

<b>Country</b>	<b>Kenya</b>
<b>SIGI 2019 Category</b>	<b>Medium</b>
<b>SIGI Value 2019</b>	<b>35%</b>

<b>Discrimination in the family</b>		<b>50%</b>
	Legal framework on child marriage	25%
	Percentage of girls under 18 married	13%
	Legal framework on household responsibilities	50%
	Proportion of the population declaring that children will suffer if mothers are working outside home for a pay	-
	Female to male ratio of time spent on unpaid care work	2.2
	Legal framework on inheritance	75%
	Legal framework on divorce	50%

<b>Restricted physical integrity</b>		<b>29%</b>
	Legal framework on violence against women	50%
	Proportion of the female population justifying domestic violence	42%
	Prevalence of domestic violence against women (lifetime)	39%
	Legal framework on female genital mutilation (FGM)	25%
	Share of women who think FGM should continue	6%
	Share of women who have undergone FGM	21%
	Sex ratio at birth (natural =105)	105
	Legal framework on reproductive rights	75%
	Female population with unmet needs for family planning	16%

<b>Restricted access to productive and financial resources</b>		<b>42%</b>
	Legal framework on working rights	25%
	Proportion of the population declaring this is not acceptable for a woman in their family to work outside home for a pay	17%
	Share of managers (male)	90%
	Legal framework on access to non-land assets	50%
	Share of house owners (male)	82%
	Legal framework on access to land assets	50%
	Share of agricultural land holders (male)	-
	Legal framework on access to financial services	25%
	Share of account holders (male)	58%

<b>Restricted civil liberties</b>		<b>17%</b>
	Legal framework on civil rights	0%
	Legal framework on freedom of movement	0%
	Percentage of women in the total number of persons not feeling safe walking alone at night	58%
	Legal framework on political participation	25%
	Share of the population that believes men are better political leaders than women	-
	Percentage of male MP's	78%
	Legal framework on access to justice	25%
	Share of women declaring lack of confidence in the justice system	48%

Note: Higher values indicate higher inequality. Percentages range from 0 to 100, while legal variables are categorised as 0%, 25%, 50%, 75% or 100%. See data source [here](#).

Source: OECD (2019), Gender, Institutions and Development Database, <https://oe.cd/ds/GIDDB2019>.

## Kenya

### 1. Discrimination in the family

#### a) Overarching legal framework for marriage

In Kenya women and men have the same right to enter into marriage (Constitution of Kenya, Sec. 45; Marriage Act, Sec. 3). The law recognises marriages concluded under civil tradition; Christian denomination; customary rites; Hindu rites and ceremonies; and under Islamic law (Marriage Act, Sec. 6). They all have the same legal status (Marriage Act, Sec. 3). All marriages must be registered (Marriage Act, Sec. 6). Both, monogamous (civil, Christian, Hindu) and polygamous (Islamic, customary) marriages are permitted. Contracting a marriage requires free consent of the parties, therefore it is punishable up to three years of imprisonment and/or a fine, if a party to a marriage knows or has a reason to presume that the consent of a second spouse was induced by coercion or fraud (Marriage Act, Sec. 89). In addition, the offence of forced marriage is recognised as an abuse under Protection against Domestic Violence Act (Sec. 3). Despite the legal framework, forced marriages still occur in rural areas (UNICEF, 2016a).

Regarding Islamic marriages, they are under jurisdictions of the Kadhi's courts (Kadhis' Courts Act, Sec. 5). Nevertheless, they are not exempt from constitutional equality provisions, its decisions are reviewed by the High Court; also individuals may appeal of Kadhi's court ruling at the High Court (CEDAW, 2017).

The Kenyan law provides for widows' protection. A woman upon her husband's death has the right to decide to re-marry or not to re-marry (Constitution of Kenya, Sec. 11). Nevertheless, the levirate custom of being married to or engaging in sexual relations with a male relative of her husband is still present among several Kenyan communities (Miruka *et al.*, 2015). This widowhood practice originally intends to continue the deceased's line and protect the widow and the deceased's children by providing them maintenance (Kamau, 2010). None of customary laws explicitly mandates the obligation of a widow to marry and engage in sexual practices with a brother or another close relative of her husband; however, she may be pressured and forced in order to avoid the eviction from the land assets (Library of Congress, 2014; Human Rights Watch, 2003).

Although the cohabitation is legally defined in the Marriage Act (Sec. 2), the law formally does not recognise de-facto unions. Nevertheless, the courts have developed the common law principle conferring several marital rights and duties to cohabitating couples under certain criteria, such as: length of the cohabitation, children, perception of the union by a man and woman (Walsh, 2003).

#### b) Child marriage

The legal age of marriage for both women and men is 18 (Marriage Act, Sec. 4). The law does not provide for any legal exceptions in this regard. The minimum age applies to all forms of marriage, i.e. civil, Christian, Hindu, Islamic and customary. The violation of the legal age renders a marriage contract

void (Marriage Act, Sec. 11). Similarly, a marriage that fails to be registered is void (Marriage Act, Sec. 12) as a measure to ensure that the minimum standard of age is obeyed. A marriage to a person under the age of 18 is considered as an offence and punishable to imprisonment up to 5 years and/or a fine (Marriage Act, Sec. 87). Whereas celebrating or witnessing to a child marriage is a subject to imprisonment penalty of maximum 6 months or a fine (Marriage Act, Sec. 92). The ban of child marriage is confirmed in the Children Act (2001) stating that no one shall impose a child to harmful cultural rites and practices such as child marriage (Children Act, Sec. 14). Moreover, the law provides for children in need of care and protection from child marriage to be placed in separate facilities from their offenders (Children Act, Sec. 119). In addition, the court may render a marriage null and void *ab initio* and send a child to school (Children Act, Sec. 125). It is also criminalised to cause or contribute to a child becoming in need of care and protection. The offence is punishable to imprisonment up to 5 years or a fine (Children Act, Sec. 127). The ban of child marriage is also supported by the criminalisation of the sexual activities with a person under 18 (Sexual Offences Act, Sec. 8, 16; IDLO, 2010).

The legal provisions on education subsidise the broader legal framework to combat child marriage. Every child has the right to free and compulsory basic education (Constitution of Kenya, Sec. 53; Children Act, Sec. 7; Basic Education Act, Sec. 28). Parents have the duty to provide a child with education (Children Act, Sec. 23). The Kenyan law also provides for child who is prevented from receiving education; subjected to cultural customs and practices prejudicial to its education; and is engaged in any work that may harm its education (Children Act, Sec. 119). Similarly to measures taken in the event of child marriage, the court may order placing a child in separate facilities and call the offender to account (Children Act, Sec. 127).

