
A project of the Global Network of Women Peacebuilders

Afghanistan, Azerbaijan, Burundi, Canada, Colombia, Democratic Republic of Congo, Fiji, India, Kenya, Libya, Iraq, Nepal, Netherlands, Nagorno-Karabakh, Philippines, Serbia, Sierra Leone, South Sudan, Sri Lanka, Sweden, and Uganda
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Researchers: Sarah Bendtsen and Katie Filous

Acknowledgements:

We would like to thank Rural Women Peace Link for their ongoing support throughout the report writing process; we dedicate this report to the memory of Rhoda Litoroh, may she rest in peace. We would also like to thank the following organizations for their willingness to meet with us and for providing access to extensive information and data: PeaceNET, UN Women-Kenya, International Rescue Committee-Kenya, the Kenya Defense Forces, the Kenya National Police Service, and the National Gender and Equality Commission. Finally, we would like to thank the Global Network of Women Peacebuilders for their advice, guidance, technical support, and for being such an inspiration to us.
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>ACHPR</td>
<td>African Charter on Human and Peoples Rights</td>
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<tr>
<td>AG</td>
<td>Attorney General</td>
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<tr>
<td>CJ</td>
<td>Chief Justice</td>
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<tr>
<td>CoK</td>
<td>Constitution of Kenya 2010</td>
</tr>
<tr>
<td>CSO</td>
<td>Civil Society Organization</td>
</tr>
<tr>
<td>DC</td>
<td>District Commissioner</td>
</tr>
<tr>
<td>DO</td>
<td>District Officer</td>
</tr>
<tr>
<td>ICC</td>
<td>International Criminal Court</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
</tr>
<tr>
<td>KINAP</td>
<td>Kenya National Action Plan on UNSCR 1325 and 1820</td>
</tr>
<tr>
<td>KHRC</td>
<td>Kenya Human Rights Commission</td>
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<tr>
<td>KNCHR</td>
<td>Kenya National Commission on Human Rights</td>
</tr>
<tr>
<td>KNDR</td>
<td>Kenya National Dialogue and Reconciliation</td>
</tr>
<tr>
<td>KNHREC</td>
<td>Kenya National Human Rights and Equality Commission</td>
</tr>
<tr>
<td>MoA</td>
<td>Ministry of Agriculture</td>
</tr>
<tr>
<td>MoE</td>
<td>Ministry of Energy</td>
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<tr>
<td>MoF</td>
<td>Ministry of Finance</td>
</tr>
<tr>
<td>MP</td>
<td>Member of Parliament</td>
</tr>
<tr>
<td>NDP</td>
<td>National Democratic Party</td>
</tr>
<tr>
<td>ODM</td>
<td>Orange Democratic Movement</td>
</tr>
<tr>
<td>PEV</td>
<td>Post-election Violence of 2007</td>
</tr>
<tr>
<td>SGBV</td>
<td>Sexual and Gender based Violence</td>
</tr>
<tr>
<td>TJRC</td>
<td>Truth, Justice and Reconciliation Commission</td>
</tr>
<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
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</tbody>
</table>
I. Women, peace and security profile

A. Nature of the conflict

There has been no major conflict in Kenya since it regained independence from Great Britain in 1963. However, since the introduction of competitive multiparty politics in 1957, violence between ethnic groups has tended to erupt around elections. Over the past two decades, Kenya has experienced conflict that can be classified into four main categories: (1) Conflicts within pastoral communities; (2) Conflicts between pastoral and agricultural communities; (3) Conflicts linked to the presence of refugees; and (4) Ethnic clashes. Community identities are one of the key drivers of conflict in Kenya, as they are closely related to issues of land, borders, and associated historical grievances.

One’s self-identity through one’s land of ancestry informs the politics of land in Kenya. In this context, local communities view land as their own. As a result, communities continue to express dissatisfaction with the way the government manages allocations and certifications of land, particularly when they were not adequately informed, engaged and involved in decisions about land. Conflicts involving pastoralists are widespread and have become increasingly severe in the North Rift and North Eastern regions of Kenya.¹ The pastoralists in the two regions are largely nomadic. They live primarily in arid or semi-arid areas and depend on livestock for their livelihood. Conflicts involving pastoralists associated with competition for scarce resources, cattle rustling, and the wide availability of small arms are widespread and of increasing concern, especially on the Samburu-Isiolo border, the Narok-Kisii border, the Kericho-Kisumu border, the Kericho-Kisii border, the Kajiado-Limuru border, the Tana River area and the Mount Elgon area.

Additionally, conflict in Kenya stems from its challenging political environment, resulting from the fairly recent political transition. In 2007-2008, after its national elections, Kenya experienced the worst outbreak of violence in the country’s recent history. The violence was characterized by killings, sexual violence, mass displacement of populations, forced evictions, widespread looting, and destruction of property. More than 1,000 people were killed and over 350,000 people were internally displaced.²

Kenya’s polity is a product of colonial and post-colonial governance systems and practices, the design and application of which deepened political, social and economic injustices in Kenyan society, which continue to exist in various ways today. Throughout all political regimes, both state and non-state actors have committed human rights’ violations and economic crimes, with little or no redress for victims. Most “truth seeking” investigations in Kenya, such as the Truth, Justice and Reconciliation Commission (TJRC), have produced reports which are either not acted upon, or are never made public. They therefore become the conduits for cover-up and entrenchment of the culture of impunity. Government corruption is also rampant in Kenya, which further deters peace and justice aims. According to Transparency International, Kenya is ranked as 136th most corrupt nation in the world, out of 177 total countries, putting it just 41 spots from the very bottom.³

Other contemporary threats include transnational networks of terrorist groups operating within Kenya’s boundaries and in neighboring Somalia, such as Al Qaeda and Al Shabaab. In the recent years, Kenya has experienced an increase in terrorist attacks, including the attack on the Westgate shopping center in Nairobi in September 2013, during which at least 67 people lost their lives.⁴

Most recently, the conflict and insecurity in Kenya has been fuelled by a spillover of violence from Somalia, where the government has been fighting Islamist insurgents. The spillover results from the fact that some insurgents cross the border, as well as from the increase in the flow in weapons across the Kenyan-Somali border.⁵ Furthermore, in response to Kenya’s involvement in the Somali conflict, the Al-Shabaab group declared Kenya a “war zone” and has carried out an attack on the Kenyan coast, killing 48 people.⁶ ⁷ Post-election violence that occurred in 2013 was relatively minor in comparison to post-election violence in 2007-2008.⁸ These attacks have caused widespread repercussions in the form of death, injuries, property damage, monetary losses in the economic sector, drastically reduced tourism, increased political unrest, and fear.⁹ Finally, Kenya’s counter-terrorism police are accused of perpetuating more violence across Kenya as they use their unbridled authority to extrajudicially kill those who are simply suspected of crime; “innocent until proven guilty” is often not the case in the Kenyan criminal justice system.¹⁰

B. Impact of conflict on women

During armed conflict, women and girls are particularly vulnerable to sexual and gender-based violence (SGBV). The conditions of inequality that exist prior to outbreaks of violence are aggravated during armed conflict situations.

In Kenya, discriminatory laws, customs, and practices, coupled with lack of opportunities for education and employment, and a lack of information and access to justice mechanisms have resulted in women’s marginalization.

Threats to women’s security in Kenya are firmly rooted in longstanding gender discrimination, which until 2010, was structurally embedded in Kenya’s constitution, laws, and policies. Regardless of Kenya’s now-formalized legal mechanisms for women’s equality (for example, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the African Charter on Human and Peoples’ Rights, and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa), Kenyan society is extremely patriarchal and women must face informal but powerful barriers to equality in the form of gender stereotypes and cultural expectations. Cultural, religious, and traditional practices discriminate against women and limit their participation in the public sphere, thereby curtailting women’s full enjoyment of, and access to, socio-economic rights.

