HUMAN RIGHTS-BASED ANALYSIS OF KENYA'S BUDGET 2021/2022

What do the numbers tell us?

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CONTENTS

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EXECUTIVE SUMMARY

Kenya has made remarkable progress in development. Notably, the country's per capital income growth has reached USD 1,828, according to the 2019 Human Development Index, the country stands at 0.601 with a medium human development status, life expectancy stands at 66.7 years and mean years of schooling at 6.6. Poverty has decreased by 8 percentage points from 43.6% in 2005 to 35.6% in 2015, while GDP was growing at an average of 5% from 2015 to 2019.

The COVID-19 pandemic has reversed these earlier gains. The pandemic increased poverty by 4 percentage points in 2021 through serious impacts on livelihoods, by sharp decreases in incomes and employment. GDP growth decelerated to 1.4% in 2020, after growing 5.4% in 2019. The fiscal deficit has widened to 8.3% of GDP as a result of revenue shortfalls and pandemic-related spending increases in health, household, and business cushioning from the effects of the pandemic.

The Kenya's budget for the fiscal year (FY) 2021/22 seeks to stimulate economic recovery in the wake of the pandemic which has resulted in increased poverty and vulnerability levels across the country. According to the National Treasury, the 2021/22 budget seeks to achieve two policy goals, i.e. stimulating economic recovery while mitigating the effects of the pandemic. The aim of this budget brief is to provide a human rights-based analysis of Kenya's budget for FY 2021/22. This analysis focuses on spending on social sectors that are key to the fulfillment of minimum core obligations and progressive realisation of economic, social, and cultural (ESC) rights and the 2030 Agenda, including the Sustainable Development Goals (SDGs).

The results of the analysis show low social sector spending. The total share of social spending for social protection, health, education and water and sanitation averaged 10.67% of the total budget and 2.98% of GDP for the period 2018-2021. The low investments in these sectors have implications on the progressive realisation of ESC rights as the core obligations of several rights, such as social security, education, health and water and sanitation, have not yet been realised in Kenya. Moreover, investments in these sectors do not address needs of disadvantaged and vulnerable groups sufficiently. The low investments in social spending are due in part to the ever-decreasing fiscal space as a result of increased debt servicing costs and reduced domestic revenues, as well as austerity policies. The debt servicing costs alone account for 38% of the total budget and 63% of the total domestic revenues.

Underinvestment in social sectors impacts the country's progress on the path towards progressive realisation of ESC rights and sustainable development and undermines the attainment of the SDGs, particularly those relating to health, education, social protection, and water and sanitation (SDGs 1, 3, 4, 6). In its latest review of Kenya (2016), the Committee on Economic, Social, and Cultural Rights (CESCR), recommended that the government needs to increase the levels of public funding, at both the national and county levels, to ensure the progressive realisation of ESC rights, particularly the rights to water and sanitation, social security, health and education, and that the government should improve its budget execution process with a view to spending all the allocated funding in a timely, effective and transparent manner. During the COVID-19 period, it is important to scale up investment in social sectors in order to safeguard lives and livelihoods, and ensure no one is left behind. These investments should focus on realising essential levels of ESC rights (education, social protection, health, water and sanitation) in line with Kenya's minimum core obligations during this period of containment and the progressive realisation of these rights in the recovery stage.

1. INTRODUCTION

Kenya is a lower middle-income country with a GDP per capita of US $1,828 and a Gini coefficient of 40.8[1]. The country's Human Development Index (HDI) stands at 0.601, positioning it at 143 out of 189 countries with a medium human development status[2]. However, when the value is discounted for inequality, the HDI falls to 0.443, a loss of 26.3% due to inequality in the distribution of the human development indices.

The country has made tremendous steps in development. For instance, between 2015 to 2019, Kenya's economic growth averaged 5.7%, making it one of the fastest growing economies in Sub-Saharan Africa[3]. Poverty dropped by 8 percentage points from 43.6% in 2005 to 35.6% in 2015[4]. However, the COVID-19 pandemic has reversed these earlier gains. The pandemic increased poverty by 4 percentage points (or an additional 2 million poor) through serious impacts on livelihoods, by sharp decreases in incomes and employment[5]. Also, due to containment measures that led to closure of businesses, the unemployment rate approximately doubled to reach 10.4% in the second quarter of 2020[6]. Those in employment have experienced reduced working hours, with average hours decreasing from 50 to 38 hours per week. Almost one-third of household run businesses are not currently operating, and between February and June 2020, average revenue from household run businesses decreased by almost 50%[8]. The informal sector workers[9] are particularly at risk—a group in which women make up the majority.

In 2020, GDP growth decelerated to 1.4%, after growing 5.4% in 2019[10]. The fiscal deficit has widened to 8.3% of GDP as a result of revenue shortfalls and pandemic-related spending increases in health, household, and business cushioning from the effects of the pandemic[11]. Government borrowing has increased to cover revenue shortfalls. Kenya's debt has been classified as sustainable, although it is at a high risk of debt distress[12]. The debt to GDP ratio has increased by 10 percentage points from 62% in 2019 to 72% in 2021.[13] Debt service-to-revenue stands at 68%, indicating heightened vulnerabilities, especially as budget revenues decline due to the pandemic[14]. With total debt service (interest and principal due) expected to be above 70% of government revenues over the next three years[15], Kenya faces heightened liquidity vulnerabilities and reduced fiscal space.

