



**Convention on the Elimination
of All Forms of Discrimination
against Women**

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**Committee on the Elimination of Discrimination
against Women**

**Consideration of reports submitted by States parties under
article 18 of the Convention on the Elimination of All Forms
of Discrimination against Women**

Combined fifth and sixth periodic reports of States parties

Kenya*

* The present report is issued without formal editing.

For the combined initial and second periodic report submitted by the Government of Kenya, see CEDAW/C/KEN/1-2 which was considered by the Committee at its twelfth session. For the combined third and fourth periodic report, see CEDAW/C/KEN/3-4 which was considered by the Committee at its twenty-eighth session.



The fifth and sixth Combined Report of the Government of the Republic of Kenya, on the International Convention on the Elimination of All Forms of Discrimination against Women

Introduction

1. The Republic of Kenya presents its 5th and 6th Combined Report on its implementation of the international *Convention on the Elimination of All Forms of Discrimination against Women*. This report has been prepared through collaboration between the Government of Kenya and representatives of Civil Society organisations and covers the reporting period of January 2003 to January 2006. In the process of preparing this report, there have been three consultative meetings held between representatives of the Government and Civil Society organisations.

Executive summary

2. This report has been written and is being presented at what is both an exciting and perhaps the most challenging time that women's rights workers have ever faced in Kenya. As will be noted in Paragraphs 8 – 109 under the reports on Articles 1, 2, 4, 7 and 9 of the *Convention*, new challenges have emerged to the implementation of the *Convention*. In particular as has been noted in previous reports to the Committee, constitutional equality remains an unattained aspiration for Kenyan women. Thus whilst much progress has been made in various areas of women's rights, this keystone – of constitutional equality remains untouched. The Kenyan constitutional reform process which would have addressed this issue culminated in a Proposed New Constitution of Kenya which was rejected by the public in a National Referendum held on 21st November 2005. The Proposed New Constitution had several clauses that would have addressed gender based inequalities.
3. There are many gains that have been made in the areas of women's rights since the presentation of the 3rd and 4th Combined reports however, the following areas which require constitutional reform remain unchanged:
 - Article 1: - the definition of discrimination is still not compliant with the Convention. This issue had been addressed in the Proposed New Constitution which had broadened the definition of discrimination to include pregnancy etc. and was consistent with the Convention.
 - Articles 1 and 2: - qualifications to the constitutional right to equality still exist. Namely the claw back clauses in sections 82 (4(b & c)) of the current *Constitution of Kenya* that permit discrimination in matters of personal law, marriage, adoption and devolution of property (inheritance) remain.
 - Articles 2, 4 and 7: - in respect of ensuring that the obligation to address discrimination, affirmative action and women's participation in public and political life. The Proposed

New Constitution had affirmed women's right to one third representation in appointive and elective posts which would have enhanced the state's capacity to address discrimination and women's representation in public life.

- Article 9:- Nationality. The *Constitution of Kenya* does not grant women equal citizenship rights – this had been addressed in the Proposed New Constitution of Kenya.

Finally the Proposed New Constitution had addressed domestication of the Convention, in that it had provided that upon its promulgation any conventions that the country had acceded to or ratified, would automatically become law.

4. On the other hand many gains have been made in advancing the cause of women's rights in Kenya in the interim period between the 3rd and 4th report and the 5th and 6th report. In a landmark decision the Court of Appeal sitting in Eldoret, cited Article 1 of the *Convention on the Elimination of All Forms of Discrimination Against Women*, in a decision to justify awarding daughters of a polygamous man (married under customary law) who had died intestate equal shares in his property. This decision *Mary Rono – v – Jane Rono & William Rono [Civil Appeal No. 66 of 2002]* is a landmark ruling as the highest court has affirmed the principle of women's equality in one of the most contentious areas of law. Other gains that have been made and are addressed in the report under the paragraphs on Articles 1 – 9 include but are not limited to:

- Implementation of the prohibition of Female Genital Mutilation which is now illegal for minors – this is as a consequence of the enactment of the *Children's Act (2001)*.
- The enhancement of the national machinery for the advancement of women through the establishment of the National Commission on Gender and Development and the enactment of its enabling legislation.
- Minimum sentences for the rape of minors and the enhancement of punishment for the rape of a minor to a life sentence.
- Improved portrayal of women and women's rights concerns in the media.
- Increased representation of women in appointive positions – most new national institutions such as the Kenya National Commission on Human Rights now have a one third women's representation provision enacted in their enabling legislation and these provisions are largely being adhered to.
- Improved women's representation in the Judiciary.
- The testing and successful use and citation of the Convention to defend women's rights in court.

- Establishment of a police station that is specially focussed on addressing cases of violence against women.
- A pilot project to replicate the Gender Violence Recovery Centre in all provincial hospitals. The Gender Violence Recovery Centre provides counselling and medical services to victims of gender based violence – it is a private initiative that began at the Nairobi Women’s Hospital – but its founders are now collaborating with the Ministry of Health to ensure replication and availability of these services on a national basis.

5. New and continuing challenges include:

- The prohibition of FGM has resulted in it going underground and adult women from communities that practise it being pressurised to undergo the rite once they achieve adulthood.
- Increased insecurity which has resulted in increased violence against women. There has been an increase in sexual violence particularly rape of women and girls as well as boys and men.
- Resistance to and ignorance of women’s property rights.
- Monitoring the operationalisation and effectiveness of new gender responsive measures and mechanisms.

6. In respect of Articles 10 – 16, the implementation of the free primary education program has enhanced girls’ entry into the education system. The enactment of the *Constituency Development Fund Act* as well as the *Children’s Act*, have both ensured the provision of greater resources for women and girls living in rural areas. The *Children’s Act*, recognises the right of children to maintenance from both their parents. There is however a lacuna in the *Children’s Act* as women are automatically responsible for the maintenance of children born outside of wedlock whereas men are only accountable upon application. The *Children’s Act* also prohibits forced and early marriages of minors.

Article 1 – Definition of Discrimination Against Women

7. Definition of discrimination: Kenyan law does not provide a definition of discrimination against women that is consistent with the *Convention*. Many of *CEDAW*’s provisions have not yet been directly incorporated into Kenyan laws. Sections 82(1 & 2) of the *Constitution of Kenya* prohibit discrimination in law or by persons holding public office. Section 82(1) states that “no law shall make any provision that is discriminatory either of itself or in its effect”

While section 82(2) states that:

no person shall be treated in a discriminatory manner by a person acting by virtue of any written law or in the performance of the functions of a public office or a public authority.

8. Section 82 (3) defines discrimination to include:

Affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, tribe, place of origin, or residence or other local connections, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

9. Qualifications to the prohibition on discrimination on the basis of sex: The prohibition on discrimination is subject to a range of exemptions. In Kenya, laws are not discriminatory under the *Constitution* if they relate to the status of non-citizens,¹ concern matters of personal law and customary law, are on the issues of adoption, burial, divorce, marriage and succession. Consequentially sections 82 (4 (b &c)) of the *Constitution* allow discrimination against women on matters of personal law.

10. Personal law is the area of law where women most experience discrimination. Customary practices and the economic situation bring about incidences of discrimination. Women experience a wide range of discriminatory practices, limiting their political and economic rights. The area in which most customary laws disadvantage women is in respect of property rights and inheritance. Under the customary law of most ethnic groups in Kenya, a woman cannot inherit land, and must live on the land as a guest of male relatives by blood or marriage.

11. *The Law of Succession Act (Cap. 160, Laws of Kenya)* has tried to redress these imbalances and the statute provides that both girls and boys share equal rights in succession. However this law is subject to several qualifications:

- It does not apply to agricultural property in areas gazetted by the Minister, specifically communally owned land for example in pastoral areas. This is the form of property that most Kenyans own. The result is that if an individual dies intestate – i.e. without having written a will – their customary law prevails and as has been pointed out most customary laws in Kenya do not allow girls and women to inherit property.
- Persons professing the Muslim faith are exempted from the *Succession Act*. They can however apply the Islamic law which does not apportion equal shares in the estate to daughters and wives. This is based on the principals in Islamic law that require a man to

¹ Constitution of Kenya, Section 82 (4a).

take care of his sister and on this basis awarding men twice the portions of property inherited from the father and widows an eighth.

- Widows do not enjoy the same rights as widowers under the *Succession Act*: for example widows only have a life interest in their husband's property which is extinguished by re-marriage whereas widowers continue to enjoy their rights over their deceased spouse's property regardless of whether or not they remarry.
- Where an unmarried adult without offspring dies intestate the *Succession Act* provides that land is first and foremost inherited by the deceased's father, then mother, then siblings. This hierarchical order clearly privileges the father over the mother.

12. The judiciary has applied the principle of equality in succession as provided for under the *Succession Act* and in division of matrimonial property in a number of cases. Recent court decisions illustrate the way in which the Kenyan legal system is interpreting equality and discrimination.
13. In *Kivuitu –v– Kivuitu* (1992) Kenya Appeal Reports: 241 the Court of Appeal set out the categories of contribution that a woman claiming property registered in the name of the husband could be shown to have made. Recognised forms of contribution include: financial contribution that can be in direct or indirect forms as well as non financial contribution which can take such forms as taking care of the family on the home front or tilling rural agricultural land as the husband acquires property in the urban centres (this is a common pattern in Kenya). In *Muthembwa –v– Muthembwa*,² the Kenyan Court of Appeal took the issue of determination of matrimonial properties to another level by providing that a wife would be entitled to share of gifted and or inherited property if she contributed towards developing it. The principles established in these cases have been further expounded on in cases recent cases reported on under Articles 15 and 16 at paragraphs 168 – 210 below.
14. Laws on citizenship: Whilst sections 90 and 91 of the *Constitution*, allow Kenyan men to confer citizenship on their wives and children, women do not enjoy the same right. The *Constitution of Kenya* and the *Kenya Citizenship Act, Cap. 70 of the Laws of Kenya* discriminate against children born to Kenyan mothers abroad but do not discriminate against children born to Kenyan fathers born abroad. Children born to Kenyan mothers abroad have to apply for citizenship and are given entry permits for a limited duration upon entry into Kenya, while similar treatment is not accorded to children of Kenyan fathers born to non-Kenyan mothers.
15. Measures being instituted to address discrimination: Most of the issues raised regarding legal based discrimination are rooted in constitutional discrimination. Having recognised this fact, The Government in 1998 initiated a Constitutional Review Process, which culminated in a Proposed New Constitution of Kenya printed on 22nd August 2005. One of the issues that this review process was required to address was the issue of gender based discrimination. The Proposed New

² Civil appeal No. 74 of 2001.

Constitution included a definition of discrimination that was compliant with Article 1 of *CEDAW* and incorporated ideals in *CEDAW* on gender equality, particularly regarding the principle of affirmative action in relation to persons holding public office and members of parliament. The Proposed New Constitution was however put to a National Referendum on 21st November 2005 and rejected by the Kenyan public. Kenya is still therefore faced with the challenge of how to address these issues of gender based discrimination that are rooted in constitutional discrimination.

16. In a landmark decision the Court of Appeal sitting in Eldoret, cited Article 1 of the *Convention on the Elimination of All Forms of Discrimination Against Women*, in a decision to justify awarding daughters of a polygamous man (married under customary law) who had died intestate equal shares in his property. This decision *Mary Rono – v – Jane Rono & William Rono [Civil Appeal No. 66 of 2002]*, has broken new ground for women’s rights in Kenya in an area which has been extremely contentious. Citing Article 1 of the Convention as well as Article 18 of the African Charter of Human and People’s Rights stated that:

.... [As] a member of the international community, Kenya subscribes to international customary laws and has ratified various international covenants and treaties.... In 1984, it also ratified, without reservations, the Convention on the Elimination of All Forms of Discrimination Against Women, in short, ‘CEDAW’. Article 1 thereof defines discrimination against women....

17. In 1999, the Government together with representatives of civil society drafted the Equality Bill. Its aim was to make provisions for equal treatment of all citizens irrespective of their gender and end all forms of discrimination. The Bill however lapsed before it could be discussed. One of the challenges faced in this respect has been the fact that the rate at which legislation is passed through Kenya’s Parliament. On average only about 10 new bills are passed into law in a parliamentary year and there is currently a backlog of over 50 bills pending. This situation was further aggravated in 2005, by Parliament’s preoccupation with the question of a new constitution.
18. National Machinery for Advancing Gender Equality: The Government has instituted a National Policy on Gender and Development. This policy enables the Government to address gender issues strategically through an established institutional framework. The Government is in the process of developing a Plan of Action for implementation of the Gender Policy.
19. The national machinery for advancing gender equality has also been greatly enhanced through the establishment of the National Commission on Gender and Development through the *National Commission on Gender and Development Act 2003*. The Commission is mandated to protect the rights of women and advocates for legal reforms on issues affecting women and formulate laws, practices and policies that eliminate all forms of discrimination against women and all customs that are detrimental to their dignity.