Kenyan women face barriers in obtaining jobs and receiving fair compensation, as well as harassment at work or while working in their homes. Kenyan men are often the beneficiaries of land inheritances and women are regularly legally or informally barred from their property rights. The rates of domestic violence and SGBV are very high throughout Kenya. Women’s access to education is lower than that of men’s due to cultural stigma, poverty, and early marriage. Moreover, HIV/AIDS remains a very potent concern for Kenyan women who often cannot afford medication or healthcare upon contracting HIV. All of these issues are exacerbated in times of conflict, wherein women are often the first and least-protected targets. By any measure, and as will be discussed in the remainder of this report, a Kenyan woman is much worse off than a Kenyan man during any point in her life, and this is compounded in times of conflict.

C. Relevant legal and policy framework

The relevant legal and policy frameworks focusing on women, peace and security in Kenya, elaborated upon in Indicator 7, include multiple international and regional treaties and agreements that Kenya has ratified, such as The Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Platform for Action, the African Charter on Human and Peoples’ Rights, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, the Solemn Declaration on Gender Equality in Africa, the Windhoek Declaration and Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations, the Intergovernmental Authority on Development’s Gender Policy and Strategy, the African Union Gender Policy, the Declaration of the Heads of States and Government of the Member States of the International Conference on the Great Lakes Region, the Pact on Security, Stability, and Development in the Great Lakes Region, the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, and the Rome Statute.

Domestically, the relevant legal policy framework includes the quota system embedded within Kenya’s constitution. Under the Kenyan Constitution’s Bill of Rights, Kenyan women are listed as a “vulnerable group” to be protected by the Kenyan government at the State level, including the right to equal treatment, “including the right to equal opportunities in political, economic, cultural and social spheres;” membership in the National Assembly, membership in the Senate, and mandated representation in Parliament generally.11


A draft of a National Action Plan on UNSCR 1325 and 1820 (NAP) has been developed, with the participation of a number of Ministries, the civil society, and the support of UN Women. The civil society considers the NAP to be comprehensive. However, it is yet to be officially adopted by the government.

II. Data presentation and analysis

A. Participation

Indicator 1 – Index of women’s participation in governance

The Cabinet of Kenya is made up of the President, Deputy President, Attorney General, and Cabinet Secretaries. A maximum of 22 ministries are allowed to exist under the constraints of the Constitution of Kenya. The current Cabinet consists of 21 members (including the Attorney General), of which six, or 28.6 percent, are women.13 Women are also represented in Kenyan government in the ways, which the following tables indicate.

Table 1.1: Index of women’s participation in governance in 2013

<table>
<thead>
<tr>
<th>National Level Executive</th>
<th>Number of women</th>
<th>Number of men</th>
<th>Percentage of women</th>
</tr>
</thead>
<tbody>
<tr>
<td>President- Uhuru Kenyatta</td>
<td>0</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Deputy President- William Ruto</td>
<td>0</td>
<td>1</td>
<td>0%</td>
</tr>
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</table>

Overall, in the March 4, 2013 general elections, women made the following gains:

- 16 women elected out of 290 constituency Members of National Assembly
- 47 women appointed to National Assembly as County Women Representatives
- 82 women out the total 1,450 County Assembly Ward Representatives
- 6 women elected out of 47 Deputy Governors
- 0 Governors – no women elected
- 0 Senators – no women elected

The Kenyan National Assembly consists of 290 directly elected members, as well as nominated members. Among the nominated members, there are 47 Women County Representatives selected to represent women from each county, and 12 members nominated by political parties.15 As can be seen from table 1.1, the percentage of women is much higher on appointed positions, than in elected ones. Women constituted only 5 percent of elected members of the National Assembly. The appointments are part of the affirmative action plan. While their impact on the number of women in the parliament is positive, the fact that women are severely underrepresented in elected posts is significant, as it reveals the barriers to women’s participation in politics, such as the negative stereotypes and society’s view of women as lacking leadership skills and belonging to the “private sphere.”

Furthermore, according to the extensive interviews conducted by FIDA-Kenya, the affirmative action elective seats also produced some disadvantages for women candidates, as “Male opponents perpetuated the belief that women were only supposed to vie for the County Women Representative seats. Political parties would pressure women candidates to only vie for the set-aside seats, and women candidates who ran for mainstream elective seats were made to appear greedy because they already had their own set-aside seats.”16

It is also noteworthy that, within Parliament, women are best represented in House Keeping Committees (between 28 percent and 32 percent), as well as in the Labor and Social Welfare Committee (31 percent) and Education, Research and Technology Committee (34 percent). On the other hand, they are underrepresented in other committees, such as the Finance, Planning and Trade Committee (10 percent), Energy, Communication and Information Committee (14 percent), Health Committee (14 percent), Justice and Legal Affairs Committee (14 percent) and Administration and National Security Committee (17 percent). This shows that women are largely excluded from many committees addressing vital issues such as economy, energy and security. It also indicates a tendency to assign women to committees that correspond to traditionally “feminine” spheres, such as welfare or education, and exclude them from decision-making on finance, security, legal issues and trade, which are perceived as more “masculine.”

Kenya’s new Constitution, adopted in 2010, has and will benefit women through the two-thirds principle of gender representation. The two-thirds principle dictates, “not more than two-thirds of the members of elective or appointive bodies

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Table 1.2: Change in the number of women in Parliament (1992-2014)

<table>
<thead>
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</thead>
<tbody>
<tr>
<td>Number of Women in Parliament (including both women elected and women appointed)</td>
<td>7</td>
<td>9</td>
<td>18</td>
<td>22</td>
<td>68</td>
</tr>
</tbody>
</table>

shall be of the same gender.”17 This principle is described in two significant parts of the Constitution: the Bill of Rights and the general principles of the electoral system.

Full implementation of the two-thirds principle would have resulted in at least one-third representation of women in parliament, which includes the National Assembly and the Senate, and in the County Assemblies; currently, this principle is only realized at the County Assembly level, wherein women represent 35.8 percent of the members.18 However, like in the case of the National Assembly, most women in County Assemblies were nominated to fulfill the quota, and women’s representation among elected members was strikingly low.

Unfortunately, the two-thirds principle is one of the key gains that suffered the greatest setback in terms of partial implementation. Attempts by civil society advocacy to require that the two-thirds principle be implemented in parliament did not result in a positive outcome. Although the Constitution provides for the two-thirds gender rule of representation, it fails to provide a clear mechanism for its realization in the Senate and the National Assembly. The Attorney General of Kenya requested an advisory opinion at the Supreme Court seeking a determination as to whether the two-thirds rule was to be implemented immediately—i.e., during the 2013 elections—or progressively. The Supreme Court determined that the two-thirds principle was to be realized progressively and that a requisite implementing law should be passed by 2015.

A progressive implementation approach has also been used with regards to Article 27, which discusses participation, inclusiveness, and protection of minorities, contains important provisions for women’s participation in decision-making. Article 27(3) of the Constitution states that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural, and social spheres. Article 27(8) requires the State to take measures that ensure that no more than two-thirds of the members of elective or appointive bodies are of the same gender. Separate provisions create reserved positions for women in the National Assembly, Senate, and County Assemblies. It remains to be seen if these provisions have had a significant positive effect on women’s representation and have enhanced women’s role in the decision-making process at all levels of government. Including women “at the table” is an important first step, but does not necessarily guarantee any fundamental gains for women beyond their symbolic place at the table.

Although the Constitution offers a wide range of protective clauses aimed at promoting equality in the electoral process, most of these gains were not fully realized during the 2013 elections. The percentage of women is higher in appointed government postings due to the requirements of the Constitution, which is a positive gain for women. However, the number of women on elected positions is not yet equal to this of men, because of pervasive gender discrimination and gender stereotypes and norms within Kenyan society. Stereotypes and norms relegate women to the “private” sphere of the home as opposed to the “public” sphere of Kenyan government or perhaps Kenyan society more broadly.

