committed to provide quality life-long education and training for all Kenyans, as well as to invest in research and innovation to ensure sustainable development.[50]

The country has made tremendous progress in the education sector over the past decade. However, the pandemic seems to have reversed some of the earlier gains and is causing long-term setbacks to human capital accumulation and retrogression in the right to education. For instance, approximately 5% of girls aged 10–14 and 37% of girls aged 15–19, and 1% of

49 For example: 142.193 Further implement national laws and policies on health services, with particular attention on the right to health of women and children, including through collaboration with other States (Indonesia); 142.194 Step up efforts to increase access to health facilities to cover remote areas and all sectors of its society (Eritrea); 142.196 Continue the measures necessary to extend access to health insurance and quality health services to all citizens without discrimination (Djibouti); 142.199 Continue to protect and promote the right to health for all, through strengthening universal health coverage (Japan).

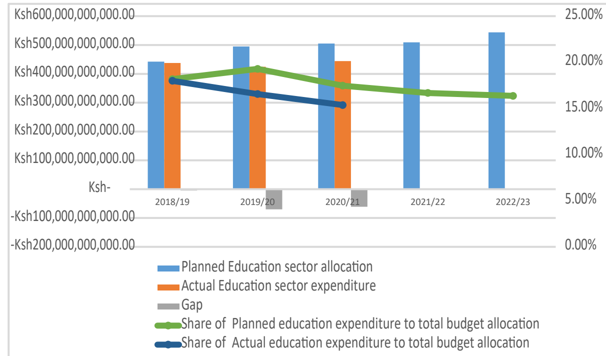
50 Ministry of Education, 2017. Education for Sustainable Development Policy for the Education Sector.

boys aged 10-14 and 26% of boys aged 15-19, did not re-enrol when schools opened in 2021.[51] The main reason for not returning to school was lack of money (47% of girls and 21% of boys) and teen pregnancy (10% of girls).[52]

In the 2022/23 budget, the Government allocated Ksh. 544.05 billion to education – 16.36% of the national budget and 4.30% of GDP. The current allocations are within the Incheon Declaration that stipulates an investment of 15-20% of the total national budget to education and/or investment of 4-6% of GDP to the education sector. They are, however, slightly below the Dakar Commitment on Education for All by the African Union which stipulates 20% of national budget to education. Despite allocations being within the internationally agreed benchmark, the overall share of education to national budget has reduced from 19.29% in 2019 to 16.36% in 2022. As a share of GDP, it has decreased from 5.32% in 2019 to 4.30% in 2022. The declining share of education to total budget allocation and GDP, in the COVID-19 recovery context, has ramifications for human capital accumulation, and could reverse previous gains in the right to education, which will have intergenerational consequences.

On the expenditure side, actual expenditures continue to deviate from planned expenditure. The execution rate for education has significantly reduced from 99% in 2018/19 to 87.97% in 2020/21. The low execution rates specifically for FY 2019/2020 and FY 2020/21 were attributed to the prolonged school closure in 2020.[53] Low execution rates hamper efforts to realise quality education as stipulated in SDG 4 and the right to education for all, especially vulnerable groups. According to a UNICEF report, to effectively maximise learning outcomes in the COVID recovery context, the Government would need to spend as much as 7% to 8% of GDP on education.[54] In 2016, the CESCR recommended increased investment in quality primary education for all without hidden costs, particularly for children living in informal settlements and ASAL areas. In 2020, Kenya accepted several UPR recommendations related to education.[55]

Figure 7: Budget allocation to and expenditure in the education sector 2018-2022



Source: Author's computation from the Programme Based Budget 2018-2022 and Budget Implementation review report 2018-2021.

3.4 Budgeting for the Rights to Water and Sanitation

Access to safe, affordable, and reliable drinking water and sanitation services are basic human rights, and essential for eradicating poverty, building peaceful and prosperous societies, and ensuring that 'no one is left behind' on the path towards sustainable development. The 2010 Constitution guarantees the right of all Kenyans to clean and safe water in adequate quantities, and to reasonable standards of sanitation. The progressive realisation of the human rights to water and sanitation requires the allocation and use of maximum available resources including ensuring the right of access to water and water facilities and services on a non-discriminatory basis and ensuring access to the minimum essential amount of water, that is sufficient and safe for personal and domestic uses to prevent disease.

