



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

Distr.: General
24 March 2010

Original: English

**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**

Seventh periodic report of States parties

Kenya*

* The present report is being issued without formal editing.

**THE 7TH PERIODIC REPORT OF THE GOVERNMENT OF THE REPUBLIC OF KENYA
ON IMPLEMENTATION OF THE INTERNATIONAL CONVENTION ON THE
ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)**

Introduction

1. The 7th Report of the Republic of Kenya on its implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has been prepared under the auspices of the Ministry of Gender, Children and Social Development in collaboration with various government and non-government organizations. Preparation of the report was preceded by workshops organized for representatives of all government ministries and several civil society organizations (CSOs) to consider the meaning and applicability of CEDAW in the country, government's commitments to its implementation and to share information on measures that the government has, so far, taken towards implementation as well as enduring and emerging challenges to government's implementation efforts. The report covers the period of February 2006 to April 2009.
2. This report has been prepared in the context of dramatic changes in Kenya's political, social, cultural and economic environments ensuing from the post election crisis that resulted in widespread violence which was prompted largely by the results of the last presidential and parliamentary (general) elections held on December 28th 2007. Soon after the outcome of elections were announced on December 29th 2008, violence ensued, spreading all over the country and lasted until March, 2008, with some parts of the country experiencing the violence for a longer period. During that time, the country witnessed unprecedented levels of all kinds of violence including the wanton killing of at least 1,133 people, rape of at least 1500 women and girls, destruction of property worth billions of shillings and internal displacement of at least 350,000 people in Kenya, many of them women and children.¹ A National Humanitarian Assistance Fund and a new Directorate for Resettlement were established by the Kenya government.
3. As a compromise between the party that took over the country's governance and the opposition party and in order to restore peace, law and order in the country, the country's 10th Parliament, with strong support and facilitation of the international community, enacted the National Accord and Reconciliation Act, No. 4 of 2008. The Act which commenced on 20th March 2008, legitimized an agreement between the government and the opposition for the establishment of a coalition government, marked principally by the establishment of the office of the Prime Minister and his deputies and inclusion of the Prime Minister, his deputies and parliamentarians from both the ruling and opposition parties in the governance of the country. The country's Constitution was amended to reflect the changed governance structure by the Constitution of Kenya (Amendment) Act, No. 2 of 2008 and the Constitution of Kenya (Amendment) Act, No. 10 of 2008 while provisions were made for the establishment of an Interim Independent Electoral Commission to succeed the Electoral Commission of Kenya, which has been disbanded and to reform the electoral process in order to institutionalize free and fair elections.

4. Calm has generally returned in the country, but the post, election violence has eroded many of the gains Kenya had realized prior to December 2007. Besides the loss of life and property, there is increased vulnerability to HIV infection due to the widespread incidents of rape. Many displaced persons who had been placed on HIV/AIDS management antiretroviral drugs lost their drugs and were unable to access new supplies or replacement during the violence thus raising fear of drug-resistant strains of HIV and because subsistence and economic activities were halted by the violence for a long period of time, there is now widespread poverty in the country, a high inflation rate and diminished government revenues.
5. In keeping with CEDAW Committee's Guidelines on the form and content of reports (document No. HRI/GEN/2/Rev.1/Add.2), this report proceeds to present, on an article-by-article basis, progress made on CEDAW implementation measures and how efforts so far made translate into improvement of women's lives, as well as emerging and enduring obstacles to women's progress in various areas since Kenya's last (5th and 6th) reports were submitted to the Committee. Under each article, this report includes information on progress and challenges which provide further answers to concluding comments and concerns expressed about the last country reports to the Committee. It is noted that some of the reported government's efforts to implement CEDAW were also intended to meet commitments made in other international instruments with provisions related to women's development, such as Beijing Platform for Action and the Millennium Development Goals.²

ARTICLE 1 – DEFINITION OF DISCRIMINATION

6. Discrimination against women in Kenya is based on sex and buttressed by a number of other non-gender factors, including political affiliation and ethnicity or tribal origin and has been manifested in many forms, including gender-based violence. Since the last country report was submitted in the year 2006, some progress has been made towards compliance with CEDAW's definition requirement.
7. **Definition cognizant of CEDAW, Article 1 requirement was included in both versions of the revised (proposed) constitution.** In the Proposed New Constitution, discrimination was defined in section 37 (1) to include discrimination on the basis of sex as follows:

“The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.”
8. Section 37 goes further to state, in 37(2) that a person shall not discriminate directly or indirectly against another person on any ground in terms of clause (1).
9. **The Constitution of Kenya Review Act, No. 9 of 2008 was passed to provide a legal framework for the review of the constitution** and to provide legal basis for establishment of organs charged with the responsibility to facilitate review.³ Incorporation of the improved definitions of discrimination is indicative of the government's awareness of its CEDAW

obligations and efforts made to meet them. Although the reviewed and improved constitution was defeated in a national referendum conducted in the year 2005, the government has now renewed its commitment to complete the review process. Completion of the review of Kenya's constitution is part of the agreement mediated by Mr. Kofi Annan that brought the coalition government into existence. With a lot of international support that the intended constitutional review process now enjoys, there is hope that Kenya may soon have a definition of discrimination that is compliant with CEDAW's requirement. A team of international and local experts which includes 2 Kenyan women has been formed to oversee the review process. It is expected that a new constitution will provide an accurate definition of discrimination and that it will also embody the principle of equality.

10. **Challenges and obstacles:** One of the challenges to constitutional development in Kenya is that there is no certainty of the continuity of the current Parliament to 2012 due to difficulties in reaching agreements in the coalition government. Prosecution of post-election violence perpetrators may disrupt government functions, including the current constitutional review efforts. Efforts are being made by the government to set up a local special tribunal to try the perpetrators of the 2007 post election violence locally; this would see more perpetrators brought to book than would the International Criminal Court (ICC).
11. Another challenge that might stand in the way of constitutional review progress is that the current global economic crisis could cause financial constraints which may affect a number of the planned projects, programmes and activities including review of the constitution.

ARTICLE 2 – MEASURES FOR ELIMINATION OF DISCRIMINATION AGAINST WOMEN

12. **Kenya government has taken a number of legislative, judicial, administrative and programmatic actions towards elimination of discrimination against women in a number of sectors** since the presentation of the last country report. In the area of legislation, a number of laws have been passed which explicitly outlaw discrimination against women. For example, the new Employment Act, No. 11 of 2007 which came into force in December 20, 2007 expressly prohibits discrimination and harassment of actual and prospective employees on the basis of sex in section 5(3)(a) thereof. It provides that:

“No employer shall discriminate directly or indirectly against an employee- on grounds of race, colour, **sex**, language, religion, political or other opinion, nationality, ethnic or social origin, disability, **pregnancy**, mental status or HIV status; in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.”

13. **Kenya's new Employment Act is progressive in advancing the rights of women in employment and in the work place by specifically outlawing discrimination against women on pertinent employment matters, based on sex and pregnancy.**

14. **The National Cohesion and Integration Act, No. 12 of 2008**, has been enacted to address the issue of ethnicity in recognition of ethnicity as a catalyst for violence and discrimination, including discrimination against women. Kenya's Parliament, soon after post-election violence in early 2008, enacted the National Cohesion and Integration Act, No. 12 of 2008 whose objective is "to encourage national cohesion and integration by outlawing discrimination..."⁴ Section 3 of the Act prohibits discrimination on ethnic grounds while Section 4 of the Act forbids "discrimination by way of victimization." Section 7 of the Act forbids discrimination in employment on the basis of ethnicity. Other key sections of the Act are 11 and 12 which forbid discrimination in access to land and discrimination in access to other property, respectively.
15. **The Truth, Justice and Reconciliation Act, No. 6 of 2008 has been passed.** In recognition of the gravity of human rights abuses committed in the country since it attained independence and the need to provide redress; and prompted by atrocities committed not only during post-election violence in late 2007 and early 2008 including violence committed against women and young girls but also those committed in previous years, the government passed the Truth, Justice and Reconciliation Act, No. 6 of 2008 to provide for the establishment of truth, justice and reconciliation commission whose functions are, *inter alia*,
- "to establish an accurate, complete and historical record of violations and abuses of human rights and economic rights inflicted on persons by the State, public institutions and holders of public office between 12th December 1963 and 28th February 2008, by, among other things, conducting investigations and holding hearings to establish cases, nature and extent of gross violations of human rights and economic rights...investigate **sexual violations**, massacres, and extra-judicial killings to determine those responsible and determine ways and means of redress" [emphasis added].⁵
16. **Truth, Justice and Reconciliation Act is being implemented** and the Government is in the process of appointing Commissioners to undertake the task.
17. **The Witness Protection Act, No. 16 of 2006 has been enacted.** Many women victims of sexual abuses, domestic violence and other abuses endure suffering without seeking legal redress due to fear of reprisals. In response, Kenya's Parliament enacted the Witness Protection Act, No. 16 of 2006 which commenced on 1st September 2006, to provide for protection of witnesses in criminal and other proceedings. Among other things, the Act establishes a Witness Protection Programme, which includes protection of witnesses from identification (Part III), special commercial arrangements for witnesses requiring protection (section 26) and immunity of witnesses from legal proceedings (section 34).
18. **The Kenyan Law Reform Commission has now refined and redrafted various bills which are progressive to women's rights.** The Bills have been submitted to the Cabinet for approval thereafter they will be presented to parliament for debate and enactment. This is in recognition of the need for women's protection on matters concerning marriage and family and the complications, contradictions and inequalities wrought by the existence of various marriage laws. The refined and redrafted include:

- (i) **Family Protection Bill of 2007** which seeks to address domestic violence against women within family settings;
 - (ii) **Marriage Bill of 2007** 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; and
 - (iii) **Matrimonial Property Bill of 2007** which makes clearer provisions for married women's rights to ownership, access, control and disposition of matrimonial property.
19. **Equal Opportunity Bill of 2007 has been redrafted by the Law Reform Commission using the lapsed Equality Bill.** The Bill has been submitted to Parliament to pass into a law which protects and promotes equality between men and women in all spheres of life and specifically outlaw discrimination based on gender. If passed, the law would legalize the requirement of equality of all citizens irrespective of their gender and outlaw all forms of discrimination in line with the Proposed New Constitution. In order to address the issue of delay which has hampered the passage of the bills over a period of time, the Ministry of Gender, Children and Social Development has in its strategic Plan prioritized steps to be taken ensure their enactment.
20. **There has been positive and encouraging progress in judicial processes** which have set and clarified the applicability of CEDAW in Kenyan courts as well as provided the legal framework for CEDAW's applicability in the country besides progress in the legislative arena.
21. **Courts in Kenya have directly applied CEDAW provisions as legal authority** in a number of cases to determine pertinent matters concerning women including forced marriages and property inheritance following the CEDAW requirement that women shall not be discriminated against. Being a Common Law country, Kenya, legally, requires national implementing legislation for every international agreement it ratifies, to operationalize the applicability of the agreements within the country. However, there is no national implementing legislation for CEDAW or for many of the international agreements that the country has ratified over the years or an umbrella national legislation authorizing the domestic application of all international agreements which Kenya ratifies. This means that there would be no legal framework for applicability of CEDAW in the country, despite government's commitment to implement it expressed by its ratification. This is a problem that hampers implementation of international agreements in many countries. In Kenya, the problem is being overcome by the judiciary in their judicial decisions, especially in relation to applicability of CEDAW.
22. In *Mary Rono vs. Jane Rono*⁶ which involved the issue of distribution of assets of the estate among beneficiaries of the estate of *Rono* who had died intestate, the key question was whether it was proper and lawful for the lower court to award less acreage of land forming part of the estate to daughters of the deceased on the basis that they were women and had prospects of marrying in future, thereby inheriting property elsewhere. The judge, after considering provisions of the Law of Succession Act, which deferred matters concerning customary land ownership to discriminatory traditional customs, further and substantially considered the relevance and applicability of

international law to the determination of the case. The judge observed that Kenya has ratified CEDAW, the International Covenant on Civil and Political rights, International Covenant on Economic Social and Cultural Rights and the African Charter on Human and People's Rights and that although the country ascribes to the Common Law theory that international customary and treaty law only forms part of domestic law where it has been specifically incorporated by implementing legislation, the current thinking on the Common Law theory is that both international customary and treaty law can be applied by state courts where there is no conflict with existing state law, even in the absence of implementing legislation. He further relied on case law from other African Jurisdictions like Zambia in the case of *Longwe vs. International Hotels*⁷ These led the court to reach the conclusion that the central issue relating to discrimination, which the matter raised, could not be fully addressed by reference to domestic legislation alone and that the relevant international laws which Kenya has ratified, specifically, CEDAW, would also inform the court's decision.

23. **The first direct application of the provisions of CEDAW by the court** - On the basis of CEDAW's provisions against discrimination, the court ruled that the deceased's land, which was at the centre of the succession dispute, be equally and equitably shared by the deceased's 9 sons and daughters, each receiving 14.44 acres thereof. In the case, the court, for the first time, directly applied CEDAW to determine a delicate inheritance matter that until the decision was determined against the rights and interest of women. The decision, which was issued in April 2005, is now the guiding authority on matters of inheritance, especially where inheritance rights of daughters and widows are in question and has been used by High Court judges when deciding on succession cases in several different communities whose customary laws do not allow inheritance a deceased person's property by daughters.
24. **Subsequent application of the provisions of CEDAW by the court** - In High Court Succession Cause No. 1263 of 2000 – *In the Matter of the Estate of Lorionka Ole Ntutu (Deceased)* the contention concerned distribution of the property of the deceased's estate among his children, with sons contending that distribution of the deceased's estate was, by law governed by Maasai customary law which does not recognize the right of daughters to inherit the estate of their fathers.
25. The court, in deciding the matter, made reference to *Rono v. Rono* in which the judge cited provisions of CEDAW and other international convention as authority and issued a ruling affirming that section 83(4) (b) of the Kenya constitution which allows discrimination on the basis of sex on matters of personal law cannot be used to discriminate against women in property inheritance because Kenya has ratified CEDAW and other international instruments which outlaw discrimination. The court stated that:

“...Mr. Mukumi while agreeing on the principle and the spirit of the non-discrimination enshrined in the Constitution, emphasized on the provisions of section 82(4) which according to him protects or approves the laws as regards devolution of property on death or any other matters of personal law. I do note that the said proposition seemingly makes that exception, But if one goes to the history of amendment in section 82(3) which included the words “**or sex**” in my view the spirit of the Constitution cannot be perceived

to be one as submitted by Mr. Mikumi. Kenya has ratified all the international covenants and treaties before the said amendment was made in the Constitution. Section 82(a) was enacted along with the original provision of section 82(3) which did not include discrimination on the ground of sex, and after the passage of several treaties and covenants, it was found necessary to make the amendment to include prohibition of discrimination on the basis of sex. In the circumstances, one can safely presume that the said amendment was found necessary after Kenya was exposed to international laws, its value and spirit.

Kenya was aware of the discriminatory treatment of women in all aspects of customary and personal laws. Hence Kenya knowingly and rightly took a bold step to eliminate discrimination of all manners and types against women. That is where the country's aspiration has reached and is rightfully intended to stay...Constitution of any country of the world should not represent a mere body or skeleton without a soul or spirit of its own...Thus in my opinion, the provisions of section 82(4) (b) was not and cannot have been made to deprive any person of their social or legal right only on the basis of sex. Finding otherwise would be derogatory to human dignity amongst sex universally applied. I shall add that taking the view otherwise shall definitely create imbalance and absurd situation.

I shall without any reservation find that even if the provisions of section 32 (The Law of Succession Act) do apply to Uasin Gishu area and even if Maasai customary law would be applicable to the estate, the customary law which shall abrogate the right of daughters to inherit the estate of their father cannot be applicable as it shall be repugnant to justice and morality. (section 3(2) of the Judicature Act)...Thus I do find that the Objector daughters are entitled to inherit from the asset of the estate known as L.R. Narok/Cismara/Ochora Oirwua/24.”

26. **The HIV and AIDS Prevention and Control Act, 2006 has been given a commencement date.** The Act has the potential to promote women's protection against rape and other sexual abuses, as well as other forms of injustices related to sex and gender because it: prohibits knowing infection with HIV (section 26 thereof); provide measures for the prevention, management and control of HIV and AIDS, provides for the protection and promotion of public health and for the appropriate treatment, counseling, support and care of persons infected or at risk of HIV and AIDS infection; and prohibits discrimination in the work place, schools, health institutions including prohibiting any restriction on travel or habitation or inhibition from public service or denial of burial services, or exclusion from credit and insurance services on the grounds only of actual, perceived or suspected HIV status. The Act prescribes a penalty for such discriminatory acts and practices as criminal offences. The impact of this Act is yet to be realized as the Act has a commencement date of April 30, 2009.
27. **Kenya's Parliament passed the Sexual Offences Act, 2006.** The Act which should be a milestone in significantly reducing sexual violence in all its forms and manifestations in Kenya. The Act prohibits all forms of sexual violence and abuse, including sexual violation of women and

provides for hefty penalties for rape and other forms of sexual violations which should have deterrent effect. The Attorney General of Kenya appointed and launched a Multi-Sectoral Task Force on the Implementation of the Sexual Offences Act, 2006 with specific terms of reference to prepare and recommend a National Policy framework and guidelines for the implementation and administration of the Sexual Offences Act, 2006, and to propose effective measures to secure acceptable schemes, programs and other mechanisms for the protection, treatment and care of victims of sexual violence as well as the treatment, supervision and rehabilitation of sexual offenders among other things.

28. **Provincial sensitization and training programs for prosecutors and other stakeholders** have been conducted by Task Force on the Guidelines for Prosecutors under the Sexual Offences Act, 2006. In the discharge of its mandate, the Task Force is guided by the principles of gender equity, sensitivity and human rights.
29. **Sexual Offences Regulations** - While progress of the Task Force is going on, the Sexual Offences Act is already being applied in many cases and positive results are expected. Further, by Legal Notice No. 132 of 17th October 2008 and Legal Notice No. 133 of 2006, detailed Sexual Offences Regulations were issued to enhance sentences for sexual offenders and authorize the establishment of a Dangerous Sexual Offenders' DNA Data Bank which shall consist of crime scene index and dangerous offenders' index, including their DNA to strengthen offender identification procedures in cases of rape. The Regulations allow profiling of sexual offenders and the safe keeping of their DNA-related data for their entire lives.
30. **Implementation of the Sexual Offences Act, 2006 by the courts** - the first conviction under the Sexual Offences Act has been upheld by the Court of Appeal in a case which saw the life imprisonment of a child defiler in the following case: (*Criminal Appeal No. 80 of 2008 (Kisumu) Jacob Odhiambo Omumbo Vs Republic*).
31. **Implementation of programmes and activities to eliminate discrimination against women** - To complement legislative and judicial measures to promote women's rights, the Kenya government is currently implementing a number of programmes and activities alone and in collaboration with partners. The Government is continuing to implement, in collaboration with development partner a reform program in the Governance, Justice, Law and Order Sector (GJLOS) covering over thirty (30) Ministries, Departments and Agencies through the Ministry of Justice, National Cohesion and Constitutional Affairs. The GJLOS Reform Program's Vision is "A safe, secure, democratic, just, corruption - free, human rights respecting and prosperous Kenya for all." Its Mission is "To reform and strengthen sector institutions for enhanced protection of human rights, efficient, accountable and transparent governance and justice." In pursuit of this vision and mission, GJLOS is committed to shared values which include rights based reform, gender responsiveness among others.
32. Since its inception in 2003, GJLOS has been integrated into Government plans, programs and budgets. Impacts of GJLOS include collaboration with local leaders, which has seen the relocation of at least 20 widows who had been evicted from their families due to their objection to forced

widow inheritance. Relocation exercise includes educating society members on women's rights and legal prohibition of inheritance rights abuses and help with re-construction of demolished houses.

33. **National Legal Aid and Awareness Programme (NALEAP)** - The Kenya government is, in collaboration with development partners, implementing A National Legal Aid and Awareness Programme (NALEAP) under the Ministry of Justice, National Cohesion and Constitutional Affairs. The NALEAP was officially launched by the Government in September 2008. In partnership with the judiciary and civil society organizations, the Scheme is already providing legal aid to Kenyans, including women who have, hitherto, been unable to access legal aid and related education due to prohibitive costs and financial and physical inaccessibility. Once Schemes pilot stage is over, its successes and challenges will be comprehensively assessed with a view to roll it out nationally. Currently, it is providing an avenue for women in areas already covered to seek redress for violations of their rights through the court system, with legal assistance of competent personnel appointed under the Scheme.
34. **Vision 2030** -The Government has developed an ambitious national plan and strategy for the country dubbed Vision 2030. This plan sets out a national vision to be achieved in the year 2030 through three key pillars i.e. political, economic and social pillars. Under the social pillar, Vision 2030 goal is "A just and cohesive society enjoying equitable social development in a clean and secure environment." The social pillar has identified Gender concerns and in particular equity in power and resource distribution between the sexes as a priority. It aims at increasing all round opportunities among women and increase the participation of women in all economic, social and political decision making processes. It seeks to do this by starting with higher representation of women in Parliament, improving access to business opportunities, health services, education services, housing and justice to all disadvantaged groups including women, persons with disabilities, the youth, people living in arid and semi-arid lands (ASAL'S) etc, minimizing vulnerabilities through prohibition of harmful cultural practices such as Female Genital Mutilation/Cutting (FGM/C), increasing school enrolment for girls and children from nomadic communities and poor rural and slum communities, attaining gender parity and fairness in the delivery of justice including up scaling training for people with disabilities and special needs.
35. **The Women Enterprise Fund** - Kenya's Vision 2030 has flagship projects to be implemented during the first five year medium term plan 2008 - 2012 to promote women's rights. One of them is the Women Enterprise Fund including increasing its overall amounts and efficiency in projects launched by its beneficiaries. The second one is the establishment of the Social Protection Fund to support vulnerable indigent/poor women in Kenya is also another flagship project under the social pillar of Kenya's Vision 2030 to be established by 2012. These two flagship projects will go a long way in addressing the critical gap in the economic and social field for women.
36. **Challenges and obstacles:** Despite progress made, some of the old challenges persist while new ones have emerged. Although measures are currently being taken to provide legal information on rights, the measures taken so far are limited in scope and resources. The legal rights awareness workshops in the districts and provinces target limited number of participants, leaving out the

majority of the population. The programmes largely depend on donor funding which, at the moment, has greatly reduced, making the future of most of the programmes uncertain. As a result of these challenges, among others, the situation of women in relation to legal protection remains, largely, poor as indicated by the increasing number of rape cases in the country presented Table 1 below.