Women’s leadership still suffers setbacks by virtue of cultural stereotypes and beliefs, there are some parts of the country where communities still believe that it is a curse for a woman to lead.19 During the campaign period, various media outlets featured the story of a female aspirant in Kajiado County, Peris Tobiko, who was cursed by community elders for aspiring for a parliamentary seat, saying it was against tradition.20 Women are less likely to be placed on electoral lists of the parties (or less likely to take top positions on these lists) and are not trusted as politicians and therefore not elected by the public. Because of systemic discrimination and barriers to accessing political positions faced by Kenyan women, factors such as women’s lack of leadership and campaigning experience, or lack of educational advantages sometimes contribute to their not running and not winning elected positions. Additionally, the threat of violence during campaigning and elections in 2013 was omnipresent, and was used as an intimidation tactic to try to dissuade women from running.21

While women are participating at all levels of government, they are first gaining entry into the electoral process at the local level. While local representation is critically important, women seem to lack access to positions at the national level for a plurality of reasons: gender discrimination, lack of education, skills, and funds to enter an election, governmental corruption, and the fact that Constitution’s gender equality provisions are slow to be implemented. Overall, Kenyan women’s participation in governance is on the rise and will continue to rise, if provisions of the Constitution are developed, tested, and fully implemented.

RATING: Moderate progress

Indicator 2 – Percentage of women in peace negotiating teams and detailed breakdown of gender issues addressed in peace agreements

Kenya faced the biggest crisis in its post-independence history following the general elections of 2007. The country faced unprecedented levels of violence following the announcement of the presidential election results. The extent of the devastation that ensued was catastrophic, with approximately 1,000 people killed and over 600,000 displaced, in addition to massive property destruction.22 In 2008, Kenya began peace negotiations and reconciliations through the Kenya National Dialogue and Reconciliation Committee (the KNDR or “National

20 Ibid.
21 Ibid.
Kenyan women leaders were particularly active during this time period. With support from UN Women and UNDP, they set up a unique kind of election observer and response mechanism, known as the Women’s Situation Room. The Women’s Situation Room places emphasis on ensuring peaceful elections and helps respond to electoral incidents through real-time interventions. It promotes women and youth’s effective participation in electoral processes in Africa. Since its inception in 2011, it has been used in three other African countries – Liberia, Senegal and Sierra Leone. In Kenya, the Women's Situation Room was located in Nairobi and consisted of a team of local Eminent Persons supported by the Eminent Women from Tanzania, Uganda, Nigeria and Liberia. During the 2013 elections, the Situation Room had a network of 500 local observers on the ground, who relayed information on any election-related incidents ranging from electoral complaints, threats, damage to property, and some violent incidents from the field to the Situation room. A team of analysts would verify and analyze the information before passing it on to the team of Eminent Women who would then seek interventions from the police, the Independent Electoral and Boundaries Commission (IEBC), or political parties and other relevant decision makers. The Women’s Situation Room recorded over 554 incidents, which included cases of insecurity and some form of violence. Through this early warning and early response mechanism, the Women’s Situation Room managed to resolve all the cases it received before they escalated to widespread, electoral violence, such as the mass riots in Kibera slum that killed hundreds of people in the 2007-2008 post-election violence.

Solutions to the recent violence and terrorist attacks Kenya is facing could benefit from the lessons of post-election violence in 2007 and after. Kenya has not yet taken substantive action to combat rising intertribal violence or terrorism, regardless of its source, leaving Kenyan citizens terrified and angry. To effectively deal with these threats, it is crucial to establish peace-negotiating teams, develop strategies, and initiate public dialogues that fully include women's voices. The experience of the peace process after 2007 post-election violence shows that including women can significantly enhance peacebuilding efforts, and help ensure that violence does not occur again. The Kenyan government should also allocate substantial funding to civil society organizations that are doing this work already. For example, Rural Women's Peace Link (RWPL) works with 14 networks of rural women's organizations in 11 counties in Kenya. Rural women are often the most underserved of all Kenyan women. By facilitating trainings, educational seminars, and other awareness-raising processes, RWPL promotes the rights of women and children in conflict situations.23

There is currently no information about any attempts at creating formal peace negotiation strategies and teams, which is indicative of the Kenyan government’s lack of organized response to its increasingly violent.

**RATING: Deterioration**

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Data on women's participation in the Kenyan National Police Service and the Kenyan Defense Forces is unavailable to the public, even if it is collected. While both the Kenyan National Police Service (KNPS) and Kenyan Defence Forces (KDF) expressed regret that this data was currently unavailable and hope that it would be available in the near future, it seems that understanding women's roles in the KNPS and KDF is not a priority for Kenya at this time. Repeated emails to the KNPS, in particular asking for a gender-specific report on women, police officers (mentioned as being in existence during the researchers' interview with spokesperson Masoud Mwinyi) repeatedly promised to provide the report, but the report was never ultimately produced. The lack of data could be due to a lack of resources (both human and financial) available to conduct the research and produce the results or because the KNPS and KDF are currently largely occupied by the ongoing terrorist attacks in many parts of Kenya, specifically in Nairobi.

The lack of data makes it impossible to determine the state of women's participation in the Police Service and Defense Forces. Nonetheless, there have been certain positive developments. For example, in December 1999, the Women's Service Corps, which severely limited women's roles in the military and did not support their choice to have families, has been eliminated.24 The Women's Service Corps kept women in a single unit that was subject to “special terms and conditions,” which took into account “women’s special needs.” Although they were unwritten policies, some of these "special terms and conditions" implied that women soldiers were not allowed to get married or become pregnant.25 Additionally, they were not allowed to be romantically involved with their male colleagues, or with any partners outside the barracks.26 This abolition was an important move towards substantively involving women in matters of national defense.

According to Kenyan Police spokesperson, Masoud Mwinyi, the Kenyan Police Service is “quickly and thoroughly” trying to meet the quota. However, lack of data makes it impossible to evaluate the extent to which these efforts translate into the actual implementation of the quota.27 Women's roles as peacekeepers in UN missions remain very low compared to men's roles.

The data on the number of women in KDF was unavailable, except for very scarce information about the KDF leadership available on its website. According to this information, women do not hold leadership positions in the military; however, their number among regular soldiers in the Defence Forces is not available.

The limited available data suggests that women are most represented in the judiciary sector. Similarly to the Police Service, the judiciary is subject to Kenya's constitutional gender quota, which enhance women's opportunities. It is telling and important that the Deputy Chief Justice of Kenya and the military Defense Cabinet Secretary are currently women. However, while percentages of female judges are higher than percentages of women in security sector and peacekeeping missions, their participation is still significantly lower than that of men.

Based on interviews conducted with the Kenyan Defense Forces and Kenyan National Police Service, recruitment tactics are increasingly focusing on women, as are training mechanisms.28 For example, the National Police Service created a gender manual for training new police recruits on women’s issues and how to handle cases of sexual and domestic violence, which was published by the International Federation of Women Lawyers (FIDA) in Kenya. These are positive developments, but without data and information about participation and involvement of women in the security sector, it is difficult to gage the extent to which they translate into real progress in this respect. It is clear that women hold very few positions of high-ranking authority or power in the military and in the judiciary. Barriers to women's participation in these sectors are similar to barriers faced by women attempting to gain political positions in the Kenyan government: gender discrimination, lack of education and skills, or opportunity to enter the police or military forces. Furthermore, the Constitution's gender equality provisions are slow to be implemented. Again, gender stereotypes and cultural barriers are extremely serious, and prevent many Kenyan women from leaving the private sphere of the home and entering the public sphere of the workplace. This is particularly the case for rural Kenyan women.

