

# briefing

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## Access to Education and Health among Minority and Indigenous Communities in Kenya: Assessment of Baringo, Trans-Nzoia, Elgeyo Marakwet and Turkana Counties

Geoffrey Kerosi and Samuel Olando



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## Minority Rights Group International

Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. Our activities are

focused on international advocacy, training, publishing and outreach. We are guided by the needs expressed by our worldwide partner network of organizations, which represent minority and indigenous peoples.

MRG works with over 150 organizations in nearly 50 countries. Our governing Council, which meets twice a year, has members from 10 different countries. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and Peoples' Rights (ACHPR). MRG is registered as a charity and a company limited by guarantee under English law: registered charity no. 282305, limited company no. 1544957.

## Endorois Indigenous Women Empowerment Network

Endorois Indigenous Women Empowerment Network (EIWEN) is an indigenous local Community Based Organization registered in Kenya and has its head office in Nakuru town. EIWEN was founded in 2016 and registered as a Community Based Organization (CBO) by local Endorois women who were committed to improving the living standards through capacity building of women and girls to enable them make informed choices in the society as well as any decision making processes. EIWEN collected data and reported about the Endorois people.

## Turkana Development Organizations' Forum (TUDOF)

TUDOF is an acronym for Turkana Development Organizations Forum is a non-political, non-partisan and non-profit making membership organization. It began operating in 2007 and registered as a Community Based Organization in 2008 and in the process of registering as a local NGO in Kenya under NGO Coordination Board. TUDOF is dedicated to improving enjoyment of human rights and root for democratic governance among the people of Turkana County in North –West Kenya. Following 13 years of successfully working with communities, civil society and government agencies the organization has developed a reputation as a credible, professional and effective organization. TUDOF has 17 member organizations distributed in the six (6) Sub-counties. It works to empower vulnerable groups to realize their governance and development rights. It has its head office in Lodwar Town in the Republic of Kenya. TUDOF collected raw data and reported in Turkana County to make this report possible.

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# Access to Education and Health among Minority and Indigenous Communities in Kenya: Assessment of Baringo, Trans-Nzoia, Elgeyo Marakwet and Turkana Counties

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# Abbreviations

<b>ASALs</b>	arid and semi-arid lands	<b>KNBS</b>	Kenya National Bureau of Statistics
<b>BOM</b>	board of management	<b>KNUT</b>	Kenya National Union of Teachers
<b>CBC</b>	competency-based curriculum	<b>MCAs</b>	Members of County Assembly
<b>CIPDP</b>	Chepkitale Indigenous People's Development Program	<b>NACONEK</b>	National Council for Nomadic Education in Kenya
<b>CoK</b>	Constitution of Kenya	<b>NG-CDF</b>	National Government Constituency Development Fund
<b>ECDE</b>	early childhood development education	<b>OPERA</b>	outcomes, policy efforts, resources and assessment
<b>EIWEN</b>	Endorois Indigenous Women Empowerment Network	<b>PWDs</b>	persons with disabilities
<b>FY</b>	financial year	<b>TSC</b>	Teachers Service Commission
<b>GDP</b>	gross domestic product	<b>TUDOF</b>	Turkana Development Organizations' Forum
<b>KES</b>	Kenyan shillings	<b>WHO</b>	World Health Organization

# 1 Scope and methodology of the study

This study seeks to measure disparity in the enjoyment of health and education rights in Kenya, with a focus on minorities and indigenous peoples in Kenya. In order to understand the resources Kenya has available – and how it has used those resources – it is necessary to examine the state’s economic policies. The study focuses on Kenya’s system of raising revenues, especially through taxation, and whether resources allocated towards the health and education sector benefit the most remote minority and indigenous communities in Kenya. Primary research was conducted with the help of partners such as the Endorois Indigenous Women Empowerment Network (EIWEN), Turkana Development Organizations’ Forum (TUDOF) and Chepkitale Indigenous People’s Development Program (CIPDP). In Baringo the primary research focused on 8 out of 15 locations that Endorois people call home. The locations are Lobo, Sandai, Chebinyiny, Arabal, Bekibon, Kamar, Olkokwe and Koibos.

Primary data was collected by TUDOF from schools and health facilities in Kapese, Lochwaa, Nakukulas, Lapii,

Kaaruko and Lokwii. The Turkana-based organization also interviewed policy makers such as Members of County Assembly (MCAs) to get further insights on the issues of health and education under investigation. Many of the interviewees spoke only Turkana language, and as a result the interviews were conducted in the local Ng’aturkana language.

Analysis of Trans-Nzoia County and Elgeyo Marakwet County (the home of Ogiek of Elgon and Sengwer indigenous peoples respectively) were included for comparative analysis. No primary data collection was conducted there at the time of putting together this national briefing paper.

Minority Rights Group International (MRG) conducted additional secondary research by reviewing various national laws, policies and practices. We used data from the Kenya National Bureau of Statistics (KNBS) to show how poverty is linked to deprivations of access to education and health.

## 2 Background information

### Progressive realization of socio-economic rights

The interpretation of the progressive realization of economic, social and cultural rights in Kenya has not been elucidated prominently. The standard for progressive realization was first expressed in Article 2(1) of the International Covenant on Economic and Social Cultural Rights, which states that:

*'Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.'*

This is further reinforced in the 2010 Constitution of Kenya (CoK) by virtue of Article 21 (2) which says that the state is to take legislative, policy and other measures to ensure attainment of progressive realization of socio-economic rights as guaranteed in Article 43. It must be pointed, however, out that the need to realize socio-economic rights progressively should not be used to justify unacceptable delays to the realization of socio-economic rights. The progressive realization of socio-economic rights is thus divided into five main components within Kenya as a jurisdiction.

- *Obligation to take steps*: this has been interpreted as the underpinning requirement of the state to take steps in the context of its policy, legislative and strategic planning framework for the realization of socio-economic rights. The state is obliged to have in place practical, affordable and accessible remedies for the enforcement and protection of the rights.
- *Maximum available resources*: it is inferred that the balancing of available resources vis-à-vis the vulnerability of individuals and communities is the duty of the state. The state is obliged to use its resources to meet the urgent needs of the poor who are most vulnerable to harsh socio-economic situations.
- *International cooperation and assistance*: this is the requirement for states to seek international cooperation and assistance, as embedded in the United Nations Charter, for technical, human and financial resources to support the realization of socio-economic rights in the event that a community is vulnerable.

- *Prohibition of retrogressive measures*: it has been averred that progression entails 'the obligation to continuously improve conditions, and the obligation to abstain from taking deliberately retrogressive measures except under specific circumstances'.<sup>1</sup>
- *Immediate obligations*: the Committee on Economic and Socio-Cultural Rights has reiterated that immediate obligations include, but are not limited to, obligations to take measures for the protection of young children and the vulnerable without discrimination.

### Policy framework on the right to education

Pastoralists in arid and semi-arid lands (ASALs) have the highest proportion of out-of-school children. Apart from inadequate financial resources, access to education among minority and indigenous communities is affected by a number of challenges, including the limited education infrastructure in the ASAL region, cultural practices – such as early marriage (especially for girls), the high cost of education, low literacy rates among parents and long distances to schools.

