The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), the Kenya Human Rights Commission (KHRC), The Economic and Social Rights Centre- Hakijamii and the East African Centre for Human Rights (EACHRights), hereby submit this follow-up report to the Committee on Economic, Social and Cultural Rights (the Committee) in advance of its consideration of Kenya's sixth periodic report and the adoption of the Concluding Observations during the 79th Session of the Committee concerning Kenya's compliance with the International Covenant on Economic, Social and Cultural Rights (ICESCR).

13 January 2025

Introduction

1. The submission builds directly on the joint civil society report submitted in January 2025, INT_CESCR_CSS_KEN_61897_E and is intended to:
    a. Update the Committee on key fiscal, policy and budgetary developments since the previous submission;
    b. Demonstrate how debt servicing and austerity-driven fiscal policies continue to undermine the realisation of the right to education (Articles 13 and 14) and the right to health (Article 12), contrary to Article 2(1) of the Covenant and;
    c. Provide concise, action-oriented recommendations to inform the Committee's consideration in its Concluding Observations for Kenya.

The Fiscal Policy Trajectory Remains Austerity-Driven

2. Kenya's overall fiscal trajectory continues to be characterised by austerity. Debt servicing absorbs an excessive share of public revenue, severely constraining fiscal space for social spending. This constraint is driven by the rapid growth of public debt, which increased from KES 10.58 trillion in June 2024 to KES 12 trillion by September 2025,[1] resulting in a corresponding expansion of debt servicing obligations. Thus, by September 2025, debt servicing accounted for 68% of total government revenue. This level of debt burden significantly limits the State's ability to adequately finance essential public services such as education and health.
3. Fiscal consolidation remains the dominant macroeconomic policy framework, shaped by Kenya's engagements with the International Monetary Fund (IMF), the World Bank and other bilateral and commercial lenders. Although the IMF Extended Fund Facility and

[1] KHRC (2025) The Economics of Repression: Human Rights Toll of Kenya's public debt and wage burden.p.6. https://khrc.or.ke/wp-content/uploads/2025/12/The-economics-of-repression.pdf

Extended Credit Facility programmes were prematurely terminated in March 2025,[2] following Kenya's failure to fulfil agreed conditions, including revenue mobilisation targets, expenditure controls, and addressing revenue leakages in State Owned Enterprises (SOEs)[3] austerity measures remain firmly entrenched. The termination of the programmes created an immediate fiscal gap, which in turn prompted renewed engagement efforts with the IMF and World Bank during the 2025 Annual Meetings[4] reinforcing the continued influence of International Financial Institutions (IFIs)-driven fiscal consolidation on national budgetary policies.

4. Revenue-raising efforts continue to rely predominantly on borrowing and regressive tax policies rather than progressive taxation of high-net-worth individuals, multinational corporations and the curbing of revenue leakages.[5] Evidence suggests that by curbing its revenue leakages and implementing progressive tax policies, Kenya could increase its tax-to-GDP ratio by five percentage points, generating an estimated additional revenue of USD 5.37 billion.[6] While maintaining the current allocation percentage to the education sector, this increase would enable an additional 1,464,830 students in Kenya to access education between 2025 and 2030. The same resources could also be used to build new hospitals, train more healthcare professionals, ensure better pay, and expand access to public healthcare. For women, it would mean 1,965 maternal deaths cumulatively averted between 2025 and 2030, and for children, it would mean 17,800 under-5 deaths cumulatively prevented over the same period.[7]

The Right to Education (Articles 13 and 14): Persistent Gaps Despite Nominal Budget Growth

[2] GI-ESCR (2025) Prioritising People in Fiscal Policy: Challenging Austerity, Reclaiming Public Services and Upholding Human Rights in Kenya. p.16. https://gi-escr.org/en/resources/publications/prioritising-people-in-fiscal-policy-challenging-austerity-reclaiming-public-services-and-upholding-human-rights-in-ghana

[3] Ibid. See also; Muiruri, K. (2025) 'Kenya to forego sh63bn in IMF Funding' Business Daily, 17 March. https://www.businessdailyafrica.com/bd/economy/kenya-to-forego-sh63bn-in-imf-funding-4969212