20. Other initiatives that will facilitate achievement of gender equality are plans by Government to launch Gender Divisions in line ministries in government. Terms of Reference that will guide operations of the Divisions are in the process of being finalised. It is expected that once operational, these divisions will go a long way in enhancing gender equality by ensuring that all policies, plans and programmes are gender responsive.
21. The Government continues to collaborate with non- governmental organizations dealing with gender issues and discrimination against women. Areas of collaboration include training of police officers on gender equality, handling victims of rape and sexual violence, integrity and professional ethics. This training is expected to enable officers to handle cases of gender based violence better.
22. Unfortunately gender based violence has been on the increase with the number of reported cases of rape and attempted rape rising from 1,675 in 2000 to 2,908 in 2004 while cases of assault and battery rose from 6,255 in 2000 to 8,959 in 2004. It has not yet been ascertained whether this increase is due to an increase in the incidence of violence or an increase in the reporting of violence. It is noteworthy that the government has set up the first police station in Nairobi to specifically deal with women and children particularly on issues of violence. Additionally, gender desks have been established in every District police station where gender violence victims are being encouraged to report with assurance of professional treatment by the police manning the desks.
23. Gender Violence: There are no laws specifically governing violence against women but there are provisions in various laws prohibiting various aspects of it and setting out punishments for perpetrators of this violence. The *Penal Code Cap 63 of the Laws of Kenya* in its chapter on “Offences Against Morality” criminalizes the offences of rape, defilement and incest. Whilst the *Children’s Act 2001*, prohibits the performance of FGM on minors and early or forced marriages of a person under the age of 18. Finally the *Public Officers and Ethics Act* recognises and prohibits sexual harassment. There are gaps in the laws, for example the *Penal Code’s* prohibitions on assault do not effectively address domestic violence, whilst there is now pressure on adult women to undergo FGM and there is need to ensure that laws prohibiting sexual harassment are applicable in all workplaces. In 2003, the *Penal Code* was amended to provide for a maximum sentence of life imprisonment for rape. There is a Sexual Offences Bill that seeks to criminalize and impose greater deterrence and sentences for sexual offences. The Government is also very supportive of the Nairobi Women’s Hospital - a private sector initiative that provides medical aid to victims of gender violence. It is intended that this initiative be replicated in other parts of the country in both provincial and district hospitals – this work is being undertaken through a collaborative initiative between the Government and Liverpool Voluntary Counselling and testing.
24. Female Genital Mutilation (hereafter: FGM): which is condemned widely by international health experts as damaging to both physical and psychological health, is still practiced in Kenya by certain ethnic groups and remains widespread, particularly in rural areas. Often, FGM is institutionalized through culture and tradition. FGM was banned through two presidential decrees

and was not allowed in government-controlled hospitals and clinics before being prohibited by the *Children's Act* in December 2001. The *Children's Act* only applies to individuals who are under the age of 18. FGM continues to persist in Kenya and is carried out clandestinely in many parts of the country due to strong traditional customs. The Kenya Demographic Health Survey of 2003 shows that in the North Eastern province of Kenya, 98.8 % of women undergo FGM. In some parts of the country FGM has been replaced by 'circumcision with words', celebrating a young girl's entry into womanhood but with words rather than through genital cutting.

Article 2 - Obligations to Eliminate Discrimination

25. Although the Constitution of Kenya prohibits discrimination on the basis of sex, achieving gender parity especially in the key decision making bodies both in public and private bodies continues to be a challenge. This is reflected by low representation of women in decision making bodies such as Parliament and public service organizations. This situation is evident despite the existence of competent women to occupy such strategic portfolios. Low intake of women is also evident in some institutions such as the army, navy, police force or air force. In the recruitment of the police force in 2005, the Commissioner of the Police stated that measures had been put in place to ensure that 20% of the recruits were women.
26. Certain forms of discrimination have proven particularly persistent. Current laws on citizenship and nationality are still detrimental to women. As noted in paragraph 10 above. Whilst practices confining women to domestic activities are still in place. Early child marriages still persist in some communities despite the fact that they are prohibited under the *Children's Act 2001*.
27. Kenya follows the dualist system of treaty implementation because it also lacks constitutional provisions to ensure direct implementation of international treaties the country has ratified and or acceded to. International laws can only be effective when Parliament, which is the law making organ, domesticates the convention by a specific Act of Parliament or other legislative means so as to incorporate that international law as part of the law of Kenya. Under this general doctrine, *CEDAW* must be given effect domestically through legislative, judicial and administrative means. The Government sought to address this problem of domestication of international treaties through provisions in the Proposed New Constitution which would have ensured that any treaty that the country was party to would automatically become law. Given the fact that the Proposed New Constitution was rejected, Kenya is still challenged with this process. The other way in which treaties are domesticated is through their citation in court. Happily this is happening with *CEDAW*. The procedure of domestication through acts of parliament is long given that there are several forms of legislation and the *Constitution* that would need to be amended and/or repealed in order for the country's laws to be fully compliant with the Convention this has contributed to the delays in implementing the *Convention*. It is to be noted that there have been some deliberate interventions made by the Government with a view to comply with the provisions of the convention. For example, the constitutional drafts had stated that international treaties that Kenya has ratified would automatically become part of the national law.

28. The Government of Kenya has passed legislation to outlaw discrimination against people with disabilities under the *Persons with Disabilities Act* whilst prohibitions against FGM (female genital mutilation) are contained in the *Children's Act*. There are also gender bills such as the Family Protection Bill, Equality Bill (2001), HIV/ AIDS Prevention and Control Bill, and more recently the Sexual Offences Bill. These bills have lapsed but will be re-submitted when Parliament reconvenes.
29. Girl's entry points to public universities are one mark lower than boys; as a result, more girls have enrolled for higher education. The Government has prepared Sessional Paper No. 5 of 2005 on Gender Equality and Development which encourages NGO's, CBO's, co-operative societies, professional bodies, the private sector, trade unions to ensure higher participation of women in various projects and decision making.
30. There are various mechanisms that have been initiated to enable women to ensure and promote equal rights and treatment between themselves and men and to outlaw discrimination through a consultative process between the Government and Civil Society. For example, there are now legal provisions for affirmative action in the decision making organs of several new national institutions namely the Kenya National Human Rights Commission and the National Commission on Gender and Development; there are legal requirements and policy provisions for women and women's rights organizations to be represented in national decision making processes in particular the constitutional review process; and the Kenya Anti Corruption Commission (KACC); amendments have been made to the *Penal Code* providing for enhanced sanctions for various violations against women, affirmative action, policies and programmes and creation of the Family Division of the High Court to protect the rights of women. The Government is also working with Civil Society to develop the Matrimonial Property Bill, 2005 and the Law of Succession (Amendment) Bill, 2005
31. The Government of Kenya has remained committed to the advancement of women, as is reflected in the progressive inclusion of women's agenda in National Development plans and projects. The national documents categorically outline the government's development approach from a gender perspective. The Social Dimensions for Development Programme, The Economic Recovery Strategy for Wealth and Employment Creation (2003-2007) which is anchored on the Poverty Reduction Strategy Paper that was released in 2001, The National Development (2002-2008), The Kenya Demographic Health Survey and the Kenya Economic Surveys are examples of such documents among others. Kenya is also committed to achieving the Millenium Goals.

Article 3 - Development and Advancement of Women

32. The Government of Kenya has taken significant steps 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. These measures are outlined in paragraphs 37 – 47 below and include but are not limited to:
 - The enhancement of the national machinery for gender equality.

- Enforcement of provisions of the *Children's Act* pertaining to early and forced marriages, child maintenance and FGM
- Enactment and enforcement of quotas that ensure at least one third women's representation in decision making bodies such as the Kenya National Commission on Human Rights; the Constituency Development Fund Committees; the National Council of Persons with Disabilities and the National Commission on Gender and Development.
- Increased numbers of women to serve in the Cabinet and diplomatic corps.

These measures focus on the political, social, economic and cultural fields. Retrogressive social cultural practices that do not recognize women's work, poverty, and low levels of education are some of the factors that hinder women's access to political participation, employment, access to health care and ownership of property.

33. Women's advancement in the political field: The National Policy on Gender and Development provides a framework for the advancement of women in the political, social, economic and cultural areas. Sessional Paper No. 5 of 2005 on Gender Equality and Development which is to be resubmitted to Parliament states that government will take appropriate action which will ensure gender parity in political participation and decision making by institutionalising mechanisms to promote the appointment of women to high level decision-making positions and adopt 50% of women/men each. The government is also in the process of seeking technical support in form of consultancy to develop a 5 year Plan of Action to implement the National Policy on Gender and Development that was approved by Cabinet in 2000. The Plan of Action will facilitate implementation of the policy and provide a basis for stakeholders to initiate programmes that seek to promote gender equity in the country. Progress of women in taking centre stage in politics is also demonstrated by the election of two women into senior positions, in two prominent political parties, one as the head of the party and the other as the Secretary General. This has largely been due the intensive civic education that has encouraged Kenyan women to vie for strategic posts in political parties as well as lobbying by civil society. It is also noteworthy that the Constitution of Kenya Review Commission that was tasked with steering the country towards the realization of a new constitution was headed by a woman.
34. Women's social advancement: The Government recognizes that the participation of women in all spheres of life and in key leadership positions contributes to change of negative attitudes towards women. The National Commission on Gender and Development will be instrumental in promoting women's participation as a result of some of the key responsibilities assigned the Commission which are *inter alia* to:
- Determine strategic priorities in all the socio-economic, political and development policies of the Government and advise on their implementation
 - Initiate, lobby for and advocate for legal reforms on issues affecting women, and formulate laws, practices and policies that eliminate all forms of discrimination against women in all institutions. As well as eradicate all practices and customs that are detrimental to women's dignity.

35. Though less than two years old, the National Commission on Gender and Development has already made several achievements. These include:
- Providing strategic advice to line ministries specifically with regard to gender responsive law reform and gender responsive budgeting.
 - Strengthening the work of national statutory commissions, such as the Kenya National Commission on Human Rights, through training and capacity building for gender equality work.
 - Collaboration with the government machinery and civil society organisations to develop Sessional Paper No. 5 on Gender Equality and Development.
36. There is still need for further support to the Gender Commission. Although the government has taken steps to facilitate operations of the Commission through funds, office space, deployment of staff and by holding regular consultative meetings on areas that concern women's advancement such as strategizing on the pending Gender Bills: Equality Bill 2001, HIV/Control Bill, Domestic Violence (Family Protection Bill) and Affirmative Action Bill. One of the challenges that has been faced in enacting these bills into law is Parliament's crowded calendar and the fact that Bills pass through the House at the rate of less than ten Bills in a year. 2005 was particularly slow given Parliament's preoccupation with the question of a new constitution.
37. Resources allocated to the Gender Commission still fall short of those required for its undertakings. In particular challenges exist in respect of the following areas:
- The Gender Commission requires that its structures be strengthened to ensure effectiveness and efficiency.
 - Funding levels have been sufficiently enabling for the Gender Commission to fully deliver on its mandate.

The government will seek ways of enhancing funding for the Commission due to the enormity of the task that it is charged with. The Government is therefore committed to providing greater support to the Commission in terms of funding to enable it to carry out its mandate effectively.

38. The Sexual Offences Bill that lapsed has received Government support due to the escalation of cases of violence against women such as rape. Reported cases rose from 1,675 in 2000 to 2908 in 2004. As a sign of good will, the Government also contributed some Kshs 4million towards the Nairobi Women's Hospital for its efforts to provide medical care to victims of gender based violence. Funding for the hospital which is relying on good will from the public remains a challenge
39. The coming into effect of the *Persons with Disabilities Act Cap. 14 of the Laws of Kenya (2003)* that establishes the Council of Persons with Disabilities further aims at uplifting civic rights of women with disabilities and in particular in respect of their employment, retirement age and

ensuring favourable tax exemption provisions. The Council is currently headed by a woman as the director.

