

REPUBLIC OF KENYA



**THE PRESIDENCY
MINISTRY OF PUBLIC SERVICE, YOUTH AND GENDER AFFAIRS**

Responses to Questions raised by the CEDAW during the interactive dialogue on Kenya's 8th Periodic Report held on 2nd November, 2017

Question 1 : Has Kenya adopted the Truth, Justice and Reconciliation Committee (TJRC) report?

Response : The report is still under implementation by the Government. For instance, the Government through the National Lands Commission has embarked on programmes to address historical injustices which is a central issue in the TJRC. This is a progressive process.

Question 2 : Provide examples of where the High Court has overturned/overruled a case handled by the Kadhi Courts

Response : There are no cases of that nature that have reached the Supreme Court yet and therefore no decision on the matter by the Supreme Court. We apologize if we indicated that there is such a decision in the Supreme Court. However, the Court of Appeal and other courts higher than the Kadhi's court, have overturned decisions by the Kadhi's courts that offend the constitution. An example of such a move is in Civil Appeal No. 15 of 2013. In this case, a mother appealed to the High Court against the Kadhi's court decision in Mombasa which had given custody of her two children to her ex-husband. The High court judge overturned the Kadhi's court decision for its lack of jurisdiction. In another case, Mombasa High Court Succession Cause No.301 of 2014, (in the matter of the estate of S.P.B-deceased), in this case, the issue

before the court was whether the High Court had jurisdiction to entertain a matter of succession in the estate of the deceased Muslim or whether it is the Kadhi's Court that has exclusive jurisdiction. The court decided that the Kadhi's court did not have exclusive jurisdiction in Muslim matters.

Question 3 : Measures taken to address security of women human rights defenders.

Response : The Government of Kenya has a duty to ensure the security and safety of all its people. No case touching on insecurity of women human rights defenders has been brought to the attention of the Government.

Question 4 : Percentage of Women in the Public and Private Sector

Response:

- a) Public Sector :**
- i) Cabinet Secretaries – **23.8%**
 - ii) Principal Secretaries – **36.6%**
 - iii) Civil Service (National Government) -**23.3%**
 - iv) County Governments - **46.9%**

Categorization by grade at the National level, shows that the share of female civil servants is fairly even across the hierarchy (oscillating within a range of 18-31%).

At the County Government level, the share of female civil servants is concentrated at the lower echelon of hierarchy (**45.35%** of **service staff** and **52%** of **operations** staff are female while **24%** of **professional, management and administrative staff**, and **22.64%** of **top management** are females

- b) Private Sector** i) Top level management – **151 women and 295 men (36.6% women)**

Question 5 : Indicate the number of shelters and safe houses provided by the state to protect girls from Female Genital Mutilation

Response : The Government is ensuring that girls rescued from harmful traditional practices are kept in rescue centres until they are reconciled with their

families. The Government has three Centres in Nairobi, Machakos and Thika. With devolved government system, there are plans to establish more rescue centres and shelters that will not only be specific to counties but also at the sub-county level. The Government through the Ministry of Public Service, Youth and Gender Affairs has engaged the National Government Affirmative Action Fund that is managed by County Women Representatives to consider construction of additional rescue centres in FGM and early marriage hot spot areas. The Government through the Ministry of Public Service, Youth and Gender Affairs is also working with the management of health care facilities to strengthen Gender Violence Recovery Centres in order to provide comprehensive and quality services to survivors,

Question 6: What are the possible interventions the Government has put in place to address fistula problems

Response: In Kenya, 3 to 4 cases out of 1000 deliveries have fistula complications. There are 3000 new cases annually. The major public hospital Kenyatta National Hospital operates 200 women per year. Flying doctors have partnered with Kenyatta National Hospital to finance operations and management of fistula since 2008. Over 50% of the surgeries are done at Kenyatta National Hospital. Currently there is a national campaign to sensitize the public about fistula and how to prevent fistula. There are 5 medical camps for fistula screening in various hospitals very year.

