



**THE WORLD BANK**

# **THE KENYAN STRATEGIC COUNTRY GENDER ASSESSMENT**

**PREM and ESSD - Africa Region, World Bank**

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## GLOSSARY AND ABBREVIATIONS

**Access:** The concepts of access, control and ownership are important to this study. Jean Davidson contends that there is confusion over terms regarding land rights such as tenure, usufruct, freehold and ownership. Tenure applies to land holding rights, including land, which is transmitted through inheritance, loan or rental for an established exchange value, and outright sale. Usufruct refers to the right to use land (and in some cases trees or water holes, independent of the land) by collective groups or individuals. Freehold applies to the practice of holding exclusive rights to a piece of land by an individual or corporate body, which can be transferred. Ownership has a cash or commodity value and is registered through a process of entitlement to an individual or corporate group.

**Household Economy:** A household is an economic unit consisting of either a single person or family (broadly defined) living together. The household has resources that it utilises for production for both domestic consumption and sales in the market as well as consumption of goods produced outside the household such as services in health and education and other consumer goods. Much literature assumes that households engage resources for the production of goods for the market and other time is used for leisure. There has been inadequate attention paid to domestic production and household reproductive activities that make a greater demand on women's time and therefore reduce their ability to sell labour or to participate in the market place.

In addition, there has also been insufficient attention paid to the relative power of different members of the household and their control and decision making regarding consumption of goods not produced by the household or application of resources such as labour for production for the market (both on-farm and off-farm).

AGOA:	Africa Growth and Opportunity Act
CAS:	Country Assistance Strategy
CBOs:	Community based organizations
CEDAW:	The United Nations is Committee on the Elimination of All Forms of Discrimination Against Women
CIDA:	Canadian International Development Agency
CKRC	Constitution of Kenya Review Commission:
COMESA:	Common Market for Eastern and Southern Africa
CSO:	Civil society organization
ESSD :	Environmentally & Socially Sustainable Development
FEMNET:	The African Women's Communication and Development Network
FGM:	Female Genital Mutilation
FIDA:	Federation of Women Lawyers – Kenya
GAD:	Gender and Development
GOK:	Government of Kenya
IEA:	Institute for Economic Affairs
<i>Jua Kali:</i>	Informal Sector
KWFT:	Kenya Women's Finance Trust
KWPC:	Kenya Women's Political Caucus
LKWV:	League of Kenya Women Voters
NCC:	National Constitutional Conference
PREM	Poverty Reduction and Economic Management
PRSP:	Poverty Reduction Strategy Paper
SCGA:	Strategic country gender assessment
WID:	Women in development.
WTO:	World Trade Organisation
UN:	United Nations
UNDP:	United Nations Development Programme
UNIFEM:	United Nations Development Fund For Women

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## I. EXECUTIVE SUMMARY

1. Kenya is a country of great economic and social variation between geographic regions and among income groups. Over half the country's population lives beneath the poverty line as illustrated by figures from the Economic Recovery Strategy for Wealth and Employment Creation, which states that the overall national incidence of poverty stood at 56% in 2001.<sup>1</sup> A UN survey has identified Kenya as coming second to Brazil in having the greatest gap between the rich and the poor. Applying a gender lens to analyse the economic and social disparities within Kenya makes the disparities even more extreme. Ultimately, women are poorer than men and suffer more severely from the ill effects of recent economic down turn. 52.5% of Kenyan males in rural areas and 49.2% of those in urban areas live beneath the poverty line. In both instances the statistics for females are higher - 54.1% of rural and 63.0% of urban women and girls live beneath the poverty line.<sup>2</sup> Whilst poverty has been identified as an area of concern for the country as a whole, it does wear a predominantly female face, with the patriarchal nature of Kenyan society inhibiting women's attempts to escape poverty. By 1998, the number of female-headed households had grown to 31.7% of the population. Out of these, 79.5% are beneath the poverty line.

2. This pattern of gender-based disparity continues as one examines other spheres of life. Whilst the December 2002 elections have ushered in the highest number of women parliamentarians ever, even after the figures for both the elected and nominated members are added, they still only constitute 7.7% of the new Parliament.<sup>3</sup> This is the lowest figure in the East African sub region. The new Government has made commendable efforts in ensuring women's representation in the new Cabinet with three women cabinet ministers and three assistant ministers, the highest ever in the history of the country. However much still needs to be done in ensuring gender parity in decision making in the country in respect of both elective and appointive positions. A legacy of systemic, institutionalised and legalised gender bias, weak national gender machinery and lack of a national policy on gender are some of the challenges the new Government faces in redressing the balance and ensuring an equitable sustainable policy and legal framework. Women and girls form majority of the population standing at 50.5%; harnessing their economic potential and institutionalising gender-responsive policy and law making are key elements in creating a prosperous Kenya with a sustainable economic future.

3. This Strategic Country Gender Assessment (SCGA) is taking place at a germane time. The new Government has created a Ministry of Gender, Sports, Culture and Social Services. It is preparing to embark on a review of existing national gender machinery and policy. It has also made commitments regarding the national legal and institutional framework that have implications for ensuring gender responsive law reform.<sup>4</sup> The December 2002 political transition, therefore, created a unique opportunity for truly transformative gender responsive policy and legal interventions. This SCGA identifies several areas of concern: HIV/AIDS, access to education, gender violence, agriculture, gender responsive legal and policy reform. It speaks to the factors undermining equitable and sustainable economic growth.

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4. Priority areas identified in respect of the upcoming Country Assistance Strategy (CAS) such as HIV/AIDS, completion and implementation of the Poverty Reduction Strategies, as well as community driven development have emerged as being relevant to the SCGA. One of the findings of the SCGA is that the community level is one of the few spheres in which women are able to mobilise resources. They are also well organised at this level. Paradoxically, whilst women have been able to organise at the community level and although they are the major economic contributors at all levels, they have limited economic control at the household level. At the national level, their access to and control over resources is virtually non-existent. Women only own 1% of the registered land, yet they form 75% of the agricultural labour force.<sup>5</sup> Women's ability to organise at the community level has also not translated into political clout. They only constituted 8.1% of the leadership in the local authorities after the 1997 elections (new elections for local authorities have not yet been held).<sup>6</sup> Local authority reform and community access to and control over resources are, therefore, important factors in ensuring gender parity.

5. The SCGA begins by providing a country context; a detailed country gender equality and equity profile follows including an assessment of the cost of gender exclusion. Finally, there are proposals regarding gender responsive priority policy and operational interventions. Due to the transition, the country is in a fluid situation. These transitional processes present opportunities and challenges. More than ever, they have illustrated the importance of an established gender responsive legal, policy and institutional framework. When the new permanent secretaries were first named there were at least five women, four of whom held strategic portfolios. Three of them have since been removed. Thus now, of the twenty-four permanent secretaries, three are women.<sup>7</sup> As there are no quotas or policy on affirmative action it is not possible to say at this time whether or not more women will be appointed to senior decision-making positions.

6. It is also not possible at this point in time to state authoritatively the institutional and legal framework the Government will adopt vis a vis gender. It is proposed that the existent national gender machinery, the Women's Bureau, be elevated from a division within a department to a full department and the Minister for Gender, Sports, Culture and Social Services has committed to establishing a gender commission. At the time of going to print, 23<sup>rd</sup> October 2003, Parliament is debating the National Commission on Gender Bill to establish a Gender Commission. This is in keeping with the commitments made by the Government when it presented its Third and Fourth reports to the UN's Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) in New York in January 2003.<sup>8</sup>

7. The National Constitutional Conference (NCC) has been underway and the third session is scheduled to begin on 12<sup>h</sup> January 2004. The completion of the constitutional review process is imperative to ensuring and securing an institutional and legal framework that guarantees gender equality. The current *Constitution of the Republic of Kenya* discriminates against women; it legalises and institutionalises gender exclusion, its review is therefore critical to ensuring gender parity. What is clear is that a multi-sectoral and multi-faceted approach is required to achieve gender equity, as gender is a

crosscutting concern.<sup>9</sup> Several of the newly created ministries are critical to ensuring gender equality, in particular the new Ministries of Planning and National Development as well as the Ministry of Justice and Constitutional Affairs.