### Table 3.3: Index of women participating in peacekeeping missions, August 2014

<table>
<thead>
<tr>
<th>Mission</th>
<th>Number of women</th>
<th>Number of men</th>
<th>Percentage of women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military experts</td>
<td>7</td>
<td>20</td>
<td>26%</td>
</tr>
<tr>
<td>Troops</td>
<td>156</td>
<td>663</td>
<td>19%</td>
</tr>
<tr>
<td>Individual police</td>
<td>16</td>
<td>35</td>
<td>31.4%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>179</td>
<td>718</td>
<td>20%</td>
</tr>
</tbody>
</table>


### Table 3.4: Missions where peacekeepers are deployed, August 2014

<table>
<thead>
<tr>
<th>Mission</th>
<th>Number of women</th>
<th>Number of men</th>
<th>Percentage of women</th>
</tr>
</thead>
<tbody>
<tr>
<td>MINUSMA</td>
<td>0</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>MONUSCO</td>
<td>5</td>
<td>17</td>
<td>22.7%</td>
</tr>
<tr>
<td>UNAMID</td>
<td>16</td>
<td>102</td>
<td>13.6%</td>
</tr>
<tr>
<td>UNIFIL</td>
<td>0</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>UNMIL</td>
<td>5</td>
<td>21</td>
<td>19.2%</td>
</tr>
<tr>
<td>UNMISS</td>
<td>153</td>
<td>576</td>
<td>21%</td>
</tr>
</tbody>
</table>


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25 Ibid.
26 Ibid.
27 Interview with Kenya Police spokesperson Masoud Mwinyi, conducted June 2014.
28 Interview with KDF International Peace Support Training Centre Lt. Colonel Sitienei, conducted June 2014; Interview with Kenya Police spokesperson Masoud Mwinyi, conducted June 2014.

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RATING: Slight progress
Indicator 4 – Number and percentage of women participating in each type of constitutional or legislative review (including security sector review)

Kenya did not undergo a constitutional or legislative review in 2013. The last constitutional review took place in 2009, following the 2008 elections. The participation of women in the process was guaranteed by chapter 3a of the Constitution of Kenya Review Act, which governed the review. The Act states that the purpose of the review is, among other things, establishing “gender equity, gender equality and affirmative action.” The Act also provides that “regional and gender balance” should be maintained in the composition of the Parliamentary Select Committee on the Review of the Constitution, established by the National Assembly, as well as in the Committee of Experts.

These provisions were only partially realized, as the Committee of Experts on Constitutional Review included only three women: Atsango Chesoni (Vice Chairperson), Christina Murray, and Njoki S. Ndung’u. Specific data or information as to how the women changed the dynamics of the Committee is unavailable. All three women were extremely well qualified attorneys and international human rights experts, as were the men on the committee. Additionally, as mentioned in prior sections, implementation of gender equity through affirmative action measures is being gradually and slowly introduced, and therefore substantive gender equality does not yet exist.

Table 4.1: Percentage of women in Constitutional Review in the National Assembly

<table>
<thead>
<tr>
<th>Committee</th>
<th>Percentage of Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constitution Implementation Oversight Committee</td>
<td>25% (7 women/21 men)</td>
</tr>
<tr>
<td>Committee on Delegated Legislation</td>
<td>7% (2 women/26 men)</td>
</tr>
</tbody>
</table>


Table 4.2: Percentage of women in Constitutional Review in the Senate

<table>
<thead>
<tr>
<th>Committee</th>
<th>Percentage of Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Committee on Delegated Legislation</td>
<td>44% (4 women/5 men)</td>
</tr>
<tr>
<td>Constitution Implementation Oversight Committee</td>
<td>33% (3 women/6 men)</td>
</tr>
</tbody>
</table>


As a bicameral body, the National Parliament now has joint committees that draw membership from both the National Assembly and Senate. Women are underrepresented in all committees, including the Joint Committee on National Cohesion and Equal opportunity, which is expected to perform tasks aimed at promotion of equal opportunity for women in Kenya and to oversee the elimination of gender discrimination in government bodies. At this point, women do not hold influential positions over constitutional or legislative review; the exception to that is the National Assembly Committee on Implementation, wherein a woman holds the position of vice chairman.30

The Joint Senate and National Assembly Committee on National Cohesion and Equal Opportunity’s role is to “monitor and promote measures relating to policy and program initiatives in pursuit of peace and national cohesion, investigate, inquire into and report on all matters relating to inter-community cohesion, monitor and promote measures designed to enhance the equalisation of opportunities and improvement in the quality of life and status of all persons, including persons who are marginalised on the basis of gender, age, disability, health status, ethnic, racial, cultural or religious background or affiliation or any other such ground.”31 This means that the Committee is supposed to guarantee the equalization of opportunities for all Kenyan people, with women being a protected class of citizens, as evidenced by the specific mention of “gender” above. While this is important in an affirmative action and legal protection sense, it does not necessarily translate into any substantive changes for women.

The Caucus for Women’s Leadership was the civil society organization spearheading women’s rights organizations’ involvement in the constitutional review process. The Caucus sought to ensure that female political candidates and aspirants could be readily identified by political parties prior to the 2007 elections, by compiling an up-to-date database of all female political candidates.32 The database included political profiles of all aspirants, mapping and demographic characteristics that could be used to identify any obstacles in the candidates’ districts.33 The Caucus also partnered with the Centre for Development and Population Activities and the League of Women Voters-Kenya on an initiative to address gender-based election violence.34 The initiative trained monitoring agents to identify and report incidences of gender-based election violence, trained female candidates and aspirants on issues of election security, and developed informational and educational materials to raise awareness of gender-based electoral violence and the means to avoid it.35

RATING: No change

Indicator 5 – CSOs in task force/committees on UNSCR 1325 and 1820

The Kenyan National Action Plan on UNSCR 1325 and 1820 was developed by a task force, which consisted of the representatives from the government, independent commissions, civil society, and the development partners.

31 Ibid.
33 Ibid.
35 Ibid.
There were 19 CSOs represented in the task force, out of which ten were women's groups. All of the women's CSOs work on issues related to women, peace, and security, which include education, food security, voting rights, and the elimination of female genital mutilation, among others.

The CSOs were able to create their own draft of the National Action Plan (NAP), which was used in the creation of the final version of the NAP, so their contributions, expertise, and ideas for concrete actions to ensure the implementation of UNSCR 1325 and 1820 in Kenya had a substantive impact on the process and on the final document. CSO participation in the development of Kenya's National Action Plan for the Implementation of UNSCR 1325 and 1820 task force have increased because Kenya is steadily moving towards a formal launch and implementation of the NAP, hopefully with governmental support, but that remains to be seen. Overall, Kenyan civil society organizations, as well as governmental and independent commissions feel that the NAP is fully researched, comprehensive, and realistic. However, it is yet to be adopted and officially launched by the government.

**RATING: Significant progress**

### B. Prevention and protection

#### Indicator 6 – Number and Percentage of SGBV cases reported, investigated, prosecuted and penalized

In the last decade, Kenya has made great strides in taking progressive measures towards enacting national and international statutory provisions aimed at curbing sexual and gender-based violence (SGBV). However, the country remains plagued by a climate of tolerance of violence against women and children, as evidenced by the number of women and children who report having experienced sexual and gender-based violence in their lifetime. SGBV occurs across all socioeconomic and cultural backgrounds in Kenya, which can largely be attributed to the prevailing culture in which women are taught to accept and tolerate violence, and to remain silent. The culture of impunity and women’s unwillingness to report SGBV makes it difficult to gather accurate and substantive data on SGBV.

The lack of reliable and comprehensive data on cases of SGBV is of great concern, and makes it difficult to entirely understand the rate of SGBV, the availability of services to victims, and the role of judicial and law enforcement mechanisms in combating the SGBV. Additionally, without a database, documenting the number of reported cases and the response to them, it is impossible to analyze the number of reported, investigated, and prosecuted cases.