There are several initiatives taken at the national level to fight against child marriage (CRC, 2016). The Government has adopted the National Plan of Action for Children in Kenya 2015-2022 setting the elimination of child marriages as one of its objectives (National Council for Children's Services, 2015). Moreover, Kenya recently joined the African Union Campaign to End Child Marriage (Girls Not Brides website). At the regional level, the West Pokot County has allocated significant financial resources for initiatives and programmes targeting children, also affected by and at risk of child marriage (CEDAW, 2017).

In Kenya, child marriage is still practiced, despite the enactment of the Marriage Act 2004, prohibiting such practice. The prevalence rates vary across the country; most of child marriages occur in the North Eastern and Coast regions whereas Central region and Nairobi have the lowest rates (Girls Not Brides website). It is estimated that almost one fourth of girls in Kenya are married before the age of 18 (UNICEF, 2016b). In rural families, girls are treated as an economic burden that can be valued as capital for exchange (Gender Violence Recovery Centre, 2015). Parents who marry off their daughters at young age, receives some goods, money or livestock that help them to escape poverty.

### **c) Household responsibilities**

Kenyan Constitution protects equality within marriage and provides women with the same rights as men to be recognised as the head of household (Constitution of Kenya, Sec. 27, 43, 45, 53). Women are not legally required to obey their husbands. Nevertheless, the Ministry of Health reports that

households are predominately headed by men in both rural and urban areas (Ministry of Health, 2014).

Both parents have equal rights and responsibilities to their child regardless if they are married or not (Constitution of Kenya, Sec. 53). Under the Children Act, parental responsibility includes all the duties, rights, powers, responsibilities and authority stated by law and exercised in relation to the child and its property (Children Act, Sec. 23). Parents have the duty to provide a child with food, housing, clothing, medical care, education and guidance, and to protect a child from neglect, discrimination and abuse (Children Act, Sec. 23). They also hold rights to bring up a child in accordance with religious, moral, social, cultural and other values; determine the child's name; appoint a guardian; manage the property of the child for their benefit and best interest; decide on the emigration of the child from Kenya; in the event of death of a child arrange for the funeral (Children Act, Sec. 23). In the case where parents were married to each other at the time of child's birth, they have joint parental responsibility; the same applies when they were not married at the time of its birth but have subsequently married each other (Children Act, Sec. 24). If this is not done, the mother is automatically granted sole parental responsibility and the father may acquire it by the court order or upon the agreement between him and the mother (Children Act, Sec. 24, 25). Moreover, the father acquires the parental responsibility if he subsequently cohabited with the mother of a child for a period not shorter than 12 months; he has acknowledged the paternity of the child; or he has maintained for the child (Children Act, Sec. 25). Maintenance of child is a joint responsibility of married parents; the same applies when parents are not married to each other but the father acquired the parental responsibility (Children Act, Sec. 90).

#### **d) Divorce**

In Kenya, women and men have the same rights to initiate divorce (Marriage Act, Sec. 3); the same applies to finalise a divorce or annulment. The Marriage Act provides separate rules for the dissolution of marriage for all types of marriages laid down in the Act: Christian, civil, customary, Hindu and Islamic.

Spouses may petition the court for a decree for dissolution of Christian, civil, customary and Hindu marriage (Marriage Act, Sec. 65, 66, 68, 70). Cases of marriages contracted under Islamic law are submitted to the jurisdiction of Kadhis' courts (Marriage Act, Sec. 71, 72). Kadhis' courts have and exercise jurisdiction in cases related to personal status, marriage, divorce and inheritance in which parties involved profess the Muslim faith (Kadhis' Courts Act, Sec. 5). There are no universal grounds for dissolution of marriage, they vary by the type of marriage. The most restrictive ones are mandated for customary and Islamic marriages (IMPOWR Database).

Parents hold equal responsibility to provide for a child regardless if they are married to each other or not (Constitution of Kenya, Sec. 53). Nevertheless, upon divorce, they may agree on joint custody or the court may also make an order vesting the custody of the child in one of parents (Children Act, Sec. 82). The custody means parental rights and duties as relate to the possession of the child (Children Act, Sec. 81). In determination of custody, the court is required to take into consideration a number of factors, such as: wishes of a child, parents, guardians, foster parents and any other person who have had the actual custody of the child; customs of the community and religious background of the child; siblings; relationship between the child and the parent; and the best interest of the child (Children Act, Sec. 83). In cases of custody on divorce, the profound importance is given to conduct of

parents (Children Act, Sec. 83). In most cases, the custody is awarded to the mother and she has claim against the father to the financial maintenance of a child.

The court may order a person to pay maintenance to a former spouse if a divorced spouse is not in position to maintain himself. It is if the person has refused or neglected to provide for a former spouse as required; if the person has deserted for the time of desertion; during the time of matrimonial proceedings; when granting or after granting a decree of separation or divorce; and after making a decree of presumption of death, the former spouse if found to be alive (Marriage Act, Sec. 77). It applies to both women and men. The order of maintenance lapses when a maintained person is able to support himself or in the event of death of any of former spouses (Marriage Act, Sec. 78). The order also terminates upon the remarriage of the beneficial party (Marriage Act, Sec. 79).

Upon divorce or other dissolution of marriage, the marital property is divided according to spouses' contribution (Matrimonial Property Act, Sec. 7). Contribution relates to monetary and non-monetary contribution and includes domestic work and management of the matrimonial home; child care; companionship; management of family business or property; and farm work (Matrimonial Property Act, Sec. 3). In polygamous marriages, the property acquired by the man and his first wife is equally divided between them, if the property was acquired before the man married another wife. Whereas after the marriage with another wife, the property is considered as owned by the man and by wives according to any contributions made by the parties (Matrimonial Property Act, Sec. 8). In addition, any wife have right to hold the matrimonial property with the husband separately from other wife or wives and own it equally with the man without participation of other wife or wives (Matrimonial Property Act, Sec. 8). It serves to safeguard property rights of wives in polygamous marriages. For parties who profess the Muslim religion, the Islamic law applies (Matrimonial Property Act, Sec. 3).

#### **e) Inheritance**

Kenyan law provides daughters and sons with the same rights to inherit land and non-land assets (Constitution of Kenya, Sec. 60; Succession Act, Sec. 35). Surviving female spouse has life interest in the assets that terminates upon her remarriage to another man. This applies only to widows, while widowers keep their rights even if they re-marry (Succession Act, Sec. 35). Under Kenyan law, disinheritance is not explicitly covered, however, the court may order provision for dependants not adequately provided for in the will or on intestacy (Succession Act, Sec. 26).

In case of polygamous marriage, assets are divided between the houses according to the number of children in each house, but also taking into consideration any surviving wife as an additional unit to the number of children (Succession Act, Sec. 40). The distribution within each house is governed in accordance with the general rules stated for intestacy.

