

## THE FEDERATION OF WOMEN LAWYERS – KENYA (FIDA Kenya)



### A SHADOW REPORT TO THE 5<sup>TH</sup> AND 6<sup>TH</sup> COMBINED REPORT OF THE GOVERNMENT OF THE REPUBLIC OF KENYA, ON THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

PRESENTED BY FIDA KENYA TO THE 39<sup>TH</sup> SESSION OF THE UNITED NATIONS  
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## LIST OF ACRONYMS

CBO	Community Based Organization
CEDAW	Convention on the Elimination of Discrimination against Women
CRC	Convention on the Rights of the Child
EC	Electoral Commission
FIDA (K)	Federation of Women Lawyers - Kenya
FGM	Female Genital Mutilation
GBV	Gender Based Violence
GJLOS	Governance, Justice, Law and Order Sector Reform Program
HIV	Human Immune Virus
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
KDHS	Kenya Demographic and Health Survey 2003
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Commission on Human Rights
NCGD	National Commission on Gender and Development
NGOs	Non Governmental Organizations
PRSP	Poverty Reduction Strategy Paper
TIP	Trafficking in Persons

## EXECUTIVE SUMMARY

In Kenya women, who form a majority of the population (52%), play an active and significant part in the development of the Kenyan society. Kenya is a patriarchal society and the status of women is relatively low with gender inequality/inequity prevailing in many aspects of the Kenya society. Yet they remain marginalized and discriminated upon, a situation that is reinforced by existing laws and policies as well as prevailing social-cultural factors.

Kenya submitted its 1<sup>st</sup> State report on the implementation of CEDAW in 1999 and its second report in 2002. From the time of the first report the government, commenced talks on the implementation of policies and laws for the advancement of women, however these talks have only translated into very limited and slow paced tangible change.

This shadow report examines the veracity of the 5<sup>th</sup> and 6<sup>th</sup> combined report of the government of the Republic of Kenya, on the international Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It also raises concerns with what it sees as Government's minimal commitment to the advancement of women by looking at each of the Articles below:

**Question for the Committee to consider.**

In what ways and when will the government enact and implement adequate policies and laws for the advancement of women?

## INTRODUCTION

This shadow report intends to serve as a supplement to the 5<sup>th</sup> and 6<sup>th</sup> country report submitted by Kenya to the CEDAW committee, which will be reviewed by the CEDAW Committee in its 39<sup>th</sup> session. The Federation of Women Lawyers – Kenya (FIDA Kenya), a national women’s rights non-governmental organization, hopes to further the work of the CEDAW Committee by providing independent information concerning the rights of women in Kenya. The Kenyan government ratified CEDAW in March 1984 and has not ratified the Optional Protocol to CEDAW at the time of this submission. Although the government ratified CEDAW in 1984, no steps have been made to domesticate the same into national legislation. A few programs/policies have been initiated to address discrimination against women but these are quite minimal.

This shadow report highlights several areas of concern related to the status of rights of women and girls in Kenya. Specifically on; Discrimination Against Women, Legislative measures to Guarantee Basic Human Rights and Fundamental Freedoms, Suppression of Exploitation of Women, Political and Public Life, Participation at the international level, Nationality, Equal rights in Education, Health Care and Family Planning, Economic and Social Benefit, Rural Women, Equality before the Law and Marriage and Family Law.

The report was prepared by FIDA Kenya in collaboration with key stakeholders in the women’s rights movement. FIDA Kenya being the leading women’s rights organization providing legal aid has been able to obtain current case laws that infringe on women’s rights, some of which have been quoted in this report.

The methodology used in preparing the shadow report was of critiquing article by article according to how the same was presented within the country report.

## **ARTICLE 1: Definition of Discrimination Against Women**

For the purposes of the CEDAW to Convention, the term 'discrimination against women means, "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civic or any other field".

Whereas, the Kenyan Constitution defines discrimination under Article 82, the definition is not in conformity with the definition contained in Article 1 of the Convention, which takes into account the prohibition of direct and indirect discrimination.

The government is aware that discrimination against women is rampant. Indeed the report acknowledges that there is a prohibition against discrimination contained within the Constitution of Kenya in article 82 (4 (b &c)), but notes that the prohibition against discrimination is subject to various limitations, exceptions and qualifications in article 82(1 & 2). These qualifications when interpreted in patriarchal context make it difficult for women to actualize their right not to be discriminated against on the basis of gender, especially in matters covered by personal law. The report notes the limitations faced by government after the defeat of the proposed constitution whose provisions were more in conformity with the Convention. It has also cited judicial decisions, which have complied with the principles of the convention. However noble as these pronouncements are there is no indication on whether these decisions by and large can be attributed to a systematic and deliberate judicial policy which would be more beneficial than isolated cases of individual judicial activism. Equally, there are no indications of what is being done to harness these efforts through training and empowerment of all judicial officers. Apart from the constitution, it is also noteworthy that language in the general legislation is mostly gender neutral thus making it difficult to deal with discrimination that results when laws do not specifically define gender discrimination or make discrimination a penal offense.

**Questions for the committee to consider.**

1. How does the government justify its failure to define discrimination within the Kenyan Constitution to be in tandem with the definition within article 1 of CEDAW?
2. Will the government repeal section 82(4) of the Constitution that allows discrimination against women on matters of personal law?
3. What effort is being made by the government to ensure that discriminatory laws conform to the international instruments ratified by government?
4. Will the Kenya government train the judiciary to appreciate and use international human rights instruments to advance women's rights?
5. Will the government review the current Constitution to holistically deal with gender discrimination?

## **ARTICLE 2: Policy Measures to Be Undertaken To Eliminate Discrimination against Women.**

Formulation of policy for the advancement of women has been lengthy with little tangible result. The formulation of the National Policy on Gender and Development has taken over ten years. Though this Policy has now been adopted as Sessional Paper, it is yet to be widely disseminated to Kenyans to create awareness and support for implementation.

