

COUNTRY BRIEF

MAKING THE RIGHT TO EDUCATION A REALITY IN KENYA

1. INTRODUCTION

1.1 About Elimu Yetu Coalition (EYC)

EYC is Kenya's National Education Coalition, established in 1999 as a national platform for civil society



organizations, professional groupings, education/research institutions and other non-state actors in Kenya's education sector to lobby for the implementation of Education for All (EFA). It has a membership of about 140 Civil Society Organizations (CSOs) actively involved in and committed to efforts to domesticate global conventions including implementation of SDG 4 and 5 in Kenya for the attainment of quality basic education for all.

1.2 About RTEI

The Right to Education Index (RTEI) is a global index built out of the international right to education framework to monitor national progress towards its fulfillment. It reveals key areas in need of improvement, offers country-to-country comparisons, and tracks progress over time. The current RTEI initiative is led by RESULTS, a non-profit citizens' advocacy organization that has been creating the public and political will to end poverty by empowering individuals to exercise their personal and political power for change since 1981, in partnership with World Vision International, a Christian relief, development and advocacy organization.

1.3 RTEI PARTNERSHIP

EYC has partnered with RESULTS and World Vision to monitor the right to education in Kenya using a framework that consists of five core areas: Governance, Availability, Accessibility, Acceptability and Adaptability. The index was calculated by examining key indicators in these areas focusing on policy and practice. Initial information was provided by EYC through filling in a comprehensive [RTEI questionnaire](#). The information was peer reviewed before final scores were reached. Kenya has an average score of 70% on RTEI.

2. OVERVIEW OF RTEI RESULTS

Kenya RTEI overall score is 70%. It is ranked 8th out of 15 countries whose RTEI was measured. Kenya is behind; UK (85%), Brazil (84%), US (82%), Philippines (83%), Palestine (81%), Indonesia (73%), and Honduras (72%). It is however ahead of Zimbabwe (66%), Sierra Leone (60%), Tanzania (61%), Uganda (57%), DRC (55%), Ethiopia (56%) and Haiti (53%).

On **Acceptability**, Kenya scored 89%, this was its highest rating, it included aims of education (100%), learning outcomes (92%), and learning environment (75%). **Adaptability** which was the lowest score per category area at 61% was favorably considered in the sphere of Migrants, Refugees, IDPS, and Children Deprived of Liberty (80%) However, low scores were realized on Children of Minorities & Indigenous Peoples (44%), Children with disabilities (50%) and Armed Conflict (67%) and Girls' Education (62%). Other scores were **Governance (72%)** which was boosted by a score of 100% on plan of Action, but

registered low scores on National Law (56%) and Financing at 61%.; **Availability (82%)** where high scores were recorded on sanitation (94%) while the lowest score was on learning materials (61%).and; **Accessibility** (66%) where participation was measured at 71% and free education at 62%

3. IMPACT OF COVID-19 ON THE RIGHT TO EDUCATION

100% of students were affected by the closure of schools due to COVID-19. The schools were closed in March 2020 and fully opened in January 2021. They were partially opened for exam candidates in September 2020. School closures lasted for about 28 weeks and on average about 75% of the school calendar was affected. The Government re-organized the school calendar to cope with the loss of learning time.

Like many countries across the world, Kenya introduced remote learning to provide education while schools were closed. However, few learners were reached owing to locality and lack of internet connectivity. Those mostly affected were children living in rural areas, children without access to electricity, and children with disabilities. No tech, low tech, and high tech modalities were used ranging from community-based initiatives, use of radios, and the use of phones and computers.

Kenya took steps to identify those most at-risk of dropping out of school and identified those that did not return to school by setting-up a reporting system.¹Cases of early pregnancies, dropouts, and early marriages were reported as resulting from the prolonged school closures. While Teachers in public schools were paid during unplanned school closures, some teachers in private schools were not paid because schools had no source of income.

Kenya had an education emergency response plan to help mitigate the impact of COVID-19 in schools. However, there was no budgetary allocation. The Global Partnership for Education (GPE) provided Kenya 11 million USD to help with COVID-19 management in schools.²

Public health measures were established in almost all schools in Kenya. Children and educational staff have access to soap and clean water and educational staff were provided³Guidelines to help address matters of public health during the crisis. Teachers were prioritized to receive vaccines and to date about 90% of teachers have been fully vaccinated.⁴

Given that COVID-19⁵ is still with us, it is prudent to monitor the situation and adopt strategies that can keep learners in schools, especially girls. According to UNICEF about 250,000 children were out of schools in 16 counties. These children are still at the risk of teenage pregnancies and child marriage.⁶

4. DATA AVAILABILITY

There is no regular data collection pattern for important education indicators necessary to monitor the right to education in Kenya: "The existing data management practices in the sector do not support evidence-based, timely, reliable and correct data. Currently, there are overlapping school level data maintained by

¹ <https://www.scidev.net/sub-saharan-africa/news/kenya-lockdowns-led-to-pregnancies-school-dropouts/>

² Kenya Basic Education COVID-19 Emergency Response Plan.