The customary and tribal laws replace application of the Succession Act with regard to agricultural lands and crops thereon or livestock in certain districts defined in the Act (Succession Act, Sec. 32). The customary and tribal regulations on inheritance rights vary among districts. In some, married daughters are not entitled to inherit; whereas in other districts, daughters are recognised as equal to sons and enjoy the same rights; or inheritance is reserved just for unmarried daughters (IMPOWR Database). Customary law is recognised as one of the sources of law in Kenya and is applicable as long

as is consistent and harmonious with the Constitution and any other written law, and repugnant to justice and morality (Constitution of Kenya, Sec. 2; Judicature Act, Sec. 3).

People of the Muslim faith are exempt from the scope of the Succession Act and Islamic law is applicable (Succession Act, Sec. 2). Therefore, women do not enjoy and benefit from the equal inheritance rights. Under Quran both testamentary and intestate succession are recognised (FAO Database). The deceased may distribute one third of his estate in a will, remaining two thirds is governed by statutory intestacy rules providing fixed shares for the heirs (widows, father, mother and children)(UN-HABITAT, 2002). In general, a male heir receives twice as much as corresponding female heir (UN-HABITAT, 2002). A widow with children inherits one eighth of the net estate while a childless widow one fourth (FAO Database). The same applies to Islamic polygamous marriages.

Notwithstanding existing legal framework, women often do not inherit land and other family property (FAO Database). The customary law continues to restrict women's access to and control over assets (Makena *et al.*, 2014). It is commonly practiced that fathers leave land to their male children expecting the care for daughters will be provided by their husbands (FAO Database). Women rarely hold land title under their name and even if they formally own it, men have control over it (Makena *et al.*, 2014). In many rural communities, widows with no children or daughters only, do not inherit his estate that is treated as her husband had not been married (FAO Database). There are also communities where succession is patrilineal so restricted to males (FAO Database).

### *More*

The polygamy may have a weighty impact on the situation and position of women. It serves to fortify the male domination and attribute women to the domestic and family sphere (CEDAW, 2016). It is also contrary to the constitutional provisions on gender equality (CEDAW, 2017). Measures included in the Marriage Act, such as the requirement of the registration or equal rights of spouses, aim to ensure the protection for women living in polygamous marriages.

## **2. Restricted Physical integrity**

### **a) Violence against women**

Kenya has signed and ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). However, the implementation of Art. 14 (2) (c) of the Protocol addressing reproductive rights remains reserved. Under the Constitution, a ratified document of international law becomes a part of national legislation (Constitution of Kenya, Sec. 2).

The Constitution of Kenya provides for protection from any form discrimination in violence in either the public or private sphere (Constitution of Kenya, Sec. 29, 53). This constitutional provision mandates the right to freedom and security which safeguards women's right against sexual gender-based violence and any other related form of violence (Aura, n.a.). In addition, enactment of the Sexual Offences Act 2006, Counter- Trafficking in Persons Act 2010 and the Prohibition of Female Genital Mutilation Act 2011 covers specific forms of violence against women (Beijing +20: Kenya's Report). The Sexual Offences Act is considered as a key legislation that outlines a range of sexual offences and aims to protect the victims of gender-based violence (CEDAW, 2017). It recognises following sexual offences: rape, attempted rape, gang rape, defilement, attempted defilement, sexual harassment,

sexual assault, forced prostitution, trafficking for sexual exploitation, child trafficking, child sex tourism, child prostitution, child pornography, among other offences including deliberate transmission of HIV or any other life threatening sexually transmitted disease. Although the Penal Code prohibits acts of violence, it does not cover violence against women (Aura, n.a.).

The law does not provide for comprehensive approach to address violence against women with specific provisions for perpetrators or victims and survivors, however, there are some specific regulations and support services provided. For instance, a person convicted of a sexual offence and who fails to disclose it cannot apply for employment which places him or her in a position of authority or care of children or any other vulnerable person, also cannot offer or agree to supervise children or any other vulnerable person (Sexual Offences Act, Sec. 30). The Act also provides for special measures for supervision of dangerous sexual offenders (Sexual Offenders Act, Sec. 39). A medical treatment order may be granted to victims and survivors of sexual violence; costs are covered by the State (Sexual Offenders Act, Sec. 35). Moreover, it contains provisions related to vulnerable witnesses and their protection (Sexual Offenders Act, Sec. 31, 32).

There are a number of policies and frameworks have been adopted in order to fight against gender-based violence. The Attorney-General has appointed and constituted the Task Force on the Implementation of the Sexual Offences Act in charge of undertaking initiatives towards effective implementation of the Act. The Task Force has developed the Multi-sectoral Standard Operating Procedures (SOPs) for Prevention of and Response to Sexual Violence in Kenya (2013). It provides for minimum standards of care to be provided to victims and survivors across several sectors – health, psychosocial and legal. The SOPs also lay out the referral pathways in this multi-sectional management (NGEC, 2014). The Kenyan government has launched the National Policy on Prevention and Response to Gender Based Violence which provides a framework towards the elimination of gender-based violence across the country (CEDAW, 2016). It seeks to adopt a coordinated approach in the fight against gender-based violence among various state and non-state actors. In addition, the National Monitoring and Evaluation Framework towards the Prevention of and Response to Sexual and Gender Based Violence in Kenya established one integrated and functional multi-sectional monitoring and evaluations system. It greatly contributes to evidence-informed funding, advocacy, decision-making and programming (NGEC, 2014). Moreover, the Kenya Vision 2030 Second Medium Term Plan (2013-17) states the intervention to create one-stop response centres in all healthcare facilities offering help to victims and survivors of sexual and gender-based violence. The Gender Based Violence Recovery centres in the biggest public hospitals have been already established (Beijing +20: Kenya's Report). The National Plan for Human Rights also confirms the women's rights and recognises violence against women as one of the major challenges.

Kenya launched in 2013 the gender-based violence hotline that is free and operates on 24-hour basis. Women can call the helpline seeking advice and access to gender-based violence services. The helpline provides supports for victims of all forms of discrimination. Moreover, the specific Data Sheet was introduced at the launch in order to collect sex-disaggregated data (CEDAW, 2016).

In Kenya, there is still high level of tolerance of gender-based violence that hinders the implementation of all measures undertaken (Ministry of Devolution and Planning, 2017). Discriminatory gender norms and social structures strongly influence the subordinate position of

women to men in society. Therefore, in some communities, certain forms of violence against women are considered ordinary and permissible (ACORD, 2010). Moreover, there is low level of awareness of existing gender-based violence legal framework and support services among girls and women (Kenya Girl Guides Association, 2015).