The National Commission for Gender and Development was established in 2003 under an Act of Parliament. The establishment of the Commission was not followed with a requisite operational plan. Subsequently, teething problems with regard to funding and relations with other bodies like the Ministry of Gender and specifically the Gender Department were not clarified. This scenario has left the Commission vulnerable and unable to meet their expected outputs. On the downside, this Commission was notably under funded and missing from the list of constitutional commissions contained in the proposed new draft constitution thereby reducing its profile as the premier government body championing the rights of women. The commendable efforts made by government through the appointment of the Task Force on Laws Affecting Women, which completed its task in 1997 have not borne fruit due to lack of implementation.

### **Questions for Committee to consider:**

1. How will the government ensure that the recently enacted National Policy on Gender and Development is fully implemented?
2. When will the government implement the recommendations of the Task Force on the Laws Affecting Women?
3. Having observed that the Commission has a wide mandate and existing funding levels are not parallel to the said mandate, how does the government expect to bridge the gaps between expectations and the low funding to enable the commission achieve its set objectives.



## **ARTICLE 3 & 4: All Appropriate Measures Including Legislation to Guarantee Basic Human Rights and Fundamental Freedoms**

Although Kenya has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the CEDAW Convention, it has not domesticated these conventions as required by its dualistic legal tradition and practice. Further to this, Kenya while ratifying these treaties has not ratified the optional protocols such as the one relating to CEDAW. The result has been that the women in particular have not been able to benefit from the conventions; as far as the protocols are concerned non-ratification has meant that Kenyans cannot access some of the mechanisms for seeking remedies at the international forum. Being dissatisfied by government's apparent lethargic approach, between the years 2000 to 2002 the women civil society organizations started to agitate for and to draft gender friendly laws such as the Equality Bill, Affirmative Action Bill and the Family Protection Bill that would give effect to the provisions of CEDAW. Consequently, some of these bills were tabled before parliament. However parliament was dissolved before any of the bills were passed and most of the Bills have not been re introduced. The Affirmative Action motion was eventually debated and passed. It was subsequently put on hold to await the constitutional review process and has not been re visited after the proposed new constitution was defeated in the referendum in November 2005.

Despite widespread and continuing discrimination against women the government has failed to prioritise the elimination of such discrimination. Whereas, government recognises the inadequacy of the existing legislative framework to ensure compliance with the Convention, it has not done much to push for legislative reforms. A good example is the Equality Bill which would be instrumental in the elimination of all forms of discrimination against women, but was allowed to expire before discussion by parliament and to date no attempts have been made to republish it for tabling in parliament. As a result of these omissions on the part of government and parliament, incidents of discrimination against women continue unsanctioned, as there exists no mechanisms to ensure or enforce compliance with the ratified conventions; leaving little or no recourse for women who experience discrimination.

The report states that the government has developed Sessional Paper No 5 of 2005 on Gender Equality and Development, which paper forms the framework for affirmative action. The report has highlighted Section 58 of the Sessional Paper that encourages NGOs, CBOs, trade unions and the private sector to ensure higher participation and representation of women. Examples of implementation are given from various sectors, glaringly missing is the central governments own policy and actions taken, indeed the central government's dismal performance is demonstrated by the statistics provided under Article 7.

The report makes various and detailed references to the Government's initiated Constitutional Review Process, which resulted in a Proposed New Constitution of Kenya printed on 22<sup>nd</sup> August 2005. The Proposed new constitution dealt with the issue of gender based discrimination and highlighted gender equality, particularly regarding the principle of affirmative action in relation to persons holding public office and members of parliament. However the expected impact of these provisions relating to women was weakened by the failure to sufficiently entrench them in the constitution; and secondly these rights were subjected to limitations by other provisions within the proposed constitution. In any event the Proposed New Constitution was subjected to a National Referendum on 21<sup>st</sup> November 2005 and was defeated. Should the process of constitution making continue, the benefits accorded women should cease from being mere principles instead they should be enacted as tangible actionable rights that are free from limitations.

**Questions for the Committee to consider**

1. When does the government intend to domesticate CEDAW and the various international human rights instruments that it has signed/ratified?
2. When does the government intend to ratify and implement the Optional protocol to CEDAW?
3. When does the government intend to enact the following legislations: Equality Bill, Affirmative Action Bill and the Domestic Violence (Family Protection) Bill.
4. What mechanisms have been put in place to prioritize elimination of discrimination against women?
5. How does the government intend to implement section 58 of Sessional Paper No. 5 of 2005 on Gender and Development?

## **ARTICLE 5: Sex roles and Stereotyping**

A noteworthy step in an attempt to modify social and cultural patterns of conduct to eliminate prejudices against women has been the change of the school curriculum. The former 7-4-2-3 system of education encouraged gender stereotypes by depicting women in their traditional roles i.e. as mothers, housekeepers, catering or nurses. The system has now been changed to have women portrayed in all sectors including roles that were traditionally male dominated, thus passing the message that girls and boys are equal. However this drive to change the stereotypical portrayal of women is limited to the education system. Outside of school and at home patriarchal ideology continues to exist unabated. Further, stereotyping of women as regards their roles, abilities and inferiority to men continue to be reinforced by the media and by political utterances indeed during the campaign for the referendum on the proposed constitution demeaning references to women including provisions relating to women in the proposed constitution went on unabated. Family education still emphasizes the role of the women as the primary caretakers of the family with little emphasis being placed on the man's care taking role besides financial provision for the family.

### **Question for the committee to consider.**

1. Which mechanisms does the government intend to put in place to address elimination of all forms of discrimination against women in all arenas including gender stereotyping?

## **ARTICLE 6: Suppression of Exploitation of Women**

The Government acknowledges that the main reason women resort to prostitution is poverty as highlighted in the report. It must be emphasized that poverty is exacerbated by entrenched discrimination against women in education, employment and property ownership. As a result they are economically disempowered with little choice but to turn to prostitution or to enter into exploitative relationships thereby exposing themselves to human traffickers in their endeavours to earn a living. Having acknowledged that poverty is the root cause of prostitution and other forms of exploitation amongst women in Kenya – the report indicates that government has instituted measures through provision of credit facilities, but there is no clarity on the implementation of these measures. Further, there is still no government project aimed at rehabilitating prostitutes which work is left entirely to a very small number of NGOs with little support from the government.