40. Women's economic advancement: Efforts are being made by Government and community support organizations to enable women to access micro finance credit. The challenges women continue to face include lack of capacity in terms of skills and other managerial competencies that would enable them to effectively utilize funds to operate micro-enterprises. There are programmes in place that seek to build the capacity of women in entrepreneurship. The programmes are highlighted under the report on Article 14 in this report
41. Women's cultural advancement: There are efforts by Government through the provincial administration in collaboration with civil society organizations to fight negative social practices such as FGM and early marriage. This issue has been addressed in paragraph 27 above with the example of alternative rites of passage. Also successful women who escaped the circumcision rites such as Members of Parliament, are speaking out against FGM. At the same time there is innovative use of positive cultural practises to advance women's rights. In Nyanza Province, for example, the Kenya National Commission on Human Rights is engaged in a project in which it is using the fact that traditionally widows are supposed to be taken care of by the community, to settle dispossessed widows back on their land.
42. Inter-ministerial Committee on Female Genital Mutilation: The Ministry of Gender, Sports, Culture and Social Services has been identified as the national focal point for the coordination of all FGM initiatives. This has been out of the recognition that FGM is a gender issue affecting relationships between women, men, boys and girls; a social issue since it determines society's approval of one's image in society; and a cultural issue therefore a norm which a person from the communities that practice it might not fit in if not circumcised. FGM is also a health issue as the operation negatively affects the health of women and girls who have undergone it. Coordination by the Ministry include advocacy at national and community levels, policy direction and development of new initiatives. An Inter-ministerial Committee on FGM has been instituted and an Action Plan developed to facilitate implementation of the National Action Plan on FGM. In addition, the government in collaboration with the UNFPA has commissioned a situation analysis on FGM whose results will form the basis of future interventions on FGM.
43. The National Policy on Gender and Development also addresses educational concerns of children born with disabilities. A survey on persons with disabilities to be carried out in 2006 will also provide much needed data that will inform policy and programme formulation for persons with disabilities.
44. There are other efforts to improve access to rehabilitation, education, training and employment of persons with disabilities. Such efforts include implementation of policies to ensure that girls and boys with disabilities have access to relevant education in integrated settings with particular attention to children in rural areas; the training of youth, women, men with relevant marketable skills including tax rebates and incentives. Some of the challenges include enforcement of the *Persons with Disabilities Act*. The Act requires premises to be designed so as to be accessible to

persons with disabilities, not all buildings have complied with this requirement. One of the challenges faced in the operationalisation and implementation of the Act is the amount of conflicting legislation in respect of persons with disabilities. Some of the areas that are inconsistent with other legislation include retirement age and provision of tax rebates. There is therefore need to harmonise this legislation.

45. Affirmative Action: The Government has adopted the policy of affirmative action in the admission of students to public universities. Female students and persons with disabilities are permitted into universities with slightly lesser points. This serves two purposes: it makes-up for past injustices; and it changes the perception that only men are capable of joining university. We see affirmative action as a step towards reversing stereotypes and advancing the status of women by offering them opportunities that they previously did not have access to.
46. Challenges in these efforts include implementation of legislation and inadequate funding for implementation of targeted programmes that would provide necessary skills and attitudinal changes towards persons with disabilities due to deeply entrenched customs and practices. Other concerns are that children with disabilities who are born at home are sometimes kept away from the public and therefore not registered at birth.

Article 4: Acceleration of equality between women and men

47. Sessional Paper No 5 of 2005 on Gender Equality and Development provides a framework in areas where affirmative action can be used to bring equality between men and women. In political participation and decision making for example, in section 58(c) it encourages NGOs, CBOs, co – operative societies, trade unions, professional bodies and the private sector to ensure higher representation and participation of women in decision-making. In section 58(e) it also encourages the creation of awareness and promotion of the active participation of women in political and decision-making processes at the grass roots level.
48. Education: In 2000 Affirmative Action policy was introduced in education with the aim of improving access to and retention of girls in the education system. It operates through mechanisms such as lowering entry points to public universities. Another positive measure was the establishment of Kenya's re-entry policy for pregnant school girls that was introduced in 1998. The challenge faced is effective implementation of the measures including monitoring and evaluation
49. Other areas: At other levels, Cooperative societies under the Ministry of Cooperatives have adopted affirmative action. At least one – third of the members of cooperative management boards are required to be women to ensure equitable gender representation. The Government is currently undertaking measures to ascertain the membership of women on these boards as well as the nature of duties performed.
50. *The Constituency Development Fund Act, 2003* states that one-third of members of Constituency Development Fund Committees are required to be women. It is envisaged that this representation

will ensure that women's voices are heard in terms of the projects that are earmarked for implementation. We are in the process of collecting data on women's representation on the committees as well as the positions they hold in order to determine their effectiveness in terms of influencing development agenda at the constituency level. Introduction of the Constituency Development Fund is also expected to expedite grassroots development by alleviating poverty among the rural poor most of whom are women.

51. The East African Legislative Assembly (EALA) has embraced affirmative action in the sense that nine of its members are required to be women from the three countries of East Africa that form the East African Community: Kenya, Uganda and Tanzania. The previous regime breached this rule such that currently Kenya is represented by two women instead of three while Tanzania and Uganda each have three representatives. The justification used for sending less than three women to the EALA was that the precise mechanism for achieving gender parity was not spelled out in the East African Treaty. What this has illustrated to Kenyan women's rights workers is the importance of precision in language and legislation intended to strengthen and protect women's rights. The impending elections for the East African Legislative Assembly will present Kenya with an opportunity to rectify this anomaly.
52. On the other hand the *National Commission on Gender and Development Act 2003* section 11(5) specifies that the director and deputy director of the commission shall be of opposite sexes and at no one time shall more than two – thirds of the Commission be of the same gender. A similar provision is also found in respect of the Kenya National Commission on Human Rights' enabling legislation, at the KNCHR the Chairperson is a man whilst the Vice-Chairperson is a woman.
53. These special measures are considered to be non – discriminatory because they are meant to ensure women are at par with men in specific areas of their lives.
54. On the Beijing Platform for Action Implementation, the Government has been preparing progress reports on the implementation status to the annual Commission on Status of Women meetings in New York. Developing a system for tracking and measuring progress in gender mainstreaming is among the key activities that the Department of Gender will carry out in 2006 as reflected in the Strategic Plan of the Department. This system will also be used to monitor implementation of the Platform for Action.

Article 5 (a) - Sex roles and stereotyping

55. The Government of Kenya recognizes the obligation to modify social and cultural patterns of conduct that are likely to result in prejudices blur equality between men and women. The Government also recognizes that it was asked by the Committee on Elimination of Discrimination against Women to take action on cultural practices that continue to entrench gender stereotypes. In this regard, the Government has undertaken a number of legislative, policy and other measures aimed at realizing this end. These measures are discussed hereunder.

56. Change of School Curriculum: The Government has undertaken a comprehensive review of the Primary and Secondary School education curriculum. Books that initially portrayed women as actors in the domestic front and men as players in public life have either been reviewed or done away with. The syllabus also encourages both boys and girls to learn creative arts, home science (including cooking, knitting, washing cloths etc.) and even sports. It is hoped that this new curriculum will go a long way towards eliminating currently prevailing stereotypes. Since the syllabus targets children at their very early stages in life, we expect a Kenya bereft of abusive stereotypes.
57. Implementation of *The Children's Act (2001)*: The Government of Kenya has also realized that cultural practices like FGM and forced early child marriages still go on unabated. In this regard, it is particularly noteworthy that the Government has enacted the *Children's Act* which *inter alia* outlaws practices such as Female Genital Mutilation (FGM) on children below the age of 18. The Act treats FGM as an assault on children and is punishable by law. The Act is also a bold step against the practice of early child marriages which have continued to undermine the rights of the girl-child. The Act is expected to mark the beginning of an epoch where the girl child will have the same opportunities as the boy child. It is envisaged that soon, the cultural practice of FGM and that of early child marriages will be done away with.
58. There are however, problems still associated with the implementation of the *Children's Act*. Firstly, since the level of illiteracy is generally, high, a host of the citizenry is ignorant of the law; and this does not help in the realization of the target to see children freed from *inter alia* FGM and early child marriages. Secondly, the Government has noted that even as children are now legally immune from forced marriages and FGM, women above the age of 18 are still held by these very chains.
59. The *Public Officer Ethics Act, 2003*: Recognizing that the prevalence of gender stereotyping is still rife at the workplace, the Government enacted the *Public Officer Ethics Act 2003*. This Act proscribes sexual abuse at the workplace; it encourages a working environment that promotes a condition of respect of fundamental human rights; and it requires that public officers obey and respect principles of accountability and transparency. All commissions are expected to develop and enforce codes of conduct for the various public services organizations that will guide conduct of public services organizations. Already the Public Service Commission and the Teachers Service Commission have developed Codes of Conduct for their employees. We expect that in the fullness of time, this law will assist in eradicating sexual harassment in the work place.
60. The *National Commission on Gender and Development Act (2003)* and the Gender Commission: On the 9th of January, 2004, the *National Commission on Gender and Development Act (2003)*, came into force. This Act establishes the Commission on Gender which has the mandate to *inter alia*:

Initiate, lobby for and advocate for legal reforms on issues affecting women, and to formulate laws, practices and policies that eliminate all forms of discrimination against women and all institutions, practices and customs that are detrimental to their dignity.

The Commission was inaugurated in November, 2004.

61. Support of NGOs: The quest to change retrospective cultures is supplemented by the Non Governmental Organisations. The Government has also supported – and continues to support - Non Governmental Organizations (NGOs) working towards this noble end. For instance, the United Nations Fund for Women (UNIFEM) has commenced programmes aimed at supporting girls who are rejected by indigenous communities that practice FGM. One way the State has ensured support for this endeavour is by waiving tax for all costs spent on this kind of work.
62. It is worth mentioning that a positive trend has developed in the portrayal of women by the media. This can be attributed to efforts by the Association of Media Women in Kenya (AMWIK), civil society and Government. The ICT policy that the government is set to implement also addresses this concern. There are instances however where women have been wrongly used in adverts. For example, some media adverts have continued to portray men as educated, rich and powerful people who will always be adored by very beautiful women. At the same time, the media is yet to be sensitive to persons with disabilities generally. Creative means of utilising positive cultural practises have also emerged – for example in the Nyanza Province, the fact that there is a cultural practise of maintaining widows is being encouraged by the Kenya National Human Rights Commission, whilst discouraging the negative practise of widow inheritance. This project also illustrates the use of culturally relevant approaches to eradicate negative cultural practises.
63. Generally, discriminating cultural practices, like FGM, early and forced marriages still persist. We recognize that regulating the media has been a difficult task given the underlying principle that the media ought to be free and be as less regulated as possible. We also acknowledge that cultural practices are deeply entrenched ways of life that will certainly take time to change.

Article 6 Suppression of the exploitation of women

64. Prostitution is illegal in the country though it exists mainly in urban areas due to the fast urban development and high unemployment rates especially of women. The 2002 national estimate of those below the poverty line (living on less than US \$ 1 a day) stood at 56% of the population. In urban areas, 49.2% of men live below the poverty line as compared to 63.0% of urban women.³ Since women are economically disadvantaged any enforcement of laws against prostitution has more of an impact on them than on men.
65. Kenya's current laws on commercial sex work are antiquated and discriminate against women as is illustrated in the following paragraphs. The following are the sanctions in place: Kenya's laws regarding prostitution have not changed since our last report. Section 147 of the *Penal Code* deals extensively with procuration, while sections 153 and 154 deal extensively with the offence of prostitution. Every woman who knowingly lives wholly or in part on the earnings of

³ Government of Kenya, *Economic Strategy for Wealth and Employment Creation 2003-2007* (Nairobi: Government Printer, 2003) xvii.

prostitution, or who is proved to have, for the purpose of gain, exercised control, direction or influence over the movements of a commercial sex workers in such a manner as to show that she is aiding, abetting or compelling her to prostitution with any person or operating a brothel is guilty of a misdemeanor.

66. To prevent trafficking and exploitation of women, any person who procures or attempts to procure any girl or woman under the age of twenty-one years to prostitute or have unlawful carnal connection, either in Kenya or elsewhere, is guilty of a misdemeanour and, subject to the provisions of section 27 of the *Penal Code*, may, at the discretion of the court, and in addition to any term of imprisonment awarded in respect of the said offence, be sentenced to corporal punishment. This applies to any person who uses threats or falsely procures or applies, administers to or causes to be taken by any woman or girl any drug, matter or thing, with intent to stupefy or overpower so as thereby to enable any person to have carnal connection is guilty of misdemeanour.
67. Section 156 of the *Penal Code* makes it an offence for a person to operate a brothel, lease or let any part of the premises with the knowledge that the premises or some part thereof is used as a brothel. Selling women's sexual services by a third person is illegal. Section 151 prohibits detention of females for immoral purposes whereas Section 152 justifies conducting of a search for a woman detained for immoral purposes. Any person, who detains any woman or girl against her will in any premises with intent that she may be unlawfully and carnally known by any man, is guilty of a misdemeanour. In such circumstances if a woman escapes wearing apparel meant to confine her in such premises, no legal proceedings will be conferred against her.
68. The Government of Kenya has intensified efforts to grant women their rights including legislation, to suppress all forms of trafficking of women and exploitation of women through prostitution. The country on that vein has continued to put in place a number of legislative measures to prevent trafficking in women and girls. These measures include the signing of the Palermo Protocol on Human Trafficking and preparation of a Trafficking in Persons Bill.
69. The Government is also a member of a stakeholders committee set up under the International Organization for Migration for the "Counter Trafficking in Kenya": A capacity Building and Awareness Raising Initiative" The Committee serves as a forum to discuss stakeholder activities in counter-trafficking. A strategy for building the capacity of the government and civil society organizations to counter trafficking in Kenya is under discussion.
70. The government acceded to the United Nations Convention Against Transnational Organised Crime in June 2004 which deals extensively with trafficking.
71. The Government has also established the anti- trafficking police unit under the police department to specifically investigate cases of suspicious international adoptions, commercial sex tourism of children and their prostitution as well. This police unit has undergone special training to build their capacity to identify risk areas and instances of adoption that are tantamount to trafficking.