³ https://planipolis.iiep.unesco.org/sites/default/files/ressources/kenya_ministry_of_education_-_covid-19_guidelines_15th_sept_2020.pdf

⁴ <http://www.xinhuanet.com/africa/20220205/92d2492c53c9480fa819ae6a402034d5/c.html#:~:text=By%20mid%2DAugust%202021%2C%20according,of%20vaccines%20by%20the%20tutors.>

⁵ Republic of Kenya; Ministry of Education State Department of Early learning and Basic education; guidelines on health and safety protocols for reopening of basic education institutions amid covid-19 pandemic (2020)

⁶ <https://www.unicef.org/kenya/press-releases/new-drive-launched-get-250000-out-school-children-back-class-16-counties>

TSC, KNEC and MOE."⁷

Kenya fails to collect the following data:

On Availability, the current statistical booklet does not have data on pupil-toilet ratios. But the ratio in Kenya is estimated to be at 1:200 for girls and 1:230 for boys.⁸ This calls for the improvement of these facilities.

There is need to provide updated information on water sources in schools in the latest statistical booklets. There is no mention of a minimum standard for pupil to teacher ratio in the National Education Sector Support Plan 2018-2020, while the School Safety Standards Manual 2018 sets the standard at 50:1 (p.52). There is no data on the mean teacher salary relative to the national mean salary.

Currently there is no data on the amount of household spends on education- this is an important indicator on the status of free education. It is known that households pay additional levies in schools but the burden of these costs on households is unknown.

Early childhood development and education is a devolved function.⁹ There is however no data on ECDE financing allocation at the counties¹⁰ This calls for a better understanding on what is currently being allocated to the sub-sector at the county level

There has always been a challenge on data related to learners with disabilities, just as there is no data on teachers that have been trained to teach children with disabilities.

5.1 ISSUE ONE: CHILDREN WITH DISABILITIES, GIRLS' EDUCATION, AND SCHOOL SAFETY

Matters of Children with Disabilities (50%) and Girls' Education (62%) were some of the areas that contributed to the score of 58 under Adaptability.

National laws recognize the right to education for children with disabilities. The Constitution of Kenya, in Article 53 (1) (b) states that every child has a right to free and compulsory basic education. Additionally, the Ministry of Education is implementing the National Special Needs Education Policy Framework (2009) targeting learners with physical, visual, hearing, speech and other impairments. Although accommodation is mentioned in legal statutes and policy, there is limited implementation in schools.

Overall, according to the Education Sector Analysis 2018, there are no accurate statistics on learners with disabilities in Kenya.¹¹ This includes data for teachers trained to teach children with disabilities. It is however approximated that about 9.5% of children with disabilities are enrolled in 'special schools.' It is

⁷ National Education Sector Support Plan 2018-2022 1.3 data management in the Education sector

⁸ www.standardmedia.co.ke/counties/article/2001284760/shame-of-toilets-in-public-schools#:~:text=The%20numbers%20continue%20to%20rise%20rapidly.%20The%20World,at%201%3A200%20for%20girls%20and%201%3A230%20for%20boys

⁹ FOURTH SCHEDULE [Articles 185(2), 186(1) and 187(2)]

¹⁰ <https://globaldevincubator.org/strengthening-early-childhood-development-ecd-delivery-in-kenyan-counties/>

¹¹ <https://africacheck.org/sites/default/files/Kenya-Basic-Education-Statistical-Booklet-2019.pdf>

important to monitor this statistic as this number should reduce as education becomes less segregated and more inclusive.

On Girls' Education, the expulsion of girls from school because of pregnancy or for having a baby is not explicitly forbidden and stated in the national legislation, because of this, such cases do occur but rarely. There are re-entry guidelines enabling pregnant girls and adolescent mothers to remain in school and return which can be done at the beginning of the school year. This in itself is restrictive.¹² Since the guidelines are recent, it is critical that a programme be initiated to establish the effectiveness of the guidelines in promoting retention rates in schools. The law prohibits child marriage (below the age of 18). The Children's Act and the Marriage Act 2014 section four require that all marriage parties should be above 18 years of age. The World Bank places the percentage at 23% for marriage before 18 (World Bank 2014).¹³ There is the need to monitor the situation in schools given that child marriage and pregnancy were consequences of prolonged school closure.