TABLE 1: Annual Crime Statistics, 2002-2008

Cases reported to police stations	2002	2003	2004	2005	2006	2007	2008
Rape including attempt	2005	3317	3439	3145	3313	3517	3126
Corruption	76	62	182	107	252	177	133

Source: The Government of Kenya, Ministry of Planning and National Development, Monitoring and Evaluation Directorate, *The Third Annual Progress Report (2005-2006)* at 124, Kenya Economic Survey 2008 and Department of Kenya Police

37. The figures reported in Table 1 above do not include the high incidence of rape of women and young girls before, during and after post-election violence of late 2007 and early 2008. It is reported that during that time, 1,500 women were raped, many of them gang raped and that in the process, many people were infected with HIV. It is suspected that the number of women who suffered sexual and gender based violence is higher but many rape cases which occurred during that period were unreported because law and order broke down and many of the rape victims were subsequently killed. The Report of the Commission on Post Election Violence in Kenya '*Waki Report*' states that because of the context in which it took place, the sexual violence experienced took the form of gang and individual rapes, many of which were ethnically driven, as well as horrendous female and male genital mutilation.
38. Many victims of sexual violence experienced other injuries, lost family members, their houses, property, had no place to go or to turn for help, and have ended up alone or in IDP camps without a means of earning a living. There were allegations that perpetrators of sexual violence included Kenya's security forces, including members of the General Service Unit (GSU), members of the Armed Forces and administration police and members of the security forces. In order to address the allegation of the involvement of security forces in sexual violence, the Police Force has set up a Task force to investigate the accusations against the police officers involved.
39. Challenges facing these new legislative developments include harnessing the political will and involvement of men in promoting gender equality. The civil society organizations have been addressing these by conducting education and awareness raising on human rights targeting men and women in country.

**ARTICLE 3 – MEA ARTICLE 3 – MEASURES FOR DEVELOPMENT AND
ADVANCEMENT OF WOMEN**

40. In many ways, legislative and other measures elaborated under Article 2 above would, in effect, promote advancement of women in various areas. However, under this Article, it is necessary to document government measures specifically intended for the advancement of women.
41. **Policy and institutional framework** - Establishment of the Ministry of Gender, Sports, Culture and Social Services soon after national elections in the year 2003 marked the beginning of a focused consideration of the situation and status of women and their participation in various spheres of life on the country. Under the auspices of the Ministry, *Sessional Paper No. 2 of 2006 on Gender Equality and Development* was passed. It is the government's Policy on gender equality and development which states recognized gender inequalities, factors contributing to the unequal status of men and women and sets out government's commitment to address existing inequalities. The Policy is part of the government's commitment to address gender concerns expressed in gender and human rights international instruments to which Kenya is a party.
42. **Policy on Gender Equality and Development** expresses the government's commitment to advance the status of women as stated in CEDAW and other international instruments. The overall objective of the Policy is to ensure women's empowerment and mainstreaming of their needs and concerns in all sectors of development in the country so that they can participate and benefit equally from development initiatives. The Policy underlines the need to focus on empowerment strategies that not only demonstrates understanding of the essential linkages within sectors, but also recognizes that gender and development approach is cross-cutting and therefore, programme strategies should incorporate equality as a goal and mechanisms to achieve gender-balanced development through the removal of disparities between women and men.
43. **The Policy on Gender Equality and Development establishes institutions as well as programmes and activities** through which the specified government objectives would be met. The Ministry of Gender, Children and Social Services through the Department of Gender and the National Commission on Gender support gender mainstreaming in all government ministries, advice on the impact of all government policies on women, monitor the situation of women, help formulate policies and implement strategies to eliminate gender-based discrimination.
44. **Remedial programmes and activities**, set out in the Policy on gender equality and development include: institutionalizing mechanisms to promote the appointment of women to higher decision-making positions, working towards gender balance in national candidates for election or appointment to international and local bodies and resource mobilization. These programmes and activities are intended to address inequalities that exist in participation of men and women in various sectors including employment (Policy, pages 6-10) noting, for example that there were more poor women than men in both urban and rural areas (Policy, page 9).
45. **Establishment of the Ministry of Gender, Children and Social Development** - The former Ministry of Gender, Sports, Culture and Social Services has now been divided into two ministries.

The Ministry of Gender, Children and Social Development is the new lean and efficient mechanism to drive Gender mainstreaming and to promote implementation of international agreements that address gender equality. The Ministry has developed a strategic plan to guide its prioritized work of mainstreaming gender into all development process, engendering the national budget, promoting generation of sex disaggregated data to guide interventions, and enhancing collaboration and partnership with stakeholders for sustainable development.

46. **The Ministry of Gender, Children and Social Development has highly qualified professional staff.** The staff complement currently stands at 1,446, in post against the authorized requirement of 2,782 needed to implement the strategic plan. The ministry has departments in every district in the country and a gender officer in most every district. Out of 209 districts, 84 have District Gender and Social Development Officers. The Ministry's stakeholders include Development Partners, Academic and Research Institutions, Media and Public Relations Agencies, Civil Society, Community Based Organizations and Local Communities as well as the Judiciary, Private Sector, Line Ministries and Government Institutions⁸.
47. **Progress towards advancement of women** - Through Gender Division and the Gender Commission as well as other institutions created under the ministry, the government has made progress towards advancement of women in various sectors. These include:
- The establishment of gender focal points in all government ministries, (now numbering 41) to facilitate mainstreaming of gender issues in all government ministries and departments;
 - Development of a Service Charter indicating service-related commitments to improve services in various areas;⁹
 - Development of a Training Manual on Gender Mainstreaming to co-ordinate and harmonize gender mainstreaming initiatives by various government and non-government actors;
 - Development a monitoring and evaluation system to track gender mainstreaming in the country;
 - Development of a National Plan of Action to Implement the Gender Policy (2008 – 2012);
 - Development of a National Plan of Action for the Abandonment of Female Genital Mutilation (2008-2012), established a functional National Committee for the Abandonment of FGM/C (NaCAF) and Secretariat with strong support from civil society and development partners;
 - Formulation a Policy for the abandonment of FGM/C;
 - Development of a Strategic Plan setting out its mission, vision, objectives, challenges, programmes, activities, best practices and lessons learnt;

- Collaboration with ministries to develop sector-specific gender policies, for example the Gender Policy in Education developed in 2007; Draft Land Policy, Gender Mainstreaming Strategy for the Ministry of Agriculture among others
- Lobbying both government and non-governmental organizations for gender mainstreaming and for promotion of women's participation in various activities as well as promotion of equality between men and women in various areas;
- Conducted surveys of various government ministries and departments to determine the situation of women's participation in various sectors as well as their current level of participation; and
- Worked to protect women from abuses, such as female genital mutilation (FGM).

48. **Women's cultural advancement** - The Division of Gender and Social Development has conducted a study on female genital mutilation in Kenya to form basis of its activities targeting elimination of the practice. In its Situation Analysis,¹⁰ the Department found that FGM is still practiced in Kenya and that overall, 32% of women were reported to have undergone FGM in 2003, which presents a slight reduction compared to 38% in 1998. The study also found that girls are now being subjected to FGM at earlier ages (7-12) than in the past (12-15) and that increasingly, FGM is being conducted under medication unlike in the past when it was conducted solely by traditional practitioners (at page5). The Government has taken a variety of legal and administrative measures including Presidential decrees to outlaw the practice, which persists for various reasons, including: rite of passage, ensuring marriageability, family honour, controlling sexuality, religious requirement and cultural and ethnic identity.
49. **Education and other Measures to curb FGM/C** - The country's experience with legal measures against FGM/C indicates that such measures alone cannot eliminate the practice (page 7). The Government in collaboration with various partners has devised methods devoted to education, including persuasion. The Division of Gender is now implementing such measures, including promotion of girls' education to oppose FGM in order to eliminate the practice.
50. **Working with existing structures to moderate harmful cultural practices** - In the cultural field, the government has made efforts under the Governance, Justice, Law and Order Sector (GJLOS) programme to work with local traditional (tribal) leaders in certain parts of the country to address women's rights abuses, and to promote respect women's rights through human rights awareness and practical measures. In Nyanza province, for example, officials have worked with Luo Council of Elders and local Chiefs to promote respect for women's rights through education, awareness-raising seminars and one-on-one discussions. As a result, at least 20 women who were evicted from their matrimonial homes by relatives were reinstated to their homes and their houses re-constructed. In many of those areas, there is now an appreciable level of understanding of the detriments of widow inheritance and local people are beginning to appreciate the nature and applicability of human rights, as well as legal consequences attendant human rights abuses.

51. **Women's advancement in political and public decision making** - In 2007, the Political Parties Act, No. 10 of 2007 was enacted and has taken effect. The Act seeks to ensure equal participation between men and women in the political life and decision making on political matters concerning the country. The law provides, in section 14 that a political party shall not be registered if founded on gender or promotes gender-based propaganda; if words, slogans, emblems or symbols used could arouse gender division (section 14(a); has a constitution or operational ethic which provides, in any way for discriminatory practices contrary to the provisions of the country's constitution or of any written law (section 14(c); or accepts or advocates the use of violence or force as a means of attaining its political objectives (section 14(d). The Act fell short of making a provision requiring that 30% or 50% of all elected parliamentarians be women. There is however a requirement that at least 30% of the office bearer must be of opposite gender. The above-average performance of elected women who are currently serving in Kenya's parliament gives hope that intensified efforts to promote female parliamentary candidates, which is long overdue, would not be a futile effort.
52. **Women's advancement in social and economic matters** - In response to the Gender Policy's recommendation for promotion of equality between men and women in public sectors, President Kibaki issued an Executive Decree in October 2006 that henceforth, 30% of all appointments to public positions would comprise women. Although 30% is not the same as 50% and would not ensure equality in the actual sense, given the history of inequality between men and women in Kenya, the Presidential executive directive was a welcome departure from the tradition of inequality. Subsequent government appointments, including appointment to the *Waki* and *Kriegler* Commissions that investigated 2007/2008 issues to do with presidential election and post-election violence respectively, did not comply with this directive. It is however, noteworthy that issues of sexual and gender based violence were compressively dealt with in the *Waki* Report despite the fact that women not represented as commissioners or secretaries. In the diplomatic appointment, there are, currently, 13 female ambassadors out of the country's diplomatic representatives in a total of 100 missions across the world.
53. **Women's participation in economic development** - In recognition that the advancement of women requires their empowerment to take their own actions to improve their material circumstances, the government introduced **the Women Enterprise Fund (WEF)** to facilitate women's access to micro-finance credit and other financial services. At its inception in 2007, a budget allocation of Kshs 1.0 billion was made to the Fund. The Money from the Fund is disbursed through two distribution channels namely, selected financial intermediaries and Constituency Women Enterprise Scheme (C-WES). The Fund, which is administered by the Ministry of Gender, Children and Social Development has so far been disbursed to 92,000 women in all the 8 provinces as indicated in Table 2. The demand for credit far outstrips the available funds allocated by the Treasury. As a flagship project under the social Pillar in Vision 2030, the government recognizes the need to scale up the (WEF) if it is to make any meaningful impact in economic empowerment of women. The Ministry of Gender is currently using the District Gender and Social Development officers throughout the country to raise awareness of and accessibility to the fund.

TABLE 2: Individual Recipients of Women Enterprise Fund by Province

Region	No. of Women
Nairobi	11,000
North Eastern	9,450
Rift Valley	17,900
Coast	9,900
Nyanza	13,450
Eastern	11,300
Central	10,200
Western	8,8000
Total	92,000

Source: Women Enterprise Fund Records, March 2009.

54. **Introduction of the Youth Enterprise Fund (YEF)** is another initiative taken by the government to ensure access to credit facilities by young women and men in Kenya to enable them establish businesses and earn income to improve their lives. The Fund, which is administered by the Ministry of Youth and Sports, has so far been advanced to more young women than men.

TABLE 3: Individual Recipients of Youth Enterprise Development Fund

Region	Female	Male	Totals
Kenya	18,042	9,923	27,965
Nairobi	1,746	1,780	3526
Central	3,377	2,784	6161
Coast	1,847	488	2335
Eastern	3,649	2,447	6096
North Eastern	16	40	56
Nyanza	2,631	822	3453
Rift Valley	3,185	1,296	4481
Western	1,491	266	1757

Source: Kenya Gender Data sheet, 2008

55. **More young women received funds for businesses** than young men as shown in Table 3. However, there is a great regional disparity in the number of recipients. For example, whereas 3,377 women in Central Province received funds, only 16 women in North Eastern Province benefited, yet women in North Eastern Province are much poorer than women in Nairobi. In

future the government intends to set regional priorities for recipients of the fund as well as set up set up assessment or monitoring and evaluation to determine the use and impact of the Fund.

56. **Establishment of a Social Protection Fund (SPF)** – The Government recognizes that women’s economic empowerment remains one of the powerful means of improving their status, participation in various sectors of the society and promotion of their equal participation with men. In Vision 2030, the government has made provisions for the establishment of a Social Protection Fund (SPF) to facilitate access to credit and cash transfer on flexible terms. The policy governing operations of SFP is being drafted. Through the establishment Social Protection Fund (SPF) and other such Funds, the government will address women’s need to access financial facilities to promote small-scale businesses.
57. **The government’s efforts to increase women’s accessibility to financial facilities** is increasingly being complemented by non-government organizations such as the Kenya Women Finance Trust Fund, *Jamii Bora* and many other micro Finance Organizations that offer flexible loans to women for small-scale businesses in urban and rural areas. The government has encouraged more of such organizations to be established and for capacity of existing ones to be enhanced.
58. **Women’s advancement in education-** The Kenya government has developed a comprehensive education policy known as *Sessional Paper No. 1 of 2005*¹¹ which it outlines various actions to improve access to education for all. In order to increase women’s access to education, the government intends to remove all cultural barriers through sensitization of stakeholders and communities to discard socio-cultural practices that prohibit effective participation of girls and boys in secondary school education and enforcement of legislation against violation of children’s rights (page 48 of the policy).
59. **Gender Responsive Budgeting (GRB):** GRB seeks to mainstream gender into budgetary process from planning to implementation, monitoring and evaluation. GRB has been increasingly used as an effective tool, both to hold government accountable to its commitment to gender equality and to achieve gender equality. The government of Kenya has embraced budget reforms, which includes the public’s participation in the budget making process to allow transparency and negotiations. Public sector hearings of the budget preparation are announced through the local media and in this way, women are availed the opportunity to make their contribution in the budget development process. The other positive development is the shift from line budgeting where the budget was based on line items to programme-budgeting providing for the financing of specific programmes/projects. This shift has enabled the government to track budgetary allocations that target gender equality and women’s empowerment. Resources are also being allocated and utilized based on sex-disaggregated data.
60. **Challenges and obstacles:** Inadequate government revenue is a problem that can render many of government’s programmes, such as GRB ineffective. Another major challenge facing government measures to advance women’s equality and participation in various sectors of the Kenyan society has been that of mechanisms for monitoring and evaluation of progress made. The government

through the Ministry of Gender has now developed a monitoring and evaluation framework to address the issue as well as produce official report indicating how the measures were exactly implemented, who actually benefited, for example, from WEF disbursements, the specific women or groups of women who actually received funds, the regions of parts or the country where they operate and the impact of the measures, including WEF disbursements.

61. Additionally some ministries have not earmarked budgets to establish the required gender focal points thus making it harder to realize de facto equality in government appointments. The ministries are however being trained on gender budgeting and some of the government parastatals, have already been allocated resources for gender programmes.

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

62. Although temporary special measures to ensure equal participation of men and women are necessary in many areas and sectors in Kenya, a few areas have been identified as critical and those areas have received focused attention in recent years.
63. **Temporary special measures for maternity-related costs** – In Kenya, social security is employment-based. The legal infrastructure for security comprises a number of laws, including the Pension Act which provides specifically for old age as a contingency, the National Hospital Insurance Fund Act which provides for employee contributions into a statutory fund to be matched by employers and the National Social Security Fund Act which also provides to employee contributions into a fund, to be utilized upon retirement, or when one reaches retirement age. There is no comprehensive social security law or programme that caters for all contingencies that ought to be provided for as specified in international instruments. Even the existing social security frameworks, especially National Hospital Insurance Fund that is open for membership to all employees usually caters for very limited medical care service because employee and employer contributions, based on salaries, are usually too low to cater for medical care, especially maternity care. In recognition of the difficulty in meeting the cost of medical care services which often leads to delivery at home, with attendant birth complications, the National Hospital Insurance Fund administrators have made a rule allowing disbursement of Kshs. 3000 to any female employee in need of maternity services to help meet the cost of related care.
64. **Temporary special measures in education** – In 2003, the Kenya government introduced free primary education to increase access of girls and boys to education. However, while there have been dramatic increases in enrolment of children previously not in school, gender disparities in school enrollment, performance, continuation and completion was still observed, particularly in rural; areas and urban slums.¹² In order to accelerate the position of women in order to achieve their *de facto* equality with men in education, the government has taken a number of measures as explained in the following paragraphs:

65. In **Sessional Paper No. 1 of 2005**,¹³ the government outlined a number of temporary special measures for education, including those targeting increased women's access to education. These include:
- (i) Establishment of a broadcasting channel;
 - (ii) Provision of community support grants to support marginalized and vulnerable communities;
 - (iii) Implementing affirmative action to support girls' education;
 - (iv) Providing support to poor and disadvantaged students through secondary school bursaries;
 - (v) Providing support to targeted school in arid and semi-arid areas and other areas, especially for girls;
 - (v) Ensuring the re-entry of girls who drop out of school due to pregnancy and early or forced marriages; and by
 - (vi) Supporting affirmative action to ensure equitable access to university education.¹⁴
66. **Kenya Education Sector Support Programme (KESSP)** - Further, the Ministry of Education, Science and Technology developed the KESSP to implement agreed measures, specifically, affirmative action to support girls' education to remove gender disparities that were still observed, in order to realize equality between men and women in education. The KESSP devotes a whole section on temporary special measures to this end, including:
- (i) expansion and improvement of class-rooms, boarding facilities, water and sanitation facilities to create conducive and gender responsive environments, particularly in arid and semi-arid areas of the country;
 - (ii) empower girls through participation in school management , especially, "Tuseme" or speak out programme intended to increase women's self-esteem; child rights clubs; SARA Initiative; mentorship and capacity building on HIV//AIDS; life skills and sexual maturation and its management;
 - (iii) construction of schools for girls;
 - (iv) equipping laboratories to improve girl's performance in science subjects;
 - (v) use of cluster approaches for in-service training of teachers and school managers in child-centered and gender-responsive teaching;
 - (vi) peer education, guidance and counseling;
 - (vii) advocacy for girls' education through community social mobilization campaigns and role-modeling;
 - (viii) the establishment of centers of excellence for girls;

- (ix) community empowerment, mobilization and sensitization on inhibitive cultural practices to girls' education, including child labour, female genital mutilation and early marriages;
- (x) teacher training on peer education;
- (xi) the establishment of boarding and mobile schools for girls in nomadic communities;
- (xii) affirmative action for girls and women to access further training;
- (xiii) award of bursaries and scholarships to girls; and
- (xiv) use of mass media to inform the Kenyan public about these measures and their implications for girls' and women's education.¹⁵

67. **Development of a gender policy in education** – In 2007, the government, through the Ministry of Education, developed a *Gender Policy in Education* to provide a framework for planning and implementation of gender responsive education sector programmes, including the proposed measures to increase equality in education between men and women. The Policy elaborates and broadens temporary special measures and other measures to increase women's participation in education. It adds more measures to be undertaken, including: gender responsive research to address gender-in-education issues, including institutional capacity to address the issues; establishment of a gender and education unit; measures to address gender-based violence and sexual harassment in education; and measures for monitoring and evaluation of progress made in the implementation of the proposed measures. Ongoing initiatives to implement the measures include the establishment of a National Task Force for Gender and Education, establishment of a Ministerial Task Force on Girls' Education and the establishment of a Gender Desk within the Ministry of Education.