A majority of women and girls in Kenya experience some form of SGBV throughout their lifetime. While all types of SGBV exist within the country, rape, domestic abuse, FGM, and child marriage are among the most common forms of violence and harmful acts committed against females.

Nearly one in three girls experiences some form of sexual violence before reaching the age of eighteen. In a 2010 National Survey on Violence Against Children, conducted by the Government of Kenya, with support from UNICEF, 32 percent of females, ages 18-24, reported having experienced sexual violence and 66 percent of females reported having experienced some form of physical violence. Additionally, 24 percent of girls who had sex before the age of 18 reported that it occurred against their will. In totality, 76 percent of girls have experienced at least one type of violence (sexual, physical or emotional) before reaching the age of 18. Most cases of SGBV are committed by family members or intimate partners of the victims, including boyfriends, husbands, fathers, and mothers.

While numerous discriminatory and harmful practices, which disproportionately affect women and girls, including Female Genital Mutilation (FGM), human trafficking, and child marriage, have a long history in Kenya, the prevalence of sexual violence increased dramatically during the post-election violence in 2007-2008. Following the 2007 Presidential election, approximately 900 cases of SGBV were reported; however, an estimated 40,000 unreported incidents of sexual violence occurred during the first three months following the election. The areas most impacted by this plague of sexual violence were Nairobi, the Rift Valley, the Coast, and Western Provinces. During the post-election violence, women were systematically raped, often in front of their families, and experienced grave physical injuries as a result of SGBV. Despite the government’s complete failure to record the rates at which such violence occurred and was reported, hospitals countrywide reported a surge in the number of females who sought treatment for rape immediately following the election in 2007. Specifically, during a two month period from December 27, 2007 to February 29, 2008, the Nairobi Women’s Hospital’s Gender Violence Recovery Centre reportedly treated 433 survivors of SGBV, of which 80 percent had been raped.

<table>
<thead>
<tr>
<th>Total number of taskforce members</th>
<th>Number of CSOs</th>
<th>Percentage of CSOs</th>
<th>Number of CSOs focusing specifically on WPS</th>
<th>Percentage of CSOs focusing specifically on WPS</th>
</tr>
</thead>
<tbody>
<tr>
<td>34</td>
<td>19</td>
<td>55.9%</td>
<td>10</td>
<td>29.4%</td>
</tr>
</tbody>
</table>

Kenya has a strong legal framework aimed at protection and retribution for SGBV victims. In particular, the enactment of the Sexual Offenses Act of 2006 contributed to building a more comprehensive legal framework for prosecuting SGBV, since it expanded the definitions of SGBV to include crimes such as gang rape, incest, trafficking for sexual exploitation and child pornography. It also included both women and men as potential victims and perpetrators of SGBV, and stated that in order to consent a person has to “have a freedom and capacity to make that choice,” thus acknowledging that coercive tactics or relationships imply lack of consent. The Act also stipulated the penalty of at least 10 years’ imprisonment for these offences, with the possibility of life imprisonment.

However, despite extensive provisions for protection and reparation provided for in domestic and international laws and policies, SGBV remains widespread, and these mechanisms are greatly underutilized by victims. There are numerous factors contributing to this. The ineffective responses to SGBV from the law enforcement and judicial officials greatly contribute to a climate of impunity for perpetrators and the spread of violence. Victims are frequently met with disbelief, retaliation, humiliation, threats, and further violence when reporting the crime to the police. Women who reported their cases to the police overwhelmingly report that the officers were “unhelpful,” “reluctant to record statements,” or demanded bribes. Victims are also often forced to undergo insensitive and invasive evidence-gathering procedures, which may lead to re-victimization and deepen the victim’s trauma.

This state of affairs discourages the victims from coming forth and reporting the abuse, and contributes to impunity, as well as the scarcity of data on SGBV.

In response to the inefficiency and unresponsiveness of the police, in particular in the aftermath of the post-election violence of 2008, 160 girls filed a lawsuit against the Government of Kenya for failing to protect them on April 30, 2013. The case was considered by the High Court, which on May 27, 2013, decided that the police has failed to enforce the existing laws and protect the girls, and that it has neglected its duty to respond to the girls’ complaints about sexual violence and abuse “unlawfully, inexcusably and unjustifiably.” The decision has been a significant victory, as it publicly acknowledged the need for a fast and effective response to SGBV complaints and the current failure of the police to protect Kenyan women and girls.

However, while a lack of reliable data makes it impossible to fully evaluate and understand the impact of this development on the practice of law enforcement, current cases depict a lack of implementation. Recently, after the High Court’s decision on May 27, 2013, six men in Busia repeatedly gang-raped a 16 year-old girl, Liz, causing her extensive internal, external, and psychological injuries. After she reported the attack to local police the day after, the police recorded the attack as merely an “assault,” arresting only three of the six perpetrators, and issuing punishments of “grass cutting” at the police station. It was not until local and international CSOs led the global #JusticeforLiz campaign, which called on the Inspector General of Police to arrest and prosecute the suspects that authorities issued a public assurance that further and appropriate remedial actions would be taken.

Yet, to date, the police have arrested only three perpetrators, and of the three, one only has been prosecuted. None have received convictions or corresponding sentences.

Additionally, in the wake of the #JusticeforLiz case, local CSOs shed light on 70 other cases in which police in Busia County had entirely failed to conduct any investigations or arrests. Using #JusticeforLiz as a platform and inarguable example of police inaction, CSOs petitioned to the Kenyan Director of Public Prosecutions (DPP) to re-open and investigate each individual case.

Accordingly, the DPP and Director of Criminal Investigations appointed a team of specially trained investigators to open the 70 cases, which subsequently led to the arrests of perpetrators. This is great progress in a country that has displayed historical apathy to the plight of victims and survivors of SGBV; however, it is CSOs, and not the Kenyan government, that continuously spearhead the efforts and operations of these investigations and prosecutions.

Lastly, the Kenyan government’s efforts made on paper to combat human trafficking have done very little in the way of materializing into action or policies which provide actual protection against the pervasive abuse. Despite passing the Counter Trafficking in Persons Act, a comprehensive piece of legislation aimed at combating the exploitative crime, and providing extensive protections and remedies for victims, human trafficking remains rampant and perpetrators face little-to-no reprisal. Noting the government’s failure to fully implement the Act and accordingly provide adequate protections for victims and punishments for traffickers, the United States Trafficking in Persons Report has placed Kenya on its Tier 2 Watch List for the third consecutive years beginning in 2011. A “Tier 2” rating signifies that Kenya has failed to comply with the minimum standards for eliminating and preventing of trafficking. Additionally, the U.S. State Department has acknowledged Kenya’s inadequate progress in recognizing and prosecuting known cases of trafficking. Though nationwide data on the number of reported trafficking cases and


48 The campaign, #JusticeforLiz, was spearheaded by the Coalition on Violence Against Women (COVAW), African Women’s Development and Communication Network (FEMNET), and Avaaz and obtained 1.7 million signatures from around the world.
50 Ibid.
victims remains unknown or unavailable, during one recording period in 2013, the Kenyan authorities identified 43 victims and 30 traffickers. However, of those 30, only 7 were convicted.52 It is important to note, however, that upon release of the Trafficking in Persons Report, Kenya responded by creating and deploying the Counter Trafficking Advisory Committee. The Committee is charged with actualizing the Act, primarily through the development and implementation of regulations and guidelines to lead authorities in combating trafficking and implementing programs to protect and rehabilitate victims.53

Despite the alarmingly slow progress that Kenyan authorities have made in providing protection against SGBV, and remedial measures for victims and survivors of SGBV, the government’s responsiveness in promulgating laws specifically addressing the need to eradicate SGBV and provide restorative mechanisms for victims should be applauded. However, as demonstrated in cases such as the ones cited above, such laws have little teeth unless they are universally implemented, which Kenya continuously fails to do. In order to ensure effective implementation of the laws, and protection of the SGBV victims, the following measures should be undertaken: (1) Create safer and confidential methods of reporting SGBV, such as private gender desks at police stations, manned by specially trained and sensitized police officers. Although such desks already exist in theory, in practice they do not offer privacy to the victims, and are often manned by untrained staff;54 (2) Conduct community outreach and education initiatives to raise awareness about SGBV, and make available judicial and support mechanisms at the national, regional, international levels; (3) Organize comprehensive gender training on SGBV prevention and response for all law enforcement, judicial bodies, and military personnel that is often the only law enforcement present in IDP and refugee camps; (4) Introduce accountability mechanisms for the judicial, executive, and legislative branches of government to ensure that a climate of corruption is not thwarting efforts to advance protections available to women and girls.

