

**SHADOW REPORT IN RESPONSE TO THE EIGHTH PERIODIC STATE REPORT BY  
KENYA TO THE COMMITTEE ON THE ELIMINATION OF ALL FORMS OF  
DISCRIMINATION AGAINST WOMEN (CEDAW)**

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## **ABBREVIATIONS**

AGPO	Access to Government Procurement Opportunities
CAJ	Commission for Administrative Justice
CDF	Constituency Development Fund
CIPEV	Commission of Inquiry in the Post-Election Violence
FGM	Female Genital Mutilation
FIDA-K	Federation of Women Lawyers Kenya
GBV	Gender Based Violence
IEBC	Independent Electoral and Boundaries Commission
KDHS	Kenya Demographic and Health Survey
KNHCR	Kenya National Human Rights Commission
MCAs	Members of County Assemblies
MMR	Maternal Mortality Rate
MSE	Micro and Small Enterprise
NGEC	National Gender and Equality Commission
NGO	Non-Governmental Organization
ODPP	Office of Director of Public Prosecutions
SDGs	Sustainable Development Goals
SGBV	Sexual and Gender-Based Violence
SMEs	Small and Medium Enterprises
TJRC	Truth Justice and Reconciliation Commission
WEF	Women Enterprise Fund
YEDF	Youth Enterprise Development Fund

## **INTRODUCTION**

This is a Shadow Report to Kenya's Eighth State Periodic Report to the Committee on the Elimination of All Forms of Discrimination against Women (hereinafter referred to as the Committee) as prepared by the following organizations:

1. Plan International Kenya-**The lead organization**
2. Kenya Human Rights Commission (KHRC)
3. African Women's Development and Communication Network (FEMNET)
4. Coalition on Violence Against Women (COVAW)
5. The East African Centre for Human Rights (EACHRights)
6. Terre Des Hommes Netherlands (TdH-NL)
7. The Cradle – The Children's Foundation
8. Women Empowerment Link (WEL)
9. Health Systems Advocacy Partnership (HSAP) Kenya
10. SOS Children's Villages Kenya
11. Women Educational Researchers of Kenya (WERK)
12. The Girl Child Network (GCN)
13. Organization of Africa Youth (OAY)
14. United Disabled Persons of Kenya (UDPK)
15. Women Challenged to Challenge
16. Deutsche Stiftung Weltbevoelkerung Kenya (DSW)

The Report is divided into:

Section I: Introduction

Section II: Kenya's present overall constitutional and political context.

Section III: Analysis and Recommendations

Section IV: Summary and Conclusion

## PRESENT KENYAN CONTEXT

The Constitution of Kenya<sup>1</sup> was promulgated in August 2010. It brought with it renewed enthusiasm and hope for Good Governance, Rule of Law, respect for Human Rights and provided for elaborate and clear provisions against discrimination. The Preamble grounds equality as a core foundation of the Kenyan State in the following words *'Recognising the aspirations of all Kenyans for a Government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law'*. Article 10 of the Constitution entrenches equality as one of the National Values and Principles; and has provided that all persons are equal before the law, having the right to equal protection and equal benefit before the law<sup>2</sup>. It further stipulates that the State shall not discriminate directly or indirectly against any person on any ground including race, pregnancy, marital status, social status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language, or birth<sup>3</sup>.

Article 27(6) obliged the state to take legislative and other measures, including affirmative action programmes designed to redress any disadvantage suffered by individuals or groups due to past discrimination. Specifically on gender, Article 27(8) requires the State to take legislative and other measures aimed at ensuring that not more than two thirds of the members of appointive or elective bodies shall be of the same gender. In addition, the general rules of international law (*jus cogens*); form part of the Kenyan Laws<sup>4</sup>.

As will be discussed in the report, the State has taken various legislative measures in fulfilling her obligations under Article 27 of the Constitution. Such legislations include the Protection against Domestic Violence Act 2015<sup>5</sup>, Marriage Act 2014<sup>6</sup>, Matrimonial Property Act 2013<sup>7</sup>, Land Act 2012<sup>8</sup>, Land Registration Act 2012 and the Political Parties Act 2011<sup>9</sup>. Whether the women and girls community have reaped the intended benefits of these laws and whether they live up to the principles of non-discrimination as espoused by CEDAW is the subject of interrogation in this shadow report.

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1 Available on [www.kenyalaw.org/lex/actview.xql?actid=Const2010](http://www.kenyalaw.org/lex/actview.xql?actid=Const2010)

2 Article 27 of the Constitution of Kenya, 2010.

3 Supra

4 See Article 2(6) of the Constitution of Kenya, 2010.

5 Available on <http://kenyalaw.org/lex//actview.xql?actid=NO.%202%20OF%202015>

6 Available on <http://kenyalaw.org/lex//actview.xql?actid=No.%204%20of%202014>

7 Available on <http://kenyalaw.org/lex//actview.xql?actid=No.%2049%20of%202013>

8 Available on <http://kenyalaw.org/lex//actview.xql?actid=No.%206%20of%202012>

9 Available on <http://kenyalaw.org/lex//actview.xql?actid=No.%2011%20of%202011>

This report examines the progress and challenges in implementing the substantive provisions under CEDAW, providing recommendations as appropriate.

