MEASURING INCLUSIVE DECISION MAKING IN KENYA WITH FOCUS ON JUDICIARY AND PUBLIC SERVICE

BY

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DURING THE MEETING ORGANIZED BY UNDP AND IPU

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Current Situation in Kenya

- KNBS is currently collecting data on key decision making positions from the three arms of the Government both at national and county levels

**Data Source:**
- Administrative data from various institutions including Judicial Service Commission, Parliamentary Service Commission, Council of Governors etc.
  - Published annually in the *Economic Survey* and *Statistical Abstract*
- Labour Force Survey and
- Population and Housing Census
One of the mandates of the Bureau (Statistics Act, 2006) is to plan, authorize, coordinate and supervise all official statistical programmes undertaken within the national statistical system.

Coordination is also partly done through the Technical Working Committees (TWCs) chaired by KNBS.

Main objective of forming the TWCs is to establish a coordinated production and dissemination of official statistics in support of policy and program implementation, monitoring and evaluation and also promoting best practices.

TWCs comprises of both data users and producers, drawn from state and non-state actors.
Examples of existing TWCs

- **Governance Peace and Security Statistics TWC**

- **Gender Statistics TWC**
  - Was initiated in 2016 with the aim of overseeing production of gender related statistics

- **Disability Statistics TWC**
  - Was initiated in October 2020 to strengthen stakeholder collaboration to foster production of quality disability statistics in the country

The other role of the TWCs is to validate the data collected especially from administrative source before they are published to ensure quality.

**Quality checks include:** Completeness, Timeliness, Consistency, Uniqueness, Accuracy, Reliability and Validity
SDG 16.7.1: Proportions of positions in national and local institutions, including (a) the legislatures; (b) the public service; and (c) the judiciary, compared to national distributions, by sex, age, persons with disabilities and population groups.

Figures on national distributions, by sex, age, persons with disabilities and population groups can be extracted from 2019 census reports and Labour Force Survey.

1. SDG 16.7.1b: Public Service

- KNBS has never collected data on those who are holding key positions in public service based on merit or career seniority.
- However, we are willing to explore existing opportunities to collect the required data and report on the indicator.
2. SDG 16.7.1c Judiciary

- KNBS annually reports on the number of judges by position and sex
- Yet to collect data on:
  - proportion of judges disaggregated by disability status and age and
  - proportion of registrars
- As at 2019, Kenya had 153 judges
- The number has been decreasing due to exit, except for 2017
- Overall, over 33% of the judges holding key decision making positions in the last five years are female
- This is in line with the third gender rule as outlined in the 2010 Constitution of Kenya
- However, the proportion is slightly lower for the Supreme Court Judges who are also few in number
### Measurement of SDG Indicators 16.7.1b and 16.7.1c in Kenya (3/5)

#### Number of Judges by Position and Sex, 2015 - 2019

<table>
<thead>
<tr>
<th>Position</th>
<th>Sex</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
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<tbody>
<tr>
<td>Supreme Court Judges</td>
<td>Male</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Court of Appeal Judges</td>
<td>Male</td>
<td>18</td>
<td>18</td>
<td>15</td>
<td>12</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>8</td>
<td>7</td>
<td>7</td>
<td>7</td>
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</tr>
<tr>
<td>High Court Judges</td>
<td>Male</td>
<td>60</td>
<td>59</td>
<td>48</td>
<td>45</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>37</td>
<td>37</td>
<td>37</td>
<td>38</td>
<td>40</td>
</tr>
<tr>
<td>Employment &amp; Labor Judges</td>
<td>Male</td>
<td>0</td>
<td>0</td>
<td>8</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>0</td>
<td>0</td>
<td>4</td>
<td>4</td>
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</tr>
<tr>
<td>Environment &amp; Land Judges</td>
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<td>0</td>
<td>21</td>
<td>21</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>0</td>
<td>0</td>
<td>13</td>
<td>13</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>Male</td>
<td>83</td>
<td>82</td>
<td>97</td>
<td>91</td>
<td>90</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>47</td>
<td>46</td>
<td>63</td>
<td>64</td>
<td>63</td>
</tr>
</tbody>
</table>