## **b) Domestic violence**

Kenya adopted the Protection Against Domestic Violence Act (2015) providing protection and relief for spouses, children and any dependants within family. The Act covers physical, sexual, psychological and economic forms of abuse. The following are recognised: abuse that includes child marriage, female genital mutilation, forced marriage, forced wife inheritance, interference from in-laws, sexual violence within marriage, virginity testing and widow cleansing; damage to property; defilement; economic abuse; emotional or psychological abuse; forcible entry into the applicant's residence where the parties do not share the same residence; harassment; incest; intimidation; physical abuse; sexual abuse; stalking; verbal abuse; any other conduct against a person, where such conduct harms or may cause imminent harm to the safety, health, or well-being of the person (Protection Against Domestic Violence Act, Sec. 3). It refers to abuse both, from former partners and within the family (Protection Against Domestic Violence Act, Sec. 4). The mediation and conciliation in family matter is widely promoted in Kenya; however, the confidentiality rule does not apply in cases of domestic violence (Mediation (Pilot Project) Rules 2015, Sec. 12). Notably, the protection order may be granted to victims of domestic violence (Protection Against Domestic Violence Act, Sec. 3, 8). The perpetrator is liable for its breach and faces imprisonment for a period not exceeding twelve months and/or a fine.

There is no specific National Action Plan addressing domestic violence. The law partially provides for integrated services for girls and women who survived the domestic violence. A person to whom a complaint of domestic violence is made or who investigates any such complaint is obliged to advise the victim of all relief measures available including access to shelter, medical assistance or any other required assistance (Protection against Domestic Violence Act, Sec. 6). The free helpline is also available.

The results of the 2015 Demographic and Health Survey domestic violence module provides data on experiences of physical and sexual violence and its different forms; perpetrators; age at first experience of sexual violence; violence during pregnancy; marital control by spouse; forms of spousal violence and their background characteristics; physical consequences of spousal violence; help-seeking behaviour (Demographic and Health Survey, 2014). The results found that domestic violence remains wide spread and tolerated by both women and men.

In Kenya, domestic violence remains a challenge; it is difficult to investigate and prosecute. Women rarely report domestic violence offences as they are often socialised to tolerate and rationalise such offence (Demographic and Health Survey, 2014). Police officers are not likely to deal with issues concerning domestic sphere as it is considered as a private family matter (US State Department, 2016). Moreover, they are known to accept bribes or send victims back to their family perpetrators to reconcile the problem individually (IMPOWR Database).

### c) Rape

The Kenyan legislation addresses sexual violence (Sexual Offences Act) and recognises rape as a criminal offence liable to imprisonment of no less than 10 years but which may be enhanced to imprisonment for life (Sexual Offences Act, Sec. 3). Attempted rape is also punishable to not less than five years (Sexual Offences Act, Sec. 4). The law is based on lack of consent and requires proof of physical force and genital penetration (Sexual Offences Act, Sec. 3). Marital rape is exempted from criminal prosecution; the Sexual Offences Act explicitly excludes the liability of persons who are lawfully married to each other (Sexual Offences Act, Sec. 43). Moreover, under customary law there is a presumed and perceptual consent to sex upon marriage (Equality Effect, 2010). The law also provides for increased penalties for aggravated forms of rape, such as: acts committed within the view of a family member, child or person with mental disabilities; gang rape; rape related to the position of authority and position of trust; rape of an idiot or imbecile (Sexual Offences Act, Sec. 7, 10, 24; Penal Code, Sec. 146).

Professionals who may deal with sexual violence cases are equipped with the National Guidelines on the Management of Sexual Violence. They have been designed to provide general knowledge on sexual violence in Kenya and appropriate management, and highlight the various needs of sexual violence survivors – medical, psychosocial, humanitarian and legal ones (UN Women, Global Database on Violence against Women). The Sexual Offences Act itself does not provide for adequate training for law-enforcement officers and judiciary, however, several initiatives have been undertaken by various institutions. For instance, the Judiciary Training Institute has been developing a module and training manual focused on sex and gender-based violence for judicial officers (Speech of the Deputy Chief Justice of the Republic of Kenya, 2015). Although, poor police training on investigating sexual and gender-based violence cases is noted, all police recruits obtain basic training in this matter while at police academy (International Review of the Red Cross, 2014). In addition, across the country “gender desks” have been created at police stations to serve as entry point for victims of sexual violence seeking to report and open a case (International Review of the Red Cross, 2014).

The reporting and prosecution rate of rape in Kenya remains low (US State Department, 2016). There is a number of hindering factors such as: social pressure on the importance of purity on honour; cultural barriers towards public discussions on sex-related topics and sexual violence in particular; victims’ shame and fear of retribution (US State Department, 2016; Aura, n.a.). Moreover, it is reported that the police officers often do not enforce the illegality of rape and may accept bribes; prosecutors are not adequately trained in sexual violence and cases may be dismissed due to lack of evidence in the court proceedings (US State Department, 2016; Lawyers Circle and Oxfam, 2014).

### d) Sexual harassment

The legal framework in Kenya provides legal protection from sexual harassment. The offence of sexual harassment refers to unwelcomed sexual advances or requests, persistently made by any person in position of trust or holding public office (Sexual Offences Act, Sec. 23). It is punishable to imprisonment of not less than three years and/or a fine. The scope of the Act is limited to the workplace and educational establishments, there are no legal provision addressing sexual harassment in sporting establishments, public places or cyber-harassment (Sexual Offences Act, Sec. 23, 24). There is a concern that the Act does not provide for criminal liability of ordinary citizen (Lawyers Circle and

Oxfam, 2014). In addition, the sexual harassment in the workplace is covered and developed in the Employment Act; however, there is no sanction specifically provided (Employment Act, Sec. 6). An employer is supposed to eliminate discrimination in any employment policy or practice and to create a policy statement on sexual harassment in his workplace (Employment Act, Sec. 5, 6). An employer who contravenes or fails to comply with any of the provisions of the Act, may be called to account and be liable to imprisonment up to 3 months and/or a fine (Employment Act, Sec. 88). The prohibition of sexual harassment is also highlighted in the Public Officers And Ethics Act prohibiting such practice towards a member of the public or a fellow public officer (Public Officers And Ethics Act, Sec. 21).

### e) Female genital mutilation

In Kenya, female genital mutilation (FGM) is considered as a criminal offence and punishable to imprisonment for a term of not less than three years, and/or a fine (Prohibition of Female Genital Mutilation Act, Sec. 19, 29). In the event of death of the victim of the FGM, the person may be liable to imprisonment for life (Prohibition of Female Genital Mutilation Act, Sec. 19). It refers to any person performing female circumcision, including medical and other practitioners. Parents involved may be liable to abetting, aiding, counselling or procuring a crime (Prohibition of Female Genital Mutilation Act, Sec. 20). It also applies in the event of sending a child abroad to be subjected to FGM (Prohibition of Female Genital Mutilation Act, Sec. 21). The Act also expands the criminal liability for using premises to perform FGM; possession of tools or equipment designed for FGM; failure of reporting the offence to a law enforcement officer (Prohibition of Female Genital Mutilation Act, Sec. 22-24). Moreover, it is criminalised to use derogatory or abusive language towards a woman who has not undergone FGM or towards a man who has married or otherwise supported a woman who has not been subjected to FGM (Prohibition of Female Genital Mutilation Act, Sec. 25).