## **KEY ISSUES AND RECOMMENDATIONS**

### **Article 1: Definition of Discrimination**

The Constitution of Kenya guarantees and entrenches freedom from discrimination. Despite the existence of these explicit constitutional and legislative provisions, discrimination against women and girls continue to be experienced in the economic, social, cultural, and political spheres.

The Judiciary has contributed positively in defining gender discrimination particularly in the case of *Rose Wangui Mambo & 2 others V. Limuru County Club and 17 others*<sup>10</sup>. However, judicial officers still needs to understand gender discrimination particularly as appertains sexual and gender based violence as was illustrated in the case of *Omus Kiringi Chivatsi v Republic*<sup>11</sup>; where Chitembwe, J. acquitted the alleged defiler on the basis that the girl behaved like an adult and engaged in sexual intercourse thus the assumption was that she seemed to enjoy sex; and could therefore not have been defiled.

We therefore recommend that the State:

- Fully implements the letter and spirit of Constitution on discrimination against women and girls in the economic, social, and political spheres and enact a comprehensive anti-discrimination law;
- Strengthens the capacity of NGEK and KNCHR to monitor and advise National and County Governments on gender discrimination while creating awareness to combat the patriarchal attitudes and stereotypes that further discrimination against women and girls;
- Undertakes a legal audit of all the gender – blind and gender neutral laws for Parliament to amend, including providing for penal measures where gender discrimination arises;
- Facilitates and fast tracks the implementation of non-discrimination laws and develop mechanisms and structures of working with lawyers and civil society organisations to

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<sup>10</sup> High Court Constitutional Petition Number 160 of 2013.

<sup>11</sup> Criminal Appeal Number 32 of 2016.

continuously undertake Public Interest Litigation to facilitate development of jurisprudence on gender discrimination- whether it has arisen in the public or the private arena.

### **Articles 2 & 3: Measures to Eliminate Discrimination and foster Development and Advancement of Women**

Various policy, legislative, administrative, and judicial measures have been undertaken to address discrimination and inequality. Despite the enactment of these important pieces of legislation, very little progress has been made to achieve non-discrimination and equality among men and women. For instance, on the ownership and inheritance of land; only a handful of women can inherit their father's properties due to deep rooted customs that stipulate that married women are not entitled to their fathers' property upon marriage. Similarly, women who remarry upon the demise of their husbands cease to have the right to stake a claim over their deceased husband's property.

The Marriage Act, 2014: The Act requires that all customary marriages be formalised within three years of the marriage or they will become voidable. It is important to note that a majority of Kenyan marriages are customary marriages; and most people are unaware of this provision. In this context, many women may end up losing all the benefits accruing from these unions should they be declared void by a court of law. The Act subsequently allows men to practice polygyny whereas it remains an offence for women to enter a polyandrous union under the Penal Code.

The Matrimonial Property Act, 2013: The Act legislates over property acquired during the subsistence of the marriage as envisioned under Article 45 (3) of the Constitution. However, Section 6 of the Act requires that any spouse claiming matrimonial property must quantify their contribution towards the acquisition of this property. It is obvious contribution by Kenyan women is usually indirect contribution such as childcare and cannot be accurately quantified. This is a discriminatory provision that requires amendment.

The Land Registration Act, 2012: This Act was amended to omit spousal interest as an overriding interest in any land transactions and effectively stripped women their right to land ownership as most of the matrimonial property in Kenya is registered under their husbands' names.

The State Report in Paragraph 23 and 24 alludes to the enactment of the Victim Protection Act 2014 that establishes the Victim Protection Board. Unfortunately, the Board as constituted does not factor in victims of sexual and gender based violence who are mostly women and girls.

We recommend that the State:

- Amends the Land Registration Act 2012 to re-introduce provisions for spousal interest as an overriding interest in land ownership and disposal.
- Amends the Children's Act 2001 to be consistent with the Constitution and provide equality for girls and boys.
- Amends the Marriage Act 2014 to include polyandrous marriages and recognize customary marriages irrespective of the registration status.
- Amends the Matrimonial Act 2013 to eliminate the requirement for the quantification of non-monetary contribution.
- Allocates adequate financial and human resources to the Anti-Female Genital Mutilation Board to enable it carry out their mandate as envisaged in Prohibition of Female Genital Mutilation Act, 2011.
- Conducts continuous education and awareness of communities on the new legislation to ensure that women enjoy the full benefits of the new legislations.
- Constitutes and operationalises the Victim Protection Board so that women who are victims of offences access reparations and other support services as contemplated under the Act.
- Speedily reviews all legislation that contain gender drawback clauses and align them with the Constitution



#### **Articles 4: Temporary Measures to address Inequality between Men and Women**

While we recognise and appreciate the temporary measures that the State has put in place to address inequality between men and women, the following key areas need to be addressed:

- The Constitutional Amendment Bill No. 4 of 2015 to give effect to the Two Third Gender Rule is yet to be enacted by Parliament despite three (3) court rulings by the High Court<sup>12</sup> and a Supreme Court Advisory Opinion, intense lobbying by women Parliamentarians and other State and Non-State Actors in what has been said to be the deep rooted patriarchal attitude and lack of political goodwill by male members of parliament<sup>13</sup>. The Cabinet as currently constituted is unconstitutional as it does not comply with the mandatory quota of not more than two third of either sex<sup>14</sup>, the same is replicated in all County Governments across the country<sup>15</sup>
- Questions have arisen with respect to the funding opportunities alluded to in the State report including Women Enterprise Fund (WEF), Uwezo Fund and Youth Enterprise Development Fund (YEDF). They include complaints of irregularities and failure to follow procedures when disbursing the funds, cumbersome and technical application forms bearing in mind that literacy among women is low<sup>16</sup>, the repayment modes and centres of loan applications are situated majorly in urban centres posing a challenge to access by women who live in rural marginalised areas, many women have little or no knowledge of the existence of the funds and their benefits, the interests charged are high and the repayment schedules do not take into consideration the variance in time for businesses to break even. A monitoring and evaluation framework of the extent to which the Youth and Women Enterprise Funds reach persons with disabilities should be developed.

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12 Centre for Rights Education & Awareness (CREAW) v Attorney General & another [2015] eKLR

13 See the reasons behind the failure on <https://www.standardmedia.co.ke/article/2000200820/why-kenyan-mps-shot-down-gender-bill>

14 <http://www.president.go.ke/the-presidency/the-executive-cabinet/>

15 The Daily Nation Newspaper "Missing From the Top" published on 26th August 2016 <<http://www.nation.co.ke/newsplex/genderbill-/2718262-3357890-786j2wz/index.html>>

16 17% of women in Kenya lack basic literacy skills compared to only 9% of men. See Kenya National Bureau of Statistics, Kenya National Adult Literacy Survey (March 2007), available on <http://statistics.knbs.or.ke/nada/index.php/catalog/58>

- The impact of 30% reservation of Government Procurement Opportunities that has been reserved for women, youth and people with disability has not entirely addressed the barriers that women face in accessing government procurement opportunities. The standards for accessing procurement opportunities are still high and access of these reserved procurement opportunities has been left to a few elite women. The regulations were put in place to ensure all women across the economic divide can easily access government procurement opportunities which has not been the case.
- The state has admitted in Paragraph 59 that there has been insufficient gender and sex-disaggregated data to inform the interventions towards addressing inequality between men and women.

We recommend that the State:

- Prioritizes the collection and analysis of gender and sex-disaggregated data to inform the temporary interventions to address discrimination against women and girls.
- Enacts legislation to realize and achieve the Constitutional gender parity provisions to secure the representation and participation of women in governance.
- Continues to decentralise the Huduma Centres especially in the rural areas to ensure easier access of various government services to all including women and girls.
- Increases the representation of women, especially those in rural areas, in the devolved fund committees including the Constituency Development Fund (CDF) and other funds.
- Enacts a National Equality Policy that is in tandem with Article 100 of the Constitution regarding the promotion of representation of marginalized groups that include women.

### **Articles 5: Measures for Modification of Social and Cultural Patterns of Conduct**

Despite the outstanding legislative and policy measures among others as stated in the State report; retrogressive cultural attitudes, norms, and stereotypes against women are a common place in modern day Kenya. The Kenya Demographic and Health Survey (KDHS) 2014<sup>17</sup> indicates that twenty-one per cent (21%) of women between age 15-49 surveyed have

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<sup>17</sup> Available on <https://dhsprogram.com/pubs/pdf/fr308/fr308.pdf>

undergone Female Genital Mutilation (FGM). Despite the National FGM prevalence rate average continuing to decline, particular communities have recorded higher prevalence rates including the Somali (94 percent), Samburu (86 percent), Kisii (84 percent) and Maasai (78 percent).

Female Genital Mutilation has largely contributed to child/forced marriages in Kenya as girls who have undergone the cut, despite being minors; are considered adults in their communities. The 2014 KDHS is explicit that among women of ages 25-49, 29 percent were married by the age of eighteen (18), and 48 percent were married by the age of twenty (20). This clearly denies girls the right to education and access to economic-empowerment opportunities.

Gender based violence is still prevalent. The Kenya Demographic Health Survey 2014, indicates that 45% of Kenyan women aged 15 – 49yrs have experienced physical violence since attaining the age of 15. The Gender Violence Recovery Centre (GVRC) records 45% of women between ages 15 – 49 have experienced either physical or sexual violence, with women and girls accounting for 90% of the gender based violence (GBV) cases reported. One in five Kenyan women (21%) has experienced sexual violence.

There hasn't been significant commitment by the State to provide reparations to female victims of gender based violence as a result of the 2007/08 Post Election Violence as per the recommendations of the Commission of Inquiry into the Post-Election Violence. The Multi-Agency Taskforce (2012) that was headed by the Office of Director of Public Prosecutions to investigate and recommend prosecution of offences especially those committed in the context of the Post-Election Violence did not recommend any prosecution for rampant SGBV offences committed during the 2007/2008 post-election violence.

Similarly, the Truth Justice and Reconciliation Commission (TJRC) Report 2013 provided for mechanisms on how to address various stereotypes against women and young girls that were deemed to be historical injustices against women and young girls. However; despite its progressive recommendations, the report has never been adopted by Parliament nor implemented.

