**KENYA**

1. Discriminatory family code

The New Kenyan Constitution provides that parties to a marriage between a woman and man will be entitled to equal rights at the time of marriage, during the marriage and at its dissolution.\(^1\) The 2008 Marriage Act provides a minimum age of marriage of 18 for women and men, and the Children’s Act of 2001 expressly forbids early or forced marriage.\(^2\)

In 2013, a new Marriage Bill, which seeks to harmonize and consolidate all the substantive marriage laws, give equal legal recognition to all types of marriages and provide for a simplified procedure for matrimonial matters,\(^3\) was passed.\(^4\) The bill consolidates existing legislation relating to marriage, making it much easier for married women to understand their rights.\(^5\) It also allows for the registration of marriages performed under customary law.\(^6\) A new law that went into effect in Kenya in April 2014 makes it legal for a man to marry as many women as he wants. The Marriage Bill 2013 initially allowed the first wife the right to veto the husband’s choice of additional spouses but this clause has since been removed in the Marriage Act 2014.\(^7\)

Statutory marriage stipulates that parental authority be equally shared by men and women and there are no legal grounds to prevent married or unmarried women from becoming heads of household.\(^8\) However, Muslim and customary marriages are discriminatory in this matter.\(^9\) According to the Kenyan National Bureau of Statistics, there are approximately 4.3 million Muslim identified citizens in the country, composing a significant portion of the population.\(^10\) Further, custody is almost always awarded to the father when a customary marriage ends in divorce.\(^11\) The Children’s Act of 2001 also stipulates that the children born to unmarried

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\(^1\) Constitution of Kenya (2010) Article 45 (3)
\(^3\) CEDAW (2010), p.6
\(^5\) CEDAW (2010) pp.22-23
\(^6\) CEDAW (2010) pp.22-23
\(^8\) World Bank (2013a)
\(^10\) Kenyan National Bureau of Statistics (2011) http://www.knbs.or.ke/Population%20by%20Religious%20Affiliation%20and%20Province.php (accessed 15 December 2013); for comparative purposes, the largest religious groups are Catholics (approximately 9 million), and Protestants (18.3 million).
\(^11\) CEDAW (2006) p. 46
mothers are the sole responsibility of the mother; only when the father claims responsibility or lives with the mother for 12 months following birth does he gain legal responsibility.\textsuperscript{12}

In 1981, Kenya established an \textit{inheritance} law (The Law of Succession Act) that enforces equality between men and women, and the 2010 Constitution provides equal inheritance rights to women and men.\textsuperscript{13} However, in practice, these rights are not applied equally to all citizens and some judges do not respect the law, or determine that a property or inheritance dispute should be determined by customary law, which can discriminate against women.\textsuperscript{14} For example, judges sometimes rule that married daughters are ineligible to inherit or, in cases in which the heirs are in dispute, they may transfer the affair to an elders council that follows discriminatory customs.\textsuperscript{15} Divorced and separated women are vulnerable since are both formal and informal court systems discriminate against women.\textsuperscript{16} Under Islamic law daughters typically inherit only half of the share to which sons are entitled. Wives receive one-eighth of a husband’s estate if there are children, or otherwise one-fourth. Wives in polygamous Muslim marriages would share the one-eighth or one-fourth.\textsuperscript{17} The 2010 CEDAW report notes, however, that in some recent inheritance cases, judges have in fact referred to the provisions in CEDAW and other international legal instruments to rule in favour of daughters receiving an equal share of inheritance.\textsuperscript{18} Additionally, the 2012 National Land Commission Act, one of three land reform laws passed that year, established a National Land Commission for the management of land in Kenya, in part to remove the current discriminatory practices against women in the formal and informal court setting.\textsuperscript{19}

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The 2013 Marriage Bill stipulates grounds for \textit{divorce} in all instances – in cases of Christian, Hindu, Muslim, and customary marriages.\textsuperscript{20} In cases of Christian, Hindu, and customary marriages, the grounds include: desertion, adultery, cruelty (mental or physical), and, in the case of Hindu marriage only, “that the marriage has irretrievably broken down.”\textsuperscript{21} Muslim divorce is governed by Islamic law.