The criminalization of the FGM is also recognised under Protection Against Domestic Violence Act as well as in the Children Act. Under the Protection Against Domestic Violence Act, FGM is considered as a form of domestic violence and therefore, a protection order may be granted (Protection Against Domestic Violence Act, Sec. 3, 8). No person shall subject a child to female circumcision (Children Act, Sec. 14). Female child who is subjected or is likely to be subjected to FGM is considered as a child in need of care protection and may be placed in separate facilities from her offenders (Children Act, Sec. 119). Parents may be liable to cause or contribute that child becomes in need of care and protection. The offence is punishable to imprisonment up to 5 years or a fine (Children Act, Sec. 127).

Under the Prohibition of Female Genital Mutilation Act, the Anti-FGM Board has been established (Prohibition of Female Genital Mutilation Act, Sec. 3). Its mandate covers: design, supervision and co-ordination of public awareness programmes against the practice of FGM; advice to the Kenyan government; design and formulating a policy on the planning, financing and co-ordinating of all FGM-related activities; the Board also provides technical support to institutions, agencies and other bodies involved in the programmes on elimination of FGM and design programmes aimed at eradication of FGM itself (Prohibition of Female Genital Mutilation Act, Sec. 5). Considering criminal prosecution, the Office of the Director of Public Prosecutions has constituted a specialized anti-FGM Prosecution Unit (OHCHR, 2015). It aims to promote and support anti-FGM legislation among communities and to prosecute cases concerning FGM practice.

The Kenyan government is committed to eradicate FGM practice across the country and therefore undertakes a number of institutional and policy measures to tackle the issue. The Ministry of Health is implementing the National Plan of Action for the Elimination of FGM in Kenya 1999-2019; moreover the same Ministry has published the Reference Manual for Health Service Providers on the management complications of FGM (OHCHR, 2015). Another training Manual “Stopping medicalization of FGM” targeting health care practitioners has been developed, providing ethical standards and code of conduct (CEDAW, 2017). Within the Ministry of Gender, Children and Social Development operates a Unit specifically dealing with FGM (UN Women, Global Database on Violence against Women). This Ministry also had been implementing the National Action Plan for Accelerating the Abandonment of FGM/C in Kenya in years 2008-2012. In addition, National Policy for the abandonment of FGM/C has been formulated (Beijing +20: Kenya’s Report). The elimination of FGM is one of the objectives of the National Plan of Action for Children in Kenya and Kenya Vision 2030 Second Medium Term Plan (2013—17). At the county level, the West Pokot County has channelled financial resources into initiatives on children, including FGM (CEDAW, 2017).

The National Council of Children’s Services supervises and controls the planning, financing and co-ordination of child rights and welfare activities and to advise the Government (Children Act, Sec. 32). The Council is responsible for the full implementation of Kenya’s international and regional obligations relating to children and facilitate the formulation of appropriate reports under such obligations (Children Act, Sec. 32). Moreover, The Director of Children’s Services and Children’s Officers provides reports and assessments of the situation of children as may be required by any court and provides quarterly reports on the management of children’s rehabilitation centres, children’s homes and remand homes (Children Act, Sec. 38). The Kenyan law provides guidance on prevention protection, support and follow-up services and assistance for victims of FGM. These include all services and assistance offered by the National Council of Children’s Services; proceedings in respect of children and medical care. The child is eligible to apply for legal aid (Legal Aid Act, Sec. 36); also the Directors is obliged to provide all necessary assistance to the judicial process (Children Act, Sec. 38).

Despite legal prohibition, FGM practice still remains persistent (CRC, 2016). Deeply rooted cultural traditions and beliefs hinder the implementation of the provisions of the Prohibition of Female Genital Mutilation Act. It is considered as a traditional rite of passage into adulthood among many communities (NCPD, 2013). This religious practice is supposed to support cultural identity, better hygiene, enhance girl’s virginity, improve future marriage prospects and restrain sexuality (Mbugua, 1997). In Kenya, there are just 4 ethnic group among 42 that do not traditionally undergo FGM, while among ethnic Somali girls and women 94% were subjected to this practice (US State Department, 2016; Demographic and Health Survey, 2014). There are other factors influencing the practice of FGM, such as: level of education, geographical location, and rural and urban areas (Oloo *et al.*, 2011). There is an increasing number of prosecutions of perpetrators and parents; however, in regions where FGM remains a common practice, there are reports that police officers are frequently bribed by parents to avoid prosecution and continue the practice (US State Department, 2016). Moreover, underground performances of FGM secretly undergone by health care providers were reported (OHCHR, 2015).

#### **f) Abortion**

In Kenya, the Constitution permits abortion on cases of emergency to preserve mental and physical health of the woman and to save woman’s life. An opinion of a trained medical professional is

required. There is no provision stating maximum number of weeks by which the woman can seek the legal abortion. The current abortion law does not fully correspond to the provisions of Maputo Protocol due to the Kenya's reservation on the article on reproductive rights. The Protocol includes medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus (Maputo Protocol, Art. 14).

The Penal Code considers an illegal abortion as an offence. Performing an abortion is punishable to imprisonment for fourteen years while the penalty for assisting with an abortion by supplying drugs or instruments is three years of imprisonment (Penal Code, Sec. 158, 160). In addition, a woman who undergoes an illegal abortion is guilty of a felony and is liable to imprisonment of seven years (Penal Code, Sec. 159).

It is reported that in Kenya access to safe and legal abortion services and post-abortion care is limited (CRC, 2016). This may lead women and girls to undergo illegal abortions. Unsafe abortions are estimated to be the cause of one third of maternal deaths (Lawyers Circle and Oxfam, 2014). The Kenyan National Commission on Human Rights carried out a public inquiry on sexual and reproductive rights in 2011. In the final report, the Commission called the Government to improve access to family planning services and information; improve maternal health services; provide redress and access to health care services for survivors of sexual violence; promote the reproductive rights of vulnerable and marginalised groups; make sexual reproductive health care affordable (Center for Reproductive Rights, 2014). A Family and Reproductive Health Bill was drafted back in 2007 but has never been adopted (OHCHR, 2012).

### **3. Restricted Access to productive and financial resources**

#### **a) Secure access to land and assets**

In Kenya, unmarried and married women have the same rights as men to own, use, make decisions over land and non-land assets and use as collateral (Constitution of Kenya, Sec. 27, 40, 45, 60; Land Act, Sec. 3).

