



SHADOW REPORT¹
CEDAW COMMITTEE
REVIEW OF KENYA
68th session
October 23 - November 17, 2017

1. ACCESS TO JUSTICE

Women's access to justice² is a major component to ensuring women realise their rights in the CEDAW Convention.

Legal aid is broadly defined to include 'legal advice, assistance and representation for persons suspected, arrested, accused or charged with a criminal offence, detained and imprisoned and for victims and witnesses in the criminal justice process'. Legal aid as a principle, should be provided at no cost for those without sufficient means or when the interests of justice so require. Eligibility criteria for legal aid can also discriminate against women if tests are based on family or household income, which they may not have access to.

In the List of Issues³ the Committee noted that the State party had established a pilot national legal aid and awareness program in six regions and requested for information on:

- (a) the financing of that programme and the extent of its coverage, especially in rural areas and marginalised communities such as slums; and
- (b) whether legal aid is available for civil matters, including in cases of domestic disputes.

¹This report was drafted by Janet Maina (Nairobi, Kenya), a women's human rights defender, member of the organisation "CLEAR" with the support of lawyers Andomalala Rakotondrabary (France) and Walleska Pareja Díaz (Ecuador).

Maina focuses her work on women and children who cannot afford legal services. The main tools CLEAR uses are training to empower the women and children and also legal representation.

² CEDAW Committee, General recommendation on women's access to justice, 23 July 2015, available at: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_33_7767_E.pdf

³ CEDAW, CEDAW/C/KEN/Q/8, List of issues and questions in relation to the eighth periodic report of Kenya, 13 March 2017, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKEN%2fQ%2f8&Lang=en, para. 3.



The state in response⁴ noted that Under the Legal Aid act 2016, there is a National Legal Aid Service whose functions include administering national legal aid scheme that can be accessed, and is affordable for all Kenyans who require this and that plans are now in place to operationalise the Act.

QUESTIONS & RECOMMENDATIONS TO THE STATE:

- Can the state clarify/confirm whether legal aid includes victims and witnesses as many women and girls find themselves as victims and witnesses and not necessarily perpetrators?
- Eligibility criteria and whether there are any evaluations for eligibility based on family or household income.
- The state should ensure that women obtain equality with men before the law by putting in place measures to prioritise legal aid for all cases of domestic violence, child custody and maintenance, property and children in conflict with the lawⁱ.

2. NATIONAL MACHINERY FOR THE ADVANCEMENT OF WOMEN

Availability of data disaggregated by sex is necessary for effective gender analysis and targeted policies and programs aimed at the implementation of the Convention.

In the list of issues⁵ the Committee requested the state to provide information regarding the existing system for the collection, sharing and analysis of data disaggregated by sex, age, ethnicity and disability pertaining to all areas covered by the Convention. The state responded⁶ that a framework to consolidate data disaggregated by sex, age, ethnicity and disability has been initiated. It also further stated that currently data is available in the following areas: Public Service Sector (Employment, appointments and promotions) Teachers Service Commission and the Universities.

QUESTION & RECOMMENDATIONS TO STATE

- Can the state provide the specific information and details on the existing/initiated framework for collecting sex disaggregated data.

⁴ Replies of Kenya, 5 July 2017, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKEN%2fQ%2f8%2fAdd.1&Lang=en, para.7.

⁵ CEDAW Committee List of issues, para.5.

⁶ Replies of Kenya, para. 20.



- The CEDAW Committee should recommend that all government agencies including law enforcement collect data desegregated by sex, age, ethnicity and disability pertaining to all areas covered by the Convention.
- The CEDAW Committee should recommend mandatory collection of data disaggregated by sex particularly as it pertains to women's access to justice.
- Specifically, CEDAW should recommend mandatory collection of data by age, residence, relationship between victims and perpetrators, and other characteristics at all levels.
- The CEDAW Committee should recommend mandatory collection of data disaggregated by sex in crime statistics, pre-trial remedies such as bail and bond, court records, access to and use of legal aid and use of Alternative dispute resolution.

ⁱ Legal representation of all children in Pretrial detention ought to be enforced as a matter of priority. The National Legal Aid Awareness program may be of assistance in this regard. ' report on an Audit of the criminal justice system in Kenya at pg. 259 export available at http://www.judiciary.go.ke/portal/assets/filemanager_uploads/Downloads/Criminal%20Justice%20Report.pdf