Some of the key policy frameworks relevant to education are:

- *Vision 2030*: this is Kenya's blueprint to steer the trajectory of the country's development until 2030. Education is projected in the social pillar as one of the nodes to drive the country as a centre for research and development in new technologies. The aspects which are taken into consideration include the place of early childhood education in primary education, reform of the secondary school curriculum and modernization of teacher training, among other elements.
- *Medium-term Plan (MTP) Vision 2030*: the MTP outlines the government's plan to strengthen universal primary education. It also highlights the government's intention to implement information and communication technology (ICT) to enhance the quality of education. Furthermore, it outlines the government's commitment to protect vulnerable populations.
- *Early Childhood Development Education (ECDE)*: this strategy includes review policies and other measures to support the development and strengthening of ECDE centres across the various counties in Kenya.
- *Education infrastructure*: the government commits to developing and rehabilitating classrooms, sanitation

facilities and other amenities, including rescue centres, special needs schools and learning and resource centres.<sup>2</sup>

## Basic Education Act<sup>3</sup>

The regulatory framework in Kenya with regard to basic education builds on the Constitution, ratified treaties and the various statutes legislated upon by the government of Kenya. The CoK asserts that every child in Kenya has a right to free and compulsory education<sup>4</sup> and Kenya as a state is obliged to take measures including, but not limited to, programmes which are affirmative in nature.<sup>5</sup> In the context of minority and marginalized populations, the Constitution obligates the state to provide special opportunities in the educational and economic fields.<sup>6</sup>

Breathing life into these constitutional provisions, the Basic Education Act No. 14 of 2013 asserts the right of every child to free and compulsory basic education.<sup>7</sup> Besides providing for free primary education, the Basic Education Act prohibits the payment of tuition fees by parents and furthermore makes access to these services compulsory.

The Basic Education Act<sup>8</sup> outlines a number of areas where the government is responsible, including ensuring that:

- every child receives a *free compulsory basic education*
- children belonging to *marginalized, vulnerable or disadvantaged groups* are not discriminated against and prevented from pursuing and completing basic education
- there are *sufficient human resources*, including adequate teaching and non-teaching staff, in line with the prescribed staffing norms
- *infrastructure* is available, including schools, learning and teaching equipment, and *appropriate financial resources*
- quality basic education is provided conforming to the *set standards and norms*
- there are *special education and training facilities* for talented and gifted pupils and pupils with disabilities
- there is compulsory admission, attendance and completion of basic education by every pupil
- *free, sufficient and quality sanitary towels* are available for every girl child registered and enrolled in a public basic education institution who has reached puberty and provision of a safe and environmentally sound mechanism for disposal of the sanitary towels.

## Children's Act of 2001<sup>9</sup>

The Children's Act of 2001, which was subsequently revised in 2012, obligates the government to take necessary steps and provide basic education to every child. This

legislation entitles every child to get free and basic education. It further criminalizes discrimination of children on the basis of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence and or local connection. The Children's Act further obligates the Cabinet Secretary to develop regulations affecting the rights of children from minority communities 'to give fulfilment to their culture and to practise their own language or religion'.<sup>10</sup> This implies an acknowledgement of the vulnerabilities of children from minority groups.

## Rules and regulations

There are clear regulations in place around class size, staffing levels, teaching resources and other areas of education in Kenya. These include:

- *Pupils' classroom ratio*: basic education institutions should have standard classrooms measuring 7m × 8m for 50 learners at primary school or 45 learners at secondary, or standard classrooms measuring 7m × 6m for 25 learners.<sup>11</sup> However, in practice the pupils' classroom ratio is 36:1 for primary schools and 40:1 for secondary schools in Kenya.<sup>12</sup> In many of the minority and indigenous communities under study, the available classrooms are inadequate. For instance, in Turkana County, children still learn under trees with no access to shelter from rain, dust and direct sunshine. This affects the educational outcomes in the area, despite the fact that at 94.1 per cent, Turkana County's Gross Enrolment Ratio at Pre-Primary education level is higher than the national level (76.5 per cent).
- *Pupil-teacher ratio*: the benchmark for the number of pupils for every teacher in the classroom set in the Basic Education Regulations is 50:1 for primary school or 45:1 for secondary schools. According to data from the Teachers Service Commission (TSC) in Kenya, there are 211,046 teachers in Kenya with a requirement of 259,219 teachers. Turkana County had only 1,664 teachers with the highest shortage of primary school teachers in Kenya. According to the Kenya National Union of Teachers (KNUT), the deficit of teachers is worse than that reported by the TSC.
- *Pupils per available textbook*: in Kenya there is a minimum standard of pupils per available textbooks of 1:1.<sup>13</sup> However, the estimated ratio average is 1:3 at the national level.

## Resource allocation and expenditure for the education sector

An analysis of the implementation reports from the Office of the Controller of Budget established that Kenya’s public budgets, including county allocations, between 2013/14 and 2018/19 amounted to KES 14.4 trillion.<sup>14</sup> During the same period, Kenya’s total gross domestic product (GDP) was KES 40.5 trillion. Out of the KES 14.4 trillion set aside under public budgeting in Kenya for the period under review, only KES 11.4 trillion was spent. Approximately KES 3 trillion remained unspent due to

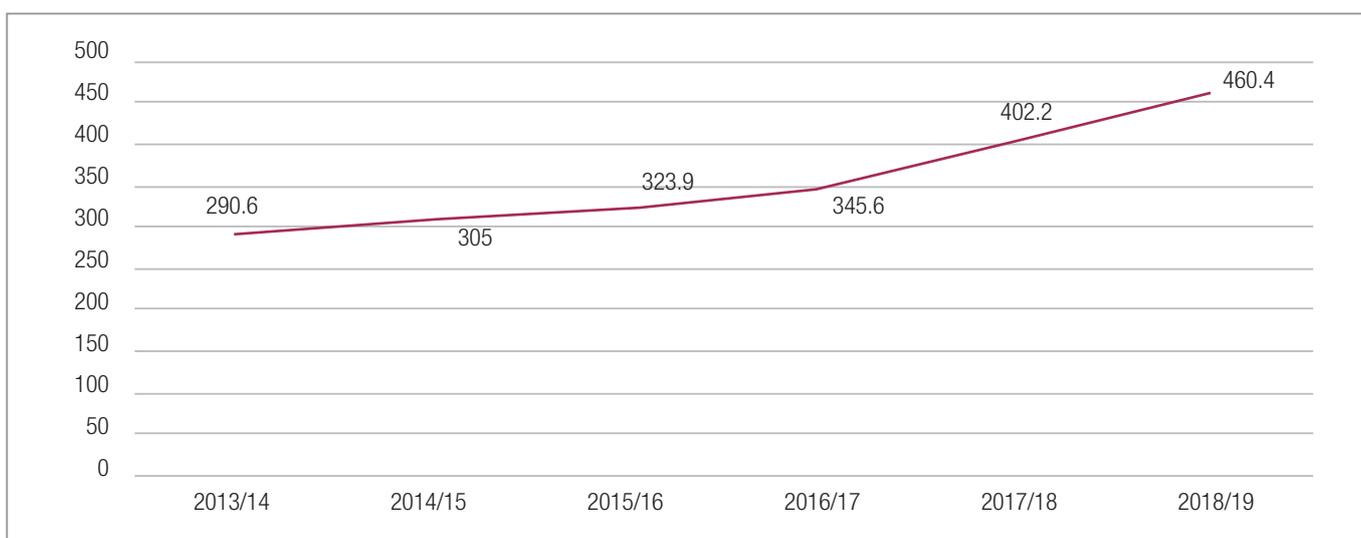
lack of political goodwill, delays in disbursements from the National Treasury and late revision of budgets, hence allowing no time for implementation of projects.