There still exist challenges in facilitating access to justice for SGBV female victims with mental and other disabilities. The Criminal Justice Sector Actors are ill-trained to handle persons with mental disabilities.

We recommend that the State:

- Takes immediate steps to protect, provide support and shelter to girls escaping FGM and child marriage; and to ensure that at-risk girls are not subjected to the practice particularly during the school holidays;
- Implements laws against FGM and child marriage; and ensure proper investigation and prosecution for violations;
- Works to put into place protective measures within at-risk communities to protect girls from both child marriage and FGM, and to ensure that they continue with their education;
- Raises awareness through community-based education and campaign programs to change cultural perception and beliefs on FGM and child marriages;
- Increases education and awareness targeting legal practitioners and judges, medical personnel to eliminate cultural norms and practices which encourage gender stereotypes and bad and harmful practices.
- Enacts county specific legislation to prohibit all forms of gender stereotypes and practices that enhance discrimination.
- Includes gender equality in the curriculum to address pedagogy, teaching/learning processes and the entire student-teacher interaction in school that reflect gender biases, stereotypes, and insensitivity.
- Establishes and equips rescue centres for girls and women victims of FGM and sexual and gender based violence within the Counties and ensure that they cater for women and girls with disability.
- Adopts and uses technology in reaching out to communities and girls under threat of FGM.
- Establishes comprehensive support services to meet health and psychosocial needs for women and girls who are victims of FGM and GBV with adequate consideration for persons with disabilities.

- Ensures full implementation of the Truth Justice and Reconciliation Commission (TJRC) Report 2013 and the Commission of Inquiry into the Post-Election Violence report.

### **Articles 6: Trafficking in Women and Exploitation of Prostitution of Women**

Kenya continues to be a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking; despite legislation and policy measures that have been undertaken to curb the trafficking in persons. Inland, children are forced to labor in domestic service, agriculture, fishing, cattle herding, street vending, and begging. They are also exploited into prostitution throughout the country including in the coastal region sex tourism industry. There are several reported cases of an increasing number of Kenyan women who have been trafficked to the United Arab Emirates and Saudi Arabia for labor exploitation<sup>18</sup>.

We recommend that the State:

- Ensures adequate resource allocation for the implementation of the Counter Trafficking in Persons Act 2010 as well as the National Plan of Action to Combat Trafficking in Persons (2013-2017).
- Undertakes concrete steps towards instituting investigations, prosecutions and reparations that would secure meaningful and speedy justice for the victims of trafficking in persons; increase oversight of and accountability for overseas recruitment agencies; and increase protective services available to adult trafficking victims, particularly those identified in and returned from the Middle East.
- Allocates resources to the National Assistance Trust Fund for Victims of Trafficking.
- Increases information sharing with local and international partners to ensure detection of possible cases of trafficking.
- Creates public awareness on the various forms of human trafficking in women and girls.
- Provides professional training to all government levels, including front-line responders, on the identification and handling of trafficking crimes.

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<sup>18</sup> United States Department of State Trafficking in Persons Report 2015 at pg 204. See more at <http://www.state.gov/j/tip/rls/tiprpt/2015/index.htm>

- Ensures data collection from the 47 Counties for anti-trafficking efforts and interventions, including victim assistance.

### **Articles 7: Participation in Political and Public Life**

Equality in political and public life is threefold and includes having an equal right to vote, holding public office and participating in civil society. As noted in the State Report, there are remarkable provisions in the Constitution 2010 to safeguard the equality and rights of women in political and public spheres. Despite the inclusion of affirmative action, fewer women participated in the 2013 general elections. There were nineteen (19) women candidates for senatorial and gubernatorial positions (out of 237 candidates). As a result, no women were elected as senator or governor. Out of the 290 elected National Assembly members, only 16 women were elected, only 5 were nominated out of the 12 positions and 47 County women representatives bringing the total to 68 women out of the 349 seats (19.48%) falling short of 49 of the 117 required for full compliance with the two thirds gender rule. In the Senate, there are 18 women filling the 18 reserved seats under the Constitution (26.8%) which is 6.4% short of the constitutional requirement out of the total 67 seats.<sup>19</sup> The 2017 General Elections have seen slight improvement with the National Assembly now at 21% and the Senate at 30% while the County Assemblies are still at 34% with a 2% increase in women elected in open seats. The National Assembly and Senate has 12 members with disabilities out of the total number of 417. This is a 2.8% ratio which is below the 5% Constitutional threshold. Out of the 12 members, only 3 are women. Of the 3, only 1 was elected. Based on this analysis, men with disabilities got more positions than their women counterparts.

We therefore recommend that the State:

- Invests in a long-term political education on the need for women in leadership as a key requirement for sustainable development.
- Establishes mechanisms for funding women who are seeking elective posts to ensure that they can run competitive campaigns like their male counterparts.
- Establishes programmes that will target the change of cultural attitudes against women participation in politics.

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<sup>19</sup> <https://www.sidint.net/content/actualization-and-implementation-two-thirds-gender-principle-kenya>

- Protects and supports women with disabilities aspiring for political leadership.

