

REPUBLIC OF KENYA



THE PRESIDENCY
MINISTRY OF DEVOLUTION AND PLANNING



**8TH PERIODIC CEDAW REPORT OF THE GOVERNMENT OF THE REPUBLIC OF
KENYA ON THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF
DISCRMINATION AGAINST WOMEN (CEDAW)**

FINAL DRAFT

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Introduction

1. **Methodology:** The 8th periodic report of the Republic of Kenya on its implementation of the Convention on Elimination of All Forms of Discrimination against Women has been prepared under the auspices of Gender Directorate in the Ministry of Devolution and Planning. The preparation was both participatory and consultative where inter-ministerial representatives, the Civil Society Organizations, research and academic institutions as well the international organizations operational in Kenya were engaged on contextualizing the meaning and applicability of CEDAW provisions in Kenya.

2. To broaden the consultative process, written memoranda were invited from Human Rights bodies and Women's organizations familiar with CEDAW and have closely monitored state's commitment to the implementation of the convention. A technical team drawn from the state and non-state actors was constituted to review and harmonize the submissions across legislative, administrative, judicial and other socio-economic facets. A national workshop with multiple Human Rights, State agencies and civil society bodies, research and academic institutions was convened to validate the outcome of the reviewed documents and align the same to CEDAW reporting format. The 8th periodic report therefore covers the period of May, 2009 to December, 2013, however, relevant achievements complimentary to the report contents beyond the stipulated period have been included to help solidify continued government commitment on Convention implementation.

3. The 8th periodic report is anchored on developments arising from the promulgation of the Kenya Constitution on 27th August (2010) ushering in a transformation of the principles, processes and structures of government. Thus, the CoK (2010) became the supreme basic law replacing the nearly fifty year old Constitution of Kenya, 1963 (CK1963). This came after two major attempts in 1998 through the Inter Party Parliamentary Group [IPPG] which brought some token reforms and the 2003 endeavor through the Constitution of Kenya Review Commission (CKRC) that partly culminated in the referendum of 2005 where an edited version of the

Commission's Draft Constitution was rejected at the vote. To enhance citizenry comprehension of the constitution, the Government initiated National Legal Awareness Programme (NALEP) as information dissemination strategy. This effort was complimented by the input from non-state actors amongst them women's right organizations and the Human Rights bodies and/or actors.

4. Progressive legal context: The 2010 Kenyan constitutionⁱ has been lauded as one of the most progressive in the world for its inclusive and comprehensive bill of rights, decentralization of power, reserved legislative seats for youth and persons with disabilities and several new, independent commissions. It also includes important provisions related to gender equality. In addition to granting women equal inheritance rights and making laws related to marriage and custody of children more equitable, it prohibits elected bodies from being overly dominated by one gender. The constitution prohibits either gender from constituting more than two-thirds of any elected body; this means women, who are were severely underrepresented in Kenya's political arena as at the time of promulgation, must make up at least one-third of all elective public bodies.

5. Subsequent gender-aware legislations: The Political Parties Act of 2011ⁱⁱ extends the two-thirds rule to parties' membership lists and governing bodies. To enhance a abroad understanding of the provisions, the Kenya Integrated Civic Education (KNICE) program pioneered by the Government of Kenya in partnership with non-state actors was initiated to provide civic education on the constitution with the broad aim of achieving fundamental national transformation through policy, legal and institutional reforms, as well as creating the necessary awareness, reorienting the national psyche for the new dispensation and engendering robust public engagement in the constitution implementation process.

6. Elections: The General Elections of March 4th 2013 also form a significant context for the 8th periodic report. More specifically, it was conducted in an environment compounded by constitutionally secured affirmative elective seats for women, a six-tier election process at one-go, the ushering in of devolved government architecture, and generally new constitutional dispensation order. An elementary gain for women in the Constitution is the guarantee of equitable representation anchored in the two-thirds gender principleⁱⁱⁱ ('not more than two-thirds of the members of appointive and elective bodies shall be of the same gender). To this end, gender-aware legislations on Political Parties Act (2011) and Elections Act (2011) clearly spelt a

pathway to realization of equitable representation of women in elective decision making organs. Moreover, the government in collaboration with non-state actors had massively invested in transforming the electoral institution resulting into the creation of Independent Electoral and Boundaries Commission (IEBC), and the judiciary to amicably address any electoral disputes.

7. In compliance with CEDAW's committee treaty-specific reporting guidelines adopted by the Committee at its fortieth session in January 2008 (A/63/38), the 8th report presents, the progress, gaps and strategic way forward on article by article on CEDAW implementation since the submission of the 7th periodic report. Article-based information has also paid attention to CEDAW committee concluding observations on the country's 7th periodic report by giving the progress report so far realized on administrative, legislative and socio-cultural fronts.

ARTICLE1: DEFINITION OF DISCRIMINATION

8. Article 1 of CEDAW defines discrimination against women as 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. Some progress has been made since the submission of the 7th periodic report.

9. **Legislation:** Kenyas Constitution in 2010, has a strong focus on equality, a much improved right to non-discrimination, and special provisions on the protection of rights for particular groups vulnerable to discrimination. In this regard, the Kenya Constitution (2010) in its preamble envisions a government based on the principles of equality:

“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”

10. **Domestication of International law/treaties:** Section 2(6) of the constitution of Kenya provides for the domestication and applicability of CEDAW provisions by providing that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution, thus, the courts and other arms of the government including the non-state actors are expected to apply CEDAW provisions in their jurisdictions. This is given legal enforcement in

Section 21(4) which further requires enactment of legislation to fulfill its (Government's) international obligations in respect of human rights and fundamental freedoms. Enabling laws to these provisions have been established under the Treaty Making and Ratification Act (2012)^{iv}. By virtue of women being Human Beings and being born as human beings, they are entitled to all the rights afforded to the citizens under the Bill of Rights (Chapter IV) in the Constitution of Kenya, and any other Regional and International legal instruments that Kenya has ratified. Furthermore, Article 27(4&5) prohibits discrimination permitted by the state or individual that subverts one's constitutional entitlements as follows:

“Article 27(4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth. (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).”

11. **The Treaty making and Ratification Act 2012** confirms that Kenya still maintains the discretion to implement international laws through parliament, offering Kenyans the comfort that international norms and practices that are contrary to the peoples beliefs and customs can be avoided through parliamentary intervention through Article 94 (5)^v of the Constitution. The Act was passed in order to give life to the provisions of Article 2 (6) of the Constitution and aims to give the procedure to domesticate treaties and the ratification of the same. Hence, there is an existing legal framework through which women can claim gains enshrined in the constitution in case such provisions are not clearly spelt within the Constitution and other domestic legislation pieces.

12. **Non-discrimination in governance:** The Government of Kenya has entrenched non-discriminatory governance architecture in law and practice. Article 10(2)(b) of the Constitution of Kenya states that national values and principles of governance include human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized. Moreover, in Article 60, the Constitution provides that land and property in Kenya shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable, in accordance with stated principles, including the elimination of gender discrimination in law, customs and practices related to land and property in land. These

provisions aim at redressing historical discrimination practices that have largely insubordinate women in the spheres of socio-economic resources and political governance.

13. In cognizance of the role of the courts in interpreting these rights, the Judiciary Transformation Framework, 2012- 2016 was launched. The framework operates under four pillars: People-focused Delivery of Justice, Transformative Leadership, Organizational Culture and Professional Staff, Adequate Financial Resources and Physical Infrastructure and Technology as an Enabler¹, all of which are aimed at enriching the jurisprudence process including cases touching on rights violation. More importantly, the Judiciary Training Institute was repurposed to drive continuing learning, research and the development of a robust, indigenous and patriotic jurisprudence. It is the latter that aims at eliminating restrictive interpretation of the provisions of the Constitution that has in the past suffered a patriarchal view before courts of law. It is largely expected that training of magistrates and judges on international treaty cross-references and application will widen enjoyment of rights especially those already domesticated as CEDAW.

14. In the Constitutional Petition Number 160 Of 2013: Rose Wangui Mambo and 2 others Vs. Limuru County Club and 17 others: At the centre of the controversy was a by-law allegedly made by a majority of the respondents (males) as directors of the Club at a Board meeting held on 18th December 2012. The by-law had the effect of excluding the lady golf members from participating in the Golf General Meeting Election. The relevant part of the impugned by-law reads as follows; “*The golf committee being a male only affair, only full male members with valid handicaps, and who are fully paid up, will be allowed to participate in the meeting and that lady golfers will attend the meeting as guests.*” The petitioners’ contended that they joined a Club that was compliant with the Constitution and one that respected their fundamental rights and freedoms; that in **Article 28** of the Club’s constitution, members are entitled to vote at any general meeting; and that the Club takes equal subscription and admission on equal basis. In the ruling, the judge was of the opinion that Court has the constitutional mandate to hear and determine disputes relating to allegations of violations of fundamental rights and freedoms under

¹ Justice Kalpana Rawal (2013). Constitutional and Judicial Reforms: The Kenya Experience. Presented at the Southern African Chief Justices’ Forum Annual Conference.

Article 165² as read with **Article 22³** entitle every person to move to Court claiming that a fundamental right has been infringed or is threatened with infringement. The Bill of Rights binds all state organs and all persons, corporate or incorporates, by dint of **Article 2(1)**. Consequently, the 1st respondent, a corporate body, is bound to respect and observe the fundamental rights of its members and of all persons. Hence the ruling was delivered that the amendment to the by-law passed by the Board resolution of 18th December 2012 was not only discriminatory contrary to **Article 27** but is also in violation of the right to freedom of expression protected under Article 33 of the Constitution.

15. **Jurisprudence compliance with CEDAW in the case:** CEDAW Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW) defines discrimination against women in the following terms: "discrimination against women" shall mean 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, civil or any other field." It can be seen unequivocally that the by-law that was being passed clearly distinguished between the sexes of the parties hence falling under the perfect ambit of negative discrimination. Besides, the law therefore stood to in violation of the constitution and in particular Article 27 of the Constitution of Kenya.

16. **Challenge:** The sections within the Penal code that perpetuated discrimination on the basis of gender Caps 170, 172 and 173 have since been repealed by the Kenya Citizenship and Immigration Act 2011. The Government has audited the Laws and amended discriminatory clauses as evidenced in the review of Section 38 of Sexual Offences Act of 2006. The office of the Attorney General and Department of Justice shall therefore engage both state and non-state actors in identifying the gaps in other areas of law (especially laws of succession) that perpetuate direct or indirect discrimination and subsequently engage the executive and legislature on

² Article 165(2b) (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened.

³ Article 22 (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.

moving appropriate amendments to rectify the same in conformity with CEDAW and other Human Rights Regime ratified by Kenya.

17. **Another challenge** is that the subsequent legislations have remained gender neutral in their language making it difficult to deal with discrimination in situations where the law fails to categorize discrimination as an offence. The Government through legislature shall undertake to repeal sections of legislations that are gender neutral (especially in Land Acts) in order to conform to the constitutional definition of discrimination.

18. **Another challenge is accession to the Optional Protocol (2000) on CEDAW:** The Government of Kenya has committed to acceding to the optional protocol to CEDAW to allow individuals violated to access the CEDAW committee after exhausting domestic remedy. This process is being spearheaded by the Department of Justice under the office of the Attorney General.

ARTICLE 2: MEASURES FOR ELIMINATION OF DISCRIMINATION AGAINST WOMEN

19. **The government of Kenya has initiated legislative, administrative, judicial measures in curbing discrimination against women across the socio-cultural, political and economic spheres.** More significant were the changes instituted by the CoK (2010): Article 59 of the Constitution establishes the Kenya National Human Rights and Equality Commission whose core function is to promote respect for human rights and develop a culture of human rights in Kenya and under Article 59(2) (b), promote gender equality and equity and to coordinate and facilitate gender mainstreaming in national development. Article 59(3) gives every person the right to complain to the Commission, alleging that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is being threatened.

20. **Draft Gender Policy framework 2011:** The draft Policy under review was developed in July 2011 by the then Ministry of Gender Children and Social Development reconstituted as Gender Directorate after the 2013 General Elections. The policy framework was developed with an overall goal of mainstreaming gender concerns in the development process in Kenya in order to improve the social, legal, economic, and cultural conditions for women, men, girls, and boys.

The objectives of the Policy include promoting equity and equality of women and men throughout their life cycle and ensuring that interventions do not promote inequitable gender roles and relations. The implementation of the policy remains a significant step to the welfare of women since it envisages various principles for enhancing women's status amongst them:

- Women's rights are human rights
- Equity in treatment of women, girls, men, and boys, as well as equal opportunities to access national resources.
- Recognition of the specificity of women, men, girls, and boys in order to promote and protect fairness in the treatment of different categories of women, noting that they are not homogeneous and their circumstances vary.
- Promoting economic empowerment for women
- Developing affirmative action interventions targeting women as a corrective measure to equalize opportunities and access.
- Recognition that inequitable gender relations cannot be addressed by focusing on women in isolation.
- The creation of an enabling environment for women and men, which is gender-sensitive and gender-responsive, in order to meet the specific gender needs of women and men.

21. **Marriage Act (2014)** seeks to eliminate social inequality between men and women in marriage in the context of Kenya. The Act provides that parties to a marriage have equal rights and obligations at the time of the marriage, during the marriage and at the dissolution of the marriage 3(2). To cater for the Muslim women, section 3(4) states that 4) subject to sub-section (2), the parties to an Islamic marriage shall only have the rights granted under Islamic law but largely provides for conformity to equal treatment for women under Islamic marriage as much. The Act provides that all marriages will be issued with marriage certificates, including customary marriages. Before this, customary marriages were treated as inferior with no marriage certificates, thus, women under customary marriage can from the time of operationalisation of Marriage Act prove the legality of their matrimony to particular man, a significant factor in matrimonial property distribution and/or inheritance. The latter is significant at the time on matrimonial property distribution which had largely been relegated to customary practices biased against women before the new law came into force.

22. **Women and land entitlements:** Kenya's Constitution and the three laws adopted in 2012 (the National Land Commission Act, the Land Act and the Land Registration Act) are significant improvements with respect to women's rights to land. Under the new Constitution, women are able to own and inherit land and are guaranteed equal treatment to men under the law. The

Constitution protects the right to property of every Kenyan. Within its “Land and Environment” chapter, which sets out a series of principles for the use and management of land, the Constitution calls for the elimination of gender discrimination in law, customs and practices related to land and property in land. Furthermore, it provides increased protection for widows who are often targets of dispossession from their relatives once their husbands die. Another remarkable feature of the new laws is that co-ownership of land by spouses is now possible. As explained in the Land Registration Act, “there shall be a presumption that the spouses hold the land as joint tenants” (Republic of Kenya, 2012). These gains move women from mere usufruct rights to control over land as a factor of production.

23. Realizing women’s land rights in partnership with non-state actors: a project was initiated on Enhancing Customary Justice Systems in the Mau Forest, Kenya, where local administration partnered with USAID/Landesha. This project focused on bridging the gap between formal and informal justice systems at the local level, with a particular focus on women’s land rights. The Kenyan Constitution and the National Land Policy allow women to own and inherit land, to participate in family and community decisions and to exercise joint control of family resources. However, this has not become the practice in many communities. The awareness-raising campaign around the new constitutional provisions for women’s land rights targeted both traditional leaders as well as community members. As a result of the project, there is a harmonization of traditional and statutory justice systems and the traditional chiefs now require spousal consent for all land transactions. Moreover, two of the OI Pusimoru sub-locations have elected 14 women elders out of 50: this is the first case of women being elected as elders within the Maasai and Kalenjin communities.

24. Sexual violence: Several laws have been enacted that prohibit sexual and gender based violence and further put in place mechanisms to protect women and punish offenders. The Bill of Rights contains progressive provisions that protect women from human rights violations including Article 27 which provides for equality and freedom from discrimination including equality before the law and Article 50(7) which allows evidence to be provided by an intermediary. This is also provided under the Sexual Offences Act. Article 50(8) provides for protection of witnesses or vulnerable persons, Article 50(9) protects the rights and welfare of victims of offences and Article 43(1) (a) safeguards reproductive health rights of women. The

Government has recognized violence against women as a consequence of inequality between men and women with roots in socio-cultural and economic patterning of the society; hence, progressive legislations to prevent the occurrence and prosecute the offenders have largely been laid down.

25. **Amendment to Sexual offences Act (2006)^{vi}**: The government has repealed Section 38 of the Sexual Offences Act under which women face the risk of being victimized for initiating prosecutions against their abusers as of June 2012. Victims of sexual offences whom majority happen to be women are now able to report cases of sexual violence without fear of criminal sanctions. In addition, Regulations required for the implementation of the Sexual Offences Act have been passed amongst them:

- i. Regulations on Dangerous Offenders DNA Databank
- ii. Medical Treatment Regulations
- iii. Regulations for inter-sectoral implementation of the Act
- iv. Sexual Offences Rules of the Court, 2014

26. **Victim protection Act 2013**: gives effect to Article 50(9) of the constitution requiring that parliaments enacts legislation providing for the protection, rights and welfare of victims of offences. The Act aims to recognize and give effects to the rights of victims of crime, protect their dignity by taking measures such as provision of better information, support services, reparations and compensation from the offender, establishment of programs to assist vulnerable victims, establishment of programmes to prevent victimization at all levels of government and promote co-operation between all government departments and other organizations and agencies involved in working with victims of crime. It not only covers rights of the accuser but the accused and sets out principles for any court or administrative body. For example, every victim shall be treated in a manner which takes into account his or her cultural values and beliefs. The bill also explicitly sets out the rights of child victims involved in a case.

27. In addition, **the Act establishes a Victim Protection Board** – which plays an important role in policy development and Victim Trust Fund to cater for expenses arising out of assistance to victims of crime. The terms victim and vulnerable victim have been given a very wide and broad definition under the Act. The Act provides for the right to privacy from intrusion by the media,

health professionals, and any other person. The right also includes confidentiality of communication between a victim and support services providers. Once victim requests confidentiality, then the investigating agency is not to divulge information pertaining to the residential address, telephone number, email address or place of employment of both the victim and the victim's family. Disclosure is only entertained to the extent required for the purpose of law enforcement in the proceedings and ensuring the safety and security of the victim. The Act will go a long way in protecting women who have always been subjected to public ridicule at the point of being accused of committing violence against men while at the same time afford reparations directly to women victims of sexual and gender-based violence.

28. Equalization fund policy: Kenya's Equalization Fund, created in Article 204 of the Constitution (2010), is an important opportunity for the country to contribute to redressing ethno-regional economic inequalities. Article 204 sets up several legal requirements for use of the money in the Equalization Fund:

(1) There is established an Equalization Fund into which shall be paid one half per cent of all the revenue collected by the national government each year calculated on the basis of the most recent audited accounts of revenue received, as approved by the National Assembly.

(2) The national government shall use the Equalization Fund only to provide basic services including water, roads, health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible.

29. Provision of basic needs through equalization fund: Article 204(2) specifies that the fund is an earmark for use only to provide basic services amongst them: water, roads, health services, and electricity. The basic services such water are very significant commodities demanded by women who live in marginalized areas in Kenya that also double as arid regions. Moreover, the fund will be significant in improving maternal health facilities that have been lacking in these areas. While it can be argued that the fund is only 0.5% of the national revenue vis a vis its purpose, it should be understood that the fund operates alongside other devolved funds to the County Governments, Constituency Development Fund.