#### Proportion of Female Judges by Position and Sex, 2015 - 2019

<table>
<thead>
<tr>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Supreme Court Judges</td>
<td>0.29</td>
<td>0.29</td>
<td>0.29</td>
<td>0.29</td>
<td>0.29</td>
</tr>
<tr>
<td>Court of Appeal Judges</td>
<td>0.31</td>
<td>0.28</td>
<td>0.32</td>
<td>0.37</td>
<td>0.37</td>
</tr>
<tr>
<td>High Court Judges</td>
<td>0.38</td>
<td>0.39</td>
<td>0.44</td>
<td>0.46</td>
<td>0.47</td>
</tr>
<tr>
<td>Employment &amp; Labor Judges</td>
<td>0.0</td>
<td>0.33</td>
<td>0.38</td>
<td>0.38</td>
<td>0.33</td>
</tr>
<tr>
<td>Environment &amp; Land Judges</td>
<td>0.0</td>
<td>0.38</td>
<td>0.38</td>
<td>0.38</td>
<td>0.33</td>
</tr>
<tr>
<td>Overall across all Courts</td>
<td>0.36</td>
<td>0.36</td>
<td>0.39</td>
<td>0.41</td>
<td>0.41</td>
</tr>
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</table>
Computation of Female Representation Ratio:

Note:

❖ In Kenya, Judges retire at age 70 while the official retirement age for majority of the working population is 60 years
❖ 2019 Population Census figures can be used to calculate the working-age population

- Proportion of women in the working age = \( \frac{12,555,846}{24,606,270} = 0.51027 \)

- Female representation ratio = \( \frac{\text{Proportion of female personnel at respective level of courts}}{\text{Proportion of women in the working-age population}} \)
Interpretation

- The representation of female judges in Kenya is lower across all courts than in the working-age population.
Opportunities (1/2)

- Judiciary being a member of Governance Peace and Security Statistics TWC hence possibility of collecting age and disability disaggregated data as well as data on registrars

- Provision of a third gender rule in the 2010 constitution under article 81 (b): “Not more than two thirds of the members of elective or appointive bodies shall be of the same gender”

- Emphasis by the government to the employers to ensure they include the minority and persons with disability during recruitment

- Disability Technical Working Committee whose part of their role is to ensure disability disaggregated data

- Inclusion of disability module in the 2019 population and housing census where we used Washington Group on Disability Short Set of questions (WG_SS) and also the fact that Kenya is a member of WG
Opportunities (2/2)

- Ongoing process of producing 2019 KPH Census Monographs which includes data disaggregated by age, sex, disability status and employment status

- Existence of the Commissions (Public Service Commission, Teachers Service Commission, National Police Service Commission, Kenya National Human Rights and Equality Commission,) and the Council of Governors which coordinates the devolved functions where majority are members of the three TWCs

- Need to map of all main institutions within the public administration

- The Bureau can provide projections for various population groups namely; women, youth and persons with disability
Challenges

- **SDG 16.7.1b (Public Service)**
  - Lack of coordination between the Ministries, Commissions and Independent Offices
  - Health and Education functions are shared between the National and County Governments
  - Mapping of the job categories in Kenya into the four categories of International Standard Classification of Occupations (ISCO-08)

- **SDG 16.7.1 (Both)**
  - Getting data for the population groups and also about comparability
Way Forward

KNBS with the assistance of the TWCs should:
❖ identify or map all the institutions dealing with public administration from which data can be sourced
❖ plan for harmonization of data collected from different sources
❖ provide population projections
❖ start reporting on the indicator appropriately as soon as possible

UNDP should:
❖ provide guidance on how to map the job categories in Kenya into the four categories of International Standard Classification of Occupations (ISCO-08)
❖ organize for benchmarking workshops between NSOs to share experiences among countries and adopt best practices
END

THANK YOU