



Economic & Social Rights Centre - Hakijamii

'Putting people first'

Yaya Court, Suite 8, Along Chania Avenue  
P.O Box 11356-00100  
Nairobi, Kenya  
Tel +254 726 527 876

## IS THE GOVERNMENT RESPECTING, PROTECTING, PROMOTING & FULFILING THE RIGHT TO EDUCATION FOR ALL IN KENYA?

### *Right To Education Index Findings for Kenya, 2018*

#### 1.0 Introduction

The Right to Education Index (RTEI) is an initiative of RESULTS Educational Fund whose aim is to drive accountability and progress towards the right to education in countries all over the world. The Organization partners with Civil Society Organizations from different countries, with each country having one core Civil Society Organization to collect data on a wide range of indicators explicitly derived from the international right to education framework. A questionnaire containing close ended questions is used by the Civil Society Organization to collect the data and thereafter subjected to a double-blind peer review by in-country independent experts and national research organizations. The questionnaire is then finally provided to national



governments for further review. Reconciliation of discrepancies is then done by RESULTS Educational Fund and data from the final completed questionnaires is used to create the global RTEI report which can be used by Civil Society Organizations and the public at large to hold governments and institutions accountable for their commitments to the right to education as it reveals key areas in need of improvement, offers country-to-country comparisons and tracks progress over time.

Fully reviewed and reconciled questionnaires are used to calculate RTEI scores which identify areas that governments can improve upon as they make progress towards the right to education. Scores range between 0 to 100 with 0 being the right to education is not upheld and 100 being the optimum. Kenya obtained an overall score of 78% with the sub-theme of sanitation having insufficient data available and the lowest scores being on the sub-themes of discrimination at 55% and opportunity and indirect costs at 57%.

## 2.0 Issue Area 1: Sanitation

The Government of Kenya provided free primary education in the country in 2003 and this resulted in a rapid increase in the number of children in the primary schools thus taking a toll and placing severe strains on the existing infrastructures like toilets. There is no law or policy in Kenya place setting the minimum standard of pupils per toilet for either primary or secondary schools. The toilets in some schools in the country depict a sorry state as they are on the verge of collapsing whereas in other areas there are no toilets at all forcing children to use the fields. There are several cases where the walls of the toilets have caved in while pupils are using the facilities. The Government thus focused on constructing toilets in schools but has not made any effort in place setting standards for the minimum number of pupils per toilet or rehabilitating the existing toilets thus posing health risks to the pupils. The law in Kenya only states that institutions should have sanitary facilities, including bathrooms for both learners and other persons, segregated by gender and age.<sup>1</sup> This means that the number of pupils per toilet is at the discretion of the school. In many schools, the distance between the classrooms and the available toilets is also an issue. For instance in some schools pupils cover a distance of about one kilometer to reach the toilet whereas in other schools, children have to queue for a long time to wait their turn to use the toilet thus disrupting their learning. In many public primary schools, girls miss school during their menstrual period as toilets lack doors and thus do not offer the privacy they need for them to change their sanitary towels.<sup>2</sup> Many pupils may use one toilet and this poses a health risk to the pupils which may lead them to miss school affecting their education. In addition to these, the toilets available in many public schools are not clean as there are no cleaners hired to clean them by the Government. A majority of the schools seek for support from donors to rehabilitate and maintain its toilets. Good sanitation is thus an important aspect of providing education and it is prudent for the Government to place set minimum standards.

Many schools have access to water be it through tap, borehole, river or rain however the same may not be safe for drinking and may thus pose health risks to pupils causing diseases that affect their attendance and performance in school and further impeding their growth and development. It is crucial for the water being offered to students to be clean as it maintains hygiene and will reduce student dehydration thus improving cognitive abilities.

## 3.0 Issue Area 2: Discrimination

The national laws in Kenya forbid discrimination in education on several grounds however they do not explicitly state the grounds of property as well as sexual orientation and gender identity. Further to this, pregnant school girls and schools girls who have had a baby are discriminated upon as they are more often than not expelled from school when they are discovered. In Kenya, 15% of women age 15-19 have already had a birth, and 3% are pregnant with their first child.<sup>3</sup> Pregnancy is the number one reason why they drop out of school and it is more often than not unintended. There is no national legislation forbidding schools from expelling girls for pregnancy or having a baby however there exists two separate policies being the 1994 “Return to School Policy” and the 2009 “National School Health Policy” which both seem to touch on the issue. While the Return to School policy implementation guidelines imply that pregnant learners should be sent home, the National School Health Policy stipulates that such learners should be allowed to remain in school for as long as possible. The two policies seem to contradict one another and this is probably why the practice of expelling girls from schools for being pregnant or having a baby is still regularly practiced. The practice leads to lack of education for these girls forcing them to