68. **Special temporary measures to increase women's participation in university education** - the measures are commonly known as "*affirmative action*." As part of implementation of the Gender Policy in Education, public universities in the country have introduced affirmative action to increase girls' entry into university and entry into specific courses. This has been accomplished specifically through lowering university entry point and entry point for specific courses for girls. Before the year 2007, public Universities' Joint Admissions Board (JAB) lowered entry point for girls by one point, below that of men. However, that did not result in appreciable increase in women's enrollment in public universities. Moreover, the slight increase in the number of women in public universities saw them end up only in general and not professional courses. Therefore, as a further measure, in 2007, JAB lowered for women 2 point below that of men and expanded public universities' affirmative action to include entry into specific courses. Currently, women qualify for enrollment into public universities and specific courses, including engineering at 2 point below that for men. The aim of affirmative action is to attain a 30 percent increase in women's enrollment every year. Once a 30 percent increase in women's enrollment in specific courses is attained each year, JAB closes the action so that no more students are allowed to enroll in courses at lower points.

69. **Affirmative action programmes in Education** - In the education sector, appreciable affirmative action programmes are being implemented and as a result, there has been an increase in girls' and women's participation in education, specifically in: school enrollment rates, retention rates, completion rates and in transition from pre-primary to primary, from primary to secondary and from secondary to university as elaborated in more detail under Article 10 (paragraphs 145 – 156 below). However, in spite of all the measures taken, over the years, the enrollment of women in public educational institutions, their retention and completion rates as well as their transition from primary to secondary schools and from secondary schools to universities has lagged behind that of men. Therefore, *de facto* equality between men and women in education has yet to be attained.
70. **Special measures in the Health Sector** - The government has taken special measures aimed at protecting maternity. For instance the government has taken specific measures aimed at prevention of mother-to-child transmission of HIV, in order to prevent transmission of the HIV virus to unborn babies; the government is currently supporting a mother-to-child prevention of HIV programme in many public hospitals across the country with assistance of external partners. To this end, the government has, through the Ministry of health, prepared PMTCT guidelines, including Guidelines for Antiretroviral Drug Therapy in Kenya (December 2002) and Clinical Manual for ARV Providers: A Concise and Practical Guide to ARV Provision (2004).
71. **In the employment sector, a number of legislative measures are being implemented for protection of employment security of pregnant mothers:**
- (i) The new Employment Act, No. 11 of 2007, section 5(3) thereof prohibits termination of employment on account of pregnancy. This ensures that women are free to carry out reproductive functions without fear of losing their jobs.
 - (ii) Further, section 29(1) of the Act provides for the grant of maternity leave to working women and extends the leave period from two to three months, with full pay and requires that at the end of maternity leave, a female employee shall return to the job which she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave. This allows recovery and rest from reproductive functions without fear of losing one's job.
 - (iii) There are also elaborate occupational health and safety requirements expressed in Kenya's Occupational Safety and Health Act, No. 15 of 2007 whose observance would safeguard working women's health, including their maternity.
72. **Other challenges and obstacles:** In spite of the appreciable temporary special measures in the various sectors, old challenges endure while new ones have emerged. In health insurance, the amount offered women to meet maternity-related expenses is too low to cover maternity care costs and lacks basis in law that would provide legitimacy for calls to increase the amount. The Government is trying to find the best way to establish a framework for a universal health care

programme for all, after a universal health insurance proposed by the former Minister for Health, was defeated in the 9th Parliament.

73. Regarding measures for prevention of mother-to-child transmission of HIV, physical and financial inaccessibility of services remain major challenges. Government operated health care facilities where PMTCT services are offered are few and many pregnant women find it difficult, if not impossible to walk to the facilities to access services, especially in rural areas where women are very poor. Also, PMTCT services have not been very effective because they have not been accompanied by intensive awareness campaigns to educate women, especially in rural areas of their availability and significance. Many development partners have reduced assistance to Kenya, including assistance in the provision of anti-retroviral drugs. Shortage of ARVs presents a dangerous challenge to PMTCT and other HIV/AIDS prevention and mitigation measures. The Government intends to incorporate monitoring and evaluation mechanisms were not integrated into some of the measures that are currently being implemented in order to determine actual positive impacts with certainty.

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

74. Measures are currently being undertaken in various areas to modify social and cultural conduct of men and women in order to remove gender-related obstacles which hinder women's participation in socio-economic activities. However, it should be noted that cultural trends are subject to regional disparities.
75. **Measures to redress cultural practices and attitudes** which hinder women's realization of human rights, including property inheritance that the country has taken in the current reporting period include: (a) *Legislative measures*.
76. **Legislative efforts to outlaw harmful cultural practices** - The Kenya Law Reform Commission has worked with various stakeholders to prepare a number of bills for enactment into laws that would outlaw cultural practices which hinder women's participation in economic and social activities in a number of areas, including the domestic arena, property ownership and inheritance and in family contexts. A Cabinet Memorandum has been prepared and the Bills will be submitted to the 10th Parliament. The bills in this regard include: Family Protection Bill of 2007, Marriage Bill of 2007, Matrimonial Property Bill of 2007 and Equal Opportunities Bill, also of 2007. If and when passed into law, the proposed laws would introduce positive changes in favour of women. For example, if the Marriage Bill is passed into law, it will consolidate all marriage laws (The Marriage Act, The African Christian Marriage and Divorce Act, The Matrimonial Causes Act, the Subordinate Courts (Separation and Maintenance) Act, The Mohammedan Marriage and Divorce Registration Act, The Mohammedan Marriage Divorce and Succession Act and the Hindu Marriage and Divorce Act) into one, which will allow women and other persons wishing to marry to avoid having to navigate through at least two acts of Parliament before they can understand their marriage status, rights and liabilities. If the Bill becomes law, one will need to look into only

one piece of legislation to understand marriage formalities, status, rights and liabilities. If passed into law, Kenya would also, for the first time, have an act of Parliament which allows for registration of marriages contracted under customary law so that women do not have to rely on elders, relatives and other witnesses to prove a customary marriage as they do today.

77. **Legal rights awareness activities to moderate harmful cultural practices have been undertaken.** Since 1980, the Law of Succession Act has provided for the right of women to inherit property but for a long time, women's property inheritance rights were greatly hindered by cultural barriers to their succession, fostered by lack of awareness of women's property rights. Increasingly, the government is working with partners to implement legal rights programmes. For instance the Kenya National Commission on Human Rights and the GJLOS programme already explained collaborates with the Government to raise awareness about human rights, including property inheritance rights throughout the country as part of empowering women and men to take action to protect themselves from rights abuses or seek redress, where abuses have occurred.
78. **The National Legal Aid and Awareness Programme (NALEAP)** was introduced in late 2007 as stated above. The NALEAP is the latest and more comprehensive government effort to provide Kenyans with free legal advice, free legal representation in court, free legal education in urban areas and in rural areas, from the grass-root, to provide training and support to para-legal staff to expand legal services in rural areas and to promote the use of alternative dispute resolution to resolve many of the ever-increasing cases arising mainly as a result of rights abuses. The Programme implemented under the Ministry of Justice, National Cohesion and Constitutional Affairs as part of a broader legal reform initiative upon realization by the Kenya government that lack of access to justice has close linkage with poverty and underdevelopment. The Programme is currently being implemented on a pilot basis for three years, after which, based on lessons learnt and best practices, it will be expanded to other regions of the country. Issues that affect women which are already being addressed through NALEAP include: domestic violence, matrimonial property disputes, divorce and separation, discrimination in employment, widow eviction from matrimonial home and disputes arising from cultural restrictions on women's access to land and other resources. In order to adequately address such issues, a Women and Family Division has been established in NALEAP which currently works in collaboration with Kenya Federation of Women Lawyers (FIDA), Kenya National Commission on Human Rights and the Law Society of Kenya, among others.
79. **Judicial actions** - specifically court decisions that uphold women's rights are being taken to ensure women's realization of rights. One of the results of human rights awareness efforts is an increase in the number of cases filed in court by widows and daughters seeking to enforce their property inheritance rights. The cases so far determined in favour of women include, but are not limited to: *Rono v. Rono and In the Matter of the Estate of Lorionka Ole Ntutu (Deceased)* and already cited, in *The Matter of the Estate of Sebastian Karanja Macharia*¹⁶ in which the High Court ordered relatives who had evicted a widow to allow her relocation to her matrimonial home and restoration of her deceased husband's property that had been forcefully taken by the relatives and in *Wairimu Rukwaro & Another v. Dorcas Wangui Rukwaro & 4 Others*,¹⁷ in which the court ruled that attempt by tribal elders to distribute the deceased's property in accordance with

customary practices which discriminated against the woman amounted to intermeddling with the deceased's property, which is prohibited by section 45(1) of Kenya's Law of Succession Act. These are just some of the many cases that have been decided in recent years in favour of women's rights against retrogressive cultural practices. In many ways, decisions against cultural practices inform and shape cultural ideas, beliefs and attitudes towards women.

80. **Application of CEDAW by the Courts** - Courts in Kenya have directly applied CEDAW provisions to rule against forced widow inheritance. For instance in the case of *Ngoka v. Madzomba*¹⁸ the High Court directly applied CEDAW provisions at a time when there was (and still is) no specific national legislation against widow inheritance to rule that a traditional custom that would force a woman to be inherited against her will would be repugnant to justice and morality and in breach of human rights. The judge went further to state that women, in whatever community, are no longer commercial objects and it is time customary diehards woke up to that reality.¹⁹
81. **Modification of cultural patterns and conduct in the education sector** - A number of positive developments have also been realized in the *education sector*. These include: (a) *Advocacy*. In the Kenya Education Sector Support Programme, 2005-2010, the government aims to undertake advocacy for girls' education through community social mobilization campaigns, use of media and role modeling, among others, to change cultural biases against girls' education. (b) The government also aims to undertake community empowerment and sensitization targeting cultural practices which inhibit girls' education, such as female genital mutilation (FGM), child labour and forced early marriage of girls.²⁰ It is expected that the initiatives would, in effect, eliminate retrogressive cultural practices, attitudes and beliefs and garner support for education of women and girls. The government provides conducive environment for advocacy and sensitization work which has been undertaken by civil society organization in many parts of the country.
82. **Modification of cultural patterns and conduct in collaboration with communities** - The government works in collaboration with—community elders to change cultural attitudes, beliefs and practices which foster abuses of women's rights and inequalities between men and women. It has been explained in preceding discussions that the government is currently making deliberate efforts through the GJLOS Programme to work closely with community elders, such as the Luo Council of Elders and *Njuri Njeke* of Meru to change the negative cultures and promote respect for women's rights and advancement in property ownership and inheritance and in other spheres of life. Other community organizations that could provide support and collaboration frameworks in other parts of Kenya include "Daughters of Mumbi."
83. **Actions to prevent and redress cultural factors fuelling sexual and gender-based violence** - In order to address social and cultural factors fuelling the occurrence of all forms of sexual and gender-based violence in Kenya, a number of efforts have been made, including: (a) the development of *A National Framework on Gender-based Violence*. The government through the National Commission on Gender and Development has developed a National Framework on Gender Based Violence (February 2009) to form that basis of investigation of instances of sexual violence and strengthen coordination of responses to stem the vice. Actions to address the

problems set out in the Framework include: (a) establishment of community structures that are responsive to sexual and gender-based violence at grass-root levels (b) increase awareness on prevention within communities and community-based institutions, strengthening behaviour change programmes addressing sexual and gender-based violence, (c) increase male participation in measures for prevention of sexual and gender-based violence at community levels, (d) train and equip law enforcement agencies, including the police to respond adequately to cases of sexual and gender based violence, (e) identify victims and take necessary response actions, (f) establish comprehensive referral structures to address instances of sexual and gender based violence, (g) establish rescue shelters across the country, (h) outlaw customary practices that promote gender based violence, (i) create a specific legislation against gender based violence that is in line with CEDAW and other international human rights instruments, (j) provide free and accessible legal advice to victims of violence, (k) review national guidelines for medical management of rape and other forms of sexual violence, (l) establish national guidelines for psycho-social care, identify reform agenda for the judicial sector, and (m) enhance capacity of the Kenya Police Force to respond adequately to cases of sexual and gender based violence.²¹

84. **Gender mainstreaming** - In 2008, the Kenya government unveiled a long-term strategy for Kenya's social and economic growth christened, "Kenya Vision 2030," the new long-term policy blue print which sets out a long-term strategy for realization of a higher and sustainable growth of the economy in a more equitable environment. Vision 2030 devotes a whole section to address gender issues in which it explicitly recognizes that sexual and gender-based violence as one of the vices that continue to bedevil social and economic progress in the country. To address the challenge, requires mainstreaming gender into government policies, plans, budgets, and programmes as an approach geared towards achieving gender equity in all aspects of society.²² Already, gender focal points have been established in most of the 41 government ministries.
85. **Gender mainstreaming in Vision 2030** - Vision 2030 states that gender mainstreaming will be introduced in all government policies, plans and programmes to ensure that the needs and interests of each gender are addressed. There will also be a deliberate effort to recognize and acknowledge the various ways in which women make a contribution to the economy and the society as a whole to increase awareness in all ministries and government agencies. Furthermore, the operationalization and strengthening of gender divisions in all ministries and state corporations will be implemented to aid the gender mainstreaming process.
86. **Prohibition of retrogressive cultural practices and social ills in Vision 2030.** Vision 2030 also expresses the government's commitment to undertake deliberate efforts to "prohibit retrogressive cultural practices and social ills *as well as improve access to essential services.*"²³
87. **Production of sex disaggregated data** – The has government undertaken to produce information which accurately portrays the gender balance in all sectors of the country and to avail the data to form the basis of developing gender-sensitive policies, plans and programmes. Official gender disaggregated data are produced every two years in the form of a Gender Data Sheet with latest one officially launched on March 27, 2009.

88. **Affirmative Action Policy** - The government has committed itself to develop and implement a national affirmative action policy to legitimize actions to ensure that women have at least 30 per cent representation in recruitment, promotion and appointment at all decision-making levels.
89. **Additional programmes** - In close collaboration with ministries and agencies, the government intends to implement additional programmes, namely: (i) promote campaigns to eliminate retrogressive cultural practices such as FGM and early marriages; (ii) double the number of births attended by skilled health personnel; (iii) reduce the rate of high risk sex through increased access to safe sex methods; (iv) use decentralized funds to provide social amenities as close proximity in order to reduce the amount of time taken by people to access services; and (v) put in place an efficient legal system to help protect the rights of people in order to reduce gender-based violence and other human rights violations.²⁴
90. **Introduction of Paternity leave in the Employment Act** - Although it is not explicitly stated, the grant of paternity leave at the time of a spouses maternity leave presupposes that a husband's help or assistance may be necessary during or after delivery and herein lies a recognition that spouses ought to complement one another in performing reproductive and family roles. Such roles can no longer be left to women alone and in light of the permissive paternity provisions, it can no longer be argued that certain family or reproductive roles are solely to be shouldered by women.
91. **Actions to prevent and redress negative cultural factors within the family** - A wave of change is sweeping across Kenya in awareness and actions targeting gender roles and stereotyping through the entry of men's organizations in the gender equality movement. Church based groups, which function on the basis of national laws permissive of freedom of association are not tackling gender issues, especially those affecting families and family relationships as a regular agenda and linking it to ideals of positive masculinity, such as responsible parenthood and inter-gender communication to strengthen families and family relationships and shield or salvage families from the scourge of the HIV/AIDS pandemic.
92. **Actions to prevent and redress negative cultural factors by men** - Besides church or faith-based groups, civil society organizations, such as Men for Gender Equality Now! Have emerged to bridge the gap between women and men's roles that have, for a long time, hindered women's progress in many aspects. Men for Gender Equality Now! Is a pioneer men's network that was established in 2004 by the African Women's Development and Communication Network (FEMNET) to champion elimination of gender stereotypes and roles. The organization has opened up debates on gender roles and stereotypes by engaging men in issues of positive masculinity, responsible fatherhood, men's roles in combating gender-based violence and promotion of gender equality through: seminars, inter-gender dialogue, rapid response services for survivors of sexual and gender-based violence and Men's Traveling Conference which usually coincides with a period of 16 days of activism on violence against women. As a result of the positive actions against gender stereotyping, more men are taking their family responsibilities seriously. Increasingly, men are also taking up responsibilities for their children born out of wedlock.

93. **Challenges and obstacles:** In spite of the strides made towards modification of social and cultural patterns of conduct, various challenges persist while new ones have emerged. The most significant challenge that emerged is widespread violence throughout the country that erupted soon after national elections on December 27, 2007. Every kind of violence was witnessed in the country and although men, women, children, the young and the old suffered, it has been officially recognized that women suffered more.²⁵ Women suffered from loss of lives, property, children, agricultural livelihoods and business. In addition, they suffered rape and other forms of sexual and gender-based violence, within two months of the violence, there are at least 354 cases of sexual and gender-based violence. In Vision 2030, the government acknowledges that many of the cases of sexual and other gender-based violence against women that were committed during that period of post-election violence were unreported.²⁶
94. During and long after the post-election violence (until April 2009), women formed the majority of internally-displaced persons.²⁷ A Situation Analysis of Sexual and Gender Based Violence in Internally- displaced Persons Camps After Post-election Violence in Kenya (February 23, 2009) conducted in February 2009 in six of the camps for internally displaced persons found that women and girls constitute 63.9 percent of them.²⁸ In addition to loss of home and high levels of insecurity, these women and girls have suffered and continue to suffer: loss of family members (88% of the surveyed ID populations are widowed) and associated trauma, disrupted social ties and high risks of malnutrition, deteriorating health and many got infected with HIV and now have to contend with a new disease. The government through the Ministry of Special Programmes with the support of development partners has been concerted efforts to address the plight of the IDPs. The Head of State, while opening the 3rd Session of the 10th Parliament on April 21st 2009 reported that over 90% of the IDPs had been resettled.
95. Regarding property ownership, only 3 per cent of Kenyan women own title deeds, thereby minimizing their opportunities to access credit.²⁹ Moreover, generally, reported cases of rape and domestic violence are on the increase. Similarly, the girl-child's health, educational and career development has been negatively affected by harmful cultural practices, such as female genital mutilation and early marriages. Moreover, more women are poorer than men. Empirical evidence reveals that there is a significant gap in poverty levels between female headed and male headed households. In rural areas, 48 per cent of male-headed households were classified as poor as compared to 50 per cent of female headed households. In urban areas, the gap is larger; 30 per cent of male headed households are poor while female headed households constitute 46 per cent.³⁰
96. Judicial actions seem to be effective. However, most women do not know of their legal rights and judicial proceedings are expensive, lengthy and in case of sexual offences, embarrassing for women, hence remain inaccessible for many women. Efforts by the Law Reform Commission to have laws governing women in areas most affected by traditional cultures and practices are bold and is appreciable. However, Kenya's Parliament is still dominated by men (only 21 out of 222 members of parliament are women). Therefore, it will be a big challenge for the bills aforementioned, to be enacted by Parliament.

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

97. **Prostitution and exploitation of prostitution are outlawed**, specifically by the Penal Code, whose provisions in that regard are buttressed by provisions of the Children’s Act of 2001 and the Sexual Offences Act. Therefore, although in reality, prostitution abounds in almost every part of the country, government efforts to address or redress exploitation of women’s or men’s prostitution within the country cannot be expected, in view of the official prohibition. However, there are local non-government organizations that are currently working to reach prostitutes, train and find them alternative work in order to earn an honest living.
98. The Protocol to Prevent, Suppress, and Punish Trafficking in Persons, especially women and Children (to the U.N. Convention Against Organized Crime) defines “trafficking in persons as “the recruitment, transportation, transfer, harboring or receipt of persons by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception or abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having the control of another person, for the purpose of exploitation.” This definition informed understanding of activities considered as trafficking, especially in view of the fact that Kenya does not have any legislation which defines trafficking in persons or more specifically, trafficking in women.
99. Studies conducted by non-state organizations and reports of Kenya’s Ministry of Immigration and Registration of Persons indicate that trafficking in women occurs in Kenya in many forms and for various reasons, including poverty and political instability within Kenya and neighbouring countries. In terms of trafficking in women, Kenya serves the whole spectrum of trafficking activities. It is a source country, a transit country and a destination country. In addition to local or internal trafficking of girls, Kenya is a source country for women and girls trafficked to Europe serves as a transit route for women being trafficked to Europe and Middle East, for purposes of sexual exploitation and cheap labour. Official data indicates that approximately 40-50 young women are trafficked out of Kenya every year in the pretext of participation in dubious Programmes. Trafficked women end up being detained or confined into slavery and prostitution. In some cases, they are forced into labour for which they receive very little pay or are not paid at all.
100. Currently the only available legal instrument that forms the basis of government’s response actions is the Immigration Act, Chapter 172 of the laws of Kenya which was enacted in 1963. Under Cap. 172, crimes related to trafficking are usually dealt with as immigration offense of fraud, impostor (using passport/travel document issued to another person), use of forged passports or use of forged visa. However, these immigration offences target trafficking victims rather than the traffickers. It is the trafficked person who is often found in possession of forged travel documents or using travel documents belonging to other persons and thereby acting as impostors. Rarely are traffickers charged for engaging in the practice or for harbouring victims of human trafficking which, in any case, is difficult to prove in a court of law because the victims themselves are usually unwilling to testify due to fear of repercussions to their lives or their

families back home. Even if traffickers themselves are apprehended, they would not be charged with trafficking because trafficking has not yet been recognized or made a specific offence in any law in the country. As one official put it, the Immigration Act under which cases of trafficking are currently being addressed as immigration offences was enacted a long time ago and at a time when people did not know that such things as trafficking in humans can happen.