8. The Country Gender Equality and Equity Profile is further subdivided into six subsections:

- ◆ Socio-Economic Roles and Male/Female Participation in Market and Household Economies
- ◆ Gender Based Disparities in Access to, Control Over and Use of Assets and Productive Resources
- ◆ Gender and Human Development Indicators
- ◆ Female/Male Participation in Development Decision-Making at Household, Local and National Levels
- ◆ Legal, Institutional and Socio-Cultural Gender Discrimination
- ◆ An assessment of the cost of gender based exclusion

9. In examining the socio-economic roles and male/female participation, it was found that Kenya is a patriarchal society where women perform both reproductive and productive roles. They are responsible for domestic tasks and are the primary economic actors as the labour force of smallholder farming. According to the proposed *National Gender and Development Policy*, women head 38% of agricultural operations in Kenya.<sup>10</sup> Men dominate the formal and modern sectors of the economy. The sectors which women are most active in, agriculture and the informal sector are both in a state of decline. As Kenya's economy continued to deteriorate, more men have been pushed into the informal sector and women have moved into illicit activity such as brewing; while globalisation has created competition for markets in which Kenyan smallholder farmers are not equipped to compete. Development interventions have reinforced and confined women's activity to the household and micro levels. At the same time, the pursuit of gender blind policy has resulted in resources, training and technology not being directed to those who are the primary actors. Thus although women are the dominant actors in smallholder farming they have less access to inputs and extension services much to the cost of the entire agricultural sector. Given that agriculture is Kenya's primary economic activity, its decline and neglect have consequences for the entire economy. It is estimated that if women farmers received similar extension information to that availed to men, their yields would increase by a factor close to 10%.<sup>11</sup>

10. An examination of gender based disparities in access to, control over and use of assets and productive resources found that at the household, community and national levels, men hold control over them. As an agricultural economy, land is the primary asset and resource, patriarchal and patrilineal inheritance traditions ensure that virtually only men own it. Moreover, moves toward privatisation and individual ownership of land (in areas with traditionally communal ownership systems) further denies women what little user rights they have preventing even access. It is therefore not surprising that only 1% of titled land is in the hands of women. Thus whilst women are the primary economic

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contributors they do not benefit from the wealth that they generate. Without title deeds one cannot be a member of a co-operative. So that co-operatives, which provide support and alternatives for accessing inputs and markets, are overwhelmingly dominated by men. Yet Kenya's colonial and subsequent settlement patterns have resulted in male emigration from the rural to urban areas with the rural areas increasingly being dominated by female-headed households. These households are poorer as they do not own or control the one asset—land -- they are responsible for maintaining. The finding emanating out of this assessment is that land and agrarian reform must address the question of women's marginalisation if the issues of poverty reduction and sustainable economic growth are to be effectively addressed.

11. Gender and human development indicators show women as lagging behind. This is a factor of the overall economic decline. Not to mention the overwhelming inequitable resource ownership patterns. Whilst there is virtual parity in access to education at the primary level, the drop in the percentage of girls who then are able to make it to secondary school and eventually university increases. Firstly, it is important to note that less than a quarter, 23%, of all children who complete primary school are able to obtain places in secondary school. Secondly in respect of university enrolment rates the gender differential is high, with only 32.2% of women enrolling into university. This has implications for access to decision-making and work in the more lucrative formal sector. It is therefore not surprising that men dominate both decision-making positions and the formal sector. The overall impact on the economy is that the majority of the population remains locked in the sectors in decline and lacks the skill base to invigorate them.

12. Life expectancy for both women and men has dropped due to the impact of HIV/AIDS; in 1993 the life expectancy for both women and men was 63.2 and 59.0 respectively. By 1998, it had dropped to 53.4 (females) and 52.8 (males).<sup>12</sup> Not only has the epidemic affected those in their most productive years, 15 – 49, but with infection rates for females in the 15 to 19 age-group being five times that of men; it also has resulted in drops in literacy. As women and children become primary care givers, in one part of the country, girls are not going to school at all.<sup>13</sup> Two important factors in the high incidence of HIV/AIDS infection are women's lack of decision-making power at both the household and national levels as well as the high incidence of gender-based violence. At the household level women lack negotiating power and so are unable to negotiate the nature of their relationships. Several cultural barriers prevent women from demanding safe sex. Insistence on the use of a condom, for example, invites suspicion of infidelity.

13. At the national level, policy for HIV/AIDS care has been gender blind and has not taken on board the differential impact of the epidemic. An attempted calculation of the per annum cost of lost earnings due to the epidemic suggests this to be up to five times Kenya's GDP.<sup>14</sup> A recently completed study on gender-based violence found that 41% of women and 45% of girls have been sexually abused.<sup>15</sup> Not only is there need for gender responsive policy in respect of addressing HIV/AIDS, it also must take on board the whole question of gender-based violence.

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14. Violence inhibits women from participating in decision-making at the national level, where it is cited as a barrier to participation in electoral politics. Whilst women's decision-making power at the household and national levels is limited, the growth and presence of women's groups at the local level is a mediating factor. Through these groups, women are able to access resources, which they channel back to their homes. They also have made some inroads into decision-making in institutions such as school boards of governors, parent teachers associations (PTAs), while small towns have witnessed the phenomenon of women mayors out of the 1997 elections. However, women are not able to harness this power at the national level and women's groups are actually used by male politicians. Thus the statistics for women in national decision-making in Kenya remain low. Of the 210 elected members of Parliament only nine, that is to say 4.3%, are women and as Kenya celebrates the achievement of 6 women ministers and assistant ministers, Uganda has 15.<sup>16</sup> The absence of a national gender policy and mechanisms to eradicate and/or address gender based discrimination such as affirmative action have been key factors in Kenya's entrenched gender disparities. Underlying this systemic institutionalised bias is a lack of understanding of the economic cost of gender-based exclusion.

15. Kenya's socio-cultural, institutional and legal framework is patriarchal. Most of its indigenous African cultures are patrilineal, patrifocal and patriarchal.<sup>17</sup> According to Kenya's customary law, land is communally owned but the right to use it is passed on through the male line. Several cultural practices, in particular, polygamy, widow inheritance, early marriage and female genital mutilation (FGM) are also factors in ensuring women's and girls' subjugation. As women cannot hold property in their own right, when their husband passes on in some Kenyan cultures, they must marry one of his relatives who then acts as the custodian of the deceased's property. Early marriage and FGM are intimately related to the practice of paying bride price, both of which make it more attractive to marry girls off at an early age than send them to school. In cultures where FGM is practiced, it is usually a prerequisite for marriage despite its negative health consequences. The fact that daughters cannot inherit land or other property results in preference for boys. It is through sons that the name of the clan will pass and the property will stay within the family.

16. In examining women's access to and control over property the three types of law that come into play are matrimonial, family and succession laws. Kenyan law recognises four types of marriage: African Customary, Muslim, Hindu and statutory marriages.<sup>18</sup> Under African customary and Muslim law women enter potentially polygamous unions. Since there is no legal requirement that all marriages be registered it is possible for a woman to enter a polygamous union without knowing it. Under African customary law, women have no property rights in marriage. The law is also silent on what happens upon the dissolution of the marriage. Not only does the *Constitution* discriminate against women, it provides a legal framework that institutionalises their impoverishment. Section 82(4(b)) of the Constitution provides that the prohibition on discriminatory laws (contained in section 82(2)) does not apply to personal and customary law. Yet these are the areas of law that affect women the most, as they relate to marriage and devolution of

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property (inheritance). (This is discussed in greater detail in paragraph 34, of this report)

17. Therefore, discriminatory customary law can be applied in respect of marriage and inheritance. The *Succession Act* does not apply to agricultural land, livestock and resources, the primary asset owned by most Kenyans.<sup>19</sup> Thus, where an individual dies intestate, any agricultural property held in their name is apportioned through their customary or personal law. For most indigenous Kenyan women, customary law comes into play at this time as they are left at the mercy of the informal legal system. Furthermore, sections 90 and 91 of the *Constitution*, bequeath on women a secondary citizenship to that of men which does not entitle women to pass on citizenship to either their spouse or child. It is on the basis of section 90 that one must either furnish evidence of their father's citizenship, or in the case of a married woman be accompanied by her husband to obtain a national identity card. Married women require their husband's permission to have their children endorsed on their passports. The philosophical underpinning of this law is that women are not citizens and are minors

18. Ironically, whilst the law does not allow Kenyan women to bequeath citizenship on their children; and it facilitates their impoverishment by not entrenching their property rights, the same law provides that where a child is born out of wedlock it is only the mother that is responsible for its maintenance. Under the *Children's Act 2001*, parental responsibility is a choice for the father and a legal obligation for the mother. Section 24(3) of the *Children's Act* provides that:

Where a child's father and mother were not married to each other at the time of the child's birth and have not subsequently married each other –

the mother shall have parental responsibility at the first instance

the father shall subsequently acquire parental responsibility for the child in accordance with the provisions of Section 25.<sup>20</sup>

20. Given this socio-cultural, legal and regulatory framework, and the increase in female headed households, it is not surprising that more than three quarters, 79.5%, of these households are in absolute poverty. The *Children's Act* is also an illustration of the selective legislation and evocation of African customary law to suit the needs of Kenyan men. In most of Kenya's indigenous cultures men are responsible for the maintenance of their children under customary law yet this one element of customary law which is the precise justification for not allowing women to pass on and hold extensive property rights is the very one that is not legislated.

21. Although Kenya has ratified the international *Convention on the Elimination of All Forms of Discrimination Against Women* (the *Women's Convention*) it is yet to incorporate it into its domestic law. The legal and institutional framework at play in the country is therefore a major disincentive towards equitable resource distribution and sustainable economic growth. Arguably why should half the country's population invest in resources they cannot own and how can their economic potential be harnessed without

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even a policy on the eradication of these systemic and flagrantly discriminatory socio-cultural, institutional and legal barriers? One of the social costs of gender-based exclusion is the experience of alienation and anomie by Kenyan women.