30. **Non-discrimination in the field of work:** According to article 27 of the Constitution, employees cannot be discriminated based on race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. Moreover, law prohibits employee discrimination on the basis of political or any other opinion, nationality, mental status or HIV status (section 5). Anti-union discrimination is also prohibited under section 5 of the Labour Relations Act. Hence, women like any other employees are legally allowed to join a trade union of their will.

31. **Non-discrimination against women with disabilities:** These provisions are entrenched in the Persons with Disability Act (2003). In employment, Section 15(5) requires employers to undertake reasonable accommodation for persons with disabilities. Section 13 requires that the National Council for Persons with Disabilities endeavour to reserve five percent of all casual, emergency and contractual positions in employment in the public and private sectors for persons with disabilities. In education, learning institutions are obliged to take into account the special needs of persons with disabilities in a number of aspects of education including admission requirements and curriculum. A range of obligations are in place with respect to the duty to provide reasonable accommodation in respect of access to public buildings and public service vehicles (Section 22 and 23). All these are expected to benefit women with disability who had previously been discriminated in the legislation lacuna.

32. **Jurisprudence in compliance with CEDAW on transgender:** *In the high court of Kenya at Nairobi judicial review division jr case no 147 of 2013, Republic v Kenya National Examinations Council & another ex-parte Audrey Mbugua Ithibu.* According to the statutory statement dated 7th May, 2014, the orders were sought on the grounds that: “a) The refusal by the 1st Defendant (KNEC) to effect the change of name and gender mark is unreasonable, unjustified and unfair in the circumstances; b) The refusal to effect the change of name and gender mark is in breach of the rules of natural justice.; c) That the refusal to effect the change of name and gender mark is against the legitimate expectations of the Applicant. And, d) That the refusal to effect the change of name and gender mark is in bad faith.

In the affidavit the KNEC CEO avers: “18. THAT there is no requirement in law for the Council to effect a name change on the Applicant’s or any other person’s certificate and in any event the Council does not effect name changes on certificates that have already been issued as doing so may encourage creation of fraudulent certificates. 19.

THAT it is clear from the Applicant's National Identity Card and Passport that the Applicant is a male and not a female .21. THAT there is also the danger that if the Council allowed former candidates to effect changes to their records; it could become nigh impossible to authenticate certificates produced to potential employers or educational institutions and other interested parties as the Council only authenticates such certificates against records as submitted by candidates at the time they registered for examinations.22. THAT the Council has records in the millions for candidates dating as far back as 1929 and entertaining the Applicant's prayer may encourage other candidates to make similar requests. 23. THAT the Council is funded by public resources and it does not have the resources or manpower to undertake an exercise of this nature."

33. **Jurisprudence compliance with CEDAW:** In the ruling, the judge observed that according to Rule 9(3) of the Rules, KNEC may withdraw a certificate for amendment or for any other reason where it considers it necessary. It therefore has the legal backing to comply with the Applicant's request. Where it fails to do so, then the Court can issue an order of mandamus to compel it to perform the duty. Issuance of orders would not affect the rights of any other Kenyan. The Applicant had indicated that he was willing to pay a nominal fee for the issuance of a new certificate. The respondents had not demonstrated why the orders the Applicant sought should not be issued. The would make the Applicant feel complete as a human being.. An order of mandamus was therefore issued to compel KNEC to recall the Applicant's KCSE certificate No. 1855399 issued in the name of Ithibu Andrew Mbugua and replace the said certificate with one in the name of Audrey Mbugua Ithibu without any gender mark and be issued within 45 days. The ruling is largely viewed as conforming to the constitutional principle of non-discrimination social grounds as well as the CEDAW provision on non-discrimination on the basis of sexual orientation.

34. **Challenge on -FGM abandonment effortst:** cultural resistance from traditional practicing communities has a posed a major set-back to the realization of the provisions of the Prohibition of FGM Act. The National Government through the enacted Anti-FGM board will partner with County governments in supporting initiatives banning harmful traditional practices and facilitate grassroots efforts that focus on changing the mindset of practicing communities. One such initiative is the Tasaru Ntomonok Initiative (TNI). TNI was instrumental in the conviction of the father of 12 year old Sasiano Nchoe who bled to death following the practice, together with her circumciser. The unprecedented court ruling that took place in 2010, based on the Children's

Act of 2001, was facilitated by Equality Now's Adolescent Girls Legal Defense Fund with the help of TNI. This demonstrates that grassroots organizations can be significant partners in the fight against FGM, hence, the continued partnership between the Government and grassroots actors.

35. Challenge with Marriage Act (2014): The marriage Act however not only recognizes polygamous marriages but also allows the man to marry another wife without the first one's consent. This is seen to contravene Article 45(3) of the Constitution states that Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage. There is urgent need to bring those laws and customs in conformity with the constitution. The government will thus consult state and non-state actors on a harmonization process before the legislature is engaged to repeal sections that do not conform to international legal regimes such CEDAW and the general provisions of the Kenya constitution on equality.

36. Challenge on women's land and property ownership: The Government acknowledges that women are greatly underrepresented when it comes to land governance, in terms of their decision making and management. Land administration and management structures tend to be dominated by men at national and various sub-national government levels. Women's participation in decision-making processes is pivotal in addressing gender inequality in the land sector. To this end, the government will not only create awareness on the provisions but also partner with advocacy organizations that have initiated the formation of community land and property "watch dog groups" to monitor and try to prevent property stripping from widows and orphans, thus working towards the achievement of tenure security for vulnerable members of the community besides facilitating paralegal trainings for the members. The government prioritizes this approach because women's rights to active, meaningful and effective participation in legal and policy development are not only crucial for the development of good policy but are fundamental in implementation and governance processes in order to deliver on commitments of gender equality.

ARTICLE 3: MEASURES FOR DEVELOPMENT AND ADVANCEMENT OF WOMEN

37. **Article 3 of CEDAW** provides that states shall take, in all fields, in particular, the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Following the promulgation of the 2010 Constitution, the government established the Constitutional Implementation Commission (CIC), under the Constitutional Implementation Commission Act, 2011. The mandate of CIC is, *inter alia*, to monitor, facilitate and oversee the development of legislation and administrative procedures required to implement the Constitution; and to work with other constitutional Commissions to ensure that the letter and the spirit of the Constitution is respected.

38. **Establishment of Rights Commissions:** The Kenya National Human Rights Commission (KNHCR), the National Gender and Equalities Commission (NGEC), and the Commission on Administrative Justice (CAJ or the office of the ombudsman). These commissions are established pursuant to Article 59 of the Constitution, and in particular Article 59(4) which provides for the forming of two or more commissions to perform the functions provided for in Article 59(2).

39. **The Directorate of Gender:** the Directorate of Gender in the Ministry of Devolution and Planning which is under the Presidency is established under executive order of May, 2013 tasked with responsible for overall coordination of gender mainstreaming in national development, formulation, review and management of gender related policies, negotiations, domestication and reporting on gender related international and regional treaties and promotion of equitable socio-economic development between men and women. To fulfill its mandate the Directorate collaborates with partners and stakeholders including Government Ministries, Departments and Agencies, CSOs, Development Partners, Parliament, universities and private institutions. Under this structure, the Gender Officers have been deployed to all Ministries and are situated in Central Project Planning and Monitoring Units (CPPMU) to provide technical guidance on gender mainstreaming. It is intended that this will result in gender concerns being addressed in all sectors in a harmonized and coordinated manner and that it will promote harmonized reporting. At the devolved level, Youth Officers at the County and sub-county levels have been assigned additional responsibilities for coordinating gender mainstreaming and women's

empowerment. The officers are undergoing capacity building on their roles and responsibilities on gender mainstreaming.

40. **The National Gender and Equality Commission, NGEC**, is fully independent and inherits the status and powers of its parent Commission (the KNHREC) as outlined in Chapter 15 - Commissions and Independent Offices of the Constitution of Kenya 2010. The NGEC is empowered by Article 252 to initiate investigations based on suspicions or claims of discrimination, to have the authority of a Court to summon a witness in the course of such investigations, and to act as a peace-maker to right any wrongs and facilitate amends. The NGEC is also expected to carry out a historical analysis on gender and equality and initiate measures to redress any imbalances therein that have arisen out of past discriminative practice:

“27(6) to give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

(7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.”

41. **The Commission continuously look into and institute measures** that remedy past discrimination arising from cultural beliefs and practice such as access to property, to credit, to inheritance, to education among others.; and to consider past economic marginalization and discrimination, especially of minorities and persons with disabilities as elaborated in the Constitution (Sub-Article 27(3) & (6)).

42. **National Gender and Equality Commission NGEC and application of gender-principle on appointive positions:** The NGEC interrogated all levels of government with regard to appointive positions. For example, the Commission was understandably concerned with the National Government's first extensive list of nominees for ambassadorial positions in August 2014, on the two-thirds gender principal, leaving out persons living with disabilities. Part of the public concerns stemmed from the fact that the Supreme Court had ruled almost two years before in December of 2012 that the two-thirds principal was to be applied gradually. The same applied to the County Governments who seemed to have taken cue from past practices of the old order. This was because County Governments were not granted the same 5 year flexibility from the

enactment of the constitution of Kenya 2010 as political parties and the National government in appointments over the two-thirds principal.

43. **Performance Contract Monitoring Tool:** The Directorate of Gender in the Ministry of Devolution and Planning in collaboration with National Gender and Equality Commission need a Reporting Tool that is used by the Public Sector to report on Quarterly and Annual basis Gender Mainstreaming and Freedom from Discrimination activities. The tool captures among other things: continuous gender training and sensitization of employees on gender mainstreaming; baseline and benchmark on compliance level with the 2/3 gender representation policy on appointments, employment and promotions in the Public Service as per the Constitution; baseline and benchmarks measuring progress of the number of women-led, youth-led and PWDs-led enterprises accessing 30% public procurement tender opportunities; proportion of ministerial sector plans subjected to sex disaggregated benefit incidence analysis as well as development and implementation of the ministerial policy in line with the National Gender and Development Policy to guide the gender mainstreaming activities. The data is collected on a quarterly and annual basis and submitted to the NGECE and the Directorate of Gender and is to be used for National Planning.

44. **The Kenya National Commission on Human Rights (KNCHR)** is an autonomous national human rights institution, established by the Kenya National Commission on Human Rights Act, 2011. It is a successor to the body of the same name established by an earlier Act of Parliament in 2002. Following the promulgation of the Constitution of Kenya in August 2010, the former commission was legally reconstituted as the Kenya National Human Rights and Equality Commission (under Article 59 of the Constitution). The 2011 legislation restructured the body, assigning the equality function to a new National Gender and Equality Commission and reestablishing the name of the KNCHR. KNCHR is a watchdog body that monitors Government institutions, carries out investigations on alleged human rights violations, and in appropriate cases provides redress to those whose rights have been violated. KNCHR is also an advisory body. The Commission gives advice to the Kenyan Government on how to enhance the promotion and protection of human rights. It also monitors the enactment of legislation in Kenya

and recommends existing legislation for review to ensure they comply with human rights standards.

45. The Commission on Administrative Justice in Kenya is established by the Commission on Administrative Justice Act No. 23 of 2011 pursuant to Article 59 (4) of the Constitution of Kenya. The role of the Commission is to investigate complaints from members of the public against Government institutions and inter-governmental conflicts. However, the commission may, on its own initiative, investigate any matter arising from the carrying out of an administrative action. The mandate of the Commission can be summarized in nine broad categories;

- a. Quasi – judicial mandate to deal with mal administration.
- b. Ensuring compliance with leadership, integrity and ethics requirements.
- c. Litigation and quasi- judicial functions.
- d. Reporting obligation.
- e. Training of Government ministries, departments and agencies.
- f. Resolution of intergovernmental conflicts.
- g. Provision of advisory opinions and recommendations.
- h. Promotion of constitutionalism and human rights advocacy; and
- i. Performance contracting.

46. Article 4 provides that the adoption by states of temporary measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in CEDAW, but shall in no way entail as a consequence the maintenance of unequal or separate standards; and these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved. Further, adoption by states of special measures including those contained in CEDAW, aimed at protecting maternity shall not be considered discriminatory. Article 4 therefore requires a broad understanding of discrimination, based primarily on the disadvantage that people may suffer as result of discrimination. In this sense, where the state takes measures to address the disadvantage suffered by women, but which in turn may lead to the differential treatment of men and women, this should not be considered discrimination, within the meaning of the Convention. Thus, equality should not only be provided for within the law (de jure) but should also be promoted in fact.

47. *In a suit filed by the Attorney General in the Supreme Court (Advisory Opinion No. 2 of 2012)*, seeking an advisory opinion on the implementation of the two-third gender principle under Articles 81, 27(4), 27(6), 27(8), 38, 96, 97, 98, 177(1), 116, 125 and 140 of the Constitution, the CIC, NGECC and CAJ were enjoined as interested parties. Each of these commissions were categorical that this principle should be implemented immediately, thereby impacting the 2013 general elections by ensuring that more women would hold political office. CAJ went further to demonstrate the ways in which Parliament had impeded the implementation of this rule, by removing the provisions which would ensure the implementation of Article 81 (b) and by rejecting proposals to amend the Constitution to allow for implementation of the two-thirds gender principle.

48. The Honorable Attorney General has established a technical working group to develop a framework for the implementation of the two-third gender rule by August 2015. Further to this, the Government Commissioned an independent analysis of the Supreme Court Ruling on the realization of the 2/3 gender which recommended the formulation of an equality policy among other alternatives

The Directorate is in the process of formulating the Policy to guide the two-thirds gender rule in public institutions. **Women's participation in socio-economic development:** the Government has established seed funds such as the Women's Enterprise Fund, the Youth Enterprise Fund and the Uwezo(ability) Fund among others, which have enabled women to access funds for starting or growing their business ventures without the burden of collaterals. The initiatives are enshrined in the National Vision 2030 which is the Government's development blue print that aims to transform Kenya into a newly industrializing middle-income country providing a high quality of life to its citizens by 2030 in a clean and secure environment which is implemented on the medium term basis. The second Medium Term Plan (2013-2017) emphasize gender mainstreaming and the empowerment of women as key priorities in ensuring equality between men and women in access to economic, social and political opportunities. The MTP-II recommends that, as part of gender mainstreaming, gender disaggregated data is critical in guiding policy decision making. To this end, the strategy proposes to collect, analyze and utilize gender disaggregated data to update the gender development index by establishing a Gender

Research and Documentation Centre currently spearheaded by the Gender Directorate and NGECC.

50. Flagship project for Medium Term Plan-II (MTPII) 2013 - 2017: progress has been made to increase access to education with funds disbursed to take care of children from the urban informal settlements, arid and semi-arid areas and the rural-poor where girls have largely dropped out of school due to economic constraints. In the health sector, subsidized maternal healthcare and free maternal deliveries have been initiated in the public hospital and health centres towards realization of maternal and child health goals. Following the adoption of a National Social Protection Policy in 2012, the National Safety Net Program (NSNP) was launched in 2013 which aims to increase the coverage, quality and coordination of the five main cash transfer programs in Kenya to address the plight of the vulnerable groups amongst them women in the urban-informal and rural settlements under MTP-II.

51. Women Enterprise Fund (WEF): Established in 2007, it remains a flagship project under Kenya's Vision 2030 provides a holistic integrated approach to addressing the challenges women face in starting or expanding their enterprises especially with regard to lack of capital, low financial literacy, accessibility to markets, decent work spaces and linkages with big enterprises. The Fund has also enabled several beneficiaries to access micro-finance credit and other financial services thus reducing the gender gaps in socio-economic spheres.

52. Government allocation to WEF: The Government of Kenya through the Treasury has to date (2014) allocated **Kshs 4.5 billion (USD 50.6 Million) of WEF**. These funds have benefitted 864,920 women who have borrowed over Kshs. 4.5 billion (USD 50.6 Million) whilst over 404,800 women have been trained on business management skills, sensitization and registration of 52 Savings and Credit Co-operatives (SACCOs), use of mobile phone loan repayment, partnership with private-public non state actors. The loan repayments have been impressive at 89% group loan and 99.8% through financial intermediaries largely due to business skill trainings afforded to loanees before any monetary advancement i.e., financial literacy.

53. Success of WEF: The Fund has been successful in promoting women empowerment and gender equality by reducing barriers and impediments that hinder access to financial

resources/capitation. To broaden the reach to a majority of women across the country, WEF has been devolved across the 290 Constituencies..

54. **The UWEZO Fund:** This was established in 2014 by the Government and aims at empowering youth and women and persons with disabilities by providing interest- free loans as start-up capital for small and micro business of varying amounts not exceeding Kshs. 500,000 (USD 5682). The fund will enable the beneficiaries to take advantage of the 30% government procurement preference for youth, women and persons with disability. Kshs 500 Million is used for capacity building of groups to equip recipients with skills and market linkages necessary to manage group enterprises.

55. **Government allocation to UWEZO fund:** The fund adopts a hybrid concept of the table banking and revolving funds, designed to ensure that women, youth and persons with disabilities are able to employ availed resources for credit, while similarly promoting and sustaining a savings culture. Total funds set aside for this is Kshs 6 billion (USD 68.18 million). The National Assembly approved a House Committee's amendments to the Uwezo Fund Regulations which will see the Sh. 6 billion funds turned into a revolving fund. So far a total of USD 4.7 million has been disbursed to constituencies to roll out the fund. The fund will enable the beneficiaries to take advantage of the 30% government procurement preference for youth, women and persons with disability.

56. **The Youth Enterprise Development Fund (YEDF)** is a Government initiative that seeks to ensure access to credit facilities by young women and men in Kenya to enable them establish businesses and earn income to improve their lives. The Fund was established in 2006 with the aim of reducing unemployment among the youth (both women and men) who account for 61% of the unemployed in Kenya. The Fund's strategic focus is on enterprise development as a key strategy for increasing economic opportunities for and participation by the youth in nation building. The Fund has so far been advanced to more young women than men.

57. **The 30% procurement affirmative action:** The Government has also introduced the 30% affirmative action policy for women, youth and persons with disabilities in public procurement.

Under this provision, women, youth and persons with disability are given preference for 30% of public procurement tenders thus accelerating achievement of MDG 3 by facilitating ease in accessing previously male monopolized economic activity space. In addition, the government has introduced a Bill (Access to Government Procurement Opportunities (AGPO)) to entrench the practice into law for women youth and persons with disability. Once it is enacted into law it will be implemented at the national and devolved level. The development of the Bill is anchored on Article 227 of the Constitution that provides that:

“227. (1) When a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.
(2) An Act of Parliament shall prescribe a framework within which policies relating to procurement and asset disposal shall be implemented:
(a) categories of preference in the allocation of contracts;
(b) the protection or advancement of persons, categories of persons or groups previously disadvantaged by unfair competition or discrimination.”

58. Reservations for women and youth enterprises in procurement bids: According to the Public Procurement and Disposal Preference and Reservations Amendment Regulations, 2013, a procuring entity shall allocate at least 30 per cent of its procurement budget for the purpose of procuring goods, works and services for micro and small enterprises owned by women, youth and PWDs. This translates to a minimum of USD 2.4 billion per year worth of business from the government to women, youth and people with disability. The Government monitors the implementation of this policy through the various Ministries and agencies’ Performance Contracts.

59. Huduma Centres: Establishment of “Huduma” (service) centers to bring essential services closer to the people. The Government has set up service centers that bring together a multiplicity of services offered by different government departments under one roof. Some of the services available include the issuance of birth certificates, national identity cards, passports, registration of business names, and applications for marriage certificates, drivers’ licenses, police abstracts. This enables women to register their businesses and obtain their licenses in a timely manner.