72. Parents or guardians may go before the judge or magistrate to retrieve a woman or girl from unlawful detention for immoral purpose. In such a case a warrant for search may be issued for the woman to be returned to the parents or otherwise dealt with as circumstances permit and require. A magistrate issuing a warrant under section 152 (1) of the *Penal Code* may by the same or any other warrant, cause any person accused of so unlawfully detaining the woman or girl to be apprehended and brought before a magistrate and proceedings to be taken for punishing that person according to the law. A woman or girl shall be deemed to be unlawfully detained for immoral purposes if she is so detained for the purpose of being unlawfully and carnally known by any man.
73. The Government has launched a very aggressive Universal Birth Registration Campaign. This arose out of various realisations:
- that the children most vulnerable to trafficking are those that are not registered at birth and as such, the Government has been unable to track them as they are not accounted for.
 - that in instances of child sexual exploitation, child prostitution, early and forced marriages, it becomes impossible for parents and guardians of the children to claim their rights to be protected even from harmful cultural practices due to the absence of birth certification which can only arise out of birth registration. In the absence of a birth certificate, it becomes practically impossible to actually prove that the child victim of the aforementioned atrocities is actually underage.
 - that the majority of Kenyans do not realise the significance of birth registration.
74. This campaign is faced by several challenges among which include cultural and social beliefs which inhibit the naming of children before the passage of a certain amount of time, geographical distance from the offices where registration is required to take place, ignorance and the tedious procedure involved in birth registration. Currently, the Government is making use of Traditional Birth Attendants (TBAs) to register children as most women, especially those in the rural areas deliver at home. The problem faced is the fact that although most of these birth attendants are trained by the Government this is work they undertake on a part time basis and have to fit in their registration obligations within their everyday duties. A greater challenge is that the majority of them are illiterate and have to depend on their children to write for them before the records are forwarded to the chief. A lot of information then gets lost in translation.
75. Child prostitution is equally against the law. Any person who unlawfully takes an unmarried girl under the age of sixteen years out of the custody or protection of her parents, or other person having the lawful care or charge of her, and against the will of the parents or other person, is guilty of a misdemeanour. Further, Section 255 of the *Penal Code* stipulates that any person who fraudulently takes, entices away, detains, receives or harbours a child enticed away is guilty of a felony and is liable to imprisonment for seven years.
76. To curb the problem of commercial sexual exploitation of children, the Government has established the Tourist Police which is based at the Kenyan coast (which is a popular tourist

destination) and mandated to deal with child prostitution and commercial sex workers. This is because it was realised that in most cases these are the same children who are trafficked for purposes of sexual exploitation and early and forced marriages to other countries.

77. There are other laws to prevent international exploitation of women. Under section 257 of the *Penal Code* any person who kidnaps any person from Kenya or from lawful guardianship is guilty of a felony and is liable to imprisonment for seven years. Section 260 provides that kidnapping with intention of confining or for unnatural lust is unlawful; it's a felony and is liable for imprisonment. To penalize nationals who exploit women and girl children outside the country, section 264 of the *Penal Code* provides that a person who imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against one's will is guilty of a felony and is liable for imprisonment for ten years.
78. The law relating to rape in Kenya is covered under the section dealing with offences against morality. This law protects all women including commercial sex workers. Since prostitution is illegal unless proved otherwise a raped commercial sex worker will not stand much ground to acquire justice on rape in comparison to a woman who does not practice it. The difficulty faced by commercial sex workers is that they are stigmatised and thus are less likely to be willing to report a rape.
79. The laws against prostitution are also biased against women. Those who solicit the services of commercial sex workers are not punished under the law. When arrests are conducted for commercial sex workers, female commercial sex workers are mainly netted as opposed to their predominantly male clientele. There are no specific laws relating to clients of commercial sex workers although in quite a number of swoops a few male clients get arrested.
80. Given that living off the earnings of prostitution is illegal in Kenya commercial sex workers are not licensed and commercial sex work is stigmatised, punished and prohibited in Kenyan law.
81. One of the challenges the State has faced is in addressing the root causes of both trafficking in women and children and the exploitation of commercial sex workers. The main causes of prostitution are poverty brought about by high unemployment and low incomes. Prostitution also continues to thrive because the punishments prescribed only address one of the parties, clients do not incur risks.
82. In trying to tackle the problem, the Government is instituting measures to empower women economically through provision of credit facilities for them to venture into legal income generating projects. Other measures are being put in place such as strengthening of security along the nation's borders through the enforcement and facilitation of the immigration department. However there is still no system in place to monitor whether immigrants or emigrants are predominantly engaged in sex work. At the same time no specific laws exist to protect young girls from labour agencies, marriage bureaux and others which sometimes essentially engage in trafficking.

83. The combination of poverty, unemployment, gender inequality (the low status of the girl-child), inadequate legislation and poor law enforcement in Kenya has allowed trafficking in children to thrive. While Kenya cannot be said to rival the sex tourist centres of Asia and South America, the problem appears to be escalating in Africa due to the enactment of tough legislation against child abuse in the aforementioned regions. The Kenyan cities and towns of Mombasa, Nairobi, Malindi, Nanyuki and Nakuru have been implicated as areas known for child sex tourism. For example, in Malindi, there are an estimated 500 foreign-owned villas, most of which are located in isolated areas with great security, where authorities suspect the practice continues unabated.
84. Kenya is in the process of putting in place a Trafficking Act. The Bill is currently under discussion.

Article 7: Political and Public Life

85. As indicated in our last report, Kenya's *Constitution*, guarantees both men and women equal rights as voters. Kenya's electoral laws do not discriminate on the basis of sex and allow both men and women of majority age vote and contest for public offices. Women can also campaign and participate as election monitors.
86. In 2002, women constituted 51.8 per cent of the voters, a slight increase from 51.1 per cent in 1997. The number of women parliamentarians doubled from 9 to 18 in March 2003, an increase from 4.1% to 8.1% following the 2002 General Elections.
87. Political participation: The 2002 general elections show an increase in women's participation. Women contestants constituted 84(7.9%) out of 1,057 parliamentary candidates. This compares to 50 (5.7%) women contestants out of 882 parliamentary candidates in the 1997 General Elections. Of the 210 elected members of parliament in 2003, 10(4.8%) were women as compared to 4(1.9%) of 210 in 1997. In addition, measures taken by political parties to increase women's participation in the 2002 elections by nominating additional women to the National Assembly, translated into 66.7% of nominated members of parliament in 2002 compared to 41.7% in 1997.
88. One of the continuing challenges that is faced by Kenya is in the area of increasing women's representation in national decision making institutions such as the Parliament. Affirmative action for women's increased parliamentary representation would require constitutional amendment as the number of seats in Parliament is set by the *Constitution*. Constitutional amendment has proven to be a long and perilous struggle. Although section 82(4(d)) of the *Constitution* provides for compensation and affirmative measures for groups that have suffered a recognised form of discrimination such as sex based exclusion, there is no enabling legislation to ensure the enforcement of section 82(4(d)).
89. Other challenges to women's entry into public office: The prevalent values and attitudes among the Kenyan populace make women generally shy away from elective positions. Some of the factors that continue to impede women's participation in politics are inadequate resources, social

cultural attitudes which do not encourage women to participate in politics which leads to women's lack of confidence, sexual harassment of women candidates and lack of resources. Other factors that impede women from running for political office include violence and the patronage based nature of politics in Kenya. There are also legal impediments such as the lack of a regulatory framework for political parties. Finally stereotypes of women's role as being that of those who support and cheerleaders not actual leaders also impede women's participation in politics.

90. Some of the measures in support of women's participation include civic education by both Government and civil society, formation of civil society lobbying and advocacy groups. Amongst these measures are voter and civic education efforts that have been undertaken by the Electoral Commission of Kenya which also monitors the incidence of women voters and candidates.

Table 1: Politics and Decision Making June 2003 – January 2006

RANK	June 2003				January 2006			
	Women	Men	Total	(%) Women	Women	Men	Total	(%) Women
Ministers	3	26	29	10.3	2	32	34	5.8
Assistant Ministers	4	39	43	9.3	6	40	46	13
National Assembly	18	204	222	8.1	18	204	222	8.1
Ambassadors/ High Commissioners	7	27	34	20.6	11	29	40	27.5
Permanent Secretary (PS)	3	21	24	12.5	5	25	30	16.7
Provincial Commissioners (PC)	0	8	8	-	0	8	8	-
District Commissioners (DC)⁴	3	68	71	4.2	2	69	71	2.8
Deputy Secretary	19	75	94	20.2	21	77	98	21.4
Councillors	377	2460	2837	13.3	377	2460	2837	13.3

⁴ The figure for 2006 is actually the position as at June 2005.

Lawyers	1645	3179	4824	34.3	1708	3277	4985	34.3
District Officers (DO)	68	355	423	16.1	88	359	447	19.7

Source: - Department of Gender
 - Electoral Commission
 - DPM Compliment Statistics Unit

91. In the local councils women's representation has progressively increased from 8.1% in 1998 to 13.3% in 2002 as shown below.

Table 2: Local authorities membership by sex (1988-2002)

Authorities	1988			1992			1998			2002		
	Total	Women	% Women									
County	631	13	2.1	1029	24	2.3	2455	201	8.2	1847	248	13.4
Municipal	215	7	3.3	354	15	4.2	596	52	8.7	446	60	13.5
City Council	-	-	-	55	4	7.3	69	7	10.1	113	13	11.5
Town Council	125	3	2.4	398	7	1.8	572	40	7.0	431	56	13.0
Total	971	23	2.4	1836	50	2.7	3692	300	8.1	2837	377	13.3

Source: Electoral Commission, 2002

92. Civil Service: The Government has continued to make considerable efforts to appoint women in various public bodies including parastatals. There has been remarkable improvement in women's representation in the Judiciary at all levels. In 2005 women formed 42.2% of District Magistrates, 37.6% of Senior Resident Magistrates, 42.3% of Senior Principle Magistrates and 20.3% of High Court Judges compared to 41.3%, 36.8%, 40.9% and 17.6% respectively in 2003. The number of women judicial service officers increased from 196 in the year 2003 to 224 in the year 2005 as shown in the table 3 below. In June 2005, 34.3% lawyers registered by the High Court were women as compared to 34.1% in June 2003.

93. However, at other levels of the public service women are still not well represented in senior positions. For instance by June 2005, women permanent secretaries constituted 5(16.7%) out of 30. Only 2(2.8%) out of 71 District Commissioners, 21(21.4%) out of 98 Deputy Secretaries and 88(19.7%) out of 447 District Officers. Not a single woman occupied the level of Provincial Commissioner, out of the 8 posts in the entire country.

Table 3: Judicial Service Establishment in Kenya by Grade and Sex

Rank	June 2003				June 2005			
	Women	Men	Total	(%) Women	Women	Men	Total	(%) Women
Chief Justice	-	1	1	-	-	1	1	-
Judges of Appeal	1	10	11	9.1	-	12	12	-
High Court Judges	9	42	51	17.6	12	47	59	20.3
Commissioners of Assize	1	2	3	33.3	1	2	3	33.3
Chief Magistrates	6	8	14	42.9	6	9	15	40.0
Senior Principal Magistrates⁵	9	13	22	40.9	11	15	26	42.3
Senior Resident Magistrates	32	55	87	36.8	38	63	101	37.6
Resident Magistrates	53	71	124	42.7	64	82	146	43.8
District Magistrates	85	121	206	41.3	92	126	218	42.2
Chief Kadhi/Khadhis	-	17	17	-	-	17	17	-
Total	196	340	536	36.6	224	374	598	37.5

Source: - Judicial Commission
- DPM Compliment Statistical Unit

94. Women's Organizations in Policy making: The Government has made efforts to include participation of women's organizations in policy making. For instance, formulation of the *National Poverty Eradication Plan* for the period 1999-2015 involved private sector "Faith Based Organizations" and Non-Governmental Organizations (NGO's) including women's organizations. Women's organizations were also involved in formulation of the National Policy on Gender and Development and Sessional Paper No. 5 of 2005, the HIV/Aids Control Bill, and the Adolescent and Reproductive Health and Development Policy, prepared in 2003, among others. Affirmative action in the proposed constitutional drafts can also be attributed to the participation of women's organizations during the review process, which was expressly provided for in the *Constitution of Kenya Review Act, Cap 3A of the Laws of Kenya*.

