

AN ANALYSIS OF PROVISIONS ON PERSONS WITH DISABILITIES (PWDS) IN EDUCATION, HEALTH, SOCIAL PROTECTION AND LABOUR POLICIES IN KENYA

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Key policy messages

- 1** Rights to education, health, social protection and labour are clearly outlined in policy but lack of enforcement mechanisms hinders access by persons with disabilities (PWDs).
- 2** The education and social protection domains have comparatively complex systems for addressing PWD issues but must be backed by clear monitoring, evaluation and learning frameworks.
- 3** Budgetary allocation appears to be a key gap yet it is an important aspect of policymaking that must be put in place if implementation is to be effective.
- 4** Multi-sectoral and multi-disciplinary policymaking is critical for ensuring coherence and fostering implementation both vertically and horizontally thus engagement across sectors and stakeholders should be sought.

Overview

A policy analysis on four domains: education, health, labour and social protection for Persons with Disabilities (PWDs), in Kenya was conducted under the Bridging the Gap project (Box 1). The analysis was conducted to assess how current national policies, programmes and strategies in, education, health, labour and social protection address poverty, inequality and access to services for disabled adults and children in Kenya. Over 35 policies were identified. All three policies on PWDs were analysed while in the education domain 4

were fully analysed and 6 subjected to minor content analysis; in health 3 were analysed and 5 subjected to minor content analysis; in labour, 3 were analysed and 3 subjected to minor content analysis; and under social protection 3 were analysed and the remaining 3 subjected to minor content analysis. This policy brief highlights some key findings arising from the analysis.

It was found that there is significant effort by the Kenyan Government towards inclusion of people with disabilities (PWDs) and mainstreaming disability across

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sectors. Kenya is party to international conventions such as the United Nations (UN) Convention on the Rights of the Child, (1990) and the UN Convention on the Rights of Persons with Disabilities (2008). Under Kenyan law, (Article 2(6), Constitution of Kenya), once ratified, international treaties become law. This means that the CRC & CRPD are law in Kenya. Kenya's constitution (2010) also provides for non-discrimination directly or indirectly on any basis including disability (Article 27(4) and provides for equality before the law for all persons (Article 27(1-2). In Article 21 (3), state organs and public officers are obligated (as a duty) to address the needs of vulnerable groups including PWDs. The draft Disability Policy and the PWD Act (2003) as well as the education policies including the Policy Framework for Education and Training, Kenya (2012) highlight these aspects of the international conventions as well as the Kenya constitution.

Results

These results and policy recommendations are drawn from analysis of national policies and re-analysis of national data sets. The analysis involved identification of relevant policies for each domain after which each identified policy was rated by carrying out content analysis to determine if PWDs are mentioned and where mentioned, the level of detail provided. The review also sought to identify if specific issues are men-

tioned e.g right to and accessibility to services under each domain, inclusivity, presence of implementation plans, enforcement and budgetary allocation. The reviewed policies were then rated according to a predetermined rating scheme with a scale of 1 to 4, with 4 as the highest score. These are summarised in **Figure 1** below.

Rights and accessibility in the draft Disability Policy (2016) and under the four domains of health, education, labour and social protection rank well owing to the fact that the Kenya Constitution (2010) and specific policies largely provide for rights and non-discrimination for all citizens, regardless of disability, race, gender and other barriers and prejudices. These fundamental rights provide a mechanism for PWD protection as well as providing a strong basis on which specific policies relate to PWDs as equal citizens of Kenya. This means that PWDs are protected under Kenyan law and have *locus standi* for legal action in case of any infringement.

Budgetary allocation, information systems and enforcement have been identified as areas of weakness under most of the domains, except under the PWD Act, where a PWD fund is created. In policies where budgetary allocation is mentioned, there is little clarity on exactly what the funds are to be used for, which could result in them being used for other activities and not necessarily PWD interventions or even not being used