Question 7: When will Kenya ratify ILO Convention 182 on Domestic Work

Response Kenya ratified ILO Convention 182 on Domestic Work in 2001. The Convention is in being implemented in the country

Question 8: What inter institutional coordination mechanisms and programmes are in place to harmonize functions and avoid overlap among gender machineries

Response: The main gender machineries are: The State Department of Gender Affairs and the National Gender and Equality Commission. The State

Departments functions are clearly spelt out in Executive Order of May, 2016 that set up the Department. It functions include: Gender Policy management, Special programmes for women, empowerment, Gender mainstreaming in Ministries, Departments and Agencies, Community mobilization, domestication of International Treaties/Conventions on gender as well as policy and programmes on gender violence. The National Gender and Equality Commission on the other hand is an Independent constitutional commission set up under the Constitution and the National Gender and Equality Commission Act 2011. The overall mandate of the Commission is to promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution.

The Commission is mandated to co-ordinate, facilitate and advise on mainstreaming and integrating issues of gender, youth, children, women, persons with disabilities and other marginalized groups in national and county development and advising the Government on all aspects thereof. The Commission is therefore the oversight body. In the of Policy development for instance, the State Department spearheads formulation while the Commission participates in the process in accordance with the NGEC Act. The State Department of Gender Affairs works in close collaboration with the Gender Commission in order to avoid overlaps and regular consultations undertaken to ensure harmonization of work between the two gender machineries.

Question 9: What is the percentage of the State Departments of Gender Affairs out of the total national Government

Response: The allocation to the State Department of Gender Affairs is for 2017/18 is Kenya Shillings 4.9 Billion. This amounts to 0.17% of the National Budget.

Question 10: When will Kenya ratify the Optional Protocol on CEDAW

Response: The process of ratifying the Optional Protocol is under consideration by the Office of the Attorney General and information on the status will soon be will be provided

Question 11: What is the Status of the Public Benefits Act, 2013?

Response: This is an ACT of Parliament that provides for the establishment and operation of public benefit organisations; their registration; and an administrative and regulatory framework within which public benefit organisations can conduct their affairs and for connected purposes. The Act is still in the process of being operationalized

Question 12: What is the National Gender and Equality doing to protect women with disabilities?

Response:

- i. Monitoring social safety net program in form of the cash transfers for persons with severe disabilities who consist of girls, women, mothers of children with severe disabilities and older women and or girls who are orphans. The social safety program designed and implemented by the government include cash transfers to orphans and vulnerable children, PWD with severe disabilities and older members of society as those suffering from extreme food insecurity. In 2014/15 the commission monitored the targeting, reach, coverage, absolute value of transfers to recipients, and disbursement of the funds to ensure elimination of exclusions of women and girls with disabilities among other vulnerable groups, and promote equity in reach. To-date the program has demonstrated ability to close gender gaps and social inequities and with greater investment the funds has potential to eliminate extreme poverty among most vulnerable groups.
- ii. Auditing residential institutions for older members of society. Ageing is accompanied by failing health and in many cases disability also sets in. NGEC assessed the status of homes to establish the suitability of the homes and adherence to set standards and norms on accessibility, mobility and reasonable accommodation. The audit aims to ensure that the elderly women with disability like other clients receive high quality services in the homes.
- iii. In 2015, the Commission introduced incentive schemes in which it is recognises the efforts of private enterprises and companies in addressing plight and rights of persons with disabilities targeting among others women and girls with disabilities. The initiative has acknowledged more than 10 companies who have put together programs or dedicated

social corporate responsibilities to promoting the rights of PWDs. The program has been expanded to recognize care givers and communities who have dedicated time and resources to promote rights of women and girls with disabilities.