The report captures very well the law and government intervention with regard to suppression and exploitation of women. In fact parliament recently passed The Sexual Offences Act, which outlaws various forms of exploitation of women including trafficking, which were hitherto not offences under Kenyan law. However, Kenya is yet to ratify the UN Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons. The proposed Bill to counter Trafficking in Persons is yet to be enacted.

It is important to acknowledge the role of civil society in addressing issues especially those relating to trafficking of women and children. There is also the need to include other actors particularly those in the private sector such as finance and micro finance institutions, small and middle enterprises and the informal sector, especially in relation to interventions aimed at economic empowerment of women as a lasting solution to the elimination of discrimination against women. Considering the impact of HIV/Aids particularly on the most vulnerable, linkages must be made to address it within the context of commercial sexual workers, including those who reluctantly engage in prostitution. Adequate measures must be taken to create awareness amongst them and their clientele to protect them from infection as well as programmes to deal with those who are infected or affected by the virus.

**Questions for the committee to consider.**

1. Does the Kenyan government regards trafficking in persons as a gross violation of human rights and if so will it make it a priority for law enforcement?
2. When does the government intend to enact the Counter Trafficking in Persons Bill that was presented to the Attorney General in May 2006?
3. Does the government intend to address poverty concerns that make women embark on activities resulting in sexual exploitation?
4. How does the government intend to implement and create public

## **ARTICLE 7: Political and Public Life**

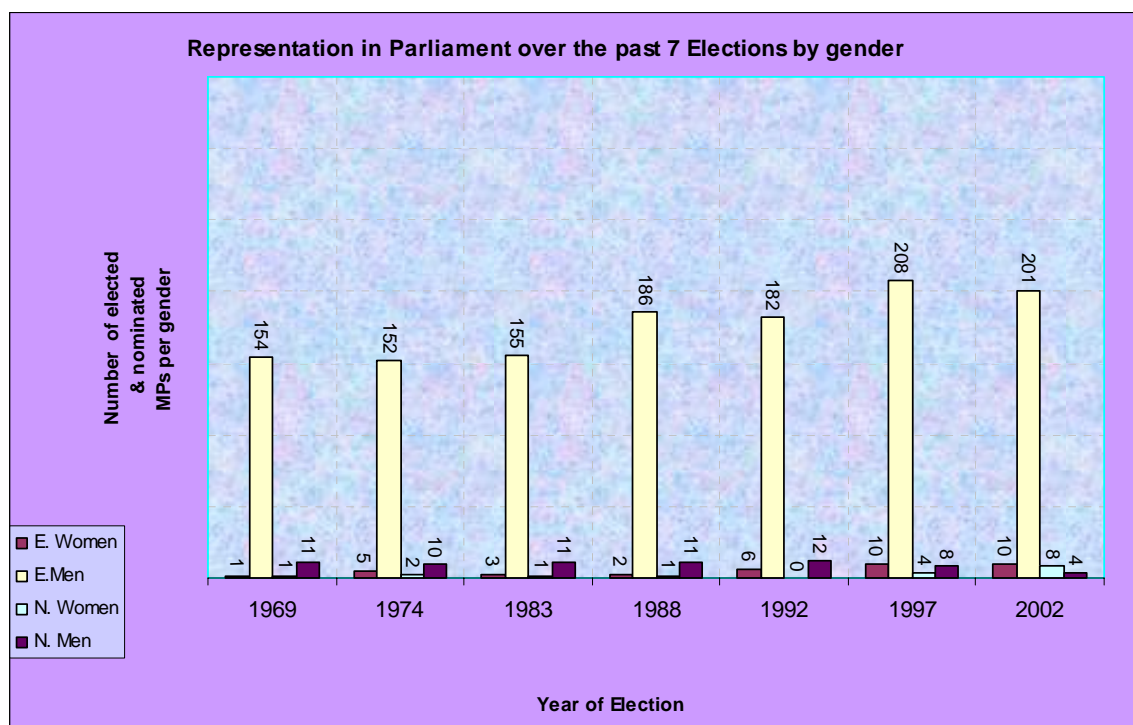
The Kenyan Constitution guarantees the right of all citizens over the age of 18 years to vote and to participate freely in politics. However several factors such as: the requirement of large sums of money, the culture of belittling of women by authority figures particularly in respect to elective offices, general lack of adherence to electoral laws during elections, lack of political goodwill in the enhancement of the participation of women in political and public life at national level including lack of legislative accountability frameworks for political parties, the threat of and actual violence and abusive language targeting women participating in competitive politics, prevent women from exercising their constitutional right to vote and participate in politics.

The Government has not taken any steps to address these issues nor has it advocated for women's greater participation in public life. There has been reluctance on the part of government to reform electoral laws to empower the Electoral Commission to deal with blatant violations in both the nomination and electoral process. As a result the whole electoral process continues to be very hazardous and puts off women candidates. The Political Parties Bill is still being debated in parliament. It is hoped that with the introduction of clear management requirements as well as the provision for funding of political parties, women's participation in competitive politics will no longer depend on male patronage.

As a consequence of the above discrimination which impedes their participation in politics the number of women in parliament is neither reflective nor proportionate to the electorate, which is composed of 52% women. Out of the 222 members of the current parliament only 18 are women. Of this number only 10 were elected even though there were 64 women contestants in the 2002 elections, the other 8 women were nominated to parliament, this was a commendable effort by the political parties considering that in total they have a total of 12 slots for nominated members of parliament. Nonetheless, as a result of their insignificant numbers women MPs are unable to bring women's issues to the fore of parliamentary agenda and also women's issues are likely to be defeated or trivialized in debates. As far as party leadership is concerned only two parties elected women to occupy prominent positions, one as the head of the party and the other as the Secretary General.

Women representation in the judiciary is skewed with the majority occupying the bottom tiers of the judiciary; it is indeed notable that after the judicial purge carried out in 2003, currently there is no woman serving as Court of Appeal Judge, which previously had only one woman to the 10 men. In spite of the report's indication that women form about 33% of the total number of lawyers in the country and that 40 % of the magistrates are women, women still make up only 20% of High Court judges and no measures have been instituted to correct the situation.