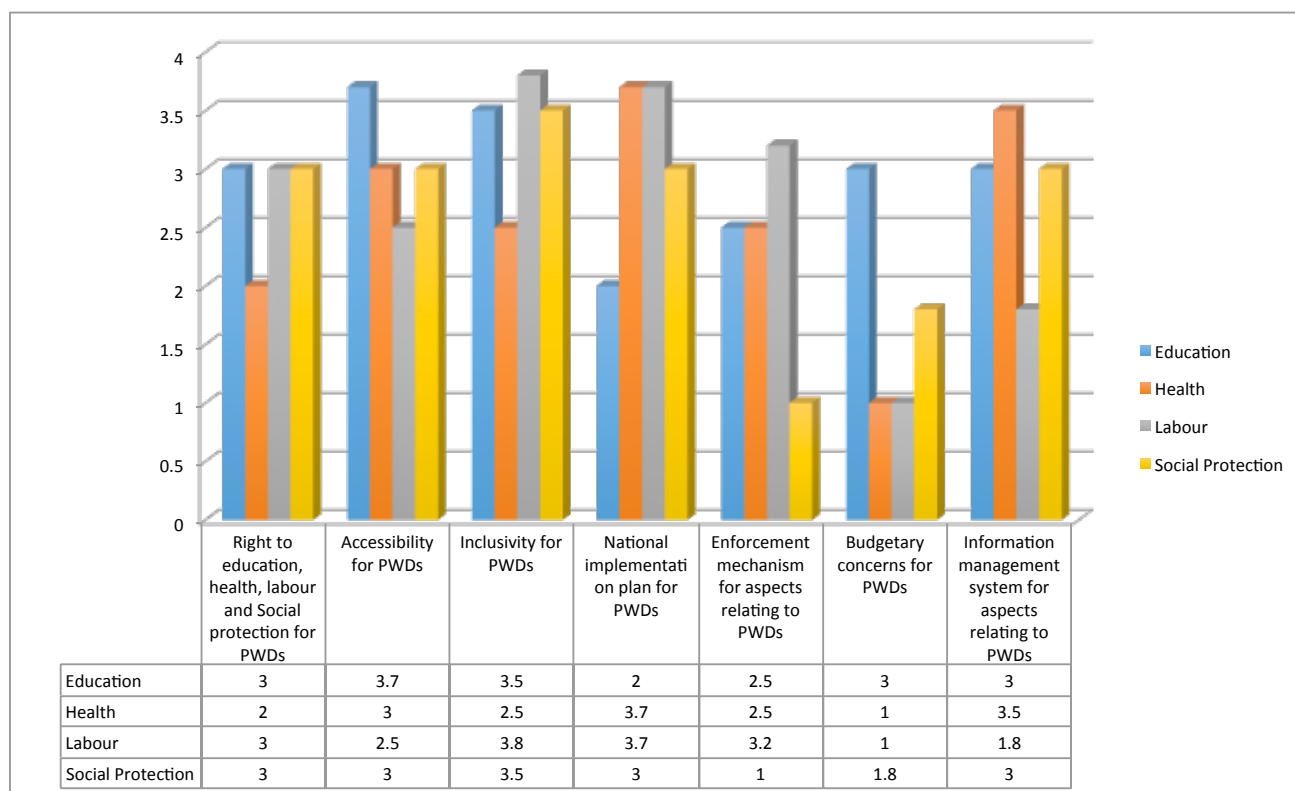


Figure 1: Ranking for education, health, labour and social protection policies

at all. For the monitoring of these policies, while there is repeated reference to information systems, there is a deficiency in terms of responsible agencies, clear indicators and funding for maintaining these systems. Enforcement is also weak given that clear compliance and enforcement mechanisms are not clearly defined.

Policy Messages

Right to education, health, social protection and labour are clearly outlined in policy but lack of enforcement mechanisms hinders access by PWDs

The Kenya constitution guarantees the right to education under Article 43 (1f), the right to health in Article 43(1a), the right to social protection under Article 43(1e) and the right to fair labour practices in Article 41. This is also outlined in the PWD Act and Disability Policy, the Policy Framework for Education and Training (2012), Basic Education Act (2013), the Kenya Health Policy (2014 - 2030), the Employment Act (2007) and the Kenya Social Assistance Act (2013). This is critical in safeguarding the rights of PWDs and ensuring their protection and access to services. The constitution and the PWD Act also provide for inclusivity including affirmative action with an employment quota of 5% in elective and appointive bodies for PWDs. Additionally, the National Council for Persons with Disabilities (NCPWD) has county officers who are mandated to ensure mainstreaming of disability and inclusivity at county level.

Inadequacy lies in the fact that the policies do not set out punitive measures for those who do not adhere to set laws and in cases where they do, e.g in the case of non-compliance with the PWD policy on a 5% employment quota for PWDs in the public and private institutions the NCPWD has the power to fine any institution that does not meet this requirement but this fine does not apply to government institutions. It is also not clear how this is implemented.