## Sector resource allocation

Figure 1 shows evidence of sustained investment by the national government in the education sector.

In the year 2013/14, the then new and devolved government invested KES 290.6 billion in the education sector, rising all the way to KES 460.4 billion in the year 2018/19. Therefore, it is imperative that this investment is reflected in the education infrastructure available to marginalized and vulnerable groups.

Figure 1: Kenyan national government investment in the education sector from 2013/14 to 2018/19



The data shows that there has been an improvement in the expenditure of the education sector commensurate to the investment made by the national government.

However, in practice the education sector in Kenya has been under-spending the allocations, thereby impacting on the quality of education (Figure 2).

Figure 2: Actual Kenyan government expenditure in education

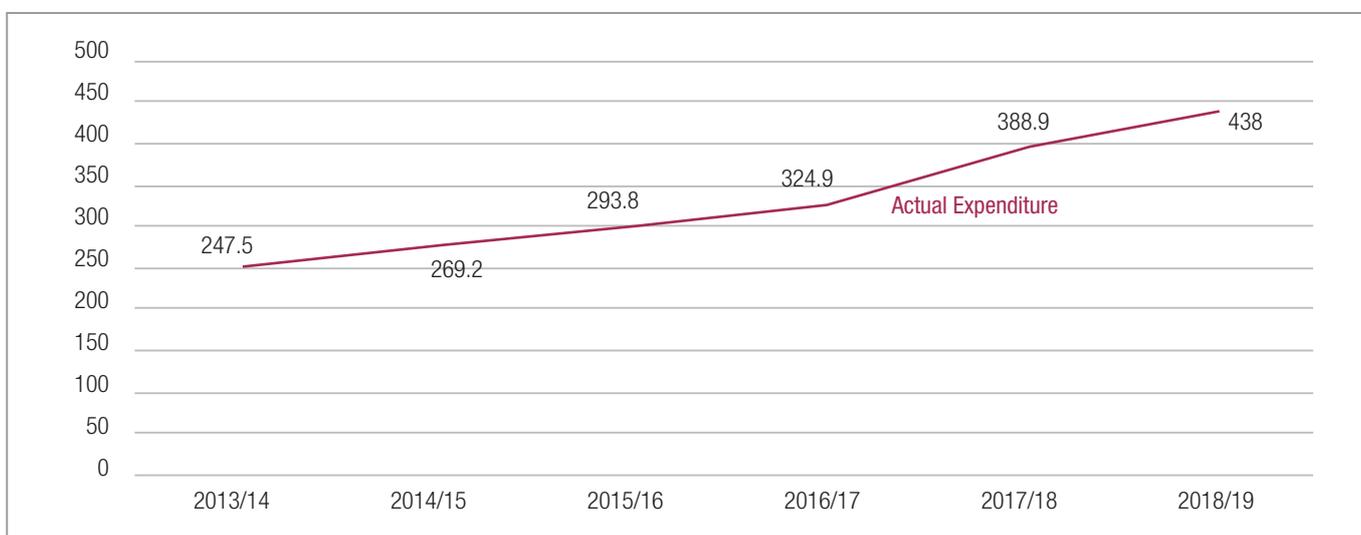


Table 1: Data on various education indicators in Kenya

Pre-Primary	2014	2015	2016	2017
Total enrolments '000s	3,020	3,168	3,200	3,294
Gender parity index	1.1	0.97	0.96	0.96
Total no. of teachers	104,784	107,187	110,819	118,276
Pupil-teacher-ratio	28.8	29.6	28.9	27.8
Primary				
Total enrolments '000s	9,951	10,091	10,280	10,404
Gender parity	0.97	0.97	0.97	0.97
Private enrolment (%)	7.8	6.8	8.4	8.0
Total no. of teachers	200,758	210,868	214,990	217,532
Pupils-teacher-ratio (public)	45.7	44.6	43.8	44.0
Primary school completion rate (%)	79.3	82.7	83.5	83.6
Primary secondary transition rate (%)	76.1	81.9	81.3	81.8
Secondary				
Total enrolments '000s	2,332	2,558	2,721	2,831
Gender parity index	0.92	0.90	0.95	0.95
Private enrolment (%)	6.7	6.7	6.7	6.7
Number of pupils per teacher (public)	27.6	27.9	28.5	29.0
Tertiary				
Technical enrolment	147,821	153,314	202,556	275,139
University enrolment	443,782	510,685	523,706	520,863
Proportion of enrolment in private universities (%)	18.1	15.3	16.3	15.5

Source: Kenya National Bureau of Statistics, Economic Survey, 2018.

According to the KNBS Economic Survey, there has been a steady rise in pre-primary school enrolments. The transition rate is on average above 80 per cent, indicating that the investment in the education sector has had a positive impact on the transition rates. At the same time, the impact of under-spending of the allocated resources has also affected the ability of the education sector to serve marginalized and vulnerable populations.

## County-level education expenditure

According to the Fourth Schedule of the Constitution, the counties have a mandate over pre-primary education, village polytechnics, homecraft centres and childcare facilities. This section will focus on how much Turkana, Trans-Nzoia, Baringo and Elgeyo Marakwet counties spent in the financial year (FY) 2019/20 on the education sector and the reported outcomes, with a key focus on minority and indigenous communities (Table 2).

In general, the case study counties (Turkana, Baringo, Elgeyo Marakwet and Trans-Nzoia) had a total combined budget of KES 36,960 million, out of which KES 2,698.20

million (7.3 per cent) was allocated to the education sector. These counties were chosen because they are home to specific minority and indigenous communities in Kenya.

In FY 2019/20, Turkana County – the home of Turkana people – had a supplementary budget of KES 14,840 million, out of which KES 995.19 million was set aside for the education sector. This comprises 6.7 per cent of the total county budget. Further, during the fiscal year, Turkana County spent KES 294 million on scholarships.<sup>15</sup>

During the period under review, Baringo County – home of the Endorois people – had a supplementary budget of KES 8,380 million, out of which KES 577.21 million (6.6 per cent of the total budget) was allocated for the education and ICT sectors, but only KES 346.93 million was actually spent.<sup>16</sup> This means that only 68.91 per cent of the resources allocated to the education and ICT sector in Baringo County was actually spent. During the period under focus, the Office of the Controller of Budget pointed out that there was even lower absorption of the development budget. For instance, out of the development budget under Education and ICT (KES 224.57 million), only KES 62.11 million was spent, meaning that just over a quarter (27.7 per cent) of the budget allocated was spent.

Table 2: County education budget as a percentage of total annual budget

No.	Name of county	Annual total approved budget (KES million) -2019/20	Education sector budget (KES million) -2019/20	Education sector budget as a % of total budget
1	Turkana	14,840	995.19	6.7%
2	Baringo	8,380	557.21	6.6%
3	Trans-Nzoia	7,970	586.87	7.36%
4	Elgeyo Marakwet	5,770	558.93	9.68%
	<b>Grand total</b>	<b>36,960</b>	<b>2,698.20</b>	<b>7.3%</b>

Trans-Nzoia County, home to the Ogiek of Elgon indigenous community, had a total budget of KES 7,970 million for FY 2019/20. The education, ECDE and vocational training sector was allocated KES 586.87 million (7.4 per cent of the total annual county budget) during the supplementary budget, but only KES 506.60 million (86.3 per cent) was spent.