60. **The Social Protection Fund** which facilitates access credit and cash transfer on flexible terms has also been put in place. The Fund was established in a bid to attain a meaningful and better quality of life of poor and vulnerable individuals by transferring a monthly stipend to the poor and vulnerable households with older citizens of 65 years and above. Other Social Protection interventions include Orphans and Vulnerable Children cash transfers and to residents of urban informal settlements. Devolved funds have been instituted to ensure equal distribution of national resources.

61. **Legislative measures:** Legislative and policy measures include the adoption of the National Land Policy which recognizes women's rights to own property and the enactment of the Gender laws which include the Matrimonial Property Act, 2013 and the Marriage Act 2014. In particular the Matrimonial Property Act, 2013 safeguards women's property rights during and upon dissolution of the marriage. The Counter-Trafficking in Persons Act 2010, the Prohibition of Female Genital Mutilation (FGM) Act 2011 and the Sexual Offences Act 2006 outlaw specific forms of violence against women. The Kenya Citizenship and Immigration Act, 2011 provides for dual citizenship (section 8) and for the first time, married women can confer citizenship to their foreign husbands (section 11).

6263. **Challenge on Law de Jure and De facto:** Currently, both de facto and de jure equality are problematic in Kenya. The constitutional provisions which would require that no more than two-thirds of a gender should be in elective or appointive offices are yet to be realized. The various commissions should work with the legislature in partnership with the non-state actors in finding a fitting formula for realization of this principle before August 2015 as set by the Supreme Court ruling in 2012.

64. **Another challenge is the under-representation** of Women in Devolved Funds Committees- There is insufficient representation of women in management committees of devolved funds whose main objective is poverty eradication such as in the Constituency Development Fund (CDF) Fund and LATF (Local Authority Transfer Fund). The national government is working with the devolved units to ensure the gender principle in the constitution is observed in selection and constitution of fund committees. The aim is to ensure that the voices of women are adequately represented in the grassroots funds.

65. **Another challenge** is underfunding where the national gender machinery and commissions have to rely largely on partnerships with non-state actors and/or development partners to meet a number of their mandates.

ARTICLE 4: ADOPTION OF TEMPORARY SPECIAL MEASURES TO ACCELERATE DE FACTO EQUALITY BETWEEN MEN AND WOMEN

65. **Legislation:** The preamble to the Constitution of Kenya lists equality as one of six essential values upon which governance should be based. This expression of principle is given legal force in Article 10, which includes human dignity, equity, social justice, inclusiveness, equality, non-discrimination and protection of the marginalized among the national values and principles of governance that are to be used in applying and interpreting the Constitution and other laws, and in making or implementing policy decisions. This is further emphasized in Article 20(4) (a) which lists equality and equity as values to be promoted in interpreting the Bill of Rights and Article 21(3) which creates a duty on state actors to address the needs of “vulnerable groups” in society. Kenya’s international obligations in respect of equality extend not only to eliminating discrimination, but also require it to take measures to promote substantive equality through positive action i.e., the affirmative action.

Free maternal care provision: On June 1, 2013, the Government of Kenya took action to address this problem by initiating a policy of free maternity services in all public facilities. In July 2013, the government committed Sh3.8 billion to fund the free maternal health care program, with an additional Sh700 million for free access to health centers and dispensaries, Sh3.1 billion for recruitment of 30 community nurses per constituency, Sh522 million for recruitment of 10 community health workers per constituency, and Sh 1.2 billion for provision of housing units to health care workers, within its overall allotment of Sh10.6 billion for health care in the 2013/14 national budget. More women are benefitting from the initiative due elimination of the fees.

66. **The beyond zero campaign:** According to the Commission on Information and Accountability for Women and Children’s Health 2013 Update Report, in 2012 alone, more than 100 000 children died before their fifth birthday—largely due to preventable causes. In the same

year, 13 000 new HIV infections occurred among children and 62% of children living with HIV did not access life-saving antiretroviral drugs. The ‘Beyond Zero campaign’ is part of the initiatives outlined in the Strategic Framework for the engagement of the First Lady in HIV control and promotion of maternal, newborn and child health in Kenya that was unveiled on World AIDS Day 2013. The framework aims to galvanize high-level leadership in ending new HIV infections among children and reducing HIV related deaths among women and children in Kenya. The strategic framework focuses on five key areas:

- (i) Accelerating HIV programmes;
- (ii) Influencing investment in high impact activities to promote maternal and child health and HIV control;
- (iii) Mobilizing men as clients, partners and agents of change;
- (iv) Involving communities to address barriers to accessing HIV, maternal and child health services; and,
- (v) Providing leadership, accountability and recognition to accelerate the attainment of HIV, maternal and child health targets.

67. The new initiative also aims to accelerate the implementation of the national plan towards the elimination of new HIV infections among children. The initiative has so far attracted Donors and private sector organizations who pledged funds to purchase mobile clinics that will provide integrated HIV, maternal and child health outreach services in the country. The Ministry of Health has invested in 2014 an estimate of US\$ 400 million towards initiatives to reduce HIV transmission and maternal and child mortality, to increase the number of skilled health care providers and to equip the existing facilities with relevant supplies.

68. Temporary special measure in education: in order to meet policy objectives, especially those related to equity and equality in education, the government supports affirmative action in provision of education at all levels. This comprises: providing support to poor and disadvantaged students through secondary school bursaries, providing support to targeted boarding schools in arid and semi-arid areas and other deserving areas, especially for girls, ensuring the re-entry of girls who drop out of school due to pregnancy and early/forced marriages as well as sensitizing stakeholders and communities to discard socio-cultural practices that prohibit effective participation of girls and boys in secondary school education and enforce legislation against the violation of children’s rights.

70. Sanitary towels provision: The government has set aside funds to provide sanitary towels for girls in poor and marginalized areas as the lack of sanitary towels among poor girl was identified as one of the obstacles to girl child education since such girls would be forced to stay away from school during their monthly periods. Moreover, free primary education introduced in 2003 and, subsidized secondary school education introduced in 2008 have led to: increased enrolment of girls in pre-school programmes, increased enrolment of girls in primary schools, increased primary school completion rate, increased school retention rate, increased rate of transition of girls from primary to secondary schools and from secondary schools to colleges and universities and increased entry of girls into employment.

71. GBV Hotline 1195 and referral mechanism- toll free line that offers response to GBV victims: This National Domestic Toll Free Short Code was recently donated to Healthcare Assistance Kenya by Communication Authority of Kenya launched on Thursday, 21st February 2013. The Toll free helpline 1195 enhances support for Survivors of rape, defilement, FGM and physical assault. A Data Sheet was also introduced at the launch that gives sex disaggregated data on all forms of Sexual and Gender Based Violence (SGBV) in Kenya. Several UN agencies participating in the GoK-UN JP GEWE worked together on this initiative in partnership with the former Ministry for Gender, Children and Social Development, Healthcare Assistance Kenya (HAK), USAID through the International Rescue Committee, GIZ, Communication Commission of Kenya (CCK) and key mobile service providers. The gender data sheet will help the government in developing informal policies related to gender based violence in Kenya and the whole systems is expected to address the plight of women and the girl-child who have more often fallen victims of abuse without recourse to report such occurrences.

72. Measures in public life and political participation: The Constitution of Kenya 2010 in its bid to domesticate the universal declarations and practices on the principles of democracy has primed participation as part of people's sovereignty, national value and central tenet in people's political representation. At the National Assembly, Kenya is experimenting with legislated candidate quotas in line with the provisions of the Constitution. Article 27 (8) of the 2010 Constitution states that the 'State shall take legislative and other measures to implement the

principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

73. **Participation as a national value:** As national value, the law directs state organs, state officers, public officers and all persons to uphold patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people (Article 10 (2a)). Besides emphasis on accountability in this Article, there is a call for inclusion of the people in all matters that affect their welfare. Participation through representation is nuanced in the Parliament (Articles 90, 97 and 98), National government (Article 130(2)) and the County government (Article 177(1); 197(2)). These provisions cut across elective and appointive positions and aim at achieving full diversity of the nation across ethnic, age, minority and gender considerations.

74. **Challenges:** A number of initiatives have remained under-funded but the Government is bridging the gaps through Public Private Partnership to raise capital and working with bilateral donors on the Health sector to realize the vision of quality health care for all.

75. **Another challenge** has been lack of gender and sex-disaggregated data to inform the intervention. The Government through the Gender Directorate has adopted the production of disaggregate gender related data and information in order to form basis for developing gender sensitive policies, plans and programs under the vision 2030 platform.

ARTICLE 5: MEASURES FOR MODIFICATION OF SOCIAL AND CULTURAL PATTERNS OF CONDUCT

76. Article 5(a) of CEDAW provides that states shall take appropriate measures to modify social and cultural patterns of conduct, with a view to achieving the elimination of prejudices and customary and all practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women. The Government has responded to this through a number of legislations and programs.

77. **The context FGM practice in Kenya:** In Kenya, FGM/C is practiced widely by many communities, with the Kenya Demographic and Health Survey (KDHS) 2008/2009 indicating that 27.1 percent of women surveyed are circumcised, a decline from 32 percent in 2003. The

KDHS also indicates that a higher proportion of rural women (30.6 percent) than urban women (16.5 percent) have been circumcised with North Eastern leading with the highest proportion of circumcised women at 97.5 percent. The KDHS 2008/2009 shows a marked decline in prevalence between generations. The Government has put in place both legislative and programmatic measures to curb the practice which amounts to violation of young girls' rights.

78. The Prohibition of Female Genital Mutilation Act (2011). provides at Section 27 that the Government should take positive measures in order to ensure the provisions of the Act are actualized. These measures include, *inter alia*, the undertaking of public education and sensitization of the people of Kenya on the dangers and adverse effects of female genital mutilation. This is an important provision, which takes into consideration that the criminalization of female genital mutilation is not sufficient. It must be accompanied by the necessary changes in cultures and customs.

78. The National Action Plan for the Abandonment of FGM (2008-2012), developed by the Ministry of Gender, Children and Social Services, and in co-operation with the National Committee on Abandonment of Female Genital Mutilation (NACAF) is currently being implemented under the stewardship of Anti-FGM board which is Government funded. On June 29th 2010, the National Policy for the Abandonment of FGM/C was approved by cabinet. In approving this Policy, the government has demonstrated its commitment to the promotion of gender equality as envisioned in the Vision 2030. The Social Pillar which focuses on Gender, Youth and Vulnerable groups underlines the importance of minimizing vulnerabilities through the prohibition of retrogressive practices such as Female Genital Mutilation for the empowerment of women and girls. Further, this policy is consistent with the government national priorities as envisioned in the current policies and plans so that all actors can work together in the spirit of transparency and accountability for maximum success.

79. Actions to prevent cultural patterns fuelling sexual and gender-based violence: Policy frameworks: The Government has put in place various policy measures to guide interventions around violence against women in Kenya. These are prioritized in Kenya Vision 2030 and its first Medium Term Plan 2008 -2012 which notes that, "Gender specific violence and vulnerabilities prevent particularly the women and girls from enjoying a high quality of life and

equal opportunities. In terms of strategic focus the MTP prioritizes the strengthening of the legal systems to deal with GBV whilst Vision 2030 devotes a whole section on gender issues in which it explicitly recognizes that sexual and gender-based violence as one of the vices that continue to bedevil social and economic progress in the country. The Vision further expresses the government's commitment to undertake deliberate efforts to "prohibit retrogressive cultural practices and social ills as well as improve access to essential services.

80. National Framework on prevention and response to Gender Based Violence (2010). The Kenya Demographic and Health Survey (KDHS) 2008-09 indicated that about 45% of women aged 15-49 have experienced either physical or sexual violence. Specifically, the report reveals that 25 percent of women have experienced physical violence, 7 percent have experienced sexual violence, and 14 percent have experienced both physical and sexual violence. The KDHS report (2008-09) also indicated that 3% women had perpetrated physical violence against their husbands or partners. The Police Annual Crime Report (2010) showed an increase of 8% in rape cases, 19% in defilement cases and 22% in cases of incest. to guide and assure coordinated GBV interventions in the country. The National Action Plan to Aid the Implementation of the National GBV Framework was also developed to ensure that efforts to respond to and prevent GBV are systematically applied in the policies and work of all state and non-state actors in Kenya.

81. Programmes being undertaken, raising awareness, community mobilization, public and private sector initiatives;

The Government of Kenya through the leadership and coordination of the National Gender Machinery in partnership with other actors is undertaking various programmes to address GBV in the work place and in the public sector:

- Mapping of sexual and gender based violence services in order to raise high national level awareness of gender based violence services offered and available in the country.
- Engaging various informal justice systems in Kenya including Council of Elders, in different regions. These programmes are important as informal justice systems to the women at the grassroots level.

- Advocacy initiatives on harmful cultural practices by conducting civic engagement to sensitize communities on the implications of FGM, disseminating information on the Prohibition of FGM Act, 2011.

82. **Protection Against Domestic Violence Bill (2013)**. This Bill has already undergone second reading in parliament and if enacted into law, the Protection Against Domestic Violence as legislation will protect families from domestic violence. The legislation seeks to protect victims of domestic violence and provide protection for spouses and any children or dependants within the family unit. The Bill recognizes sexual violence within marriage, child marriage, FGM, incest, defilement, forced wife inheritance, interference from in-laws and sexual abuse as forms of domestic violence unlike previously when they were only associated with physical violence. Domestic violence will also include economic abuse, damage to property, emotional or psychological abuse, virginity testing. It will form part of law for the protection of the family as required by various cultures and by the Constitution of Kenya in particular Article 45(1) which states:

- “The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.”
- Article 29. Every person has the right to freedom and security of the person, which includes the right not to be—(c) subjected to any form of violence from either public or private sources.

83. The National Policy framework and guidelines for the administration of sexual violence have been completed awaiting the Attorney General approval and publication. As part of developing more coordination in responding to sexual violence, National Guidelines on Rape and Sexual violence management have been developed through a joint initiative with the Ministry of Health, Division of Reproductive Health (DRH).

84. The Government has set up a multi-sectoral Standard Operating Procedures (SOPs) setting out the roles and responsibilities of each stakeholder in the prevention and response to sexual and gender based violence:

- The Directorate of Gender is charged with the overall responsibility of promoting and coordinating gender equality initiatives including SGBV. The Directorate has established a multi-sectoral GBV committee to provide guidance on GBV prevention and response programming in the country.
- National Gender and Equality Commission as the oversight body monitoring governments work on the protection and promotion of the rights of women, children, youth, elderly, the minority and persons with disabilities
- Gender Units in Government Ministries and State Cooperation's to spearhead gender mainstreaming including integration of SGBV initiatives in their sectors
- National Council on the Administration of Justice to receive and investigate public complaints including sexual violations
- Kenya Commission on Human Rights to address human rights violations including women's and children's rights

85. **Provision of legal aid to GBV survivors:** FIDA(K) has pioneered provision of free legal services to GBV victims /survivors including training on self representation to allow GBV survivors to represent themselves in court. Under the Children's Act, 2001 and FGM Act 2011, gender and children officers provide paralegal and counseling services. The Government through the Ministry of Health offers free medical services to survivors of SGBV. Towards strengthening and reorienting health personnel on gender sensitivity for survivors of violence, the Ministry of Health has undertaken a series of capacity building interventions.

86. **National Cohesion and Integration Act:** Following the post-election violence in 2007/2008, Parliament passed the National Cohesion and Integration Act. This Act prohibits ethnic discrimination in employment; in the membership of organizations; the access to and distribution of public resources; in property ownership, management and disposal. This Act therefore deals with ethnic discrimination in the public sphere, as opposed to the private sphere. The Commission of Inquiry in the Post-Election Violence CIPEV, upon whose recommendations Parliament passed the National Cohesion and Integration Act, noted that women suffered ethnic discrimination within the private sphere. Such ethnic discrimination was characterized by the rape of women by family members; by the eviction of women from their matrimonial home and

by denying women parental rights. Thus, women were targeted both on the basis of their ethnicity and of their gender. Notably, women in inter-tribal marriages/relationships were particularly vulnerable in the face of the 2007/2008 political upheaval which was characterized by ethnic tension. The Act establishes the National Cohesion and Integration Commission which, whose mandate is to build integration amongst Kenya's 44 ethnic communities, thereby avoiding the factors that led to political violence in the aftermath of the 2007 elections.

87. Non-discriminatory Land and Property Ownership: the Constitution of Kenya, 2010 Article 60 1(f) provisions for elimination of gender discrimination in law, customs and practices related to land and property in land meaning that women can now inherit land. To actualize the realization of this provision, National Land Commission Act recognizes the constitution of County land Boards that are gender-aware in their structure and/or composition. This is important because the land boards form part of the structures by which land inheritance matters are adjudicated hence women have an opportunity to sit in land adjudication bodies and voice their concern in the distribution, disposal and ownership issues. These had originally been the preserve of males where land inheritance was through androgenic rules in the society.

88. Matrimonial Property Act 2014: provides for equal status of spouses (Section 4) where a married woman has the same rights as a married man: to acquire, administer, hold, control, use and dispose of property whether movable or immovable; to enter into a contract; and to sue and be sued in her own name. The Act has entrenched equality to property rights in matrimonial unions and serves to secure the rights of widows and women seeking divorce who have previously been disposed of their rightful matrimonial property inheritance.

89. Repeal of Section 38 of the Sexual Offences Act which provided for unreasonable punishment for people making false reports relating to sexual offences. This provision served as an obstacle to reporting cases of sexual offences. Moreover, the Government has made appointment of special prosecutors for cases of sexual violence.

90. Rules for magistrates and judges on sexual offences: Committee of the Judiciary developed rules and procedures to guide judges and magistrates in implementing the protective provisions of the Act. The Judiciary Training Institute has collaborated with various NGOs to

conduct trainings for judges and magistrates on the SOA, violence against women and human rights. This is complimented by the development of National Guidelines for the Management of the Sexual Violence by the Ministry of Health and relevant stakeholders.

91. The Government has established Gender Based Violence Recovery centers in the largest public hospitals in Kenyatta National Hospital, Mombasa, Nakuru, Kisumu and Eldoret. This will help to address the plight of women survivors of SGBV who more often are not able to access services.

92. The Government now provides Post Exposure Prophylaxis and Emergency contraception to victims of sexual violence who report to health facilities. Besides, the Government has established Gender Desks at almost all police stations.

93. **Housing Situations for women in the informal settlements:** In 2012 the Government through the Ministry of Housing, initiated the process of developing the National Slum Upgrading and Prevention Policy (NSUPP). This was as result of a multi stakeholder process held under the auspices of the Multi-Stakeholder Support Group Forum (MSSG). The need for NSUPP had initially been agreed upon during the MSSG held in November 2011. The NSUPP is being undertaken within a number of policy and legal frameworks. These include the National Housing Policy 2004, the National Land Policy 2009, the Constitution of Kenya 2010, the Draft National Urban Development Policy (NUDP) and Kenyan Vision 2030. The Constitution of Kenya 2010 under Article 43 guarantees the right to accessible and adequate housing. Article 21 requires the Government to take appropriate policy and legislative measures including the setting of standards to ensure that the right is achieved. By developing the NSUPP the Government is discharging its mandated constitutional obligation.