22. The current national gender machinery is the Women's Bureau. Although in its third and fourth reports to CEDAW, the Government has stated that it has adopted a gender and development (GAD) approach, its national machinery and data collection systems are still locked in the WID (women in development) mode.<sup>21</sup> Whilst several NGOs collect data for their own purposes, there is no centralised repository for this information. Lack of gender-disaggregated data (and data disaggregation systems) as well as the generally poor state of Kenya's data collection systems have resulted in scattered and inaccessible information, making it difficult to conduct gendered economic analysis.<sup>22</sup> There are no national time allocation studies, which would greatly enhance the possibilities of quantitatively assessing the overall cost of gender roles ascribed to women and men. Women's economic contribution is rendered invisible whilst data documenting men's activities is virtually non-existent as most gender-disaggregated data was collected for WID purposes. Assessing women's contribution to the cash crop economy, for example, is difficult as "administrative arrangements governing this area of production [are such that] the title holder is the one officially recognised by a board or co-operatives through which benefits of agricultural production are channelled."<sup>23</sup> The National Economic Survey as noted by the Government is yet to be gender responsive in its methodology and data collection.<sup>24</sup> This is all occurring against a background in which there is a backlash against gender based analysis with a myth that too much money has gone towards addressing gender imbalances (and women) and that redress would be too costly. Yet all economic indicators illustrate a further marginalisation of women. Currently, it is difficult to quantify the overall impact of gender-based exclusion on the economy. However, this Report identified the following as the social and economic costs of gender based exclusion:

- Alienation and anomie, this sensation of not belonging is particularly experienced by women.
- Loss of life through HIV/AIDs, life expectancy has dropped.
- A proneness towards violence
- Low education attainment
- Decline in agricultural production
- Inequitable access to leadership and decision-making at the national level
- Inequitable access to productive resources

23. Despite the grim picture in respect of gender parity, there exist two promising trends. Firstly in the vibrant civil society which reflects a strong presence of organizations that are addressing the issue of gender equality. The 1990s have witnessed the emergence of women's rights organizations willing to address the questions of women's access to decision-making, access to resources and legal reform. Including civil society organizations in the gender sector beginning to address such questions as gender budgeting. Some of these organizations include the Federation of Women Lawyers (FIDA (K)) which has undertaken legal advocacy work and provides legal aid and the

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Kenya Women's Finance Trust (KWFT), which provides micro-finance to women, to mention just two. The League of Kenya Women Voters and the Kenya Women's Political Caucus provide support for women wishing to enter competitive politics. There is need for civil society organizations in the Gender Sector to partner with NGOs and other institutions that are outside the sector to pursue their goals. Macro-economic analysis still remains a challenge for women's rights and gender organizations with only the regional African Women's Communication and Development Network (FEMNET) undertaking work in this area. In respect of economic analysis partnership with organizations such as the Institute for Economic Affairs or the Institute for Policy Analysis Research (IPAR) might address some of the capacity constraints. There is also need for more intra-sectoral partnering to address crosscutting issues.

24. On the Government front, several legal and policy reform and poverty reduction measures have been initiated the completion of which would ensure gender parity. In particular, the participatory nature of the approach adopted in the preparation of the Draft Poverty Reduction Strategy Paper (PRSP) and constitutional review process resulted in the collation of many instructive recommendations regarding how to effectively address gender inequality. In 1998 the Taskforce on Laws Relating to Women released its report, which contained several recommendations for constitutional and legislative reform the implementation of which would go a long way in addressing the existent bias in Kenya's legal and policy framework. It is therefore clear that it will be important to engender monitoring and ensure the gender responsiveness of ongoing legal, policy and institutional reform processes such as the implementation of the Poverty Reduction Strategies, constitutional review and recently ended work of the Commission on Land. At the dissolution of the 8<sup>th</sup> Parliament on 25<sup>th</sup> October 2002, several pertinent bills relevant to gender-responsive law and policymaking were before the House – the National Policy on Gender had also finally reached the Sessional Paper stage.<sup>25</sup> The creation of a Ministry of Gender, Sports, Culture and Social Services, elevation of the Women's Bureau to a department and the promise to review existing national gender machinery and policies and create a National Gender and Development Commission are all promising signs. The question therefore is when will Kenya finally cross the river and implement its pending gender responsive policies and laws.

25. Four key areas of intervention have emerged from this SCGA and are hereby recommended for action. The interventions are meant to capture some critical processes currently going on in the country that would facilitate gender equity and equality for sustainable livelihoods and development.\*

- Undertake countrywide Time-Use studies. This would yield important tools and instruments for quantitatively assessing women's overall economic contributions in various sectors, as well as assessing the economic cost of gender exclusion, the cost of gender violence and of HIV/AIDS for example.<sup>26</sup>

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\* The above recommendations contained in paragraph 25 are in no way binding and we recognize that various stakeholders will within context of their own institutional needs use the report and findings to develop interventions as they may deem necessary.

- Broaden gender violence work currently underway in Kenya, and spearheaded by CIDA/GESP, to capture HIV/AIDS. The most effective and desirable legal framework for curtailment of this should be considered. The economic costs of gender violence including HIV/AIDS, need to be assessed and taken into account.
- Support the process for strengthening the capacity of the Ministry of Gender, Sports and Social services. This may involve assisting the ministry in updating/developing the gender policy, and as it seeks to mainstream gender in development activities in other ministries and in its dialogue with the civil society and donor community. <sup>27</sup>
- Ensure that key gender issues emerging from the SCGA inform on one hand critical instruments underway in the country in which Government is playing the lead role: the Economic Recovery Strategy; Land Reform; implementation of Poverty Reduction Strategies and the Constitutional process, and on the other the Bank's country assistance strategy (CAS) and other instruments. .

## II. SCOPE AND METHODOLOGY

### i. Scope of the SCGA:

26. The SCGA will inform the World Bank's (the Bank) country strategy, the implementation of Poverty Reduction Strategies and its dialogue with both Government and Civil Society actors. The objectives of the SCGA are to:

- ♦ Collaboratively analyse the gender dimensions of development in the country
- ♦ Collaboratively identify gender responsive policies and actions important for poverty reduction, economic growth, human well being and development effectiveness; and
- ♦ Integrate gender responsive policies and actions into policy dialogue and the country assistance program.
- ♦ Facilitate Bank support to Government policymakers in developing priority policy and operational interventions reflective of the country assistance program.

27. In fulfilling its objectives, the SCGA will cover the following core elements:

a. A country profile focusing on:

- ♦ Gender based socio-economic roles and participation in both the market and household economies;
- ♦ Gender disparities in access to and control over assets and productive resources
- ♦ Gender disparities in human indicators

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- ♦ Male/ female participation in development decision making at the household, local and national levels
  - ♦ Incidence of gender discrimination and/or gender based inequality in the national legal, institutional, policymaking frameworks, norms and practices.
  - ♦ An evaluation of the cost of gender exclusion.
- b. A discussion of the country context including Kenya's policies, priorities, legal and regulatory framework, and national machinery for implementing its gender and development goals.
- c. Proposed gender-responsive priority policy and operational interventions informed by (a) and (b) above.

## **ii. Methodology and Approach of the SCGA**

28. A collaborative, and interactive approach was adopted between the consultants and representatives of government, civil society and international (Donor) actors. This involved the following process:
- a. Constitute a team of local gender experts to conduct the SCGA
  - b. Conduct a literature review on existing profiles of socio-economic roles; gendered analysis of the national legal and policy framework; male/ female participation in decision-making and gender disparities in access to and control over assets and productive resources.
  - c. Conduct focus group discussions (FGD) with members of the Gender Thematic Group where necessary.
  - d. Conduct at least two roundtables with the Donor gender experts; firstly to test proposed methodology and secondly to share findings.
  - e. Undertake one-on-one interviews with selected representatives from the Government and civil society actors.
  - f. Hold a stakeholder strategic and learning workshop with representatives from the above constituencies to review the SCGA with focus on the interventions, identifying the propellers of each action.

### iii. Limitations of the SCGA

#### Timing of and time allocated for the SCGA

29. Whilst the timing of the SCGA was fortuitous in that the transition of government has provided an opportunity for genuine appreciation on the part of government and possibility for the acting upon the recommended interventions, it did prove a challenge for the consultants for two reasons. Firstly, the timing of the research occurring at the end of the year (which normally of itself is a difficult period for holding workshops) in an election year, made it difficult to secure availability of intended participants in FGDs. Secondly, the post election flux in government slowed the completion of the assessment.<sup>28</sup>

#### Data Availability

30. It had been anticipated that this study would be able to quantify the cost of exclusion and present it in a manner that could lend itself better to macro-economic analysis. This has not been possible as the consultants found out that there was little reliable national level data to assist in this regard. Whereas a lot of data is said to exist in Kenya with regard to gender, it is neither national in coverage nor available in a central place. Many NGOs claim to have undertaken time allocation studies as part of their work but there is no centralised depository of this information neither does it lend itself to easy comparisons. Updating information on the agriculture section, for example, entailed collation of materials from six institutions. Given the time available for this work, it was not possible to visit all these diverse sources and collate information - it should be possible to do that with more resources and time and interest in building a central depository of information. In light of the consultants' experience, it is recommended that any future SCGA allocate sufficient time and funds to allow a broader and deeper literature review.

#### Consensus Building

31. Kenya has a vibrant women's movement that has been active for long. However, many of the actors approach the work from different perspectives - some WID, some GAD, some feminists, others mix and match. They are important actors and it would have been useful to discuss this study with them before finalisation for feedback. That was not possible because of time constraints.

## III. THE COUNTRY CONTEXT

32. Kenya has a primarily agricultural economy in which access to and control over land is a major economic determinant. As noted in *Kenya – Draft Interim Country Strategy Note July 15, 2002* (CAS Note), “increasing land scarcity,” is one of the factors that “have contributed significantly to Kenya’s economic difficulties.”<sup>29</sup> Owning land is important not only in it of itself, it also provides access to other resources as land is the primary form of collateral. Thus, holding land title creates access to credit and investment

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opportunities. Land is at the core of Kenya's history and its exploitation is probably the most contentious of the country's resource distribution questions. The colonial perspective on African land tenure systems was that they perpetuated severe land fragmentation, degradation, erosion and land disputes – their preference was towards the western model of land consolidation and registration. Currently, there are three categories of land ownership in Kenya: Government, Trust, private and ancestral land. Government land is held by the government for its use and is also available to the public for various uses. Various county councils hold Trust Land for people resident in them. Residents occupy the land under customary systems of tenure, which are essentially communal. Private land is either freehold or leasehold, where a holder has absolute ownership or holds an interest for a term subject to the payment of fees and conditions of development and use. Kenya's land registration and tenure process has been recently under review by the Land Commission, the report of which the Government is yet to make public.