Against this backdrop, on 10 June 2021, the National Treasury and Planning presented the budget for fiscal year (FY) 2021/22 under the theme: *"Building Back Better: Strategy for Resilient and Sustainable Economic Recovery and Inclusive Growth."* The budget focuses on economic recovery in the wake of the pandemic which has resulted in increased poverty and vulnerability levels across the country. According to the National Treasury, the 2021/22 budget seeks to achieve two policy goals - stimulating economic recovery, while mitigating the effects of the pandemic. This budget brief seeks to analyse the budget information contained in the programme-based budget from a human rights and leave no one behind perspective.

The rest of the brief is organised as follows: section 2 presents social sector spending analysis; section 3 discusses allocations for social protection, health, education, and water and sanitation; section 4 presents governance, justice, law and order spending; and section 5 wraps up with conclusion and policy implications.

1 World Bank Development Indicators https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=KE.
2 UNDP (2020). Human Development Report: The Next Frontier: Human Development and the Anthropocene.
3 World Bank Kenya Overview.
4 Kenya National Bureau of Statistics (2018). Kenya Integrated Household Budget Surveys 2015/16.
5 World Bank (2020). Kenya Economic Update: Navigating the pandemic.
6 Kenya National Bureau of Statistics (2020). Quarterly Labour Force Survey.
7 World Bank. (2021). Socioeconomic Impacts of COVID-19 in Kenya on Households: Rapid Response Phone Survey, round 1. World Bank. https://openknowledge.worldbank.org/handle/10986/35173.
8 Ibid.
9 According to KNBS (2018) Informal sector is the main source of livelihood supporting 84% of the total workforce and women account for 61.9 percent of the informal sector.
10 African Development Bank (2021) Africa Economic Outlook.
11 Ibid.
12 According to the World Bank/IMF Joint Debt Sustainability Assessment 2020.
13 International Monetary Fund (IMF) (2021). Sub-Saharan Regional Economic Outlook: Navigating A Long Pandemic.
14 International Monetary Fund (IMF) (2021). The Country Technical report: https://www.imf.org/en/Publications/CR/Issues/2020/05/11/Republic-of-Kenya-Request-for-Disbursement-under-the-Rapid-Credit-Facility-Press-Release-49405.
15 Ibid.

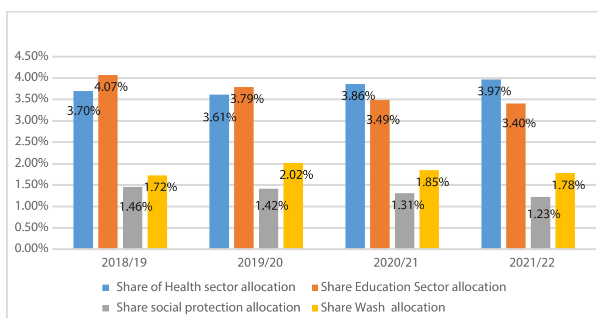
2. SOCIAL SECTOR SPENDING

2.1 Overview of Social Spending

Social sector public spending is crucial for alleviating poverty, reducing inequality, saving lives and sustaining livelihoods. It is arguably the most important instrument for ensuring that no one is left behind in the sustainable development process, in good and in bad times, irrespective of economic fortunes/positioning. Social spending is also essential to ensure the fulfillment of minimum core obligations and progressive realisation of ESC rights.[16] Studies have shown that social sector investments, particularly in education and health, are significant drivers of inclusive and sustainable growth [17,18]. For example, increased access to quality health services and basic education increases the human capital stock and can potentially decrease inequality in education and health outcomes, with intergenerational multiplier effects. This, in turn, increases productivity and growth, and reduces inequality of opportunity and income[19]. Most importantly from a human rights perspective, right-holders are able to enjoy the right to health and education.

Over the last four years, Kenya has witnessed chronic underinvestment in social sectors. The total social sector investment (health[20], education[21], social protection, and water and sanitation) share to total budget has averaged 10.67% for the period 2018 to 2021 (see figure 1). The share is low given that the share of National Security[22] alone accounts for 5.34%— almost half of the total share of essential social spending for education, health, social protection, and water and sanitation. The total investments in social sectors have increased by 4% from Ksh 303.6 billion in 2020/21 to Ksh 316.7 billion in 2021/22.[23] This increase was largely attributed to increased investments in the health sector, which increased from Ksh 111.7 billion in 2020/21 to Ksh 121 billion in 2021/22. Expressed as a share of total spending, health expenditure accounts for 3.97% in 2021/22. Similarly, the education allocation increased from Ksh 100.8 billion in 2020/21 to Ksh 103.9 billion in 2021/22, with a budget share of 3.4%. Water and sanitation investments increased from Ksh 53.3 billion in 2020/21 to Ksh 54.3 billion in 2021/22 with a budget share of 1.78%. However, social protection witnessed a slight decrease in allocations from Ksh 37.7 billion in 2020/21 to 37.4 billion in 2021/22, with a budget share of 1.23%. Despite the small increases in education, health and water and sanitation, the current investment of 10% in social sectors is low. The low investment has implications for the sustainable development path of the country and in particular the enjoyment of ESC rights (i.e. education, healthcare, and social protection) and the realisation of 2030 Agenda, including attainment of Sustainable Development Goals (SDG) and African Union Agenda 2063. In its latest review of Kenya (2016), the Committee on Economic, Social, and Cultural Rights (CESCR), recommended that the government needs to increase the level of public funding, at both the national and county levels, to ensure the progressive realisation of ESC rights, particularly the rights to water and sanitation, social security, health and education, and that the government should improve its budget execution process with a view to spending all the allocated funding in a timely, effective and transparent manner.