[4] The National Treasury and Economic Planning (2025) International Monetary Fund World Bank Spring Meetings. https://newsite.treasury.go.ke/international-monetary-fund-and-world-bank-spring-meetings

[5] GI-ESCR (2025) Prioritising People in Fiscal Policy: Challenging Austerity, Reclaiming Public Services and Upholding Human Rights in Kenya. https://gi-escr.org/en/resources/publications/prioritising-people-in-fiscal-policy-challenging-austerity-reclaiming-public-services-and-upholding-human-rights-in-ghana

[6] Ibid. Tax Justice Network (2024) Stolen futures: The impacts of tax injustice on the Right to Education, p. 63. https://taxjustice.net/reports/stolen-futures-the-impacts-of-tax-injustice-on-the-right-to-education/

[7] Calculations done using the Government Revenue and Development Estimations (GRADE) Tool. The GRADE tool is based on econometric models of the relationship between government revenue, governance quality, and progress on key SDG indicators. Drawing on four decades of data from 196 countries, it translates changes in government revenue into projected impacts on governance and human development-such as increases in child survival, maternal health, school attendance, and access to clean water, sanitation, and electricity.

5. In fiscal year (FY) 2025/26, the education sector was allocated KES 671.42 billion, representing 29% of the national budget and exceeding international benchmarks.[8] However, this nominal growth has not kept pace with sectoral needs, particularly in light of inflationary pressures, a growing school-age population, and the resources required to fully transition to the Competency Based Curriculum (CBC).[9] The Committee should interrogate why, despite meeting budgetary benchmarks, Kenya continues to fall short of delivering free, quality and inclusive public education for all.
6. In December 2025, the government increased the primary school capitation by 58%, raising the allocation to KES 2,238 per learner for the year 2026. While this increase is a positive step, it remains insufficient in the absence of a comprehensive costed analysis of what it actually takes to educate a child under the Competency Based Curriculum.[10] Moreover, throughout 2025, public schools continued to experience delayed and partial disbursement of capitation funds, forcing school administrators to send learners home early due to a lack of operational resources. The Cabinet Secretary to the National Treasury attributed these delays to limited fiscal space, underscoring the direct impact of austerity-driven policies on learners' right to education.[11]
7. Although recurrent spending increased between FY 2020/21 and FY 2024/25, this growth largely reflects the rising wage costs for existing staff rather than the recruitment of additional teachers. As of early 2025, the Teachers Service Commission reported a shortage of approximately 98,281 teachers,[12] contributing to poor teacher-to-learner ratios and declining education quality. Inadequate remuneration has resulted in informal cost-shifting practices whereby public schools ask parents to pay "teacher motivation fees," undermining the guarantee of free public education.[13]
8. Chronic underinvestment in public education has continued to fuel reliance on private and low-cost private schools, particularly in informal settlements. This is despite the government introducing the Basic Education (Amendment) Bill in 2025 to recognise

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[8] GI-ESCR (2025) Prioritising People in Fiscal Policy: Challenging Austerity, Reclaiming Public Services and Upholding Human Rights in Kenya. https://gi-escr.org/en/resources/publications/prioritising-people-in-fiscal-policy-challenging-austerity-reclaiming-public-services-and-upholding-human-rights-in-ghanaSee also Institute of Public Finance (2025) Highlights from the proposed FY 2025/26 Budget. https://ipfglobal.or.ke/wp-content/uploads/2025/05/FY-2025-26-Budget-Estimates-GoK.pdf
[9] GI-ESCR (2025) Prioritising People in Fiscal Policy: Challenging Austerity, Reclaiming Public Services and Upholding Human Rights in Kenya. p. 24-26. https://gi-escr.org/en/resources/publications/prioritising-people-in-fiscal-policy-challenging-austerity-reclaiming-public-services-and-upholding-human-rights-in-ghana
[10] Eastleigh Voice (2025) Government raises primary school capitation by 58 per cent to Sh. 2,238 per learner. https://eastleighvoice.co.ke/education/252167/government-raises-primary-school-capitation-by-58-per-cent-to-sh2238-per-learner
[11] Ibid.
[12] Thiong'o, J. (2025) 'Looming crisis as TSC facing a shortage of 98,281 teachers,' The Standard. https://www.standardmedia.co.ke/business/education/article/2001515936/looming-crisis-as-tsc-facing-a-shortage-of-98281-teachers
[13] GI-ESCR (2024) Build us More Schools! The Quest for Quality Free Education in Mabatini and Ngei wards of Mathare, Nairobi. https://gi-escr.org/en/resources/publications/build-us-more-schools-the-quest-for-quality-affordable-education-in-mabatini-and-ngei-wards-of-mathare-nairobi