Rating: Slight progress.

Indicator 7 – Number and quality of gender-responsive laws and policies

Beginning with the enactment of the Sexual Offences Act in 2006, the Kenyan government has made notable progress towards creating a legislative framework that recognizes the particular vulnerability of women and girls, and their need for special protections against sexual and gender-based crimes. The Act, together with numerous pieces of succeeding legislation protecting against acts of violence, such as The Victims Protection Act of 2014,55 has provided a mechanism for granting relief and reparation for victims, while simultaneously holding perpetrators accountable and challenging the culture of impunity. However, the implementation of these laws remains a challenge, and there is considerable work to be done to ensure effective protection of the rights of women and girls in Kenya.

Table 7.1: Number and quality of gender-responsive laws and policies

<table>
<thead>
<tr>
<th>Law name &amp; year</th>
<th>Purpose</th>
<th>Result of the law</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sexual Offences Act of 2006</td>
<td>To expand the definitions of crimes of SGBV so as to include under-protected and unrepresented individuals and groups of victims, and to offer stiffer penalties for perpetrators and greater remedial measures for victims.</td>
<td>• 14 new offenses included in the law, including: gang rape, deliberate infection with HIV/AIDS, sexual exploitation and trafficking, sexual harassment, and child pornography; • Introduction of minimum sentences attached to convictions; • Creation of a DNA data bank and pedophile registry.</td>
<td>• SGBV included in law enforcement training; • Numerous cases have been brought before the high courts and have paved the way for imperative jurisprudence, including the recent landmark case: CK et al v. The Commissioner of Police of the Nat’l Police Service, Petition No.8 of 2012.8</td>
</tr>
<tr>
<td>The National Gender and Equality Commission Act of 2011</td>
<td>To establish the National Gender and Equality Commission, which serves as a successor to the Kenya National Human Rights and Equality Commission to Article 59(4) of the Kenyan Constitution. The purpose of the Commission is to promote gender equality and ensure freedom from gender discrimination.</td>
<td>Creation of the National Gender and Equality Commission (NGEC).</td>
<td>• The NGEC has established and disseminated standards with regards to SGBV; • Creation of the National Training Curriculum on SGBV.</td>
</tr>
</tbody>
</table>

52 Ibid.
54 Source: Interview with Kibera Women for Peace and Rural Women’s Peace Link.
<table>
<thead>
<tr>
<th>Act / Constitution</th>
<th>Purpose</th>
<th>Key Provisions</th>
<th>Outcomes / Impacts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Counter Trafficking in Persons Act of 2010</strong></td>
<td>To prohibit all forms of trafficking in persons and holds a minimum punishment of 15 years imprisonment for convicted perpetrators.</td>
<td>Reducing the number of cases of human trafficking.</td>
<td>236 investigations, 10 prosecutions, and 6 convictions of trafficking perpetrators have resulted after enactment of the law. However, only two of the six convictions involve human trafficking offenses.</td>
</tr>
<tr>
<td><strong>Prohibition of Female Genital Mutilation Act of 2011</strong></td>
<td>To prohibit the practice of FGM, to safeguard against the violation of a person's mental or physical integrity through the practice of FGM and for connected purposes.</td>
<td>Eliminating the practice of FGM, providing relief to survivors, and ending impunity of perpetrators.</td>
<td>• The Office of the Public Prosecutor created an anti-FGM unit to track and prosecute cases. • The Public Prosecutor, through the anti-FGM unit, brought the first criminal FGM case to court. • Created severe punishments for perpetrators, with sentences ranging from monetary fines to life imprisonment.</td>
</tr>
<tr>
<td><strong>Kenyan Constitution (2010)</strong></td>
<td>To expand, amend and consolidate laws pertaining to matrimonial rights and responsibilities of spouses in relation to matrimonial property.</td>
<td>Women were granted equal protections and status to men in economic, social, cultural, political, and civil rights policies and practices.</td>
<td>Expanded provisions include those which grant equal rights to land property, inheritance, right to marriage and dissolution, and right to reproductive health and choice, excluding abortion.</td>
</tr>
<tr>
<td><strong>Matrimonial Property Act (2013)</strong></td>
<td>To provide for the rights and responsibilities of spouses in relation to matrimonial property.</td>
<td>Women were given the right to own matrimonial property and the Married Women Property Act was abolished.</td>
<td>Data is unavailable given the recent enactment of the law.</td>
</tr>
<tr>
<td><strong>Marriage Act (2014)</strong></td>
<td>To expand, amend and consolidate laws pertaining to marriage and divorce.</td>
<td>Affirmed the minimum marital age to be 18, permitted monogamy, reiterated gender equality in all marital and dissolution cases.</td>
<td>Data is unavailable given the recent enactment of the law.</td>
</tr>
<tr>
<td><strong>The Employment Act (2007)</strong></td>
<td>To declare and define the fundamental rights of employees and to regulate employment of children.</td>
<td>Addressed key issues of gender discrimination practices.</td>
<td>• Maternity leave was increased to three months for women and two weeks for men • Prohibits discrimination and harassment based on the basis of sex; • Women may not be terminated for reasons relating to pregnancy.</td>
</tr>
</tbody>
</table>

The development and evolution of gender-responsive laws in the last eight years reflects the relentless advocacy of CSOs in shifting Kenya’s political climate towards one that incorporates the rights and needs of women, in drafting and adopting new policies and pieces of legislation. Most notably, the extensive gender-sensitive provisions included in the Constitution of Kenya 2010 laid an imperative foundation and powerful framework for addressing gender equality.

While continued work is crucial, Kenya, with the support of CSOs and international models, has made notable and significant progress in addressing the ramped practice of FGM, particularly in rural and Somali communities. Although The Children’s Act first outlawed FGM in 2001, the enactment of the Prohibition of Female Genital Mutilation Act 2011 is the first piece of legislation that severely penalizes anyone who aids, abets, procures, provides tools, or contributes to the practice of FGM. The Act includes a range of sentences from payment of fines to life imprisonment. Further renewing its commitment to the elimination of the practice, the Director of Public Prosecutions recently created a 20-member Anti-FGM prosecution to track cases and prosecutions and ensure full implementation of the Act.

Additionally, the recent deaths of two teenage victims have heightened efforts by authorities to curb the practice and bring perpetrators to justice. After both victims bled to death during or as a direct consequence of the procedure, the anti-FGM unit launched a hotline as a means of reporting the practice and rescuing girls who are at risk of being cut. The unit has also been

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active in working with community leaders and elders in areas with high prevalence rates to expand and disseminate information regarding the risks, harm and illegality of FGM to community members, parents of young girls, and FGM practitioners.