33. Land reform and tenure is not the only important legal and regulatory framework under review in Kenya today. The country is in a time of flux. Kenya's third President since independence was sworn in on 30<sup>th</sup> December 2002; and for the first time since 1963 there is a new party in power, the National Rainbow Coalition (NARC). This political transition has provided both challenges and opportunities and coincides with an important legal one as the country's *Constitution* is being overhauled. The *Constitution* is the basic law of the land and where there is conflict it takes precedent. It is not clear when the constitution review process will be complete. The third round of the National Constitutional Conference (NCC) is now scheduled to begin on January 12<sup>th</sup> 2004 and end on March 31<sup>st</sup> 2004, whilst the CKRC's mandate has been extended to 30<sup>th</sup> June 2004.<sup>26</sup>

34. The constitutional reform process potentially has immense ramifications for gender equity. The current *Constitution of the Republic of Kenya* discriminates against women and provides only limited protection from discrimination on the basis of sex. Section 82(1) of the *Constitution* prohibits discrimination in law. Section 82(2) defines discrimination to include discrimination on the basis of sex. However sections 82(4(b & c)) of the *Constitution*, provide an exemption in respect of matters of customary and personal law, particularly marriage, divorce and the devolution of property (inheritance) these are the areas of law that most affect women. Case law on sections 82(4(b & c)) has consistently been interpreted in favour of men. The *Constitution* itself also discriminates against women as sections, 90 and 91, which govern citizenship, provide that one is a citizen either by birth or marriage to a Kenyan man. It is on the basis of these sections that women cannot bequeath citizenship. The *Constitution* therefore sets the stage for a gender biased regulatory and legal framework, buttressed by patriarchal matrimonial, family and succession statutes and customary laws. The section of this study on "Legal, Institutional and Socio-Cultural Discrimination" goes into great detail on these matters.

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<sup>26</sup> See, Samuel Siringi, *Bomas III put off to January*, the Daily Nation, October 23 2003, 3

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**i. The Legal and Regulatory Framework**

**a. The Nexus Between Marriage And Access To And Control Over Land And Other Productive Resources**

35. Marriage is a critical determinant in respect of women's property rights. There are four forms of law that govern marriage in Kenya: African customary law, Muslim law, Hindu and statutory law (which also governs Christian marriages). The nature of a man's first marital union or ceremony determines what law governs the marriage. Men are allowed to have more than one wife under African and Muslim marriage laws, which permit polygamy. Having multiple spouses is a criminal offence if the first marriage contracted was a Christian, Hindu or statutory one. Women cannot have more than one spouse under any of these marriage laws. There is no provision for the registration of African customary law marriages. Therefore, it is possible to unknowingly enter into a marriage with someone who is already married. Women are particularly vulnerable to this and courts are reluctant to enforce the laws of bigamy where they apply.<sup>30</sup> Many women discover the existence of another spouse/s and children upon the death of the husband. Polygamy erodes women's property rights. If a polygamous man dies intestate the law treats all women who have been married to him as dependants and they have equal rights to any property held in the deceased's name regardless of their contribution (or lack thereof). All children of the deceased man are beneficiaries of his estate.

36. There is no uniform law governing property rights held during and upon the dissolution of a marriage. Although African customary law differs on this issue, it is often interpreted against women when disputes are brought before the formal legal system. The precedents in respect of this law is that women have no property rights, particularly in respect of land, as all of Kenya's indigenous cultures do not allow women to inherit. So that even where women have contributed to the acquisition of property, if there is no solid evidence of this, it is difficult for them to establish their rights to it in the event of dissolution other than by death. Where an African customary law marriage is dissolved by death and there is no will, any property in individual name vests in the man or his estate regardless of whether or not it was acquired by him. African customary law is disparate; it is often interpreted selectively and in favour of men. This law is primarily dispensed through the informal legal system in which women have no access to the administration of justice, as councils of elders are usually entirely male. The primary productive resources held under African customary practises and laws are land and agricultural produce, the main asset owned by most Kenyans. Disposition of property in this system occurs primarily through marriage and inheritance.

37. Traditionally, land was communally owned, but user rights were passed on through the male line. Women had user rights. Registration of land has happened at the expense of women as title vests absolute ownership and control in those who hold it. The registration system has not provided for the recognition of user rights and bundles of rights that only exist under African customary law. In the process many women have been rendered destitute as has been observed by Anne Muragu who notes:

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Land titles are invariably in the name of a man and a woman's access to land is only through her relationships to men. Primarily this means her husband. With land titling, the customary rights of men gained legal force and market value. When land is registered, the registered person is conferred with absolute rights and can therefore evict any occupiers at his discretion. Hence, women's security of tenure in the land that they occupy or have access to has been threatened by the registration process.<sup>31</sup>

38. Whilst land scarcity is a problem in Kenya, it is disproportionately borne by women. The impact of gender blind land reform and tenure systems is that women own only 1% of titled land in Kenya.

39. Muslim law is explicit in respect of women's property rights. Women enjoy some property rights under this law, albeit not equivalent to those of men. Muslim law also provides for a potentially polygamous union as a man can marry up to four wives. The problems in respect of this area of law tend to be ignorance and lack of enforcement. Both African and Muslim matrimonial laws also render girls vulnerable to early marriage.<sup>32</sup> However the *Children's Act 2001* recognises all persons under the age of 18 as children and prohibits harmful traditional practices such as early marriage. Matrimonial and other conflicting older legislation is yet to be harmonized with the *Children's Act*.

40. An important statutory actor in the disposal of agricultural land is the Land Control Board, which is provided for by the *Land Control Board Act Cap 34 of the Laws of Kenya*. All transactions relating to agricultural land have to be approved by the Land Control Board of the District in which the land is situated. It has been suggested that one of the ways of protecting women and other vulnerable groups would be to require that more women sit on the Land Boards. It has also been recommended that land laws be amended to require that all family members, including women and children give their consent before land is disposed of.

b. *The Law of Succession and Property Rights*

41. The *Succession Act Cap 160 of the Laws of Kenya* governs the disposition of property upon death. Although it provides for equal inheritance rights for children regardless of their gender, the provisions of section 32 of the *Act* undermines this. Section 32 of the *Succession Act* provides that it (the *Succession Act*) does not apply to agricultural land, crops and livestock, the devolution of which is governed by African customary law, in situations where land is held in an individual's name and the individual dies intestate. As stated, women and girls cannot inherit under African customary law. Furthermore, Muslims are entirely exempted from the *Succession Act*. Again whilst Muslim women and girls can inherit property it is not on an equal or equivalent status with their male counterparts. The *Succession Act* also discriminates against women as it treats widows as dependants of their husband's estates, whatever rights they enjoy *vis a vis* immovable property held in his name, cease if they re-marry whereas if a married woman dies intestate her property vests in her husband absolutely. All children of a deceased individual are potential beneficiaries of their estate if they die intestate.<sup>33</sup>

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## ii. Policy Framework and Priorities

42. Although much work has been undertaken in the pursuit of one, Kenya still lacks a National Policy on Gender and Development. The National Policy on Gender and Development has been prepared for the Sessional Paper stage, when the Cabinet approves it in order to be operationalised. The impact of not having a National Gender Policy has been the absence of a statement and policy for the State to address gender imbalance and inequality as well as its repercussions. The draft National Policy on Gender and Development is under review. The overall objective of the policy is “ to facilitate the mainstreaming of the needs and concerns of men and women in all areas in the development process in the country.”<sup>34</sup> To this end, the policy identifies eight critical areas of concern: the economy; poverty and sustainable livelihoods; law; political participation and decision-making; education and training; health and population; the media; and policy implementation framework and resource mobilisation.

43. The draft policy has made several important suggestions in respect of legal, regulatory and institutional reforms that can be undertaken to ensure that obstacles to equitable sustainable development are removed. A key element of the policy is the recognition of the importance of shifting from a WID to a GAD approach. As noted in the policy it arose from the:

Government’s realisation that without a coherent and comprehensive overall framework for guiding the different sectors and agencies involved in development, tremendous resources may continue to be lost unless the thrust of mainstream development directly addresses gender concerns. The Policy recognises traditional development theories have not facilitated the participation of women in strategic areas and positions of power and influence because they are based on traditional assumptions of the roles and responsibilities of women and men. The approach also recognises that without quality gender disaggregated data, the planning and programming process cannot be efficient and productive.