94. New jurisprudence from the Constitutional Court is lending support to the legislative and policy initiatives of government in this regard. In a recent case, the Constitutional Court pronounced the human rights of poor men, women and children who had been viciously evicted from an informal settlement by the government and a private entity. The Court declared such evictions as unconstitutional and a breach of the human rights of the poor. The applicants in this

case included women who are to be paid compensation by the State and the private entity for their eviction without an offer for alternative settlement.

95. The National Land Policy Sessional No.3 of 2009 is also quite explicit on the need for a slum upgrading Policy. It recommends the development of a Slum and Resettlement Programme and the need to put in place measures to prevent further slum development and recognizes the issue of women's registration as co-owners or owners of houses whom are set to benefit from the initiative.

96. **Truth Justice and Reconciliation Commission Report 2013:** With respect to gendered human rights violations with a focus on women, the report outlines the various atrocities that have taken, and still take place against women. These violations stem from systematic oppression and violation of women in Kenyan communities. The report focuses on the following areas: gender based persecution looking at issues of widow rights, matrimonial property rights and widow inheritance, sexual violence, the preference for the boy child, early marriage and bride price, female genital mutilation (FGM) and state discrimination. The issues of socio-economic status of women including issues of the feminization of poverty, women employment, women and land rights, education, maternal mortality and access to health facilities and women with HIV/Aids. The challenges women face in being involved in politics, as well as state repression.

97. The report calls for an end to the above violations against women in all forms and for the advancement of substantive gender equality in order to prevent these abuses from continuing further into the future. It recommends that the Gender and Equality Commission must increase measures to raise awareness about harmful cultural practices that adversely affect the enjoyment of human rights by women. This recommendation is vital in addressing issues of child marriage, widow rights, FGM, preference of the boy child as well as women's property rights. Increasing awareness and education regarding women's rights and cultural practices that erode these rights will promote the status of women in communities and is a viable solution toward addressing the problem. The report also recommends that within twelve months of the release of the report, the

government must ensure the composition of land dispute tribunals meets the Constitutional gender ratio requirement.

This is an important recommendation in alleviating the social and economic discrimination women face.

97. **Media and Sexual objectification:** The media in Kenya is diverse and largely free following the liberalization of the airwaves and entry into the market of private and vernacular radio stations. According to the Media Council Annual Status Report 2012, there are 301 radio stations categorized as being “on air”, 6 daily newspapers, 11 weekly newspapers and 20 monthly magazines. Kenya has more than 15 television stations available in major towns across Kenya. The Kenya Broadcasting Corporation is the only Government owned broadcasting station. The government recognizes the power of print and electronic media to influence the attitudes of the society towards women. Efforts aimed at responsible journalism have been put in place to cut down on stereotypes usually associated with women as well as ensure a balanced coverage of men and women in the media.

98. The Government has taken deliberate measures to ensure that women are portrayed positively in Kenya by passing the Media Council Act (2013) which contains a Code of Conduct for journalists that calls for objectivity and fairness in portrayal of women and children. Increasingly the electronic media has improved its coverage of children by respecting their privacy. The Government efforts have been complemented by women media organizations which conduct trainings and provide scholarships for women journalists to enable them compete for jobs on an equal footing with men.

99. In 2013, the Government adopted the free maternal healthcare policy in government healthcare facilities. This was aimed at lowering maternal morbidity by ensuring that more women have access to free delivery services. The government has committed Kshs. 95 billion towards the realization of the goals underscored within the free maternal health care policy. The implementation of this policy has revealed that household incomes for many families in Kenya could not cater for maternal healthcare. This is evidenced by the increase of the number of women who are now having hospital deliveries in some parts of the country- particularly in

urban centers. Many women are still unable to access the healthcare facilities, because these facilities are located very far from their homes.

100. **Challenge on FGM law:** The implementation of this Act has been met with challenges where the practice of FGM is prevalent. Justification for the continuity of the practice includes cultural purity, virginity, control of libido and cultural identity. In addition, family honour and social expectations play a powerful role in perpetuating the practice, making it extremely difficult for individual families, as well as individual girls and women, to stop the practice on their own account. In some parts of the country communities have protested against the implementation of this Act arguing that that the provisions of the Act infringe against their Constitutional right to culture. The Government recognizes that criminalization of FGM needs to be accompanied with the relevant public education and sensitization programmes, to avoid the practice being carried out in secrecy, and in a manner that would not easily be detected. The Government has committed to carry out awareness creation to sensitize the communities practicing FGM communities about the law in partnership with community leaders and other line-non-state actors.

101. **Challenge:** The National Cohesions and Integration Act does not take into account a crucial aspect of the CIPEV report, and focuses only on ethnic discrimination within the public sphere. The National Cohesion and Integration Act should be amended in order to take into consideration intersectional discrimination occurring on the basis of ethnicity and gender. This way, the Act will address the specific forms of discrimination which women face and the Commission will be mandated to address specific forms of discrimination against women, which would otherwise remain invisible and unresolved.

102. **Challenges:** The free maternal healthcare policy so far only caters for delivery. It does not extend to ante-natal or post-natal care. This means that the policy has limitations in making use of opportunities where men can also be given training on childcare right from the time of conception. Culturally, in many communities men are not allowed to witness the birth of their children. Thus, while this policy improves significantly maternal health, which in turn has a positive impact on households and families, need to make use of the opportunity now available to educate mothers and fathers on childcare responsibilities. It is recommended that this policy

should be extended to ante-natal and post-natal care. Within the provision for ante-natal and post-natal care, an education component should be included, whereby men are encouraged to accompany their partners for clinics, both for the provision of physical healthcare and for family education services.

103. **Other challenges** are Illiteracy and poverty which hinder access to justice and make women vulnerable to SGBV. This leads to lack of information and access to institutions and bodies that would assist women to access justice. This also leads to lack of information on legislation available to seek redress for survivors of GBV. To mitigate this, it will be necessary to simplify advocacy measures for the semi literate women not only understand but to also actively participate in the relevant debates that affect their welfare.

104. **Challenge:** The Government recognizes there is still need for better coordination and learning between development agencies aimed at providing better training for civil society organizations, legal aid agencies, security forces and election workers regarding the protection and services for politically active women candidates and voters. More efforts are required towards integrating activities throughout the electoral cycle for the purposes of addressing gaps in the understanding of women and specific risks they face.

105. **Challenge:** Weak medico-legal linkages: Medical (such as care and treatment) and legal (such as a survivor's access to justice) responses to GBV should operate in tandem in order to guarantee survivor safety, effective prosecution of cases and uphold perpetrator rights to a fair trial. Kenya currently lacks a harmonized chain of custody of evidence across the medical, police and legal levels that ensures the plausibility of cases in court.

106. Inadequate financing to address GBV prevention and response interventions: Most GBV interventions are funded by development partners. Moreover, Kenya does not have a national framework with clearly defined indicators on GBV. The absence of a database affects the accuracy, validity and integrity of national statistic available on GBV.

ARTICLE 6: ACTION TO SUPPRESS ALL FORMS OF TRAFFIC IN WOMEN AND EXPLOITATION OF PROSTITUTION OF WOMEN

107. Article 6 of CEDAW provides that the state shall take appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation of prostitution of women. Article 27 of the Constitution provides for Equality and Freedom from discrimination, including discrimination on the ground of sex, pregnancy, marital status among other things. Vision 2030 which is the government's development blueprint recognizes gender violence as a vice that needs to be tackled. The Government has responded to suppression of women and their exploitation through a number of policy and programmatic interventions.

108. Kenya is a source, transit, and destination country for men, women, and children subjected to trafficking in persons, specifically conditions of forced labor and forced prostitution. Within the country, Kenyan children are forced into domestic servitude, commercial sexual exploitation – including involvement in the coastal sex tourism industry – and forced labor in agriculture (including on flower plantations), fishing, cattle herding, street vending, and bars. Traffickers – who gain poor families' trust through familial, tribal, or religious ties – falsely offer to raise and educate children in towns, or to obtain women lucrative employment. Kenyan men, women, and children voluntarily migrate to the Middle East, other East African nations, and Europe in search of employment, where they are exploited in domestic servitude, massage parlors and brothels, and forced manual labor, including in the construction industry (USDS, 2010).

109. **Legislation:** Enactment of Counter- Trafficking in Persons Act 2010 and the Prohibition of Female Genital Mutilation Act 2011. Kenya has enacted the trafficking in person's act 2010. The Constitution of Kenya also guarantees fundamental rights and freedoms for all, men and women alike. Article 27(3) guarantee women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres. Article 53(d) guarantees children protection from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour. These laws deal with specific forms of violence against women and girls that have been persistent in the country.

110. **National Steering Committee on Counter Trafficking in Persons:** the Government established the National Steering Committee on Counter Trafficking in Persons in 2012 to monitor the implementation of the Act. A National Plan of Action (NPA) has been developed as a measure to respond to the situation. A number of children and women trafficked within the country and outside the country are rescued and placed in safe places. Psycho-social support, rehabilitation, re-unification and re-integration programs are offered to the trafficked children and women.

111. **Cases of women being offered jobs abroad** and instead ending up as slaves (including sexual slaves) have been reported. The countries into which women are mostly trafficked to include Saudi Arabia and Dubai. Women are often lured into these countries with the promises of well-paying jobs and a better quality of life. However, they are often subjected to difficult working conditions (often, not the types of jobs that they were promised), lack of freedom (their passports and other identification documents are often confiscated); lack of adequate pay for the work that they are expected to do. As a result of these problems, the Kenyan government, in June 2012, banned Kenyans from travelling to the Middle East region, if the purpose of the travel was to take up work as domestic workers.

112. **Prosecutions:** In September 2009, a Nairobi court sentenced two Kenyan women to 10 years' imprisonment for subjecting children to prostitution. In 2009, authorities at Jomo Kenyatta International Airport detained an American citizen on suspicion of trafficking Asian women to Eastern Europe through Nairobi and government officials worked closely with United States law enforcement to arrest and extradite him to Thailand.

113. **Protection:** In 2009, the former Ministry of Gender, Children, and Social Development hired an additional 67 Children's Officers – officials charged with advocating for children's rights and obtaining services for children in need – bringing the total number to 400. These officers coordinated the work of 2,427 local Children's Advisory Committees, which worked in partnership with police to combat child trafficking, monitor institutions – such as orphanages – providing charitable services to children, and advance awareness of human trafficking at the local level. In addition, Children's Officers served on the management committee of the Rescue Center, a shelter for sex trafficking victims in Mombasa, and provided case assessments and

service referrals for victims. The government also worked with Ugandan authorities to repatriate four Ugandan children who had been identified in conditions of forced labor. The Ministry of Gender, Children, and Social Development continued partnership with a local NGO to jointly operate a 24-hour toll-free hotline for reporting cases of child trafficking, labor, and abuse.

114. **Challenge:** The trafficking of women often happens through employment bureaus operating in Kenya. It is these bureaus which scout for women and offer them employment abroad. Most Kenyan migrants are employed as domestic workers and are vulnerable to abuse, exploitation, violence, rape and even murder. In response to the alarming number of cases involving the mistreatment of Kenyans abroad, on 29 September 2014 the government revoked the licenses of 930 agencies recruiting Kenyans to work in the Middle East.

ARTICLE 7: MEASURES TO ELIMINATE DISCRIMINATION AGAINST WOMEN IN AND ENSURE EQUALITY IN POLITICAL AND PUBLIC LIFE

115. **Context of women's underrepresentation:** In Kenya, a number of factors block women's level of participation in politics as pointed out in Women's Manifesto (2010): Men dominate the political stage and set the rules of the political game and women lack confidence in vying for political leadership; Political life is organized according to male norms and values which set the standards through which political achievement is judged. These often emphasize aggression and long hours spent outside the family set-up; short changing of women during political party nominations; the nature of the electoral system and environment, which may not be favorable to women candidates. Similarly, issues such as inability to utilize women's voting power and numerical strength; ignorance and illiteracy coupled with limited financial muscle amongst women candidates have largely contributed to the underrepresentation.

116. **Constitution and Legislative development:** There has been remarkable positive constitutional development. The Constitution of Kenya 2010 is explicit in its provision that "not more than two-thirds of the members of elective public bodies shall be of the same gender" and elevates women's representation in the National Assembly and County Assemblies. Articles 27 (3), (4), (6) and (8) as read together with Article 81(b), 96, 97, 98, 177(1) (b), 116 and Article 125 provide inter alia that not more than two thirds of the membership of any elective or

appointive bodies shall be of the same gender- which include the National Assembly, Senate and the County Assemblies. In addition, the Constitution guarantees the recruitment and appointment of women to the highest echelons of public service by outlawing the occupancy of office in any public organization by more than two-thirds of either gender (Government of Kenya, 2010).

“Article 27(3) of the Constitution provides that both women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres”.

117. The Political Parties Act 2011 was legislated after the passing of the Constitution of Kenya 2010. It provides a legal framework for participation of men and women in formation and management of political parties and in participation in all voting conducted at party levels regardless of sex. It also provides that every political party shall among other requirements “respect and promote human rights and fundamental freedoms, and gender equality and equity”.¹³ It is noteworthy that although political parties are required to respect and promote gender equality and equity, there is no penalty for noncompliance with this provision of the law. Political parties have generally failed to ensure women’s equal participation. This was particularly evident in the March 2013 General Elections.

118. Although the Elections Act 2011 went through several amendments just before the March 2013 elections, none of the amendments sought to deal with the potential crisis of failing to meet the Constitutional gender threshold. The Act provides the following gender-nuanced remedies:

- Any citizen of Kenya who has attained the age of 18 years can register as a voter. Through this provision, suffrage for young women is guaranteed.
- Voters wishing to transfer their registration to an electoral area other than where the registered are permitted to do so. The provision ensures that even women who have been internally displaced as a result of civil strife can transfer registration and participate.
- Persons are still eligible to vote even if they fail to produce a voter’s card, which reduces the barriers to women’s suffrage. It is useful because, in some cases, women’s voter cards are withheld or in the custody of their spouses or male relatives.
- Defines as an offence the use of force or violence during the election period, i.e., to compel or prevent a person from voting. This measure responds to past situations in which violence has forced women to stay away from the polls.
- Defines as an offence for a person to interfere with free political will by canvassing and campaigning using language that is threatening, abusive, or insulting or engaging in any kind of action that may advocate hatred, incite

violence, or influence the voters on grounds of ethnicity, race, religion, gender, or any other grounds of discrimination.

119. **At the Senate level** which is established in accordance with Article 98 of the Constitution and is composed of 47 members elected from single-mandate constituencies (Counties); 16 seats are allocated to women members, nominated by political parties according to the proportion of seats won in the Senate elections; 2 seats to members representing the young (one woman and one man); and 2 seats to members representing persons with disabilities (one woman and one man). Except in the case of the seats reserved for women, each party list representing special interests (youth, persons with disabilities and workers) comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed. (Article 90 (2:b) of the 2010 Constitution and Article 36 (2) of the Elections Act 2011).

120. **At the National Assembly**, Kenya is experimenting with legislated candidate quotas in line with the provisions of the Constitution. Article 27 (8) of the 2010 Constitution states that the 'State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.' Furthermore, Article 81 (b) stipulates that the electoral system shall comply with the principle that 'not more than two-thirds of the members of elective public bodies shall be of the same gender', however, it is important to point out that the realization of the same in the National Assembly was suspended by the ruling of Supreme court of Kenya in December, 2012 interpreting the law through the lenses of progressive realization of political rights by August 2015.

121. In addition, the Constitution (2010) reserves 47 seats in the National Assembly for women deputies elected from 47 counties, with each county constituting a single-mandate constituency. These seats are contested only by women candidates nominated by political parties in these counties. The law further provides that, the National Assembly has 290 elected members, each elected by voters of single-mandate constituencies, and 12 members nominated by political parties to represent special interests including the youth, persons with disabilities and workers, with the relevant list to be composed of alternating male and female candidates (Article 97 of the Constitution of Kenya, adopted August, 2010).

122. Except in the case of the seats reserved for women, each party list representing special interests (youth, persons with disabilities and workers) comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed. (Article 90 (2:b) of the 2010 Constitution and Article 36 (2) of the Elections Act 2011).

123. **At the county level**, reserved seats are used as the quota system. The Constitution (2010) provides that no more than two-thirds of the membership of the county assembly is of the same gender. In order to ensure this, every county assembly shall consist of members elected by voters in each ward (each ward constituting a single member constituency) and a number of ‘special seat members’. The holders of these special seats should be nominated by political parties in proportion with seats received in that county by each political party. (Articles 175 (c), 177 (1b) and 197 (1). Each party list representing special interests (youth, persons with disabilities and workers) comprises the appropriate number of qualified candidates and alternates between male and female candidates in the priority in which they are listed (Article 90 (2b) of the 2010 Constitution and Article 36 (2) of the Elections Act 2011). The current composition of county assembly as disaggregated by data is summarized in table 1.1 below.

Table 1.1: Elective and Nominations positions at County Level

Positions	Total	Male	Female
MCA(elected)	1450	1368(94%)	82(6%)
MCA(Nominated)	778	146(19%)	632(81%)

Source: NGEC, 2013.

124. Although the Constitution was passed in August 2010, at the end of 2012, just before the elections of March 2013, the Attorney General filed a constitutional Reference in which he sought the Supreme Court’s advisory opinion on whether the “not more than two- third gender principle” was applicable to the National Assembly and the Senate in the March 4th general elections.

125. The Supreme Court ruled that it would be impractical to implement the Constitutional principle of “not more than two-thirds gender proportions rule as stipulated in the constitution under article 81 (b) as Parliament and various political entities had not prepared themselves

adequately. As a result of the Affirmative Action seats, political representation of Kenyan women now stands at 21%. This is an improvement from the previous 9.8 percent representation in the 10th Parliament. Elective and nominations summing realization of constitutional provisions and gaps in gender parity are summarized in the tables below:

Table 1.2: Elective and Nominations positions at the National Level

Position	Total	Male	Female
Governors	47	47(100%)	0
Deputy Governors	47	38(81%)	9(19%)
Members of National Assembly(elected)	290	274(95%)	16(5%)
Members of National Assembly (nominated)	12	8(67%)	4(33%)
Senate (elected)	47	47(100%)	0
Senate (Nominated)	20	2(10%)	18(90%)

Source: NGEC, 2013

126. **Leadership in the National Assembly:** women presently chair seven out of the 27 committees in the National Assembly while also serving as vice-chairpersons in eight other committees but remain slightly represented in other House positions as summarized in the tables below.

Table 1.3: Constitutional and House leadership positions

Leadership Position in NA	Women Representation
Speaker	None
Deputy Speaker	1
Majority Leader	None
Deputy Majority Leader	1
Majority Chief Whip	None
Majority Deputy Chief Whip	None
Minority Leader	None
Deputy Minority Leader	None

Minority Chief Whip	None
Minority Deputy Chief Whip	None

Source: FIDA-K, 2013

Table 1.4: National Assembly House leadership committees

Women Chairpersons 7 women (out of a total 27 committees)	Women Vice-Chairpersons 8 women (out of a total 27 committees)
Liaison Committee	Committee on Appointments
Committee on Implementation	Public Accounts Committee
Committee on Regional Integration	Budget and Appropriations Committee
Environment and Natural Resources Committee	Justice and Legal Affairs Committee
Lands Committee	Labor and Social Welfare Committee
Education, Research and Technology Committee	Committee on Constituency Development Fund
Catering and Health Club (House Keeping) Committee	Constitution Implementation Oversight Committee
	Procedure and House Rules Committee

Source: FIDA, 2013

127. **House committee leadership by sex:** On average, women currently comprise 20 percent of the membership of all National Assembly committees in the 11th Parliament.