101. Once offences related to trafficking are proved as immigration offences, the only legal remedy is repatriation of victims to their home countries. The Kenya government does not yet have mechanisms for providing meaningful assistance to victims for trafficking. However, there are a number of non-government organizations which currently offer assistance through provisions of counseling, temporary shelters and financial assistance, among others. These include: Solidarity with Women in Distress (SOLWODI), International Organization for Migration (IOM) and Catholic Diocese of Malindi.³¹
102. **The motion for tabling the Anti - Trafficking in Persons Bill has been passed in parliament and the bill is ready for tabling and debate by the parliament.** The Anti-Trafficking Bill has been prepared by civil society organizations in collaboration with government. If approved, Kenya will have, for the first time, a legal framework for prevention and remedy of trafficking in women.
103. **Other challenges and obstacles:** Despite the significance of Kenya in relation to trafficking in women and girls, the country, there has been delay in enacting legislation that deals with trafficking comprehensively, and in putting in place official policy or strategy on trafficking. Lack of a legal definition of trafficking has sometimes created confusion, leading to the lumping of cases of trafficking with those of human smuggling, yet the two types of activities are not at all the same in objectives, practices or effect.
104. Poverty, increasing unemployment and deteriorating living conditions continue to foster conducive environments for trafficking in the country. The Department of Immigration faces constraints in discharging the one mandate of repatriating victims of trafficking. An upsurge in the number of trafficked women has overwhelmed the personnel and financial resource capacity of the Department. The Department also lacks its own custodial facilities to accommodate victims while arrangements are made for repatriation and relies on police cells as holding facilities, which makes life worse for victims of trafficking.

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

105. **Women’s right to participate in voting** - On the basis of the Constitutional expression of the right of **all** to vote, women in Kenya have continued to exercise their right to vote by participation in all public (national and local) elections. Because there is no official hindrance to women’s participation in elections in the country, there has been a steady increase in women’s participation in national and local elections, including national constitutional referenda, national parliamentary,

presidential and civic elections and local by-elections at constituency levels. The data contained in Table 4 shows an upward trend in women's exercise of the right to vote:

TABLE 3: Number of Registered Voters by Province and Gender

Province	2005		2006		2007	
	Male	Female	Male	Female	Male	Female
Nairobi	645,412	325,874	684,878	386,361	769,491	505,954
Coast	527,907	439,525	566,735	472,241	638,383	540,154
North Eastern	126,607	110,705	136,026	119,737	166,125	149,631
Eastern	1,028,613	948,815	1,101,561	1,017,270	1,231,066	1,143,697
Central	966,098	829,127	1,031,973	904,748	1,144,041	1,042,895
Rift Valley	1,438,199	1,230,598	1,573,904	1,365,427	1,770,605	1,587,776
Western	674,208	648,376	710,512	682,498	792,285	772,397
Nyanza	870,885	793,782	926,876	848,271	1,047,574	994,106
TOTAL	6,267,929	5,326,802	6,732,465	5,796,553	7,559,570	6,736,610

Source: Kenya National Bureau of Statistics (KNBS), *Kenya Facts and Figures* (2008) See, also: Republic of Kenya, Kenya National Bureau of Statistics, *Economic Survey* (2008) at 251.

Although the figures in Table 4 indicate that the number of women voters lags behind that of men, the inequality in participation has no legal basis. Factors contributing to women's unequal participation include poverty, which means that many women are pre-occupied with survival activities, ill health, physical inaccessibility of polling stations in some areas and negative attitude towards voting by women themselves and men, which is fostered by cultural attitude and beliefs that leadership belongs to men. There is also a fair amount of hopelessness in many people, including men, which is perpetuated by the poor performance of political and civic leaders. Many people do not see the need to vote because there has been very little, if any change in their lives and livelihoods because of persistent poor performance by political and leaders. Lack of national identity cards has been another hindrance to women's participation in voting but available data indicates that the number of women seeking new national identity cards has been increasing. For example, in 2007, a total of 947,780 women were issued with new national ID cards in preparation for national elections while in 2003, only 261,499 women sought and were issued with new IDs.³² No literacy or property-related qualifications are required for voting.

106. **Enactment of a new Political Parties Act, No. 10 of 2007** – This is a positive development in the current reporting period. In order to streamline activities of political parties in Kenya, a new Political Parties Act, Chapter 10 of 2007 was passed, which took effect in January 2009. The law expresses equal voting right and thus provides a legal framework for participation of men and women in formation and management of political parties and in participation in all voting

conducted at party levels, which provide platforms for pursuit of political aspirations, regardless of sex or gender. The relevant provisions of law states that:

“All members of a political party shall, during a party election, have *equal voting rights*, but the exercise of such right may be made dependent, under the provisions of the party’s constitution, upon a member first paying a membership subscription fee.” [Emphasis added].³³In addition the Act requires that one third of political parties office bearers should be of opposite gender.

107. On the basis of the provisions of law, women cannot be locked out of political parties on the basis of sex.
108. **Increased nomination and election of women to political offices** - The period has witnessed *increased election and nomination of women to political offices*. The Constitution of Kenya guarantees the right of every person in Kenya to be elected to political office and to participate in decision-making, subject to set qualifications, such as age qualifications, which apply to both men and women. On this basis, women have been encouraged to participate in the political life of the country and there has been an appreciable increase in the number of women contesting parliamentary and civic elections, which has resulted in an increased number of elected and nominated women parliamentarians and an increase in the number of female ministers and assistant minister, as the following data in Table 5 shows:

TABLE 5: Members of National Assembly by Sex, 1969 – 2008

Year	Women	Men	Total	% Women
1969	2	165	167	1.2
1974	7	162	169	1.4
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
2008	21	201	222	9.5

Source: Electoral Commission of Kenya, 2008.

109. In the year 2003, the number of women parliamentarians was 18, which constituted 8.1 per cent of parliamentarians. Of the number, eleven women were elected while seven were nominated. However, the number of elected women increased to 16 in 2007 while that of nominated women decreased to 5. In total, women currently constitute 9.5 per cent of parliamentarians.

110. **Increased women's participation at civic levels:** Similar increases have been witnessed in women's participation at civic levels, in local authorities, whose elections are usually mainly held at the same time as parliamentary and presidential elections as the following figures in Table 6 shows:

TABLE 6: Women's Participation in Local Authorities (Civic Positions)

Authorities	1992			1998			2002			2008		
	Total	Female	%F	Total	Female	%F	Total	Female	%F	Total	Female	%F
County	1029	24	2.3	2455	201	8.2	1847	24.8	13.4	1618	252	15.6
Municipal	354	15	4.2	596	52	8.7	446	60	13.5	391	63	16.1
City Council	55	4	7.3	69	7	10.1	113	13	11.5	99	15	15.2
Town Council	398	7	1.8	572	40	7	431	56	13	378	63	16.7
Total	1836	50	2.7	3692	300	8.1	2837	377	13.3	2486	393	15.8

Source: Electoral Commission of Kenya, 2008.

111. **Increased women's participation in decision making and policy implementation -** The country has attained *increased women's participation in decision making and policy implementation*. In the current reporting period, there has been an appreciable increase in women's participation in government decision making at various levels, including ministerial and administrative levels. After the last national elections held in December 2007, more women were nominated to Kenya's Cabinet as ministers. There was also an increase in the appointment of women assistant ministers, permanent secretaries and ambassadors/high commissioners as the following data in Table 6 shows:

TABLE 7: Participation in Politics, Public Life, Decision Making and Representation of Government February 2003 – February 2009

RANK	February 2006				February 2009			
	F	M	Total	(%) F	F	M	Total	(%) F
Ministers	2	32	34	5.8	7	35	42	16.7
Assistant Ministers	6	40	46	13	6	46	52	11.5
National Assembly	18	204	222	8.1	21	201	222	9.5
Ambassadors/ High Commissioners	11	29	40	27.5	11	29	40	27.5
Permanent Secretary (PS)	5	25	30	16.7	7	37	44	15.9
Provincial commissioners	0	8	8	0	0	8	8	0

Deputy Secretary	21	77	98	21.4	33	92	125	26.4
Councillors	377	2460	2837	13.3	393	2093	2486	15.8
Lawyers	1708	3277	4985	34.3	1763	3334	5097	34.6

Source: - Department of Gender; Office of the President; Electoral Commission of Kenya and Directorate of Personnel Management (DPM) Compliment Statistics Unit.

112. **Increased number of women ministers and assistant ministers** - The number of women ministers in Kenya's Cabinet increased from 3 in 2003 to 7 in 2008. The number of assistant ministers also increased from 4 to 6. Similarly, the number of permanent secretaries and ambassadors representing Kenya broad increased from 3 and 7 to 6 and 11, respectively. However, due to lack of commitment on the part of top political officers in the country, it appears that women's gains in the political life of the country may be short-lived. There is still no female provincial commissioner in the country. The figures indicate that there has only been a marginal increase in the appointment of women to decision-making positions in Kenya's government and that the official goal of 30 per cent representation of women, which is itself low, has yet to be attained.
113. **Establishment of Kenya Women Parliamentary Association (KEWOPA)** – This is a positive development that has the potential to enhance women's participation in political matters of the country. Female members of parliament have formed an association known as the Kenya Women Parliamentary Association which has developed a Strategic Plan, 2006-2010 whose vision is that men and women are to be equitably represented in Parliament and in relevant decision making bodies in which men and women are equal partners at all levels of leadership. This could form a powerful platform for increased women's participation in politics, the civil service and other top-ranking bodies. KEWOPA endeavors to make purposeful outreach for men to support women's progress in the area of representation as well as to secure economic empowerment to enable more women to come forward and express their interests in decision-making positions, especially in politics.
114. **A changed cultural attitude towards women's participation in politics has occurred** in Kenya. Another key development witnessed in the current reporting period is a cultural transformation, or, as more popularly referred to, a cultural revolution in perceptions, attitudes, beliefs and practices in relation to women's participation in the political life of the country. Acceptance of women's leadership in political matters by various communities is an indication that culture is changing, along with harmful practices, beliefs and ideas, in favour of women. The change can be attributed partly to women's proven capability of political leadership.
115. **First woman chairperson of Kenya National Commission on Human Rights** - for the first time, a woman has been appointed to head the Government sponsored Kenya National Commission on Human Rights. In the current commissions under formation, five women and ten men have been nominated for six positions available in the Truth Justice and Reconciliation

Commission (TJRC) while nine women and six men have been nominated six positions available in the National Commission and Integration Commission.

116. **Women's increased participation in non-government organizations** is part of progress so far realized. The current reporting period has also witnessed an increase in women's participation in civil society organizations, including non-government organizations (NGOs) and faith-based organizations where they participate in the implementation of measures and actions to address various problems facing the Kenyan society, including HIV and AIDS. The NGO Co-ordination Act of 1999 is the law that governs establishment and operation of non-government organizations in the country. The law has general requirements which apply to all, meaning that all men and women of age and sound mind in Kenya have the privilege to establish non-government organizations. There are no legal barriers to women's participation in non-government organization. The position is strengthened by the Kenya Constitution which, in section 80 expresses freedom of association for everyone. The following data in Table 8 indicates that women's participation in such organizations has been on the increase:

TABLE 8: Membership in Women Groups in 2007

Province	Total No. of women Groups	Total Membership	%Female
Kenya	138,753	5,417,850	96.5
Nairobi	3,679	213,689	99.6
Central	18,267	641,636	99.4
Coast	9,580	301,456	99.9
Eastern	28,625	1,181,626	99.9
North Eastern	2,561	41,781	100.0
Nyanza	25,840	1,034,454	99.9
Rift Valley	31,564	1,243,402	99.9
Western	18,637	759,806	99.9

Source: Ministry of Gender, Children and Social Development, Kenya Gender Data Sheet (2008).

117. **Increased Membership in Women Groups** - The information in Table 8 shows that women have adequate space to form and join women's organizations which would allow them to come together to address challenges facing them, including poverty. Although documented information on women's participation in women groups in previous years is not available, the current number of existing groups has been observed to be larger than the number in the last reporting period.

TABLE 9: Women's Participation in Co-operative Societies in 2007

Province	Total No. of Cooperatives	Total No. of Members	% Females
Kenya	11269	3,642,078	22.9
Nairobi	1665	598,099	40.3
Central	1028	999,794	38.7
Coast	896	86,780	18.2
Eastern	774	692,075	10.4
North Eastern	49	2,782	8.9
Nyanza	740	469,490	22.8

118. **Women's increased Participation in Co-operative Societies** Information presented in Table 9 indicates that women's participation in Co-operative Societies has increased, however, women have not yet attained 30% representation in cooperative societies. This means that there still exists a high level of inequality in women's access to facilities that could be availed through cooperative societies, including credit and farm inputs.
119. **Increased role of media to raise awareness** - Prior to the last general elections, civil society organizations, in collaboration with provincial administration, increased use of the media to present programmes, such as *URAILA* and *Vijana Tugutuke* to explain to the electorate, including women, their role in national elections. With clear understanding, many women, including married women who did not have national identity cards and were therefore not eligible to vote were able to receive the necessary information, including where to seek and obtain new national identity cards. As a result, a larger number of women were issued with IDs and were able to participate in voting.
120. **Other challenges and obstacles:** Challenges to women's participation in non-government organizations include lack of finances to fund establishment of civil society organizations and lack of technical skills and competence to draft necessary documents, establish organizations and operationalize them successfully.
121. Regarding making, it is noted that although there has been an upward change in women's representation and participation in decision making, inequality persists. Male representation in political positions is still disproportionately higher than that of females in all the ranks. The government's commitment to increasing women's participation in decision making has been expressed in Kenya, Vision 2030 (page 116), in the national Gender Policy and in an Executive Decree on 10th October 2006, followed by a circular from the Secretary to the Cabinet dated 7th November 2006 to the effect that at least 30% of new employees recruited into the public service should be women. Compliance with these policies and directives is yet to be realized. The Ministry of Gender is however monitoring implementation of the Presidential Directive on

Affirmative Action and has already prepared a report that will be used for advocacy to ensure greater accountability by government in future appointments.

122. A larger number of women won favour with the electorate in 2007 than in 2002. Many more women would have contested parliamentary and civic positions, but lacked economic empowerment to enable them organize campaigns and political rallies to sell their ideas to the electorate. These constraints are recognized by the state. Before the last national elections, an idea was mooted in Parliament that legislation should be passed, requiring that 50 percent of elected parliamentarians be women. However, the motion proposing it was defeated in parliament and the proposal was abandoned. Factors contributing to women's unequal representation include the patronage nature of Kenya's politics and cultural attitudes and stereotypes of women's roles as being that of supporters, rather than actual leaders.

123. In the civil service, the government has also officially recognized that:

“Women are still grossly underrepresented in senior decision-making positions within the civil service. For instance, in the top most levels of the civil service, male representation stands at 84 per cent, against 16 per cent female representation. At the lower cadres of the civil service, female representation stands at 74 per cent, with 26 per cent male representation.”³⁴

124. Constraints to women's increased participation in the civil service include need for enhanced political will among top-ranking government officers to appoint women to these positions. Other challenges include tribalism, nepotism, official corruption and balancing family duties and reproductive activities which compete unfavourably with women's career development and advancement.

ARTICLE 8 – WOMEN'S REPRESENTATION OF GOVERNMENT AT INTERNATIONAL LEVELS

125. As already indicated above, the current reporting period has seen a slight increase in the number of women ambassadors and high commissioners who represent the government in foreign missions abroad. However, the number of men representing the government at international levels is still higher than that of men in all positions. Women have not yet attained even a 30 per cent representation in representation of government internationally. Existing obstacles include lack of political will to increase women's participation and, to some extent, difficulty in balancing family responsibilities with public service on the part of women.

ARTICLE 9- WOMEN'S RIGHTS TO NATIONALITY

126. **Nationality:** The progress regarding grant to women of equal rights with men in acquisition, change or retention of nationality is that the Proposed New Constitution of Kenya which incorporated new changes but was defeated in a national referendum conducted in 2005 is back on the table for consideration. As reported under Article 1 above, The Constitution of Kenya Review

Act, No. 9 of 2008 was passed with the specific objective to facilitate the completion of the review of the constitution of Kenya and to provide legal basis for establishment of organs charged with the responsibility to facilitate review. A team of local and external experts has been appointed to oversee the constitutional review process and actual review. If a new constitution is approved, women and men in Kenya will have equal rights to acquire citizenship and to retain citizenship (i.e. by birth, after marriage for a period of seven years, and by naturalization). In addition, a person who is a citizen by birth shall not lose citizenship by reason only of acquiring the citizenship of another country and, a person who acquires citizenship of another country, for example, by marriage, may apply to regain citizenship.

127. **Removal of barriers to obtaining passports by women** - In Kenya, unmarried women no longer require their father's approval or consent to obtain passports as long as they meet official requirements. In the case of married women, only a marriage certificate is required by the Immigration Department before a passport is issued and NOT a husband's consent.
128. **Nationality of children** –Women and men in Kenya will have equal rights with regard to the nationality of their children once the Proposed New Constitution is approved. The Proposed New Constitution has provisions for every child born in Kenya becomes a citizen by birth if either the mother or the father was a citizen at the date of birth. Similarly, a child born outside Kenya shall be a Kenyan citizen by birth if, at the date of the child's birth, either the mother or the father was a citizen born in Kenya by registration or naturalization
129. **Challenges and obstacles**: The slow pace of the constitution review process remains a major challenge to granting women equal rights with men in acquisition, change or retention of nationality.

ARTICLE 10 – EQUALITY IN THE FIELD OF EDUCATION

130. Kenya has policy and legal bases for advancement of equality between men and women in education at all levels.
131. **Legislative developments** – Kenya has both an Education Act and a Children's Act of 2001 which incorporate the right to education for all Kenyans. The Education Act sets a broader framework for attainment of the right to education in the country, which is further articulated in details in the Children's Act. Education Act also addresses obstacles such as Female Genital Mutilation/Cutting that hinder attainment and completion of education. The two statutes are complemented by a number of other education-related statutes, including University of Nairobi Statutes.
132. **Review of education sector performance** – In the year 2003, a National Conference on Education and Training (NCET) was held by key players in the education sector to review performance in the education sector. One of the findings was that despite a general increase in school enrollment, the education sector was still faced with issues of access, equity and equality.

133. **Development of a comprehensive national policy on education** - Pursuant to recommendations of the National Conference on Education and Training (NCET), the government developed *Sessional Paper No. 1 of 2005 on A Policy Framework for Education, Training and Research* [hereinafter, the Education Policy], setting its objectives: to provide *every Kenyan* with basic quality education and training including 2 years of pre-primary, 8 years of primary and four years of secondary/technical education; and the realization of universal access to basic education and training to ensure equitable access to education and training for all children, among others, noting that education is necessary for the development and protection of democratic institutions and human rights.³⁵
134. **Education for all by the year 2015** -The overall policy goal of the Education Policy by the government is to *achieve education for all by the year 2015* in order to give every Kenyan the right to education and training, no matter his/her socio-economic status. This is to be achieved through the provision of all-inclusive quality education that is accessible and relevant to all Kenyans. The government has sustained allocation of resources to the education sector, to ensure that education and training embrace equity issues, such as equal opportunity for all in access, retention, transition and completion,³⁶ and to eliminate gender and regional disparities at all levels of education by 2015.³⁷
135. **The Education Policy** indicates that the government is committed to ensuring the same conditions for access to studies and the same conditions for achievement of diplomas in educational establishments. However, in order to meet policy objectives, especially those related to equity and equality in education, the government supports the implementation of *affirmative action* in provision of education at all levels. This comprises: providing support to poor and disadvantaged students through secondary school bursaries, providing support to targeted boarding schools in arid and semi-arid areas and other deserving areas, especially for girls, *ensuring the re-entry of girls who drop out of school* due to pregnancy and early/forced marriages as well as sensitizing stakeholders and communities to discard socio-cultural practices that prohibit effective participation of girls and boys in secondary school education and enforce legislation against the violation of children's rights.
136. **Development of an Education Sector Support Programme, 2005 – 2010.** The government has developed an education sector support programme to provide a comprehensive framework for implementation of programmes and activities in order to meet Education Policy goals and objectives.
137. **Gender Policy in Education** -The Ministry of Education has developed Gender Policy in Education to address central issues related to gender and education. The purpose of the Policy is to provide a road map to Ministry of Education and stakeholders towards the achievement of Gender Policy. It aims at ensuring that girls and boys, men and women participate equally in the learning and management of education at all levels.