⁵ This figure includes both principal magistrates and senior principal magistrates

Article 8: International representation and participation

95. Participation in foreign service and international organizations: The Government of Kenya recognizes the need for equal representation of women internationally as well as their participation on a basis of equal opportunity in international organizations. In the recent past, when advertising for international jobs, women applicants have been encouraged to apply. The government has also continued to appoint women in Kenyan Missions which has seen increase of women Ambassadors and High Commissioners from 7 (20.6%) in 2003 to 11(27.5%) in 2005.
96. The Government is yet to set criteria for participation of women in international meetings. However, women have been involved in almost all regional and international meetings in fora such as, the East African Community (EAC), COMESA, IGAD, the African Union (AU), the Great Lakes Region, Commonwealth, United Nations meetings such as the recent Millennium Development Goals summit in New York where most women representatives served as advisers in various technical areas. Their expertise has been mainly in their area of competence.
97. Several regional bodies including both the EAC and the AU now have instituted affirmative action and quotas. All member states of the AU are for example required to send at least one woman parliamentarian (out of five) to the Pan African Parliament – the AU’s legislative organ. Kenya has complied with this requirement and has appointed two women parliamentarians to represent it within the Pan African Parliament.
98. Most new legislation increasingly recognises principles of affirmative action in respect of appointive positions. Thus the Kenya National Commission on Human Rights, and National Commission on Gender and Development, all have a requirement for at least one third female representation in their supreme decision making organs. This marks a distinct shift in national attitudes whereby it is now increasingly recognised in the country that it is necessary to have women represented in policy, law and decision making. Perhaps the greatest mark of this is that in respect of all the major legal or policy reform processes currently being undertaken such as the constitutional review process there were legal requirements that women be represented.

Article 9: Nationality

99. The Government of Kenya recognizes the obligation to grant women equal rights with men in all spheres of life. However the current laws relating to citizenship and nationality are not yet in conformity with the Convention. Citizenship is determined by parentage, marriage, registration or naturalization. The father’s citizenship determines acquisition of citizenship by birth in marriage. This therefore does not bestow equal weight to mother’s citizenship to that of fathers. A foreign woman married to a Kenyan male is entitled to citizenship. Section 91 of the *Constitution of Kenya* provides that a “woman who has been married to a citizen of Kenya shall be entitled to citizenship upon making an application in the prescribed form.” Other than the father determining citizenship as stipulated in section 90 of the current *Constitution*, women are not denied citizenship on the basis of their economic, cultural and other social status. Children

born in Kenya after independence whose fathers are Kenyan, automatically become citizens of Kenya unless his/her father possesses immunity from suit and legal process.

100. The current *Constitution* does not recognize dual citizenship and stipulates that a woman citizen by naturalization, who has been married outside ceases to be a Kenyan citizen unless she renounces the other citizenship, takes an oath of allegiance to the country or registers such allegiance. Therefore marriage to a non-citizen or the change of the husband without confessing change of citizenship by the woman affects her nationality.
101. Women who are single must obtain their father's consent to obtain passports whereas those who are married must obtain their husband's consent. Once a woman has a passport the permission of her husband or father is not mandatory for her to travel outside the country.
102. The Government has encountered challenges in addressing the issue of women's citizenship in that it is a constitutional question and with the rejection of the Proposed New Constitution on 21st November 2005, this matter is now in abeyance. It is of note though that this was the only gain from a women's rights perspective that was not challenged therefore there does seem to finally be an acceptance by the public that women ought to have equal citizenship rights. It is hoped that this issue will be taken care of when a new Constitution is realized

Article 10: Education

103. The Government has continued addressing the multiple barriers affecting girl child education while at the same time fostering equal access to education for both women and men. The Kenya Demographic and Health Survey (KDHS), 2003 statistics show that for women of ages 15 to 49 years, 25% complete primary education, 12% complete secondary education and 6% obtain post secondary education. For men of between 15 to 54 years, 23% complete primary education, 16% complete secondary education while 10% obtain post secondary education. Girls' completion rate in primary school increased from 43% (in 1994) to 65.9% (in 2004) whereas in secondary schools it increased from 81.9% in the year 1994 to 87.5% in the year 2004 as shown in tables 4 and 5 below.

Table 4: Primary School Completion Rate By Sex, 1994-2004
(In %)

YEAR	BOYS	GIRLS	TOTAL
1994	44.6	43.0	43.9
1995	43.0	42.1	42.6
1996	45.1	43.5	44.3
1997	46.3	45.8	46.1
1998	46.4	48.1	47.2
1999	47.7	47.8	47.7
2000	49.9	51.1	50.5
2001	53.3	53.2	53.3

2002	60.3	53.2	56.9
2003	56.8	57.7	57.2
2004	67.0	65.9	66.5

Source- MOEST

Table 5: Secondary School Completion Rate By Sex, 1994-2004(In %)

YEAR	BOYS	GIRLS	TOTAL
1994	82.3	81.9	82.2
1995	76.2	78.2	77.1
1996	95.8	94.9	95.4
1997	88.6	87.9	88.3
1998	85.8	83.1	84.5
1999	86.5	84.1	85.4
2000	93.1	88.4	90.9
2001	96.6	93.7	95.2
2002	94.4	89.7	92.1
2003	95.0	86.6	91.1
2004	88.3	87.5	87.9

Source MOEST

104. In the year 2000 a Multi-Indicator, Cluster Survey showed that out of women in age group 15-24 years, 80.7% were functionally literate compared to 79.8% of men. For those over 35 years, only 50.8% of women were literate compared to 71% of men. In 2003 90.2% of men in age bracket of 15-24 were literate compared to 85.7% of women. In the case of those over 35 years, 81.8% of males were literate compared to 61% of females. (KDHS, 2003). The level of those without education in 2004 stood at 21.6% for females and 13.8% for men. Table 6 below gives adult literacy rates in rural, urban areas and nationally.

Table 6: Adult Literacy Rates (15 years) and over (In %)

Area	1994		2000		2003	
	Male	Female	Male	Female	Male	Female
Rural	79.8	63.2	75.0	66.4	86.2	75.2
Urban	95.1	87.4	86.3	81.6	93.7	88.5
National	82.8	67.4	77.6	70.2	88.1	78.5

Source: Welfare Monitoring Survey 1994 and MICS 2000 and KDHS 2003

105. In the year 2003 the Government of Kenya implemented the free and compulsory primary education throughout the country. Tangible results were immediate with gross enrolment in primary schools peaking to 48.7% for girls and 51.3 for boys, as illustrated in tables 7 and 8 below. The Government is however faced with challenge of teacher shortages in some

areas. Further challenges relating to retention of the children in school, transition from primary to secondary levels and affordability (owing to high levels of poverty) are expected. There has been a marked improvement in Girls' Gross enrolment rate in primary and secondary schools since the year 1994 to 2004 as shown in the tables below.

Table 7: Primary Gross Enrolment Rate By Sex 1994 – 2004(In %)

YEAR	BOYS	GIRLS	TOTAL
1994	89.1	87.8	88.5
1995	87.4	86.3	86.8
1996	87.3	85.5	86.4
1997	88.7	86.5	87.7
1998	89.3	88.2	88.8
1999	90.8	88.8	89.8
2000	91.1	90.8	91.0
2001	90.5	89.2	89.8
2002	91.3	87.5	89.4
2003	105.0	100.2	102.6
2004	108.3	102.1	104.5

Source MOEST

Table 8: Secondary Schools Gross Enrolment Rates By Sex, 1994-2004(In %)

YEAR	BOYS	GIRLS	TOTAL
1994	24.8	21.0	22.9
1995	24.0	20.5	22.2
1996	24.2	21.1	22.7
1997	24.5	21.9	23.2
1998	24.6	21.7	23.2
1999	24.8	22.3	23.5
2000	28.5	23.8	26.1
2001	29.0	24.8	26.9
2002	29.0	25.2	27.1
2003	30.2	27.0	28.5
2004	30.7	27.4	29.1

Source MOEST

Table 9: Polytechnic and other Technical Training Institutes students

Enrolled by Sex, 1997/1998 – 2004/2005

Year	Male	Female	Total	% Female
1997/98	16,344	7147	23491	30.4
1998/99	15,861	8348	24209	34.4
1999/2000	17,597	8662	26259	33.0
2000/2001	15,740	8814	24554	35.9
2001/2002	19,491	11064	30555	36.2
2002/2003	20,654	13001	33655	38.8
2003/2004	21,830	14,086	35,916	39.2
2004/2005	24,882	17987	42,869	42.00

Source: Teachers Service Commission

Table 10: Total Student's Enrolment For Public Universities including part time, 1995/1996 – 2004/2005

Year	Male	Female	Total	% Female
1995/96	28938	11127	40065	27.8
1996/97	27059	10914	37973	28.8
1997/98	30862	12729	43591	29.2
1998/99	28163	12360	40523	30.5
1999/2000	28498	12770	41268	30.9
2000/2001	33,444	17260	50704	34.0
2001/2002	39,637	23,040	62677	36.8
2002/2003	46875	24957	71832	34.7
2003/2004	47,088	25,462	72,550	35.1
2004/2005	53,394	28,097	81,491	34.5

Source: Joint Admission Board

Table 11: Private Accredited Universities Enrolment By Sex, 1997/98 – 2004/2005

Year	Male	Female	Total	% Female
1997/98	2,072	1,816	3,888	46.7
1998/99	3,609	3,382	6,901	48.4
1999/2000	3,963	4,162	8,125	51.2
2000/2001	3,093	4,050	7,143	56.7
2001/2002	3,122	4,089	7,211	57.7
2002/2003	3,476	4,163	7,639	54.5
2003/2004	3,650	4,371	8,021	54.5
2004/2005	3,796	4,546	8,342	54.4

Source: Joint Admission Board

106. There seems, at the national level, to be near gender parity in education at the primary school level. For example in the year 2003, primary school Gross Admission Rate stood at 103.9% (101.4% for girls and 106.4% for boys). However, gender gaps are still evident at regional and district levels.
107. In order to progressively ensure access to secondary and post-secondary education, the Government has established the Higher Education Loans Board (HELB) to give loans, bursaries and scholarships to needy Kenyan students who are pursuing higher education at recognized institutions within and outside Kenya. This is a revolving Fund which is expected to grow and be capable of funding, on loan basis, most of the country's higher educational needs in the future.
108. The Government has also set up a bursary scheme, which pays school tuition for bright but otherwise disadvantaged secondary school students. Non-governmental organizations and private companies have also supplemented Government efforts towards provision of bursaries and scholarships e.g. Barclays Bank, East African Breweries, Safaricom, Various Educational Foundations etc. These efforts are however compromised by the high levels of poverty and the effects of HIV/AIDS.
109. The Government has put in place guidance and counselling department in the Ministry of Education. This department has non-teacher representatives in all public schools to counsel and guide girls on performance, stereotypes and negative cultural practices.
110. Continuing education is in place. Access to degrees is no longer tied to the formal education system. This is expected to help women who have hitherto been disadvantaged. This applies even to medium tertiary education i.e. diplomas. This effort is supplemented by non-government agencies e.g. the Salvation Army Church.
111. In September 2001 Kenya developed its National Sports Policy which seeks to lay down a National Plan and Guiding Principles to coordinate various sporting activities for both sportsmen and women alike.

Article 11- Employment

112. There has been progressive increase in women's participation in strategic decision making institutions such as Parliament, Central Government, Local Authorities, Trade Unions, Co-operative Societies, Professional bodies and Land Boards. The number of ambassadors and permanent Secretaries among others has increased since 2003 as illustrated in paragraph 85 above and reported under Article 7 of the Convention.
113. During the 2002 general elections, there were 84(7.9%) women contestants out of 1,057 parliamentary candidates. However, only 10(4.8%) women out of 210 MPs were elected. Eight more women compared to four men were nominated to the House bringing the total of women legislators to eighteen. Immediately after the elections, three of the women were

appointed to the cabinet as ministers although the number reduced to two after the December 2005 cabinet reshuffle. Out of the 46 assistant ministers, six are women. The table below shows the members of National Assembly by sex from the year 1969 to 2002.

Table 12: Members of National Assembly by Sex, 1969 – 2002

Year	Women	Men	Total	% Women
1969	2	165	167	1.2
1974	7	162	169	4.1
1979	4	166	170	2.4
1983	3	167	170	1.8
1988	3	197	200	1.5
1992	7	193	200	3.5
1997	8	214	222	3.6
1998	9	213	222	4.1
2002	18	204	222	8.1

Source: Electoral Commission, 2002

114. In the civil service the number of women in key positions has been small compared to that of men. Generally, women's representation in the civil service rose marginally from 24% in 1998 to 29.6% in 2003. In the teaching profession, there is marked improvement in the number of female school teachers both in primary and secondary schools since 1997. In 2004, 44.4% of 178,184 primary school teachers were female compared to 41.4% of 186,590 in 1997. Similarly in 2004, 34.4% of secondary school teachers were female compared to 33.5% in 1997 as shown in Tables 13 and 14 below.