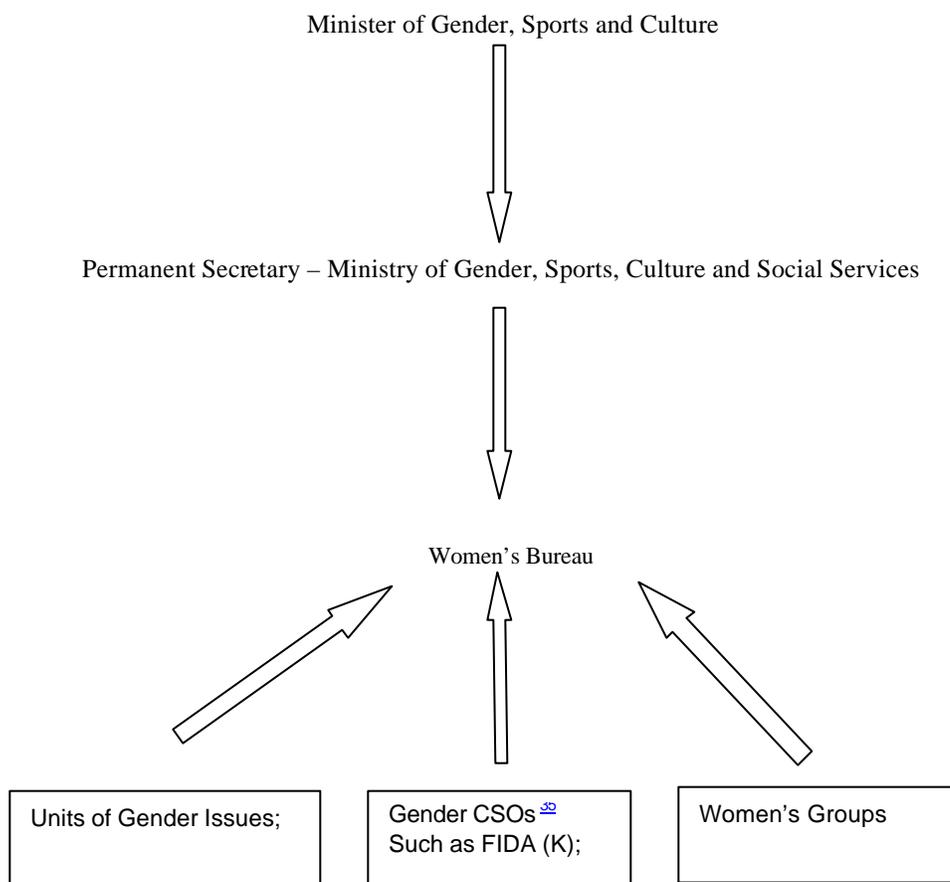
44. In respect of law reform, the policy is rather coy. Whilst it identifies key forms of discrimination in respect of customary law, the law of succession and citizenship, it stops at the issue of the statutes that cover these areas rather than addressing itself to the root cause – the *Constitution*. At the time the policy was authored, constitutional reform was a controversial issue. It is important to note that it is not sufficient to amend and/or repeal the statutes without addressing the root cause of the problem, as statutes are subsidiary to the *Constitution* and can always therefore be proscribed on the basis of unconstitutionality. The inability to address constitutional discrimination is the primary weakness in the draft National Policy on Gender and Development. There are also some weaknesses in the proposed national machinery, which are addressed in the next section.

## iii. National Machinery for Implementing Gender and Development Goals

45. The existent national machinery for implementing gender and development goals is through the newly created Ministry of Gender, Sports, Culture and Social Services, which houses the Women’s Bureau (See Diagram 1 below). Currently, plans are under

way to review this machinery and ensure that it is in keeping with the Government's GAD, and gender mainstreaming goals and approaches. Administratively the existent machinery suffers from many weaknesses. Even as a department, the Women's Bureau has limited authority over the other departments in the same Ministry let alone at an inter-ministerial level. Furthermore, this machinery is WID derivative and is not equipped to address the evolving Government GAD needs and approaches.

### DIAGRAM 1, EXISTENT NATIONAL GENDER MACHINERY



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**DIAGRAM II, PROPOSED NATIONAL GENDER MACHINERY**

Parliamentary Committee on Gender; Minister of Gender, Sports, Culture and Social Services



National Commission On Gender and Development



Permanent Secretary, Ministry of Gender, Sports, Culture and Social Services



National Gender and Development Secretariat

46. Given these weaknesses the Government has recommended the creation of a National Commission on Gender and Development and a bill for the establishment of such a Commission, housed within the Ministry, has been tabled in Parliament and is currently being debated as of 23<sup>rd</sup> October 2003. The Technical Committee on Constitutional Commissions of the NCC has also agreed to propose the inclusion of a Gender Commission amongst the constitutional commissions in the Draft Constitution. The Bureau, it is recommended, would become the National Gender and Development Secretariat servicing the Commission. Also recommended in the National Gender and Development Policy, is a Parliamentary Committee on Gender (which does not currently exist. The proposed machinery is illustrated in Diagram II above).<sup>36</sup>

47. Whilst these bodies and recommendations are commendable and certainly an improvement on the existing machinery, the proposed machinery still suffers from two key weaknesses – vulnerability to proscription and limited authority. Given the Government's stated desire for a comprehensive approach which draws on all development actors and the fact that gender is a cross-cutting concern, the answerability of bodies other than the Ministry of Gender, Sports, Culture and Social Services, to the National Commission on Gender is an important one to be considered. This temporal nature of the proposed bodies has led to the proposition to the Constitutional Review Commission of Kenya that there be a constitutionally entrenched National Commission on Gender, the CKRC chose instead to recommend a gender commissioner. The Technical Committee on Constitutional Commissions of the NCC has recommended that there be a constitutional commission on Gender, it is therefore likely that the relevant provisions of the Draft Constitution will be amended to provide for a constitutional gender commission.

48. The membership of a constitutionally entrenched National Commission of Gender would be different, as it would be an independent body. The current proposal is to have Permanent Secretaries sit on the Commission. But what is important is the level of authority such a Commission would have and its ability to act as a check on the various arms of Government, as these have been the bottlenecks. The Women's Bureau currently liaises with other ministries at the level of Units of Gender Issues (UGIs), which do not have much clout. An independent body also has the advantage of being able to draw membership from, directly access and source strategic important non-governmental actors. A model for this sort of structure exists in South Africa, which has:

- ◆ An Office on the Status of Women, housed in the Office of the President
- ◆ Gender Units, in Government Departments
- ◆ Two relevant constitutional commissions: the Commission for Gender Equality and Human Rights Commission.
- ◆ A parliamentary Women's Caucus and select parliamentary committees.

The South African approach ensures that all the arms of Government (Executive, Judiciary and Legislature) are answerable on gender issues and concerns.

a. *Relationship of Civil Society Actors to the National Machinery for Gender*

49. Kenya has a vibrant women's movement. The multi-party era and its consequential opening space birthed new civil society actors within the gender sector in the 1990s. Within the gender sector there are now institutions focused on different sub-sectors such as NGOs focussed on development and gender (Gender Sensitive Initiatives (GSI)), gender and law (the Federation of Women Lawyers - Kenya (FIDA (K))); women and politics (the League of Kenya Women Voters and the Kenya Women's Political Caucus (KWPC)); and women and micro-finance (the Kenya Women's Finance Trust (KWFT)). The 1990s also witnessed a shift in the concerns that women's rights and gender based organisations began to address themselves to, that have included access to decision-making; governance; law; and economics hence the nature of the institutions named above. These NGOs have actively engaged the State in advocacy for gender responsive legal and policy reform. Often, they have also intervened to provide support in sectors where the State is no longer able to or has never provided services such as legal aid (FIDA (K)) and micro-finance (KWFT). Occasionally, coalitions have arisen within the sector in response to certain phenomena, for example, the need to get women represented in the constitution reform process resulted in the creation of the KWPC.

50. Desired policy and legal reform has also resulted in closer Government/CSO interaction. The consultative nature of the preparation of the Draft Poverty Reduction Strategy Paper (PRSP) witnessed unprecedented collaboration between Government and civil society actors through the establishment of the Gender Thematic Group. Post this process CSOs (particularly FIDA (K)) were invited to participate in drafting the reports to the Committee on the Elimination of Discrimination Against Women (CEDAW). An emerging area of support in respect of the civil society gender sector is in respect of macro-financial analysis. As the sector addresses itself more to the question of equitable resource distribution, the paucity of gender responsive macro-economic analysis and necessary tools for it is marked. One way to address this would be for NGOs in the sector to engage in more intra-sectoral liaison and also cross-sectoral liaison. At the moment, there is limited interaction between gender NGOs and policy institutions or organisations engaged in economic analysis such as the Institute for Economic Affairs (IEA) and the Institute for Policy Analysis Research (IPAR). Yet much of the advocacy gains by the women's movement, such as affirmative action, are being undermined by the fact that policy makers lack information and analysis that tangibilises the economic benefits of an inclusive and equitable approach.<sup>37</sup> CSO institutions have always interacted with the Government through the Women's Bureau. The proposed national machinery for gender offers a formalised forum of interaction between the various gender and development actors including CSOs.

b. *Impending Policy and Legal Reform Initiatives with Implications for the National Policy on Gender and Development and Proposed National Machinery for Gender*

51. Several people-oriented, participatory legal and policy reform initiatives that would greatly enhance gender equality have been undertaken since 1993. Namely:

- The 1993 appointment of the Taskforce on Laws Relating to Women. The findings and recommendations of which were released in 1998. The report is unpublished and has never been disseminated.
- The PRSP process embarked on in 2000; the implementation of the recommendations of which did not occur.
- The appointment of the Constitution of Kenya Review Commission, which released its Draft Bill on 28<sup>th</sup> September 2002 and which is the subject matter of the ongoing National Constitutional Conference (NCC).

52. Aside from the cost to the country of these processes – the CKRC process alone is said to have cost Kshs. 4 Billion – there is increased public anger at the waste of national resources and fatigue from consistently being subjected to “participatory” processes only to have their views ignored. One of the findings of the CKRC was that the public feels “alienated” from Government.<sup>38</sup> In all three instances Kenyan women and men have put forth suggestions that would ensure gender parity and equal access to resources if implemented. Therefore, the non-implementation and incomplete nature of these processes have further reinforced gender disparity, with women and girls bearing the burden of these inequalities. In this context, the need for gender sensitive and responsive interventions is imperative.