Figure 1: Budget allocation to the social sectors, 2018-2021 (Share of National Budget)



Source: Author's computation from the Programme Based Budget

[16] Article 43 of the 2010 Constitution guarantees all Kenyans their economic, social, and cultural (ESC) rights and Article 21 establishes the progressive realization of social and economic rights and obligates the State to "observe, respect, protect, promote, and fulfil the rights and fundamental freedoms in the Bill of Rights."
[17] Rossi, Federico (2018). Human Capital and Macro-Economic Development: A Review of the Evidence. Policy Research Working Paper No. 8650, (The World Bank Group).
[18] Coady, David and Allan Dizioli (2018). Income Inequality and Education Revisited: Persistence, Endogeneity and Heterogeneity. Applied Economics, Vol. 50 (25).
[19] International Monetary Fund (IMF) (2019). A Strategy for IMF Engagement on Social Spending.
[20] This includes allocations to Ministry of Health (MoH).
[21] This includes allocations to early learning and basic education (primary and secondary).
[22] This includes allocations to the Ministry of defence, National Intelligence, and National Police Commission.
[23] These estimates are based on the programme-based budget analysis.

2.2 Shrinking Fiscal Space for Social Sector Spending

Social spending can only be sustainably funded through domestic resources. However, in Kenya this has been a challenge due to the shrinking fiscal space for discretionary spending as a result of increased debt servicing costs and reduced domestic revenues. Table 1 shows that non-discretionary spending has increased by 64% from Ksh 805.77 billion in 2019 to Ksh 1,327.22 billion in 2021, mainly driven by an increase in debt servicing. The share of discretionary spending to domestic revenues has decreased by 19 percentage points for the period 2019 to 2021. This means that the financing of discretionary spending in general, and particularly social spending, is constrained by increased debt servicing. With slow economic growth and high risk of debt distress coupled with the effects of the pandemic, it is imperative to expand fiscal space to support social spending.

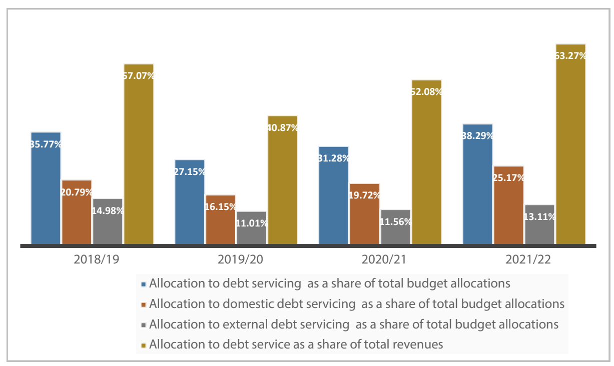
Table 1: Shrinking Fiscal Space

	2019	2020	2021
Domestic revenue	1,737	1,848	2,038.6*
Non-discretionary spending	805.77	1,028.06	1,327.22
Debt service [Principal & Interest payments on debt]	696.55	904.70	1,169.17
Salaries, Pensions, Allowances and Others	109.22	123.36	158.05
Discretionary spending from domestic revenues	932	819.94	711.38
Discretionary spending as % of domestic revenues	53.7%	44.4%	34.9%

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

For the period 2018 to 2021, debt service costs (interest and principal due) have accounted for a significant share of the total budget and total revenues. In 2021/22, the share of debt service to total budget is 38% (Ksh 1.17 trillion), with domestic debt service accounting for 25% (Ksh 768 billion), while external debt service accounts for 13% (Ksh 400 billion) of the total budget. Also, the share of debt service cost to total revenue[23] is 63%, implying that for every Ksh 100 collected as tax revenue, only Ksh 37 is available for financing the recurrent and development expenditures. Debt levels have significantly increased over thelast decade as a result of increased fiscal deficits, reduced domestic taxes, and slower economic growth. For instance, debt as a share of GDP has increased by 22 percentage points from an average of 46.8% (2010-17) to 72% (2021).[24] The increased debt levels significantly reduce fiscal space, resulting in low investments in social sectors which can potentially increase the risk of additional people being left behind in sustainable development efforts. From a human rights perspective, the growing debt service costs in addition to decreasing revenues have significantly reduced the available fiscal space[25] for social spending, which is essential to meet the minimum core obligations and progressive realisation of ESC rights, and attainment of the SDGs.

Figure 2: Shrinking fiscal space as a result of debt servicing



Source: Author's computation from the Programme Based Budget 2018-2021

[23] Based on 2020 total tax revenues obtained from the Budget Summary of Revenue and Expenditures.
[24] International Monetary Fund (2021). Regional Economic Outlook.
[25] 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. Social Protection

The overall goal of social protection in Kenya is to ensure that all citizens live in dignity and exploit their capabilities to promote their social and economic development[26]. 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. According to the Kenya National Bureau of Statistics (KNBS) (2018), more than half (53%) of the population—23.4 million Kenyans—are multidimensionally poor, that is deprived in realisation of at least three basic needs, services and rights. In terms of gender, 54% of girls and women in Kenya are multidimensionally poor, compared to 52% of boys and men. Out of the multidimensionally poor, children comprise the largest share (48%), followed by youth (25%), and the elderly (6%). Multidimensional poverty incidence in rural areas (67%) is more than twice the incidence in urban areas (27%), implying geographical inequalities in accessibility and availability of public services. In monetary terms, more than 1 in every 3 Kenyans (36% or 15.9 million) are poor and more than 27% of the population are both poor in monetary and multidimensional terms.