The education and social protection domain have fairly complex systems for addressing PWD issues but must be backed by clear monitoring, evaluation and learning frameworks

The Policy Framework for Education and Training (2012) and the Basic Education Act (2013), outline measures for access to education with a commitment to ensure inclusive education for learners with special needs and disabilities, integration of special education

programmes in all learning and training institutions and ensuring that the institutions are responsive to the education of learners with special needs and disability. PWDs in all sectors are eligible for tax relief if earnings are below 150,000 Kshs (PWD Act) and once registered with the NCPWD and are able to access the cash transfer program after assessments are made. There is however little data to show the level of awareness and participation by PWDs on these programs. Besides access to this can be hindered by requirements such as medical assessments which may be expensive for PWDs.

Whereas there is provision for monitoring progress it still remains to be seen how such results are used to make improvements at implementation and/or adjust policies. For PWDs who are employed in different sectors an assessment of the quarterly reports which are meant to be submitted to the NCPWD by MCDAs (on the disability indicator) would have to be assessed to determine progress. The Kenya Health Sector Strategic and Investment Plan (KHSSPI) provides for a common data architecture to avail data sources for already identified monitoring and evaluation indicators as does the education policy. Under the education and health domains where information management systems are provided for, disability-disaggregated data is not mandatory and most of it is neither centralized nor accessible. Furthermore, the government recognizes the need to establish a participatory management information system (MIS) for social protection in Kenya to harmonize and consolidate the current range of fragmented schemes and increase the ability of social protection initiatives to scale-up their operations quickly in response to crises. However, the intervals at which the information should be collected are not specified. From the analysis it is unclear to what extent, if any, such data and information has been used to influence policy or implementation.

Budgetary allocation is an important aspect of policymaking that must be put in place if implementation is to be effective

Budgetary allocation has been identified as an area of weakness under most of the domains, except under the PWD Act, where a PWD fund is created. In policies where budgetary allocation is mentioned, there is little clarity on exactly what the funds are to be used for, which could result in them being used for other activities and not necessarily PWD interventions or even not being used at all. For the monitoring of these policies, while there is repeated reference to information

systems, there is a deficiency in terms of responsible agencies, clear indicators and funding for maintaining systems. For the Health Policy which provides for targeted training to better address needs of PWDs, early assessment and identification as well as action to prevent disability it is not clear where funds for such programs are derived from leaving the decision on this to this to the budget office which may or may not allocate funds for such.

Participatory and coordinated policymaking is critical for ensuring coherence and fostering implementation both vertically and horizontally

In a context analysis conducted on major policies in the four domains there is a lack of clarity on the participation of Disabled Persons Organizations (DPOs) or Persons with Disabilities (PWDs) in the formulation processes especially in the health and labour domains. In terms of coordination, the policy analysis points to little interaction between the different policies. For instance the social protection policies do not even have a clear definition of PWDs and have little mention of education, health or labour issues. However, the PWD policy has aspects of all four domains and is largely in compliance with the CRPD. The education and health policy share linkages under the Kenya National School Health Strategy Implementation Plan indicating relative progress but this is lacking in the other domains.

Recommendations

1. Enforcement and compliance mechanisms need to be strengthened to enable greater protection and access by PWDs. This aspects can be incorporated in the Disability Policy and the Special

Needs Policy which are yet to be gazetted.

2. Clear monitoring, evaluation and learning frameworks need to be put in place to ensure that progress is tracked and changes made for better results. Specifically the Health and Education Information Management Systems should mandatorily capture disability-disaggregated data for use in decisionmaking and at implementation to better meet PWD needs.
3. Budgetary allocation including sources of funding should be made explicit in the disability policy and the other policies in the four domains examined under this research to ensure effective implementation.
4. Greater effort must be made to ensure multi-sectoral and multi-disciplinary engagement and consultation especially with PWDs and Disabled Persons Organizations (DPOs) to ensure inclusivity and policy coherence.
5. The PWD policy needs to be revised to align with all the CRPD articles and the rest of the policies in education, health, social protection and labour reviewed to reflect these provisions.

Further reading

Khaemba Winnie, Kariuki Joan and Kingiri Ann (2016). Bridging the Gap on Disability: Kenya Policy Analysis Report.

Wafula Sam, Olenja Joyce and Nyariki Emily (2017). Bridging the gap on Disability Secondary Data Analysis Report, Kenya.

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