Elgeyo Marakwet had an approved budget of KES 5,770 million, out of which KES 558.93 million (9.7 per cent) was allocated towards education and technical training. Of this, however, the county ended up spending only KES 399.81 million, 71.5 percent of the allocated education sector budget. Low absorption of funds is reported as one of the challenges facing Elgeyo Marakwet (especially with the development budget). For instance, in FY 2019/20 Elgeyo Marakwet had a budget of KES 2,410 million for development purposes but ended up spending KES 1,110 million. As a result of this laxity in absorption of development funds, KES 102.9 million meant for pre-primary education and an additional KES 27.9 million meant for Technical Vocational Education Training remained unspent.

## Access to basic education by the Endorois community in Baringo county

Of all the existing ECDE centres, 48 per cent of those in Baringo County were established following the advent of devolution in Kenya. Further, at least 44 per cent of the existing primary schools were established after 2013. However, only 8 per cent of existing secondary schools were established during the period under discussion (Figure 3). Finally, no tertiary institutions have been established. ECDE centres form the largest proportion of education institutions in Baringo County. Since Kenya attained its independence, no technical, vocational and university institutions have been established within the locations under study. This has hampered the transition rates from basic education institutions to tertiary institutions, hence increasing the disparity in access to education for ethnic minorities in Baringo County.

Notwithstanding all of this, out of the total of 51 ECDEs sampled, 47 (92 per cent) are run by Baringo

Figure 3: Proportion of educational institutions established in Baringo County after 2013

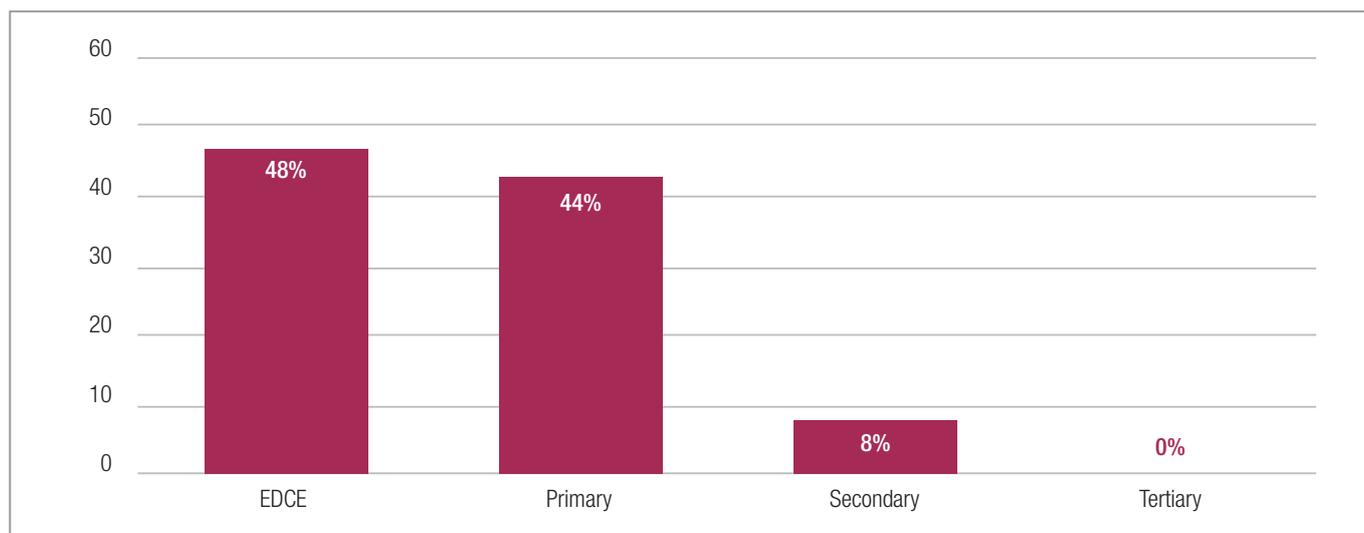


Table 3: Ownership of institutions of early learning as at 218/2019

Ownership	Number	Percentage
Government	47	92
Private	2	4
Faith-based	2	4
NGO	0	0
<b>Total</b>	<b>51</b>	<b>100</b>

County government, while faith-based and private institutions ran two each. This reinforces the responsibility of the government to meet its obligations in ensuring access to education.

In terms of resources and funding, the national government does not consistently remit funds meant for primary and secondary school infrastructure, despite budgeting for the same every financial year. Most institutions reported receiving funds for infrastructure and school development from the National Government Constituencies Development Fund (NG-CDF) but not the national budget through the Ministry of Education as expected. Most schools are allocated resources for construction of classrooms once every five years. This is not adequate considering the amount of infrastructural development required. Parents usually fundraise for construction of classrooms and other facilities required to match the progressive infrastructural development of other areas within the region. The Ministry of Education supports these schools by providing capitalization grants to pupils and students of most government institutions. The funding, however, primarily supports the purchase of learning materials and includes little on infrastructural development.

## Proportion of students in learning institutions

Five thousand and forty (5,040) pupils and students were found to be enrolled in the 51 sampled institutions of learning (ECDE centres, primary and secondary schools; Table 4). The majority of these institutions are within the

primary school sector of the education ladder. The numbers of secondary learning institutions to which the primary students should transit has an impact on the transition of pupils to other learning institutions. The transition rate of girls is approximately 50 per cent in primary schools. Efforts should be made to improve this in order to see more girls transitioning from primary to secondary schools in Baringo County. Generally, the proportion of girls among students was found to be significantly lower (45 per cent) than that of boys (55 per cent), a situation that may be attributed to early marriage and other cultural practices which hinder female pupils from proceeding with their education. There is also low enrolment and transition to secondary schools, with some schools having very few students.

Based on the data of the county government, Baringo North has the largest number of centres, hence the highest number of county government teachers at 360. Across the various sub-counties, the county government has hired a higher number of female than male teachers. At 254 teachers, Eldama Ravine sub-county has the lowest number in Baringo County, as seen in the *Table 5*.

Across Baringo County, Baringo North has the highest number of schools at 153, followed by Baringo Central at 125 schools. East Pokot has 114 schools with Koibatek and Marigat having 90 and 95 schools respectively. Across the various schools, boys have the highest enrolment at 73,540, while girls are at 69,905. Baringo North has the highest enrolment rate at 27,961 pupils. The number of schools, student enrolment and the distribution of teachers is again low in Marigat, East Pokot and Mogotio sub-counties (*Table 6*).