Whereas, the government report is generally reflective of the numbers of women participating both in political and public life – it is disturbing to note that appointments to public office continues to reflect age old trends, whereby women are heavily represented at lower and middle level management and their numbers dwindle at the higher levels. Considering that appointments to high public offices in Kenya is largely political and indeed rarely competitive, the government cannot be excused for choosing to exercise political power to appoint in favor of men against women. This lack of political will was demonstrated when the government reconstructed the cabinet after the constitutional referendum – it resulted in the reduction of women holding full cabinet positions from three to two.



**Questions for the Committee to consider:**

1. What mechanisms are in place to ensure that gender parity/equity is achieved in the High Court and the Court of Appeal?
2. What criteria does the government intend to use to ensure women are ably represented in all the socioeconomic and political spheres?

## **ARTICLE 8: Participation at the international level**

The report notes that the number of female ambassadors and high commissioners has increased from 20.6% to 27%. These are the only figures reported – there is no indication of women in senior management level at the Ministry and other international and regional bodies. The report notes that several women have served as advisers in various technical areas. The report quotes the Kenya National Commission on Human Rights (KNCHR), the Electoral Commission (EC) and the National Commission on Gender and Development (NCGD) as bodies required by legislation to have at least a third of its membership as women.

It is not clear why the report has chosen to mention these commissions under Article 8 since they are national bodies while the article refers to participation at international level. Nonetheless it is important to point out that the legislative requirements are limited to the commissioners and no similar provisions are made with regard to management staff, hence like all other public sector institutions these organizations tend to have very few women at top management levels.

### **Question for the Committee to consider:**

1. How does the government intend to implement the principle of affirmative action in all the appointments at the international and foreign services so as to achieve gender parity?



## **ARTICLE 9: Nationality**

The report acknowledges that discrimination against women is glaring with regard to citizenship. The determination of citizenship rests with the male, and in line with the current constitution the father's nationality determines that of his spouse and children. The only attempt by government to rectify this was in the Proposed New Constitution, which was rejected at the referendum on 21<sup>st</sup> November 2005. There has been no further attempt to amend this portion of the constitution through other avenues. It is hoped that notwithstanding the stalled constitutional review process, the issues surrounding discrimination against women with regards to citizenship will be sorted out either by statute or administrative directives.

### **Question for the Committee to consider:**

1. When will the government repeal the discriminatory laws relating to citizenship and allow nationality of children to be determined by both men and women?

## **ARTICLE 10: Equal rights in Education**

The report states that the Government has taken several steps to eliminate discrimination against women in education. The first step taken was the introduction of free primary education. While free primary education is laudable it is necessary to address cultural and social issues that keep parents from sending their girl children to school. Consequently the introduction of free primary education may see a rise in the total number of children enrolled in schools, but there may be little difference to the number of girls retained as the mentality that it is not worth while educating girls continues to exist. Further there should be a policy for retention especially of a girl child who is most likely to drop off from school for variety of reasons including domestic work, caring for the sick and earning income for the family.

As one climbs the rungs of education there is a notable decrease in the levels of enrolment by women. The government's solution to dealing with this has been to lower entry requirement for female students to universities and tertiary institutions.

Statistics in the report reveal an interesting trend that indicates that enrolment of female students at public universities for both government sponsored and self sponsored stands at an average of 30% (last 10 years) while at the private universities the average is about 52% (last 8 years) enrolment for women. Since public universities are considered the first and cheaper option for most citizens, it may be useful for the government to investigate the underlying causes of the disparities. It is also worth noting that though there has been an increase in the female adult literacy the number of literate adult females is still less today than the number of literate adult males was 15 years ago.

### **Education and Disability**

Educating young women and developing their self-esteem and self-sufficiency should be a priority. In 2003 Free Primary Education (FPE) was introduced in Kenya with the objective of enhancing access, retention and equity in education. Education for girls is one of the most crucial issues in resolving social inequity yet there is no legal framework to enforce the principle of non-discrimination as far as girl child is concerned. Also early entry into reproduction often denies young women the opportunity to pursue basic education and is detrimental to their prospects for good careers, which often lowers their status in society. Statistics by KDHS show a strong relationship between age of sexual debut and educational level attained particularly for women. While 25% of women age 15-24 with no education had sex by age 15, only 4% with at least some secondary education did so.

Increasing girls' access to education has proven to reduce fertility and infant mortality rates, promote better health, nutrition and quality of life among families, encourage greater economic productivity and labour force participation and improve overall social and economic development. Even

with the introduction of free primary education, access to education still remains a pipe dream to many Kenyan children. Whereas the introduction of free primary education saw an increase in the enrolment, a sizeable number of children, especially girls still find themselves out of school owing to a number of reasons thereby shattering their academic dreams. A combination of discrimination, poverty, disease and backward cultural practices continue to deny the girl child her right to education. There is a strong belief in many communities that boys should be educated because they will need to support parents and establish households. A girl child is thought to eventually marry and serve another family. The situation gets worse when a mother dies, forcing the girl to take over her responsibilities. An increasing impediment to girls' education is the HIV/AIDS pandemic which forces many of them to leave school to care for family members. Even girls who are educated often end up in lower paying jobs with less opportunity for professional development.

The girl child with disabilities faces additional barriers and needs to be assured of non-discrimination and equal enjoyment of all human rights and fundamental freedoms. Girl children with disabilities need to be assured of access to appropriate education and skills training for their full participation in life. Unfortunately a large number of children with disabilities cannot access education due to a shortage of relevant institutions and facilities, limited trained personnel and even ignorance of parents. Harmful traditional practices such as early marriage, FGM, widow inheritance and discrimination against girl-child are still rampant, hindering retention of children in schools.

**Questions for the Committee to Consider:**

1. Which mechanisms does the government intend to put in place to ensure that the girl child is enrolled and retained in school?
2. When does the government intend to commence providing sanitary towels to girls in schools, as part of the free primary education package?
3. Has the government ensured and confirmed that all the needy girls/women get access to bursary and loans to enable them pursue education?