### **Articles 8: Women’s Representation of the Government at International Level**

As noted in the State Report, contrary to the Two Thirds Gender principle, there is under representation of women at the international level. According to the Ministry of Foreign Affairs, the representation of women in key international diplomatic postings in 2014 constituted only 15.8%. We therefore recommend that the State increases the number of women to meet the constitutional threshold.

### **Articles 9: Women’s Rights to Nationality**

Though the Constitution has focused on the issue of women and citizenship and the Kenya Citizenship and Immigration Act, Act No 12 of 2011 has been enacted, there are still concerns and issues to be addressed within the implementation framework of the Constitution and the Act. In a dialogue conducted by the UNHCR and the Kenya Human Rights Commission, it was identified that most women in Kenya are not able to confer nationality to their children and spouses, particularly where their spouses are stateless persons or refugees<sup>20</sup>. This is because of a perception by government officials that nationality is patrilineal; this perception continues to render many families and children stateless.

The State Report identifies a discrepancy between the Constitution and the Citizenship and Immigration Act. Constitutionally, a person is a citizen by birth if on the day of the person’s birth, whether or not the person is born in Kenya, either the mother or father of that person is a citizen. The Constitution does not distinguish between the parent(s) being a citizen by birth or registration. However, the Act provides that a person born outside Kenya shall be a citizen by birth if on the date of birth that person’s mother or father was or is a citizen by birth (not a citizen by registration). The provision is clearly unconstitutional.

The Act also requires that women married under customary law must produce marriage certificates for them to obtain Kenyan passports. Though the Marriage Act of 2014 requires that all customary marriages be formalised and registered under the Act, the reality is that the

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<sup>20</sup> <http://www.refworld.org/pdfid/54f838564.pdf>

majority of the unions in Kenya are customary and most of them have not been formalised as required by the Act. Therefore, most women in customary marriages as opposed to men cannot obtain passports to enable them travel.

We therefore recommend that the State repeals the Citizenship and Immigration Act, 2011 to address these concerns.

### Articles 10: Education

According to the Economic Survey 2016<sup>21</sup>, the enrolment of boys and girls in various levels of education from 2011-2015 was as follows:

Year	2011		2012		2013		2014	
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls
Primary school	4887.3	4673.7	4972.7	4784.9	5019.7	4837.9	5052.4	4898.4
Secondary school	948.7	819.0	1019.0	895.8	1127.7	976.6	1202.3	1107.6
Universities	127.5	91.2	140.2	111.0	214.0	147.4	259.6	184.2
Teachers training institutions	14912.0	14701.0	15180.0	15516.0	18235.0	18878.0	19523.0	20330.0
Technical institutions	53585.8	48173.0	77260.0	50431.0	88064.0	59945.0	89765.4	58377.0

\*Number in thousands

<sup>21</sup> The report can be accessed on [http://www.knbs.or.ke/index.php?option=com\\_phocadownload&view=category&id=107:economic-survey-publications&Itemid=1181](http://www.knbs.or.ke/index.php?option=com_phocadownload&view=category&id=107:economic-survey-publications&Itemid=1181)



Though we acknowledge the several initiatives that the State has undertaken in increasing the enrolment of girls into formal education, there is still a notable lower enrolment and retention rate of girls at different levels of education. In some communities, especially pastoralist communities, there is still stigma on educating girls. Even when girls enrol in schools they drop out due to early pregnancies which can be partially attributed to failure to teach comprehensive reproductive health to girls. Retrogressive cultural practices such as Female Genital Mutilation are also a causative factor for school dropout rates. Child and forced marriages has also been cited as a factor.

There is still a disparity between male and female students in engineering, technical and information technology courses. Female students are still fewer in the aforementioned careers which for a long time have been viewed as male careers. As can be seen in the table above, the gap between the number of male and female students enrolling in technical and vocational training institutions continues to widen in favour of the male gender.

Despite the existence of a robust legal and policy framework on violence against children, cases of excessive force and violence against both the boy and girl child by their teachers are regularly reported in mainstream media. Sexual violence against young girls often lead to the girls dropping out of school as well as early pregnancies.

A close check in most educational institutions indicate that women with disabilities do not enjoy the needed special consideration in education programs. The Persons with Disabilities Act 2006 provides that a person with disability shall not be denied admission either by a person or an institution to any course of study if the person can acquire substantial learning in that course and to take care of their needs in respect to entry requirements, pass mark, curricula, examinations, auxiliary services, use of school facilities, class schedules or physical education requirements.

A higher percentage of girls with disabilities especially in the rural areas drop out of school because of lack of proper sanitation and infrastructure in those learning institutions. Most of

the institutions of higher learning do not have special facilities meant to cater for their special needs<sup>22</sup>.

We recommend that the State:

- Institutes affirmative action to increase the number of girls in technical and vocational training institutions.
- Continues education awareness programmes on the need and plight of girl child education especially in marginalized communities.
- Increases the number of institutions available for girls with disability countrywide and ensure all user friendliness of the existing institutions.
- Accord adequate and appropriate facilities and services within early childhood education for girls with disabilities.