The Kenyan Constitution, the National Land Commission Act, the Land Act, and the Land Registration Act provide a comprehensive framework for women with respect to enjoyment of their rights to land (CEDAW, 2016) including: equitable access to land; security of land rights; elimination of gender discrimination in law, customs and practices related to land and property in land, encouragement of communities to settle land disputes through recognised local community initiatives (FAO Gender and Land Rights Database). In addition, there is the National Land Policy adopted in 2009 which recognised the role of women in land matters. It requires the enactment of laws protecting the land rights of both spouses, widows and divorcees, persons living with HIV and AIDS including rural women (CEDAW, 2010).

The Matrimonial Property Act stipulates separate and matrimonial property and provides for protection of the rights of each spouse. Separate property is the property of one spouse whereas matrimonial property includes the matrimonial home or homes; household goods and effects in the matrimonial home or homes; or any other immovable and movable property jointly owned and

acquired during the marriage (Matrimonial Property Act, Sec. 6). Notably, the ownership of matrimonial property vests in the spouses according to the contribution of each spouse towards its acquisition (Matrimonial Property Act, Sec. 7). Upon divorce or death of the spouse, the property is not equally divided, women is required to prove her contribution to the acquisition of the property during the marriage what disallows her rights to marital property (CEDAW, 2016). Contribution relates to monetary and non-monetary contribution and includes domestic work and management of the matrimonial home; child care; companionship; management of family business or property; and farm work (Matrimonial Property Act, Sec. 3). Several provisions protecting property rights are included in the Land Registration Act. For instance, if one spouse obtains an interest in land for the co-ownership and use of both spouses it is presumed to be a matrimonial property (Matrimonial Property Act, Sec. 93).

Nevertheless, customary practices that discriminate against women in their property rights are still common. Among some communities, women frequently exercise the right to use while land or non-land assets are owned and controlled by their male relatives (FIDA, n.a.). There are a number of barriers in the full enjoyment of women's land and property rights, including cultural, legal and social factors. Cultural beliefs still give precedence to men in the ownership and inheritance of property; it is believed women are not trustworthy, are unable to manage property and require male protection (FIDA, n.a.). Other hindrances are poor legal literacy and expensive legal proceedings. Women may not be aware of their rights and do not know how to effectively claim their rights. The legal language of laws is very technical what may not be understandable and accessible to broader populations (OECD, 2015). Traditionally, women rely on their husband or other male relatives in legal questions (FIDA, n.a.). High costs of overall of legal proceedings impede access to justice and enforcement of rights to property (FIDA, n.a.).

#### **b) Secure access to formal financial resources**

Women and men have the right to equal treatment, including the right to equal opportunities in economic sphere (Constitution of Kenya, Sec. 27). There is no restriction located to suggest that women and men do not have equal access to formal financial resources. Married and unmarried women have the same right as men to open a bank account at formal institutions or obtain credit. In addition, there are several initiatives undertaken to enhance economic empowerment of women.

The economic empowerment of women is one of the key objectives within social pillar of the Kenya 2030 Vision. The Women Enterprise Fund is its flagship project that provides Kenyan women with access to alternative financial services. It aims to address a range of challenges that women meet when entering or expanding the entrepreneurship such as: lack of capital; low financial literacy; accessibility to markets (Beijing +20: Kenya's Report). Besides capacity-building training for women, the Fund provides loans to women across the country in all the constituencies (CEDAW, 2016).

Another affirmative action programme for the empowerment of women is the UWEZO Fund. It seeks to empowering youth and women and persons with disabilities by providing interest-free loans as start-up capital for SMEs (Beijing +20: Kenya's Report). It also provides for trainings for entrepreneurs to advance their skills and market linkages fundamental for the professional activity (CEDAW, 2016). Moreover, the policy on Access to Government Procurement Opportunities for women, youth and

persons with disabilities has been introduced that reserves for them 30% of public procurement tenders (Ministry of Devolution and Planning, 2017).

There are also training programmes targeting grassroots women entrepreneurs organised under the Ministry of Trade (CEDAW, 2010). It aims to train women how to improve quality of their products and introduce them to international markets. In addition, the Ministry of Trade has established Business District Information Centres across the country keeping sex-disaggregated data on local female entrepreneurships, often producing handicrafts and other products made by rural women (CEDAW, 2010).

Nevertheless, women's access to financial services and credit remains a concern. There is a low level of financial literacy among women, they are not aware of credit facilities and they do not obtain appropriate financial training (Overseas Development Institute, 2010; Makena *et al.*, 2014). Given women often do not have assets or collateral to secure credit financing, the financial institutions estimate higher risk of women's businesses and provide high interest rates, payable within a shorter period (Makena *et al.*, 2014). In addition, the institutions rarely offer financial services tailored for women. The cultural norms also impede access to financial resources and credit; entrepreneurial activities are perceived as male and traditional roles in the communities do not support female businesses (Makena *et al.*, 2014).

### c) Workplace rights

Kenya has ratified ILO Conventions C100 and C111, whereas it is not a party of Conventions C156, C183 and C189.

Under the Employment Act, the Ministry of Labour, labours officers and the Industrial Court have a duty to promote equality of opportunity in employment in order to eliminate discrimination in employment. The law in Kenya mandates non-discrimination on the ground of sex in employment. The Employment Act covers job advertisement, selection criteria, recruitment, hiring, terms and conditions, promotions, training, assignments and termination (Employment Act, Sec. 5). However, it is allowed to take affirmative actions in order to promote gender equality or to eliminate the discrimination in the workplace (Employment Act, Sec. 5). The Act also provides for equal remuneration for work of equal value (Sec. 5). Women may not be excluded from entering certain professions under the Minister's ruling on the employment conditions for women, youth and children (Employment Act, Sec. 91). Women do not need permission from their husband or legal guardian to either choose a profession or register a business (Constitution of Kenya, Sec. 27). Women are allowed to work the same night hours as men as there is no restriction located.

The Kenyan law mandates maternity leave of 13 weeks (Employment Act, Sec. 29). It is fully-paid and covered by the employer (Employment Act, Sec. 29). Similarly, the father is entitled to the paternity leave of 2 weeks with full pay financed by the employer (Employment Act, Sec. 29). Dismissal of a woman due to her pregnancy or for any reasons connected with her pregnancy is prohibited (Employment Act, Sec. 46). The same applies when an employee goes on maternity or paternity leave. These are considered as an unfair termination and may be a subject of a complaint to a labour officer (Employment Act, Sec. 47). If dismissal is found unjustified, the labour officer may recommend to the employer to pay adequate remedies (Employment Act, Sec. 49). The pregnant woman's employment

security is also protected by provision stating that upon maternity leave she has the right to return to the position she held prior to the maternity leave or any reasonably suitable job on not less favourably terms and conditions (Employment Act, Sec. 29).