Approximately 32% of the Kenyan population are unable to access improved water sources, while 53% of Kenyans lack access to basic sanitation.[56] The low access exposes underserved households to several risks including water-borne diseases, high healthcare expenditures, and reduced time available for school and economic activities especially for women and girls. The urban-rural inequality for water deprivation stands at 28 percentage points higher in rural areas.[57] Despite

51 Presidential Policy and Strategy Unit, Promises to Keep: Leave No One Behind. The Impact of COVID-19 on Adolescents in Kenya (2021). www.popcouncil.org/uploads/pdfs/2021PGY_ImpactCovidAdolKenya.pdf
52 Ibid
53 Report of the Auditor-General for the National Government for The Year 2020/2021.
54 UNICEF, COVID-19 and Shrinking Finance for Social Spending. Innocenti Policy Brief series, Brief 2022-01, Shortfalls in Social Spending in Low- and Middle-income Countries (2022).
55 For example, 142.207 Continue to increase investment in education, and improve education in rural areas (China); 142.208 Intensify efforts in the field of education to ensure access to quality education for all, especially for rural populations (Djibouti); 142.211 Ensure equal access to education through the full integration of refugees and asylum seekers into national education policies by 2020, in accordance with the 2017 Djibouti declaration on refugee education (Canada); 142.212 Consider taking further measures to increase the number of girls and women in secondary and higher education, including through specific measures aimed at ensuring adequate access to education for girls with disabilities (Bulgaria).
56 KNBS, Kenya Demographic Health Survey (2014).
57 KNBS, Comprehensive Poverty Report: Children, Youth, Women, Men & Elderly from National to County (2020).

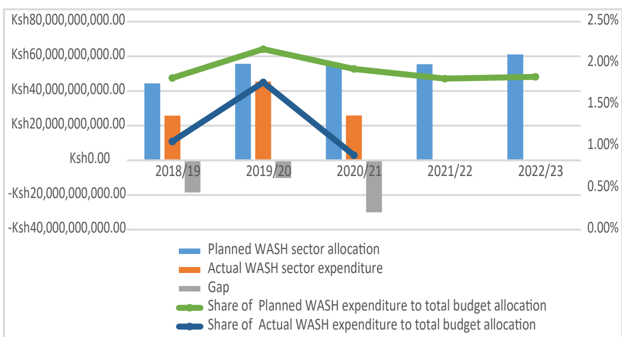
improved access to WASH in urban areas, there are significant inequalities affecting informal settlements, particularly in terms of availability of public water supply and affordability. An OHCHR assessment of the right to water in informal settlements[58] found that a majority (35%) of surveyed households spent between 3-10% of household income on water — which is above the international standard for affordability (3%) – while a significant proportion (17%) spent over 20% of household income.

In the 2022/23 budget, the national Government plans to invest Ksh. 61.04 billion, or an equivalent of 1.84% of the total budget and 0.48% of GDP, on water and sanitation. This represents a significant increase of 10% from the 2021/22 allocation of Ksh. 55.4 billion and a 2% increase from the 2020/21 allocation. Allocations increased by 39% in the Water and Sewerage Infrastructure Programme - that seeks to increase accessibility of water (to an additional 32,000 people) and sanitation services (to an additional 37,000 people). For the period 2022-2024, the Ministry of Water, Sanitation, and Irrigation seeks to improve access to water services at household level from 68% to 80% nationally,[59] through the completion of several key water supply, dam, and sanitation projects.

Despite the increase in allocations in nominal terms, the share of WASH investments to total budget decreased from 2.17% in 2019 to 1.84% in 2022/23. During the same period, WASH allocations as a share of GDP decreased from 0.60% to 0.48%. This level of investment is low given that the country loses an equivalent of 0.9% of GDP due to poor water and sanitation services.[60] The current allocation of 1.84% is below the Sanitation and Water for All (SWA) commitment to allocate at least 7% of the total budget to the WASH sector. As a share of GDP, 0.48% is below the Africa Infrastructure Country Diagnostic (2008) proposal, which required Sub-Saharan African countries to allocate 0.9% of GDP to achieve improved WASH outcomes for all citizens. However, the current investments almost meet the Ngor Declaration target of allocating 0.5% of GDP to WASH.[61]

Despite allocation being below targeted levels, actual expenditures deviate from planned expenditures and the WASH sector has one of the lowest execution rates in the social sectors. In 2020/21, the WASH execution rate was 46.32%; water services had an execution rate of 28.33% while sanitation services had an execution rate of 52%. For 2018/19 and 2019/20, the WASH execution rates were 58.16% and 63.27%, respectively. The low execution rate affects the ability of the Ministry of Water and Sanitation to advocate for an increase in the allocation due to low capacity to absorb planned expenditure. This in turn, affects service delivery and access to safe, affordable, and reliable water and sanitation services, especially for marginalised areas and vulnerable groups. To ensure everyone has access to improved WASH services, in 2016, the CESCR recommended that the Government increase the budgetary allocation to improve access to water and sanitation, particularly in urban informal settlements and rural areas and to improve its budget execution process with a view to spending all the allocated funding in a timely, effective, and transparent manner. It also recommended that the Government intensify its efforts to effectively regulate water prices and ensure compliance, particularly by small-scale water vendors, with the tariff guidelines set by the Water Services Regulatory Board. In 2020, Kenya accepted UPR recommendations related to the right to water.[62]

Figure 8: Budget allocations to and expenditure in WASH sector 2018-2022



Source: Author's computation from the Programme Based Budget 2018-2022 and Budget Implementation review report 2018-2021

58 OHCHR, Right to Water in Kenya: Assessment of Access to Water in Informal Settlements, https://www.ohchr.org/sites/default/files/Documents/Countries/KE/Assessment_right_water_Kenya2020.pdf (March 2020).
59 From the programme-based budget 2022/23.
60 World Bank, Economic Impacts of Poor Sanitation in Africa (2012).
61 The Ngor Declaration on Sanitation and Hygiene, adopted by the African Ministers responsible for sanitation and hygiene on 27 May 2015 at AfricaSan4, Senegal.
For example: 142.182 Accelerate the development of the national public waterworks for water resources storage to better ensure the right to water and sanitation of its people (Viet Nam); 142.190
62 Continue efforts to eradicate poverty and provide drinking water and sanitation to the population (Sudan).