Table 1.5: House committee leadership by sex in the National Assembly

National Assembly Committees	Men	Women	% of Women
<i>House Keeping Committees</i>			
House Business Committee	23	9	28%
Procedure and House Rules Committee	13	8	38%
Liaison Committee	17	7	29%
Committee on Selection	14	6	30%
Catering and Health Club Committee	15	7	32%
<i>Standing Committees</i>			
Committee on Appointments	22	6	21%
Public Accounts Committee	24	3	11%
Public Investments Committee	25	2	7%
Budget and Appropriations Committee	47	4	8%
Committee on Implementation	23	6	21%
Committee on Delegated Legislation	26	2	7%
Committee on Regional Integration	20	9	31%
<i>Departmental Committees</i>			
Defense and Foreign Relations Committee	23	6	21%
Administration and National Security Committee	24	5	17%
Agriculture, Livestock and Cooperatives Committee	24	5	17%
Environment and Natural Resources Committee	22	7	24%
Education, Research and Technology Committee	19	10	34%
Energy, Communication and Information Committee	25	4	14%
Finance, Planning and Trade Committee	26	3	10%
Health Committee	25	4	14%
Justice and Legal Affairs Committee	25	4	14%
Labor and Social Welfare Committee	20	9	31%
Lands Committee	22	7	24%
Transport, Public Works and Housing Committee	26	3	10%
<i>Other committees</i>			
Committee on Constituency Development Fund	10	1	9%

Constitution Implementation Oversight Committee	21	7	25%
Pensions Committee	8	0	0%

Source: National Assembly, 2014

128. **Leadership in the Senate:** Women’s leadership in Senate committees is greater than in the National Assembly. One of the 11 committees is chaired by a woman, while women serve as vice-chairpersons on six other committees. Overall, women currently comprise 28 percent of the membership in all the Senate committees

Table 1.6: Senate leadership by sex

Senate Committees	Men	Women	% of Women
Rules and Business Committee	8	4	33%
Information, Communication and Technology	6	3	33%
Energy, Roads and Transportation	8	1	11%
Finance, Commerce and Economic Affairs	7	2	22%
Health, Labor and Social Welfare	7	2	22%
Legal Affairs and Human Rights	7	2	22%
National Security and Foreign Relations	7	2	22%
Agriculture, Land and National Resources	6	3	33%
Delegated Legislature Committee	5	4	44%
Implementation Committee	6	3	33%

Source: FIDA, 2013

129. As a bicameral body, the national parliament now has joint committees that draw membership from the National Assembly and Senate. So far, there are two joint committees: the Joint Committee on National Cohesion and Equal Opportunity, and the Joint Parliamentary Broad-casting and Library Committee.

130. **Progress in women’s participation at the Cabinet:** There has been marked progress in the representation of women in key Cabinet positions -The number of women Cabinet Secretaries in Kenya’s Cabinet has increased. Women Cabinet Secretaries and Principal Secretaries constituted 33.3 per cent and 26.9 per cent respectively. Women hold the positions of Cabinet Secretaries for

Ministries of Foreign Affairs and International Trade, Lands Housing and Urban Development, Defence, Environment, Water and Natural Resources as well as the East Africa Affairs, Commerce and Tourism. The portfolios to which women have been appointed are fundamental in guiding the economic and security direction of the nation and the nation's relations with external partners.

131. Progress In women's participation at the Judiciary: The Deputy Chief Justice and the Chief Registrar of the Judiciary are women. The number of women magistrates increased from 174 in 2012 to 218 out of a total of 486 in 2014. The number of women judges increased from 44 in 2012 to 48 out of a total of 126 Judges in 2014. This means that the gender threshold has been met in the highest levels of the judiciary. The women judges formed the Kenya Women Judges Association (1993) to promote the professional development and welfare of their members.

132. Progress in women's participation in Constitutional National Commissions: Women are at the helm of 4 the key National Commissions - The chairpersons of Kenya National Commission on Human Rights, the Chairperson of the Gender and Equality Commission, the Chairperson of the Salaries and Remuneration Commission and the Budget Controller. Women also occupy the positions of the Vice Chairpersons of the Commission on the Implementation of the Constitution, the National Land Commission and Public Service Commission. Women form not less than one third of the members of the entire constitutional and Statutory Commissions.

133. Progress in nomination and election of women to political offices: The period witnessed increased election and nomination of women to political offices, on average women hold only 38% of national political party positions¹⁴. The Constitution of Kenya guarantees the right of every person in Kenya to be elected to political office and to participate in decision-making, subject to set qualifications, such as age and education, which apply to both men and women. On this basis, women have been encouraged to participate in the political life of the country and there has been an appreciable increase in the number of women contesting National and County elections. This has resulted in an increased number of elected and nominated women parliamentarians. Four out of twelve nominated members of Parliament are women

134. **Progress in women's participation as County Commissioners:** Women County Commissioners constitute 36.2 per cent of the total County Commissioners appointed by the President. These figures indicate that there has been a marked increase in the appointment of women to decision-making positions in Kenya's government and that the official goal of a minimum of 33 per cent representation of women is progressively being attained in many key positions. Some selected positions are summarized in tables below.

Table 1.7: Appointments at National level by Gender

Positions	Total	Male	Female
Cabinet Secretaries	18	12 (67%)	6 (33%)
Principal secretary	26	19 (73%)	7 (27%)
Chair- Independent Offices	2	1 (50%)	1 (50%)
Chair-Constitutional Commissions	12	7 (58%)	5 (42%)
Heads ,mmof Parastatals	36	34 (94%)	2 (6%)
Magistrates (Within Nairobi)	90	39 (43%)	51 (57%)

Source: NGEC, 2013

Table 1.8: Appointments at County level for selected positions

Position	Total	Male	Female
County secretaries	46	40 (87%)	6 (13%)
County Assembly Clerks	47	37 (79%)	10 (21%)

Source: NGEC, 2013

Table 1.9: Representation of PWDs at the County and National levels

Gender	County Assemblies		Senate		National Assembly	
	M	F	M	F	M	F
Nominated by political parties	31	30	1	1	2	1
Elected persons	10	0	1	0	5	1

Source: NGEC, 2013

135. **Patriarchal dividend and elective politics:** According to the Global Gender Gap Report (2013), women make up some 54 percent of the voting population in Kenya, which certainly should provide a platform from which more women can reach elected positions without the need

of an *Affirmative Action* in order to be at par with their male counterparts. However, women accounted for only 46 percent of voters who actually turned out in the 2013 election and unfortunately, Kenyan women continue to fair dismally in the male dominated political arena. Similarly, in the March 4th, 2013 general elections, none of the 47 counties voted in at least 10 women where up to 18 counties did not even elect any women at all. This is a clear indicator of deep-seated patriarchal political attitude towards public leadership amongst a majority of electorates despite the remedial measures being in place. Socio-cultural aware civic education aimed at dismantling the image of ‘male-politics’ should become a responsibility of the men and women whether elected or not in partnership with the civil society organizations. The timings of such education need to be on a rolling basis in order to influence the attitude toward norming women’s ‘electability’ in the society.

Table 2.0: Overall Participation of Women in Key Decision Making Positions 2012–2013

Categories	2012				2013			
	F	M	Total	(%) F	F	M	Total	(%)F
Ministers/Cabinet Secretaries	6	36	42	14.3	6	12	18	33.3
National Assembly	22	200	222	9.9	69	280	349	19.8
Permanent/Principal secretaries	7	37	44	15.9	7	19	26	26.9
Diplomatic	14	53	67	20.9	15	48	63	23.8
Senators	0	0	0	0	18	49	67	26.9
Governors	0	0	0	0	0	47	47	0
Deputy Governors	0	0	0	0	9	38	47	19.2
County commissioners	16	31	47	34	17	30	47	36.2
Sub county commissioners	28	262	290	9.7	31	264	295	10.5
Deputy secretaries	42	107	149	28.2	49	121	170	28.8
Supreme court	1	5	6	16.7	2	5	7	28.6
Court of appeal judges	8	19	27	29.6	8	18	26	30.8
High court judge	35	45	80	43.7	35	51	86	40.7
Magistrate	174	281	455	38.2	182	228	410	44.4
Kadhis	0	18	18	0	0	18	18	0
Chiefs	96	2483	2579	3.7	98	2492	2590	3.8
Assistant Chief	458	5438	5896	7.8	471	5415	5886	8
Lawyers	2274	3897	6171	36.8	2430	4040	6470	37.6
Councillors/county assembly members	393	2093	2486	15.8	88	1362	1450	6.1

Source: KNBS (2014)

136. **Lack of voting rights for nominated senators and threat to affirmative action:** Article 123 (4) of the Constitution states that each county shall have one vote to be cast on behalf of the county by the head of the county delegation who in this case is the elected senator (all which are males in the current parliament). The same principle has been replicated in Article 68 of the standing order which equally assigns each county one vote; hence, the voting power is vested in the elected representative. While the intention is to give counties equal voting rights, it serves to weaken the affirmative clause that informed the nomination to the senate.

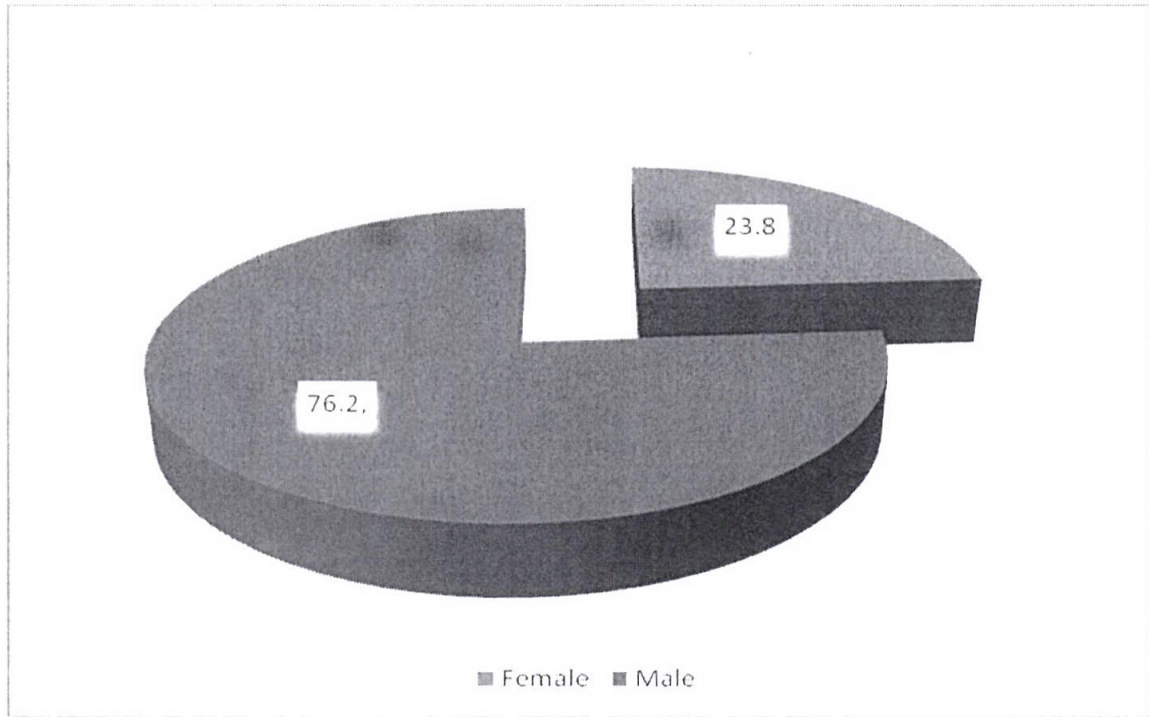
137. **Another challenge** is lack of well structured mentorship by women political leaders. Whereas, the Kenya Women Parliamentary Association has been active since 2001, lack of substantive funding has under-cut its ability to deliver its mandates on timely basis. The Gender Directorate in collaboration with KEWOPA, Development partners and CSOs in Kenya will synergize towards enhancing experience sharing with women political leaders pioneers while at the same time mentor young aspirants.

138. **Another challenge is that** women remain underrepresented in the Joint Committee on National Cohesion and Equal Opportunity committee which is expected to perform tasks integral to the promotion of equal opportunity for women in Kenya and to oversee the elimination of gender discrimination in government bodies.

ARTICLE 8: WOMEN'S REPRESENTATION OF THE GOVERNMENT AT INTERNATIONAL LEVEL

139. Kenya's new Constitution, ratified in August 2010 stipulates that not more than two-thirds of any appointed or elected body may be of the same gender as a strategy to achieve gender balance. Data from the *Economic Survey 2014* shows that these high-level decision making positions are yet to meet the 30 per cent gender rule. The report shows that that Kenya has 15 women envoys or 23.8 per cent of the country's diplomatic corps as summarized in figure 1.1.

Figure 1.1: Kenyan Envoys by sex



Source: KNBS, 2014

140. **Challenge:** There continues to be underrepresentation of women in the Diplomatic corps positions despite the constitutional provision demanding for equitable representation of men and women in appointive positions.

ARTICLE 9: WOMEN’S RIGHTS TO NATIONALITY

141. The constitution (2010) on its chapter on citizenship clearly defines the concept of acquisition and loss of citizenship for Kenyan men and women. More profoundly, it speaks to the fact that citizenship is no lost through marriage or the dissolution of marriage. The law also grants dual citizenship and women are allowed to confer citizenship to their spouses.

“13(3) Citizenship is not lost through marriage or the dissolution of marriage.

14. (1) 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 the person is a citizen.

(5) A person who is a Kenyan citizen by birth and who, on the effective date, has ceased to be a Kenyan citizen because the person acquired citizenship of another country, is entitled on application to regain Kenyan citizenship.

16. A citizen by birth does not lose citizenship by acquiring the citizenship of another country”.

142. Thus, for women of Kenya, it implies that a woman will be able to pass on citizenship to her children regardless of whether or not she is married to a Kenyan. A woman's children will not live in Kenya as foreigners or under visitor's visas even if you the father of the child is a foreigner since given that the woman is deemed a Kenyan citizen. If and when a woman gets married to a foreigner, she does not lose her Kenyan citizenship. This will include the period she will be married and even after dissolution of such marriage. Section 13 of the Citizenship and Immigration Act, contemplates citizenship by registration, including to persons married to Kenyan nationals, regardless of their gender. The Act also provides for dual citizenship while Article 11 of the same legislation entitles persons married to Kenyan citizens for at least seven years to apply for citizenship.

143. **Kenya Citizenship and Immigration Act, No. 12 of 2011.** The Kenya Citizenship and Immigration Act which implements Chapter 3 of the New Constitution commenced on 30th August 2011, effectively repealing the Kenya Citizenship Act Cap. 170, the Immigration Act Cap. 172 and the Aliens Restriction Act Cap. 173 Laws of Kenya. This Act makes provision for the acquisition, loss and regaining of citizenship, duties and rights of citizens; issuance of travel documents; entry, and residence and exit out of Kenya. Some of the main concerns addressed in the Constitution is enabling Kenyan women to pass citizenship to foster children.

144. The Act provides that a person who has been a lawful resident of Kenya for a continuous period of 7 years and meets other requirements may apply to be registered as a citizen. An application, accompanied by a non-refundable application fee of Kshs. 5,000/-(USD 56) must be made. The application must be verified by a declaration made before a magistrate, commissioner of oaths or notary public. On marriage and citizenship, the Act states that a foreign spouse of a Kenyan citizen who has been married for at least 7 years is entitled upon application to be registered as a citizen provided they meet the prescribed criteria. There is no requirement that the spouse be resident in Kenya throughout the 7 years period. All these provisions spell equality between men and women in conferment of citizenship before the law.

145. **Challenge:** Article 14 of the Constitution of Kenya provides that 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 is more restrictive and

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). This provision may be subject to challenge in the future as the Constitution prevails over the Act. The Honorable Attorney General will work with the Legislature to move necessary amendments to conform to the Constitution.

146. Challenge and way forward: The issue of women married under customary law without any certificates as proof of such marriages when applying for passports has been resolved under the Marriage Act (2014) requiring that customary marriages be officially registered after three months. The immigration office will undertake to publicize citizenship Law on the same to ensure wider understanding of the same amongst the general public.

ARTICLE 10: EQUALITY IN THE FIELD OF EDUCATION

147. Gender equity in education presently revolves around two universally accepted declarations or goals, one of them being the Universal Primary Education (UPE) by 2015, and the Millennium Declaration to achieve universal completion of primary schooling and achieve equity in access to primary and secondary schooling at all levels by 2015. The Government of Kenya has implemented a number of measures aimed at ensuring equal access to education between women, boys and girls in this reporting period.

148. Legislative development: The right to education without discrimination is enshrined in the Constitution of Kenya 2010. Education is entrenched as a Fundamental Human Rights issue in the laws of Kenya (Article 10 (2) (b), 28, 43(1)(f)) with access to Basic Education clearly spelt in articles 53 1(b)(d), 54 (1)(b). Government has gone ahead to criminalize all harmful cultural activities/practices such as early marriages that would deter girls from realizing their full rights to education in Article (55d). In addition, Kenya's Education Act 2013, further articulates the right to education for all Kenyans and sets a broad framework for the attainment of the right to education. The right to education in legislation is summed up under the following articles in the Constitution

“Articles 20, 35, 42, and 43 of the Constitution state clearly that every person has the right to education. If the State claims that it does not have the resources to implement the right, a court, tribunal, or other authority shall be guided by the principle that it is the

responsibility of the State to show that the resources are not available to meet that constitutional right. The State will give priority to factoring in access to education by vulnerable groups or individuals (women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities).”

“Articles 53, 54, 55, 56, 57, and 59 of the Constitution have provisions on children’s right to free and compulsory basic education, including quality services. Access to educational institutions and facilities for persons with disabilities that are integrated into society, to the extent compatible with the interests of the person is another provision.”

149. **Education policy and 2015 goal:** The Education Policy 2007 articulates the government’s commitment to ensuring the same conditions for access to studies and the same conditions for achievement of diplomas in educational establishments. The policy aims at providing every Kenyan, without any discrimination, with basic quality education and training which includes 2 years of pre-primary, 8 years of primary and 4 years of secondary/technical education. The policy aims at realization of universal access to basic education and training to ensure equitable access to education and training for all children, noting the importance of education in the lives of boys and girls as well as men and women. The policy also seeks to ensure that education and training embrace equity issues, such as equal opportunity for all in access, retention, transition and completion and to eliminate gender and regional disparities at all levels of education by 2015.

150. **Affirmative Action in Education:** in order to meet policy objectives, especially those related to equity and equality in education, the government supports affirmative action in provision of education at all levels. This comprises: providing support to poor and disadvantaged students through secondary school bursaries, providing support to targeted boarding schools in arid and semi-arid areas and other deserving areas, especially for girls, ensuring the re-entry of girls who drop out of school due to pregnancy and early/forced marriages as well as sensitizing stakeholders and communities to discard socio-cultural practices that prohibit effective participation of girls and boys in secondary school education and enforce legislation against the violation of children’s rights.

151. **Sanitary Towel fund initiative:** The National Schools Sanitary Towel Program is guided by the provisions of the Constitution - article 53 (1) (b), outlines the right of every child to free and compulsory basic education. Further in Article 28, the Constitution recognizes that, “Every person has inherent dignity and the right to have that dignity respected and protected.” This notwithstanding in article 43 (1) (a), “Every person has the right to the highest attainable standard of health, which includes the right to health care services including reproductive health care.” Further to this, the program is an implementation of the Gender Policy in Education (2007)⁴ and in line with the Sessional Paper No 14 of 2012, and the Basic Education Act (2013).