#### **IV. COUNTRY GENDER EQUALITY AND EQUITY PROFILE.**

##### **i. Socio – Economic Roles and Male/Female Participation in Market and Household Economies.**

53. The progress made in the 1970s and 1980s in documenting and understanding the gender dimensions of development has not always translated into concrete progress for women. The World Bank’s World Development Report 2003 still notes the following:

Studies of a wide range of societies find that women are an important engine of growth and development. Their ability to save and invest in their families is well documented. As the family’s nutritional gatekeeper, women fight hunger and malnutrition. Their largely unrecorded role in agriculture explains the survival of many traditional subsistence communities on marginal lands. Yet in many places traditions, limited mobility, lack of voice or access to information make women the most marginal group.<sup>39</sup>

54. The reasons for gender economic disparities dimensions are several:
- a. Failure to develop, implement and entrench in national and local planning gender responsive strategies, processes and outcomes in the form of a National Gender Strategy and/or Policy.
  - b. Sector specific economic decline and its gender dimensions
  - c. The same old problems persist:

- ♦ Officials not wanting to be accountable for results and for gender based indicators
- ♦ Women remaining invisible and their contribution unaccounted for, as statistics do not capture their contribution adequately.

55. There is, therefore, need for new ways of communicating to make gender relevant and to overcome the backlash.

56. The negative indicators for women in Kenya are a function of several key factors. First, the majority of women are still engaged in the agricultural sector. This sector has experienced general decline over the last decade or so. Its performance has also become extremely erratic. Climatic factors and efforts at economic liberalisation, which have at times caused the sector as a whole and certain sub-sectors to perform even worse than that experienced by other sectors of the economy. Second, poor performance of the Kenyan economy has meant that women who have less mobility than men have fewer alternatives to agriculture. Third, the informal sector (*jua kali*) which has traditionally been women's alternative, has become ever more competitive and precarious. The numbers of people resorting to this sector has increased in the last decade. Large numbers were forced into the *jua kali* sector during 1999 and 2000 when the water and electricity rationing which caused large-scale factory closure. The statistics indicate that women were again pushed to the fringes of the *jua kali* sector, taking up illegal, dangerous, and high-risk activities such as prostitution, brewing of illicit liquor etc.

57. Fourth, there is evidence of a gender backlash in official policy circles and in society as a whole. The focus in international debates on gender and women in the 1970s and 1980s in particular has led to "gender fatigue" and to the belief that women have had all the development. Many policy makers have developed resentment and a mistaken belief that women have received disproportionate development resources at the expense of men and that there is now no need to focus attention on them. Information indicates that women in Kenya are still the most marginal group. Indeed with the economic down turn, the indicators show that women have become even more marginalised than they were 20 years ago.

a *Male/Female Participation In Market And Household Economies*

58. The socio-economic roles for men and women in Kenya determine their participation in market and household economies. For women these roles have confined them more firmly at the household economic level. Women's primary role in agriculture coupled with the key role they play in ensuring food security at the household level has confined them to the household economy. Women and to some extent girls, are the major food producers in Kenya. The *1994 – 1998 National Development Plan* indicates that women contribute 80% of the labour necessary for the production of household food crops. At the household level, women and girls are also responsible for fetching water, firewood and cooking. They collect water not only for domestic purposes but also agricultural. They are responsible for childcare.

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59. In respect of subsistence agriculture women and girls perform such activities as land preparation, planting, scaring birds and wild animals, threshing and winnowing, weeding, harvesting, post-harvest storage and processing. All these roles are performed with a limited/inadequate use of modern agricultural technology.<sup>40</sup> Some tasks such as weeding manually or planting must be well timed and are seasonal. Further, patterns of rural urban migration that have become entrenched since the colonial era have seen many more men than women continue to migrate. The incidence of female – headed households has increased to 31.7% with 66.1% of women living in rural areas. The impact of this trend is that women bear more and more of the farm based labour. Today, most women include traditional male duties and roles such as livestock tending, in their repertoire of responsibilities. Inevitably, they are heavily burdened.

60. Development policy and practice since the 1970s contributed to limiting women to the household economy through programmes and projects that targeted women's contribution to household economies. The growth of women's groups and funding for micro and small-scale economic activities has worked to encourage this role. Women have been less successful at translating their contribution and abilities to participation in the market economy at local or national level. In certain communities, gender-defined roles allow women to participate beyond the household economy level. In the small-scale fishing industry in Nyanza province, for example, women continue to be responsible for processing fish. Men catch and sell the fish.

61. In the cash economy, however, the established pattern has been that women lose out. Women can provide labour but the benefits in terms of control and remuneration will go to men in their capacity as heads of households. Women's loss of control and benefits can be attributed to the confluence and impact of western and African patriarchal traditions. At the household level, African gender traditions predominate allowing women to occupy their traditional role. At the local and national level, the new patriarchy tends to dominate the market economy. Men now assign themselves dominance and control of the market economy. As observed in the Country Context in Chapter III above, the regulatory and legal framework as well as the process of land tenure have affirmed and supported male dominance of the market economy. As a general rule the greater the value of the resources and benefits, the more male control will be found.

62. Male control is also more present because the time allocated by women to marketing their labour in either formal employment or income earning and productive engagement is greatly limited by their allocation of time to domestic and reproductive duties. While there are no time use studies at the national level, available information, usually from NGOs and other groups, who conduct participatory assessments, reveals that women spend a larger proportion of their time engaged in household reproductive activities.<sup>41</sup>

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**ii. Gender Based Disparities in Access to, Control Over and Use of Assets and Productive Resources**

a. *Women and Girls Roles in Agricultural Production in Kenya.*

**Introduction**

63. Kenya's economy depends heavily on its agriculture. Indeed, the *Kenya Rural Development Strategy* notes "Kenya has continued to rely on this sector as the base for economic growth, export earnings and employment generation."<sup>42</sup> While agriculture has played a significant role in Kenya's economic growth, the adoption rate of labour and timesaving technology (improved agricultural technology to increase productivity) has been extremely slow. Consequently the use of manual labour is vital to this sector. An examination of the gender division of labour in the agricultural sector illustrates that women and girls are responsible for much of this labour in both the subsistence and cash crop economies. Kenya's agriculture is "dominated by small holder mixed farming of livestock rearing, sheep and goats, poultry and food (subsistence) crops such as maize, rice, potatoes, beans and a variety of vegetables, wheat and sorghum."<sup>43</sup> (See annex 4). Most of these subsistence crops are seasonal crops. Women and girls provide most of the labour required for the production of these crops.

64. The *1994 - 1998 National Development Plan* (p. 254) indicates that women provide ¾ of the labour used in smallholdings, which constitute 95 % of the farms. In respect of cash crops, the Plan asserts that they command more than 50% of the labour input.<sup>44</sup> Because of the gender based patterns of rural/urban settlement patterns and land ownership, it is difficult to assess the cash value of male/female contribution to cash crop production. Whereas women are the dominant population in rural areas, they do not hold the title to the land on which they work. The means by which agricultural boards and co-operatives assess cash crop contributions is by title deed, thus women's labour and contribution to this sector are rendered invisible, whilst men who are the titleholders are the beneficiaries of the produce. In livestock production where cattle, sheep, goats and poultry rearing were appreciated, women and girls had specific roles to perform. This included milking, herding of small stock such as calves, kids and management of poultry. The care of sick animals was also the responsibility of women and girls. Women and girls experience labour bottlenecks and competition between domestic caring needs and subsistence demands. Livestock disposal decisions are made exclusively by men.

b. *Ownership and Control over Land and Access to Credit*

**TABLE 1: Ownership of Land in Title Deed**

No	Responses	Combined		Gatundu		Mwea		Suneka		Sabatia		Muslims		FFH		Control	
		No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
	No title deeds	115	46.2	28	48.3	46	76.6	16	26.7	25	37.5	7	35	22	44	3	15.8
	Husband	75	30.1	20	34.5	10	16.7	27	45	18	25.7	8	40	8	16	9	47.4
	Wife	4	1.6	-	-	1	1.7	2	3.3	1	1.4	-	-	3	6	-	-
	Joint	14	5.6	3	5.2	1	1.7	1	1.7	9	12.9	-	-	3	4	5	26.3
	Father-in-law	40	16.1	7	12.7	2	3.3	14	23.3	17	24.3	5	25	14	28	-	-
<b>TOTAL</b>		<b>248</b>	<b>99.6</b>	<b>58</b>	<b>100</b>	<b>60</b>	<b>100</b>	<b>60</b>	<b>100</b>	<b>70</b>	<b>100</b>	<b>20</b>	<b>10</b>	<b>49</b>	<b>98</b>	<b>17</b>	<b>89.5</b>

SOURCE: NALEP Baseline Survey of Focal Areas, Republic of Kenya; September - October 2002.

65. Most areas in Kenya have been surveyed, and registered land title deeds have been issued to individual parcel holders. Statistics from Table I indicates that 6.1% of female headed households (FHHs) hold title deeds from the four divisions. The rest of the women lived on land in the name of male relatives, such as their brother or father-in-law. This mirrors the national trends.