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\textsuperscript{13} Constitution of Kenya, Article 45(3); The Law of Succession Act, Article 35; World Bank (2013a)
\textsuperscript{15} Ellis et al (2007) p. 29.
\textsuperscript{16} Harrington and Chopra (2010).
\textsuperscript{17} Ellis et al (2007) p. 27.
\textsuperscript{18} CEDAW (2010) pp.6-7
\textsuperscript{21} Government of Kenya (2013)
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2. Restricted physical integrity

There is no specific law against domestic violence.\(^{22}\)

As of 2010, a number of other bills designed to protect women’s rights had been drafted including the Family Protection Bill (addressing domestic violence).\(^{23}\) No information could be found on the status of this draft Bill. According to the country’s previous two reports to CEDAW, police are frequently reluctant to intervene in what they consider to be a ‘family matter’.\(^{24}\)

According to a study conducted by the Federation of Women Lawyers in Kenya, “women are most often violated by their male relatives mainly as a result of the skewed power equation at the domestic level.”\(^{25}\) Almost half of Kenyans find intimate partner violence acceptable. Given five reasons why a man might be justified in beating his wife, 43.7% of men and 52.6% of women interviewed for the 2008/09 Demographic and Health Survey (DHS) agreed with at least one reason.\(^{26}\) It is notable that, in addition to the overall lower percentage of agreement by men, compared with women, men were also less likely to support wife beating for each of the five reasons.\(^{27}\)

Under the Sexual Offences Act (2006),\(^{28}\) all forms of sexual assault are criminalized. Under the Act, a person commits rape if “he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs” which is not consensual, and the crime is punishable by 10 years to life imprisonment.\(^{29}\) Under the Act, consent cannot be granted by a disabled person or a child under 18; however, marital rape is not specifically addressed, nor is it clear whether the perpetrator can escape prosecution for rape by marrying the victim.\(^{30}\)

In 2011, official police statistics indicated 4,517 cases of gender-based violence, including 934 cases of rape, but according to the US State Department’s 2012 human rights report, human rights organisations put the number much higher.\(^{31}\) The 2008/09 DHS survey found that 60% of women who have been married, divorced or separated have experienced violence.\(^{32}\) 12% of women aged 15-49 reported that their first sexual experience was forced against their will.\(^{33}\) 41% of women reported experience physical and/or sexual violence in their lifetime.\(^{34}\)

Of the female respondents to the DHS survey who did experience violence, 45% never told anyone about it and never sought help.\(^{35}\) The police and the justice system rarely prosecute
cases of rape, and local women’s rights organisations claim that police reluctance to investigate rape cases, and procedures in handling rape cases act as a significant deterrent to reporting (for instance, requiring that victims be examined by a police physician before any investigation can be initiated). There is also a culture of silence around gender-based violence that makes both reporting acts of violence and the collection of data on the matter challenging.

There were widespread reports of rape and sexual assault during the post-election violence in Kenya in 2008. The 2010 CEDAW report states that at least 1500 women are known to have been raped during the violence, many subjected to gang rape. The report also states that much of the sexual violence was ethnically driven. In 2008, the Truth, Justice and Reconciliation Act was passed to establish of a commission to investigate the violence and enable victims to seek redress.

**Sexual harassment** is addressed under the Sexual Offences Act, where it is defined as “any person who, being in a position of authority, or holding public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome.” Under the Act, the punishment for those found guilty of sexual harassment is no less than 3 years imprisonment or a fine of 100,000 shillings, or both. Sexual harassment is also addressed in Employment Law, but according to the latest report by the US Department of State, sexual harassment laws were not effectively enforced.

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Currently in Kenya, the law does not allow abortion in any circumstances, however in some previous cases, doctors have been permitted to carry out abortions in cases where the woman’s life was in danger. A Reproductive Health and Rights Bill, which would allow abortion in cases of rape, as well as safeguard the reproductive health of women and girls in Kenya, has been under consideration since 2010.

**3. Son bias**

The male/female sex ratio for the working population in 2014 is 1.01 while the sex ratio at birth is 1.02. There is evidence to suggest that Kenya is a country of low concern in relation to missing women due to high rates of AIDS mortality.

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36 US Department of State (2012)
37 Measure DHS (2010) p. 245
38 US Department of State (2012); See also CEDAW (2010) p.5
40 CEDAW (2010) p.11
41 CEDAW (2010) p.5
42 Sexual Offences Act, 2006
43 Sexual Offences Act, 2006
45 US Department of State (2012).
46 United Nations Department of Economic and Social Affairs (UN DESA) (2013).
47 CEDAW (2010) p.73
48 CIA (2014)
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UNICEF provides data on education from 2008-2012. The gender gap in pre-primary and primary education is very small, in detriment of girls. The trend is more significant in secondary education.\(^{49}\) Data on the gender division of household chores between girls and boys was not located. Based on 2002-2012 data from UNICEF, child labour slightly affected males more than female children.\(^{50}\)

Malnutrition data from 2009 indicates that male children were more vulnerable in this regard than females.\(^{51}\)