152. The Ministry of Education Science and Technology (MoEST) adopted the Schools Sanitary Towel Program in the year 2011, a program previously spearheaded by civil society including Girl Child Network. The program focus is to enhance participation (retention and transition rates) of girls in education through provision of sanitary towels. The government has set aside funds to provide sanitary towels for girls in poor and marginalized areas as the lack of sanitary towels among poor girl was identified as one of the obstacles to girl child education since such girls would be forced to stay away from school during their monthly periods. The program is in its 4th year of implementation with a budgetary allocation of Kshs 400 million shillings in current FY 2014/2015. The financial allocation and number of beneficiaries are summarised below.

Table 2.1: Annual financial allocations to sanitary towel program and beneficiaries

Financial year(s)	Amount in Kshs.	Districts	Public primary schools	Special sec school	No. of schools	Public Pri. girls	Special pri/sec girls	total no of girls
2011/2012	240 m	82			4114			443858
2012/2013	300 m	142	6974	167	7141	557261	11664	568925
2013/2014	201 m	156	8993	167	9060	653256	11995	665251
2014/2015	400 m					812439	12313	824752

Source: MoEST (2014)

153: **Government efforts to encourage girls’ uptake of Information, communication and Technology subjects.** This is done by equipping schools with computers, capacity building of Science, Mathematics and Technology (STEM) teachers in subject content knowledge and use of gender-responsive pedagogy; sensitizing girls and boys, parents, communities, teachers,

⁴ The gender policy in education is under review to comply with the Constitution of Kenya, 2010 provisions.

PTAs, SMCs, BOGs and educational managers, so as to change beliefs and attitudes about females' ability in Science, Mathematics and Technology (STEM).

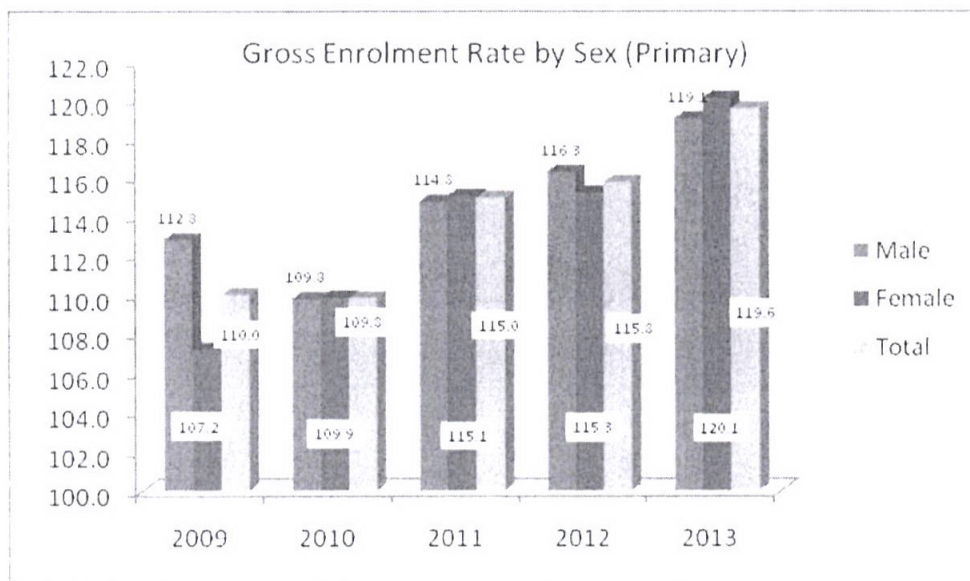
154. The Government is engendering the curriculum and increasing access to gender-responsive Science Mathematics and Technology (STEM) facilities, equipment and text books, especially for girls; implementing affirmative action for qualified females in admissions to Science, Mathematics and Technology (SMT), Technical, Industrial, Vocational and Entrepreneurship Training (TIVET) and university programmes by instituting gender-responsive, subsidized bridging courses/pre-tertiary SMT programmes to enable girls and women meet admission requirements and provide scholarships and bursaries for needy students, particularly girls pursuing SMT-based programmes; building girls' confidence in Science, Mathematics and Technology (STEM) through implementation of programmes, such as mentorship, role modelling, science camps / clinics and career guidance; mobilizing resources for STEM programmes and research with special focus on women and girls issues in STEM; and lobbying for increased recognition and reward of women scientists and technologists by society and the labour market; institutionalizing gender-responsive monitoring, evaluation and accountability mechanisms for STEM programmes improvement, progress and impact assessment.

155. **Sustained allocation of resources to the education sector:** The Government has sustained allocation of resources to the education sector, to ensure that education and training embrace equity issues, such as equal opportunity for all in access, retention, transition and completion, and to eliminate gender and regional disparities at all levels of education by 2015. In the 2014 budget, the Education Ministry has been allocated 27.3% of the National Budget which is the largest sector budget.

156. **Primary school Gross Enrolment Rate (GER) and Net Enrolment Rate (NER), 2009-2013** grew steadily. For example in the Kenya Certificate of Primary Education (KCPE) examinations, the number of candidates grew by 3.4 per cent from 811,930 in 2012 to 839,759 in 2013. The number of female candidates rose by 4.3 per cent from 396,310 in 2012 to 413,390 in 2013 compared to an increase of 2.6 per cent for the male candidates. This shows that as a result

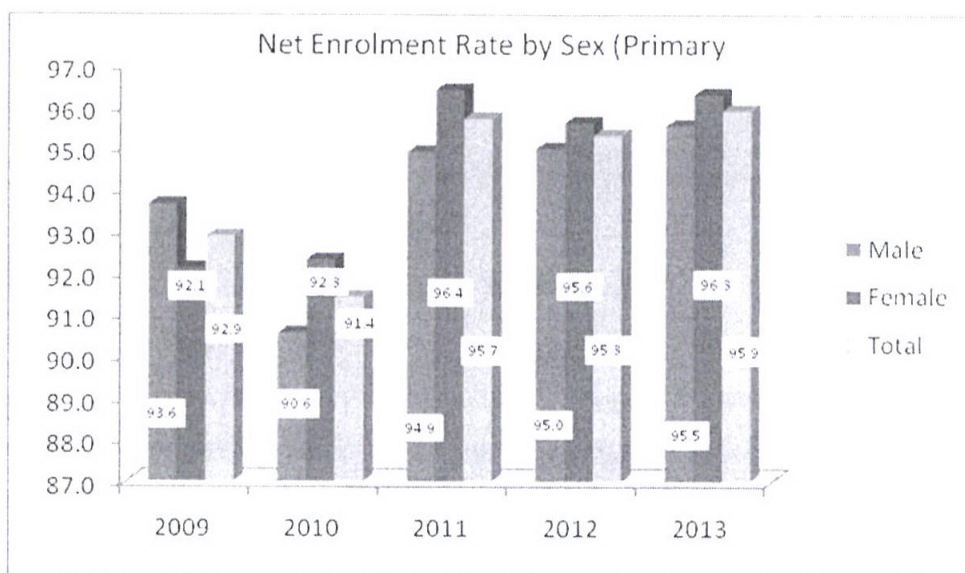
of implementation of Education Act and Education policy, the education sector in Kenya has seen an increase in the rate of transition of girls from primary schools to secondary school.

Figure 1.2: Gross Enrolment Rate by sex between 2009 and 2013 in primary school



Source: KNBS, 2014

Figure 1.3: Net Enrolment Rate by sex between 2009 and 2013 in primary school



Source: KNBS, 2014

157. **Primary Teachers:** There was an increase of 4.9 per cent in the total number of teachers in public primary schools from 191,034 in 2012 to 199,686 in 2013. The increase can be attributed to recruitment of teachers in the year 2012/2013. The upgrading of teachers who had completed degree and diploma courses resulted in a significant increase in the number of graduate teachers from 6,865 in 2012 to 19,273 in 2013 with the number of female graduate teachers overtaking their male graduate teachers. Similarly, the number of secondary school teachers for the period 2009 to 2013 also increased. The total number of public secondary school teachers increased by 1.8 per cent from 64,338 in 2012 to 65,494 in 2013. This was mainly due to the replacement of teachers who had exited. Female graduate teachers increased by 3.3 per cent from 19,731 in 2012 to 20,378 in 2013 compared to an increase of 1.0 per cent for the number of male graduate teachers. The number of trained secondary school teachers increased by 1.9 per cent while that of untrained secondary school teachers declined by 31.4 per cent from 229 in 2012 to 157 in 2013.

Table 2.2: Teacher trainees enrollment by year and sex

Type of Institution/ Certification	2012		2013	
	Male	Female	Male	Female
Public Primary (P1)				
1st Year	4,403	4,497	5,249	5,435
2nd Year	4,365	4,402	4,967	5,357
Sub- total	8,768	8,899	10,216	10,792
Private Primary (P1)	5,342	5,943	6,997	7,392
Sub Total	14,110	14,842	17,213	18,184
Diploma				
1st year	422	245	313	265
2nd year	332	205	250	297
3rd year	343	230	256	290
Sub – total	1,097	680	819	852
Total	15,207	15,522	18,032	19,036

Source: KNBS, 2014

158. **Progress in access to high schools:** More girls are now able to access higher education. Secondary school Gross Enrolment Rate (GER) has been on an upward trend since 2009. The GER increased from 49.3 per cent in 2012 to 56.2 per cent in 2013 and the Net Enrolment Rate (NER) for secondary schools increased by 6.4 percentage units to stand at 39.5 per cent in 2013. Expansion of NER in secondary schools may be attributed to the Free Day Secondary Education (FDSE) in addition to increase in the number of schools as well as to efforts to remove obstacles, such as early and unwanted pregnancies and return to school programmes for girls who conceive while in school.

159. **Government Directive** on issuing completion certificates to girls and boys, whether they have fees arrears or not, aims to enable transition to higher levels of education. Many girls from poor backgrounds are set to benefit from this executive directive and proceed to secondary school and other technical institutions having obtained necessary documents. This initiative complements Government's effort in the affirmative action of entry of girls to higher institutions.

160. **Progress in Completion of Secondary School by girls:** Increase has been attained in the number of girls enrolled in secondary school and in their secondary school completion rate. In the Kenya Certificate of Secondary Education (KCSE) for example, the number of KCSE candidates increased by 3.0 per cent from 432,443 in 2012 to 445,520 in 2013. The number of female candidates grew by 4.6 per cent to 202,539 in 2013 compared to an increase of 1.7 per cent for the number of male candidates. However, the total number of girls is still lower. In addition; there are still a considerable number of girls who drop out, which means that obstacles to girls' education have not been totally eliminated.

161. **University Education:** The overall university student enrolment increased by 34.9 per cent from 240,551 in 2012/13 to 324,560 in 2013/14. The increase is attributable to higher enrolment levels in the public universities following the introduction of new courses in addition to upgrading of university colleges. Women student enrolment rose by 25.0 per cent to 131,375 in 2013/14 while male student enrolment increased by 42.6 per cent from 135,436 in 2012/13 to 193,185 in 2013/14. During the same period, enrolment at public universities increased by 41.3 per cent from 195,528 in 2012/13 to 276,349 in 2013/14. Enrolment in private universities increased by 7.1 per cent from 45,023 in 2012/13 to 48,211 in 2013/14. The number of women enrolled in public and private universities has shown slight increases but parity in university education between men and women is yet to be attained at all levels in Kenya.

162. **Establishment of women study centres:** The Government in partnership with non-state actors has supported the establishment of women centres in the leading public universities. This exemplified by the African Women's Studies Centre, University of Nairobi which exists to promote scholarship and influence policy from African women's perspectives through research, teaching, publication and dissemination and engaging with policy makers.

Table 2.3: Enrolment in universities by sex

INSTITUTION	2010/11		2011/12		2012/13		2013/14*	
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE
Public Universities								
Nairobi	31237	18127	27084	17219	30710	20185	38693	25376
Kenyatta	18739	13795	21328	15892	25633	31559	37758	32248
Moi	11963	9143	14124	11409	17372	14273	12477	9579
Egerton	6095	4453	7050	5095	4577	3101	7044	4896
Jomo Kenyatta University (JKUA)	6677	2713	9818	4119	19048	9870	19729	10847
Maseno	3400	1927	2809	1742	3953	2159	3922	2247
Masinde Muliro Technical University of Kenya	4142	2320	10958	6402	6295	3901	5606	3445
Technical University of Mombasa	850	135	187	642	405	135	5102	1915
Chuka							7318	2663
Karatina							2700	2014
Kisii							913	531
Meru							2001	903
Multimedia							697	331
Southeastern Jaramogi Oginga Odinga							1988	1037
Laikipia University of Eldoret							1259	771
Kabianga							857	574
Dedan Kimathi Pwani							8059	4507
Masai Mara							1004	681
							675	246
							2666	1591
							2585	1851
Sub Total	85931	53839	94358	63558	109821	85707	167046	109303
Private Universities								
Private Accredited	17564	13763	18864	14575	20788	16884	21113	18895
Private Unaccredited	4228	2292	4478	2427	4827	2524	5026	3177
SUB-TOTAL	21792	16055	23342	17002	25615	19408	26139	22072
TOTAL	107723	69894	117700	80560	135436	105115	193185	131375
GRAND TOTAL	177617		198260		240551		324560	

Source: KNBS, 2014

163. **Development of an Education Sector Support Programme**, 2010-2015 after successfully implementing the 2005 – 2010 programmes. The government has developed an education sector support programme to provide a comprehensive framework for implementation of programmes and activities in order to meet Education Policy goals and objectives. Some of the measures in the Education Policy that have led to success in the education sector include among others:

- i. School instructional materials have been engendered to remove stereotypes that depict women as only capable of taking up careers like nursing while men take up engineering and medical courses.
- ii. Provision of free education capitation grants to non-formal education schools. Due to demand for education after the introduction of FPE, many schools owed privately emerged in the informal settlements and absorbed children who would otherwise have missed education.
- iii. School health, nutrition and feeding programmes. This has served as an incentive for children from very poor families to attend school.
- iv. Provision of Constituency Bursaries to the needy has enabled a smooth transition to secondary school and tertiary institutions for children from poor families.
- v. Provision of grants for laboratory equipment. More girls are now able to learn Science and technical subjects as all schools can now be able to equip their laboratories. Previously most girls schools did not have well-equipped laboratories.

164. **Non-tolerance of learners' abuse: The Teachers Service Act 2013:** TSC Circular No. 3 of 2010 and Database on Disciplinary Measures including offences against a learner. Revisions of the code of ethics for Teachers – supposed to give interpretations on sections of protection of female learners. Moreover, the Ministry of Education Science and Technology (MoEST) is considering development of a Learners Protection Policy to prevent circumstances where girls are impregnated by their teachers. Review of Children's Act (2001) to strengthen protection mechanisms including protection of girls from all forms of violence including sexual harassment at school. These efforts are complimented by the ongoing development of the National Child Protection Policy Framework and the enacted Prohibition of Female Genital Mutilation Act (2011), all of which protect school-going girls from harmful practice and allow the young girls to enjoy their education entitlements.

165. **Challenges and way forward:** there are increasing numbers of women joining the teaching profession at the primary school level. However, there are a lower numbers of women joining

secondary school teacher colleges and universities. The Government will apply affirmative action on admission of female students in tertiary colleges to shore up the numbers and bring parity at the high levels of education and training.

166. There is a shortfall as the total number of girls in need of sanitary towels is approximately 2.2 million girls both in primary and secondary school. The budget needed for this total reach is Kshs. 2.4 billion per year. This is an average of 70 per cent of girls who are still in need of accessing sanitary towels; a critical gap that needs to be addressed by partners and stakeholders working in the development sector. The current budget allocated by Treasury is Kshs400 million which is targeting to reach 650,000 adolescent girls. The Government has been engaging partnership with Private sector and civil society to reach the 1.8 million girls, who are yet to be reached by the program.

167. **Other challenges** cut across withdrawing girls from school to help with care giving work, farm work, or for early marriages. While the Government has responded through stringent legislation, continual community awareness will be carried by the National and County Governments in partnership with civil societies on the significance of educating girls.

ARTICLE 11: ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN THE FIELD OF EMPLOYMENT

168. Currently, women in Kenya do the vast majority of agricultural work and produce/market the majority of food. Yet they earn only a fraction of the income generated and own a nominal percentage of assets. Only 29 percent of those earning a formal wage throughout the country are women, leaving a huge percentage of women to work in the informal sector without any federal support. The effect is severe—nearly 40 percent of households are run solely by women and, because of a lack of fair income, nearly all these homes suffer from poverty or extreme poverty (FSD, 2014).

169. **Legislation:** The Kenya law clearly states that there shall be no form of discrimination in employment. Both the Employment Act, section 5(3) and the Constitution of Kenya, Articles 26-51, bar any form of discrimination on the grounds of gender, (among others) in accessing employment and in employment security. In addition, Section 5 gives responsibility to the

Minister, labor officers and the Industrial Court to ensure that employers promote equality of opportunity in employment in order to eliminate discrimination in employment. By clearly defining and providing for elimination of all forms of discrimination at the work place and promoting equality in all matters related to employment, the law guarantees both women and men equality of opportunity in employment as well as equal pay for work of equal value.

170. **The labour Relations** are protected in Article 41 of the Constitution as follows:

- 41. (1) Every person has the right to fair labour practices.
- (2) Every worker has the right—
 - (a) to fair remuneration;
 - (b) to reasonable working conditions;
 - (c) to form, join or participate in the activities and programmes of a trade union; and
 - (d) to go on strike.

171. These provisions are safeguarded in Article 236 stating that a public officer shall not be victimized or discriminated against for having performed the functions of office in accordance with this Constitution or any other law; or dismissed, removed from office, demoted in rank or otherwise subjected to disciplinary action without due process of law.

172. **Right to Work:** Women and men can't work in the same industries (especially mining sector). (Section 91 of the Employment Act, 2007). According to article 27 of the Constitution, employees can't be discriminated based on race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth. Moreover, law prohibits employee discrimination on the basis of political or any other opinion, nationality, mental status or HIV status.

173. **Sexual Harassment:** Sexual harassment at workplace is prohibited by law and an employer is supposed to create a policy statement prohibiting sexual harassment at workplace. However, law does not propose any punishment (section 6 of the Employment Act). However, under section 28 of the Sexual Offences Act of 2006, "Any person, who being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of

the offence of sexual harassment and shall be liable to imprisonment for a term of not less than three years or to a fine of not less than one hundred thousand shillings or to both".

174. **Equal Pay:** All workers are meant to be treated equally as the law instructs, which means men and women should get the same pay if they do work of equal value. If a worker is discriminated in this regard, the law stands on their side in case of a lawsuit since discrimination in work compensation is unlawful and a liable offence in Kenya. (Section 5.4 and 5.5 of the Employment Act, 2007).

175. **Maternity Leave:** Female employees can get 91 days (3 months) of maternity with full pay. This period can be extended if the employer gives consent (Section 29 of the Employment Act, 2007). The maternity leave is awarded with full pay and is financed by the employer (Section 29 of the Employment Act, 2007). Similarly, A female worker has the right to return to same job/position (or some other similar and suitable position) after availing her maternity leave (Section 29.2 of the Employment Act, 2007).