138. **Access to the same curricula** –*The Ministry of Education has developed a Career Guide Book 2007 for schools as basic instructional material on careers, career choices and career requirements for all male and female students. There is no official designation of careers based on sex or perceived gender roles. The Career Guide Book presents a list of careers that guides selection and requirements for further training. It indicates, for example, the required combination of subjects for a particular career and leaves it up to both male and female candidates to work towards attaining the requirements for careers of their choices.*
139. **Education Sector Policy on HIV and AIDS** – In response to the negative effects of HIV/AIDS in the education sector, which has undermined the implementation of many of the sectors policies and programmes, the Ministry of Education (as it was then) developed an *Education Sector Policy on HIV and AIDS* to provide a framework for efforts to address the pandemic in the education sector. Among other measures, the Policy requires the provision of HIV/AIDS education in schools, which is currently being implemented at all levels, including universities on the basis of an approved HIV/AIDS education curriculum, provision of accurate, timely and relevant HIV/AIDS education to education sector personnel, establishment of mechanisms for the provision of care and support to infected and affected in the education sector.
140. **Positive measures that have been put in place by the government to enhance women’s access to education.** These include: free primary education and, from 2008, subsidized secondary school education include: increased enrolment of girls in pre-school programmes, increased enrolment of *girls in primary schools, increased primary school completion rate, increased school retention rate, increased rate of transition of girls from primary to secondary schools and from secondary schools to colleges and universities and increased entry of girls into employment.* The data presented below provide details of improvements.
141. **Increased enrollment in early childhood development and education (ECDE)** - The government recognizes the significance of ECDE as one of the most important levers for accelerating the attainment of its goal of education for all and the Millennium Development Goals (MDGs). Attainment of education for all as a goal obligates the government to expand and enhance comprehensive ECDE programmes that are essential for basic education. Government efforts to meet the goals have resulted in an increase in enrolment in ECDE as the following data on Table 10 shows:

TABLE 10: Pre-Primary School Enrolment by Year and Sex, 1997 – 2008

Year	Girls	Boys	Total	% Girls
2000	609,793	636,808	1,246,601	48.9
2001	648,876	674,579	1,323,454	49.0
2002	712,863	742,764	1,445,627	49.3
2003	785,655	816,577	1,602,232	49.0
2004	804,304	823,417	1,627,721	49.4

2005	812,347	830,828	1,643,175	49.4
2006	805891	866445	1,672,336	48.2
2007	814930	876163	1691093	48.2
2008	834925	885320	1720245	48.5

Source: Ministry of Education, Science and Technology

142. **Increase in the enrollment of children in ECDE** - The data on Table 10 shows that there was an overall increase in the enrollment of children in ECDE from 1,672,336 in 2006 to children 1,691,093 in 2007. Of this number, there were 9,039 additional girls enrolled in ECDE programmes across the country. There was a further increase of 19,995 girls enrolled between 2007 and 2008. During this period of time, the number of girls enrolled in ECDE programmes surpassed that of boys. This shows that as a result of government's efforts to improve ECDE programmes, more girls are attaining early childhood education, unlike in the past. Similar increases have been recorded at primary school level as the following data in Table 11 shows:

TABLE 11: Primary School Enrolment by Sex, 2000 – 2008 (In 000)

Year	Boys	Girls	Total	% Girls
2000	3064.5	3013.6	6078.0	49.6
2001	3002.5	2939.1	5941.6	49.3
2002	3074.0	2988.8	6062.7	49.3
2003	3674.4	3485.1	7159.5	48.7
2004	3,815.5	3579.3	7394.8	48.4
2005	3,902.7	3688.8	7591.5	48.6
2006	3,896.6	3,735.5	7,632.1	48.9
2007	4261.0	4069.1	8330.1	48.8
2008*	4358.7	4205.1	8563.8	49.1

Source: Ministry of Education, Science and Technology

143. **Increase in the number of girls enrolled in primary schools** - The data in Table 11 indicates that between 2006 and 2007, the number of girls enrolled in primary school increased by slightly more than 332,000. There was a further increase in enrollment of 132,000 between 2007 and 2008 but it is noted that the number of girls enrolled during that time dropped by almost half.

TABLE 12: Primary School Completion Rate by Sex, 2000-2008

YEAR	BOYS	GIRLS	TOTAL
2000	49.9	51.1	50.5
2001	52.0	52.1	52.0
2002	59.0	53.2	56.2
2003	57.1	58.0	57.6
2004	67.1	66.0	66.6
2005	68.0	65.5	66.8
2006	65.4	63.4	64.4
2007	75.0	74.1	74.5
2008	75.9	72.3	74.1

Source: Ministry of Education, Science and Technology

144. **Retention rate for girls** - For a variety of reasons, including forced early marriages and poverty, a high school drop-out rate of girls in primary schools has been one of the challenges facing the education sector in the country. However, the data presented in Table 12 above shows that the challenge is being overcome. It is noted that retention rate for girls dropped between 2007 and 2008. That could be attributed to post-election violence which displaced very many people, including school children from their homes and schools.

TABLE 13: Primary to Secondary Transition Rate by Sex, 2000 – 2008

YEAR	BOYS	GIRLS	TOTAL
2000	43.5	42.6	43.3
2001	45.6	43.4	44.5
2002	44.3	42.5	43.4
2003	49.2	55.2	51.9
2004	51.9	47.2	49.6
2005	41.8	40.2	41.0
2006	47.2	44.5	46.0
2007	51.2	47.3	49.3
2008	54.6	50.0	52.4

Source: Ministry of Education, Science and Technology, 2009

145. **Increase in the rate of transition of girls from primary schools to secondary schools** - As a result of efforts made to reform the education sector in Kenya, there has also been an increase in the rate of transition of girls from primary schools to secondary schools. During the current reporting period, the rate of transition steadily rose from 40.2 per cent in 2005 to 50 per cent in

2008 as shown in Table 13 above. However, equality in the rate of transition between girls and boys has yet to be attained.

TABLE 14: Secondary School Enrolment by Year and Sex, 2000 – 2008

Year	Male	Female	Total	% Female
2000	402504	356463	758967	47.0
2001	403390	359855	763245	47.1
2002	411777	369824	778601	47.5
2003	462750	419763	882513	47.6
2004	490506	435644	926150	47.0
2005	494157	439992	934149	47.1
2006	546072	484008	1030080	47.0
2007	638690	541577	1180267	45.9
2008	735680	593284	1328964	44.6

Source: Ministry of Education, Science and Technology, 2009

146. **Increase in enrollment of girls in high schools** - It is evident that the rate of enrollment of girls in high schools has increased, which means that more girls are now able to access higher education as shown by Table 14 above. However, as compared to increase in the number of boys' enrollment, the number of girls is still lower.

TABLE 15: Secondary School Students Enrolled by Form and Gender

Form	2004		2005		2006		2007	
	Male	Female	Male	Female	Male	Female	Male	Female
I	146,145	126,557	139,469	124,384	161,588	137,873	170,297	142,672
II	124,585	114,053	122,867	109,471	132,015	119,077	173,444	149,602
III	117,975	105,118	120,912	107,770	120,978	115,443	157,903	134,765
IV	101,301	89,416	110,909	98,367	131,491	111,615	137,749	113,835
Total	490,006	435,144	494,157	439,992	546,072	484,008	639,393	540,874

Source: Republic of Kenya, National Bureau of Statistics, Statistical Abstract (2008).

147. **Increased Number of girls enrolled in secondary schools.** The above data in Table 15 above, on secondary school enrollment by gender indicates that girls join secondary school at increasingly large numbers. However, as they move up the academic ladder from Form 1 (9th Grade) to Form four (12th grade), their number reduces. This means that although many girls join high school, only a proportion of them manage to complete. In 2007, for example, only 113,835

girls managed to reach Form Four and yet at the time of entry into Form One and in Form Two, their numbers were higher.

TABLE 16: Secondary School Completion Rate by Sex, 2000-2008

YEAR	BOYS	GIRLS	TOTAL
2000	93.1	88.4	90.9
2001	92.5	89.6	91.1
2002	88.2	84.8	86.6
2003	94.6	87.5	91.3
2004	94.3	90.4	92.4
2005	98.2	96.0	97.1
2006	92.0	82.7	87.5
2007	93.6	89.6	91.8
2008	93.8	91.2	92.5

Source: Ministry of Education, Science and Technology, 2009.

148. **Increased Completion of Secondary School by girls** - Increase has also been attained in the number of girls enrolled in secondary school and in their secondary school completion rate. Data in Table 16 shows that there has been a steady increase in the rate of girls' completion of high school to a point where 92.5 per cent of them managed to complete school in 2008. The improvement could be attributed to efforts to remove of obstacles, such as early and unwanted pregnancies and return to school programmes for girls who conceive while in school. However, there are still a considerable number of girls who drop out, which means that obstacles to girls' education have not been totally eliminated.

TABLE 17: Total Student's Enrolment in Public Universities including part time, 1995/1996 - 2008/2009

Year	Male	Female	Total	% Female
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	47087	25464	72551	35.1
2004/2005	53394	28097	81491	34.5
2005/2006	53737	27940	81677	34.2
2006/2007	56517	34820	91337	38.1
2007/2008	60504	36603	97107	37.7
2008/2009*	62753	37896	100649	37.7

Source: Joint Admissions Board

149. **Increase in enrollment of girls in public universities** - The number of women enrolled in public universities has also shown slight increases but clearly, parity in education between men and women is yet to be attained at all levels in Kenya. The data presented in Table 16 above shows that there are usually more women joining schools at the primary level, but at transition to high school and beyond, the number drastically reduces. This is due to a number of obstacles including preference for boys in high school education, pregnancy of girls in primary school leading to school dropout, forced early marriages, an increasing rate of premature death of parents, forcing many girls to take over responsibilities for up bringing their siblings and gender-insensitive school environments.

TABLE 18: Enrolment in Public Primary Teacher Training Colleges as at January 2009

No.	College	1 st Year		2 nd Year		Total
		Males	Females	Males	Females	
1	Asumbi	142	155	215	229	741
2	Baringo	192	167	167	192	718
3	Bondo	161	189	208	181	739
4	Egoji	379	323	334	274	1310
5	Eregi	277	260	345	318	1200
6	Garissa	199	205	143	157	704
7	Kaimosi	247	258	290	299	1094
8	Kamwenja	225	195	313	208	941
9	Kericho	202	196	309	322	1029
10	Kigari	237	324	295	390	1246
11	Kilimambogo	136	298	257	260	951
12	Machakos	188	287	277	193	945
13	Meru	177	253	203	309	942
14	Migori	209	217	235	250	911
15	Mosoriot	248	214	277	198	937
16	Murang'a	145	159	213	202	719
17	Narok	----	----	162	172	334
18	Shanzu	191	177	218	246	832
19	Tambach	234	226	252	239	951
20	Thogoto	155	157	201	165	678
	TOTAL	3944	4260	4914	4804	17,922

Source: Ministry of Education

150. **Increased enrolment in Public Primary Teacher Training Colleges** - The data in Table 18 above shows that the number of women joining primary teacher training colleges in the country has steadily risen. In many colleges, the number of female trainees exceeds that of men. This means that there is an increasing number of women joining the teaching profession at the primary school level. However, there is a lower number of women joining secondary school teacher colleges, which suggests that as in families, women still bear a greater burden in taking care of children of tender age, even in schools.

TABLE 19: Enrolment in Teachers' Training Colleges: S 1 Diploma, 2004-2007

Academic Year	2004		2005		2006		2007	
	M	F	M	F	M	F	M	F
1 st	425	331	305	282	359	295	422	301
2 nd	411	331	421	330	301	261	359	295
3 rd	421	304	463	334	344	287	301	261
Total	1,257	966	1,189	946	1,004	843	1,082	857

Source: Kenya Bureau of Statistics, Statistical Abstract (2008) at 199.

151. **Enrolment in Teachers' Training Colleges (S 1 Diploma)** the number of women enrolled in secondary school teacher training colleges for diploma is lower than their number in primary school teacher colleges and the number of their male colleagues in secondary school teacher training colleges as shown in Table 19 above. This suggests a decrease in women's participation as they move up the career ladder. More efforts ought to be made to attain equality between men and women at all levels.

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

152. Since the last reporting period, Kenya has made great strides towards attainment of equality between men and women in employment through a number of legislative measures and reforms. The following is an elaboration of the measures taken, so far.
153. **Legislative measures: Legal prohibition of discrimination in employment** - In the year 2007, Kenya passed a new Employment Act, No. 11 of 2007 which took effect on December 27, 2007 and replaced the old employment law. Section 5 (3) (a) of the Act prohibits discrimination in access to employment and in employment security on the basis of sex, among others. Under section 5(4) of the Act, an employer who discriminates against an actual or prospective female employee on the basis of sex commits an offence and is liable to punishment. In section 5(3)(b), the new Employment Act also outlaws discrimination in respect of training, promotion, terms and conditions of employment or other matters arising out of employment.

154. **Promotion and guarantee of equality** – section 5(1) (a) and (b) of the law obligates the Minister of Labour, labour officers and the Industrial Court as newly constituted to promote and guarantee equality of opportunity in employment in order to eliminate discrimination in employment. Employers have the responsibility to eliminate discrimination in any employment policy or practice. Affirmative action measures that are consistent with the promotion of equality or the elimination of discrimination in the workplace shall not be considered as discriminatory.
155. **Legal requirement of equal pay for work of equal value** – In addition, section 5(4) of the Employment Act requires that all men and women performing work of equal value shall be paid equal remuneration. This outlaws the employer practice whereby female employees were paid less than their male counterparts performing the same work of equal value on the basis that women have husbands to take care of them and therefore do not deserve the same pay as the men, even if they perform work of the same value.
156. **Legal prohibition of sexual harassment** - For the first time in Kenya's history, there are provisions of law, in section 6 of the new Employment Act, prohibiting sexual harassment which the law defines to include use of language, whether written or spoken, of a sexual nature. In section 6(2) of the law, an employer who employs twenty or more employees shall, after consulting with the employees or their representatives, develop a policy on sexual harassment which must include an explicit statement to the effect that every employee is entitled to employment that is free of sexual harassment.
157. **Provisions for three months maternity leave with full pay** - The Employment Act, section 29 stipulates that *“A female employee shall be entitled to three months maternity leave with full pay.”* This provision has eliminated injustices and inequalities suffered by female employees who were, in many cases, denied leave all together, or allowed leave for only one week, two weeks or, in most cases, one month which were not adequate to allow full recovery from delivery and enough time to tender new born babies. At the expiry of her maternity leave, a female employee shall *“...have the right to return to the job which she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave.”* The significance of the provision is that unlike in the past, it ensures that women who have been on maternity leave are not dismissed from work and/or demoted, upon return from maternity leave. The three months maternity leave is in addition to annual leave and any sick leave, which are also provided for by the law. The Government will monitor closely to see that these provisions do not result in backlash against women.
158. **Prohibitions against unfair termination of employment** - Section 46 of the new Employment Act prohibits unfair termination of employment, which, in section 46 (a), (b) and (g), includes termination on the basis of sex, going on leave or a female employee's pregnancy or any reason connected with her pregnancy.
159. **Protection of employee health** - The law obligates employers to ensure the provision of sufficient and proper medicine for employees during illness and if possible, medical attendance during serious illness. These provisions are in addition to provisions of the Occupational Safety and

Health Act, No. 15 of 2007, which makes elaborate provisions for the safeguarding of employee health and safety. Provisions of the new employment Act and the Occupational Safety and Health Act are complemented by provisions of three other new employment laws, namely: The Work Injury Benefits Act, No. 13 of 2007; The Labour Relations Act, No. 14 of 2007; and The Labour Institutions Act, No. 12 of 2007.

160. **Reforms in the military allowing women equal opportunities with men** - In addition to the specified legislative measures, efforts have been made to improve and increase women's participation in military service. Until the late 1980's, women in the armed forces served mainly in the Women Service Corps (WSC), whose functions comprised mainly non-combat duties of female army officers. Terms and conditions of work were restrictive and women performed only administrative and subordinate duties while their male colleagues were deployed for more rigorous tasks, including combat operations. However, that has changed. The WSC was disbanded and women who were serving therein absorbed into the mainstream Army, Air Force and Navy. Women now serve alongside their male colleagues in all three branches of the military, including peace keeping responsibilities in other countries. Currently, the military is fully committed to increasing the number of women in the service in line with the government policy of gender balance. Women soldiers can be sent on United Nations missions abroad and are considered for appointments and promotion on an equal basis with their male colleagues. On their part, women serving in the military have proven to be competent enough in their line of duty.³⁸
161. **Actual increases in women's employment realized** - Legal development have facilitated positive changes in people's perceptions and attitudes about women's participation in employment which has, in turn, shaped employment practices in both public and private sectors in favour of women's employment. In reality, there has been an increase in women's employment in the country, generally.

**TABLE 20: Distribution of Wage Employment by Sex and Income (Monthly) Groups
(excluding unpaid family workers and unpaid directors)**

Income (Monthly) Groups	2004		2005		2006		2007	
	Male	Female	Male	Female	Male	Female	Male	Female
<2000	3,456	575	3,412	606	3,675	648	3,895	676
2,000-3,999	13,824	5,846	14,061	6,138	14,320	6,228	14,510	6,261
4,000-5,999	44,198	12,009	45,040	12,785	45,493	12,850	46,857	13,092
6,000-7,999	160,182	29,442	162,854	31,777	164,978	31,976	169,435	32,380
8,000-14,999	275,502	113,628	276,774	117,891	279,161	118,615	283,577	119,513
15,000-19,999	277,553	107,398	281,182	112,532	289,172	115,288	296,318	117,288
25,000-29,999	203,392	97,155	210,159	103,358	220,949	108,304	229,508	111,852
>30,000	46,914	16,494	47,823	17,431	49,095	17,822	50,164	18,048
TOTAL	1,241,929	521,796	1,261,426	474,287	1,297,036	562,707	1,332,595	574,655

Source: Kenya National Bureau of Statistics, Statistical Abstract, 2008 at 274.

162. **The number of women entering wage employment increases annually** - The data in Table 20 above indicates that every year, the number of women entering wage employment increases, even though the increase is small, compared to that of men. The data does not show the number of women raising children and those taking care of sick and elderly family members. This is an indication that women's reproductive roles and their roles as family care givers is yet to be recognized as work, yet the roles consume a lot of women's energy, time, emotions and opportunities that would otherwise be spent in productive activities.
163. **There has been increase in women's employment within both private and public sectors** - Available data indicates that there has been an increase in women's employment within both private and public sectors as the following data in Table 20 above shows that in all ranks, the number of women in employment has increased, even though equality has not been attained. Women now occupy more positions than they did in the last reporting period as members of parliament, government ministers, councillors, permanent secretaries and as lawyers.
164. **There has been increase in women's employment in the judiciary** - Improvement in women's employment is also reflected in the judiciary, as the following data in Table 21 shows:

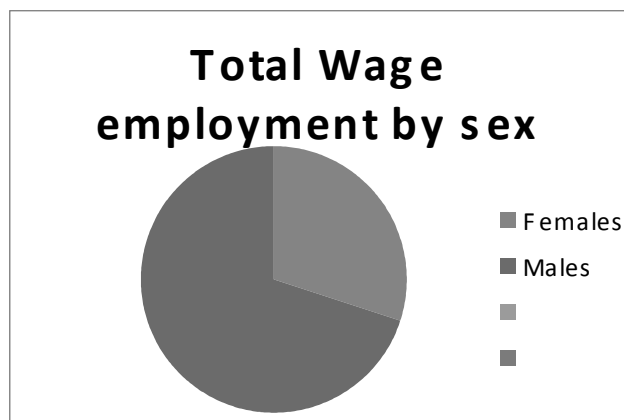
TABLE 21: Judicial Service Establishment in Kenya by Grade and Sex

Rank	February 2005				April 2009			
	F	M	Total	(%) F	F	M	Total	(%) F
Chief Justice	-	1	1	-	-	1	1	-
Court of Appeal Judges	-	9	9	-	0	9	9	0
High Court Judges	10	39	49	20.4	14	48	62	22.5
Chief Magistrates	4	5	9	44.4	5	8	13	38.5
Senior principal magistrates	4	11	15	26.7	5	13	18	27.8
Principal Magistrates*	11	19	30	36.7	12	22	34	35.3
SRM	36	66	102	35.3	38	62	100	38.0
Resident Magistrates	33	44	77	42.9	30	44	74	40.5
District Magistrates(11)	14	24	38	36.8	5	7	12	41.7
Khadhis	-	17	17	-	-	17	17	-
Total	112	235	347	32.3	108	225	333	32.4

Source: Judicial Service Commission and DPM Compliment Statistical Unit.

* This figure includes both principal magistrates and senior principal magistrates.

165. Except for Kadhis who preside over personal matters involving Muslims, and for the position of the Chief Justice, employment of women in all of the positions in the judiciary, has slightly increased.
166. **Challenges and obstacles:** One of the biggest challenges to increased women's participation in the labour force is limited opportunities for education. The data on education presented under Article 10 herein shows that girls enter into elementary school in large numbers and that there is a near parity between girls and boys in education at that level. However, during transition into secondary schools and colleges, the number of girls drastically reduces, which means that fewer girls manage to acquire necessary educational qualifications and technical competence to secure paid employment. Obstacles contributing to the unequal realization of the right to employment between women and men include: forced and coerced early marriages and unwanted pregnancies. The number of teenage pregnancies has increased which has negative impact on completion rates for girls.
167. Poverty is another obstacle to women's unequal participation in employment. Poverty hinders many parents from educating their daughter beyond primary school. In some cases, where resources are scarce, parents still prefer boys' education over girls' meaning that fewer women would qualify for meaningful wage employment. The situation has been exacerbated by frequent premature deaths due to HIV and AIDS, which leaves many orphans without parental support. Another challenge that the country is faced with is child labour where majority are girls. The government has put in place programs to that seeks to eliminate the worst forms of child labour which include domestic, child prostitution, working in plantation and mines and child trafficking. In addition insufficient social services, especially those related to child care have made young mothers depend on unskilled house helps to supplement roles. This has an impact on their productive roles in the workplace. Employers consider that women's double roles contribute to disruption of work and underachievement, which makes many employers deny employment to women with actual or perceived child-bearing potential.
168. It is also noted that most women work as farm labourers in family and commercial farms where they constitute 70 per cent of the labour force, but the extent of their labour contributions in the agricultural sector is not adequately remunerated.
169. Further, Implementation a Presidential Executive Order issued on 30th October 2006 requiring that at least 30 per cent of new employees recruited or appointed into the public service and appointments in public offices should be women has been slow. For example, in the last appointments of the Judiciary made on April 2, 2009, 2 men were appointed to the Court of Appeal to replace a lady judge, making the Court of Appeal comprised of men only. In the appointments made to the High Court, at the same time, out of 5 Judges 4 were women.