### **Articles 11: Employment**

According to Economic Survey 2016<sup>23</sup>, the number\* of Kenyans employed in different industries desegregated in terms of gender from 2012-2014 was as follows:

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<sup>22</sup> See KNCHR Disability rights report: From Norm to Practice: A Status Report of the Rights of Persons with Disabilities in Kenya (2014), available on <http://www.knchr.org/Portals/0/Reports/Disability%20Report.pdf>

<sup>23</sup> The report can be accessed on [http://www.knbs.or.ke/index.php?option=com\\_phocadownload&view=category&id=107:economic-survey-publications&Itemid=1181](http://www.knbs.or.ke/index.php?option=com_phocadownload&view=category&id=107:economic-survey-publications&Itemid=1181)

INDUSTRY	2012		2013		2014	
	Male	Female	Male	Female	Male	Female
Agriculture, Forestry and Fishing	209.9	127.8	217.8	124.7	220.6	112.7
Mining and quarrying	7.3	1.7	7.7	1.7	10.8	2.0
Manufacturing	192.8	78.1	228.5	50.9	234.4	53.0
Electricity, gas, steam and air condition supply	10.3	4.0	10.4	4.2	11.1	4.2
Water supply, sewerage, waste management and remediation activities	5.6	2.9	6.3	3.1	7.0	3.4
Construction	94.2	21.9	106.7	23.1	117.1	26.6
Wholesale and retail trade; repair of motor vehicles and motorcycles	147.0	51.0	159.1	53.1	164.7	55.5
Transportation and storage	62.2	13.0	55.7	20.4	58.3	21.4
Accommodation and food service activities	44.5	24.4	49.9	23.6	49.0	24.1
Information and communication	52.4	33.3	58.1	34.3	61.9	37.2
Financial and insurance activities	33.8	27.8	39.2	26.1	40.4	27.1
Real estate activities	2.0	1.7	2.8	1.0	2.9	1.0
Professional, scientific and technical activities	44.4	18.3	45.3	19.9	46.4	20.2
Administrative and support service activities	3.4	1.1	4.2	0.6	4.3	0.6
Public administration and defence; compulsory social security	133.5	73.9	141.6	80.8	147.6	85.9
Education	220.8	164.0	202.1	221.2	215.4	234.6
Human health and social work activities	41.6	63.1	45.3	67.0	47.7	70.7
Arts, entertainment and recreation	4.1	2.3	4.5	2.1	4.6	2.1
Other services activities	17.2	11.0	18.9	10.3	18.6	11.9

Activities of households as employers; undifferentiated goods and services producing activities of households for own use	38.9	67.4	40.6	69.2	40.3	71.8
Activities of extraterritorial organizations and bodies	0.7	0.3	0.8	0.3	0.8	0.3
<b>TOTAL</b>	<b>1366.6</b>	<b>789.0</b>	<b>1445.5</b>	<b>837.6</b>	<b>1503.9</b>	<b>866.3</b>

\*Numbers in 000

As illustrated above, the number of women in employment is much lower than that of men across all the years as well as across sectors. There is a high number of women in the industry classified as 'Activities of households as employers; undifferentiated goods and services producing activities of household for own use'. There is a high number of women who are employed in service related industries.

The statutory period for maternity leave in the Employment Act for 2007 is three months as stated in the State report. However, difficulty arises with respect to maternity leave entitlement for women whose infants die immediately after birth or thereafter during the pendency of the maternity period. Again what in instances when there is a miscarriage or in instances of still births, is there an opportunity for maternity leave entitlement? Are women who adopt infants entitled to maternity leave? The Employment Act is silent on all these issues.

A survey carried out by Oxfam in August 2013, in Mukuru, an informal settlement in Nairobi discloses that women domestic workers face serious livelihood challenges<sup>24</sup>. These include low and delayed pay, poor working conditions, sexual exploitation, as well as physical and psychological abuse. Many were not aware of any place where they could report or lodge their complaints and lack of resources was noted as a deterrent to their quest for justice.

A 2012 Survey by the Kenya Human Right Commission working conditions of women in 15 flower farms in Naivasha, Thika, and Athi River<sup>25</sup> found that on average, women in the farms work longer hours (12.9 hours per day) compared to their male counterparts (8.2 hours per day), albeit without additional remuneration.

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<sup>24</sup>Oxfam, Report of a Baseline Survey of Women Domestic Workers in Mukuru Informal Settlement - Nairobi Kenya, (Oxfam, August 2013)

<sup>25</sup> KHRC, Wilting in Bloom: The Irony of Women Labour Rights in the Cut-flower Sector in Kenya, (KHRC, 2012)

We therefore recommend that the State:

- Institutes education and awareness programmes for a change in cultural norms that impede women from seeking formal employment.
- Undertakes an urgent audit of the numbers and conditions of female workers in flower farms and domestic workers to facilitate Government plans for strategic interventions.
- Addresses the challenges experienced by women in trying to success funds and other government opportunities that have been specifically set aside in favour of women.
- Amends the Employment Act to accommodate the different needs of maternity for women including women who have miscarriages, still births, adopting infants etc.
- Ensures achievement of the 5% employment quota for persons with disabilities with further emphasis on representation of women with disabilities.
- Develops a national database of women and girls with disabilities for appropriate interventions.