176. Under the Constitution of Kenya 2010 the Government is implementing the affirmative action principle in employment in the Public Sector- where not more than 2/3 of appointive positions should be of the same gender⁵. This has resulted in more women occupying management positions as demonstrated in the section on Women in Power and Decision Making.

177. **Expansion of ICT services-** Fiber Optic Cables and increased use of social media leading to increased connectivity and access to information. This means that women can take advantage of the information available on the internet to start or expand their businesses. This is particularly useful for young unemployed graduates who have been able to tap into the wealth of information on the internet and link up with international markets. Internet connectivity is now available in all major counties at affordable rates.

178. The Government in partnership with the private sector conducts training on entrepreneurship, book keeping and basic business administration to enable those who qualify for the different catalytic funds to set up or improve their businesses.

179. **The Micro and Small Enterprises Authority** – coordinates small and medium enterprises which are largely dominated by women. Government is creating a more conducive policy environment for MSE development, primarily through the facilitation of labor law reform, and in addition there have been attempts to stimulate specific sector reform to promote a decent work agenda in the MSE sector. The National Micro and Small Enterprises (MSE) Bill (2011) takes cognizance of the fact that MSEs are the drivers of Kenya's economy and it aims at an organized, regulated and well-coordinated MSE sector in Kenya for improved productivity and growth. Recognizing the obstacles that women entrepreneurs face, the ILO supported the Government in the strengthening of member based associations and networks and the provision of business training and credit.

180. **Status of Child Labour:** Child labour is considered as a key obstacle to Kenya's endeavour to achieve MDG 2: Universal Primary Education, given the fact that a child who is not educated cannot be empowered to escape from poverty, as well as the global goals of MDG 3 and 4. The Ministry of Education estimates that there are over 1 million children out of school. The KNBS Child Labour Analytical Report (2008) estimates that 1.01 million children are economically active; 773, 696 (365,537 girls and 408,159 boys) are in child labour. Child labour has been found to be a result of a multiplicity of causes in Kenya. Poor economic performance and lack of social security has contributed to the increasing number of households affected by poverty. Children from poor households therefore have to work in order to supplement household incomes. The adoption of child rights business principles within the private sector bodies such as association of Federation of Kenyan Employers which include development of protection of children from labour within the production chain is a significant effort towards salvaging young girls who have always been recruited as cheap source of labour at the expense of their Human Rights entitlement. Moreover, review of Children Act (Amendment Bill) and Social Protection Act – offer protection mechanisms for children and employees.

181. **Challenge and way forward:** The status of occupational safety and health (OSH) is an issue of growing concern. The scarcity of data, which makes it impossible to characterize the conditions under which workers are engaged and the fact that the majority of workers in Kenya are transitory, operating mainly in the informal economy pose to be some of the challenges

faced. In addition, awareness on OSH is low thus exposing a huge number of workers to work place risks. If an employee is pregnant, there is no provision in the law which would restrict her employer in assigning her arduous or harmful work. Similarly, the law doesn't cover nursing breaks for new mothers.

182. **Poverty among women-** Poverty is another factor that hinders women from equal participation in economic development and employment.

183. **Unpaid and unrecognized work of women** - women constitute majority of the labor force in family and commercial farms in Kenya. For example, women continue to mitigate and respond to disease challenges at the community level by providing community and home-based care. However these contributions have continued to go unrecognized due to the manner in which GDP is calculated.

ARTICLE 12: MEASURES TO ELIMINATE DISCRIMINATION OF WOMEN IN THE FIELD OF HEALTH

184. In Kenya, the Maternal Mortality Rate (MMR) is high, with 488 deaths per every 100,000 live births per year, largely because women do not give birth under the care of skilled health providers. These high rates of maternal deaths are attributed to well-known and preventable causes (KDHS, 2009). They include obstructed labour, complications of unsafe abortion, infections, haemorrhage, and high blood pressure. During antenatal care visits to health facilities, pregnant women are screened for complications and given advice on a range of issues, including place of delivery and referral. However, the majority of women (56 percent) give birth at home due to: lack of transport, fears about negative attitudes of health workers, long distances to health facilities, cultural preferences, and charges for services which are beyond what most women can afford.

185. **Free maternal healthcare provision:** The framework for free maternal health services is provided for under several local, regional, and international mandates. Article 43(1)(a) of the Constitution of Kenya 2010 states that: Every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care. Reproductive health is widely recognized to include family planning, antenatal, delivery, and postnatal health services. The Constitution of 2010 further provides that a person has the

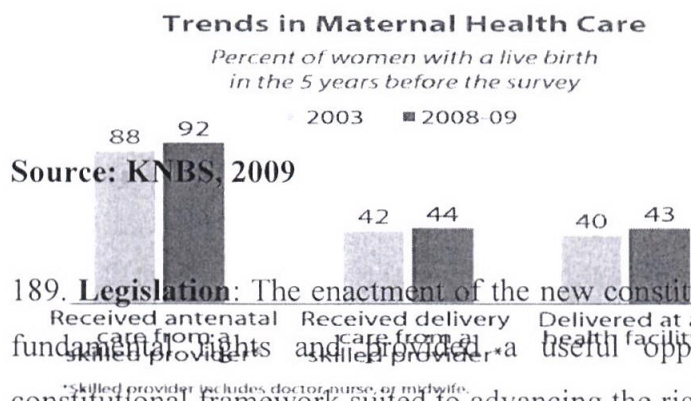
right to emergency treatment (Article 43(2)), the right to inherent dignity and the right to have that dignity respected and protected (Article 28), and the right to access information (Article 35). The Kenya National Patients' Rights Charter (2013) outlines the right to access health care, the right to receive emergency treatment in any health facility irrespective of ability to pay, the right to the highest attainable quality of health care products and services, the right to be treated with respect and dignity, the right to information, and the right to complain, among others.

186. Government policies on fees: Pregnant women who pay for healthcare incur high costs, which can negatively affect their socio-economic status. Others simply fail to seek care in health facilities. Overall, about 3 to 4 percent of Kenyans are pushed into poverty each year due to illness-related expenses. As a result, families suffer, and the nation suffers, making it more unlikely for Kenya to meet Millennium Development Goals (MDGs) targets by 2015. As of June 2013, the Government introduced free maternal care in all public health facilities encourage more women to deliver at health facilities and to result in fewer maternal deaths. With the new policy, health facilities will be reimbursed by the government for every delivery that they handle, at the rate of Sh.2, 500 per birth at health centers and dispensaries, and Sh.5000 for every birth at public hospitals. This covers both normal deliveries, deliveries through caesarean, and complicated deliveries. These funds are paid directly to the facilities. In addition, no fees will be charged for antenatal and post-natal care up to six weeks after delivery, or for referrals made in the case of complications related to pregnancies. All fees charged for all types of health care services at dispensaries and health centers have also been abolished.

187. The Kenya Health Policy 2012-2030 aims at attaining the highest standard of health in a manner responsive to population needs through supporting the provision of equitable, affordable and quality healthcare at the highest attainable standard to all Kenyans. Despite the advances made by Kenya in overcoming some development challenges, maternal and child health in Kenya remains a challenge. According to the KDHS 2008/09, Kenya's maternal mortality rate is currently 488 out of 100,000 live births. There are regional variations in the maternal mortality rate. Statistics indicate that 43.8% of births in Kenya were attended by skilled personnel in 2011.

188. According to the KDHS 2009 the contraceptive prevalence rate is 46% against the MDG target of 56% in 2015. The unmet need for family planning exists in roughly a quarter of all married women. HIV/AIDS still poses one of the greatest challenges in Kenya. HIV prevalence is largely highest among women at 8% as compared to that of men at 4.3%. Other key affected groups include sex workers, injecting drug users and MSM.

Figure 2.4: Trends in Maternal Healthcare in Kenya



189. **Legislation:** The enactment of the new constitution marked the end of years of struggle on fundamental rights and provided a useful opportunity to better articulate a legal and constitutional framework suited to advancing the right to health. Specifically, article 43(1) of the Constitution guarantees every individual the highest attainable standard of health and provides that no individual may at any moment be denied emergency medical care which is important to the realization of the right to life. Furthermore, Article 46 provides for the right to the protection of consumer health, safety and economic interests. On the other hand, Article 53 (1)(c) specifically provides for the right of every child to adequate health care.

The “right to health care services” is explicitly guaranteed, providing content to the right to health and placing clear obligations upon the government to provide health care services.

“Reproductive health care” is included in the definition of the right to health and health care services, affirming that reproductive health care is essential to the right to health and forms part of the health care services to which people are entitled”.

190. **The law and abortion:** The Constitution explicitly permits abortion when “in the opinion of a trained health professional, there is need for emergency treatment or the life or health of the pregnant woman is in danger, or if permitted by any other written law Article 26(4)]. A “trained health professional” should be interpreted to include doctors, clinical officers, nurses, and midwives who have the appropriate training.

191. **The health sector in Kenya is guided both by the Constitution of Kenya 2010 and Vision 2030** by implementing a human rights based approach to health and maximizing the health contribution to the country’s development. The Kenya Health Policy 2012-2030 aims at attaining the highest standard of health in a manner responsive to population needs through supporting the provision of equitable, affordable and quality healthcare at the highest attainable standard to all Kenyans.

192. **The positive measures have been put in by the government through the National Council for persons with disabilities established by the Disability Act of 2003.**The main objective of the council, is to mainstream disability issues in all aspects of social cultural, economic and political development, including health. The new health policy 2012-2030 adopted a rights based approach to health and seeks to make the right to health for all Kenyans a reality. The constitution of Kenya in Article 54 emphasizes on the rights and freedoms of persons with disabilities. In 54(b) they are entitled to access educational facilities and institutions that are integrated into society to the extent compatible with the interests of the person.

193. **Training of community health workers:** The Kenya Essential Package for Health has been updated to include health education on GBV which had largely been seen as posing risk to women in the reproductive health-age bracket. Similarly, the Government has spearheaded the training and follow-up of health care workers including community midwives in skilled care during pregnancy, child birth and thereafter launch of the maternal and neo-natal health roadmap on maternal health in 2010. This has triggered sustained responses to wards assuring reproductive health commodity security.

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and neo-natal health roadmap on maternal health in 2010. This has triggered sustained responses to wards assuring reproductive health commodity security.

195. The second MTP places more emphasis on primary healthcare, access to clean water and better management of communicable diseases.

196. The Government has developed a Community Health Workers Training package. These health workers play a key role in conducting awareness on health issues in rural areas where a number of rural women can hardly access a professional healthcare provider.

197. The Plan of Action for Kenya's Adolescent Reproductive Health and Development Policy 2005-2015 recognizes that information and sex education is important for adolescents and they accurate appropriate information to make informed choices, enjoy healthy and positive lifestyles and avoid undesired consequences like unwanted pregnancy and STIs. The availability of youth friendly services has made this possible.

198. **Prevention of Mother-to-Child Transmission of HIV:** Adult HIV prevalence (ages 15-49) in Kenya, estimated at 6.3% in 2009, has declined from 8.4% in 2001. Between 2009 and 2010, the number of new HIV infections among children in Kenya has declined 43%—from 23,200 to 13,200⁵. HIV prevalence among pregnant women was 5.6% in 2009, and in 2010, there were an estimated 87,000 pregnant women living with HIV in Kenya. The majority (92.5%) of health facilities in Kenya offer PMTCT services⁶. HIV testing among pregnant women increased from 31% in 2005 to 83% in 2010⁷, and 67% of pregnant women with HIV received efficacious ARVs for PMTCT in 2011. Kenya has adopted WHO Option A regimen for

⁵ Joint United Nations Programme on HIV/AIDS, Together We Will End AIDS, 2012

⁶ WHO/UNICEF/UNAIDS, calculated from Universal Access country reported unpublished data, 2011

⁷ World Health Organization, Joint United Nations Programme on HIV/AIDS, United Nations Children's Fund, Towards Universal Access: Scaling up Priority HIV/AIDS Interventions in the Health Sector. Progress report, 2011

prophylaxis, and a Multi-Sectoral National AIDS Strategic Plan (2009/2010 – 2012/2013) is in place, of which PMTCT is a component⁸.

199. Various efforts have been put in place by the government in the fight against HIV. Kenya has adopted multi-sectoral strategies to respond to HIV, particularly Kenya National HIV and AIDS Strategic Plan (KNASP) I; KNASP II; and currently KNASP III. The KNASP III contains a National Action Plan for the prevention and treatment of HIV.

200. **Resources challenge:** The Government of Kenya's current allotment of Sh95 billion for health represents only 5.7 per cent of the total budget, well below the 15% required by Kenya's commitment to the Abuja Declaration. The current budget is a decrease from rates of 7.2 percent in 2010, 6.1 percent in 2011, and 5.9 percent for 2012. It also falls short of the Ministry of Health's 2012 task force report, which called for a minimum of Sh217 billion for a three-year health stimulus package. Doctors and other stakeholders have expressed further concern that the Sh60 billion allotted to county governments will not be used entirely on health; given other priorities like infrastructure, salaries, and local development funds. Insufficient funds could seriously jeopardize the success of the maternal health program. The Government will work with development partner in bolstering health service provisions at its National and County facilities.

201. **Infrastructure, Equipment and Staffing challenge:** Kenyan public health facilities have long suffered from insufficient infrastructure, equipment and staffing. Recent survey data found that only 36 per cent of public health facilities offering delivery services had all the basic delivery room infrastructure and equipment needed, with rural areas and lower level facilities particularly unequipped. The Kenya Health Sector Strategic & Investment Plan (2012-2018) also estimates that current staff levels meet only 17% of minimum requirements needed for effective operation of the health system. Kenya has only 7 nurses per 4,000 residents, half the number (14 per 4,000) recommended by the World Bank. These health workers are also unevenly distributed across the country, with particular gaps in the North Eastern and Northern Rift provinces. These problems have been only further enhanced by the initiation of free maternal health services.

⁸ Joint United Nations Programme on HIV/AIDS, United Nations Children's Fund, Global Plan Towards the Elimination of New HIV Infections among Children by 2015 and Keeping Their Mothers Alive 2011-2015, 2011

Hospitals have reported increased overcrowding in maternity wards, with some mothers forced to leave the hospital early to make room for others or even deliver on the floor due to lack of beds. Priority has already been set by the Government in the Health Sector Plans to expand health infrastructure while also equipping the existing ones.

202. Access to Facilities: One of the most critical barriers to maternal health care in Kenya on a national scale is the lack of physical access to facilities, due to the insufficient number of facilities, distance to facilities, and inadequate transportation infrastructure. Demographic and Health Survey(2009), indicated that the largest percentage (42%) of women who delivered outside a health facility did so because the facility was too far away or there was no transport to the facility, compared to only 17% who cited the cost of delivery as the key barrier. Cost of health facilities ranked as a factor above 30% only for women in Nairobi, with rural women far more likely to report that they did not deliver in a hospital because it was too far or they lacked transport. The national and County Governments are working in equipping sub-county health facilities to meet the facility demands by the growing populations.

203. PWDSs Challenge: A public inquiry report launched by the Kenya National Commission Human Rights Commission in 2012 indicates that women with disabilities suffer stigma and discrimination when they seek reproductive health services. The notable challenges faced by these individuals include; prejudice and are often seen as being victims to double discrimination: first from their status as women and second because of their disability. The National Health Policy will be reviewed to include interventions for PWDs in accessing reproductive health services while the Council will be further empowered to ensure compliance with its recommendations on access to healthcare for women with disabilities.

204. Challenge on PMTCT target: Coverage of early infant diagnosis is moderate in Kenya. In 2010, 64% of HIV-exposed infants received a virological test within two months of birth, but only 7% received co-trimoxazole prophylaxis—an antibiotic that significantly reduces morbidity and mortality. Paediatric ART coverage also remains low, at 31% in 2011, up from 19% in 2009. Among pregnant women with HIV who received ARVs in 2010, 33% still received single dose nevirapine, a regimen currently not recommended by WHO, and 27% received ART. The Government has put in place measures for additional investments to strengthen the MNCH platform and for community engagement to create demand for services. Increase investments in

building the capacity within MNCH services and communities (HR capacity building; equipment for MNCH and PMTCT; linkages/referrals mechanisms within/between facilities and with communities) for the provision of quality antenatal and postnatal follow up care through Health Sector plan 2012-2030.

ARTICLE 13- MEASURE FOR ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN OTHER AREAS OF SOCIAL AND ECONOMIC LIFE

205. Social protection can assist people in escaping from chronic poverty and help those hit by shocks avoid destitution. Both the Government and Development Partners have increased the commitment to social protection interventions. Such measures include cash transfer programs for orphans and vulnerable children (OVC), older persons, persons with disability and the chronically food insecure in the arid lands (the Hunger Safety Net Program, HSNP). Key Ministries including Ministry of Labour, Devolution and Planning, Ministry of Health in collaboration with Development Partners are spearheading these initiatives.

206. **Legislation:** Article 27 of the Constitution provides for Equal and full enjoyment of rights; equal treatment in all spheres. Similarly, Article 43 e) rights to social security; g) appropriate social security to persons who are unable to support themselves and their dependants. The enforcement of these legislations go a long way to address the plight of young girls and women in Kenya who have suffered gender-based discrimination in accessing social benefits.

207. **Social Assistance Act (2013):** This is An Act of Parliament to give effect to Article 43(1)(e) of the Constitution; to establish the National Social Assistance Authority; to provide for the rendering of social assistance to persons in need and for connected purposes. Under this law financial and social assistance should be provided to poor orphans, vulnerable children, poor elderly persons, youth who are unemployed, disabled persons, widows and widowers, and people who have been disabled by acute chronic illness. The law creates the National Social Assistance Authority of Kenya with the power to pay for food, shelter, clothing, fuel, utilities, household supplies, personal requirements, health care services, transportation expenses, funeral and burial expenses for those who qualify. It has the legal power to offer rehabilitation, counselling,

adoption, and day care services and income assistance while also computing data on the status of disbursement to beneficiaries, a data base that has lacked in previous devolved funds.

208. The government of Kenya established the National Safety Net Program targeting critical categories of Kenya's population. These are poor and vulnerable Older Persons above 65 years of age, Orphaned and Vulnerable Children households, poor households with Persons with Severe Disabilities and food insecure households in poor urban settlements and Northern arid Counties. The overall objective of the program is to reduce poverty and vulnerability in Kenya by improving the wellbeing and resilience of cash transfer beneficiaries. The household receive monthly stipend of KES 2,000 given every two months at the rate of KES 4,000. The OVC impact assessment based on various surveys (2008-2013) shows that there is 15% increase in consumption with a substantial improvement in dietary diversity of the household members. It also shows 13% reduction in poverty levels of the beneficiary households. There has been reduction of child labour by 6%, increased secondary enrolment by 6.6%, increased primary school retention by 15% and improved living dignity for beneficiaries.

209. An audit carried out of the cash transfer programme in 21 Sub- Counties in 2013 revealed that majority of the beneficiaries of the CT-OVC and OP-CT Programme were female 55% of the beneficiaries for PWSD were female compared to 45% male. Among the elderly benefiting from the OP-CT, 76% are female and 24% male. Almost all the beneficiaries of the CT-OVC are female at 88% compared to male 12%. The five cash transfer programmes are integrated at the moment through the Integrated Management Information Systems, though implemented by different government agencies, to ensure the policy of one eligible household per one program. The OP-CT impact assessment has revealed that there has been improved health standards, improved food security in households, education for grand children, improvement in the general economic status of the beneficiaries, formation of social support networks and improvements in quality and quantity of household assets.