Table 4: Population of boys and girls in Baringo County project area (2020)

Institution level	Boys	Girls	Total
ECDE	810	820	1,630
Primary	1,190	982	2,172
Secondary	695	543	1,238
<b>Total</b>	<b>2,695</b>	<b>2,345</b>	<b>5,040</b>
Percentage	55%	45%	100%

Table 5: Distribution of teachers in Baringo County (2020)

	Baringo Central	Eldama Ravine	Tiaty	Baringo North	Mogotio	Baringo South	Total
Number of centres	124	145	171	216	176	180	1,012
Number of female teachers under county government	269	249	127	331	252	268	1,497
Number of male teachers under county government	8	5	159	29	18	57	275
<b>Total number of teachers under county government</b>	<b>277</b>	<b>254</b>	<b>286</b>	<b>360</b>	<b>270</b>	<b>325</b>	<b>1,772</b>

Table 6: Number of primary schools and enrolment per sub-county (2017)

	Baringo Central	Koibatek	East Pokot	Baringo North	Mogotio	Marigat	Total
No. of schools	125	90	114	153	104	95	681
Boys	12,111	13,395	10,129	14,441	10,531	12,933	73,540
Girls	11,908	12,934	8,195	13,520	10,947	12,401	69,905
<b>Total</b>	<b>24,144</b>	<b>26,419</b>	<b>18,438</b>	<b>28,114</b>	<b>21,582</b>	<b>25,429</b>	<b>143,445</b>

All the ECDE centres used the newly introduced competency-based curriculum (CBC). This curriculum was recently introduced by the government of Kenya. Primary schools used both the CBC and 8-4-4 systems, with the latter currently being phased out by the government. Co-curricular activities offered in most educational institutions include athletics and ball games. The findings show that the basic learning institutions in these areas are not adequately staffed. Many schools continue to engage teachers who are not trained and registered by the TSC. This will compromise the quality of education and student performance.

Research conducted by TUDOF in 2020 revealed that 'there are no learning institutions established in areas occupied by nomadic pastoralists and 99 per cent of children in nomadic pastoralists' areas are kept out of schools to help with home labour: typically herding for boys and home-chores like fetching water from the streams for girls. The reasons that led schools not to be established in these areas include lack of access roads, as well as insecurity escalated by child abduction.

The national government of Kenya has in place structures and plans to support nomadic pastoralists. One such body is the National Council for Nomadic Education in Kenya (NACONEK) which is mandated with increasing access to education in nomadic and marginalized regions. The council has always been allocated resources in national approved budgets to established mobile schools and low-cost boarding schools in ASALs in 14 nomadic counties. There are no publications or reports on the NACONEK website to clarify the level of implementation of their mandate. This is an issue which calls for engagement with the council to better understand why nomadic pastoralists in Turkana East and Turkana South are not enjoying their right to access to basic education.

Further, TUDOF found that the CBC is being taught by an average of 10 per cent of the schools. The delay in implementation of CBC is due to inadequate funding. Limited funds have even reduced drastically the number of visits that Quality Assurance Standards Officers make to schools.

According to the TUDOF research findings, the number of trained and registered teachers in peri-urban and urban primary schools is on average three and seven respectively. As the schools are understaffed, they often employ teachers through the Board of Management (BOM). On average, one teacher is employed by BOM to work at the ECDE centres and an average of three teachers are employed at each primary and secondary school. At most of the schools visited during the data collection exercise, it was observed that the majority of the teachers employed by the BOM are untrained high-school graduates. In terms of access to textbooks, it was observed that at all levels of education students are often supplied with adequate textbooks and the student to textbook ratio is expected to be 1:1, but the national average is 1:3.

In terms of security of land tenure and how this affects education, the children of nomadic pastoralists have lower access to education as compared to the children of sedentary pastoralists. In our opinion, the government can improve access to education by introducing mobile schools and establishing boarding schools in areas occupied by nomadic pastoralists. More mobile clinics would also help to closing the disparity gap in access to health for nomadic pastoralists.

## Institutions' land status

From the information gathered, most of the government schools had title deeds for their land while

private and faith-based institutions had tenancy agreements for their occupancy.

## Access to education for children with disabilities among minority and indigenous communities

Children in the research area of Baringo County face many challenges in order to access education. They have to find ways of crossing flooded rivers during the rainy season, their lives are in danger from cattle rustlers who are armed with dangerous weapons and they have to walk long distances to access education. The situation is worse for pupils with disabilities because of the absence of tailored support. For instance, there are no special needs centres in the area of research. In addition to the challenges facing pupils in general, children with disabilities have inadequate access to assistive devices, such as wheelchairs for those with physical disabilities, and there are no special needs institutions or trained special needs teachers.

Persons with disabilities (PWDs) have for a long time faced discrimination and are left out of major decision-making processes. According to the UN Women Baringo County Gender Data Sheet, there were 27 county government employees with disabilities, of whom 15 were women and 12 were men. This translates to 0.67 per cent of the 4,025 county government employees in Baringo County.<sup>17</sup>

Baringo County government reports that it gives KES 2,000 to 210 beneficiaries under the Baringo PWDs and elderly grant programme. It is estimated that 3.1 per cent of the county population are PWDs, estimated to be 17,121 persons in the 2009 Census and projected to number 26,300 people by 2022.<sup>18</sup> In Trans-Nzoia County, a total of 26,789 PWDs were enumerated by the 2009 National Housing Census. The county authorities report that they support sports tournaments for PWDs, such as amputee football and volleyball. Primary research in

Turkana County revealed that PWDs were most affected when it comes to access to education and health care. PWDs face multiple forms of discrimination; they risk experiencing discrimination from their own family members and, according to local residents, the government fails to plan for them.

According to the Kenya 2019 Census, in Turkana East, a total of 323 people had indicated that they had attended university at the highest level of education while a total of 2,501 people indicated that they had no education at all. The number of people without formal education shoots up to 6,617 in Turkana South Sub-county.<sup>19</sup> This clearly indicates that within a county there are further disparities at the sub-county level. Furthermore, at an estimated 1 per cent, the disability prevalence rate in Turkana is one of the lowest of any county in Kenya.<sup>20</sup> In the population of Turkana, the distribution of disabilities across the county population is as follows: 0.4 per cent with seeing difficulties, 0.2 per cent with hearing difficulties, 0.4 per cent with mobility difficulties, 0.3 per cent with cognition difficulties and 0.2 per cent with communication difficulties.<sup>21</sup> To some extent, the nature of disability also dictates where many PWDs live. As many people with severe and moderate disabilities cannot endure the hardships of rural or nomadic pastoralist areas, they are forced to move to and live in urban or peri-urban areas. This is a clear indication that rural and pastoralist communities struggle to integrate PWDs among them. However, at the national level, 700,000 PWDs live in rural areas and 200,000 PWDs live in urban areas.<sup>22</sup> The main causes of disabilities are diseases. Other causes of disabilities are traumas, gun shots, fire burns, accidents, insect bites and hereditary complications.

The overwhelming majority of PWDs (99 per cent) have no access to health and education, due in large part to discrimination.<sup>23</sup> PWDs are discriminated against by the community, and even their own family members can consider them as unproductive and hence a burden. Lack of assistive devices, poverty and non-existence of special schools contribute immensely to low access to education and health.

# 3 Right to health

The Kenyan Constitution acknowledges the right to health through a human rights-based approach, situating the right of every person to the highest attainable standard of health, including but not limited to reproductive health rights. The state is obligated to promote, protect, observe and respect human rights, including the right to health, in the CoK. The right to health has been devolved to the various county governments, acknowledging the interdependent relationship between the county and national authorities.

International health laws include standard-setting instruments adopted by the World Health Organization (WHO) and human rights law. There are also health-related norms, standards and regulations, which include the patients’ rights, environmental laws and medical ethics. Kenya is a member of the WHO and, as a result, has ratified a number of WHO conventions as well as other UN instruments. The International Health Regulations are binding for 196 countries, including the 194 member states of the WHO. Regionally, the African Union (AU) has developed numerous strategies, such as the Africa Health Strategy 2016–2030 and the Maputo Action Plan, among others. The AU Constitutive Act makes it possible for the regional body to ‘work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent’.