66. It is also important to note that about 46.2% of male-headed households (HHs) had no title deeds. Where title deeds are held, the deed was usually in the husband's name and in 16.1% of these households; they were in the father-in-law's name. For example, in Mwea Division of Mbeere District, 76.6% of HHs had no title deeds, but in Suneka in Kisii District, only 26.7% of HHs had no title deeds. Generally, the process of accessing land title deeds has been made difficult because of the bureaucratic procedures. This bureaucracy works against both women and men. In places where land is registered in women's names, one of the authors has also noted that any recorded charge on the land has been in favour of a male person (child or brother -in-law). There were no noted incidences where the charge was in favour of women. This reinforces the fact that society does not confer rights of control over land to women, even if it might concede to register land in their names.

67. Land rights play a significant role in the welfare of individuals, households and communities who depend on land for survival.<sup>45</sup> Lack of land ownership status is a disincentive to increased agricultural productivity. Women's access to and control of land has been linked to reduction of absolute poverty in households.<sup>46</sup> Apart from the economic dimension of women's control and access to land and its linkages to reduction of female poverty, survival and productivity, influences gender relations, especially women's ability to challenge male oppression in society and within the household. Decision-making processes to determine the acreage required for food crops, crop variety and selection of seeds needed for each planting season are male dominated. Subsistence production, a predominantly female activity, is consequentially only continued in small

pieces of land, which in most cases is unproductive or need a lot of agricultural inputs to achieve good yields. Yet, women lack access to the inputs – since they do not hold titles.

68. One of the basic reasons ownership of land by women is important is because of the association of ownership with security of tenure, which in turn encourages investments.<sup>47</sup> This does not only lead to increased productivity and efficient use of resources but it affects gender-based property rights and control of income. While some investments require that a woman possess user land rights, the majority require absolute ownership rights to land. The size of land also matters in terms of access to credit through formal channels. Studies have shown that most poor people in Kenya (majority of whom are women) carry out their agricultural activity on land less than 5 acres (1.1 Ha). However the typical credit recipient from the Agricultural Finance Corporation (AFC) has an average of 19 acres (4.8 Ha). This clearly indicates that women and the land they till are out of range of the formal credit systems. In rural smallholder farming areas, the size of farms is so small that it might not be acceptable as collateral for a loan. The average farm size is about 2 acres.

c Women's access to training in agricultural skills and to extension services

- Agricultural extension services
- Agricultural credit

**Agricultural extension services**

69. The National Gender and Development Policy confirms earlier studies that indicate that agricultural extension agents tend to focus on male heads of households as landowners, thereby giving them “preferential information.”<sup>48</sup> The assumption is that men are farmers following the western patriarchal modes that predominate in agricultural policy making. This approach denies women farmers systematic access to modern agricultural research information and technology, which contribute to productivity of the agricultural sector as a whole. Most extension workers are men and they find it difficult to interact with women who in most cases are wives of other men. Traditionally, men visiting the homesteads of other men, even if to provide professional information, are something that is frowned upon. Furthermore, the hours during which extension services are provided sometimes conflict with the times when women are expected to be engaged in their reproductive roles. Consequentially extension staff target male heads of households and not women. As recently as 1998, women who contribute the bulk of agricultural labour received only 7% of the extension information (KARI, 1998). Female farmers are usually less educated and would therefore benefit more from targeted extension services. It has been recommended that one of the ways to address these cultural barriers is to provide extension services to women's groups, which engage in agricultural activities.<sup>49</sup>

70. Kenya is signatory to several regional and international treaties, which offer a lot of opportunities for agricultural exports. Such treaties include EAC, COMESA and WTO

among others. However, before small holder farmers can successfully respond to markets like COMESA, EAC and AGOA, there is need to shift (perhaps revolutionize) agriculture from subsistence to commercial farming. In addition, systems should be set up to link resource poor farmers to exporters for the gradual connection to the global market. Otherwise, the agricultural sector, as the Draft PRSP succinctly notes, "does not seem prepared for the effects of globalisation and because of the increased competition in the International Trade in agricultural commodities" (p.40). Therefore, the Government, non-governmental organizations and external investors should facilitate farmers to meet quality requirements for various global opportunities.<sup>50</sup>

### **Agricultural credit**

71. Agricultural policies are made with the assumption that in the absence of adequate capital, providing agricultural credit would enable farmers to acquire the necessary inputs for their farm operations. Government policy aims, therefore, to continue providing agricultural credit, but this could move towards a decentralized agricultural finance system and greater dependence on informal credit (Kenya SP No. 2, 1994, p. 19). Within the food sector, the overall aim is to provide a financial base that would result in intensified production (Kenya SP No. 2, 1994 p. 37). This agricultural credit policy is all encompassing but the reality on the ground is that it was only channelled to where it was presumed it was needed. Certainly women were not beneficiaries of this agricultural credit. In most cases credit came from commercial banks, Agricultural Finance Cooperation, Cooperative Bank and other agricultural state corporations. Therefore, agricultural incentives such as credit, farm inputs, co-operative membership and extension services work in favour of men and cash crop production (MacKenzie, 1990).

### **iii. Gender and Human Development Indicators**

72. Annex 1 provides comprehensive statistics and indicators that track both positive and negative progress of women in Kenya over time, and readers may turn these for more information. The statistics are based on official information collected by the Government of Kenya and collated and/or compiled by the Women's Bureau in the Ministry of Gender, Sports, Culture and Social Services. Data in Annex 1 captures 12 broad areas:

- Population
- Education,
- Health
- Employment and social economic benefits
- Employment in the informal sector
- Child labour,
- Women in power and decision-making
- Agriculture
- Nutritional status
- Women groups in Kenya

- Women and poverty
- Violence against women

73. Analysis in this section will focus on a few selected areas. The areas covered briefly in this section include, population, education, women in power and decision-making.

### Population

74. In Kenya there have always been slightly more women than men since the first census was taken in 1948. The last population census, held in 1999, put the percentage of women at 50.5%.

**Table 2: Kenya's population by sex, 1948 – 1999**

Year	Male	Female	Total	% Female
1948	2675953	2730013	5405966	50.5
1962	4276963	4359300	8636263	50.5
1969	5460324	5482381	10942705	50.1
1979	7607113	7719948	15327061	50.4
1989	10628368	10815268	21443636	50.4
1999	14205589	14481018	28686607	50.5

Source: Kenya Population Census (Various)

75. The statistics indicate that a higher percentage of women than men live in the rural areas. The census in 1999 found that 66.1 % of women lived in rural areas as opposed to 64.2 % of men.

76. Life expectancy coupled with infant, child and maternal mortality and morbidity rates are basic indicators of a country's health, socio-economic situation and quality of life. Table 3 provides data on life expectancy, under five-mortality rate and infant mortality rates by sex in Kenya. Table 15 indicates that from 1962 until 1993, there was a rise in life expectancy and other related basic indicators for both men and women. Life expectancy increased from 42.7 for men and 49.8 for women in 1962 to an all time high of 59.0 and 63.2 for men and women respectively in 1993. Throughout this period (1962 to 1998), women had a higher life expectancy than men. The widest gap was in 1962 when the gender difference was 7.1 years.

#### a. *The Impact of HIV/AIDS on Life Expectancy*

77. The decrease in life expectancy, which is captured by statistics of 1998, is a consequence of an increase in adult death rates caused by the HIV/AIDS epidemic.

**Table 3: Life expectancy, under five mortality rate and infant mortality rates by sex in Kenya**

Year	Life expectancy at birth		Under five mortality rate		Infant mortality rate	
	Male	Female	Male	Female	Male	Female
1962	42.7	49.8	221	201	136	116
1969	46.9	51.2	177	157	129	109
1979	54.1	56.9	160	140	114	94
1989	57.5	61.4	115	95	84	64
1993	59.0	63.2	97	89	67	58
1998	57.6	60.9	108	103	74	67

Source: Census and KDHS Reports

78. The HIV/AIDS epidemic has wiped out the socio-economic gains that contributed to a rise in life expectancy for both men and women. The current statistics from the report of the National AIDS Committee entitled, *HIV/AIDS in Kenya: Situation Analysis for National HIV/AIDS/STD Control Programme, September 1998* indicates that the decline in life expectancy has become established in Kenya, at least for the foreseeable future. Life expectancy has declined to 52.8 (males) and 53.4 (females) from the projected 64.1 and 67.5 for males and females respectively for the years 2000 to 2005. The trend of HIV infection in which more women than men are infected, is likely to take away women's natural advantage in the area of life expectancy.

79. The epidemic has an age dimension to it. For women in the 15 to 19-age range, the HIV infection rates are five times those of men. In the 20 to 24-age bracket, it is three times that of men. The infection rates for men only begin to exceed those for women in the 30 to 39-age range. With such demographic based infection rates, it is predictable that in the next decade or so women will have a lower life expectancy than men. Paragraphs 83-87 below provide a more detailed discussion on HIV/AIDS. They provide further information and details that illustrate the impact of both HIV/AIDS and gender-based violence.

b. National Policy on HIV/AIDS

80. National policy on HIV/AIDS has recognised that the epidemic is "...not just a health problem, it is a development crisis that threatens the very fabric of national existence...."<sup>51</sup> In the course of developing the current five-year *Kenya National HIV/AIDS Strategic Plan 2000 – 2005* gender dimensions of the pandemic were not adequately reflected or articulated. In response, the Government of Kenya has developed the current *Mainstreaming Gender into the Kenya National HIV/AIDS Strategic Plan 2000 – 2005*. This builds on expert knowledge accumulated over the last 18 years. This knowledge provides approaches, strategies and programmes on how to address the epidemic that have been garnered from global and national sources. An important lesson from this experience has been that partial solutions in the fight against HIV/AIDS do not result in successful or effective interventions. In the course of consultations to develop

the Strategic Plan, the National AIDS Control Council recognised that a Plan that did not take cognisance of the gender dimensions of the pandemic would be ineffective, as it would offer only half the solution.