However, despite the noteworthy progress that Kenyan authorities have made in their efforts to pursue, prosecute and punish the practice, the Act’s effectiveness has been called into question. Most recently, a growing concern has arisen that the Act has not actually decreased the prevalence of FGM, but instead has merely driven it underground, placing victims at great risk of irreparable harm and creating an additional barrier for authorities in their efforts to monitor and punish the practice.59 Additionally, despite the success of this Act on the books, the rate of FGM remains high, with a national average of 27 percent and rates as high as 98 percent within Somali and Kisii communities.60 Lastly, while significant advancements have been made in the number of prosecutions and arrests, the resulting convictions have been minimal. Since the adoption of the Act, only 16 of the 71 cases brought before a tribunal have resulted in a conviction.61

Similar to the progress Kenya has made in tackling FGM, legislatures have made significant headway in establishing gender-sensitive policies that equalize rights in marriage and dissolution, employment, political representation, and citizenship. With the enactment of a new Constitution in 2010, there was a new obligation on the State to ensure that:

- 27(4) Women are free from discrimination based upon their sex, pregnancy, and marital status;
- 45(3) Women have equal rights at the time and duration of marriage, and in divorce; and
- 60(f) Women are free from gender discrimination in law, customs, and practices relating to land and property.62

Complementary pieces of legislation have followed and supplemented the rights enumerated within the Constitution. Among these are The Marriage Act of 2014, Matrimonial Property Act of 2013, and The Employment Act of 2007 (revised in 2012). However, while all three pieces of legislation are progressive in some regards, they are alarmingly regressive in others. The adoption of both the Marriage Act and Matrimonial Property Act63 granted women the right to matrimonial property; however, matrimonial property is defined in both Acts as property that is solely that which is jointly owned by the spouses. Furthermore, women are required to prove that they financially contributed to the acquisition of property to have a right to it upon divorce or death of their spouse. Such proof is nearly infeasible for many women who do not hold paid employment outside of the home. With no means of proving financial contribution, women in such cases are deprived of the right to remain in their homes.64 It is important to note that, although the provisions of both Acts apply with equal force to men and women, their implications have drastically disparate effects on women, given their position in the society and historical discrimination they have faced.

In addition to the barriers that women face in acquiring and holding property, the Kenyan MP’s, in their adoption of the Marriage Act, voted to include and legalize the practice of polygamy. As a result, the Marriage Act not only allows for this historically oppressive and discriminatory practice, but it also does not require first wife’s consent to transition from a monogamous relationship to a polygamous one.65 These discriminatory provisions are not only regressive, but also violate the new Constitution, particularly Article 45(3) and 60(f), cited above.

The Employment Act of 2007 is another important step towards promoting and protecting rights of Kenyan women. It has broadened the requisite and appropriate accommodations for pregnant women, including extending the length of both maternity and paternity leave, as well as prohibiting employers from terminating or restricting the terms of employment solely on the basis of pregnancy and motherhood.66

In matters concerning FGM, women’s employment rights, and protection against sexual crimes, Kenya has made noteworthy and imperative progress in promulgating laws, which serve to prevent gender-discrimination and victimization. However, outdated and revised legislation pertaining to women’s rights in property, marriage and divorce, and trafficking remain unrealized, discriminatory, or generally harmful towards women. Additionally, some domestic pieces of legislation in these three arenas directly conflict with the 2010 Constitution. Lastly, while pieces of legislation, such as the Counter Trafficking in Persons Act, are progressive on paper, they have yet to be integrated into policies, which provide actual protection for victims and retribution for perpetrators. Therefore, while Kenya should be recognized for the noteworthy promulgation of such laws, significant work remains to actualize such laws to eradicate the abuse and exploitation of women.

To ensure that women are protected, perpetrators are brought to justice, and a historical climate of gender-discrimination is eliminated, Kenyan decision-makers and authorities must enact and implement laws that are gender-sensitive.

### Rating: Moderate progress


Indicator 8 – Number and nature of provisions/recommendations in the truth and reconciliation commission (TRC) and other transitional justice reports on women’s rights.

The Truth, Justice and Reconciliation Commission (TJRC) was established in response to the post-election violence in 2007-2008 to “address the past in order to prepare for the future” and “give the people of Kenya a fresh start, where justice is accorded to the victims.”

Out of seven Commissioners, three were women, constituting 43 percent of the commission. A woman – Ms. Tecla Namachanja Wanjala – was a Vice Chairperson of the commission. It should also be noted that the hearings of women organized by the commission, were attended by women only, thus contributing to creating a safe space for female victims to speak about the abuse they experienced.

The TJRC submitted its report to the President on May 21, 2013. There has been controversy surrounding the release of the report. A network of organizations and individuals, the Kenya Transitional Justice Network (KTJN) has demanded the report. A network of organizations and individuals, the report has been considered controversial.

Despite this controversy, the report includes several provisions important from the perspective of women’s rights. Chapters 32-40 of Volume IIA of the report, discussing general historical context of violence in Kenya, deal with sexual violence and its impact on victims’ lives; Volume IIC deals with “Gender and Gross Violation of Human Rights,” giving particular attention to women as one of the most vulnerable groups. It tackles issues of systematic discrimination, as well as the role of women in conflict and peacemaking. Chapters 10 and 11 of the final Volume (IV) of the report also deal with sexual violence and women respectively.

The report recognized that vulnerable groups, such as women, are particularly affected by the corruption and inefficiency of the government. It also acknowledged that women experience broad discrimination due to male dominance embedded in the Kenyan culture. It mentioned widow’s rights, matrimonial property rights, FGM and sexual violence as examples of such discrimination. It also recognized that there is discrimination within state institutions.

The report analyzed the prevalence of sexual violence from the colonial times until the post-election violence of 2007-2008, and recognized the complicity of police and armed forces in such violence. The Commission received reports of many different types of sexual violations, including rape, mass rapes, gang rapes, incest, mutilation, sexual torture and sexual slavery.

Some of the gender-sensitive recommendations of the TJRC are listed below.

Table 8.1: Provisions and Recommendations of the Kenyan TJRC on women’s rights

<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Timeframe</th>
<th>Responsibility for implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>VOLUME IIA</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Every police station in Kenya should reflect a good representation of ethnic diversity and gender balance.</td>
<td>Not specified</td>
<td>Not specified</td>
</tr>
<tr>
<td>Acknowledge and offer a public and unconditional apology for acts of violence committed by State security agencies, during security operations and other periods of generalized violence, such as the 2007/2008 post-election violence.</td>
<td>3 months</td>
<td>President</td>
</tr>
<tr>
<td>Establish gender based violence recovery centers in every county.</td>
<td>12 months</td>
<td>Kenyan Government</td>
</tr>
<tr>
<td>Set up the office of the Special Rapporteur on Sexual Violence, as recommended by the Waki Report.</td>
<td>12 months</td>
<td>Kenyan Government</td>
</tr>
<tr>
<td><strong>VOLUME IIC</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Make a public and unconditional apology for the State’s sanction of discrimination against women.</td>
<td>6 months</td>
<td>President</td>
</tr>
<tr>
<td>Increase measures to raise awareness about harmful cultural practices that adversely affect the enjoyment of human rights by women.</td>
<td>Not specified</td>
<td>Equality and Gender Commissioner</td>
</tr>
<tr>
<td>Expedite the enactment of the Marriage Bill 2007, the Matrimonial Property Bill 2007, the Family Protection Bill 2007 and the Equal Opportunities Bill 2007.</td>
<td>18 months</td>
<td>Attorney General and Parliament</td>
</tr>
<tr>
<td>Ensure that the composition of land dispute tribunals meet the Constitutional gender ration requirement.</td>
<td>12 months</td>
<td>Ministry of Land</td>
</tr>
</tbody>
</table>

Although these provisions are an important and positive development, there remain serious challenges to their implementation. One of the principal problems is the lack of political will for the implementation of TJRC’s recommendations. Furthermore, the controversy surrounding the political influencing of Volume IIIB of the report undermines its credibility, which may further affect its implementation. Because of that, many of the provisions remain unfulfilled, and the impact of the Commission’s work on women’s rights in Kenya remains limited.

Rating: Slight progress

Indicator 9 – Percentage of women (versus men) who receive economic packages in conflict resolution and reconstruction processes

The research team has been unable to access information about the distribution of economic packages.