- iv. The Commission has been instrumental in the realisation of the 2/3 gender principle provided for in the constitution and Article 100 on promotion of representation of marginalised groups in parliament and the County Assembly. The Commission takes note of the fact that women are not homogeneous and as the agenda is furthered to also include women with disabilities. The Commission also ensures that where the seats are reserved for Disability both genders are considered. As part of the affirmative action and program, the commission advocates for appointment of women with disabilities in public and private sector decision making organs and in political sector.
- v. NGECC continuously monitors with support of other agencies the indicators on gender and disability inclusion in the public sector through government approved public sector performance contracting program. Ministries, Departments and Agencies at national and county government level submit period reports on extent of inclusion of women and girls with disability in public sector employment, and how they are using disaggregated data to inform programs and interventions. The audit ensure public sector check itself on extent of inclusion of all vulnerable groups in programming and service delivery.
- vi. The commission has been able to facilitate 15 county governments to develop specific legislation for persons with disabilities to regulate their service delivery to PWDs. The laws as developed are for purposes of legislating and regulating affirmative actions that benefit the target groups and in particular women and girls with disabilities.
- vii. The Commission has also been instrumental in facilitating ministries and government agencies with review of disability mainstreaming policies in the public sector. The policies streamline the working conditions of employees with disability and this includes female employees with disabilities.
- viii. In the 2013 and 2017 general elections, Commission mediated several electoral petitions involving persons with disabilities including women and youth with disabilities aspirants

during nomination processes, and as candidates during the main elections. In few cases, the commission has joined the matters in courts as amicus curie on petitions on affirmative seats. Further the commission has been involved in mediating and in other instances public litigation on matters of progressive realization of economic, social and cultural rights for persons with disabilities including cases of multiple discrimination for PWD in education, social assistance, and access to housing. Through the commission complaint receipt mechanism, cases of discrimination are processed for action by the commission or referral to other human rights agencies or implementing government agencies. The note the number of complaints from PWD remain low due to various reasons including low awareness among them on need to report, among others.

- ix. The commission in 2014/15 facilitate stakeholders including the Ministry of Health and Kenya Revenue Authority to review income tax deductions and exemptions order to expand opportunities for more persons with disabilities including women with disabilities to obtain tax exemptions. In 2016 more than 8000 PWD had tax exemption certificates (new plus renewed). While this number is still low, the commission continues to refer clients to KRA for consideration on tax exemption.
- x. The Commission also participated in the international and regional reporting on status of vulnerable groups in respect to gender equality and freedom from discrimination. These reports use sex and age disaggregated data where possible. In preparation of these report the commission advocates for inclusion of government commitments and interventions promoting rights of women with disabilities. Such reports including the ICRPWD, African commission on peoples and human rights, the technical working group on ageing, CSW among others.
- xi. In 2015/16, the Justice and legal affairs committee directed the commission to facilitate in the processes of development of a bill seeking to advance access to education for children with disabilities. The bill has expressed provisions for access to education of girls with disability given their double or multiple vulnerability. The bill was submitted to the committee and it yet to be finalized in the parliament. At the same period, the commission facilitate stakeholders review of the children act 2001, development of the

senior citizens care and protection bill, 2014 , the Persons with Disability Act 2003, all of which the commission contribution on provisions to promote rights of women and girls with disabilities is expressly stated in the amendments. The review processes are still underway.

- xii. The commission in 2016/2017 published 5 ground breaking reports all documenting the status women and girls with disabilities in various spheres of life.
 - a. Child pregnancy report that documented drivers of child pregnancies and gaps in legislative framework to protect the rights of children with disabilities.
 - b. The economic burden of GBV to survivors and service delivery institutions showing costs and investment loss due to GBV. The report acknowledges the complex economic burden women and girls with disability suffer and that GBV is correlated with acquired disability.
 - c. Status of Equality and inclusion in Kenya 2017 showing that PWDs greatly suffer from exclusion to participation and accessing some crucial services. The report draw recommendations on how all actors can address these missed and lost opportunities particularly through registration of PWDs
 - d. Assessment on access to free maternity program. The report documents the enormous contribution of the program to skilled birth attendance among mothers and couples. It shows opportunities in this program to serve better women with disabilities through provision of PWD delivery beds, among other adjustments
 - e. Violence towards older persons (whipping the wisdom) documents agents perpetuating physical, emotional, financial and psychological violence to older persons in Kenya. The report shows the higher vulnerability of older women with disabilities to violence directed to them by families and children
- f. Pre-trial detention for persons with disabilities in correctional institutions-2017 also showing some circumstances and context within which rights of women with disabilities

are violated and or protected within the correctional institutions and making recommendations thereof.