5. CONCLUSIONS & POLICY OPTIONS

This human rights-based budget analysis reveals that since 2019 (pre-pandemic), investments in key social sectors - health, education, social protection, and water and sanitation - have decreased from 26.49% of total budget to 23.05% in 2022, and from 7.3% of GDP to 6.06% in 2022. Specifically, allocations to health, social protection and WASH sectors are below the recommended minimum expenditures. Further, despite the low budget allocations to social sectors, actual budget expenditure underperforms vis-à-vis planned budget in all the social sectors analysed. The decreased social sector budget allocations, coupled with low social spending execution rates, have serious implications for the progressive realisation of the rights to social security, education, health, and water and sanitation, particularly for those most left behind, and for the attainment of the SDGs and the African Union Agenda 2063.

The decreased investment in social sectors is partly driven by shrinking fiscal space as a result of increased debt servicing costs and reduced domestic revenues. Debt servicing costs alone accounts for 42% of the total budget and 57% of the total domestic revenues and limits the ability of government to sustainably finance social spending. Shrinking fiscal space, coupled with austerity measures, could potentially worsen levels of poverty and inequalities, and impact upon the attainment of the SDGs and the principle of *leaving no one behind*.

In the wake of the pandemic, which severely impacted the Kenyan economy and access to quality and adequate social services, the Government must continue to take steps that are progressively geared towards realising universal access to education, health, social protection, and water and sanitation, in line with existing human rights commitments and SDG targets. A renewed social contract between Government and societies will require the safeguarding of social spending to guarantee the economic and social rights of all and minimize the economic impact of the pandemic on the most vulnerable. In the short to medium term, it would be important for the Government to act on its commitments by increasing social spending towards existing minimum international benchmarks, and improving social spending execution rates to adequately provide quality services for all and ensure equitable spending to reach those most left behind.

For Government to sustainably finance social spending, expanding fiscal space is critical. It would be important for the Government to consider increasing domestic resource mobilisation, particularly by exploring more progressive tax measures on income and wealth. A new analysis[63] from Oxfam shows that an annual wealth tax could raise $900 million (Ksh 103.5 billion) per annum, which could be channelled to social spending to reduce poverty and inequality. Also, improving fiscal transparency and accountability in revenue generation and the budget cycle, reducing tax expenditures[64], fighting tax evasion, and eliminating illicit financial flows are crucial in expanding fiscal space that could be used for social spending. Further, Kenya could also take advantage of the increased liquidity of the new Special Drawing Rights (SDR) allocated by the IMF to increase social spending.

The international community has an important to play in helping the Government to advance the progressive realisation of ESC rights and attainment of the SDGs. The UN and IFIs can play a critical role in underlining the importance of adequate investments in social spending, and promoting fiscal transparency, accountability, and participation to expand fiscal space. Also, both the UN and IFIs can advocate for SDRs to be channelled to much-needed social spending that can help to reduce poverty and inequalities. Recently, the IMF and the Government reached an agreement on the third review of Kenya's economic program under the Extended Fund Facility (EFF) and Extended Credit Facility (ECF) arrangements. These arrangements provide the country with access to $244 million, which can be channelled to social spending to advance the SDGs for all Kenyans, *leaving no one behind*, and the progressive realisation of economic and social rights for all. This would support the implementation of Kenya's Vision 2030 and the UN Sustainable Development Cooperation Framework 2022-2026, which focuses on inequalities that hinder achievement of the SDGs. The international community can also collaborate with authorities and civil society to conduct human rights impact assessments before economic policy interventions are put in place (ex-ante), to ensure compliance with human rights commitments and promote progressive realisation of economic and social rights.

63 Oxfam, Taxing Extreme Wealth An annual tax on the world's multi-millionaires and billionaires: What it would raise and what it could pay for?, Factsheet Report (2022), https://patrioticmillionaires.org/wp-content/uploads/Annual-Wealth-Tax-Factsheet.pdf.

64 According to the National Treasury, in 2020, tax expenditures amounted to Ksh. 318.32 billion - equivalent to 2.96% of GDP: https://www.treasury.go.ke/wp-content/uploads/2022/02/15.11.2021_Tax- Expenditure-Report.pdf.

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OHCHR's Surge Initiative has thematic specialists, who help to provide analysis, research and specialized advice on human rights-based economic and social policies including in the context of risks of economic shocks, working in tandem with other economists in UNCTs. The Surge Initiative team of specialists reviews human rights alignment of budget and fiscal policies, with special attention to marginalized sections of populations, for use in policy-making.

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