4. Restricted resources and assets

The Constitution guarantees equality of ownership rights for all Kenyan citizens. Women are free to buy, own and sell assets as they choose.\(^{52}\) However, in practice women’s access to land and access to property other than land are severely restricted by customary law, which prohibits women from owning or inheriting land and other forms of property.\(^{53}\) Women in Kenya are granted “life interest” in property rather than full ownership, which prevents them from using it as collateral for bank loans or from disposing of it as they see fit. In the event of her husband’s death, this “interest” disappears upon remarriage.\(^{54}\) In fact, according to the Food and Agriculture Organisation (FAO), women are only 5% of registered landholders.\(^{55}\) Even when women are able to acquire assets in their own name, their husbands often act as intermediaries in the transaction.\(^{56}\)

There have been several recent advances in legislation addressing women’s land rights. The National Land Policy adopted in December 2009 calls for the government to repeal existing laws and outlaw regulations, customs and practices constituting discrimination against women and children in relation to land ownership.\(^{57}\) In 2012, three laws that aimed to harmonize the various land laws were adopted: Act No. 5 of 2012, National Land Commission Act; Act No. 6 of 2012, Land Act; and Act No. 3 of 2012: Land Registration Act.\(^{58}\) According to the FAO, while the National Land Commission Act provides an opportunity for women to be heard with regards to their land claims, it does not provide for gender balance.\(^{59}\) Further, the Land Act creates an Environment and Land Court for determination of land rights, which advocates hope will override discriminatory customary practices. However, it is unclear how these laws are being

\(^{50}\) UNICEF. http://www.unicef.org/infobycountry/kenya_statistics.html (accessed 25/04/2014)
\(^{52}\) Sections 75 (1) and 81 (1) of the Constitution of Kenya in CEDAW (2006) pp. 40, 42, 46
\(^{56}\) Ellis, pp. 22-25
\(^{57}\) Gatundu (2012) p. 5.
\(^{59}\) FAO (n.d.)
implemented in practice, and whether they have yet been successful in curbing discriminatory practices against women with regard to land rights.

Since they rarely have assets of their own, Kenyan women historically have had trouble providing the collateral required by lending institutions, making it difficult for women to access financial services. According to the latest report to CEDAW, the government has initiated several schemes to enable women to obtain credit, including microcredit. According to the latest data from the World Bank, in 2011, 39.2% of women had accounts at formal financial institutions, compared to 45.6% of men, while the percentage of men who had loans from financial institutions in the past year – 12.8% -- was double that of women – 6.8%. However, women do make up over half (53.81%) of borrowers at microfinance institutions.

5. Restricted civil liberties

There do not appear to be any legal constraints on women’s freedom of movement and access to public space in Kenya. Previously existing requirements that women secure their husband’s or father’s consent before obtaining a passport have been removed. However, of the women interviewed for the 2008-2009 DHS, 26.3% reported that their husbands usually had the final say in deciding whether they were allowed to visit family and relatives. The freedom of movement is further contingent on class: according to Amnesty International’s 2011 shadow report to CEDAW, forced evictions in Kenya’s slums and informal settlements are common, and women are especially vulnerable to forced removals. Women have the same right as men to pass Kenyan citizenship onto their children.

Women and men enjoy the same rights to vote and stand for election in Kenya, although women standing for public office often face hostility. However, in public surveys, a majority Kenyans indicate that they believe that men and women are equally capable as political leaders, such as the 62% that provided this answer in a 2007 Pew survey. Quotas have also been legislated at the national and sub-national levels to encourage women’s political participation, and several of the main political parties have enacted voluntary quotas that reserve one-third of the seats for women (although the latter has not always been put into practice).

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60 CEDAW (2010) pp.63-64
61 World Bank (2013b) Global Financial Inclusion Database [database]
62 Microfinance Information Exchange (2013)
63 CEDAW (2010) p.37
64 Measure DHS (2010)
66 Constitution of Kenya, Article 14(1); Kenya Citizenship and Immigration Act, 2011, Articles 6 and 7; World Bank (2013a)
67 Freedom House (2010)
68 Pew Research Center (2007), Question Q.43
Under the Employment Act of 2007, female employees in Kenya are entitled to three months of paid maternity leave, and their employers are required to pay 100% of their wages during their leave. Under the same Act, fathers are entitled to two weeks paternity leave. There are no other protections for pregnant women written in law.

As a way to empower women socially and economically, KenTel, Rwanda Telecentre Network and Southern Africa Telecentre Network implemented a digital literacy programme targeting women in rural and urban areas. Known as the Telecentre Women Campaign, the initiative aimed to empower disadvantaged women with ICT knowledge for personal growth and greater opportunities. As a result, from July to November 2013, 300 women from Kenya, Rwanda and Zambia gained basic knowledge of ICT to help them improve their businesses and employment.

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71 CEDAW (2010) p.73
72 ILO (2011)
73 Telecentre Women, http://women.telecentre.org/?page_id=224
Sources