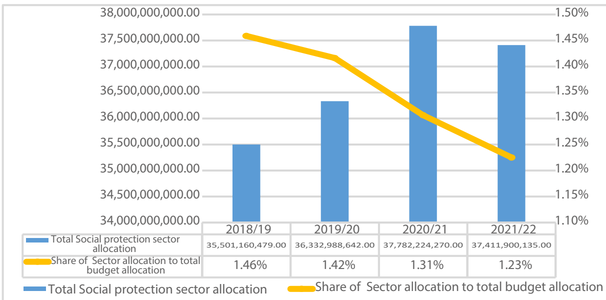
In 2021/22, social protection has been allocated a total of Ksh 37.4 billion—equivalent to 1.23% of the total budget and 0.33% of GDP. Social protection investments increased by 4% from Ksh 36.3 billion in 2019/20 to Ksh 37.7 billion in 2020/21 (see figure 3). The increase is mainly attributed to an expansion of the cash transfer programmes that are being implemented under the National Safety Net Programme (NSNP). This programme is the major intervention the government is implementing to achieve SDG 1—eradicating poverty in all its forms[27], particularly target 1.3.[28] The programme has five main cash transfer sub-programmes: the Cash Transfer for Orphans and Vulnerable Children (CTOVC); the Older Persons Cash Transfer (OPCT); the Cash Transfer for Persons with Severe Disabilities (CTPSD); the Hunger Safety Net Programme (HSNP); and the Cash for Assets (CFA) programme. The CTOVC, OPCT, CTPSD, and CFA programmes all offer a similar transfer value of Ksh 2,000 per month while HSNP[29] offers Ksh 2,700. All cash transfer programmes are based on household benefits rather than individual—which means a fixed amount regardless of household size or composition. This implies the programmes do not respond to differences in vulnerability between households. For instance, a household with a single older person and five children only qualify for the older persons cash transfer and no additional support for needs of the children. In reality, this household receives the same support as a household with only one older person. Again, the current amount of Ksh 2000 and Ksh 2700 per month for each beneficiary household is far below the average household[30] expenditure and average food expenditure per month of Ksh 7,811 and Ksh 4239, respectively.[31] Thus, the amounts are unlikely to enable an adequate standard of living. The CESCR (2016) recommended that the government needs to intensify its efforts to ensure that the cash transfer programmes cover all eligible beneficiaries, and increase the amount of benefits and regularly readjust the amount to ensure a decent living for the beneficiaries.

Historically the share of social protection to total budget and GDP has been on a decline since 2018 (see figure 3). If this trend continues, the government will be unable to safeguard livelihoods and protect the most vulnerable, which will result in high levels of poverty and inequality, with "many left behind". Social protection is a cornerstone of the government's response to addressing the needs of those left behind and the most vulnerable. Based on the current allocations, the high poverty level (multidimensional and monetary poverty) and the COVID-19 economic effects on the most

26 Ministry of Gender, Children, and Social Development, 2011. Kenya National Social Protection Policy.
27 Republic of Kenya, 2020. Second Voluntary National Review on the implementation of the Sustainable Development Goals. June, 2020.
28 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 vulnerable people.
29 HSNP is unconditional cash transfer programme targeting households living in conditions of extreme poverty in Mandera, Marsabit, Turkana and Wajir Counties.
30 https://www.socialprotection.or.ke/social-protection-components/social-assistance/national-safety-net-program/hunger-safety-net-programme-hsnp.
31 According to the Kenya Integrated Household Budget Surveys 2015/16.

vulnerable, deliberate actions are required from the government to guarantee the minimum essential level of the right to social protection.

Figure 3: Budget Allocations to Social Protection 2015-2021 (in Ksh)



Source: Author's computation from the Programme Based Budget

3.2. Health

The right to health is a fundamental human right guaranteed in the Constitution of Kenya.[32] SDG 3 aims to ensure healthy lives and promote well-being for all, at all ages. Through the health policy,[33] 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 health care in Kenya. For instance, according to National Health Accounts 2015/16, the public sector accounts for 36.9% of health expenditure while the private sector (households and non-profit institutions serving households) account for the largest share (44.1%) of health expenditure. Household out-of-pocket spending accounts for 27% of health expenditure—almost twice the recommended World Health Organization (WHO) target of 12-15%.[34] High out-of-pocket health spending places significant financial burden on poor and vulnerable households. A recent study found that approximately 600,000 Kenyans are pushed into poverty annually as a result of out-of-pocket health spending.[35] This is as a result of low insurance coverage, with only 19.9% having access to health insurance.

Since 2019, the total allocations and share of health allocation to total budget allocation have been on a steady increase (see figure 4). According to the Ministry of Health (MoH) (2021), as a result of increased spending, HIV prevalence reduced from 6% in 2017 to 4.5% in 2019. By the end of 2020, a total of 1,160,479 people living with HIV had access to lifesaving antiretroviral medicines as compared to 656,369 in 2013. Through the "Linda Mama" programme,[38] there was improved skilled birth attendance, rising from 62% in 2019 to 75% in 2020. Also, the proportion of married women using a modern method of contraception increased from 53% to 62% in 2019 and 2020 respectively, while immunization coverage increased from 76% in 2019 to 82% in 2020.