Alternative Provision of Basic Education and Training (APBET) institutions as a formal category eligible for public funding. Moreover, due to this delay in its enactment and implementation, many APBET institutions have been left operating in a regulatory grey area, undermining oversight and accountability in the quality of education provided.

9. Overcrowding in public schools, particularly in informal settlements and marginalised areas, remains acute, with no sustained or adequately funded national plan to expand public school infrastructure.[14] This reflects the impact of austerity-driven fiscal policies and government priorities shifting away from the development of public schools.
10. The new higher education funding model, adopted in 2023, marked a decisive shift in the cost of university education from the state to households already under financial strain. Following its rollout, students faced sharply higher fees, raising serious concerns regarding affordability and access. Implemented within broader fiscal reforms linked to IMF conditionalities, the model was halted by conservatory orders of the High Court on 3 October 2024 for lack of public participation, and in December 2024, the Court declared it unconstitutional. Despite this, the framework was reinstated in April 2025. Its impact has been stark; for instance, a government-sponsored nursing student's annual fees increased from approximately KES 43,000 to about KES 300,000. It is clear that the Variable Scholarship and Loan Funding model entrenches exclusion, disproportionately burdens students from low-income backgrounds, and undermines the constitutional right to equitable access to tertiary education.

The Right to Health (Article 12): Austerity, Underfunding, Financial Barriers and Poor Governance

11. Public health financing in Kenya remains critically inadequate as the health sector allocation continues to fall far below both the Abuja Declaration target of allocating at least 15% of the national budget and the WHO benchmark of allocating 5-6% of GDP to finance public healthcare. The FY 2024/25 supplementary budget saw budget cuts to the Universal Health Coverage (UHC) coordination programme, dropping from KES 18.4 billion to KES 4.2 billion. Free maternity healthcare also fell from KES 4.1 billion to KES 2 billion, and spending on medical equipment fell from KES 5.9 billion to KES 3.6 billion.[15] The FY 2025/26 budget deepened this trend, with the Curative & Reproductive Maternal New Born Child Adolescent Health (RMNCAH) programme receiving the highest budget cut of about 18%, dropping from KES 20.28 billion in FY 2024/25 to KES 16.8 billion. These

[14] GI-ESCR (2025) Prioritising People in Fiscal Policy: Challenging Austerity, Reclaiming Public Services and Upholding Human Rights in Kenya. p.34. https://gi-escr.org/en/resources/publications/prioritising-people-in-fiscal-policy-challenging-austerity-reclaiming-public-services-and-upholding-human-rights-in-ghana
[15] Okoa Uchumi (2024) Proposals for Kenya's Austerity in FY 2024/25. https://okoauchumi.com/wp-content/uploads/2024/07/Okoa-Uchumi-Memorandum-on-Kenyas-Supp.-I-Budget-FY-24_25-Beyond.pdf

reductions tend to disproportionately undermine women and girls' access to essential health services.