Though age-appropriate comprehensive sexuality education (CSE) is not part of the national curriculum, Kenya is one of the countries that have made a commitment on CSE.¹⁴ The implementation for CSE however is through life skills education where abstinence is a huge component of the training. And although teachers are trained to teach life skills, they are not trained to deliver CSE. There is need to train teachers in age appropriate CSE with the view of having it taught in schools

On school safety, Al Shabab have targeted teachers in the North Eastern parts of Kenya. This has led to an acute teacher shortage in the region.¹⁵ "During the 2017-2019 reporting period, GCPEA collected eight reports of attacks on schools," 11 reports of attacks on students, teachers, and other education personnel, and 15 attacks on higher education.¹⁶

The national government has adopted specific measures to protect children from violence and abuse in school. The Constitution of Kenya 2010 stipulates that, the child has a right to be protected from all forms of violence, inhuman treatment and punishment. The Safety Standard Manual by the Ministry also puts measures in place to ensure that the child is safe at school. Kenya is a signatory to the Safe Schools Declaration (signed in 2015). In practice, however children in schools are not free from violence and abuse. According to UNICEF, half of Kenyan children suffer violence including in schools.¹⁷ National laws prohibit corporal punishment in schools. Section 4(p) of the Basic Education Act 2013 discourages corporal punishment in schools, and it is therefore rarely practiced. However, there are teachers that use it because

¹² National Guidelines for School re-entry in Early Learning and Basic Education 2020

¹³ <https://data.worldbank.org/indicator/SP.M18.2024.FE.ZS>

¹⁴ Ministerial Commitment on comprehensive sexuality education and sexual and reproductive health services for adolescents and young people in Eastern and Southern Africa, 2013, <http://hivhealthclearinghouse.unesco.org/sites/default/files/resources/E...>

¹⁵ <https://www.crisisgroup.org/africa/horn-africa/kenya/b159-how-shield-education-al-shabaab-kenyas-north-st>

¹⁶ http://protectingeducation.org/wp-content/uploads/eua_2020_kenya.pdf

¹⁷ <https://www.unicef.org/kenya/press-releases/Action-urged-as-national-survey-finds-half-of-Kenyan-children-suffer-violence>

they believe that it is for the good of the child.¹⁸ These teachers require training in order to eliminate corporal punishment in Kenyan schools.

5.2 ISSUE TWO: EDUCATION FINANCING

The percentage of the national budget allocated to education is about 25.95%¹⁹. This is above the globally recommend rate by the Global Partnership for Education (GPE) of 20%. About 500 billion Kenyan shillings was allocated to education in the financial year 2021/2022. The percentage of the approved budget for education that was actually executed was 95.1%.²⁰ In the financial year 2020/2021 the Education Sector was allocated around 494 billion Ksh. During the same year it spent 470 billion Kenyan shillings representing a 95.1% of execution. There is a difference of 24 billion shillings which begs the question on why this is the case. If this is a case of under spending, it justifies the campaign for increase in capitation grants. For instance, the allocation to fund free primary education is 3.9%, utilizing the difference on Free Primary Education can end up doubling capitation grants to schools that could be used to boost sanitation conditions in some schools whose pupil to toilet ratio is 1:200. This difference can also be used to boost funding to teaching and learning resources which are allocated only 0.55% whereby the benchmark for Teaching and learning materials and capital development are both benchmarked at 33% (UIS, 2016).

If the difference between approved budget and what was actually spent is attributed to funds not getting to the Ministry of Education, reasons as to why this is the case should be investigated or researched. This may call for a tax justice campaign endeavor to actualize full allocations.

6. RECCOMENDATIONS

1. Monitor COVID-19 situation in schools and adopt strategies that can keep learners in schools especially girls.
2. Establish ECDE funding levels at the Counties to help engage appropriately on ECDE policy matters. Additionally, petition the Council of Governors can set a cap for ECDE allocation at the counties which can be then used to measure county performance as per set cap.
3. Build partnerships around back-to-school campaigns.
4. Engage with the Government on the need to have crucial sector data in the next publication of the Ministry of Education Statistical booklet.
5. Support initiatives aimed at collecting data and evidence on children with disabilities.
6. Petition the Government to offer reasonable accommodation for children with disabilities in schools, including enhancing physical access and provision of necessary equipment.
7. Follow-up on the implementation of guidelines for school re-entry to gauge effectiveness. Including advocating for the removal of all conditions for pregnant girls re-entry and recommending the explicit banning of expulsion of pregnant girls in law.
8. Petition the Government to implement provisions as contained in the Ministerial commitments on comprehensive sexuality education and reproductive health services for adolescents and young people in Eastern and Southern Africa of 2013 which it is a signatory to and have CSE incorporated

¹⁸https://www.researchgate.net/publication/230092716_Why_Are_Kenyan_Teachers_Still_Using_Corporal_Punishment_Eight_Years_After_a_Ban_on_Corporal_Punishment

¹⁹ Ministry of Finance, The Treasury, Government of Kenya. 2021/2022 Financial Year; Programme Budget of the National Government of Kenya for the year ending 30th June 2022 The Treasury; Budget The Mwanainchi Guide 2021/2022

²⁰ Education Sector Report: Medium term Expenditure Framework 2022/23-2024/25

into the national curriculum

9. Petition the Government to enhance security in the northeastern parts of Kenya and partner with organizations on initiatives around safe schools to ensure the safety of learners and teachers.
10. Engage in budget tracking initiatives with the view of advocating for sufficient resources for the sector to address gaps that militate against the provision of the right to education.