---

<sup>1</sup> Section 64 (c) of the Basic Education Regulations 2015

<sup>2</sup> Kimani, J (2014). Increased Pupil Enrolment taking Toll on Sanitation in Nakuru Public Schools. Available at: <https://reliefweb.int/report/kenya/increased-pupil-enrolment-taking-toll-sanitation-nakuru-public-schools>

<sup>3</sup> Kenya National Bureau of Statistics (2015) Kenya Demographic and Health Survey 2014 p. 78. Available at: <https://dhsprogram.com/pubs/pdf/fr308/fr308.pdf>

seek for unsafe abortion services to enable them continue with their schooling. In Kenya 17% of women under the age of 20 years seek post-abortion care services in health facilities.<sup>4</sup>

Another group of children facing discrimination in Kenya are refugees. Kenya is home to close to one million refugees spread across the Kakuma Refugee Camp, Dadaab Refugee Complex and Kalobeyei Settlement Scheme which house more than 200,000 school going children. Refugee families need official documentation to ensure that their children can access the primary and secondary education system. Further, the Government has introduced the National Education Management Information System (NEMIS) which is a comprehensive Education Data Management Information System that requires all students to issue the school with a birth certificate and if they do not they will not be admitted to the school. This act is detrimental to refugees as displacement frequently results in the loss of identity documents without which refugees may be unable to enroll and access education amounting to infringement of their right and discrimination on the ground of social origin.



#### 4.0 Issue Area 3: Opportunity and Indirect Costs

Despite the fact that the national laws in Kenya explicitly provide for free and compulsory primary education and the Government allocating 22.9% of the national budget to education,<sup>5</sup> there are a number of public primary schools that still charge school fees and many others levying indirect costs such as payment of staff, school trips, payment for development of infrastructures in the school and graduation ceremonies.<sup>6</sup> This is mostly so

because the government delays in disbursing the funds and the cost have to be met by the parents.<sup>7</sup> Furthermore, the Basic Education Act creates a proviso to the effect that other charges may be imposed at a public school with the approval of the Cabinet Secretary in consultation with the County Education Board provided that no child shall be refused to attend school because of failure to pay such charges. Many schools however still contravene this law and send children home for failure to pay such charges. These costs also lead to high dropout rate as some parents cannot afford to pay for their children due to poverty.

Opportunities for secondary and university education are also a challenge in Kenya particularly for children from poor families as well as refugee children. This is because the demand for education among refugees outstrips supply for example in Kakuma refugee camp, more than 40% of primary age refugees who need access to education do not have it.<sup>8</sup> Furthermore, those who access primary education and complete it have a challenge accessing secondary education as there are very few secondary schools available in the camps and the Encampment Policy restricts the movement of refugees by limiting them to

<sup>4</sup> Birungi, H., Undie, C., MacKenzie, I., Katahoire, A., Obare, F., & Machawira, P. (2015). Education Sector Response to Early and Unintended Pregnancy: A Review of Country Experiences in Sub-Saharan Africa. STEP UP and UNESCO Research Report p.4. Available at: [http://www.popcouncil.org/uploads/pdfs/2015STEPUP\\_EducSectorResp.pdf](http://www.popcouncil.org/uploads/pdfs/2015STEPUP_EducSectorResp.pdf)

<sup>5</sup> Institute of Economic Affairs (2017) Budget Analysis 2017 Available at: <http://www.iekenya.or.ke/publications/bulletins/budget-analysis>

<sup>6</sup> Githunguri Residents Association v Cabinet Secretary - Ministry of Education, Attorney General & 5 others [2015] eKLR Available at: <http://kenyalaw.org/caselaw/cases/view/109726/>

<sup>7</sup> Wanzala, O. (2018, October 1) Govt Releases Sh15.4bn to Primary, Secondary Schools. Daily Nation. Available at: <https://www.nation.co.ke/news/education/Govt-releases-Sh15-4bn-to-schools/2643604-4786424-mrnkqq/index.html>

<sup>8</sup> UNHCR (2017, November) Refugee Students Among Top Scorers in Kenya's National Primary School Exams. Available at: <http://www.unhcr.org/ke/12861-refugee-students-among-top-scorers-kenyas-national-primary-school-exams.html>

the two camps being Dadaab and Kakuma. For those children from poor families who can afford to finish secondary education, access to university is a challenge as all public universities in Kenya charge tuition fees, the average being USD 160.