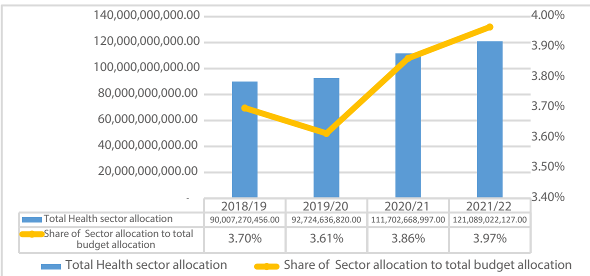
The social protection in health programme is one of the interventions the government is implementing to realise the right to health. Funding to this programme has increased by 27% from Ksh 10 billion in 2018/19 to Ksh 13 billion in 2021/22. This increase is in line with the government's commitment to address the financial barriers in access to health care, as the funds are used to implement Universal Health Coverage (UHC), including providing health insurance subsidies and free primary health care to vulnerable households. However, despite the significant increase in programme, the number of Kenyan households who have incurred catastrophic expenditure[40] have increased from 4.5%[41] in 2013 to 7.1% in 2018. Hence, the level of investment falls short of the resources needed to achieve the minimum essential level of healthcare benefits. It is worth recalling that under ICESCR, realising the minimum core content of a right for all is an immediate obligation for Kenya. If Kenya is to achieve UHC by 2022, additional interventions are needed to protect the most vulnerable population groups from out-of-pocket healthcare costs.

The National Hospital Insurance Fund (NHIF) is the main provider of health insurance, through which the government intends to increase insurance coverage. The contribution pattern adopted by NHIF is rather regressive—lower-income earners pay a relatively high share compared to high income earners. For instance, an individual earning below Ksh 25,000 a month contributes an equivalent of 3% of their income, while an individual earning Ksh 100,000 contributes an

[32] 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.
[33] Ministry of Health, 2014. Kenya Health Policy (2014–2030).
[34] Ministry of Health, 2019. Kenya national health accounts 2015/2016.
[35] Barasa, E.W., T. Maina, and N. Ravishankar (2017). Assessing the Impoverishing Effects, and Factors Associated with the Incidence of Catastrophic Health Care Payments in Kenya. International Journal for Equity in Health 16:31.
[36] KNBS (2020). Kenya Household and Health Expenditure and Utilization Survey 2018.
[37] Obtained from the programme-based budget estimates 2020/21.
[38] A public funded health scheme that will ensure that pregnant women and infants have access to quality and affordable health services.
[39] The ration between expenditures and the total (or non-food) expenditure. The calculation are based on the Kenya Health Expenditure and Utilization Survey for 2013 and 2018.
[40] Salari, P., Di Giorgio, L., Ilinca, S., & Chuma, J. (2019). The catastrophic and impoverishing effects of out-of-pocket healthcare payments in Kenya, 2018. BMJ global health, 4(6), e001809. https://doi.org/10.1136/bmjgh-2019-001809 .

equivalent of 1.7% of their income. A more progressive contribution would ensure the most disadvantaged and marginalised groups are not left behind. Also, enrolling workers in the informal sector will be key. To ensure the right to health is realised, the CESCR (2016) has recommended that the government needs to 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 and expanding the coverage of the NHIF.

Figure 4: Budget Allocations to the Health Sector (in Ksh)



Source: Author's computation from the Programme Based Budget

In an effort to re-open the economy for recovery, the government has committed to ensuring access to COVID-19 vaccines. Equitable and timely access to vaccines would enable re-opening of the economy, which will greatly benefit the informal workers who are unable to operate due to containment measures. Also, COVID-19 vaccines would reduce uncertainty, boost confidence, and perhaps allow for a more rapid return of economic activities to pre-COVID-19 levels. To this end, in the 2021/22 budget, the government allocated Ksh 14.3 billon towards COVID-19 vaccines. However, the World Bank (2021) estimates show that to reach the recommended herd immunity of 70% vaccination, Kenya needs to invest a minimum of US$ 14.29 per capita. The current investment is equivalent to US$ 3.98 per capita which means for the country to reach herd immunity, the government would have to increase the current allocations by 3.5 times. With limited fiscal space and the absence of international assistance to access sufficient vaccines, the pandemic would continue to weigh on the economic outlook and potentially postpone the recovery, further affecting the poor and most vulnerable groups, and potentially leading to retrogression in the enjoyment of ESC rights. Re-introduction of stricter containment measures will significantly reduce labour and income opportunities as well as purchasing capacities of poor households. Also, it will reduce domestic resource mobilization due to the immediate impact on economic activity, and hence reduce available fiscal space for social spending.

3.3 Education

The government aims to leverage education and learning to transform the country and achieve sustainable development. In this regard, it 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. As part of its efforts to achieve SDG 4, particularly target 4.1 (universal primary and secondary education), it provides free primary education, and free day secondary education.