## ARTICLE 11: Employment

The report has an extensive table analyzing the number of women in various employment sectors. The national profile though reflective of the fact that women do not seem to be well represented in the higher income brackets, with the highest number of women being found in the category of education, shows that women make up 41% of primary school teachers and 35% of secondary school teachers. In the wage economy women represent only 29% of the total workers. Women are not being empowered to enter into the wage economy and are instead concentrating on domestic related work that is poorly paid.

**Public Sector employment:** issues affecting women's employment in the Public Sector are discussed under article 7. However it is important to discuss the increased employment of female primary school teachers as this has been used as an example to demonstrate decreased levels of discrimination against women. However the rise in the number of female primary school teachers from 41.4% in 1997 to 44.4% in 2004 is due in part to the decrease in the amount of male teachers than the increase of female teachers. From 1997-2004 the amount of male teachers fell by 10,203, whilst the employment of female teachers rose by only 1,797 teachers. Moreover the increase in the number of female teachers from 1997-2004 can be attributed to the need for more teachers and not the elimination of discrimination against the employment of female teachers.

**Private sector employment:** since there are no laws or policies governing discrimination in the work place, discrimination against women in the private sector continues unchecked. This is reflected in the fact that though women's salaries have increased by only 3% in the period 1994-2004, women continue to earn almost 3 times less than their male counterparts.

The report discusses at length the Economic Recovery Strategy for Wealth and Employment Creation 2003-2007 that aims at creating 500,000 jobs per year. The report did not mention that the government has so far failed to provide 500,000 per year, but also that the Economic Recovery Strategy for Wealth and Employment Creation did not have any affirmative action to ensure equal employment opportunities for women nor did it address the employment concerns of women. The Economic Recovery Strategy for Wealth and Employment Creation does little to eliminate discrimination against women in employment.

**Self employment and Finance:** Though there is no de facto discrimination against women in accessing of micro finance, women are less capable of taking advantage of micro finance facilities as they rarely have the necessary capital, The few who have the capital to gain micro finance rarely have the knowledge and skills required for the successful operation of micro finance accounts consequently women are constantly being left out of this

economic arena. As well as ensuring that women have equal access to micro finance the government should take steps to ensure that women attain literacy levels and have access to capital e.g. through joint registration of titles to enable them to participate fully in the economic sector.

The report does not mention the report of the Task Force on Labour Laws and the proposed legislation that would translate into gains for women in the work place. Amongst the proposed provisions are those dealing with sexual harassment in the workplace, as well as enhancing maternity rights by abolishing the requirement for women to forfeit their annual leave in lieu of maternity leave. The government has not made much progress with regard to the recommendations of the Task Force on Labour Laws even though the task force finalized its work in 2001.

While the report notes the existence of the Industrial Court as a mechanism for the settlement of industrial disputes – there is no mention of trade unionism and particularly women’s membership considering that the industrial court only arbitrates where workers are members of unions. Further there is no mention of the number of women in trade union leadership, considering that collective bargaining has become an essential feature in establishing labour standards and practices affecting workers and therefore the opportunities to participate and inform labour policies are limited to those in leadership.

**Questions for the committee to consider:**

1. Does the government maintain a record of gender-disaggregated data in respect to recruitment, retention and promotion of employees in both the public and private sector?
2. If so, what statistics does it have to confirm that women are equally employed and promoted as men?
3. When does the government intend to enact adequate labour laws that are in tandem with the various international human rights instruments that it has signed?
4. Has the government introduced Social Security that benefits women within the informal sector?
5. How has the government ensured that women, more so the ones within the informal sector gain access to funding from Micro finance institutions?

## ARTICLE 12: Health Care and Family Planning

### Reproductive Health

The report acknowledges the deterioration of health care in Kenya. However it fails to mention the inability of women to exercise their reproductive and the sexual rights, which has led to a situation where the prevalence of HIV/AIDS among women is almost twice that of men. More needs to be done to empower women with the necessary knowledge and logistical support in order for them to make informed reproductive and sexual health choices. Research done by various organizations indicate that about 300,000 women die every year because of unsafe abortions and there is need for the issue of abortion to be discussed. Considering the emotive debate surrounding legalization of abortions the government needs to spearhead discussions with opposing camps to find practical solutions in dealing with those opting for abortion whether legal or not, as well as providing social security for those opting to carry unwanted pregnancies to term. Indeed the problem of unwanted pregnancies in Kenya is worsened by the lack of social support systems considering that most of those affected are the poor women.

(According to the Kenya Demographic Health Survey 2003 only 29.5% of all women surveyed were using some form of contraceptive. In a context where sexual violence is widespread and access to contraceptives inconsistent and limited, Kenya's highly restrictive laws pose a significant threat to the lives of Kenya's women/girls. Lack of access to safe abortion for victims of sexual violence is particularly troubling given the prevalence of sexual violence in Kenya.

Adolescent girls are at high risk of contracting HIV because of their low social status often pressures them into situations where they are forced to have unprotected sexual intercourse with men. By not providing reproductive and sexual health education in school the government misses a very good opportunity to involve boys from a very early age and to inculcate responsible sexual behaviour. Accurate information on HIV prevention and treatment is a key component of sexual and reproductive health. In Kenya more than half of all young women aged 15-19 believe they have no chance of getting HIV. Yet young women are particularly vulnerable to HIV infection compared to young men. 3% of women aged 15-19 are HIV positive while less than half of 1% of men of the same age test positive. The high rate of early marriages in Kenya also contributes to the vulnerability of adolescent girls to HIV infection. Moreso HIV/AIDS has left many children without caregivers and led to child-headed families who have no balance being in school and providing for their siblings. Approximately 25% of women aged 20-24 in 2003 were married by the time they turned 18 and more than half of those women entered into polygamous marriages. According to a 2001 study among sexually active girls aged 15-19 in Kisumu, Kenya found that HIV infection rates were more than 10 percentage points higher for married than for unmarried girls (married 33%, unmarried 22%). The study found that early

marriage increases frequency of sex, decreases condom use and makes it harder for girls to abstain from sex. Additionally husbands of married girls were three times more likely to be HIV-positive than sexual partners of unmarried girls.