The CoK has a range of provisions such as Article 43 (1) (c) which makes health a basic human right. This article states that every person has a right to enjoy the highest attainable standard of health. In addition, the Constitution provides that a person shall not be denied emergency treatment. Furthermore, there are numerous laws which govern the health sector in Kenya. The Public Health Act (CAP 242) provides for the administration of health in Kenya in terms of prevention, containment and management of infectious diseases, and provides for

housing and sanitation as well as regulating standards for foodstuffs as part of managing public health in the country.

The Health Act (No. 21 of 2017) establishes a unified health system to coordinate both the national and county government health systems. This law also provides for the right to health as well as other rights. The other laws governing the health sector include: the Public Health Officers (Training, Registration and Licensing) Act 2013, the Kenya Medical Training College Act (CAP 261), the Physiotherapists Act 2014, the Medical Laboratory Technicians and Technologists Act 1999 and the Medical Practitioners and Dentists Act (CAP 253) among others.

## Health policies

The guiding policy document for Kenya’s health sector is the policy paper Health Policy 2014–2030: Towards Attaining the Highest Standard of Health . This covers all aspects of health, taking into consideration the objectives of devolution in the context of:

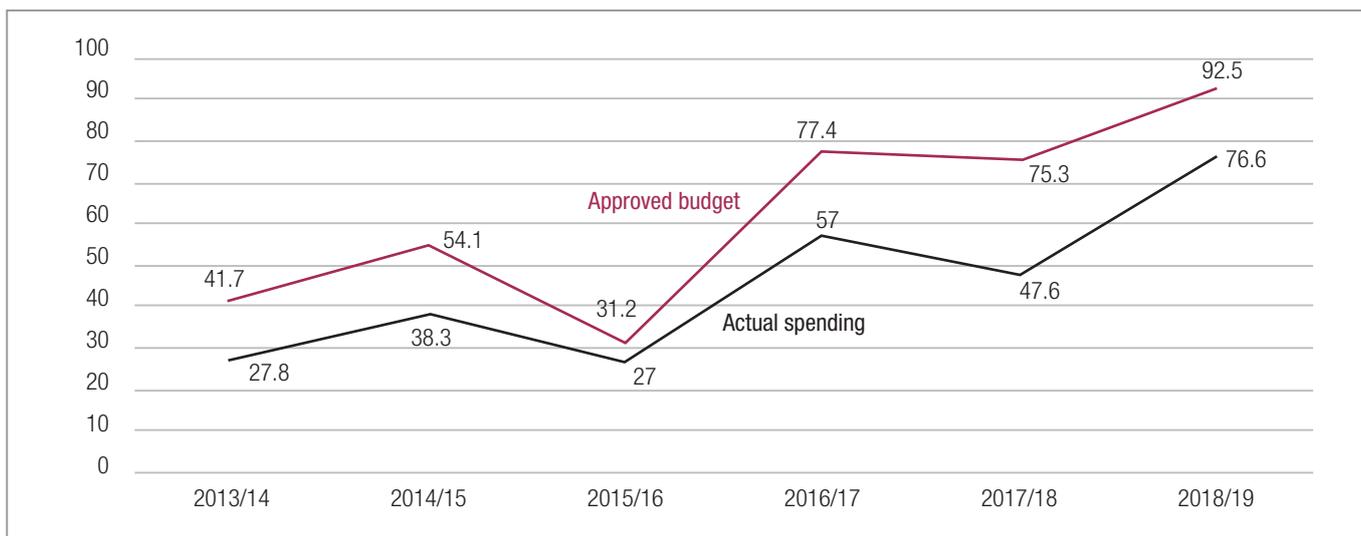
- the promotion of democracy and accountability in delivery of health care
- facilitating self-governance and fostering public participation as a tenet of governance
- acknowledging and recognizing the rights of communities to management of health
- the protection and promotion of health interests and rights of minorities and marginalized communities.

The policy framework assigns functions along two main strands. These include the national government dealing with leadership in health policy development, the management of referral facilities, and technical assistance to

Table 7: Health sector budget allocations and actual expenditure

Financial year	Budget (KES billions)	Actual expenditures (KES billions)	Deviation
2013/14	41.7	27.8	- 13.9
2014/15	54.1	38.3	- 15.8
2015/16	31.2	27	- 4.2
2016/17	77.4	57	- 20.4
2017/18	75.3	47.6	- 27.7
2018/19	92.5	76.6	- 15.9
<b>Total</b>	<b>372.2</b>	<b>274.3</b>	<b>- 97.9</b>

Figure 4: National government health sector budget vs actual expenditure (KES billions)



counties and consumer protection in the context of regulating the standards and guidelines for the delivery of health rights. The following functions are conferred on county governments: county health services; ambulance services; promotion of primary health care; also, the licensing and control of enterprises that sell food to the public, as well as of cemeteries, funeral parlours and crematoria.

In the context of minority communities, health policy has organized the delivery of health care at the community level through dispensaries, health centres, primary referral facilities, secondary referral facilities and tertiary referral facilities.

Table 7 shows that a total of KES 372.2 billion was allocated towards the health sector from 2013/14 to 2018/19 but only KES 274.3 billion was actually spent, leaving a total of KES 97.9 billion unspent for the period under review. This means that there are sometimes resources available for the delivery of health services but that these are obstructed by low budget absorption. Reasons given for this include late disbursement of funds from the Consolidated Fund and lack of procurement plans. Furthermore, analysis shows that most of the unspent resources are for capital projects.

Health is a devolved function in Kenya, as already noted. According to the Fourth Schedule of the CoK, the national government of Kenya is responsible for national health referral facilities and health policy.<sup>24</sup> The counties (devolved units) are responsible for county health services, including county health facilities, pharmacies, ambulance services and promotion of primary health care among other services.

In 2013/14 Kenya spent KES 249.9 million on health-related projects across the 47 counties.

## Total budget as a percentage of GDP

The goals of Vision 2030 under health are: to make Kenya a regional health services hub; to reduce out-of-pocket expenditure by 25 per cent and institute a social health insurance scheme; to have fully functional health centres in place; and to establish a health service commission. Vision 2030 provides for a plan to shift resources to under-served areas, such as pastoral districts.<sup>25</sup> Research conducted by partners at the community level indicates that most of the facilities serving minority and indigenous communities in Kenya are not operational, and those which are do not have adequate numbers of health personnel, lack essential services or do not stock essential medicine.

## Health sector budget at the county level

Health is a devolved function in Kenya as per the Fourth Schedule of the Constitution. The 47 counties are therefore responsible for primary health care at public clinics, dispensaries, health centres and all health facilities classified as level 3 to level 5. The counties are also mandated to manage the ambulances, county pharmacies, and the licensing and control of enterprises that sell food to the public among others.<sup>26</sup> This section reviews the resources available to the counties that are the focus of this report: Baringo, Trans-Nzoia, Elgeyo Marakwet and Turkana. As previously indicated, these counties have been chosen as they are home to several minority and indigenous communities in Kenya.

Overall, the budget for Baringo County has been increasing progressively from financial year 2014/15 to 2019/20, while the budgets allocated for health have been fluctuating in Trans-Nzoia, Turkana and Elgeyo Marakwet counties. However, an in-depth analysis of the actual absorption of the health budget reveals a depressing story.