Kenya has made gains in reaching remote areas and disadvantaged communities at primary and pre-primary levels. According to UNICEF (2020), prior to the COVID-19 pandemic, nationwide enrolment in primary education stood at 93%, while at secondary level it stood at 53%. Kenya's Human Capital Index[45] (HCI) indicates that a child born in Kenya today is likely to be 55%[46] as productive when they grow up, as they could be if they enjoyed complete education and full health[47]. However, the pandemic places a huge burden on learning outcomes for over 17 million children, who missed more than six months of formal education in 2020. In addition, COVID-19 related school closures have forced some children, particularly girls, to drop out of school and they may not return due care work responsibilities at home and early marriages.[48]

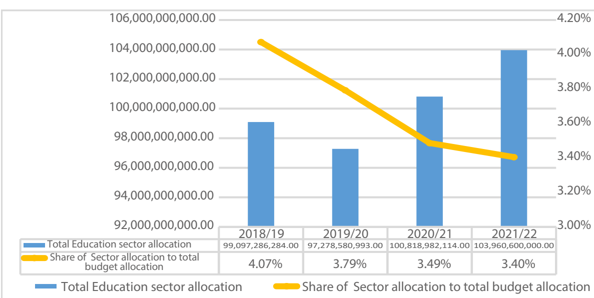
In the wake of the pandemic, protecting right holders and Kenya's human capital requires targeted interventions in the education sector. In 2021/22, the government plans to spend Ksh 103.9 billion or 3.4% of the total budget on early learning and basic education. This is an increase of 3.1% from 2020/21 allocation. The free day secondary school programme witnessed the largest change; an increase of 7% from Ksh 70 billion in 2020/21 to Ksh 75 billion in 2021/22. Despite the increase in the budget for early learning and basic education, allocations to primary education have declined by 8% from Ksh 20.9 billion in 2019/20 to Ksh 19.2 billion in 2020/21. At the same time, enrolment[49] in public primary schools decreased by 4.5% from

[41] Barasa, E. W., Maina, T., & Ravishankar, N. (2017). Assessing the impoverishing effects, and factors associated with the incidence of catastrophic health care payments in Kenya. International journal for equity
[42] in health, 16(1), 1-14.
Salari, P., Di Giorgio, L., Ilinca, S., & Chuma, J. (2019). The catastrophic and impoverishing effects of out-of-pocket healthcare payments in Kenya, 2018. BMJ global health, 4(6), e001809. https://doi.org/
[43] 10.1136/bmjgh-2019-001809.
The index is measured in terms of the productivity of the next generation of workers relative to the benchmark of complete education and full health. An economy in which a child born today can expect
[44] to achieve complete education and full health will score a value of 1 on the index.
[45] This is higher that the sub-Saharan average of 40%.
[46] World Bank (2020) Human Capital Index Report.
[47] Demographic Health Survey (2014) estimates early marriage for girls at 23%.
[48] KNBS (2020). Kenya Economic Survey; World Bank (2020) Human Capital Index Report.
[49] Demographic Health Survey (2014) estimates early marriage for girls at 23%; KNBS (2020). Kenya Economic Survey.

8,896,932 in 2017 to 8,488,274 in 2020. In nomadic and Arid and Semi-Arid Lands (ASAL) areas, enrolment decreased by 2.4% from 112,023 in 2017 to 84,786 in 2020.[50] The CESCR (2016) recommended increased investment in quality primary education for all without hidden costs, particularly for children living in informal settlements and ASALs.

Historically, the share of budget allocated to education has been on a decline since 2018/19. Existing studies have shown that increase in education expenditures is associated with increased school enrolment.[51] Therefore, with the declining share of education to total budget allocation, the country might lose a significant part of human capital accumulation, reversing previous gains, including in the right to education, with intergenerational consequences. The pandemic, coupled with severely reduced fiscal space, may result in retrogression in the right to education for all.

Figure 5: Budget allocation to Education sector (in Ksh)



Source: Author's computation from the Programme Based Budget

3.4 Water and Sanitation

The government's commitment to water and sanitation is enshrined in Article 43 of the Constitution which guarantees the right of all Kenyans to clean and safe water in adequate quantities, and to reasonable standards of sanitation. However, in 2015, Kenya ranked 76th out of 117 countries on the WASH Performance Index—a quantitative measure of the progressive realization of the human rights to water and sanitation. The ranking suggests that, compared to other countries, Kenya is not investing its maximum available resources to progressively realize the rights to water and sanitation.[52]

A significant proportion of the Kenyan population (32%) relies on unimproved water sources, such as ponds, shallow wells and rivers, while 53% of Kenyans lack access to basic sanitation.[53] These challenges are especially evident in rural areas and urban slums where people are often unable to connect to piped water infrastructure, which has implications in achieving SDG 6. For the population living in urban areas, only 15% do not have access to safe and reliable drinking water, in comparison to 43% in rural areas. Approximately two-thirds of children in rural areas (60%) are deprived of adequate sanitation compared to 15% in urban areas.[54] The urban-rural inequality is also wide for water deprivation, which is 28 percentage points higher in rural areas. Despite improved access to WASH in urban areas, there are significant inequalities between formal and informal settlements. For instance, OHCHR (2020)[55] found that approximately 57% of households surveyed in Nairobi's informal settlements do not have regular accsess to public water sources. The households surveyed indicated that water availability had worsened after the COVID-19 outbreak and the price significantly increased, limiting access for the poor living in informal settlements. The demand for clean water and sanitation services has become more pronounced, given the demands for sanitation and hygiene due to COVID-19. Hence, the urgent need for increased financing cannot be overemphasised. The World Health Organization (WHO) has demonstrated that washing hands saves lives, and WASH services are the first line of defence against waterborne diseases and COVID-19.