**Questions for the Committee to Consider:**

1. When does the government intend to introduce comprehensive reproductive health legislation that guarantees women the full range of reproductive health services in line with the provisions of the international human rights instruments?
2. How does the government intend to enact adequate legislation with the language of Human Rights that is particularly appropriate and efficacious in relation to women reproductive health rights?
3. How does the government intend to provide accessible services including appropriate information and technology to women seeking reproductive health services?
4. What roadmap has the government put in place to implement the HIV/AIDS Prevention and Control Act?
5. When does the government intend to ratify, domesticate and implement the various international instruments on reproductive health rights that Kenya has signed?
6. Which resources does the government intend to allocate to the Health sector to assist all persons living with HIV/AIDS?
7. When does the government intend to enhance the National Health Insurance Scheme to cater for all women?

## **ARTICLE 13: Economic and Social Benefit**

The report notes the establishment of the Women's Bureau by the government in 1976. The Women's Bureau whose mandate was to ensure the full participation of women in social, economic and cultural fields made major contributions to the improvement of the status of women; however, the Women's Bureau was a very small department of the Office of the Vice President, Ministry of Home Affairs Heritage and Sport. It remained seriously under funded and under resourced therefore was not able to cater for a majority of Kenyan women and thus could not effectively ensure the full participation of women in social, economic and cultural fields. The women's bureau has since been up-graded to the Department of Gender in the Ministry of Gender, Sports, Culture and Social Services. The core functions of the Department of Gender include formulation and review of policies across all sectors, facilitating domestication and implementation of International instruments, co coordinating and harmonizing the implementation of The National Policy on Gender as well as promoting the generation of gender desegregated data. The main challenge the Department of Gender is that it is still very small (with only skeleton staff since its establishment) yet it has an enormous task. The department also has the challenge of capacity and resources without which it cannot achieve its objective.

### **Question for the committee to consider:**

1. When will the government increase budgetary allocation to the Ministry of Gender to enable it achieve its outputs?
2. When will the government make the Gender Department within the Ministry of Gender autonomous?



## ARTICLE 14: Rural Women

The report acknowledges that 80% of the women in Kenya live in the rural areas, and that 70% of the employed women are employed in the agricultural sector and that their wages are often low and uncertain. However it is important to state that though women form more than two thirds of the work force in the agricultural sector working mainly in family holdings in which they have little or no control over the profits from the farm produce and often only have access to the land but no title to the land on which they farm.

The report highlights government's attempts to ensure that women are given equal access to low interest rate credit facilities; however this is often in vain as many women do not have the requisite collateral to take advantage of these low interest rate credit facilities. The report further highlights the changes in the Co-operative Societies Act that allow women to access credit facilities given by co-operative societies and the incorporation of internationally accepted cooperative principles including the one on '**democratic member control**' in to the Act. However high level illiteracy results in women not being able to take advantage to these changes, consequently, with regards to the funds and grants mentioned so far there has been no monitoring on whether the funds are being distributed equitably between men and women. The government needs to put in systems to ensure that the interests of women are also taken into account when utilising the funds and distributing grants.

Baseline Survey conducted by FIDA Kenya in 2006 on the level of awareness and impact of CEDAW on the rural women found that majority of the rural women were not aware of the existence of the CEDAW or reports to the committee by the government and they were also not aware of the National Policies and Programmes that have been formulated to address the rights of the rural women.

### Questions for the committee to consider:

1. How does the government intend to create awareness among the rural women on programmes beneficial to them?
2. What mechanisms has the government put in place to ensure women have access to title over land?
3. How does the government intend to assist women who do not possess collateral to land, to access credit and extension services over the land that they cultivate?
4. When does the government intend to enact the National Land Policy to safeguard land rights of the rural women?
5. How has the government safeguarded the socio, economic, cultural and political rights of women residing within the rural areas

## **ARTICLE 15: Equality before the Law**

In theory men and women both have equal access to the courts for legal redress. However, it is important to capture the fact that a majority of the women do not have access to justice due to many factors including the fact that they are not aware of their legal rights, Women are also economically disadvantaged and in an adversarial legal system like Kenya, one's access to justice is often determined by the ability to hire legal services - therefore there is need for a government legal aid scheme to assist the most vulnerable such as women.

It is only through advocacy initiatives carried out by Non-Governmental Organizations like FIDA Kenya and other civil society organizations that women have started being aware of their legal rights. Thirdly, more women have been able to get free or heavily subsidized legal representation through organizations such as FIDA Kenya. The government needs to be directly involved in increasing legal awareness as well as initiating mechanisms that make it easier for the most vulnerable to access justice on an equal basis with those who are better resourced.

### **Questions for the Committee to consider:**

- 1.What roadmap has the government put in place to implement the proposed National Legal Aid Scheme?
2. Does the government intend to support civil society organizations that provide legal aid services?
3. How does the government intend to simplify the system of waiver of court fees to indigent persons?

## **Equality before the Law and In Civil Matters**

Discrimination against women in other areas such as marriage (for women married under customary law, proof of marriage can an arduous process requiring testimony of witnesses yet the introduction of a simple registration mechanism is all that is required), employment, education, economics means that women are unable to take full advantage of a seemingly non-discriminatory system.

### **Question for the committee to consider:**

When does the government intend to implement mechanisms /enact legislation that will allow for the registration of all marriages?

## Article 16: Marriage and Family Law

### Equality in Marriage

The inequalities in marriage often result in discrimination. Marriage is considered to be in the sphere of personal law hence there is very little interference by the government in attempt to stop discriminatory practices that result from marriage i.e. the unequal distribution of household tasks, distribution of matrimonial property between husband and wife, or discrimination that may arise from polygamous marriages. This discrimination against women becomes most evident upon dissolution of a marriage, when the women are often left with the children and kicked out of the matrimonial home with nothing but the clothes on their back. This discriminative effect has been reinforced by the Kenyan Court of Appeal, which is the highest court in the country in their decision in the case of *Peter Mburu Echaria Versus Pricilla Njeri Echaria*<sup>1</sup> where it was held, inter alia, that neither the status of marriage nor the performance of domestic duties would entitle a woman to a beneficial interest in matrimonial property upon dissolution of marriage. There needs to be greater recognition of women's non-monetary contributions to the acquisition of wealth during the subsistence of the marriage.