Table 13: Number of Primary School Teachers by Sex, 1997-2004

Year	Male	Female	Total	% Female
1997	109345	77245	186590	41.4
1998	111407	80899	192306	42.1
1999	106792	79820	186612	42.8
2000	103439	75461	178900	42.2
2001	106369	74491	180860	41.3
2002	104658	73380	178038	41.2
2003	104650	73972	178622	41.4
2004	99,142	79,042	178,184	44.4

Source Teachers Service Commission

Table 14: Number of Secondary Teachers by Sex, 1997 –2004

Year	Male	Female	Total	% Female
1997	29501	14877	44378	33.5
1998	28231	15463	43694	35.4
1999	26487	14393	40782	35.3
2000	26073	14017	40090	35.0
2001	29144	15711	44855	35.0
2002	29824	16077	45901	35.1
2003	29,674	17,361	47,035	36.9
2004	31194	16390	47584	34.4

Source: Teachers Service Commission

115. Participation of women in modern sector employment has risen progressively to 29.6% in 2004 as shown in the table below.

Table 15: Wage employment in modern sector by sex,
1995 – 2004

(“000”)

Year	Women	Men	Total	% Women
1995	407.8	1149.2	1157.0	26.2
1996	461.3	1157.5	1618.8	28.5
1997	473.4	1174.0	1647.4	28.7
1998	487.1	1177.8	1664.9	29.3
1999	490.5	1183.1	1673.6	29.3
2000	500.6	1194.8	1695.4	29.5
2001	496.7	1180.4	1677.1	29.6
2002	503.4	1196.3	1699.7	29.6
2003	511.2	1216.1	1727.3	29.6
2004	521.3	1242.4	1763.7	29.6

Source: Economic Survey, various issues

116. The Government has also put in place the Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007 which aims to expedite economic growth, employment creation and poverty reduction. The aim of the policy is to create 500,000 jobs a year in both the formal and informal sector. The Government has also pledged to promote an enabling environment for business and industrial development. On this basis, an *Investments Act* and a *Procurement Act* have been enacted as pillars for the realization of the objectives of Government in the Economic Recovery Strategy Paper.

117. Kenya enacted the *Public Officer Ethics Act No.4 of 2003* which among other things prohibits sexual harassment in the places of work.

118. The Government has established the Kenya Industrial Court which specializes in employer-employee dispute resolution. In the past the court has determined disputes related to trade unions, individual workers from major and minor employers including the Government, Export Processing Zones and individuals.
119. Women contribute to domestic services such as childcare, housework, firewood and water collection and food preparation for which no monetary rewards are received. This if included would increase the countries GDP and allow for effective gender responsive policy making processes.
120. To enable women and men to have equal access to economic and employment opportunities, the Government has initiated and supported various efforts aimed at: reviewing laws which create impediments in access by women to and control of economic resources, gender sensitization and empowerment, guaranteeing equity and fairness to employment opportunities, and facilitating entry of women and girls in non-traditional and emerging sectors of economic activities and trade.

Article 12: Equality in access to health care

121. The health status of the Kenyan population has improved over the past few years. The results of the 2004 Kenya Demographic and Health Survey (KDHS) shows progress in some of the basic health indicators. But there are challenges facing the Government in a number of areas, for instance, life expectancy at birth has continued to decline from 1993. This is attributable to the many deaths caused by the HIV/AIDS scourge.
122. Kenya has, however, put in place a health policy framework. The policy addresses healthcare service delivery including curative services, preventive and promotive services, health personnel and drugs and pharmaceutical supplies among other issues. On Primary Health Care (PHC) the Government has pledged to improve maternal and child health services including antenatal, prenatal and child welfare services; immunization against vaccine preventable diseases; nutritional needs of the vulnerable including children, pregnant mothers, the poor, the elderly, and persons with disabilities; treatment of minor ailments particularly those common at the primary and /or community levels of the health system; safe water supply and sanitation aimed at preventing and controlling communicable diseases particularly those associated with poor hygiene and poor excreta disposal. The Government plans to improve maternal health services through promotion of safe motherhood and has a target of progressively reducing maternal deaths which in 2003 stood at 414 deaths per every 100,000 births.
123. Special programs aimed at meeting the special needs of women in rural areas have been put in place. These include the establishment of the Ministry of Gender, the Gender Commission, and the Constituency Development Fund (CDF), which aims to fund projects in the electoral areas, Constituency Aids Committee, the Constituency Bursary Fund (CBF), the Local Authority Transfer Fund (LATF) and the Road Levy Fund.

124. There are various Government initiatives aimed at improving the health of women which have realised modest but significant improvements namely: the National Hospital Insurance Fund (NHIF), Constituency Aids Committees, Medical Board, and Millennium Development Goals (MDG) initiatives targeting Malaria, HIV/AIDS and TB.
125. However, the second Report on Poverty in Kenya revealed that about 43.8% of the rural poor did not seek medical care when they are sick due to inability to cover the cost of medical care compared to only 2.5% who were constrained by distance to a health facility.
126. In the year 2003, 88% of women received antenatal care from a medical professional, either from doctors (18%) or nurses or midwives (70%). A small fraction (2%) received antenatal care from traditional birth attendants, while 10% did not receive any antenatal care. The 2003 data indicate a slight decline since 1998 in medical antenatal care coverage.
127. Infant mortality rates have worsened from 74.5 per 1000 in 1998 to 77 per 1000 (KDHS, 2003). Life expectancy at birth has dropped from 57.6 in 1998 to 49 in 2002. This is shown as below. To address this challenge, the Government in its 2005/6 annual estimates increased its allocation to the Ministry of Health from Kshs 2.4 billion to Kshs 9.9 billion.

Table 16: Mortality Rates by Sex in Kenya

Year	Life expectancy at birth		Under five mortality rate		Infant mortality rate		Total fertility rate
	Male	Female	Male	Female	Male	Female	Female
1962	42.7	49.8	221	201	136	116	5.3
1969	46.9	51.2	177	157	129	109	6.6
1979	54.1	56.9	160	140	114	94	7.9
1989	57.5	61.4	115	95	84	64	6.7
1993	59.0	63.2	97	89	67	58	5.4
1998	57.6	60.9	108	103	74	67	4.7
2000	52.8	60.4	114.3	104.7	74.5	65.3	4.8
2003	52.4	60.2	122.0	103.01	84.0	67.0	4.9

Source: Census and KDHS Reports

128. In the year 2003 there was a Maternal Mortality rate of 414 deaths per 100,000 births compared to 590 in the year 1998. Table 12 gives infant mortality rate per 1000 live births, under five Mortality rates, Crude death rates and Maternal Mortality rates per 100,000 births. The high rates of maternal mortality are as a result of unsafe abortions, haemorrhage and resultant anaemia and pregnancy and child-birth related disorders.
129. One of the challenges now being faced in the discussion on whether or not women should have the right to choose and abortion is that it is now being treated as a constitutional issue. Anti-abortion activists succeeded in having clauses incorporated into the Proposed New Constitution that prohibit abortion. It is the only criminal offence to be treated in this manner.

Table 17: Mortality rates in Kenya, 1960 – 2003

Indicators	Year						
	1960	1979	1991	1992	1993	1998	2003
Infant mortality rate per 1000 live births	119	104	52	51	60	74	77
Under five mortality rate	202	112	75	74	90	112	115
Crude death rate	17	14	11	10	10	12	11
Maternal mortality rate per 100,000 births	206	204	225	150-300	365-498	590	414

Source: Kenya National Human Development Report, 1999 and KDHS 2003

130. The HIV/AIDS epidemic continues to pose the biggest health challenge of our time. HIV/AIDS prevalence rate is higher in women than men (ratio of 1.9:1 as per KDHS, 2003). HIV/AIDS has resulted in an increased number of widows and orphans which has further increased women's financial responsibilities. To address this challenge in the long term, the Government has set aside in its 2005/6 budget some 0.5 billion to promote research aimed at the Kenya Medical Research Institute (KEMRI). Efforts are also being made to provide affordable drugs to those infected. The HIV/AIDS prevalence rate has been going down with 6.7% nationally in the year 2003 compared to 12.8% in the year 1997 as shown below. The government has also put in place prevention from mother to child (PFMC) initiatives and adopted aggressive public awareness and prevention campaigns.

131. Two of the consequences of HIV/AIDS prevalence are an increased number of child headed households as well as an increased burden on women and girls who are the primary care givers.

Table 18: Estimated HIV Prevalence, 1997 – 2003 (in %)

Prevalence	1997	1998	1999	2000	2001	2003
Urban	16.9	18.1	17.8	17.5	17.0	4.6
Rural	11.9	13.0	13.0	13.0	13.0	8.7
National	12.8	13.9	13.5	13.5	13.0	6.7

Source: National AIDS Control Council (NACC) and Ministry of Health and KDHS 2003

132. The following forms of gender-based violence have been reported in Kenya in varying proportions: Domestic violence (abuse perpetrated by a spouse), rape, incest, defilement (rape of a girl under the age of 16), wife inheritance (taking over of women by her husband's relatives upon the husband's death), female genital cutting (circumcision), forced marriages, confinement, bigamy and denial of rights to inherit property. In

recognition of the fact that the above practices inhibit women from enjoyment of their human rights, the government has taken the following measures:

- Amended the penal laws and made rape and defilement punishable by life sentence. As shown in the table below, the reported rape, attempted rape, assault and wife battering cases have been on increase.

Table 19: Reported Rape, Attempted, Assault and Battering Cases, 2000-2004

TYPE	2000	2001	2002	2003	2004
Rape and attempted rape	1,675	1987	2005	2308	2908
Assault and Battering	6,255	6648	7896	8544	8959
Total	7930	8635	9,901	10852	11867

Source: Police Department

- A draft Domestic Violence (Family Protection) Bill is pending to be introduced in Parliament.
- Establishment of the Family Division of the High Court and the Children's Court.
- The Sexual Offences Bill currently being discussed in Parliament
- Outlawed the circumcision and forced marriage of girls under the age of 18 years under the new *Children's Act*.
- Made the offence of bigamy punishable by 5 years imprisonment.
- Recent court decisions have recognized and given effect to the equitable principle that married women have an equal share of matrimonial property upon dissolution of the marriage.
- Is reviewing the *Law of Succession*.

133. Almost four in ten married women are using a method of family planning. Most of them (32%) are using modern methods while 8% use traditional methods. Contraceptive use has increased from 39% in 1998 to 41% in 2003. About 38% of women discontinue use within 12 months of adopting a method. One quarter of currently married women in Kenya have an unmet need for family planning. Three-fifths of unmet need is comprised of women who want to wait two or more years before having their next child while two-fifths is comprised of women who want no more children.

Article 13: Social and economic benefits

134. Access to credit facilities by women in Kenya is basically on the same terms with men. However, women are faced with greater challenges than men due to the fact that not many of them hold titles to land which is the major collateral to bank loans. The number of women holding title deeds in the country varies from region to region but the national average stands at 5%. The Government is addressing this challenge through the various initiatives outlined under article 14 in this report.
135. In 2003 the Government amended the *Pensions Act* to make it mandatory for a pensioner to be paid his or her gratuities before leaving employment. Upon death of a pensionable worker, the dependants should be paid within 90 days failure to which interest shall accrue thereon at bank rates. This will particularly help widows whose husbands die in the course of employment.
136. Social security and protection in Kenya is largely dominated by the National Social Security Fund (NSSF) and the National Hospital Insurance Fund (NHIF). These cover mainly employees in the formal sector and exclude the larger public. In order to improve the situation, the Government intends to review the two statutes to convert them into a pension scheme and a National Social Health Fund (NSHIF) respectively.
137. Apart from the police and the normal courts of law, any woman who is unfairly treated or discriminated against can complain and seek redress from the Kenya National Commission on Human Rights, the Children's Department, the Family Division of the High Court or the special Children's courts established in Kenya's Judicial system.
138. There are also several Non-Governmental organizations through which aggrieved women can seek guidance aid and redress. These include: The Federation of Women Lawyers (FIDA-Kenya), The Women's Rights Awareness Programme (WRAP), *Kituo Cha Sheria* (Legal Aid Centre), Coalition on Violence Against Women (COVAW), the Cradle, International Commission of Jurists (ICJ), the Children's Legal Action Network (CLAN), the Women's Network Centre, the Kenya Anti-Rape, People Against Torture (PAT), Forum for Women Educationists (FAWE) etc. It is however notable that that most of these organizations are urban-based and few rural women have access to them.