## **Articles 12: Health**

While we acknowledge the various constitutional, legislative, policy and administrative measures that the State has put in place to improve healthcare for women and girls, there are still several challenges that continue to hamper the right to quality health care for women. These include; insufficient financial resources, inadequate quality human resource, inaccessibility of healthcare facilities in a certain areas, frequent strikes by healthcare workers including doctors and nurses, and not insufficient knowledge or awareness on how to properly handle girls and women with disabilities.

According to the Kenya Demographic and Health Survey (KDHS) 2008-2009, the maternal mortality rates in Kenya stands at 488 deaths for every 100,000 live births. According to the World Health Organisation (WHO) Report on Trends on Maternal Mortality, 2013, 510 Kenyan women die for every 100,000 live births.

Despite the government's provision on free maternity services for women in all public hospitals within Kenya, maternal mortality remains high at 362 maternal deaths per 100,000 live births for the seven-year period preceding the 2014 KDHS. Additionally, maternal deaths account

for 14 percent of all deaths of women aged 15-49. The problem is attributable to a number of factors including but not limited to; lack of access to medical and health facilities by expectant mothers for ante-natal care, delivery and post -natal services. In other instances, lack of proper medical equipment and medical personnel in the health facilities contribute to these maternal deaths are causes of maternal deaths.

There are also reports of systematic abuse and neglect of women especially from poor backgrounds in public health care facilities.<sup>26</sup>The abuse entailed acts such as detaining mothers who had already given birth but were unable to clear their hospitals bills. The women would be detained and denied proper post-natal medical care. In some areas, there were reports of deliberate negligence or women in labour being totally ignore by the staff while in labour.

Health facilities are not friendly to women with disabilities because of the infrastructural barriers such as inaccessible beds, inaccessible washrooms, and lack of sign language interpreters especially in the public hospitals which are the most economically accessible.

In the 2011 Concluding Observations, the Committee noted that one of the causes of high Maternal Mortality Rate was illegal abortion and that a restrictive and punitive legal regime was pushing women to procure unsafe and illegal abortions. While the Constitution tries to rectify the anomaly, the Penal Code has not been amended. Thus, a woman who has procured an abortion under circumstances allowed by the Constitution is still susceptible to prosecution under the Penal Code. The situation was worsened in 2013 when the Ministry of Health withdrew the *2012 Standards for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya*. These guidelines provided clarity on when healthcare professionals could perform abortions within the confines of the Constitution. This uncertainty has led to the increase in the number of unsafe and illegally procured abortions which hinder women from accessing post abortion care.

Lack of access to and knowledge on contraception is another barrier to women's reproductive health rights. According to KDHS, 2014 only 53.4% of women have access to modern

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<sup>26</sup>See CENTER FOR REPRODUCTIVE RIGHTS & FIDA KENYA, FAILURE TO DELIVER: VIOLATIONS ON WOMEN'S HUMAN RIGHTS IN KENYAN HEALTH FACILITIES (2007), available at [http://reproductiverights.org/sites/crr.civicactions.net/files/documents/pub\\_bo\\_failuretodeliver.pdf](http://reproductiverights.org/sites/crr.civicactions.net/files/documents/pub_bo_failuretodeliver.pdf)

contraceptive methods. Various factors such as stock run-outs, failure to seek reproductive health services due to fear of lost wages, lack of access, cultural beliefs amongst other factors inform these statistics. This has of course led to high prevalence of HIV/AIDS amongst women and girls than it is amongst men.<sup>27</sup> Although HIV prevalence among the general population has fallen in Kenya, women continue to be disproportionately affected by the epidemic according to the 2014 KDHS findings.

#### Palliative care

Current estimates in Kenya indicate that every year 4802 women are diagnosed with cervical cancer and 2451 die from the disease.<sup>28</sup> While Breast cancer ranks high (34 per 100,000), Cervical cancer ranks as the most frequent cancer among women in Kenya and the most frequent cancer among women between 15 and 44 years of age.<sup>29</sup>

The government of Kenya has put up a spirited fight against cancer through public sensitization campaigns, equipping hospitals to better manage cancer cases, promoting healthy living, development of policies such as the National Cancer Control Strategy 2017-2022, National Guidelines for Cancer Management 2013, National Palliative care Guidelines 2013, National Palliative Care Training Curriculum among others. However, the treatment of cancer remains very expensive and cannot be afforded by very many people in Kenya. Those who manage to access it, do so after waiting for very long periods of time when the cancer is already at an advanced stage. This unfortunate situation leaves women and girls including those with disabilities at a very risky position as many of them are unable to access these services.

We therefore recommend that the State:

- Allocates sufficient resources to health for construction of new facilities, hiring and retention of additional medical professionals, and purchase of proper medical equipment for medical facilities.