Table 2.4 : Reach of safety net program by category and responsible agencies

S. No	Cash Transfer	Number of beneficiaries	Implementing Agency
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	The Cash Transfer for Orphans and Vulnerable Children (CT-OVC);	260,000	Ministry of Labour Social Security and Services
	The Older Persons Cash Transfer (OPCT);	210,000	Ministry of Labour Social Security and Services
	The Urban Food Subsidy Cash Transfer (UFS-CT)	10,000	Ministry of Labour Social Security and Services
	The Persons with Severe Disability Cash Transfer (PWSD-CT).	27,200	Ministry of Labour Social Security and Services
	Hunger Safety Net Programme (HSNP)	69,000	National Drought Management Authority under the Ministry of Devolution and Planning
	Total households	576,200	

Source: MLoSS, 2014

210. Legal Notice 114 of 2013 on the Public Procurement and disposal act Article 30 and 31 gives women, youth and Persons With Ds preferential treatment giving them access to tender opportunities and thereby advancing economic and social benefits. It obligates government Ministries Departments and Agencies to ring-fence 30% of all government spending to these categories.

211. Matrimonial and Properties Act. Article 4 states that despite any other law a married woman has the same rights as a man a) to acquire, administer, hold, control, use and dispose of property whether moveable or immoveable and b) to enter into a contract c) to sue and be sued in her name parties to a marriage.

212. **Legal Notice 21 of Public Finance Management Act:** Uwezo Fund has been established as a permanent fund following the passing of Uwezo fund Regulations through Legal Notice 21 of the Public Finance Management Act 2014 published on 21st February 2014 to empower women, youth and PWDs economically. The Fund encourages the concept of table banking for economic activities to supplement other government empowerment programmes towards the target group.

213. **Challenges:** The uptake on the 30% procurement preference has been slow in the initial period

214. **Another challenge** is under-representation of Women in Devolved Funds Committees- There is insufficient representation of women in management committees of devolved funds whose main objective is poverty eradication such as in the Constituency Development Fund (CDF) Fund and LATF (Local Authority Transfer Fund).

ARTICLE 14-MESURE TO ADDRESS THE SITUATION OF RURAL WOMEN

215. In Kenya, women command domestic duties as well as the majority of agricultural cultivation. In this region, agriculture accounts for 70 percent of the labor force, where women make up 75 percent of that work force (Mwangi, 2008). Women have been active in wage labour, subsistence farming and informal sector. However, legal and customary barriers to ownership of and access to land, use of natural resources, access to capital and credit, compounded with lack of opportunities, resources, training and skills, access to and use of technology, as well as wage differentials, had always deterred women's economic progress. The responsibility put on women to produce food for the family requires legal protection in order to maintain economic and food security. This legal protection involves access to land, to land tenure, to credit, and to the profits reaped from labor (Mwangi, 2008). These issues have since been remedied as follows:

216. **The Agricultural Sector Development Strategy 2010-2020 (ASDS)** is the overarching national policy document for the agricultural sector ministries and stakeholders in Kenya. This policy framework is anchored in the long term development plan for Kenya, Vision 2030 whose main thrust is to transform Kenya into a middle income country by the year 2030. The strategy provides a guide for the public and private sectors' effort in overcoming development challenges facing the sector. Key challenges meant to be overcome through ASDA include food security, poverty reduction, agribusiness development, access to markets and efficient use of inputs and agricultural credit of which the rural women and the youths are largely targeted. To achieve the aspirations that are set out in vision 2030, transforming smallholder agriculture from subsistence

to an innovative, commercially oriented and modern sector is critical. This transformation is predicated on:

- Transforming key institutions in agriculture, livestock, forestry and wildlife to promote agricultural growth
- Increasing productivity of crops, livestock and trees
- Introducing land-use policies for better use of high- and medium-potential lands
- Improving market access for smallholders through better supply chain management

217. **Stimulating rural economic through legislation:** Evidence shows that agriculture-led growth in Kenya is more than twice as effective in reducing poverty as growth led by industry. The key to better performance in agriculture lies in boosting smallholder productivity and developing non-farm activities. By making financial services widely available to rural communities to enable the growth of smallholder enterprises, the Government of Kenya aims to stimulate the rural economy. Three major reforms, from which dominant rural women in agriculture are expected to benefit from, all enacted in 2012, are:

- The Land Act, which mandates the National Land Commission to recommend policies on land, acquire land for public purposes, regulate land use in the public interest and allocate land for investment
- The Agriculture, Livestock, Fisheries and Food Authority Act, which establishes an authority to oversee the operation of the agricultural sector – including licensing, law enforcement and registration of farmers – and to promote and regulate the production, processing, marketing and transportation of agricultural products, advise the government on agricultural policy, and build the capacity of county governments in relation to agriculture
- The Crops Act, which formulates policies for the development of scheduled crops, facilitates marketing and distribution of crops, conducts training for farmers, and establishes and enforces crop standards.

218. The Economic Empowerment Program (EEP) is anchored on the Kenya Vision 2030 economic pillar of enhancing economic growth and reducing poverty. Its priority areas and

expected outputs are enshrined in three critical components that underscore the program centrality. The expected outcomes are ensuring; (i) inclusiveness of the poor and vulnerable are mainstreamed in institutional and policy framework as well as private sector participation in job-rich and pro-poor growth, (ii) the poor and vulnerable (particularly women and youth) are empowered as economic agents including ensuring that the poor and vulnerable access micro-finance and new technologies and (iii) coordination mechanisms for project implementation are operationalized, strengthened and supported by an effective platform for comprehensive public-private partnership. There is an established Poverty Eradication Commission to oversee the implementation and realization of these objectives which will largely impact on women.

219. **Table banking and the situation of rural women:** The government through the Poverty Eradication Commission launched the system with the aim of helping rural women access their own funds to start income generating projects. The concept allows women to save and access loans cheaply that would complement the efforts from the devolved government funds.

220. **Devolution and reach to women:** The devolution process has brought power, services and resources closer to the people through County Development Plans; County governments are bringing better services to the people with regards to: housing, sanitation, rural electricity, water supply, transport and communication. Rural women are the majority consumers of these devolved services.

221. **Women's increased access to banking through mobile phone services:** More rural women have had access to mobile telephone and mobile phone money transfer services. Banks have increased their reach to rural women by opening banking agencies e.g. Equity agent, Co-op jirani and KCB mtaani which are enfranchisements of commercial banks to increase access to the banking services. Access to technology has been adopted by non-state actors to training women on agri-business skills specifically in monitoring commodity markets.

ARTICLE 15-EQUALITY OF MEN AND WOMEN BEFORE THE LAW

222. **Women's experience** in access to has been largely documented in Kenya. For example, the International Commission with the population (332 for 38.6 million people) and has

advocated for this number to be raised. Women in particular face a number of obstacles including:

- The physical location of courts and lawyers is beyond the reach of most Kenyans who are situated in rural areas;
- Court and legal fees; most women (especially widows facing legal disputes about inheritance and property) cannot afford this;
- Although there are legal aid services, these have only reached some of those who require assistance; most of the legal aid programmes are situated in urban areas and are therefore not accessible to many people in rural areas;
- For those that have obtained legal aid, the length of the legal process can act as a deterrent. Claims can run for up to 6 years or more, which can lead poorer litigants to give up because justice is so delayed as to not be of any use to
- Although the Constitution and the Protocol provide for access to justice for women in Kenya, the power of customary law and practices cannot be underestimated. Custom and practice may vary from community to community and even family to family. There is therefore invisible power within communities, which will often dictate a woman's standing and how her rights will be determined, which may not accord with the formal written.

223. **Legislation:** Access to justice features in a number of Kenyan legislative provisions and is particularly prevalent throughout the Constitution. Most notably, Article 22(1) of the Constitution provides that “every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied violated or infringed or are threatened” and Article 48 states that “the State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access .

224. **Enactment of a new progressive Constitution of Kenya 2010** provides the basis for equality and non-discrimination. Article 27 provides that every person is equal before the law and has the right to equal protection and benefit. Further, it provides that women and men have the right to equal treatment including the right to equal opportunities in

political, social, economic and cultural spheres. Other grounds of equality provided for in the constitution include; pregnancy, race, sex, marital status, health, ethnicity or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth. Additionally the law recognizes the equality of both parents in raising their children whether they are married to each other or not under Article 53.

225. In addition to the various constitutional provisions, the Judicial Service Act aims to ensure that the Judicial Service Commission and the judiciary.

- “facilitate access to justice to all Kenyans
- “be guided in their internal affairs, and in the discharge of their mandates by considerations of social and gender equity and the need to remove any historical factors of discrimination”

226. The Civil Procedures Act states that: “women who according to the customs and manners of their communities ought not to be compelled to appear in public shall be exempted from personal appearance in court in section 82. Section 86 of the Civil Procedure Act states that the language of the High Court and Court of Appeal is English and language of subordinated courts is English or Swahili. Translators are available to translate legal proceedings into all of Kenya’s indigenous languages for those who do not speak either English or Swahili (the data of how many women do not speak Swahili is not available as while English and Swahili are the mandated national language, in the rural areas indigenous language is more frequently.

227. Adoption of the National Land Policy which recognizes the role of women in land matters. It proposes review of succession, matrimonial property and other related laws to ensure gender equity and the enactment of specific legislation governing division of matrimonial property to replace the English Married Women’s Property Act of 1882. It provide for the protection of the rights of widows, widowers and divorcees through enactment of law on co-ownership of matrimonial property. The National Land Policy requires appropriate legal measures to ensure that men and women are entitled to equal rights to land and land-based resources during marriage, upon dissolution of marriage, and after death, and development of mechanisms to curb selling and mortgaging of family land without the involvement of spouses.

228. **Challenge:** The Matrimonial Property Act, which was duly gazetted into law on 10th January 2014 has challenges with regard to women's rights to land and property in Kenya. The Act, in brief, defines matrimonial property as only property that is jointly owned by the spouse, and disallows women the right to marital property upon the death or divorce of their spouse by requiring them to prove their contribution to the acquisition of the property during the marriage.

229. **The Law of Succession Act discriminates** against women in respect of inheritance rights. The Act's basic provisions guarantee equal inheritance rights for male and female children, and the equal right to produce a will by both male and female parents. However, Sections 32 and 33 of the Act expressly exclude all agricultural land, cattle and crops from legislated inheritance and instead places their succession under the purview of customary law. For the aforementioned reasons, it is likely that decisions under these customary laws will discriminate against women and girls. In addition, rules governing 'intestate' succession create a hierarchy for inheritance which directly discriminates against women. Thus, under section 39 of the Act, priority in the absence of children or spouse is given to the father of the deceased over the mother. Furthermore, a woman's inheritance rights are made void should she remarry following the death of her husband.

230. **Another challenge** regard to equality before the law persist as some laws have built into them discriminatory provisions. The Penal Code Cap 63 (2012) 153 still assumes that a prostitute is a woman. There is need for review and amend the section to capture neutrality before the law.

ARTICLE 16-EQUALITY IN MARRIAGE AND THE FAMILY

231. **Legislation:** Article 45(3) of the Constitution is one of the biggest achievements for women in the institution of marriage in the context of equality and non-discrimination. It states that Parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage. It lays a minimum age of marriage at 18 years, thus outlawing child marriages that have, hitherto been a major handicap for Kenyan women.

232. **Marriage Act 2014:** The Marriage Act, 2014 is the consequential legislation for realization of article 45 of the Constitution. It repeals the previous numerous pieces of legislation that had governed the institution of marriage, thus making it easier and more user friendly for women seeking matrimonial justice. It is one of the major victories for women in Kenya as it champions equality in marriage as well as reiterates the minimum age of marriage for all women across religious and cultural divides. Section 4 of the Act states as follows:

“A person shall not marry unless that person has attained the age of eighteen years.” Anyone flouting this section of the law is guilty of an offence, and is liable to imprisonment for a term not exceeding five years, or a fine not exceeding Sh1 million or to both. States Parties shall ensure that women and men enjoy equal rights and are regarded as equal partners in marriage...Every marriage shall be recorded in writing and registered in accordance with national laws, in order to be legally recognized;...The husband and wife shall, by mutual agreement, choose their matrimonial regime and place of residence...A woman and a man shall have equal rights, with respect to the nationality of their children Except where this is contrary to a provision in national legislation or is contrary to national security interests;...A married woman shall have the right to retain her maiden name, to use it as she pleases, jointly or separately with her husband’s surname;...A woman and a man shall jointly contribute to safeguarding the interests of the family, protecting an educating their children during her marriage,...A woman shall have the right to acquire her own property and to administer and manage it freely.

233. **Marriage definition:** For the first time in Kenya’s history, the new law defines the institution of Marriage. According to section 3(1) Marriage is defined as a voluntary union between a man and a woman. Section 3(2) gives marriage partners equal rights. The age of consent is set at 18 for both man and woman. Any marriage must have two witnesses present excluding the person officiating it. The law recognises marriages under Christian tradition, civil tradition, customary law, Hindu tradition, Islamic tradition. All these marriages though recognized and must be registered (Sec 6(1)). Practices of other recognised groups or faiths may be notified in the Gazette (Sec 6(1)(f)).Accordingly Christian, Hindu or civil

marriages are monogamous (Sec 6(2)). Islamic and customary marriages on the other hand are potentially polygamous (Sec 6(3)). Custody and maintenance of children remain under the Children's Act.

234. Protection of customary marriage: Customary marriages which had been given second rate recognition in the previous legal regime are now anchored in law and are now registrable, thus making them less precarious and therefore offering more protection for women in customary marriages. It requires, among other things, that parties to a customary marriage shall notify the registrar within three months of completion of the relevant ceremonies or steps required to confer the status of marriage to the parties concerned. Such notification will specify the customary law applied in the marriage, and a written declaration by the parties, that the necessary customary requirements to prove the marriage have been undertaken. Such a declaration shall also contain signatures of two adult witnesses that have played a key role in celebrating the marriage and parties are to register their marriage after three years of coming into force.

235. The Matrimonial Property Act 2013. The passing of the Matrimonial Property Act, 2013 is a great milestone in laws relating to matrimonial property as for the first time in the country's history, there is a comprehensive law that governs matrimonial property. It replaces the archaic 1882 Married women's Property Act of England which had been applied since colonial times. It for the first time defines matrimonial property and creates space for prenuptial agreements. The new law states, inter alia, as follows: A married woman has the same rights as a married man:

- to acquire, administer, hold, control, use and dispose of property whether movable or immovable;
- to enter into a contract; and
- to sue and be sued in her own name.

236. Ownership of Matrimonial property (Section 7) Where there is no prenuptial agreement, matrimonial property vests in the spouses according to the contribution of either spouse towards its acquisition, and shall be divided (not equally) between the spouses.

237. Property Rights in Polygamous Marriages (Section 8): If the parties in a polygamous marriage divorce or a polygamous marriage is otherwise dissolved

- Matrimonial property acquired by the man and the first wife, before the man married another wife, shall be retained equally by the man and the first wife only;
- Matrimonial property acquired by the man after the man marries another wife shall be regarded as owned by the man and the wives taking into account any contributions made by the parties;
- It is possible for a wife to hold her matrimonial property with the husband separate from that of the other wives;
- Any wife can own matrimonial property equally with the husband without the participation of the other wife or wives.

238. Special Provisions on Matrimonial Property (Section 12): Matrimonial property cannot be sold, leased or mortgaged during a monogamous marriage without the consent of both spouses. Spouses in marriages, including the man and any of the man's wives in the case of a polygamous marriage, have an interest in matrimonial property capable of protection by caveat, caution or any law in force on registration of title deeds. A spouse shall not, during the subsistence of the marriage, be evicted from the matrimonial home by or at the instance of the other spouse except by order of a court. A spouse shall not be evicted from the matrimonial home by any person except-

- in execution of a decree;
- by a trustee in bankruptcy; or
- by a mortgagee or chargee in exercise of a power of sale or other remedy

The matrimonial home shall not be mortgaged or leased without the written and informed consent of both spouses.

239. Presumptions to property acquired during marriage (Section 14): Where matrimonial property is acquired during marriage:

- in the name of one spouse, there is a presumption that the property is held in trust for the other spouse; and
- in the names of the spouses jointly, there's a presumption that their beneficial interests in the matrimonial property are equal.

240. **Proof of contribution:** The Matrimonial Property Act, though a milestone in the history of matrimonial property law in the country and has enormous benefits for women in marriages, the requirement for spouses to prove their contribution to the acquisition of the property during the marriage makes it difficult for women to access matrimonial property. The Gender Directorate, NGEC and CSOs will work with the Kenya Parliament to repeal discriminatory and unconstitutional provisions from the 2013 Matrimonial Property Act to ensure that women have equal rights and opportunity before the law.

241. **Recent jurisprudence by the high court has, however, reaffirmed the equality provisions of the constitution, thus watering down the above stated provision in the Matrimonial Property Act, 2013.** In the recent case of *CMN v AWM*, the Court reaffirmed Article 45(3) of the Constitution.⁹ In the matter, the High Court stated that as far as the division of matrimonial property is concerned, the Judiciary is now guided by the principles of equality and not by the principles of law set in *Echaria v Echaria*,¹⁰ which focused on the contribution made by each spouse to the acquisition of the property. As such, the Court held, contrary to the plaintiff's claim, that both parties to the suit were each entitled to half a share of the property in dispute.

242. **Polygamy:** The Constitution of Kenya in Article 45(4) permits polygamy. It mandates Parliament with the task of enacting legislation that recognizes marriages concluded under any tradition, or system of religious, personal or family law. Polygamy is implied in a marriage concluded under any tradition or system of religious, personal or family law. Section 2 of the marriage Act acknowledges polygamy and defines it as the state or practice of a man having more than one wife simultaneously. Additionally, Section 6(3) of the Act asserts that Islamic and customary marriages are potentially polygamous. Polygamy has onerous implications on women. It serves to reinforce male dominance and subjugation of women in the private sphere of marriage. If the constitutional and legislative provisions that sanction polygamy are not changed, they will cause untold harm to many women as various males will choose a second wife in order

⁹ *CMN v AWM* Environment and Land Case 208 of 2012, eKLR.

¹⁰ *Echaria* (n 53).

to constrain the women bargaining powers in the relationships. Polygamy also runs counter to the very Constitution that outlaws discrimination and inequality of sexes.

243. **Challenges:** The incongruence existing in the Constitution, the Matrimonial Property Act and the Land Registration Act, 2013 need to be addressed if inequality and non-discrimination for women in Kenya are not to remain mere rhetoric.

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ⁱ In August 2010 Kenya successfully promulgated a new Constitution. This was the culmination of a long struggle for a Constitution that would be responsive to the social, economic and political needs of the people.

ⁱⁱ An ACT of Parliament to give effect to the Constitutional provisions relating to political parties; provide for the registration, regulation, and funding of political parties and for connected purposes.

ⁱⁱⁱ Article 27(8) states: In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two- thirds of the members of elective or appointive bodies shall be of the same gender.

Article 81 states: The electoral system shall comply with the following principles, (b) not more than two-thirds of the members of elective public bodies shall be of the same gender.

^w Article 2 (5) and (6) seeks to ensure that Kenyans enjoy greater protection of the international treaties and conventions ratified by the State. The coming into force of the Making and Ratification of Treaties Act is one sure way to fulfill this constitutional guarantee. It also points the state's minimal leaning towards monism.

^v Article 94(5) (5) No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.

^{vi} The provision states: "[a]ny 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." (Act No. 3 of 2006 - Sexual Offences Act (in force July 21, 2006)).