Source: Kenya National Bureau of Statistics, *Kenya, Facts and Figures* (2008), at 34.

170. As a result of these challenges, although there are more women of working age (11, 239,137) than men (10,478,089), women's participation in total wage employment is only 30 per cent, while men's is 70 per cent.³⁹

ARTICLE 12- MEASURES TO ELIMINATE DISCRIMINATION AGAINST WOMEN IN THE FIELD OF HEALTH CARE

171. An attempt has been made to report under this Article on the understanding of all components of the right to health and how they apply to women, including girls and adolescents, in all stages of their lives. The following is a description of some of the achievements made as well as emerging challenges to progress.
172. **Accomplishment of a Service Provision Assessment Survey (SPAS)** - At the instance of the Kenya government, a second assessment was conducted by an independent team of experts in 2004 (the first was conducted in 1999) on progress made in relation to health towards attaining the Millennium Development Goals (MDGs). The assessment is considered as part of progress made in so far as it was intended to reveal the situation of health care services in the country, including areas requiring urgent and focused attention for the purpose of improving the health of the population, including women.
173. **The assessment report**⁴⁰ which was released in 2005 includes, among other things, progress and challenges towards attaining equality between men and women in the field of health care, with regard to most of the pertinent health service matters, including maternal health (antenatal and delivery care), family planning and HIV/AIDS. The SPASS was therefore an important tool in national efforts to address reproductive health concerns. Areas of intervention that would make a difference had been proposed and were included as recommendations therein. It is necessary to state some of the findings of the report as they provide baseline information upon which progress or lack of it in the reporting period may be assessed.

174. Generally, the assessment revealed that:

“...despite having well focuses national health policies and reform agenda whose overriding strategies were focused on improving health care delivery services and systems through efficient and effective health management systems and reform, the overall implementation if NHSSP-1 (1999-2004) did not manage to make a breakthrough in terms of transforming the critical health sector interventions and operations towards meeting the most significant targets and indicators of health and socio economic development as expected by the plan. This may be attributed to a set of factors, most of which are inter-related, such as

- Absence of a legislative framework to support decentralization;
- Lack of well articulated, prioritized and costed strategic plan;
- Inadequate consultations amongst MOH staff themselves and other key stakeholders involved in the provision of health care services;
- Lack of institutional coordination and ownership of the strategic plan leading to inadequate monitoring of activities;
- Weak management systems;
- Low personnel morale at all levels; and
- Inadequate funding and low level of resource accountability.”⁴¹

175. As a result of the above factors, the assessment found that the position on key health matters concerning women, which has not changed much to date, were as follows:

176. **Family planning: three- fourths of facilities offer some modern method of Family planning services;** infrastructure and resources considered important for family planning counseling (privacy, individual client cards, written family planning guidelines and family planning-related visual aids) were all available in just 1 in 5 facilities, with family planning guidelines mostly lacking. Visual aids, though widely available in family planning service sites, were rarely used by providers during family planning counseling sessions; all items of infection control were available in family planning service areas in 4 of 10 facilities and in-service training received by family planning service providers was uncommon, with less than a third having received any such training in the past three years.

177. **Maternal health services: antenatal care (ANC) is offered in four out of five facilities in Kenya,** however ANC, post-natal care and tetanus toxoid vaccine services were available in only one-third of all facilities; here-fourths of facilities offering ANC services have service providers who can diagnose and treat STIs, however, just a quarter of the facilities have at least one medicine to treat each of the four major STIs; medicine for treating gonorrhoea was mostly lacking; only 36 per cent of interviewed ANC clients reported being counseled on warning/danger signs during pregnancy and 51 percent were counseled on delivery plan; two in five facilities offer

normal delivery services and 39 per cent of facilities offering delivery services have blank partographs. Only 13 per cent have medicines for managing serious delivery complications and 56 have new born respiratory support; only six percent of interviewed providers of normal delivery services were able to mention all four signs/symptoms of postpartum hemorrhage and 12 per cent were able to mention all four expected interventions.

178. ***Sexually transmitted infections (TIs): about one- fourth of facilities have at least one medicine available*** for treating each of the four major STIs, and medicines for treating gonorrhea and candidiasis are the most lacking; about one-third of facilities have all items for infections control at STI service sites, with disinfecting solution and soap the items most often missing; less than half of facilities offer TB services.
179. ***HIV/AIDS: a third of all facilities had HIV testing systems*** but only about one-fourth of them provide any prevention of mother-to-child (PMTCT) services. Antiretroviral therapy (ART) and post-exposure prophylaxis were among the least offered HIV/AIDS services.
180. ***Maternal Mortality: national maternal mortality rate has declined*** from 590 maternal deaths per 100,000 live births in 1998 to 414 maternal deaths per 100,000 live births in 2003. This is below the expected goal. Millennium Development Goal No. 5 is to reduce, maternal mortality rate to 175 maternal deaths per 100,000 live births or less.
181. The above were some of the findings which prompted a suggestion by the assessors that a comprehensive national health sector strategic plan be developed to provide a framework for improvement of health services in the country.
182. In response, ***The Second National Health Sector Strategic Plan, 2005-2010 (NHSSP-2) was developed.*** The NHSSP which was released in September 2005 provides, for the first time in Kenya's history a comprehensive output and performance-oriented strategy for improvement of health sector performance in the provision of health care services through implementation of health sector reforms. The policy goal expressed in the NHSSP is to ***reduce inequalities*** in health care and reverse the down ward trend in health related impact and outcome indicators (page xi). Policy objectives towards realization of the goal are, among others, to: increase ***equitable access*** to health services; improve the quality and responsiveness of services in the sector; improve efficiency and effectiveness of service delivery and foster partnerships in ***improving health and delivery services.***
183. ***The NHSSP-2 is a comprehensive strategy which includes a wide approach in health*** sector provision, health sector reforms, quality assurance and standards, health care commodity supply management plan, plans for decentralization of Ministry of Health's health care service-related responsibilities, provisions for partnership with stakeholders, provisions for a sectors wide approach in health care service provision, timeline for achieving health reform outputs, plans for monitoring and evaluation and indicators of progress in specific delivery areas as well as costs of implementing the Strategy and possible sources of funding. It explicitly identifies reproductive health as one of the priority matters that the Ministry of Health would address in the period 2005

to 2010. Indicators of progress in services for pregnancy, delivery and the newborn child are: deliveries conducted by skilled birth attendants; at least 55,000 pregnant women would sleep under mosquito nets to avoid malaria; 54 per cent of pregnant women would attend four ante-natal care visit and that 84 per cent of all new born babies would receive BCG.

184. **The Annual Operational Plan 3, 2007-2008 (AOP-3)** - In order to implement the NHSSP – 2, the *Second National Health Sector Strategic Plan of Kenya: Annual Operational Plan 3, 2007-2008 (AOP-3)* was developed. The government released the AOP-3 I June 2007 to be the main instrument by which the Ministry of Health, together with its development and implementing partners would effect the NHSSP - 2 and the national Economic Strategy for Wealth and Employment Creation. The Plan details the outputs to be realized at district, provincial and national levels and their respective resource requirements and financing for the 2007/2008 year. Objectives of AOP- 3 are, among other things, to: increase accessibility and utilization of quality health services by the community to achieve the mid-term targets of NHSSP-11 and to promote *a non-discriminatory*, participatory and accountable (to clients and stakeholders) *sector decision-making process* in the area of governance.
185. **The AOP-3 establishes various divisions within the ministry of health to be responsible for service delivery** in various health related areas, including: Division of Reproductive Health, Division of Vaccines and Immunization, Division of Malaria Control, National AIDS/STD Control Programme, Division of Environmental Health and Division of Child and Adolescent Health.
186. **Gender mainstreaming and human rights dimensions in health** - For the first time, the government, in the AOP - 3, took steps to mainstream gender and human rights dimensions into the annual health service delivery plan. The government articulated the *principles of gender equality and human rights* in the NHSSP-2. In the AOP-3, it was emphasized that the principles and their goals are needed to move from policy to reality and to become part of a structured and systematic approach. The idea is to integrate and ingrain the dimensions of equity, gender and human rights into the day-to-day operations of the Ministry's core functions. This is recognized by the government as pre-requisite for making service delivery more effective. It is expected that resource allocation and security for public health commodities would gradually become *more equitable and gender responsive*. As a consequence of government's implementation of NHSSP-II and AOP-3, progress has been realized in a number of key areas as explained in the following paragraphs:
187. **Progress in the fight against HIV/AIDS** - Kenya has improved its response actions towards prevention and mitigation of HIV/AIDS impacts in the country. In June 2005, the National AIDS Control Council (NACC) released the *National HIV/AIDS Strategic Plan, 2005/06-2009/10* to provide an action framework for the national response to HIV/AIDS and the context within which all stakeholders would develop their specific strategies, plans and budgets to make responses to the HIV/AIDS pandemic. Its goal is to reduce the spread of HIV, improve the quality of life of those infected and affected and mitigate the socio-economic impacts of the pandemic (page 19). The Strategy sets out a number of objectives and activities towards achievement of the set goals, together with a number of principles to guide implementation efforts.

188. **Recognition of special needs of women** - It is significant that for the first time, the government included, as one of its core principles, *recognition of special needs of women* and the youth. This is based on explicit official recognition that in Kenya, two-thirds of all persons infected with HIV are women (page 5). At the time the Strategy was prepared, the gender difference was most pronounced among the youth in the 15-24 age group. HIV/AIDS prevalence among the age group is 5.8 per cent for girls and young women, compared to 1.2 per cent of young men in the same age group (page 6). In response, the government set strategies, plans and actions to “mainstream gender” in the Strategic Plan. Subsequently, gender concerns were integrated in the Kenya National HIV/AIDS Strategic Plan, 2005/06-2009/10. A HIV/AIDS Technical Sub-committee which was formed under a previous Strategy was tasked with the responsibility of developing strategies for mainstreaming gender into the current National HIV/AIDS Strategic Plan.
189. **Comprehensive analysis of gender gaps in the National HIV/AIDS Strategic Plan-** The Gender and HIV/AIDS Technical Sub-committee completed a comprehensive analysis of the gender gaps in the National HIV/AIDS Strategic Plan and developed a strategy for mainstreaming gender in the National Strategy. The plan provides a framework for integrating gender sensitivity into the HIV/AIDS response which is fully applicable to the current strategy for the following purposes, among others:
- Ensure all prevention and advocacy strategies and programmes are gender-sensitive in order to reduce the vulnerability and risk of women;
 - Promote health and quality of life for women and men affected by HIV/AIDS;
 - Reduce the negative social and economic impact of HIV/AIDS on women and men;
 - Measure the success of gendered HIV/AIDS programmes;
 - Establish gender-sensitive policies to ensure that management systems provide an enabling environment for gender-mainstreaming; and
 - Protect the rights of women and men affected and infected by HIV/AIDS.⁴²
190. **Equitable access to antiretroviral therapy** - As part of gender mainstreaming, the government also committed itself in the National HIV/AIDS Strategy to ensuring that women have equitable access to antiretroviral therapy that is not constrained by their ability to afford treatment (page 25). The government’s aim was to provide ART services to at least 600 sites countrywide and to ensure that women constitute 50 per cent of beneficiaries there from (page 43). The government also committed itself to expanding prevention of mother-to-child transmission of HIV. All strategies, plans and measures would be monitored and evaluated for success (page 30).
191. **Increased PMTCT Services** - In accordance with the National HIV/AIDS Strategy, the government embarked on a dedicated provision of PMTCT services, targeting pregnant mothers and their spouses. By June 2005, PMTCT services were being provided in about 400 antenatal clinics in Kenya. In the current Strategy, the government seeks to expand PMTCT services countrywide to increase access to ARVs for HIV-positive pregnant mothers from 10 per cent to at

least 50 per cent and to reduce the proportion of babies born with HIV from 33 per cent to below 23 per cent by 2010. Expansion of PMTCT programme is also intended to ensure that mothers with HIV continue to receive anti-retroviral drugs after giving birth (page 22 of National HIV/AIDS Strategy). A *National Prevention of Mother-to-Child Transmission Strategic Plan* has been developed to offer specific guidance on PMTCT actions, which are expected to be undertaken in line with the National HIV/AIDS Strategy. This is supplemented by *Guidelines for Anti-retroviral Drug Therapy in Kenya* and *Kenya National Clinical Manual for ARV Providers*, among other instruments developed to guide and shape actions intended to mitigate HIV/AIDS impacts.

192. **Provision of information and education on reproductive rights:** In the National HIV/AIDS Strategy (KNASP), the government also expressed its commitment to providing women and men with information and education on reproductive rights, accompanied with advocacy for couple counseling and testing in order to address pertinent HIV/AIDS-related issues affecting married women and their spouses, especially HIV discordance. The HIV-negative partner in a discordant couple is very vulnerable to HIV infection. In Kenya, it is estimated that over 400,000 married couples are discordant (National HIV/AIDS Strategy at 14). Many of the spouses who are HIV-negative among discordant couples are women.
193. **Increased knowledge about PMTCT -** As a result of PMTCT efforts undertaken by the government in collaboration with local and external partners, there has been an appreciable increase in the level of women's knowledge of pertinent matters concerning PMTCT, including modes of transmission of the HIV virus from mother to child. Currently, at least 72 per cent of women as compared to 68 per cent of men know about modes of HIV transmission from mother to child, especially breastfeeding (KNASP, at 187). Also, the number of people on antiretroviral treatment therapy increased from 2,000 in 2003 to over 160,000 in 2007. However, only 33 per cent of women, as compared to 38 per cent of men know that the risk of mother-to-child transmission of HIV can be reduced by the mother taking certain drugs during pregnancy (KNASP, at 187). These actions have been accompanied by surveillance of the disease trends as well as periodic surveys of HIV/AIDS indicators to determine progress made.
194. In spite of the commendable efforts made in the fight against HIV/AIDS, the disease shows no signs of abating. In fact, a recent survey shows that the current HIV/AIDS situation in the country is worse than it was in 2003. A Preliminary Report of the Kenya AIDS Indicator Survey conducted in 2007, which was the last time a survey was conducted shows that whereas in the year 2003, the national HIV/AIDS prevalence rate was 6.7 per cent, in 2007, prevalence rose to 7.4 per cent. There are variations within the country in terms of HIV/AIDS prevalence, with Nyanza Province having a prevalence rate of 15.3 per cent. The report also shows that a higher proportion of women aged 15-64 years are infected than men. In the age group, the prevalence rate among women is 8.7 per cent while that of men in the same age group is only 5.6 per cent. This rate is higher than the 2003 rate when there were 1.9 infections among women for every one infection among men. Among the youth, ages 15-24 women are 4 times more likely to be infected with HIV than men. Factors contributing to the sorry state of women in relation to HIV/AIDS impacts include a low level of awareness of HIV infection, low bargaining powers, low socio-economic

status and appropriate mitigation measures, especially among rural populations. The situation was made worse by rape and other sexual violations committed against women during post-election violence of late 2007 to early 2008, coupled by inaccessibility of antiretroviral drugs due to high insecurity which wrought by widespread violence throughout the country. The burden of the HIV/AIDS pandemic on women does not end with personal health impacts; women also bear the greatest burden in taking care of ailing husbands, children, mothers and fathers in law and other relatives affected by HIV and AIDS, which robs them of development opportunities and places the lives of many of them at the risk of infection by those receiving their care.

195. **The National Reproductive Health Policy 2007** - The government has put in place the National Reproductive Health Policy 2007 which has a gender component.
196. **Other challenges and obstacles: Lower doctor/patient ratios** - the health care sector has been faced by a number of challenges which have undermined efforts towards women's equality with men in access to health care as the following information elaborates; it is in its elaboration of the expected health service outputs that the AOP-3 presents health-related statistics in the current reporting period on: reproductive health, maternal mortality, deliveries and level of provision of PMTCT services, among others. The statistics, which is confirmed by information presented in the Economic Survey and other data, as well as observations made on the situation on the ground confirm that the situation of women in relation to equality in health care service provision has worsened since the last assessment was conducted in 2004 while the general population and women's population has increased substantially, there has not been a corresponding increase in the number of health care personnel and facilities as the following information on Table 22 shows:

TABLE 22: Medical Personnel/Patient Ration Country wide

Type of Personnel	2006		2007	
	Total Number	No. Per 100,000 population	Number	No. Per 100,000 population
Doctors	5,889	16	6,271	17
Dentists	898	2	931	3
Pharmacists	2,697	7	2,775	7
Pharmaceutical Technologists	1,680	5	1,680	5
BSc Nurse			1	
Registered Nurses	10,905	1	12,198	32
Enrolled Nurses				96
Clinical Officers	5,285	15	5,797	16
Public Health Officers	1,457	4	1,682	5
Public Health Technicians	5,969	17	5,969	16

Source: Economic Survey, 2008

197. Information presented above indicates that the numbers of health personnel who are expected to provide key health services related to reproductive care, child delivery, family planning are very few. For example, for a population currently estimated at 34 million people, there are only 6,271 doctors, many of whom operate in private health care facilities and there are only 33 registered nurses. This means that the health care personnel who would be expected to facilitate health care service delivery to women to ensure equal access to health care are very few. Therefore, even if other necessary infrastructure for health care service delivery were available, it would be very difficult to ensure that women receive necessary maternity and other care adequately. There are also limited number of health care facilities that are available in the country as the following information on Table 23 shows:

TABLE 23: Number of Health Institutions by Province: 2003-2008

Province	2003	2004	2005	2006	2007	2008
Nairobi	361	377	389	409	347	387
Central	829	868	894	972	556	825
Coast	525	550	566	624	717	723
Eastern	788	824	849	952	1079	944
North Eastern	127	135	139	162	164	198
Nyanza	472	494	509	601	761	715
Rift Valley	1096	1146	1181	1308	1573	1570
Western	357	373	385	443	392	377
TOTAL	4557	4767	4912	5471	5589	5739

Source: Economic Survey, 2008

198. Available information clarifies that not all of the health care institutions indicated in Table 23 above are government hospitals. They include hospitals, clinics and dispensaries owned by various stakeholders, including the government and faith-based organizations. Non-government operated hospitals, clinics and dispensaries constitute 46 per cent of all health care facilities in the country. There are hospital care related fees for services in both government and non-government facilities. Charges in non-government facilities tend to be higher and in many cases, out of the reach of ordinary people. Moreover, the information shows that health care facilities in the country are few, compared to the total population that is expected to be served. Therefore, it is no wonder that many health care facilities are physically inaccessible.
199. *Women, including pregnant women, have to walk or travel over long distances to health care facilities:* Women's access to health care services has been inhibited by physical inaccessibility, especially in view of the deteriorated status of roads almost country wide as well as economic inaccessibility. The following data on Table 24 shows that many people, including pregnant mothers have to walk for very long distances to access health care facilities.

TABLE 24: Percentage Distribution of Communities by Distance to the Nearest Health Facility

Region/Province	500 metres or less	500metres-1Km	1.1-2.9Kms	3-4.9Kms	5 or more Kms
Kenya	4.9	6.4	12.4	28.5	47.7
Rural	3.0	4.4	12.0	29.0	51.5
Urban	23.3	25.5	15.9	23.7	11.9
Nairobi		10.9	8.2	60.7	20.2
Central	5.7	6.2	16.0	43.4	28.6
Coast	3.7	6.2	13.0	16.9	60.3
Eastern	1.5	5.2	2.3	27.2	63.8
North Eastern	3.2	3.5	7.7		85.7
Nyanza	0.1	7.8	11.6	36.8	43.7
Rift Valley	10.6	6.7	17.0	17.7	48.0
Western	5.7	6.3	14.4	28.6	45.0

Source: Basic Report: Kenya Integrated Household Budget Survey- 2005/06 (Revised Edition, August 2007) at 237.

200. Information presented on Table 24 above indicates that the majority of Kenyans live far away from health care facilities. In rural areas, 51.5 per cent of the population has to walk or travel over five kilometers to reach health facilities. There are regional disparities in the country in terms of accessibility of health care facilities. In Coast Province, for example, 72.7 per cent of the population has to walk or travel over 5 kilometers to reach health care facilities.
201. *More women give birth at home, without qualified birth attendants:* Physical inaccessibility has resulted in the delivery of many children at home, rather than in hospitals under the care of health professionals. Kenya's Integrated Household Budget Survey of 2005/2006 indicates that nationally, 53.9 per cent of children are born at home. In rural area, the proportion is higher; 60.8 per cent of children are born at home.⁴³ The Survey affirms that the situation has not changed for the better since 1994.⁴⁴ The following information on Table 25 shows that there are areas in the country where the proportion is much higher.

TABLE 25: Percentage Distribution of Children (under five) by Pace of Delivery

Region	Hospital	Health Centre	Dispensary /Clinic	Maternity Home	At Home	Other	Total count
Kenya	27.0	6.3	2.8	3.0	53.9	1.1	5,136,214
Rural	23.5	5.5	2.3	1.2	60.8	1.2	4,129,900
Urban	41.2	9.3	4.9	10.8	25.7	0.7	1,006,314
Nairobi	30.0	13.5	7.9	25.6	21.6	0.0	376,324
Central	59.5	8.1	1.3	2.9	27.0	0.3	473,732
Coast	22.6	5.4	3.1	0.6	67.1	0.9	457,388
Eastern	30.1	3.7	1.3	2.5	58.9	1.5	769,812
North Eastern	10.2	0.6	0.7	0.2	86.1	0.2	180,449
Nyanza	28.3	11.0	6.8	0.6	49.7	2.2	722,874
Rift Valley	25.1	5.2	2.1	1.2	65.2	0.7	1,239,281
Western	18.1	5.6	1.4	0.6	70.8	2.3	676,222

Source: Basic Report: Kenya Integrated Household Budget Survey- 2005/06 (Revised Edition, August 2007) at 89.