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<sup>27</sup> Women and HIV in Sub-Saharan Africa I/ nursing undergraduate core curriculum  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3874682/>

<sup>28</sup> Human Papillomavirus and Related Cancers, Fact Sheet 2017ICO Information Centre on HPV and Cancer Available at  
[http://www.hpvcentre.net/statistics/reports/KEN\\_FSKenya](http://www.hpvcentre.net/statistics/reports/KEN_FSKenya)

<sup>29</sup> Ibid



- Puts measures to resolve the ever-recurring medical personnel industrial actions including enhancement of pay for medical professionals and improvement of the conditions of service for the health professionals.
- Ensures access to reproductive health information and access to affordable contraceptives to all women and girls with special provisions for women and girls living disabilities.
- Enacts laws which are in tandem with the constitutional provision on abortion to reduce maternal mortality resulting from illegal and unsafe abortions.
- Enacts the Reproductive Health Care Bill<sup>30</sup> which provides for the recognition of reproductive rights, the standards for reproductive health and the right to make decisions regarding reproduction free from discrimination, coercion and violence.
- Invests in palliative care especially in regard to cancer patients so as to make it more affordable ensuring the right infrastructures for people with disabilities.

#### **Articles 14: Rural Women**

There is in existence prevailing patriarchal values and attitudes in rural communities that impede equality between men and women in these areas. Gender inequality in the society is still experienced in various aspects of life, even more severe for women and girls with disabilities.

We recommend that the State:

- Conducts a gender impact analysis of current laws to assess their impact on rural women.
- Increases rural women's awareness and legal literacy by providing them with information on their legal rights.
- Promotes rural women's legal empowerment, including through gender-responsive quasi-judicial and judicial procedures.
- Dismantles barriers to rural women's access to justice by ensuring that formal and informal justice mechanisms and dispute resolution alternatives are available to them.
- Ensures physical access to courts and other justice mechanisms, for example, through the provision of mobile courts which are accessible to rural women.

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<sup>30</sup>The bill can be accessed on [http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2014/ReproductiveHealthCareBill2014\\_\\_1\\_.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/bills/2014/ReproductiveHealthCareBill2014__1_.pdf)

- Provides training to the judicial officers, lawyers, law enforcement officials, paralegals, traditional leaders, and other relevant authorities and officials in rural areas, on how to handle women, girls, and persons living with disability.
- Addresses the barriers that rural women face in accessing funding opportunities to enhance financial inclusivity among the rural women with special focus on girls and women with disabilities.

### **Articles 15 & 16: Equality before the Law**

As noted in the State Report, there are several challenges that impede women's access to justice including inaccessibility of court stations and high costs related to court and lawyers' fees; lack of disability-friendly services in courts including Braille and Sign Language interpreters and case backlogs.

Kenya still lacks a robust legal framework for the process of handling children who are in conflict and or in contact with the law. This inhibits access to justice for girls who are caught in the criminal justice system as they are either held in custody with adults or with juveniles. The Child Justice Bill, 2011 is yet to be enacted into law.

The Law of Succession Act which came into force in 1981 provides for equality amongst men and women in inheritance. However, the Act allows the application of customary law in some specific districts<sup>31</sup>. As has been noted, customary law on matters of inheritance is in most instances discriminatory against women. Widows have a life interest over their deceased husband's estate which ceases upon their remarriage as opposed to widowers whose life interest on the deceased wife's estate does not cease upon remarrying.

We therefore recommend that the State:

- Amends the discriminatory provisions in the Law of Succession Act which discriminates against women.
- Puts in place policy, legislative and administrative measures to address the challenges that impede women in access to justice.

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<sup>31</sup> See Section 33 and 34.

- Adequately resources the National Legal Aid Program (NALEAP) to enhance access to legal Aid for women and girls.
- Enacts the Child Justice Bill 2011.
- Amends the offending sections of both the Marriage Act 2014 and the Matrimonial Property Act 2013 to bring them in conformity with the Constitution and safeguard the right of women in society.
- Establishes regulatory frameworks for both Braille and Sign Language Interpreters and increase the number of accredited braille and sign language Interpreters in public institutions.

#### **Articles 24: Optional Protocol**

Kenya having ratified various Regional and International Human Rights Treaties and Optional Protocols to safeguard and promote the rights of girls and women, there is growing concern that the country has not accepted the Right to Individual Petitions and complaints that is provided for under the various treaties including the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child.

We therefore recommend that the State:

- Ratifies the Optional Protocol to the Convention to allow victims, especially women and girls; to access the CEDAW Committee for redress as appropriate.

#### **CEDAW and Sustainable Development Goals (SDGs)**

The Committee in its Concluding Observations on the Kenya’s 7th Periodic Report was empathic that “full and effective implementation of the Convention is indispensable in achieving the Sustainable Development Goals”. The Committee further called “for the integration of a gender perspective and explicit reflection of the provisions of the Convention in all efforts aimed at the achievement of the Millennium Development Goals and requests the State party to include information thereon in its next Periodic Report”. The SDG framework is emphatic that “realizing gender equality and the empowerment of women and girls will make a crucial contribution to progress across all the Goals and targets. The achievement of full

human potential and of sustainable development is not possible if one half of humanity continues to be denied its full human rights and opportunities”

In view of this, we recommend that:

- The State undertake appropriate measures aimed at mainstreaming gender in the implementation of all SDGs and expend efforts towards providing avenues for women and girls as active participants in sustainable development.

### **CONCLUSION**

The State is on a positive trajectory in undertaking measures to end discrimination against women. However, there are still deep-rooted challenges that must continually be addressed. There still are legislative, policy and administrative measures that impede the realization of a seamless framework of non-discrimination against women.

It is our hope that the Committee considers this report when giving the Concluding Observations and Recommendations to the State.