Further to these, education opportunities are a challenge for children with disabilities as there is no much reasonable accommodation measures available for them in schools. This is despite the fact that that 11% of all learners in Kenya have one or another form of disability. Most schools are not equipped to handle children with disabilities and the government has not provided enough textbooks and learning aids.<sup>9</sup> In addition to this, majority of head teachers in primary integrated schools and special units do not have any training in special needs education, this thus leads to lack of access to quality education for these children as well as high dropout rates due to the uncondusive learning environment.

Finally, child labor in Kenya denies many children an opportunity to education. The legal minimum age of employment in Kenya is 13 years contrary to the ILO Minimum Age Convention. The Employment Act provides that a child between 13 years of age and 16 years of age may be employed to perform light duties which are likely not to harm the child's health or development and not to prejudice the child's attendance at school, his participation in vocational orientation or training programs.<sup>10</sup> The reality however is that the same causes children to miss school and according to statistics, 35.6 % of children in Kenya under 15years of age are working.<sup>11</sup>

## 5.0 Data Availability

In the course of the Right to Education Index research, it was challenging to find certain data which would have perhaps increased Kenya's overall score and they include the budget allocated to primary, secondary, vocational & technical training and tertiary education, policies in place particularly the 1994 Return to School Policy and the 2009 National School Health Policy; (despite its longstanding tenure, the re-entry policy has never been properly implemented or disseminated in recent years, a Ministry of Education circular was issued in the mid-1990's; however, no evidence was found of the policy being circulated again afterwards),<sup>12</sup> information on children with disabilities and data on basic parameters such as the pupil-textbook ratio for secondary school, percentage of schools that have information technology, percentage of household spending spent on primary and secondary education, literacy rate, gross and net enrolment rate as well as completion rate and overall passing score.

There is thus need for the Government of Kenya to collect and/or publish and make publicly available data on:

Data Type 1: The Budget Documents. The budget allocated to the different levels of education need to be made publicly available.

Data Type 2: Policies touching on education should be published on the Ministry of Education's website.

Data Type 3: Collect and publish data on children with disabilities in schools.

Data Type 4: Disaggregate data on basic parameters to identify data for different categories and sub-populations e.g. urban and rural populations; different income levels.

---

<sup>9</sup> NGEN (2015). Access to Basic Education by Children with Disability in Kenya. Nairobi: National Gender and Equality Commission Headquarters. Accessed at: <http://www.ngeckenya.org/Downloads/Access%20to%20Basic%20Education%20by%20Children%20with%20Disability.pdf>

<sup>10</sup> Section 53 (1)

<sup>11</sup> <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/kenya>

<sup>12</sup> Birungi, H., Undie, C., MacKenzie, I., Katahoire, A., Obare., F., & Machawira, P. (2015). Education Sector Response to Early and Unintended Pregnancy: A Review of Country Experiences in Sub-Saharan Africa. STEP UP and UNESCO Research Report p.8. Available at: [http://www.popcouncil.org/uploads/pdfs/2015STEPUP\\_EducSectorResp.pdf](http://www.popcouncil.org/uploads/pdfs/2015STEPUP_EducSectorResp.pdf)

## 6.0 Recommendations for the Government of Kenya

### ➤ Issue Area 1

- Establish and enforce a policy setting the minimum standard of pupils per toilet for primary and secondary schools. This will ensure no health risks are posed to children and reduce absenteeism in schools due to disease outbreaks and menstruation by girls.
- Promote good hygiene, sanitation and water practices in all public schools in Kenya through sensitizing the school children on the same by conducting trainings and developing reading materials.
- Allocate resources towards construction of toilets and provision of clean water in all schools in Kenya.
- Connection of sanitation facilities in schools in urban areas to sewerage systems.

### ➤ Issue Area 2

- Support and implement the Care and Protection of Child and Parents Bill, which seeks to among other things provide a framework through which an expectant girl child or a child parent may actualize their right to basic education.
- The 1994 “Return to School Policy” should be revised to ensure it is in line and not contradictory to the 2009 “National School Health Policy”. This will ensure that the policy is clear on the issue.
- Sensitize school heads, teachers and parents on the existing policies to ensure they comply.
- Document and track the re-entry of out of school girls in all primary and secondary schools in the country so as to ensure that these children have access to education.
- Refugee children should be exempted from issuing birth certificates to schools.

### ➤ Issue Area 3

- Increase the budget for education and ensure there is no delay in disbursements of funds.
- The number of secondary schools available in refugee camps should be increased through partnership with donors so as to ensure the demand meets the supply.
- Capitation fund for children with disabilities should be disaggregated according to type and severity of disabilities.
- Generate data on children with disabilities which will be used to improve service provision to learners with disabilities in schools.
- Increase the legal minimum age to 15 years so as to comply with the ILO Minimum Age Convention.