202. Physical inaccessibility of health care facilities poses dangers, especially to the lives of pregnant mothers and their unborn and born babies.⁴⁵ Given the long distance that people have to walk to access the inadequately staffed health care facilities, maternal and child mortality rates in Kenya have not reduced since the last assessment was conducted in 2004 and are, in fact, on the increase, as the following information shows.
203. *High maternal Mortality Rates:* Low doctor to patient ratios, coupled by physical and economic inaccessibility of health care facilities and high rates of poverty foster **high maternal and child mortality rates**. In the ten year period preceding 2003, national maternal mortality rate was 414 for every 100,000 births, with most of the deaths occurring among women between ages 20-24.⁴⁶ The current AOP -3 does not provide the national maternal mortality rates but indicates the rate per region, stating, for example, that in the Central Province, the rate is 960 deaths per 100,000 live births; and 710 deaths per 100,000 live births in Eastern Province. This indicates a higher trend of maternal mortality in the country than the 175 maternal deaths per 100,000 live births or less which the government committed itself to achieve as part of its Millennium Development Goals. It is also suspected that the situation may have been made worse by post-December 2007 election violence which paralyzed health care services in most parts of the country for almost four months.
204. *Inequality in health seeking behaviour between men and women:* Available information indicates that inequality still exist between men and women in terms of seeking treatment for sexually-transmitted infections (STIs) as shown in Table 26.

TABLE 26: Women and men seeking treatment for sexually-transmitted infections

Source of Treatment or Advice	Sought Care for STI	
	Women	Men
Clinic/hospital/health professional	59.0	70.8
Traditional healer	14.8	33.1
Advice or medicine from shop/pharmacy	15.7	16.9
Advice from friends/relatives	8.7	28.5
Advice or treatment from any source	68.2	89.6
No advice or treatment	31.8	10.4
Number with STI or symptoms of STI	296	88

Source: Kenya Demographic and Health Survey (2003) at 207.

205. Available information indicates that not only are more women affected by STIs; *fewer women than men seek treatment or advice for STIs*. This has serious negative implications for women's infection with HIV and their development of AIDS. Reasons for women's poor health-seeking behaviour in cases of STIs include negative societal attitudes against women. Women are often viewed as the repositories of evil, such that even if a woman is infected with an STD by a spouse or other sexual partner, she would be reluctant to seek treatment because she would be the one held, in the view of society, responsible for the infection.
206. *Domestic violence*: One of the greatest obstacles to improving women's health status and achieving equality with men on matters concerning health, including access to health care services is domestic violence against women. It has been reported that in Kenya, at least 47 per cent of women who have ever been married have reported some form of domestic violence against them, including physical violence, marital rape and strangling.⁴⁷ Besides physical harm to the health and life of a woman, domestic violence has negative implications for HIV/AIDS. Women who are regularly abused (and many are) are often rendered physically incapable of seeking or continuing with HIV/AIDS-related management services. In addition, some women suffering spousal and other abuse may develop the tendency to seek solace in other men and in the process, they may end up getting infected with HIV or infecting their sexual partners.
207. *Economic inaccessibility of health care services* – It is officially recognized that the majority of Kenyans, including women, do not have access to affordable health care.⁴⁸ Nearly half of the population live below poverty line, meaning that unless the government introduces a national health care plan for all or, at least, for the poor, many Kenyans may never realize their health rights. A proposal for a national health care insurance plan was introduced in the 9th Parliament but the bill was defeated. As a result, maternal mortality rates still remain high, especially among women. Currently, it stands at 414 deaths per 10000 births, meaning that 14,700 women of

reproductive age die every year due to pregnancy related complications.⁴⁹ Recent statistics show that 60 per cent of births in Kenya take place outside health care facilities.⁵⁰

208. Immunization of children is showing a downward trend as shown in Table 27. Progress in immunization coverage has been undermined by depletion of buffer stocks resulting from delayed procurement and over-utilization of stocks during post-election violence.

TABLE 27: Immunization Coverage: 2001-June 2008

Antigen	2001	2002	2003	2004	2005	2006	2007	2008
BCG	71%	80%	87%	92%	94%	95%	88%	87%
OPV3	58%	62%	72%	73%	68%	74%	75%	72%
Penta 3	68%	66%	89%	76%	77%	78%	80%	80%
Measles	52%	69%	73%	67%	69%	77%	79%	79%
Fully Immunized	42%	46%	57%	59%	61%	69%	70%	71%

Source: Ministry of Health: Kenya Extended Programme on Immunization

209. *Inadequate health care insurance* – Kenya does not yet have a social welfare system or a national health care insurance for everyone. However, there is a National Hospital Insurance Scheme for both the employed and the unemployed who chose to make periodic contributions which could then be used by contributors and their immediate family members to meet health care related expenses as need arise. However, many people in Kenya are poor and cannot afford to make contributions to the National Hospital Insurance Fund (NHIF). The following information on Table 28 shows NHIF benefits and the total numbers of beneficiaries for the period between 2002 and 2007.

TABLE 28: National Hospital Insurance Fund Resources, 2002/03 – 2007/08

Financial year	Recipients	Benefits	Contributions net of Benefits (in millions)
2002/03	2,523	822.0	1,701.9
2003/04	2,639	713.3	1,926.2
2004/05	3,117	685.5	2,431.8
2005/06	3,459	1,105.9	2,352.9
2006/07	3,954	1,414.9	2,540.1
2007/08*	4,511	1,856.5	2,654.9

Source: Economic Survey, 2008 at 58.

210. The data presented on Table 28 above indicates that a proportion of Kenya's population has benefited from NHIF funding of health care-related services. In the period between 2005 and 2007, for example, a total of 7,413 people benefited. Over the same period, Kenya's Integrated

Household Budget Survey showed that 27 per cent of the population reported sickness and that the ailing population comprised more women (30.1 per cent) than men (24.7 per cent).⁵¹ It appears that given the high levels of poverty and unemployment in the country, coupled with lack of a national health care insurance for all, many ailing people do not get the health care services they need.

211. *Poor health-seeking behaviour* – In many parts of Kenya, especially in rural areas, many ailing people do not seek health care services for a variety of reasons, including lack of finances, unfriendliness of health care institutions and personnel, especially maternity facilities and physical inaccessibility.
212. *Other HIV/AIDS-related challenges* – HIV/AIDS continues to pose health and socio-economic challenges. The National Aids Control Council estimates that there is an estimated 1.2 million people currently infected with HIV. Women constitute two-thirds of all people infected with HIV. In Kenya, approximately 85,000 people die of AIDS-related complications annually, leaving behind over 2.4 million orphans. Although in many areas, VCT centres have been established up to village level, the up take remains low, with only 5 per cent of the population visiting the centers.
213. *Poor nutrition* – Poor nutritional status remains a challenge in Kenya and undermines not only the Health sector goals specified in the current National Health Sector Strategic Plan, but also HIV/AIDS-related interventions. Most significantly, poor nutrition undermines access to and provision of anti-retroviral drugs which require adequate nutrition. Without adequate nutrition, many people cannot access ARV and the malnourished already placed on ARVs and those placed on ARVs who subsequently become malnourished are simply sent to their graves much faster by negative side-effects of ARVs.
214. *Imbalanced government health care financing* – Currently, the health care expenditure for rural areas account for 30 per cent of the government's expenditure on health care services, while urban areas account for 70 per cent while 20 per cent of Kenyans live in urban areas. Quality of health care services is sometimes compromised by inadequate supplies. Of the 6,194 health care facilities in the country, 51 per cent are Ministry of Health facilities, while the remaining 49 per cent are owned and operated by faith-based organizations and private entities.
215. *Poverty* is among the critical factors adversely hindering women's equal access to health care services with men. Currently, there are more poor women in Kenya than men, at a ratio of 46.7 per cent females to 46.6 per cent males (Gender Data Sheet, 2008). The poverty gap between men and women is larger at household headship level, whose poverty margins are further determined by rural versus urban settings. In rural areas, 48.8 per cent of male headed households are classified as poor as compared to 50 per cent for female headed households. In urban areas, the difference in poverty levels is higher. 30 per cent of male headed households are poor while female headed households constitute 46 per cent (Kenya Vision 2030, at 117).

ARTICLE 13 – MEASURES FOR ELIMINATION OF DISCRIMINATION AGAINST WOMEN IN OTHER AREAS OF SOCIAL AND ECONOMIC LIFE

216. **Formal employment confers women and men equal economic and social benefits.** All labour laws have been reviewed and brought into conformity with International Labour Organization's Convention and Recommendations, and their provisions for economic and social benefits that accrue to families of women and male employees. The Work Injury Benefits Act 2008, introduces compulsory insurance cover for all employees, and in case of death, the benefits accrue to the families of women employees same as male employees. The Occupational Safety and Health Act 2008 provides for the safety and welfare of the employees. Women have equal access to benefits conferred by these pieces of legislation on a par with men. However the benefits conferred by these legislations are limited for those who are in informal employment in which women are predominantly engaged.
217. **In property holding and enjoyment, both men and women are entitled to land holding,** however, this is still largely determined by principles of customary law where inheritance of land occurs by male lineage women do not own land or carry out any transaction in relation to land. The Government has remedied this situation by enactment of legislation such as the Law of Succession Act which entitles wives and daughters to inherit a share of the estate of their fathers or husbands this includes inheritance of land. In some instances, a number of widows have become registered as landowners after the death of their spouses and in some cases daughters have inherited land from their fathers. In a few instances land titles have accrued to women through subdivisions of family land. Married and unmarried women are gradually becoming registered landholders. In case of intestacy however, the Law of Succession Act grants the surviving spouse a life interest in the estate, which for widows terminates upon remarriage.
218. **The devolved funds have been instituted by the government as a measure for ensuring equitable distribution of national resources to all regions of the country.** The government has directed that 20 per cent of all Local Authority Transfer Funds (LATF) be spent on core poverty programmes which are essentially millennium development goals programmes. The government has increased allocations on Constituency Development Funds (CDF) to all the constituencies in the country to fund rural development projects. Other funds at the constituency level for benefit of the rural women and men include; the Constituency Aids Fund, the Constituency Bursary Fund and the Constituency Roads Fund. A recent survey of the devolved funds indicates that over 60 per cent of the funds are spent on education, water and health thus contributing greatly to social welfare programmes. The government policy on all the devolved funds is that the composition of the local committees disbursing the funds must have at least 30 per cent representation of women⁵².
219. **Bank loans, mortgages and other forms of financial credit are increasingly becoming available to women.** All major commercial banks have established at least one financial credit or mortgage product targeting women. The government has initiated several schemes to provide credit to women. The government through the Ministry of Trade has implemented the Joint Loans Board Scheme which extends business credit to grassroots entrepreneurs, majority of whom are

women. The largest of these initiatives which targets all regions is the Women Enterprise and Development Fund which allows women entrepreneurs to borrow money to engage in economic activities at reasonable interest rates without the requirements of cumbersome sureties and other bureaucratic processes. In addition the government has licensed several NGOs to provide credit to women individually and as group through micro finance and micro credit in urban and rural areas.

220. **The vision 2030 is based on economic pillar, social pillar and political pillar with an agenda for gender.** The agenda of vision 2030 for gender, youth and vulnerable groups is gender equity, improved livelihoods for vulnerable groups, and a responsible, globally competitive and prosperous youth (as elaborated in para 35). The 5 year goal for 2012 is to increase opportunities all-round for women, youth and all disadvantaged groups. Specific strategies involve: increasing the participation of women in all economic, social and political decision-making processes (through higher representation in Parliament); improving access of all disadvantaged groups (through business opportunities, health and education services, housing and justice); and, minimizing vulnerabilities through prohibition of retrogressive practices (such as female genital mutilation, child labour) and by scaling up training for people with disabilities and special needs.
221. **The National Hospital Insurance membership is open to women and men from formal and informal sectors** throughout the country and aims to provide accessible, affordable sustainable quality social healthcare. Some women groups use part of their revolving funds to obtain membership of the National Hospital Insurance Fund which covers the members as well as their spouses and children. The fund is intended to pay a percentage of both inpatient and outpatient though currently the Fund covers only a portion of inpatient payment in accredited hospitals while actuarial studies are underway to include part of outpatient payments.
222. **The Government has initiated social welfare programmes in all regions** through the Department of Social Development. The department facilitates the registration, capacity building, and training of groups and also gives small grants to community groups to boost their activities and uplift the living standards. As elaborated in paragraphs 236-238 below.
223. **Women and men have equal right to participate in recreational facilities, sports and all aspects of cultural life** and the law does not in any way restrict participation. Women freely take part in sports, arts, music, choirs, dance, and cultural activities as well as competitions. Many women represent the country nationally and internationally in athletics and other sports.

Challenges and obstacles

224. It is estimated that women constitute over 70 per cent of all employees in the agricultural sector, largely in the form of casual or seasonal employees. Such jobs provide minimal job security, low wages, minimal employment benefits no pension schemes, development of skills, credit or extension services. In the general society, patriarchal understanding of gender roles, undermine women's social and economic status.

**ARTICLE 14 – MEASURES TO ADDRESS THE SITUATION
OF RURAL WOMEN**

225. It is estimated that 80 per cent of the population of Kenya lives in the rural areas although rural urban migration is increasing. Most of those who live in the rural areas are women. Agriculture is the mainstay of the economy of Kenya and the main source of livelihood and economic activity for the rural population. Women provide 75 per cent of the agricultural labour and are the majority of the smallholder farmers. Women mostly produce food crops for household consumption and only sell surplus while commercial farming is mostly undertaken by men. This usually translates into women having less access to modern farming technology and less income than men. Rural women own only 5% per cent of agricultural land, their access to credit based on land as security is limited. Women face more time constraints and structural constraints in terms of limited access to and control over agricultural land and other productive resources. As a result of these challenges, rural women remained poor and with limited access to decision-making positions in the country. The Kenya government recognizes these challenges and has undertaken number of measures to uplift the socio-economic status of rural women and increase their participation in decision making as explained in the following paragraphs.
226. **Progress n the agriculture sector:** Through the Ministry of Agriculture, the government has undertaken extensive Agriculture Sector Reforms aimed at reducing poverty, increasing food security and improving economic management. The key government instruments in this regard is the *Strategy for the Revitalization of Agriculture* (SRA) which provides basis for a number of reforms in the agriculture sector, including those targeting women. The Strategy aims at encouraging farmers, especially women farmers to shift from subsistence to market oriented production by adopting modern farming methods. Through this programme the government is creating an enabling environment by improving support services, especially agricultural extension services to increase women’s capacity to undertake farming more productively and to abandon old and less productive farming practices. Already, an Extension Department has been created in the ministry of agriculture and staffed with field extension officers posted to work with farmers, including women farmers at district, divisional and locational levels, the latter being the lowest community level. The Ministry of agriculture has also indicated a commitment to provide women with marketing facilities and to increase women’s access to markets for their agricultural produce. This would overcome the perennial problem of lack of reliable markets for farm produce which has been a hindrance to farming for a long time. The Strategy also commits the government to streamline coordination agricultural development with that of the other sectors. It is expected that these reforms will benefit women who are the majority of subsistent farmers.
227. **The Government has established Agriculture Sector Coordinating Unit (ASCU)** to coordinate agriculture development in Kenya and a common fund has been established for this purpose. The fund is accessed in a competitive manner by stakeholders in the agricultural sector but gender is a consideration.
228. **The Government has also put in place the *National Agriculture Sector Extension Policy* (NASEP)** implementation framework to guide and regulate the provision of agricultural extension

service in the country. This is being extended to all provinces and Districts throughout the country and gender is a consideration in implementing the policy.

229. **The Government intends to implement Support for Rural Communities and Poverty Eradication and Food Security Initiatives** as a programme to improve agricultural productivity in rural areas. Currently, only some regions are benefitting from the programme but implementation of the Programme will be expanded to all the regions of the country.
230. **The government has also initiated National Accelerated Agriculture Inputs Access (NAAIA)** to improve farmer access to farm inputs, such as fertilizer, agricultural chemicals and farm equipment as a mechanism to improve agricultural production in terms of quality and quantity. One of the expected key impacts of the initiative is affordability of farm input, which should be a powerful incentive for millions of small scale farmers most of whom are women. The programme supports, not only poor farmers who own land to procure farm inputs, but also aides stockists of farm inputs to access credit for stocking farm inputs while farmers are supported to buy through a voucher system. In addition, the government has, put in place several other initiatives including supporting community food security initiatives and promotion of cultivation of traditional crops, such as millet, sorghum, pulse potatoes and cassava in order to improve and diversify food availability.
231. **The government continues to improve rural infrastructure** especially road for the purpose of improving market access by farmers and reduce perishability of farm produce, which has been a major cause of loses to farmers, especially women. In addition, the government is continuing to implement a Rural Electrification Programme to promote small agriculture-based based industries in the rural areas. Already, many rural areas have electricity connections and this is a major boost, especially to women farmers who, until the Programme was implemented, spent a lot of time looking for firewood as fuel to cure tobacco and other cash and subsistence crops. At the household level, efforts are geared towards small scale processing of agricultural produce to enhance the establishment of cottage industries.
232. **The Government is addressing economic and social benefit for rural women in various ways.** Through the Ministry of Co-operative Development the Government has made deliberate efforts for affirmative action through capacity building. This has ensured that women are not limited to janitorial duties but more progressive in undertaking development projects and activities and in their participation in major decision making. The co-operative college of Kenya is the premier training institutions for co-operatives that are intended to provide avenues for women's participation in not only agricultural activities, but also in other income-generating activities. Numbers of those already trained in cooperative activities by the Ministry compare favourably between the genders, even though parity has yet to be attained. Out of the total number of persons trained over the last four years, 43 per cent are women. Increased capacity of women in cooperative activities has given rise to, among other things, women's increased participation in cooperative activities as explained in paragraphs 121 – 123 above.

233. **The Government supports and encourages women to organize self-help groups and co-operatives** in order to obtain equal access to economic opportunities through employment in the service of others and self-employment. Through the Ministry of Co-operative Development, the government has put in place several measures towards advancement of rural women by encouraging and facilitating the transformation of women's '*merry-go-round*' activities, which are informal self-help activities in rural areas into formal institutions with legal backing in the form of women SACCO societies.
234. **The Ministry of Co-operative Development has introduced flexible collateral in SACCOs and relaxed the regulations** that impede women's membership in rural cooperative societies to ensure that rural women have access to agricultural credit and loans, marketing facilities, appropriate technology. The Ministry of Co-operative Development also encourages SACCOs to come up with women friendly products to facilitate easy credit to women in the rural areas and encourages enhancement of marketing capacity of societies involved in marketing products made by women e.g. handicrafts while diversifying activities to embrace women activities and deliberate and focused efforts towards fixing and promoting women to positions of responsibilities. The Ministry of Trade through its parastatal, Export Promotion Council facilitates women to access international markets including trade fairs and exhibitions.
235. **The government introduced Youth Enterprises Development Fund** from which to date, more women have benefitted than men as explained in paragraphs above in order to increase rural women's access to credit facilities in order to improve agricultural productivity and other productive ventures,
236. **Community Development Programmes** - In order to facilitate the formation of civil society organizations and women's participation therein to promote women's development activities in rural areas, the government has through the Department of Gender, Children and Social Development, initiated **Community Development Programmes** and posted offices to all Districts (established ones). The Department of Social Development registers community projects including women groups, groups of persons with Disabilities and groups of old persons who are involved in income generation activities. A part from facilitating registration of groups the, Department also undertakes capacity building, training and informal education of women group leaders and leaders of Gender and Social Development Committees in leadership skills, project management, resource mobilization and business skills. Through the Department of Gender and Social Development the Government gives grants to community groups to boost their activities and uplift the living standards. The government will in future monitor the women's earnings from the ventures.
237. **Introduction of Constituency Development Fund (CDF)** is another mechanism that the government has instituted to uplift the socio-economic status of rural women and men in Kenya. The Fund mechanism was introduced in 2003 provide basis for the government's yearly disbursement of funds for use in development activities at constituency level throughout the country. A number of women's organizations have, in fact, benefited from CDF funds, even

though it has been difficult for many women to access the fund at constituency level. The government will in future monitor the women's earnings from the ventures. At local authority level, the government is continuing to implement the Local Authority Transfer Act, which authorizes yearly disbursement of Local Authority Transfer Fund (LATIF) to each of the 175 local authorities in the country to be used in poverty reduction measures. LATIF regulations require women's representation in identifying projects or activities that deserve funding in order to improve the livelihoods of local people. The government will introduce quotas for women in all the management boards.