Despite the existing legal framework, the low uptake of paid maternity and paternity leave is reported (NGEC, 2016). The law also does not provide any restrictions to the employer in terms of treatment of a pregnant employee; therefore any harmful or arduous work may be assigned (CEDAW, 2016). The law does not prohibit employers asking about a woman's pregnancy or her intentions to have children during the recruitment or promotion process but it provides for non-discrimination on the ground of pregnancy (Employment Act, Sec. 5).

General complaints based on sex discrimination in employment may be determined by the National Gender and Equality Commission that has a power to investigate any matter in respect of any violations of the principle of equality and freedom from discrimination (National Gender and Equality Commission Act, Sec. 8). Moreover, the Industrial Court is responsible for complaints or suits involving wrongful dismissal or unfair termination of the employment of an employee (Employment Act, Sec. 50). An employer who discriminates against women in employment commits an offence; it is punishable to imprisonment for a term not exceeding 3 months and/ or a fine (Employment Act, Sec. 5, 88).

Inequalities between women and men in employment still remain. Women dominate in informal sector while numerous factors limit their access to formal employment and more remunerative activities. These include traditional position of women in the society, occupational segregation by gender, limited access to financial resources, technology among others (Atieno, 2009). The informal employment is characterised by small-scale of activities, little development and limited access to services (Atieno, 2009). Moreover, women are disadvantaged in earnings (World Bank, 2012). Nevertheless, the informal sector remains a significant source of employment for women and further measures are needed to enhance income generating activities (Atieno, 2009).

## **4. Restricted Civil liberties**

### **a) Citizenship rights**

The Kenyan law provides for married and unmarried women to acquire, change and retain the nationality, as well as confer the nationality to their children (Constitution of Kenya, Sec. 12-14; Citizenship and Immigration Act, Sec. 13, 19). Married women and men have also equal rights to confer their nationality to the spouse (Citizenship and Immigration Act, Sec. 11). Citizenship is not revoked through marriage or dissolution of marriage, the law also grants dual citizenship (Constitution of Kenya, Sec. 16; Citizenship and Immigration Act, Sec. 8).

Both parents have the right and duty to register a birth of a child regardless their marital status (Births and Deaths Registration Act, Sec. 11). Often registration service is offered by a hospital if a woman delivers in health facilities or by a healthcare worker present at birth (Juma *et al.*, 2016). The birth should be registered within 6 months following delivery (Births and Deaths Registration Act, Sec. 8). Parents who fail to register their child's birth may be subject to imprisonment up to 6 months and/or a fine (Births and Deaths Registration Act, Sec. 22). In general, the Principle Registrar for Births and

Deaths is responsible authority for registration (Births and Deaths Registration Act, Sec. 3, 6); however, there are also *Huduma Centres* located across the country where the civil registration may be undertaken (Juma *et al.*, 2016). Late registration of birth is allowed; however the procedure is lengthy, more complex and includes additional fees and penalties (Kenya Law Publications, n.a.).

There are several barriers that hinder the universal birth registration in Kenya. The awareness among citizens is low; access to distant registration facilities; bureaucracy; high administrative fees; bribes, favourism and lack of transparency (Kenya Law Publications, n.a.). In the National Plan of Action for Children in Kenya, the Government commits to ensure children's right to identity and support all measures that serve to attain the broad birth registration in the whole country (National Council for Children's Services, 2015). At the county level, multiservice centres have been created in order to facilitate access to services for all (World Bank, 2016). The Department of Civil Registration Services launched the Maternal Child Health Registration Strategy engaging nurses to register the births of unregistered children (US State Department, 2016). Moreover, there was the mobile registration model introduced in selected areas; also online registration has been initiated (National Council for Children's Services, 2015). Kenya also cooperates with international actors to address the issue. For instance, Plan International with Civil Registration Services carried out the project raising awareness about birth registration in several rural communities (Plan International website). Nevertheless, the birth registration remains a challenge for Kenyan authorities, as there are still significant inequalities between some geographical regions (Demographic and Health Survey, 2014).

The Kenyan Constitution guarantees equal rights of women and men and specifically recognises and prohibits discrimination against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth (Constitution of Kenya, Sec. 27).

Every Kenyan citizen is required to register and obtain an identity card once the age of 18 is attained (Registration of Persons Act, Sec. 6, 9). This applies to married and unmarried women and men and they have equal rights to apply for identity cards. In order to apply for a national identity card, the applicant is required to provide application form and supporting documents proving applicant's citizenship, such as: birth certificate or school leaving certificate; copy of identity card of either parent of the applicant or copy of passport of either parent; applicant's passport or registration certificate; two up-to-date pass photo (Application Form, Reg. 136 C). Failure to register and possess the identity card is an offence punishable to imprisonment of maximum 18 months and/or a fine (Registration of Persons Act, Sec. 14). Possession of a national identity card is required to access public services related to education; police and security; health; insurance; banking and mobile; voting; and tax (World Bank, 2016). Nonetheless, the issuance of national identity card is a bureaucratic and lengthy process; certain minority and vulnerable groups experience difficulties in acquiring documents (Open Society Foundations, 2014).

The law also provides married and unmarried women with the same rights as men to apply for a passport. (Citizenship and Immigration Act, Sec. 24). Ordinary passports are issued upon application of any Kenyan citizen to facilitate international travel (Citizenship and Immigration Act, Sec. 24, 26). Both parents are entitled to acquire passports for their minor children (Citizenship and Immigration

Act, Sec. 27). There are no restrictions found to suggest that married and unmarried women do not have equal rights to men to travel outside the country.

As of June 2017, the draft National Registration and Identification Act is being discussed. The Act aims to establish new procedures and institutions in charge of registration of births, deaths, immigration and the issuance of identity documents (World Bank, 2016).

### **b) Voting**

Women and men in Kenya enjoy equal voting rights (Constitution of Kenya, Sec. 38; Elections Act, Sec. 3). In order to vote, the person has to be registered in the Register of Voters. It is required to produce a national identity card or a Kenyan passport (Elections Act, Sec. 5, 10).

Limited knowledge of their voting rights may hold back Kenyan women from voting. Within rural communities, there is a low number of women registered in the Register of Voters and the voting is often influenced by family or a community. Several cases have been reported where women were escorted to polling stations by husbands or other male relatives (Lawyers Circle and Oxfam, 2014).

### **c) Political voice**

Women and men in Kenya have equal rights to hold public and political offices in legislature, executive and judiciary. The Constitution of Kenya confirms right of women and men to equal treatment and opportunities in various spheres, including political life (Constitution of Kenya, Sec. 27). Therefore, everyone has the right to run for and hold public and political offices (Constitution of Kenya, Sec. 38).