Table 8: Cross-comparison between counties on health sector spending for FY 2014/15–2019/20, KES millions

Financial year	Turkana County	Baringo County	Trans-Nzoia	Elgeyo Marakwet
2014/15	3,086.00	2,690.53	2,683.34	2,195.10
2015/16	2,242.80	3,660.41	3,312.62	2,418.92
2016/17	3,988.17	4,315.05	4,141.15	2,908.70
2017/18	2,048.49	4,671.00	3,806.83	3,388.41
2018/19	2,677.83	4,872.24	4,270.08	3,379.44
2019/20	2,316.98	4,925.58	4,346.08	3,601.93
<b>Total</b>	<b>16,360.27</b>	<b>25,134.81</b>	<b>22,560.10</b>	<b>17,892.50</b>

Table 9: Budgeted allocations versus actual expenditure for health in selected countries, FY 2014/15–2020/21, KES millions

County	Budget for health (2014/15–2019/20)	Actual expenditure	Deviation
Turkana	16,360.27	6,750.95	- 9,609.32
Baringo	25,134.81	11,522.57	- 13,612.24
Trans-Nzoia	22,560.10	10,500.42	- 12,059.68
Elgeyo Marakwet	17,892.50	8,337.03	- 9,555.47
<b>Totals</b>	<b>81,947.68</b>	<b>37,110.97</b>	<b>- 44,836.71</b>

For FY 2014/15 to 2019/20, the four counties under focus cumulatively allocated an approved budget of KES 81.9 billion for health between them, while only KES 37.1 billion was actually spent, leaving KES 44.8 billion unspent. The large deviation is a result of late exchequer releases (delayed release of funds known as equitable share from the national government's account at the Central Bank of Kenya to the counties). The situation is worsened by low absorption of the available funds due to reasons such as decline in local revenue collection, over-ambitious budgets and limited local capacity.

This tells us that if county governments were to use all the resources that they allocate for the health sector, then more Kenyans would enjoy their right to health – including those minority and indigenous communities which are currently among the most excluded.

## Turkana county

During the first year under devolution, the Office of the Controller of Budget did not provide data by department on how the counties spent their resources. Therefore, the data on the health sector budget and actual expenditure is not available. Therefore, FY 2013/14 was disregarded, considering that limited data is available for useful analysis. The actual expenditures are even lower due to low absorption rates in most counties.

During FY 2014/15, Turkana County spent KES 626.9 million on the construction of health centres.<sup>27</sup> In 2016/17, a total of KES 318.1 million was spent on the construction

of new dispensaries – one facility per ward. In FY 2018/19, KES 10.6 million was provided to Turkana County as a conditional grant by the UN Food and Agriculture Organization for vaccination and disease surveillance. A low absorption rate of budget funds has been identified as one of the challenges facing county government when it comes to the provision of health services to minorities and indigenous peoples in Kenya. For instance, in FY 2019/20 Turkana County had budgeted to spend KES 2.2 million for lab services but the actual expenditure was only KES 272,000. Furthermore, the county had a budget of KES 36.6 million for Universal Healthcare Coverage (UHC) but only spent KES 5.1 million out of that budget. This raises doubts about whether the national government will achieve UHC, one of the items on the Big Four Agenda spearheaded by the Office of the President of Kenya.<sup>28</sup>

The primary research conducted in Turkana East and Turkana South sub-counties by TUDOF reveals that Turkana County runs most of the health facilities in Lokuii, Lokichar, Lokori, Elelea, Nakukulas, Kaaruko, Lokwamosing, Nakalei and Lopii among others. There are only a few health facilities operated by non-governmental organizations. For instance, the Reformed Church of Africa owns a health centre in Lokori, and the Roman Catholic Church runs a mobile clinic in the same area. Despite the availability of health facilities in the two sub-counties under focus, the facilities are at least 15 km apart because Turkana, as a county, occupies a vast land mass. This means that the county government has not attained the WHO standards that residents should not walk/travel for

Table 10: Health personnel staff in Turkana County in selected villages (2020)

Facility	Lochwa	Kapese	Lopii	Kaaruko	Lokwii
Nurses	4	6	1	1	3
Clinical officers	1	2	–	–	1
Public health officers	–	2	–	–	1
Nutritionists	–	1	–	–	1
Community health extension workers	6	12	2	3	6

more than 5 km in search of health care services. The disparity in access to health care is even higher among the nomadic pastoralists. According to data collected by TUDOF, these nomads have to cover between 15 and 60 km to access health care. The majority of nomads choose not to travel to health facilities as a result of the long distances to be covered. Instead, they opt for treatment using traditional medicines, which may not be suited to their specific conditions or injuries.

Those who have health facilities near them also face challenges in their quest to access health care. Most of the available health facilities do not have essential drugs and lack important health facilities such as dental care, operating theatres, eye units, laboratories, imaging departments, physiotherapy units, mortuaries, ambulances or means of transport for doctors and nurses to offer mobile services.

‘It is ... interesting that the government has never provided orthopaedic services and the physically challenged residents of the county have been struggling for decades to meet huge travelling expenses to access these services from orthopaedic workshops in other areas until recently, when a private orthopaedic facility owned by the Catholic Church was established in Lokichar town’, revealed a Turkana resident during the interviews.

Research findings show that people in the two sub-counties under review die of curable diseases such as malaria. A case in point is the death of a 10-year old child just because the health facility to which they had access had run out of malaria drugs. Understaffing was identified as one of the challenges which faced the people of Turkana East and Turkana South in their search for health services. *Table 10* shows the situation of human resources for the health facilities which were visited by TUDOF during the data collection exercise.

The terms of service for health care staff in Turkana County are reported to have improved significantly. For instance, they easily transition from working on a contract to permanent service. However, there are limited incentives to retain them in Turkana East and Turkana South, which are considered hardship areas in Kenya.

The performance of health workers is not optimized due to the challenges they face, such as inadequate medical equipment or lack of access to such equipment to enable them to deliver efficiently on their terms of service.

## Baringo county

As shown in *Table 8*, the health budget for Baringo County has been steadily increasing between FY 2014/15 and 2019/20. In 2014/15, Baringo County spent money on the purchase of medicine and pharmaceuticals at a cost of KES 117.06 million, and spent a further KES 107.06 million on the construction of health centres. In FY 2015/16, a total of KES 171.34 million was spent on purchasing medical drugs, which was the second highest item under the Operations and Maintenance budget classification.

Primary research conducted by the Endorois Indigenous Welfare Empowerment Network (EIWEN) revealed that Baringo County has been spending considerable resources on the construction of physical health facilities, but most of them are poorly equipped. For instance, most health facilities in the eight locations where the research was conducted were understaffed. ‘Most of them had two health attendants’, and, to make matters worse, ‘The health centres do not have sufficient essential drugs and medicine’ and ‘The sick are forced to purchase medicines, which are expensive.’<sup>29</sup>

According to the Office of the Controller of Budget, a total of KES 13.9 million was spent on the construction of Marigat Hospital in FY 2016/17. The following financial year, a total of KES 6.1 million was spent on Lake Bogoria Community Projects. This shows that resources are available, but they are not shared equitably to benefit the Endorois people in access to health.