Article 14: Rural women

139. There is an elaborate National Agriculture and Livestock Extension Programme that provides group targeted extension services to men and women groups. The programme has integrated gender concerns in its approach and has special emphasis on vulnerable rural poor who are mainly women. Since its inception in year 2002, there has been a rise in the number of women participating in the programme, recording an average of 80,000 females against 100,000 men in the year 2004, up from less than 40,000 women in the year 2002. Farmer field schools and other specialised common interest groups are other agricultural

extension approaches through which women receive support to enhance their income generating agricultural activities and upscale food security initiatives. Women beneficiaries through these groups between year 2003 and year 2005 are estimated at 21,000.

140. In Kenya, over 80% of women live in the rural areas where majority are engaged in the farming of food and cash crops, livestock keeping and other agro-based income generating activities. Women form about 70% of all employees in the agricultural sector. Their wages are low and uncertain. Women's efforts in other sectors are fundamental. They contribute to domestic services including childcare, housework, firewood and water collection and food preparation for which no monetary gains are received. As individuals or groups, women engage in small scale and micro businesses from which they earn some income. Only a small percentage of women are engaged in large scale enterprises and well paying modern sector employment. The general participation of women in and contribution to the economy is under-rated. Women's time is mainly spent in their multiple roles in reproduction, production and maintenance which impacts on the extent to which they can take advantage of the new methods of production, information, knowledge and skills acquisition.
141. One of the challenges that has emerged is that there is a lack of awareness about women's property rights. Thus it has now become clear that there is need for the Government to sensitise the public as to women's rights to property and the consequences for the nation as a whole, when women are denied these rights.
142. The Draft National Land Policy is being finalised and could be a forum through which gender based discrimination in respect of access to and ownership of land could be addressed. Some of the policy recommendations include; outlawing all laws, regulations, customs and practices which constitute gender based discrimination in access to, ownership and control of land, harmonisation of the Succession and Property Laws, instituting legal measures to ensure that women and men are entitled to equal rights in land before marriage, during marriage and during and upon dissolution and after death of the spouse and enacting laws to curb the selling and mortgaging of family land without the involvement of both spouses.
143. Kenya has several credit facilities through which women can access credit at low interest rates. These include: the Agricultural Finance Corporation (AFC), the Kenya Women Finance Trust (KWFT), the Kenya Farmers Association (KFA), and the Kenya Rural Enterprise Programme (K-Rep). However, these facilities are not enough to cater for the credit demand among the rural women. What is more, the fact that most women are not the holders of title to land also limits their access to credit since they have nothing to offer as collateral for commercial bank loans.
144. The Government has also established a Ministerial Grants Committee under the Ministry of Gender, Sports, Culture and Social Services, which gives support to community

development initiatives. Projects supported are usually identified from the grassroots by the community themselves and request for support channelled through the District Community Development Committees that have been revitalised in every district. In 2005, some Kshs.48,225,500 was distributed to these groups. The Government has continuously encouraged women to form self-help and welfare groups in order to enable them to access the various available services.

145. Kenya's economy is basically agricultural and the following marketing facilities are in existence; the Coffee Board of Kenya, the Tea Board of Kenya, the Pyrethrum Board of Kenya, the Sugar Board of Kenya, the National Cereals and Produce Board, the Horticultural Crops Development Authority, the Kenya Meat Commission, and the Kenya Dairy Board. These boards facilitate the marketing of farmers' produce in the international market. The Government has restructured and liberalized most of the agricultural industries with a view to maximising benefits to the farmers.
146. The *Co-operative Societies Act*, which initially hindered women from accessing credit, has been amended in order to facilitate women to form cooperative societies and thus access credit.
147. The new *Cooperative Societies Act* has incorporated the internationally accepted cooperative principles including the one on 'democratic member control'. The amendments were also aimed at promoting the cooperative movement and to strategically place them as key vehicles to poverty reduction. This is in conformity with the Economic Recovery Strategy for Wealth and Employment Creation.
148. However, most of the large scale and commercial farming is still dominated by men while women are relegated to small-scale subsistence farming with little, if any, surplus for sale. Nevertheless, there is a new Government strategy for revitalising agriculture, 2004-2007, which aims at providing extension services to subsistence farmers.
149. Special programs aimed at meeting the special needs of women in rural areas have been put in place. These include the establishment of the Ministry of Gender, Sports, Culture and Social Services, the National Gender Commission, the Kenya National Commission on Human Rights, the Constituency Development Fund (CDF) which aims to fund projects in the electoral areas, Constituency Aids Committee, the Constituency Bursary Fund (CBF), the Local Authority Transfer Fund (LATF) and the Road Levy Fund.
150. The establishment of the Ministry of Gender, Sports, Culture and Social Services and the National Gender Commission among others have provided the Government with effective machinery through which it can address most of the inequalities hitherto facing the rural women.
151. The Kenya Government has, as part of its Economic Recovery Strategy for Wealth and Employment Creation, 2003-2007 plan, launched the Governance Justice Law and Order

Sector (GJLOS) Reform Programme which aims to among other things: address human rights abuses, provide affordable and accessible justice to all, speed hearing of court cases, create independence and integrity of the Bench and the Bar and decongest prisons. The programme adopts a holistic and sector-wide approach and involves various state and non-state actors. It seeks to serve the needs of Kenyans by adapting efficient and cost effective best practices, sustainable capacity building, providing high-level leadership and coordination and ensuring that an aggressive information, education and communication programme is in place.

152. The GJLOS programme which is funded by the Government of Kenya in partnership with international agencies is expected to be implemented in the period 2003-2009. Among the expected outputs are: a functional, accessible and well resourced Human Rights Centre, improved overall access to basic needs for the vulnerable, a functional and engendered communication and performance management system and strengthened juvenile justice system.

Article 15: Equality before the Law and in civil matters

153. Equality before law: Section 70 (a) of the Constitution of Kenya provides that every person in Kenya is entitled to the fundamental freedoms and rights of the individual including protection of the law. Section 77 (9) of the Constitution provides that all persons are entitled to institute civil proceedings in courts. Courts have a corresponding duty to hear and determine these matters impartially and within a reasonable time.

154. Conclusion of Contracts and administration of Property: The law as it stands provides that all persons who are adult and of sound mind are capable of entering into contractual obligations regardless of their sex. This is in line with the constitutional provision in Section 75 (1) read with section 81 (1) of the Constitution, which provide that all persons in Kenya are entitled to settle anywhere in the country, own property and have the law protect their interests.

155. In practice this largely holds as women are capable of entering into contracts, of securing employment, of purchasing and owning land, houses and other forms of property. This mainly pertains to those in the urban areas. In some rural areas there may be some discrepancies between the provisions of law and practice brought about by patriarchal cultural practices and traditions that did not permit and still make it difficult for women to administer property, particularly land.

156. As noted in paragraphs 5, 6 & 7 above, the *Constitution of Kenya* permits discrimination in matters of personal law, divorce, inheritance and adoption. Whilst the Government recognizes the impact of these constitutional provisos in sections 82(4(b & c)), these have proven to be the most difficult area of women's rights to address as they require constitutional amendments – which has proven to be a long and challenging process. Furthermore the public has once again, in the ongoing constitutional debates – proven that

indeed customary law is the area in which the most resistance will be encountered in addressing women's rights and is perhaps the greatest challenge now facing those committed to ensuring Kenyan women have equal rights. The draft Constitution that was rejected in the referendum by Kenyans on 21st November 2005 had within its provisions brought Kenya in line with the provisions of CEDAW, in respect of citizenship, nationality and in respect of Sections 82(4) (b) and (c) that permits discrimination based on personal laws. That rejection of the draft constitution, places the Country in the same position it was before the draft constitution.

157. Evidence before courts of law: *The Evidence Act, Chapter 80 Laws of Kenya*, provides that all facts except the contents of documents may be proved by oral evidence. This evidence must at all times be direct (sections 62, 63). It goes on to provide that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he/she asserts must prove that those facts exist (section 107).

158. It is thus clear that the law does not discriminate based on gender. However, due to the nature of some crimes which primarily affect women such as rape and other forms of sexual assault, the fact that the crime normally takes place in isolation and without witnesses, it is necessary to have further material corroborative evidence except for the case of a minor to support the rape claim. This is provided for in *section 124 of the Miscellaneous Criminal Amendment Act of 2003*. It is this factor that causes great challenge as the rape victim may not be in that state of mind to go through the equally harrowing experience of reporting the crime. Furthermore the lack of modern scientific equipment complicates matters in these situations. The Government, private and civil society institutions have intervened to address this problem in two ways:

- There is now a special police station in Nairobi, the Kilimani Police Station, to which women victims of rape and sexual assault are first asked to report.
- The Gender Violence Recovery Centre which is housed at the Nairobi Women's Hospital (a private initiative) focuses on providing support and services to victims and survivors of gender based violence. These services include counseling and medical services such as ARVs for rape survivors.

Whilst these initiatives are commendable they are new and too few already the demand within the neighbourhoods of Nairobi where these services are provided exceeds the availability of the services. The Government is therefore exploring ways in which the services provided at the Nairobi Women's Hospital can be replicated in provincial hospitals around the country.

159. At the same time the country has also witnessed an increase in the incidence of sexual assault and violence. More men and boys are also being reported as victims of this sort of violence. There is an overall increase in violence nationwide and this has led to increased public concern about such violence and commitment to introducing measures to prevent it.

Whilst the incidence of crime and insecurity has increased, it is still unclear why rape and sexual assault in particular are on the increase.

160. Section 19 of the *Penal Code, Chapter 63 of the Laws of Kenya* provides in part that a wife charged with any offence except murder or treason shall have a good defence by proving that the offence was committed in the presence of the husband and under his coercion. The presumption here is that the coercion cannot operate vice versa.

161. Right to sue: The *Marriage Act, Chapter 150 of the Laws of Kenya* provides that a husband may sue another man for having an affair with his wife. The wife on the other hand cannot sue another man or woman for having an affair with her husband. However adultery is a recognized ground of divorce that can be used by women in divorce proceedings. A wife may sue her husband in the event that he commits bestiality.

162. Legal Aid: Legal aid is provided to persons charged with murder and robbery with violence (both of which are capital offences) irrespective of their gender.

163. Residence and domicile: The *Constitution of Kenya* provides that every person born in Kenya shall become a citizen of Kenya if, at the date of his or her birth, the father is a citizen of Kenya. A person born outside Kenya shall become a citizen of Kenya at the date of his or her birth if at that date his or her father is a citizen of Kenya. This matter has been addressed in paragraphs 100 -104 above.

164. The *Law of Domicile Act, Chapter 37 Laws of Kenya* provides that a child, who is born to a married couple, shall acquire the domicile of his or her father. A child born outside of wedlock acquires the domicile of her or his mother (section 3). A child upon adoption shall acquire the domicile of the adopter, or where she or he is adopted by two spouses, that of the husband (section 6). The Act further provides that a woman shall, on marriage, acquire the domicile of her husband, but does not provide for the same treatment in the case of the man.

165. Women like men have the same capacity to enter into contracts and to own and dispose of property. In the urban areas, they are continually developing into areas formerly dominated by men. In some parts of the country, especially in the rural areas where the customs and traditions are strong, and where the societies are patriarchal, the role of women in decision making is diminished. However there are some areas which still portray discrimination against women. In cases of married women seeking to register business names or to acquire passports in their names, they are asked to declare their husbands names on the request form. That is not extended to men in the same situation.

Article 16: Equality in marriage and family law

166. Categories of Marriages: The general principle in the *Constitution* is that both men and women are equal before the law. However, the equality the *Constitution* gives with one

hand it takes it with the other hand through claw back provisions that negate the right to equality as far as personal laws are concerned. It is worthwhile to note that marriage, divorce, inheritance and burial rights form part and parcel of personal laws.

167. Marriage under Kenyan law is governed by any one of the prevailing solemnization of marriages in Kenya through the following provisions:

- *African Christian Marriage and Divorce Act Cap 151* that governs Christian marriages.
- *Marriage Act Cap 150* that governs Civil marriages.
- *Mohammedan Marriage and Divorce and Succession Act Cap 156*, that governs Islamic marriages.
- *Hindu Marriage Act Cap 157* that governs Hindu marriages. African Customary Marriages.
- Individuals can also get married under African customary law provided the marriage conforms with all the required rituals and practises of the relevant community. There is currently no statute governing African customary law marriages – this is a *lacuna* in the law. Furthermore there is no provision for the registration of African customary law marriages.
- It is important to note that the government through the Law reform Commission has started a process to review the marriage laws, which laws will take cognizance of the various provisions of the Convention. On the other hand, the media has been proactive in changing the stereotypes that have continuously discriminated against women.