12. Development expenditure in health declined between FY 2021/22 and FY 2024/25, falling from KES 63.81 billion to KES 32.03 billion (a 49.79% reduction). Over the same period, recurrent spending increased by 27.63% reflecting a prioritisation of short-term operational costs over long-term health investments. These trends highlight the imprint of austerity on the health sector, as debt servicing continues to consume an increasing share of the national budget.[16]
13. The Social Health Insurance Fund (SHIF), implemented within the broader fiscal reforms linked to IMF conditionalities in 2023, has continued to face criticism because its contribution system, based on means testing,[17] is seen as ill-fitted to Kenya's largely informal economy. The testing method fails to capture real needs, as income alone does not account for factors like family size, chronic illness, or the disparities in the cost of living.[18]Furthermore, the benefits package remains unclear and underfunded, which increases the risk of higher out-of-pocket payments, thereby undermining both financial protection and progress towards UHC.
14. Austerity-driven underfunding has accelerated the growth of private, for-profit healthcare providers. According to the 2025 Economic Survey by the Kenya National Bureau of Statistics, 44% of operational health facilities are public hospitals, while 56% are private hospitals (including Faith-Based and Non-Governmental Organisations facilities).[19] This trend reflects a retreat of the state and a deliberate policy shift towards market-based healthcare, as reinforced in the Kenya Health Policy 2014-2030, which promotes private sector participation through tax incentives and legal frameworks that encourage Public-Private Partnerships (PPPs).[20]
15. Persistent challenges in the implementation of devolution have exposed deep fragmentation in Kenya's health governance framework, undermining effective service delivery. Weak harmonisation between national health policies and county level strategies has resulted in overlapping mandates, duplicated roles, and governance gaps, further compounded by ongoing constitutional challenges to several newly enacted

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[16] GI-ESCR (2025) Prioritising People in Fiscal Policy: Challenging Austerity, Reclaiming Public Services and Upholding Human Rights in Kenya. p.23. https://gi-escr.org/en/resources/publications/prioritising-people-in-fiscal-policy-challenging-austerity-reclaiming-public-services-and-upholding-human-rights-in-ghana

[17] Means Testing is a method that used the Means Testing Instrument to determine whether an individual or a household has the ability to pay for their social health insurance premium; Means Testing Instrument: a set of indicators that capture various socio-economic aspects of an individual or a household for purposes of conducting a means testing.

[18] Masibo, C. (2024) 'FIDA Kenya and KELIN Kenya Raise Concerns Over Social Health Insurance Fund Implementation,' The Mount Kenya Times, 19 November. https://mountkenyatimes.co.ke/fida-kenya-and-kelin-kenya-raise-concerns-over-social-health-insurance-fund-implementation/

[19] Kenya National Bureau of Statistics (KNBS) (2025) Popular Version: Economic Survey 2025. Available at: https://www.knbs.or.ke/reports/2025-economi c-survey/

[20] Ministry of Health (2014*) Kenya Health Policy 2014-2030: Towards Attaining the Highest standards of Health*. https://repository.kippra.or.ke/items/c1244ef5-ecf7-4b2c-9aad-a10b14addef6

national health laws, creating legal uncertainty across the sector. These structural weaknesses have had direct consequences for the health work force and continuity of care. Following the lapse of contracts for health workers employed under the UHC programme, the national government sought to transfer these workers to county payrolls, a move resisted by counties due to inadequate budgetary allocations. This intergovernmental impasse, together with the Ministry of Health's failure to conclude a collective bargaining agreement (CBA) for clinical officers, culminated in a nationwide strike in late December 2025, disrupting services in public health facilities and undermining access to essential health care.

Recommendations

16. Kenya must address the structural drivers of inequality, particularly regressive tax measures that disproportionately affect disadvantaged groups. The government should also take deliberate actions to enhance transparency and accountability in public service delivery to prevent resource mismanagement and ensure equity in budget allocations.
17. In light of this, we therefore invite the Committee to extend the following recommendations to Kenya, further reiterating our earlier recommendations to the State.
    a. Kenya should strengthen its domestic resource mobilisation by curbing revenue leakages, through combating illicit financial flows and wasteful tax incentives, in order to expand its fiscal space and fund economic, social and cultural rights. It should enhance cooperation between the National Treasury and the Kenya Revenue Authority (KRA) to detect and deter tax evasion, including through the operationalisation of the beneficial ownership register, the enforcements of country-by-country reporting by multinational corporations and the effective implementation of automatic exchange of information.
    b. Kenya should ensure that, even at times of economic crisis/fiscal tightening, it does not compromise its minimum core obligations and takes proactive steps to ensure the provision of social services to all. To this end, Kenya should adopt transparent, participatory, and human rights-based debt management practices, including conducting human rights-based debt sustainability analyses before major borrowing. All loan agreements, debt assessments, and related conditionalities should be publicly disclosed to enable scrutiny, meaningful civil society participation, and strengthened accountability through clear legislation and institutional oversight.
    c. Adopt a rights-based macro-fiscal framework, to reduce inequality and protect low-income households. The State party should shift the tax burden away from essential goods by lowering VAT on basic items such as food and healthcare, while increasing effective taxation of high-net-worth-individuals, multinational