No rating (insufficient data)

C. Promotion of a gender perspective

Indicator 10 – Number and percentage of pre-deployment training and post-deployment programs for military and police incorporating UNSCR 1325, UNSCR 1820, international human rights instruments and international humanitarian law

While women are increasingly included in the military, as discussed in Indicator 3, there are still no specialized pre-deployment and post-deployment trainings relating specifically to UNSCR 1325 and UNSCR 1820. The Administrative Police spokesperson told the researchers that the national police force has included such trainings into their police academy curriculum. However, no further information about the programs, or data demonstrating the extent to which the gender-sensitive trainings were implemented, was available.

No rating (insufficient data)

Indicator 11 – Allocated and disbursed funding marked for women, peace and security (WPS) programs to CSOs and government

The National Gender and Equality Commission (NGEC) was established in 2011, and constitutes a sub-sector of the Governance, Order, Justice, Law and Order Sector (GJLOS) of the Kenyan government. As such, it receives funding from the government. In the Medium Term Expenditure Framework of the GJLOS for the period of 2015/16-2017/18, Promoting Gender Equality and Freedom from Discrimination is recognized as one of the funded programs, and several indicators referring to legal compliance and redress, gender mainstreaming, gender-sensitive education, research, and awareness-raising are recognized.

According to the same document, the NGEC had an approved budget of 234 million Kenyan shillings (2.56 million USD71) in the budget year 2013/14, all of which has been spent. However, the breakdown of expenditures according to different programs and projects of the NGEC is not available, and therefore it is not clear what percentage of this funding has been used for issues related to women, peace and security.

Although the NGEC “facilitated Kenya government to adopt gender-responsive budgeting (GRB) as a strategy for promoting gender equality and inclusion at both the national and county level”73 information about funding marked for gender issues, or women, peace and security programs more specifically, within other Ministries is not available.

The researchers were also unable to obtain the information about the external funding marked for women, peace and security programs disbursed to either the government or the CSOs. This shortage of data makes it impossible to provide a comprehensive analysis of this indicator.

No rating (insufficient data)

III. Conclusion and recommendations

Conclusion

UNSCR 1325 recognizes the centrality of gender in approaches to international peace and security and addresses the disproportionate and unique impact of armed conflict on women. Kenya has recently developed an extremely gender-progressive constitution, has signed and ratified various treaties and international legal commitments to women’s rights, and has adopted a gender quota system which constitutes “affirmative action” for past pervasive gender discrimination. In contrast, Kenyan society remains largely patriarchal and reluctant to change its views on gender stereotypes.

The 11 indicators analyzed above demonstrate that Kenya has made some significant strides towards addressing its women, peace, and security obligations, but is severely lacking in multiple arenas. In particular, the 2010 Constitution included several important gender-sensitive provisions, reaffirmed the rights of women, and prohibited discrimination based on gender. Women’s participation in decision-making has increased slightly, and they were represented in the constitutional review after the 2008 elections. Other important pieces of legislation, such as the Sexual Offences Act (2006), Prohibition of Female Genital

70 Interview with Lieutenant Colonel Masoud Mwinyi Administrative Police Spokesperson, Nairobi, June 20, 2014.

71 Assuming the exchange rate of 1 USD = 91.54 Kenyan Shillings, as of January 15, 2015.


Mutilation Act (2011), Marriage Act (2013), and Employment Act (2007) also contributed to the advancement of women’s rights. However, their implementation is still lagging, due to harmful social practices and perceptions of women, as well as some discriminatory provisions of the acts themselves. Finally, the development of the NAP, with active participation of the civil society, was a positive step forward. However, the adoption and implementation of the NAP is yet to be seen.

In spite of these achievements, major challenges remain. Sexual and gender-based violence, female genital mutilation and human trafficking of women remain widespread in Kenya, despite legislation and efforts to contain them. Inefficiency and lack of gender-sensitive training for the police and other law enforcement forces, as well as the general culture of impunity and lack of respect for women, contribute to the spread of these phenomena.

Limited data shows that women remain under-represented in the security sector. However, specific gender-disaggregated data and related information, including information about gender-specific trainings for the military and the police, is often unavailable, which is a worrying signal.

**Recommendations**

**To the Kenyan government:**

▸ Ensure that UNSCR 1325 is mainstreamed across all government ministries and departments especially by drafting and implementing laws, policies, and practices that empower women, strengthen and promote gender equality, and eliminate barriers to women’s access to justice, equality, and peace;

▸ Undertake efforts to accept ownership over and adoption of the National Action Plan, including allocating appropriate financial resources to the comprehensive implementation of all included policies, practices, and administrative bodies;

▸ Implement laws and policies ensuring women’s rights, including gender-specific constitutional provisions, and other laws both at the county and national levels;

▸ Enhance women’s equal participation in electoral and political processes;

▸ Increase awareness of sexual and gender-based violence and continue to develop and enforce laws and policies eradicating of all forms of violence against women, especially sexual and gender-based violence;

▸ Improve gender-responsive early warning systems and conflict prevention mechanisms and strategies, especially with regards to the recent rise of terrorism and tribal conflict;

▸ Allocate financial and other resources to facilitate the participation of women in county, national, regional, and international institutions and mechanisms for the prevention, management, and resolution of conflict;

▸ Ensure the inclusion and participation of women in humanitarian, early recovery, relief, and peacebuilding programs, with a particular focus on refugee and internally displaced women and girls;

▸ Implement policies and programs to eliminate negative gender stereotypes and stereotypical roles for women in Kenyan society;

▸ Undertake gender-disaggregated research to collect comprehensive data on the participation and treatment of women in the military, police force, and judiciary;

▸ Ensure effective protection of women from SGBV, by challenging the culture of impunity and creating safer and confidential methods of reporting SGBV, such as private Gender Desks at police stations, manned by specially trained and sensitized police officers;

▸ Organize comprehensive gender training on SGBV prevention and response for all law enforcement, judicial bodies, and military personnel;

▸ Introduce accountability mechanisms for the judicial, executive, and legislative branches of government to ensure that a climate of corruption is not thwarting efforts to advance protections available to women and girls; and

▸ Ensure full implementation of all gender-sensitive laws and policies, in particular the Sexual Offences Act, the Prohibition of Female Genital Mutilation Act, the Employment Act and the Matrimonial Property Act.

**To the United Nations:**

▸ Encourage the Kenyan Government to support a formal launch of the National Action Plan and provide funding for the NAP through the National Gender and Equality Commission; and

▸ Encourage the Kenyan Government to uphold its international legal obligations, particularly as they pertain to promoting women, peace and security.

**To Kenyan and international civil society actors:**

▸ Continue to lobby the government for formal implementation of the National Action Plan on UNSCR 1325 and 1820;

▸ Continue to undertake advocacy measures and lobbying needed for the passage of the laws necessary to actualize the two-thirds principle of gender representation;

▸ Strive to understand and utilize constitutional provisions adopting Kenya’s international legal obligations under women’s rights treaties and agreements concerning women, peace, and security into actionable domestic law;

▸ Undertake and/or increasingly focus on gender disaggregated research projects which collect clear data on women’s roles in the military, police force, and judiciary; and

▸ Continue organizing community outreach and awareness-raising initiatives focusing on SGBV and the available judicial and support mechanisms at the national, regional, international levels.
To the donor community:

- Fully support Kenyan civil society organizations, many of which are mentioned in this report, doing this work, who are performing a majority of the work required to fully implement measures necessary to ensure women's participation in peace and security;
- Provide funding for programs aimed at involving rural women in the electoral process; and
- Support any CSO willing to work on collecting gender-disaggregated data and compiling information on women's involvement in the security sector, in particular in the lower ranks of the Kenyan National Police Service and/or the Kenya Defense Forces.

IV. Bibliography


(Endnotes)