168. Polygamy: Under the current law, should a woman get married under African Customary Law or the *Mohammedan Marriage and Divorce Act*, she has expressly given consent to possible polygamous union. Traditionally, polygamy is not considered a form of discrimination against women. In fact one of the challenges that has been encountered is that there are many instances of women defending its continued existence. Harmonization of the current multiple regimes of laws governing marriages has been a major challenge due to the diversity of the communities living in Kenya. The different types of marriages confer different rights and obligations. For instance depending on the type of custom in customary law marriages, a wife cannot be granted custody of children or maintenance of self.

169. Cohabitation: which means a man and a woman living together as husband and wife without having undergone a legally recognized marriage is an increasing practice. It has had far reaching consequences for the children and women involved. For example, in

instances of separation, women have had to bear the consequences of raising the children and fending for themselves where the man was the breadwinner. Currently the *Children's Act* only binds the mother to maintain a child born outside wedlock. Currently the *Children's Act* has been put to test seeking the court's interpretation. There is a case pending in court where a minor is seeking to have his biological Father (not married to the minor's mother) compelled to provide maintenance for the said minor.

170. There is currently no legislation in Kenya governing cohabitation. However, the judiciary has continuously played a critical role in resolving cases involving cohabitation and hence securing the rights of women. To this end the judiciary is continuously giving progressive judgements that are favourable to women. Common law and judicial precedent has been applied in resolving some of the conflicts arising.
171. The case of *Peter Hinga –v- Mary Wanjiku* , *Civil Appeal No. 94 of 1977*, and *Hortensia Wanjiku Yawe –v- Public Trustee, Civil Appeal No.13 of the 1976*, *Stephen Mambo –v- Mary Wambui, Civil Appeal No. 3 of 1976*, provided a landmark precedent in matters of cohabitation. The court has held that the cohabitation has to be for a reasonable period, the definition of reasonable not being specifically defined. Should there be any children born as a consequence of a relationship where there is cohabitation, then this serves to reinforce the presumption of marriage. This period should be long enough for the court to determine that the couple have cohabited as man and wife and presented themselves to the world as such for a reasonably long period. These principles were recently affirmed in the decision in *Esther Njeri Wanjenga – v – Joseph Mwangi Mathaga Alias Justus Ndirangu [High Court Case No. 1548 of 2002]*, where the High Court ruled that a man who had changed his name in the process of avoiding a claim that he was married to a woman he had cohabited with for five years – was indeed married to the woman. Amongst factors taken into consideration by the Court in reaching this decision, other than the fact that the couple had cohabited for five years, was the fact that they had had children, one of whom had died and been buried at the father's home.
172. Early Marriage: Women and men have the same right to choose to enter into marriage only with their free and full consent, However, the *Mohammedan Act* and customary law allow the marriage of minors. The *Children's Act* has however outlawed this practice as it outlaws marriages of persons below the age of 18 years. It provides that any piece of law that is against the provisions of the Act shall be null and void. The *children's Act* being the later in time, it prevails over all other existing laws.
173. Responsibilities in marriage: As regards responsibilities in marriage, men and women share equal responsibilities towards their children including guardianship, wardship, trusteeship, adoption of children, the rights to divorce and ownership of property. For example, the ownership of property acquired before marriage is deemed individual property. All property acquired during the marriage period is considered matrimonial property and therefore each spouse has an equal share in the same. Nevertheless, each spouse is entitled to own property in his/her own name. The law on matrimonial property

currently in operation in Kenya is extremely antiquated as it is 19th Century British law resulting in several lacunae in this area. The Law Reform Commission is currently reviewing this law and is in the process of drafting a Matrimonial Property Bill. In cases of property acquired before marriage, the woman can dispose of her property freely. However in some instances especially where the property is owned jointly with the husband the consent of the husband may be required and vice versa.

174. Resolving disputes during dissolution: The Government of Kenya has provided a mechanism for resolution of disputes in cases of dissolution of marriage. The *Matrimonial Causes Act, Cap 152 of the Laws of Kenya*, lays down the mechanisms for the granting of divorce, judicial separation, nullity and other matrimonial relief arising out of statutory monogamous marriages. Matrimonial Causes arising out of Muslim marriages are governed by Islamic Law under the *Mohamedan Marriage, Divorce and Succession Act*. There is no written law regarding matrimonial causes arising out of marriages contracted under the customary law. These marriages are not registered and they are governed by customary practices. The failure to register customary marriages is an impediment to ascertaining the existence of a customary marriage. This is in light of the rising numbers of couples living together as married but who have not undergone all the customary marriage rites. Certain specific grounds are provided upon which such applications can be brought before the competent courts of the land. The spouse bringing a divorce cause can only do so three years after the celebration of the marriage. This is provided in Section 6 of the *Matrimonial Causes Act*. The courts in practice do all that is possible to encourage spouses to try and work out their differences before granting divorce. In Kenya spouses are prohibited from colluding to divorce. Section 8 of the *Matrimonial Causes Act* lists the following grounds upon which one may bring a divorce action:

- Adultery
- Cruelty
- Desertion for a period of at least three years
- That the spouse is incurably of unsound mind
- That since the celebration of the marriage, the spouse has been guilty of rape, sodomy or bestiality.

175. As regards custody of children both parents have equal rights and the courts decide the cases in accord.

176. Under the *Children's Act*, It provides that if a couple has lived together for 12 months cumulatively, then the children born of their association shall be entitled to maintenance by both parents. The *Children's Act* provides in section 24(3) that where a child's father and mother were not married to each other at the time of the child's birth and have not

consequently married each other, the mother shall have parental responsibility at the first instance. The father shall subsequently acquire parental responsibility either through an application in court for that purpose or where he has acknowledged paternity of the child or has maintained the child. Both parents are however obliged to provide maintenance for the children. In *Susan Wairimu – v – David Chege Mwangi [Muranga SPMCC No. 3 of 2003]*, a Magistrate’s court ruled that in the event of a separation where there has been a customary law marriage, the father is still has a parental responsibility for the maintenance of any children born out of that union. The same was affirmed in a case before the Nairobi Senior Resident Magistrate, *Susan Wanjiku Ndungu’u – v – Sebastian Ndung’u [Nairobi SRMCCC No. 215 of 2003]*.

177. Customary law recognizes a marriage through elopement where a woman and a man cohabit without going through any marriage ceremony. Couples who are cohabiting are not offered protection under the written law. However, upon death of a husband, the woman can prove that she was a dependant under the law of succession.

178. Right to choose spacing of children: Most women live in poverty and can therefore not afford contraception in order to be able to determine the spacing of their children.

179. Abortion: has been declared illegal in Kenya, save in a situation where the mother’s life is at regards.

180. Adoption: both men and women have rights to adopt but there are conditions and procedures prescribed by law that they have to adhere to.

181. Right to change name: The right to choose a family name is not legally provided for but the law does not interfere in this area. In a recent ruling the High Court ruled that a woman is not required to change her name upon marriage. In *Florence Wairimu Kanyora – v – Njoroge Kinyanjui [2005]*, the judge ruled that:

Failure to change a name couldn’t affect one’s [in this case a woman’s] marital status as there is no law that requires a person to adopt the husband’s name.

182. Right to choose profession and occupation: Women whether married or not, have a right to choose a profession and an occupation.

183. Ownership of property: The *Constitution* guarantees the rights of ownership, acquisition, administration, management and disposal of property. The limitations regarding this area of law have been discussed in detail in paragraphs 4,5,6,7 and 165 above. Women’s ownership of property acquired during the course of a marriage has received a boost through several recent court decisions in particular: *MSK – v – SNK [2005]*, where the High Court decided that domestic duties amount to contribution to matrimonial property. In this case, Lady Justice Mary Angawa, declared that: “A marriage is an institution of trust. The wife does not go about daily to record what she has done to contribute to the

marriage.” In *Florence Wairimu Kanyora – v – Njoroge Kinyanjui [2005]*, the Court also ruled that a woman is entitled to a share in property that her husband inherited, where she illustrates that she has contributed to the development of the same.

184. However, the *Law of Succession Act* which governs matters of inheritance and disposal of the deceased’s property provides that a widow loses her life interest upon her re-marriage to any person. Additionally, the same law denies a woman any interest in her husband’s agricultural land, crops and livestock in cases where the husband dies intestate and is resident in an area gazetted by the minister or has interests in communally owned land, where the customary law does not allow women to inherit. The Government, through the Law Reform Commission, is in the process of remedying this issue.
185. Enactment of Laws: The CEDAW Committee had recommended that the Government undertakes the speedy enactment of certain bills in order to eradicate discrimination against women and hence bring equality in marriage. Towards this end, the government has enacted the *National Commission on Gender and Development Act*, the *Criminal Law Amendment Act* and *Public Officers Ethics Act*. Additionally, the Government has continued to work together with the civil society, including non-governmental women’s organizations to create an enabling environment for legal reform, effective law enforcement and legal literacy. The Government has organized training for police officers, chiefs and other provincial administration on equal rights of women in marriages and especially on matters of succession. In collaboration with Civil Society Organizations (CSOs) like FIDA Kenya, the Police Department is mainstreaming gender into the training curriculum for police officers.
186. Additionally, the Law Reform Commission has been training its staff in gender sensitive legislative drafting. Towards speeding up the enactment of the Family Protection Bill, the government has held consultative forums with FIDA Kenya and other CSOs. The HIV/AIDS Bill was also prioritized by the Law Reform Commission and it was re-published (HIV Aids Control, Prevention and Management Bill 2005).
187. In respect of the Sexual Offences Bill - The motion for the bill has been unanimously passed in Parliament and has been prioritized for debate. As for the Equality Bill – it was recommended that the principles therein be addressed in the constitutional reform process. The challenge facing the discussions on these bills is the heavy calendar of the Parliament and the abeyance of the constitutional reform process.
188. The *Law of Succession Act Cap 160*, treats a woman married in a polygamous marriage as a wife even though her husband was previously, or later, married under a monogamous marriage. Thus, the *Law of Succession* appears to treat polygamous and monogamous marriages equally. It also acknowledges the conversion of a polygamous marriage into a monogamous one. It has been argued that the principle should be applied during the lifetime of a man in order to confer the rights to the woman. The law of succession is not applicable to the Muslims. However it is worthy noting that there is inequality in

succession among the Muslims, wherein a woman gets to inherit only a third of the property while a man gets two thirds.

189. Registration of Marriages: Statutory marriages are registered within the specific legal framework. Customary marriages are not registered in the official Government register as noted in paragraph 177 above; however, each community has a system in place for recognizing marriages solemnized under their customs.
190. Framework for Publicity by the Government: The Ministry of Gender, Sports, Culture and Social Services has developed a Sessional Paper on Gender Equality and Development which has outlined a framework for creating awareness and publicity on matters related to elimination of discrimination against women.
191. Violence against women: As relates to violence against women, there is more media coverage on issues relating to violence and this has in turn increased awareness on gender violence among the citizenry. One of the most creative ways in which awareness is being raised is through the annual recognition of the 16 Days of Activism Against Violence Against Women campaign which is conducted in Kenya. This campaign commences on 23rd November and ends on 10th December – during this time many articles are carried in all the national newspapers on a daily basis focusing the public’s attention on the issue of violence against women. It has been noted that increasingly newspaper editors in the largest selling newspapers devote editorial space to this issue – illustrating a marked improvement in the commitment of the Kenyan public to addressing this concern. More civil society organisations are also engaged in collecting data on violence against women and in 2002 – 2003, the National Council of Women of Kenya (an umbrella organisation of women’s rights NGOs) collaborated with the Population Communication Africa to produce the first ever national survey of the incidence and nature of violence against women and girls in Kenya. Importantly these studies also examined domestic abuse and provided gender and age disaggregated data which has allowed for comparative analysis of gender based violence and its incidence amongst women, men, girls and boys.⁶
192. In the effort to combat gender violence, the Government passed the Public officers Ethics Act 2003. The Act has a provision that makes harassment of women sexually in public offices an offence. The government has also published for discussion the Sexual Offences Bill and the Domestic Violence (Family Protection) Bill 2002. The two are pending discussion by parliament. There appears to be lack of political goodwill on the part of the legislators, a reason to explain the delay in having the Bills discussed and passed into law.

⁶ This research was funded by international partners and was published under The Gender Series. For more on this see: Tony Johnston, The Gender Series: Violence and Abuse of Women and Girls in Kenya: A Briefing Book (Nairobi: Population Communication in Africa in Association with Ford Foundation, NCWK and CIDA/GESP: April 2002)

193. Wife inheritance is still practiced in Kenya by some communities. This has led to the infringement of women's rights to choose who to marry and has also consequently led to the spread of HIV/AIDS.

194. Female Headed Households: The numbers of female headed households are many in Kenya. 31.7% of households are female headed and 68.3% are male headed according to KDHS, 2003. Furthermore there is a higher incidence of poverty amongst female headed households, 79.5% of these households are live beneath the poverty line.

195. Bride Price: The concept of bride price under customary law is what contributes to the legality of the marriages conducted under this system. However, this concept has been misused by some men to view women as property and not as human beings.