Kenya has introduced legislated quotas in order to enhance political participation of women at the national and local levels (Constitution of Kenya, Sec. 27, 81, 97, 98, 175, 177, 197). The general constitutional rule states that appropriate legislative and other measures should be taken to fully introduce the principle that two thirds of any elective or appointive bodies is of one gender (Constitution of Kenya, Sec. 27). Furthermore, the Elections Act provides for promoting gender equality (Elections Act, Second Schedule – Electoral Code of Conduct). Given the new Constitution and gender-sensitive electoral laws have been adopted in 2010 and 2011, the Supreme Court ruled that the principle of gender equality would be implemented progressively (IDEA, 2017).

In the National Assembly, there is one seat reserved for female deputies in each of the 47 counties; in addition there are 12 members appointed by political parties to speak for special interests of youth, persons with disabilities and workers (Constitution of Kenya, Sec. 97). The provisions with regard to the composition of the Senate guarantee 16 seats for women that are nominated by political parties (Constitution of Kenya, Sec. 98). At the county level, assemblies are obliged to apply the two thirds gender rule through additional measures such as special seats members (Constitution of Kenya, Sec. 175, 177).

In addition, several political parties have adopted voluntary quotas. The Democratic Party reserves one third of all seats for women; the SAFINA Party committed to ensure that at least one third of all elected officials come from one gender; and the National Rainbow Coalition in its gender policy provides that a minimum of one third of all nominations would be of either gender (Quota Project, 2017).

The law provides for sanctions for non-compliance the gender-sensitive provisions. The political party shall promote gender equality (Constitution of Kenya, Sec. 91). The full registration of a political party requires gender balance in its membership and composition (CEDAW, 2017; Political Parties Act, Sec. 4). A Political party is not entitled for public funding if more than two thirds of its registered officials are of the same gender (Political Parties Act, Sec. 25). This entitlement to the political parties Fund is the only advantage for parties to enhance gender-balanced politics (IDEA, 2017). In addition, the public Fund indicates the purposes it should be used for, *inter alia* promoting the representation of women and other underrepresented groups in the parliament (Political Parties Act, Sec. 26).

The promotion of women's political participation is outlined in the Vision 2030 – a national long-term development blueprint. It provides for the inclusion of women in electoral and political processes, as well as the civic education and awareness-raising programmes (Kenya Vision 2030). The Government in the Kenya National Action Plan for the Implementation of United Nations Security Council Resolution 1325 and Related Resolutions sets the objective to enhance active participation of women at all decision-making levels (National Action Plan, 2016). Specific actions and activities have been assigned in order to meet this objective, such as: development and enactment of legislation to execute gender equality ad implement quotas; providing of adequate human, financial, technical and logistical resources to support political activity and leadership of women at all levels. In addition, many projects and capacity-building trainings are carried out by NGOs and international organisations.

Women constantly face a number of electoral barriers when running for political office. Those obstacles are met at different levels. There are gender biases in party nominations; political parties that are male-dominated do not support and promote female candidates (Centre for Rights Education and Awareness, n.a.). Women also need to challenge strong socio-cultural beliefs that discourage their political activity. There is a significant elder veneration and societies are traditionally led by men (Kivoi, 2014). Moreover, the electoral violence against women is reported, especially in the period of electoral campaigns (Centre for Rights Education and Awareness, n.a.).

#### d) Access to justice

There are no restrictions found to suggest that women have unequal capacity to sue and to be sued. Also, a woman's testimony carries the same evidentiary weight in court as a man's in all types of court cases, civil, criminal, family court and tribunals. The State is obliged to ensure equal access to justice for all (Constitution of Kenya, Sec. 46). Every person holds the right to institute court proceedings when his rights or fundamental freedoms have been denied, violated or infringed, or is threatened (Constitution of Kenya, Sec. 22). The right to a fair trial cannot be limited; everyone enjoys the right to have any dispute decided in a fair and public hearing before a court or any other independent and impartial tribunal and body (Constitution of Kenya, Sec. 25, 50). A woman who due to the customs and manners of her community ought not to be compelled in public may be exempt from personal appearance before the court; it does not apply to the arrest in execution of civil process (Civil Procedure Act, Sec. 82). In addition, the Judicial Service Commission and the judiciary are obliged to facilitate access to justice to all Kenyans, and in exercising its mandate considers social and gender equity and the need to remove any historical factors of discrimination" (Judicial Service Act, Sec. 3).

The Constitution is the supreme law in Kenya and supersedes any other law recognised in the country: customary, Islamic or personal law (Constitution of Kenya, Sec. 2). Customary law can be applied in so

far it is consistent and harmonious with the Constitution and any other written law, and repugnant to justice and morality (Constitution of Kenya, Sec. 2; Judicature Act, Sec. 3), e.g. equal and non-discrimination and human dignity principles (Constitution of Kenya, Sec. 27, 28; CEDAW, 2017). Regarding Islamic law, jurisdictions of the Kadhi's courts covers matters related to personal status, marriage, divorce and inheritance in which parties involved profess the Muslim faith (Kadhis' Courts Act, Sec. 5). Nevertheless, they are not exempt from constitutional equality provisions, its decisions are reviewed by the High Court; also individuals may appeal of Kadhi's court ruling at the High Court (CEDAW, 2017).

Women face a number of barriers in equal access to legal and justice services such as: physical location of courts and lawyers; court and legal fees; legal aid services greatly developed and situated in urban areas; length of legal procedures; remaining power of customary law which determines woman's stand and her rights (CEDAW, 2016). Recently, women have been provided with the state legal aid programme covering the whole country with financing guaranteed by the government (Legal Aid Act, Sec. 36; CEDAW, 2017). Moreover, the mobile courts targeting vulnerable women from rural areas have been introduced (Beijing +20: Kenya's Report).

The law provides for special treatment of witnesses and victims of an unlawful act when the case comes before the court. There is the Witness Protection Programme that provides for protection of witness from identification, special commercial arrangements for witnesses requiring protection and immunity of witnesses from legal proceedings (Witness Protection Act, Part III, Sec. 26, 34). Moreover, the Sexual Offences Act includes provisions concerning vulnerable witnesses and their protection (Sexual Offences Act, Sec. 31, 32).

The National Gender and Equality Commission is mandated to monitor government implementation of its commitments to women's rights and gender issues (National Gender and Equality Commission Act, Sec. 8). It also monitors compliance of national laws and policies with international human rights standards. Moreover, the Commission has the power to receive and resolve complaints in any matter in respect of any violations of the principle of equality and freedom from discrimination (National Gender and Equality Commission Act, Sec. 8, 32). The body is also tasked with conducting education programmes and public awareness campaigns on gender equality and women's rights (National Gender and Equality Commission Act, Sec. 8). In addition, the production, collection and dissemination of sex-disaggregated data and gender statistics is an objective of the Kenya 2030 Vision.

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