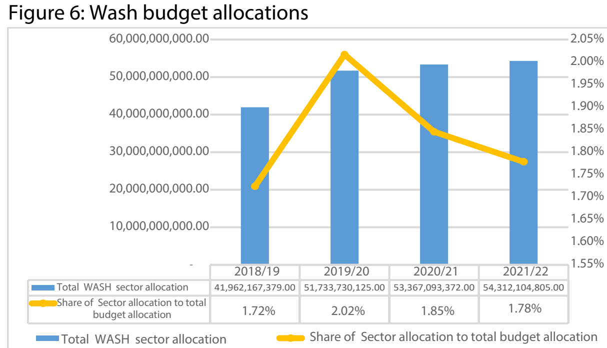
In 2021/22, the government plans to spend Ksh.54.3 billion or an equivalent of 1.78% of the total budget on water and sanitation. This is a 2% increase from the 2020/21 allocation. The increase reflects increased investments (39%) in the Water and Sewerage Infrastructure programme which seeks to increase accessibility of water (additional 32,000 people) and sanitation services (additional 37,000). In the medium term 2021 to 2023, the Ministry of Water, Sanitation, and Irrigation seeks to improve access to water services from 68% to 80% nationally.[56] This will be undertaken through completion of some key projects such as the Northern Collector Tunnel project, Kenya Towns and Sustainable Water Supply and Sanitation

47 Ibid.
48 Anyanwu J.C and Andrew E.O. (2007). Education expenditures and school enrolment in Africa. Economic Research Working Paper, No.92.
49 Ryan Cronk and others, "The WASH Performance Index report" (The Water Institute at the University of North Carolina, Chapel Hill, North Carolina).
50 KNBS (2015). Kenya Demographic Health Survey (2014).
51 KNBS (2018). Comprehensive Poverty Report (2018).
52 From the programme-based budget 2021/22.
55 Right to Water in Kenya: Assessment of Access to Water in Informal Settlements, https://www.ohchr.org/Documents/Countries/KE/Assessment_right_water_Kenya2020.pdf.
56 World Bank (2012). Economic Impacts of Poor Sanitation in Africa.

Programme, Thwake dam, Karimenu II dam, Thiba dam and Mwache dam; construction and rehabilitation of water supplies and sanitation in urban and rural areas; construction of mini dams to store water for household and agricultural use; and rehabilitation of existing dams and water pans.

Since 2019/20, the share of WASH investments to total budget have decreased from 2.02% to 1.78% in 2021/22. During the same period, WASH as a share of GDP has decreased from 0.56% to 0.49%. This level of investment is low given that the country loses an equivalent of 0.9% of GDP due to poor sanitation.[57] The government's efforts have focused on enhancing access and coverage of water supply to households whilst other aspects of sanitation and hygiene such as handwashing facilities and menstrual hygiene have not been prioritised. In the wake of the COVID-19 pandemic, menstrual hygiene requires specific consideration due to the complications it presents for girls attending primary and secondary schools especially in rural areas. The lack or limited availability of facilities for girls will likely affect the dropout and school attendance rates with an eventual effect on human development and human rights. To ensure everyone has access to improved WASH services, the CESCR (2016) recommended that the government increase the budgetary allocation to improve access to water and sanitation, particularly in urban informal settlements and rural areas. 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 which were set by the Water Services Regulatory Board.

Figure 6: Wash budget allocations



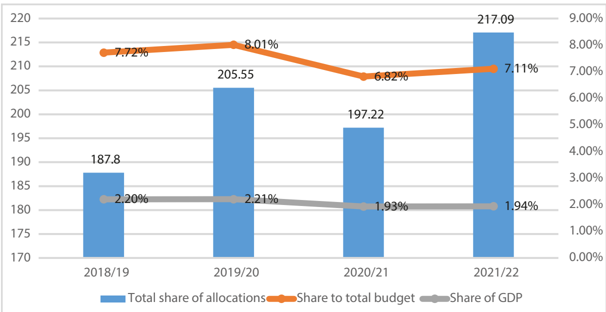
Source: Author's computation from the Programme Based Budget

[57] World Bank (2012). Economic Impacts of Poor Sanitation in Africa.

4. GOVERNANCE, JUSTICE, LAW & ORDER SPENDING

Spending for governance, justice, law and order has witnessed increased investment in the last four years. In nominal terms, the total amount of governance has moved from Ksh 187 billion in 2018/19 to Ksh 217 billion in 2021/22. The total share of governance, justice, and law and order has averaged 7.41% of the total budget and 2.07% of GDP for the period 2018/19 to 2021/22 (see figure 7).

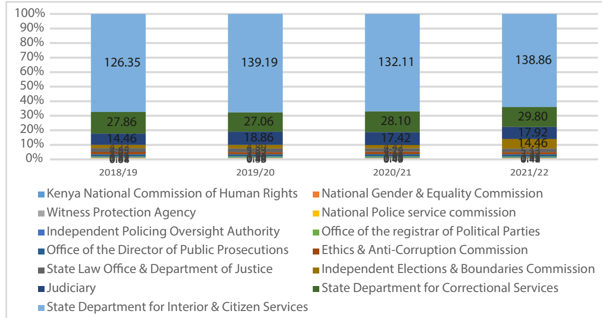
Figure 7: Total allocations for governance, justice, law & order