There is hence a need for legislation requiring joint registration of the matrimonial home so that the interest of both husband and wife are protected in the event of dissolution of the marriage.

The report lays out the laws regarding the rights of women in family and marriage under the various laws governing the same based on the different religions recognized in Kenya. Most women due to the cultural and societal attitudes, although guaranteed, do not enjoy these rights. The most glaring infringement of these rights is the subjection of women to domestic violence, whereby women are subjected to violence in their own homes. Domestic violence is the most common human rights violation whereby physical abuse by punching, kicking and slapping is the most rampant form of violation. Furthermore, it is virtually 'accepted' in society as it is viewed as a private matter between the husband and wife and also because the customary law of most Kenya communities grants husbands the rights to 'chastise' their wives for misconduct. Husbands, who are perpetrators in cases of wife battering, have been charged under Section 251 of the Penal Code, which makes it a misdemeanor for anyone to commit an assault causing bodily harm. This is not enough and new legislation needs to be passed to address cases of domestic violence that are on the rise.

### (e) Early marriage

Early marriage in Kenya is still a common occurrence owing to the customary laws that allow marriage of children especially after certain rites of passage such as circumcision. After circumcision many girls are encouraged to leave

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<sup>1</sup> Nairobi Civil Appeal No. 75 of 2001.

school and get married. Also the inconsistent laws compound the situation. In spite of the multiple risks early marriage can pose, Kenya's marriage laws do not adequately protect young women. Although the Children Act indirectly defines the minimum age for marriage as 18, the Marriage Act and the Hindu Marriage and Divorce Act both specify that the minimum age of marriage is 16 years for a girl and 18 years for a boy. Customary and Islamic laws generally allow adolescents who have reached puberty to marry regardless of their age. Early marriage leads to early childbearing and a longer fertility period, resulting often in numerous unwanted pregnancies leading to stress, an increased workload, and further financial strains associated with raising children. Often the bulk of the responsibility for upbringing these children fall on the girl child.

**(f) Children born out of wedlock**

All children whether born within or outside wedlock are equal before the law and have equal rights. In Kenya children born out of wedlock are one group that is being discriminated against yet the principle of non-discrimination is well established in most international conventions to which Kenya is a party to and in the Kenya's Constitution as well as in the Children's Act. When it comes to the issue of parental responsibility, these children get less support than children born by married parents. Unfortunately the distinction between the children born out of wedlock and children born by married parents is provided for in the Kenya's national laws. The issue of parental responsibility is determined by whether or not the parents were married at the time of the child's birth. Both the mother and the father shall have parental responsibility in cases where the parents were married and neither the father nor the mother shall have a superior right against the other in the exercise of this responsibility. Contrary, in the cases where the parents were not married at the time of the child's birth and have subsequently not married, the issue of responsibility towards the child is different. In these cases the mother is the one with full parental responsibility whereas the father bears no responsibility at all. It is optional to the father to acquire responsibility and neither the mother nor the child is able to enforce on the father. This is well evidenced in the recent High Court Constitutional Reference Case Number 1351 of 2002 *Rose Moraa & Another v. Attorney General* that reaffirmed that parental responsibility of a child born out of wedlock is solely the mother's.

**Question for the Committee to consider:**

1. When does the government intend to enact the Domestic Violence (Family Protection Bill) which has been pending since 2002?
2. When does the government intend to enact legislation governing women's property rights?
3. When will the government repeal the discriminatory provisions under the Children's Act?

## Gender Based Violence

### (a) Sexual Violence

Sexual violence figures in Kenya, indicate that it is a serious blight on the lives of Kenyan women/girls. According to police sources 2,908 cases were reported in 2004 and 2,867 for 2005 but statistics from the Nairobi Women's Hospital indicate that a much higher number of women are raped each year. Unfortunately, either the police or hospitals do not collect age-specific data. However, according to research done by a children's welfare non-governmental Organization, (the Child Rights Advisory Documentation and Legal Center (CRADLE)), most rape victims are under the age of 16 with the most vulnerable being between the ages of 9-16 years. And in a survey of 1,652 Kenyan women between the ages of 17 and 77, 52% reported being sexually abused in their lifetime while over 30% of them reported an experience of forced sexual intercourse in their lifetime. Other statistics indicate that a woman is raped in Kenya every thirty minutes. In July 2006 the Kenya government enacted the **Sexual Offences Act** to curb the spread of the heinous crimes of sexual violence against women and children. However the legislation is still experiencing teething problems in its initial implementation stages because certain provisions are contrary to the principle of natural justice. For example, ***Section 38 of the Act provides that, 'any person who makes false allegations against another person to the effect that the person has committed an offence under this Act is guilty of an offence and shall be liable to punishment equal to that for the offence complained of.'*** This provision itself can make a survivor of sexual assault not to report to the Police for fear of being punished if the case fails. The new legislation is yet to be disseminated countrywide, and some members of the judiciary are still using the repealed provisions of the Penal Code to adjudicate offences of sexual violence. Another serious concern is the fact that this legislation excludes marital rape as a punishable offence.

### (b) Rape

The report acknowledges incidents of rape have more than doubled since 2001. While the introduction of the Kilimani Police Station and the Nairobi Women's Hospital which deals mainly with victims of rape is commendable, facilities such as these need to be mirrored in other parts of the country. It must however be noted that the Nairobi Women's Hospital is a private sector initiative, this initiative needs to be taken up by government which has a better and more accessible health facilities network throughout the country. There needs to be created an environment in which victims of rape feel comfortable enough to report cases of rape. There is need to train police officers (both male and female) to be sensitive to the needs of victims of rape and the recruitment and training of more police officers, preferably female, to specialise in dealing with cases of sexual violence. A major

concern with regards to rape is the need for proper gathering and handling of evidence, which can lead to conviction or acquittal. In this regard the government should rectify this serious problem by embarking on systematic training of police officers, hospital staff and other relevant criminal justice system agents on advanced, modern, expedient response and investigative mechanisms for rape cases.