corporations and luxury consumption. This would include introducing wealth tax in the Medium-Term Revenue Strategy to redistribute resources, address poverty and inequality and ensure that public budgets prioritise the needs of the most marginalised.

d. In terms of the State provision and financing of public education:
    i. Kenya should strengthen equitable financing and access to public education. The Ministry of Education should conduct a national audit of school infrastructure, staffing and access gaps and use the findings to guide targeted investment in classrooms, sanitation and teacher deployment, particularly in underserved areas.
    ii. Kenya should protect and sustain funding for inclusive education and social protection measures such as school feeding programmes, special needs education and free primary and day secondary education to reduce financial barriers for low-income and marginalised learners.
    iii. Kenya should fast-track the enactment and effective implementation of the Basic Education (Amendment) Bill introduced in 2025 to formally recognise Alternative Provision of Basic Education and Training (APBET) institutions. This should include establishing a clear regulatory and accountability framework, so as to support access to quality and inclusive basic education, particularly for children who attend these schools.
    iv. Kenya should reform the higher education funding model to ensure it is fair, transparent and affordable, so that all qualified students can access higher education without incurring excessive debt, regardless of socio-economic background.

e. In terms of the State provision and financing of public health care:
    i. Kenya should strengthen the financing and delivery of public health services by conducting an updated national health equity and infrastructure assessment to identify service gaps across counties and use the findings to guide health sector budgeting and county allocations, prioritising underserved areas.
    ii. Kenya should strengthen coordination and harmonisation of health governance under devolution to ensure continuity of care and protect the health workforce. This includes clarifying roles and responsibilities between national and county government through aligned legislation and policy frameworks; resolving legal uncertainty arising from new national laws and ensuring adequate and predictable budgetary allocations to counties for health service delivery.

iii. Kenya should adopt a transparent and fully costed implementation plan for the Social Health Insurance Fund, clearly defining benefit packages and coverage to prevent exclusions and build public trust.

iv. Kenya should conduct a comprehensive review of policies promoting private sector participation in healthcare, including tax incentives and Public-Private Partnerships (PPPs), to assess their impact on equity, affordability and access to health services. Private sector engagement should be strictly regulated to ensure it complements, rather than substitute, the public health system and complies with human rights standards.

v. Kenya should also earmark revenues from health-related excise taxes, such as those on tobacco and alcohol, to finance the procurement of essential medicines and provide preventive care and community health services.

f. Kenya should strengthen transparency accountability, and public participation in fiscal governance by establishing a Fiscal Justice and Rights Observatory within the National treasury or the Kenya National Commission on Human Rights (KNCHR). The observatory should be mandated to systematically assess and monitor the impact of fiscal and macro-economic policies on economic, social and cultural rights; generate and publish accessible and disaggregated data on tax collection and budget allocations and expenditure performance; and conduct periodic human rights impact assessments. This includes releasing quarterly reports and helping the government institutionalise public consultation in the design, review and implementation of tax policies and fiscal measures.

Conclusion

We thank this Committee for the opportunity to make this follow-up submission that reiterates that Kenya stands at a critical crossroads. Without a decisive shift away from austerity and towards people-centred, rights-based fiscal policies, the structural barriers to realising the rights to education and health will persist. We hope that this submission assists the Committee in issuing strong, precise and actionable Concluding Observations that reflect the lived realities of people in Kenya.

Submitted by:

Contact:
Roselyne Adhiambo Onyango, Associate Programme Officer – Africa, at the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR). Email: roselyne@gi-escr.org