Source: Author's computation from the Programme Based Budget

In terms of the breakdown, the largest share of allocations for the period 2018 to 2021 (see figure 8) went to the State Department for Interior & Citizen Services,[58] followed by the State Department for Correctional Services,[59] and the Judiciary. In 2021/22, the State Department of Interior received an allocation of Ksh 138.86 billion —equivalent to 4.55% of the total budget and representing a 5% increase from Ksh 132.11 billion in 2020. In the run-up to the general elections in 2022, the Independent Elections and Boundaries Commission had the highest increase in allocation increasing by more than 2.23 times from Ksh 4.4 in 2020 to Ksh 14.4 billion in 2021. Institutions such as the Ethics and Anti-Corruption Commission and the Office of the Director of Public Prosecutions, which are responsible for fighting corruption and are key for accountability on use of public funds, have received an equivalent of 0.11% of the national budget each. Institutions such as the Kenya National Commission of Human Rights and the National Gender & Equality, and Witness Protection Agency have received the least allocation—less than 0.02% of the total budget allocations, an equivalent to 0.004% of the GDP.

Figure 8: Estimates for governance, justice, law & order



Source: Author's computation from the Programme Based Budget

In 2021/22, the allocations for the Judiciary increased by 3% from Ksh 17.4 billion in 2020 to Ksh 17.9 billion in 2021—equivalent to 0.59% of the total budget and 0.16% of GDP. The Judiciary has received relatively lower investments when compared to the other arms of government, i.e. Legislature and Executive. In 2021/22, the share of Executive allocations to total budget is 59.2% and the Legislature is 1.2% —twice the share allocated to the Judiciary. Compared to the resource requirements, Judiciary is severely underfunded. Table 2 shows that the deficit (actual allocations vs resource requirement) has increased from Ksh 4.43 billion in 2019 to Ksh 17.46 billion in 2021. The deficit as a share of resource requirements has increased by 30 percentage points from 19.02% in 2019 to 49.34% in 2021. This underinvestment affects access to justice, especially for the poor and most vulnerable. Also, this has hampered establishment and construction of courts in counties and sub-counties, affected key programmes such as the constitution of special benches, and the operationalization of small claims courts, court annexed mediation, pro bono services, mobile courts and circuits have been scaled down due to lack of adequate resources.[60] The insufficient funding has also affected court operations, automation and recruitment of judicial officers and staff. Therefore, the principle of equitable sharing of available resources amongst arms of government remains a serious policy concern for human rights and justice advocates.

Table 2: Resource requirements versus Allocations in Judiciary

	2019	2020	2021
Resource requirement	23.29	37.42	35.38
Actual Allocations	18.86	17.42	17.92
Deficit	4.43	20	17.46
Deficit as a share of resource requirement	19.02%	53.45%	49.34%

Source: Author's computation from the Judiciary budget (various issues)

[58] The department is mainly responsible for providing internal security; oversight over internal security; and coordinate national values and principles of governance.
[59] The is mandated to contain offenders in humane and safe custody, supervise and provide correctional services to all offenders, as well as effectively contribute to expeditious administration of criminal justice.
[60] Judiciary (2020). The Medium-Term Expenditure Framework Budget Report for the FY 2021/22-FY 2023/24.

5. CONCLUSIONS & POLICY IMPLICATIONS

The human rights-based budget analysis shows that the country has underinvested in social sectors. The total share of investments in social protection, health, education, and WASH has averaged 10.67% and 2.98% of the GDP for the period 2018 to 2021. Also, the country has underinvested in governance, justice, and law and order. The total share for governance, justice, and law and order has averaged 7.41% of the total budget and 2.07% of GDP for the period 2018 to 2021.

The underinvestment in social and governance sectors is due in part to the ever-decreasing fiscal space as a result of increased debt servicing costs and reduced revenues. The debt servicing alone accounts for 38% of the total budget and 63% of the total domestic revenues. The underinvestment in social sectors, in particular, hampers the country's development path towards the attainment of SDGs. It has serious implications for the progressive realization of ESC rights as the core obligations of several rights, such as social security, education, health and water and sanitation, have not yet been realised. Moreover, the budget allocations for 2021/2022 do not address sufficiently the needs of disadvantaged and vulnerable groups.

In order to safeguard well-being and livelihoods and ensure no one is left behind, it is imperative that the Government scales up investment in social sectors, particularly focusing on the most disadvantaged and marginalised households, throughout the COVID-19 containment and recovery phases. The investments should focus on realizing essential levels of ESC rights (education, social protection, health, and water and sanitation) in line with Kenya's minimum core obligations during this period of containment, and the progressive realization of ESC rights in the recovery stage.

Also, in order to sustainably finance the social sectors, the Government needs to expand fiscal space by increasing domestic resource mobilization, particularly by exploring more progressive tax measures on income and wealth. Increases in regressive taxes such as Value Added Tax should be avoided at this time of reduced income and job losses, as they are likely to severely affect the poor and most vulnerable. Also, given the limited fiscal space, the Government should consider reallocating resources from other non-essential expenditures, such as defence, to essential social spending.

In addition, scaling up investments to ensure equitable access to COVID-19 vaccines will promote herd immunity to enable the economy to fully re-open— which will greatly benefit workers in the informal sector who have been unable to operate due to containment measures. Also, equitable access to COVID-19 vaccines would allow for a more rapid return of economic activities and increase domestic resources, hence expanding fiscal space that could be channelled towards social spending and progressive realization of ESC rights and attainment of the SDGs, leaving no one behind.

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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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