The Government must be commended for prioritising the passing of the Sexual Offences Act, which deals more effectively with rape. Prior to this, the penalty imposed for the crime of rape did not act, as a deterrent to rapists and the new Act provides stiffer penalties.

### **(c) Female Genital Mutilation (FGM)**

Majority of communities in Kenya continue to practice FGM. This practice is mainly grounded in the African customs and culture. It exposes the girl child to both violence and discrimination and poses a potentially great risk to the health and well-being of the women/girls who are subjected to it not to mention its violation of the internationally accepted human rights standards. FGM violates the reproductive rights of women/girls since it involves the removal of healthy sexual organs without medical necessity and is usually performed on adolescent girls, often with harmful physical and psychological consequences and it violates their rights to health and bodily integrity. FGM causes life long reproductive health risks among women/girls and studies have shown that infant and maternal mortality is highest among the practicing communities. FGM has been linked to obstetric complications and increased risk of death, both at the time of delivery and post-partum. It can also make labor and delivery difficult for women/girls leading to prolonged obstructed labor, which is one of the leading causes of obstetric fistula, where a hole develops either between the rectum and vagina or between the bladder and vagina. The campaign against FGM in Kenya has included adoption of various plans of action including the ***National Plan Of Action For The Elimination of Female Genital Mutilation in Kenya, 1999-2019.***

According to the 2003 KDHS, 20.3% of the 1,856 female adolescents aged 15-19 participating in the survey had undergone FGM. Rural women (36%) were most likely to be circumcised than urban women (21%). Section 14 of the Children Act 2001 outlaws performing FGM on children under the age of 18. This act describes girls who are likely to be forced into FGM as children in need of special care and protection and provides for courts to take action against the perpetrators. However, the law has faulted for not providing for punishment for offender and also recent statistics indicate that the government needs to take further steps to ensure that the law is observed in practice. Specific steps should be taken to inculcate gender mutual respect by eliminating discriminatory gender biases and the resultant harmful attitudes. The Convention on the Rights of the Child provides for state parties to take all effective and appropriate measures with a view to abolishing

traditional practices prejudicial to the health of children. Article 5 of CEDAW is specific on discrimination concerns and urges states parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

In the 2003 Kenya Demographic Health Survey (KDHS), 32 percent of the women interviewed indicated that they had been circumcised. The proportion of women circumcised increases with age, from 20% of women age 15-19 to 48 percent of those aged 45-49. Although the practice is declining nationally it is still deep rooted among the Kisii, Kalenjin, Maasai, and the Meru. According to the 1998 KDHS, 97% of Kisii women, 62% of Kalenjin, 89% of Maasai and 54% of Meru women are circumcised. Female circumcision causes life long reproductive health risks among girls and women and studies have shown that infant and maternal mortality is highest among the practicing communities. In September 2004, an International Conference on FGM in Nairobi reported that, of the country's 42 ethnic groups, only four (the Luo, Luhya, Teso, and Turkana) did not practice FGM. According to the NGO Maendeleo Ya Wanawake (Development of Women), the percentage of girls undergoing the procedure was 80 to 90 percent in some districts of Eastern, Nyanza, and Rift Valley Provinces. Specific steps should be taken to inculcate gender mutual respect by eliminating discriminatory gender biases and the resultant harmful attitudes. With regard to Gender Based Violence, there have been several efforts to create awareness on gender-based violence, for example, during the 16 Days of Activism against Violence against Women, which runs from 25th November to 10th December every year. In addition in the year 2005 the government contributed Kshs. 4 million towards the Nairobi Women's Hospital in recognition of its efforts to provide medical care to victims of gender based violence. Several NGO's have also been formed to tackle the problem of gender-based violence. Despite these efforts gender based violence is still on the increase. Consequently it may be time to rethink the methods in which the problem of gender-based violence is being tackled. More effort needs to be put in place to tackle the root causes of the GBV i.e. cultural, social and economic factors that lead to GBV rather than addressing the symptoms. Campaigns for the prevention of gender based at the moment are mainly targeted towards women; more effort should be put in targeting men (who are often the progenitors of GBV), both in creating awareness and involving them in NGO's that deal with GBV.

It is important to mention that some police officers are reluctant to intervene in cases of GBV in the family, and their attitude towards GBV in the family is often callous. This discourages women from reporting incidents of GBV. Police officers need to be trained a) to recognise b) to take GBV seriously and c) to be sensitive to the needs of survivors of GBV. More government support is needed for the institutions that deal with gender-based violence throughout



the country i.e. hospitals, shelters, NGO's as their resources tend to be over stretched. Currently no specific law against gender based violence, which is addressed by the Domestic Violence (Family Protection Bill). However this bill is not yet law and further it fails to deal with gender-based violence outside the bounds of a domestic relationship. (Please rephrase this). More effective legislation should be passed to tackle GBV

**Questions for the committee to consider:**

1. What mechanisms has the government put in place to curb gender-based violence?
2. When does the government intend to enact legislation to criminalize female genital mutilation for adult women?
3. What roadmap has the government put in place to speedily implement the provisions of the Sexual Offences Act?

## Conclusion

The country report has not addressed all the areas and issues affecting women. Some of the areas and issues addressed do not give sufficient information and explanations; more details with supportive data would have been useful. It tends to conceal the actual situation and instead paints a rosy picture that depicts a situation whereby women fully enjoy their rights and that there are no barriers to doing the same.

In sum, although there have been some positive achievements for women in Kenya, there have also been major deterrents and setbacks in the advancement of women. The most obvious deterrent to the advancement of women and their enjoyment of their rights is the lack of legislative and policy framework to accelerate advancement of women; the other is lack of awareness of women's rights by the populace. The society seems to be ignorant of women's rights and therefore violates them. Additionally, many women are still not aware of their rights and suffer in silence without seeking redress. Hence, much needs to be done, especially by the government, to put in place adequate laws and policies and to create awareness that will change the attitudes of its citizens as far as women and their rights are concerned. Furthermore, the awareness will empower women to stand up for their rights and to make informed choices that will result in leading better lives, free of discrimination.