238. **The government has put in place the National Hospital Insurance Fund** to ensure that women and men have access to quality and affordable healthcare. The Fund aims to provide accessible, affordable sustainable quality social healthcare. Membership is open to all persons both from formal and informal sector throughout the country. For those in formal sector membership is compulsory and based on earnings while for those in the informal sector and persons who have retired, membership is open and voluntary at Kshs 160 (2\$) per month or 1,920 (24\$) per year. Spouses and children of members of the Fund are included in Fund benefits. The Fund has established offices throughout the country and officers sensitize communities on its benefits at community gatherings. The Fund covers a portion of inpatient payment in accredited hospitals while actuarial studies are underway to include part of outpatient payments.
239. **The Ministry of Health sends money directly to Health Centers and dispensaries accounts in order to make services more available** to women and children who are the majority of the rural population. The funds are intended to address rural women's access to adequate health care facilities, including information, counseling and services in family planning. Counseling and provision of information is a key prerequisite for initiation and continuation of Family Planning methods. Family Planning unmet need is currently is 50% with regional disparities. In central Kenya, Nairobi and Rift valley, use of Family Planning stands at 51% while in the north eastern province the use is less than 1%.⁵³
240. **The Ministry of Lands has established a Gender Unit to mainstream gender into the sector's policy, strategic plan, budgeting, programme implementation and evaluation.** A Gender Officer has been appointed to spearhead gender mainstreaming within the lands sector. Gender Assistants have been nominated from each of the five major Departments of the Ministry to assist the officer. The Department of Land Adjudication and Settlement which is responsible for most rural land programmes in the country has introduced a mandatory administrative requirement that thirty per cent of members of District Settlement Plot Allocation Committees should be women. This is expected to give women a chance to contribute in decision making on matters concerning land ownership and use, which is one of the critical matters affecting rural women in the country.
241. **The Ministry is undertaking public awareness and education campaigns on the abandonment of all forms of retrogressive culture, traditions and practices** that bar women from inheriting family land through its gender officers. The sector will also push for proportionate representation of women in institutions dealing with land at all levels. These measures

complement efforts by the judiciary to ensure women's inheritance of land and other property as explained in paragraphs above.

242. **The Draft National Land policy has now been finalized and is ready for adoption.** This draft policy aims at protecting the rights of women by effecting appropriate legislation to ensure effective protection of women's land rights. Existing laws shall be enforced and a clear legislative framework established to protect women's rights of inheritance to land and land-based resources. The draft policy also aims at the protection of widows and divorcees through the enactment of a law on co-ownership of matrimonial property. There shall also be provision for joint spousal registration of land rights, and for joint spousal consent to land disposals, applicable for all forms of land tenure. Mechanisms will also be put in place to ensure that the land rights of women living with HIV and AIDS, including rural women, are not unfairly expropriated by others to the detriment of such persons and their families.
243. **Settlement landless and Internally Displaced Persons (IDPs)** - The Ministry of Lands has settled approximately 260,000 poor landless Kenyan families, some of whom are poor rural women. In conjunction with the Ministry of State for Provincial Administration and Internal Security, the Ministry is in the process of resettling Internally Displaced Persons (IDPs) in the insecurity-ridden areas who include women. In 2008 the government established the Resettlement Department under the Ministry of Special Programmes which now works to resettle, amongst others, Internally Displaced Persons, majority of whom are women.
244. **Entrepreneur grassroots women training** - Under the Ministry of Trade, there are training programmes organized by the Export Promotion Council, Department of External Trade, and Kenya Institute of Business Training. The programmes target the entrepreneurs particularly the grassroots women entrepreneurs for training on how to improve the quality of their products to engage in effectively in international trade. The Ministry has launched Business District Information Centres covering the whole country, which assist in capturing sex-disaggregated data on women entrepreneurs at the grassroots. Through this Programme, woman entrepreneurs have managed to undertake successful trade in handicrafts and other products made by women in the rural areas. The Ministry has plans start keeping data on women's earnings from the ventures.
245. **Water Sector Reforms Programme** - Access to adequate water supply has adversely grossly been affected by exhaustion of traditional sources such as rivers and from human encroachment. This has had negative effect on rural women and children who have to walk long distances in search of water. In response, the government has initiated the Water Sector Reforms Programme which has created opportunities to improve access to water in the rural areas. This includes building capacities to improve services in the communities. The government has increased its budget for water and sanitation while communities are more willing to contribute and finance operations and maintenance of water supplies installation. Government's efforts in this regard are being complemented by non-government organizations that are working with rural populations, especially women, to provide improved water tanks and other water storage facilities.

246. **Provisions for water resource use in Vision 2030** - In the Kenya Vision 2030, the government has committed itself to encourage the establishment of water resource users associations by communities to assist in self regulation of water utilization and to develop innovative community based methods and technology for water harvesting, to address gender issues with a gender focus as water scarcity affects women and girls in both rural and urban areas more than boys and men as well as to mainstream gender in all aspects of society by making fundamental changes in four key areas namely; opportunity empowerment, capabilities and vulnerabilities. The government has introduced quotas for women in the water management boards (as per the water services strategy). Under Vision 2030 specific policy measures will be taken to correct gender gaps in access to and control over resources, economic opportunities and political power.
247. **Kenya has land and contract laws that recognize the rights of all women and men to enter into contracts for the purchase of land anywhere in Kenya.** Therefore, there are no longer legal barriers to women's purchase of land and other assets in the country. However, many women are poor and unable to raise funds to purchase land, the single most important commodity whose price continues to rise in every part of the country. Regarding women's inheritance of land and other property, it has been explained in preceding paragraphs that judicial decisions are increasingly supplementing the Law of Succession Act to strengthen women's right to inherit their fathers' and husbands' land in the midst of retrogressive cultural practices against women's inheritance.
248. **A number of initiatives, such as the National Legal Aid Scheme have been and continue to be undertaken by government and civil society organizations** to raise awareness about women's legal rights. Increasingly, the efforts contribute to women's empowerment which enables them to take their own actions to realize their property and other rights and thereby, improve their livelihoods and socio-economic status.
249. *Challenges and obstacles:* In addition to the challenges already stated, it is noted that functional and legal illiteracy remains strong barriers to the advancement of rural women. Many women in rural areas cannot read or write; neither can they understand the laws whose application is critical to their advancement. Although awareness activities are being undertaken in many rural areas, only a small proportion of the population of rural women has been reached.
250. Poverty remains a formidable challenge to the progress of rural women and their realization of equality with men in almost every sphere of life. The majority of rural women live in absolute poverty. In such a state, most women are pre-occupied with the quest for survival and hardly pay attention to legal awareness campaigns, adult education and other measures intended to improve their socio-economic status. In the midst of poverty, many women continue to suffer domestic violence which hinders their meaningful participation in subsistence and development activities. In addition, it appears that family planning programmes are becoming increasingly inaccessible to many women due to lack of finances which makes it difficult for many to travel to health care services, the places where such services are mostly offered.
251. HIV and AIDS continue to pose one of the most formidable of all challenges. More people in rural areas are infected and affected by HIV and AIDS. Many men have died, leaving behind many

widows, most of them young and without support. The numerous cases of HIV/AIDS illnesses and frequent premature deaths rob women of time that could be devoted to productive activities, yet women bear the greatest burden of care giving to the sick and the elderly, without recognition of the significance of their contributions, reward therefore or assistance. These are some of the factors that continue to hinder the progress of rural women. The Government's efforts to support persons affected with HIV and AIDS is complemented by that of several NGOs focusing on widows and orphans, however the support is small compared to the magnitude of the problem.

ARTICLE 15 - EQUALITY OF MEN AND WOMEN BEFORE THE LAW

252. **Women and men are equal before the law, with same legal recognition as individual persons and with the same legal capacity.** As such, men and women have equal access to justice, meaning equal access to courts and other official dispute resolution for a, which as enshrined in the Constitution and, in law, have the same opportunities to contract, domicile in places of their choice, and are free to move within and out of the country. In many areas where de facto equality has not been achieved, the government has introduced a number of affirmative actions as already explained to improve women's equality with men. Further, the Law the Law of Succession Act affirms women's entitlement to administer the estate of their deceased husbands as elaborated in the law. In law, wives have the first priority to administer their husbands' estate. One of the positive developments in the current reporting period is the implementation of a National Legal Aid Scheme which works to increase women's awareness of their legal rights as it also provides free legal representation to women in court matters.
253. **Women's position in law could be further enhanced if the constitutional review process, which has commenced, is successfully completed.** Article 38(1) of the Proposed New Constitution of Kenya makes elaborate provision for gender equality and states that "Women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social activities" and that "Women and men have an equal right to inherit, have access to and manage property" the Article also prohibit a any law, culture, custom or tradition that undermines the dignity, welfare, interest or status of women or men. The Article creates an obligation to protect women and their rights, taking into account their unique status and natural maternal role in society and Provide reasonable facilities and opportunities to enhance the welfare of women to enable them realize their full potential and advancement. In reality however, women are not equal with men on many legally-related matters as explained in the proceeding paragraphs.
254. **Challenges and obstacles to women's equality with men:** Women are prevented from exercising their rights due to many other factors, including existence of discriminatory provisions in some laws, low levels of education, societal attitudes, traditional roles and time constraints exerted by, among others, reproductive roles which have yet to be appreciated.

ARTICLE 16 – EQUALITY IN MARRIAGE AND THE FAMILY

255. There are still multiple laws governing marriage and family as explained in paragraph 75 above. Customary law on marriage is not codified and varies from community to community. The rights and obligations conferred on men and women may vary according to the type of marriage. Family relations in Kenya are still largely based on cultural practices and different religions recognized in Kenya and are generally governed by patriarchal principles based on male headship. Inequality between spouses exists, often leading to other forms of discrimination and domestic violence.
256. **The Law Reform Commission has redrafted a unified Marriage Bill to regulate all marriages in Kenya** (as explained in paragraph 75 above). The Bill has gone through various validation processes by stakeholders and the public and the minister for gender has already signed the cabinet memo on Marriage Bill, which is ready to be tabled to the Cabinet for discussion before presentation to Parliament for debate. The Bill provides for the same right to enter into marriage, the same right freely to choose a spouse and to enter into marriage only with their free and full consent as well as the same rights and responsibilities during marriage and at its dissolution. It is recognized that these provisions resonate well with human rights in relation to marriage. The Bill also makes provision for mandatory registration of marriages, whose benefits have already been explained in paragraph 75 above.
257. **The Law Reform Commission has also re-drafted the Matrimonial Properties Bill to regulate matters relating to property acquired during marriage.** The bill provides for same rights of both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property. The minister for gender has already signed the cabinet memo on the Matrimonial Properties Bill.
258. **Family Protection Bill has been re-drafted by the Law Reform Commission.** The Bill seeks to prohibit violence against persons whether in the family or in the public and would strengthen efforts against domestic violence against women. The Family protection Bill provides for a wide definition of violence which includes several forms of violence and psychological violence. It provides for quick, simple and inexpensive access to court and empowers courts to make protective orders for victims of domestic violence. It also provides for implementation of programs focused on stopping violence, including violence against women. The minister for gender has already signed the cabinet memo family protection bill. Currently domestic violence is dealt with by the Penal Code whose section 251 prohibits anyone from committing assault causing bodily harm. However this has been found to be inadequate for dealing with domestic violence.
259. **The Children’s Act of 2001 provides for protection against early marriage and prevention of consequential health and education implications.** The law has removed ambiguity and contradictions in the age of marriage by stipulating that the minimum age of marriage for both boys and girls is 18 years. However, implementation is still quite slow as many girls are forced out of school and into marriage as early as 12 or 13 years. The Government’s efforts to rescue young

girls forced into marriage is complemented by the efforts of Non Governmental Organizations whose efforts have been instrumental in the rescue of young girls and their return to school.

260. **The Children's Amendment Bill has been drafted** to cater for the shortcomings in the Children's Act. The Children's Act does not go as far as providing for same rights and responsibilities of parents, irrespective of their marital status, on matters relating to their children. However, it provides that in all cases, the interests of the children shall be given paramount consideration. It is also noted that the Children's Act fell short of requiring men who father children out of wedlock to take responsibility for their children, thus leaving the whole burden of raising a child born out of wedlock squarely on the shoulders of women. In such cases, men can support, but only if they choose to do so.
261. **Widows and unmarried daughters have property inheritance rights** - In the case of property inheritance from a deceased father or husband, court decisions in *Rono v. Rono* and *In the Matter of the Estate of Olentutu* already explained are instructive on the current position of the law, namely: Widows and unmarried daughters have property inheritance rights regardless of legal designation of some regions in the country as regions where customary laws on property inheritance shall apply
262. **Maternity and Paternity leave** - Regarding family responsibilities as the time of a child's birth, The Employment Act, No. 11 of 2007 in section 29(8) makes provision for paid maternity leave of three months and paternity leave of two weeks.
263. **Efforts to increase women's education are also contributing positively toward realization of equality between women and men on matters concerning marriage.** As more women access education, more women are empowered to freely choose spouses with whom to enter into marriage and generally have increased autonomy and increased control over their sexuality and reproductive roles. Increased public awareness of women's issues and enactment of several new legislations has the potential to further improve women's legal and social status.
264. **Availability of family planning services** in healthcare facilities has enabled at least 50% of women and men to decide freely and responsibly on the number and spacing of their children. Through the Ministry of Health, the government has, in the current financial year (2008/2009), set aside funds for a programme to provide free contraceptives to all women of child-bearing age. Reproductive Health and Rights Bill seeking to safeguard the reproductive health of women and girls in Kenya has been drafted and is awaiting consideration by stakeholders, including parliament. The Bill seeks to, among other things; allow termination of pregnancy in cases of rape.
265. **Challenges and obstacles:** One of the biggest challenges to women's equality with men on matters concerning marriage and the family is cultural construction of women's roles *vis a vis* that of men, cultural attitudes and belief about women and their traditional roles, which lead to women's subjugation and, in many cases, retrogressive cultural practices, including forced widow inheritance, forced or coerced early marriages and property disinheritance. These obstacles lead to domestic violence against women and girls, inability to access health care services, including

family planning, the birth of more children than a family can adequately raise and women's underachievement in development. In one case, a man knocked off all of his wife's front teeth because she had tried to use family planning methods to avoid having more children than the six she already had! Although spousal abuse amounts to battery and/or assault in law, law enforcement agencies are still reluctant to intervene in cases of domestic violence and other problems arising in the domestic arena because their conscience is informed more by culture, which forms part of their lives, than by official laws.

266. Another challenge arises from lack of family education in Kenyan schools. Calls have been made for introduction of family education in schools, which would have the potential to properly educate boys and girl on acceptable family roles and responsibilities and on measures to avoid domestic violence. However, to date, efforts to introduce family education have met resistance, especially from some churches in Kenya. A number of religious organizations are bridging the gap by introducing teachings on the family in their religious programmes, but without legislative backing, impacts of such programmes are limited, especially in view of the large proportion of non-religious adherence in Kenya.
267. Further, it is noted that lack of knowledge of legal rights, coupled by lack of financial and other resources continues to pose a hindrance to women's recourse to legal and other remedies for abuse of their legal rights, especially in relation to marriage and the family.

REFERENCES

- ¹ See *Report of the Commission of Inquiry into Post-election Violence in Kenya (The Waki Report)*, 2008.
- ² See, for example, page 2 of *Sessional Paper No. 5 of 2005 on Gender Equality and Development* which expresses government's commitment to implement measures expressed in, among others, the Beijing Platform for Action.
- ³ The Constitution of Kenya Review Act, No. 9 of 2008, Preamble.
- ⁴ The Kenya National Cohesion and Integration Act, No. 12 of 2008, Preamble.
- ⁵ The Kenya Truth, Justice and Reconciliation Act, No. 6 of 2008, section 5. The law has yet to be given a commencement date meaning, it is not yet operational.
- ⁶ *Mary Rono vs. Jane Rono*, Civil Appeal No. 66 of 2002 (Court of Appeal at Eldoret, Kenya).
- ⁷ *Longwe vs. International Hotels*, 1993 (4 LCR 221).
- ⁸ Ministry of Gender, Children Social Development -Strategic Plan 2008-2012
- ⁹ See Republic of Kenya, Ministry of Gender, Sports, Culture and Social Services, Service Charter (2005).
- ¹⁰ Republic of Kenya, Ministry of Gender, Sports, Culture and Social services, Department of Gender and Social Services, Contributing Towards Efforts to Abandon Female Genital Mutilation/Cutting in Kenya: A Situation Analysis (October 2007).
- ¹¹ Republic of Kenya, Ministry of Education, Science and Technology, *Sessional Paper No. 1 of 2005 on A Policy Framework for Education, Training and Research: Meeting the Challenges of Education, Training and Research in Kenya in the 21st Century* (2005).
- ¹² Ministry of Education, Science and Technology, *The Kenya Education Sector Support Programme, 2005-2010: Delivering Quality Education and Training to All Kenyans* (July, 2005) at 224.
- ¹³ Republic of Kenya, Ministry of Education, Science and Technology, *Sessional Paper No. 1 of 2005 on A Policy Framework for Education, Training and Research: Meeting the Challenges of Education, Training and Research in Kenya in the 21st Century* (2005).
- ¹⁴ Republic of Kenya, Ministry of Education, Science and Technology, *Sessional Paper No. 1 of 2005 on A Policy Framework for Education, Training and Research: Meeting the Challenges of Education, Training and Research in Kenya in the 21st Century* (2005) at 36-57.
- ¹⁵ All of the proposed measures are expressed in Republic of Kenya, Ministry of Education, Science and Technology: Kenya Education Sector Support Programme, 2005-2010: Delivering Quality Education and Training to All Kenyans (July, 2005), also available at kessp@education.go.ke.
- ¹⁶ *In The Matter of the Estate of Sebastian Karanja Macharia*, Nairobi High Court Succession Cause No. 1440 of 2000.
- ¹⁷ *In Eunice Wairimu Rukwaro & Another vs. Dorcas Wangui Rukwaro & 4 Others*, Nyeri High Court Succession Cause No.53 of 1998.
- ¹⁸ *Ngoka vs. Madzomba*,¹⁸ High Court Civil Appeal No. 49 of 1999, reported in (2002) K.L.R. at 698.
- ¹⁹ *Ngoka vs. Madzomba*, High Court Civil Appeal No. 49 of 1999, reported in (2002) K.L.R. , 698 – 702, at 702.
- ²⁰ The measures are outlined in Republic of Kenya, Ministry of Education, Science and Technology: Kenya Education Sector Support Programme, 2005-2010: Delivering Quality Education and Training to All Kenyans (July, 2005) at 225.
- ²¹ All of the proposed strategies are set out in, National Commission on Gender and Development, *National Framework on Gender Based Violence* (February 2009) at 13-84.
- ²² Kenya, Vision 2030: A Globally Competitive and Prosperous Kenya (2008), at 116 – 117 & 120.
- ²³ Kenya, Vision 2030: A Globally Competitive and Prosperous Kenya (2008), at 116.
- ²⁴ Kenya, Vision 2030: A Globally Competitive and Prosperous Kenya (2008), at 120.

- ²⁵ Kenya Vision 2040, at 117.
- ²⁶ Kenya Vision 2030, at 117.
- ²⁷ Kenya, Vision 2030: A Globally Competitive and Prosperous Kenya (2008), at 117.
- ²⁸ A Situation Analysis of Sexual and Gender Based Violence in Internally Displaced Persons Camps After Post-election Violence in Kenya (February 23, 2009) at 10.
- ²⁹ Kenya, Vision 2030: A Globally Competitive and Prosperous Kenya (2008), at 117.
- ³⁰ Kenya, Vision 2030: A Globally Competitive and Prosperous Kenya (2008), at 117.
- ³¹ A comprehensive list of organizations providing various kinds of assistance is presented in, *Assistance for Trafficked Persons in Kenya: Directory of Identified Services (Working Document)* (June 2008).
- ³² Republic of Kenya, Kenya National Bureau of Statistics, *Economic Survey* (2008) at 253.
- ³³ Kenya's Political Parties Act, Chapter 10 of 2007, section 17(6).
- ³⁴ Kenya Vision 2030 at 117.
- ³⁵ *Sessional Paper No. 1 of 2005 on A Policy Framework for Education, Training and Research* (2005) at 1.
- ³⁶ *Sessional Paper No. 1 of 2005 on A Policy Framework for Education, Training and Research*, at 14 & 27.
- ³⁷ *Sessional Paper No. 1 of 2005 on A Policy Framework for Education, Training and Research* at 29.
- ³⁸ Phillip Mwakio, *Top Woman Officer Soldiers on in A world Men Dominate* and Phillip Mwakio, *Era of Gender Bias is Over, Says Military*, The Standards, Thursday, April 2, 2009 at 18 and 19.
- ³⁹ Kenya National Bureau of Statistics, *Kenya, Facts and Figures* (2008), at 78.
- ⁴⁰ Kenya Service Provisions Assessment Survey, 2004: Maternal and Child Health, Family Planning and STIs (November 2005).
- ⁴¹ Kenya Service Provision Assessment Survey 2004 (November, 2005).
- ⁴² Office of the President, National AIDS Control Council, *Kenya National HIV/AIDS Strategic Plan, 2005/6-2009/10: A Call to Action* (June 2005) at 16.
- ⁴³ Kenya Integrated Household Budget Survey of 2005/2006, at 75.
- ⁴⁴ Kenya Integrated Household Budget Survey of 2005/2006, at 75.
- ⁴⁵ Barnabas Bii, *Hospitals Don't Have Medical Kit*, Daily Nation, Monday, October 27, 2008 at 6.
- ⁴⁶ Kenya Demographic and Health Survey (2003), at 237.
- ⁴⁷ *Kenya Demographic and Health Survey, 2003* (July 2004) at 243 – 244.
- ⁴⁸ Kenya Vision 2030, at 98.
- ⁴⁹ Kenya Vision 2030 at 98.
- ⁵⁰ Kenya Vision 2030 at 98.
- ⁵¹ Ministry of Planning and National Development, Kenya Bureau of Statistics, *Basic Report: Kenya Integrated Household Survey – 2005/06* (August 2007), at 73.
- ⁵² (Millennium Development Goal Status Report for Kenya)
- ⁵³ Kenya Demographic and Health Survey, 2003.
-