For the years under focus (FY 2014/15 to 2019/20), Baringo County had the largest budget for health at KES 25,134.81 million, while Turkana County spent the least on the health sector at KES 16,360.27 million. All four counties covered in this analysis reported high wage bills as one of the challenges in delivery on health and education services. For instance, in 2017/18 Baringo County spent 57.5 per cent of its total budget for the year on the payment of salaries and wages. This is far above the legal threshold of 35 per cent enshrined in the Public Finance Management Act 2012.

## Trans-Nzoia county

Trans-Nzoia county government has prioritized the development of county referral hospitals. A total of KES 1.5 billion has so far been spent on the construction of referral hospitals, including on Trans-Nzoia County Referral Hospital. This is a good investment for minority communities such as Sengwer and Ogiek of Elgon in Trans-Nzoia to access health referral services easily and avoid travelling to Kenyatta National Hospital in Nairobi City or to Moi Teaching and Referral Hospital in Eldoret.

## Elgeyo Marakwet county

In FY 2016/17, Elgeyo Marakwet spent KES 7.2 million on the purchase of specialized equipment at Iten

County Referral Hospital. An innovative approach at the Elgeyo Marakwet County is the payment of KES 11 million for National Hospital Insurance Fund services for the elderly in FY 2017/18.

In FY 2018/19, the Office of the Controller of Budget reported that Elgeyo Marakwet's health department had the lowest absorption of resources under the Department of Health and Sanitation at 28.7 per cent. This is a clear indicator that minorities may have been hit the hardest during the year, not so much due to inadequate resources, but rather on account of low absorption of available resources for health.

While Sengwer community members in Elgeyo Marakwet County were being brutally evicted from their ancestral land, there was lax provision of health services occasioned by the low absorption rate, as reported by budget implementation reports by the Office of the Controller of Budget.

# 4 Conclusion and Recommendations

In summary, through the use of an Outcomes, Policy Efforts, Resources and Assessment (OPERA) framework, this briefing has analysed Kenyan legislation, policies and regulations, alongside international standards that promote the rights to health and education, and their impacts on minorities and indigenous peoples. It focuses on Turkana, Elgeyo Marakwet, Trans-Nzoia and Baringo because these counties are home to specific minority and indigenous communities.

## Recommendations for Turkana County

1. More specialist schools should be established in Turkana East and Turkana South; statistical data on the benefits allocated to PWDs should be provided; assistive devices should be readily available; learning materials that are friendly to PWDs should be provided.
2. The county government should work together with civil society organizations (CSOs) in addressing issues highlighted in this report and commit to follow-up actions to rectify the situation.
3. A deliberate effort should be made by the county government and CSOs to ensure that PWDs benefit from public resources.
4. The county and national government should collaborate in the provision of mobile schools and clinics for nomadic pastoralists in Turkana South and Turkana East.
5. Turkana County should: provide road infrastructure to nomadic pastoralist areas; initiate projects that will provide income to poor families; improve the availability of essential drugs and medicines; strengthen staffing of schools and health institutions; and ensure proper waste disposal and proper restoration of degraded environments.
6. Turkana County should work closely with civil society to conduct community civic education on the right to health and education.
7. The national government should strengthen security in the areas that are prone to cattle rustling, and civil society should work with the government to promote peace and conduct dispute resolution sessions among the conflicting parties.

## Recommendations for Baringo County

1. The county government of Baringo should devise strategies to increase its absorption rates of the health and education budgets, in particular by ensuring that indigenous communities located in the most remote areas, such as Endorois, are also allocated financial and human resources.

2. Baringo County should formulate new strategies to improve its collection of own source of revenue in order to fulfil its commitments in the health and education sectors.
3. Baringo County should provide regular training and refresher courses for health care professionals, with adequate incentives such as hardship allowances to retain their services and ensure these human resources are equitably distributed in all wards or sub-counties.
4. The county government should always ensure that all public health facilities are equipped with essential drugs, medical devices and medicine.
5. The county government should create a conducive environment through investments in transport infrastructure to enable the private sector to increase its investments in the health and education sectors.
6. Baringo County should allocate resources towards the construction of model ECDE centres to serve the Endorois community, whose numbers are increasing.
7. The county government should provide equal opportunities in employment for PWDs and have them represented in nominated positions within government, if possible through affirmative action on employment of PWDs at the county level.
8. Baringo County should allocate resources for the provision of assistive devices for people with severe disabilities to improve their mobility and hence access to education and health.

## Recommendations for the national government

1. The national government should fast-track the transfer of funds for the four counties studied in this briefing to reduce the large gap between the approved budget and exchequer releases.
2. The national government should establish special education institutions in Baringo County, especially in Mogotio and Baringo South constituencies, to promote access to education for PWDs among the Endorois community.
3. The national government should focus on improving the security situation in Baringo County by curbing cattle rustling and other criminal activities to make it possible for residents to access education and health care safely.
4. The national government should, through the National Government Constituency Development Fund and other resources allocated to the education sector, invest more in infrastructure for primary, secondary and tertiary education institutions Mogotio and Baringo

South sub-counties. This will increase the level of access to education for members of the marginalized Endorois community.

5. The national government should establish middle-level colleges such as teacher training colleges, medical training colleges and technical polytechnics in Baringo South and Mogotio to make higher education more accessible to the Endorois and other communities in the area.
6. The government should allocate resources for the provision of water, sanitation and electricity at all learning institutions in Mogotio and Baringo South constituencies to make learning easier for students.
7. The Ministry of Education and the Teachers Service Commission should ensure teachers are adequately trained and distributed equitably to schools in Mogotio and Baringo South.

## Recommendations to civil society organizations

1. CSOs as well as community- and faith-based groups should work together in raising awareness on the value of acquiring education, both for girls and boys, among the members of the Endorois, Turkana, Sengwer and Ogiek communities in Kenya.
2. CSOs should raise awareness and educate around harmful cultural practices such as early marriage, preferential access for boys to education at the expense of girls, and female genital mutilation (an illegal practice that is still carried out widely in secret) which have a profound negative impact on the health and education of children in the Endorois community.
3. CSOs should raise awareness among members of the public as well as within minority and indigenous communities to counter the stigmatization and discrimination facing PWDs.
4. CSOs should build the capacity of PWDs to support their political, economic and social participation and ability to inform policy making, implementation and oversight.

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# working to secure the rights of minorities and indigenous peoples

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## Access to Education and Health among Minority and Indigenous Communities in Kenya: Assessment of Baringo, Trans-Nzoia, Elgeyo Marakwet and Turkana Counties

This study seeks to measure disparity in the enjoyment of health and education rights in Kenya, with a focus on minorities and indigenous peoples in Turkana, Elgeyo Marakwet, Trans-Nzoia and Baringo counties. It combines primary research with an analysis of Kenyan legislation, policies and regulations, alongside international standards that promote the rights to health and education. In particular, it examines Kenya's system of raising revenues, especially through taxation, and whether resources allocated towards the health and education sector benefit the country's most marginalized communities.

While recognizing some improvements in recent years, *Access to Education and Health among Minority and Indigenous Communities in Kenya: Assessment of Baringo, Trans-Nzoia, Elgeyo Marakwet and Turkana Counties* also highlights the continued challenges that constrain equitable and inclusive provision for marginalized groups in many parts of the country. From underspending to infrastructure gaps, lack of trained personnel to limited engagement with civil society, it identifies a range of problems and concluded with a series of recommendations for local authorities and the national government to improve minority and indigenous access to these basic rights.

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