81. The *Mainstreaming Gender into the Kenya National HIV/AIDS Strategic Plan 2000 – 2005*. was developed through a consultative process that brought together civil society actors, a cross-section of the religious sector and various stakeholders. Further, a Situation Analysis was undertaken among a cross-section of communities throughout Kenya. This Analysis revealed that "... although the epidemic affects both men and women, women are more vulnerable due to biological, epidemiological, socio-economic, cultural and religious reasons..."<sup>52</sup> Having recognised these dimensions, the government has further noted that "...Unless this awareness is translated into policies and programmes at the community level, the expanded response approach of re-enforcing strategies of risk, vulnerability and impact reduction cannot be effective..."<sup>53</sup>

c. *The Technical Sub-Committee for Gender (TSG) and HIV/AIDS*

82. The National AIDS Control Council formed the Technical Sub-Committee for Gender (TSG) before the policy document on gender mainstreaming was finalised. The TSG was mandated with the task of mainstreaming gender within the Strategic Plan, identifying gender responsive programmes. It has since become the mechanism through which gender dimensions of the HIV/AIDS epidemic are addressed.

d. *Overview of HIV/AIDS in Kenya: Gender Dimensions*

83. The first case of AIDS in Kenya was diagnosed in 1984. Since then, the numbers have continued to grow exponentially. Table 4 provides estimated numbers of people living with HIV/AIDS for 1999 to 2001. The figures are disaggregated and capture infection totals for adult men, women and children.

Table 4: Estimates of People Living with HIV/AIDS in Kenya in 1999 and 2001

	<b>Total (adults and children) (million)</b>	<b>Adults (15 – 49) (million)</b>	<b>Women (15 – 49) (million)</b>	<b>Men (15 – 49) (million)</b>	<b>Children (0- 14) (million)</b>	<b>Population (million)</b>
End 1999	2.1	2.0	1.1	0.9	0.078	29.5
End 2001	2.5	2.3	1.4	0.9	0.22	31.3

Source: Reports of the Global HIV/AIDS epidemic

84. In the early days of the epidemic, the global and national trend was that there were significantly more infected men than women. By 2001 the number of women living with HIV/AIDS had caught up with those of men in Kenya. In recent times, age has combined with sex as an important determinant when it comes to HIV/AIDS infection in the country. HIV prevalence by age and sex has been captured in the research carried out in Kisumu District. This trend is similar to other areas of the country.

**Table 5: HIV Prevalence in Kisumu District by age and sex, 1997**

Distribution	Age-groups – years					Total
	15- 19	20-24	25-29	30-39	40-49	
Men	4.2%	13.4	29.4%	34.0%	29.9%	21.0%
Women	22.3%	39.0	38.6%	31.7%	30.9%	30.9%
Ratio	5.3	2.9	1.3	0.9	0.6	1.5

Source: *HIV/AIDS in Kenya: Situation Analysis for National HIV/AIDS/STD Control Programme, September 1998, p. 23*

85. These figures clearly show that HIV/AIDS affect men and women differently. The Gender Mainstreaming Plan attributes this differential to how gender relations are constructed in Kenya. The study notes that there are similarities in the way in which gender relations are constructed in Kenya across ethnicity, class, religion or geographic region. The *Plan* states the following:

Gender relations in Kenya have been shaped by a combination of factors that include customs and cultural practices, education, economic conditions, traditional and modern laws and political representation. Gender roles, culturally prescribed norms and the sexual relations determine vulnerability of women and men to HIV/AIDS.<sup>54</sup>

86. With regard to sexuality, there are social and culturally prescribed expectations which render women in Kenya more vulnerable than men to HIV/AIDS infection. These are captured in the box below.

#### **Socio-cultural Barriers to Women's Sexual Autonomy**

- Childbearing and satisfying their husbands are the key expectations for a wife
- Women are not expected to discuss sex or make decisions about sex
- Ignorance about sex is seen as a sign of purity
- Too much knowledge is a sign of immorality
- Women may be pressured into having sex as a sign of love and obedience
- No woman can force a man to use a condom against his will
- Insistence on condom use invites suspicion of infidelity
- Violence against women and multiple partners may be culturally acceptable
- Men may seek younger partners to avoid infection
- Sex with a virgin is believed to cure AIDS

Source: Office of the President, *The Gender and HIV/AIDS Technical Sub-committee of the National AIDS Control Council, July 2002: Mainstreaming Gender into the Kenya National HIV/AIDS Strategic Plan, 2000-2005. p 16*

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## **Mainstreaming Gender into the Kenya National HIV/AIDS Strategic Plan, 2000 – 2005.**

87. These socio-cultural barriers to women controlling their sexuality means that although they have increasingly higher infection rates, it is men's attitudes and actions rather than those of women that fuel the epidemic. Women are contracting HIV faster because their biological vulnerability and socio-economic dynamics ensure that they have little control of their bodies. Another feature of this vulnerability is that they are vulnerable regardless of their age, marital or economic status. Young women between 15 and 29 are significantly more vulnerable as the figures for Kisumu district indicate.

88. Growing evidence suggests that women are also infected as a consequence of gender violence in homes, school, work places and public places. This suggestion is supported by evidence captured in the study by Population Communication Africa and the NGO National Council of Women of Kenya (NCWK) and summarised below. One of the research findings was that 24 % of women in Kenya are victims of rape. Furthermore, a survey of 12 to 24 year olds revealed that 25% had lost their virginity in circumstances in which they were forced to have sex against their will.<sup>55</sup> Further studies indicate that women are vulnerable even when they are in long-term stable relationships. The *November Gender Plan* found that in 80% of such relationships, women were HIV positive. These women had been infected by their partners who in turn were infected because of engaging in sexual activity outside the marriage or partnership.

a. *Violence Against Women*

89. Violence in its many forms has been widely acknowledged as a tool used by men to control and contain women. The degree of violence against women in any society is often taken as an indicator of women's ability in that society to participate in various aspects of decision-making at the family level and at the larger society level. This is because violence or the fear of violence can literally silence women, limit their mobility, constrain their ability to participate in decision-making at family and community level and render them invisible. The Executive Director of the United Nations Development Fund for Women (UNIFEM) has called violence against women "the greatest challenge facing humanity". Newspaper reports, research reports and surveys have indicated that women and girls are routinely subjected to all forms of sexual, physical and psychological violence. In homes, in schools, in public and private places women and girls are the target of violence. A report on women candidates of the 9<sup>th</sup> General Election revealed the extent to which gender based violence is used to limit women's access to national level decision-making institutions such as Parliament and local government. "We have seen violence unleashed on women and some have even been raped during campaigns. This leaves many to wonder whether it is worth the trouble seeking elective posts."

90. The first comprehensive study conducted in 2002, on violence experienced by women and girls in Kenya has come up with some extremely disturbing findings. The objective of the study was to generate data and information on the nature and spread of female abuse. This study covered six out of eight provinces of Kenya and was conducted

jointly by the Population Communication Africa and the NGO National Council of Women of Kenya (NCWK). For purposes of comparison, a survey involving 445 men was also conducted to investigate and understand male experiences and perceptions of violence.

The study findings include the following ones:

- 41% of women have been sexually abused
- 45% of girls have been sexually abused
- 83% of female respondents experienced physical abuse in childhood
- 61% of women have been physically abused one time or several times as adults.
- Physical and sexual abuse starts early, at four to six years of age
- Peak period for physical and sexual abuse for girls was between 10 to 15 years of age
- Peak period for physical and sexual abuse for women is between 21 to 30 years of age
- More than 60% of cases of physical violence experienced by girls occurs at schools

91. These statistics show that physical and sexual violence are a common phenomenon for women and girls in Kenya. These trends were common in families, in schools, in the work place, and in other areas outside the home. The common forms of physical violence include beating, slapping, whipping, kicking and punching. Women reported being attacked by *pangas* (5%) and being scalded or burnt (5%).<sup>56</sup> Sexual violence occurs in the form of rape, unwanted sexual touching or sexual insults and incest.

92. The perpetrators of violence against women in Kenya are largely male although mothers and sisters are responsible for some of it. Fathers, brothers and other male relatives are responsible for most of the violence. In the case of sexual violence against girls, the report found that uncles, brothers, male cousins and fathers in that order commit two-thirds. In schools girls become victims of violence at the hands of older boys and male teachers who according to the report interfere violently with girls' right to privacy.

93. The report went on to study the nature of violence that women experience in the institution of marriage. The report notes that marriage introduces women to a whole new set of potential and actual abusers. Married women experience abuse at the hands of husbands or partners (26.2%), mothers-in-law (18.5%) and fathers-in-law (17.3%). Other abusers include a woman's own parents, male cousins, grandparents and brothers-in-law.

94. The study provides disturbing findings on rape experienced by Kenyan women. The findings show that 24% of women in Kenya have been victims of rape. The perpetrators of this crime are listed as male household staff, neighbours, ex-husbands, employers or supervisors and landlords. This list indicates that for women there is no safe

place. They can become victims of this trauma whether they are in the “safe haven” of their homes, at work, in educational institutions or in public places.

b. *Efforts to Address Gender Based Violence in Kenya*

95. Over the years, civil society has taken the lead in designing and implementing programmes and projects aimed at addressing gender based violence in Kenya. Today there are programmes that address all forms of violence including, domestic, sexual, violence in schools and in the work place and FGM. Initiatives to address gender-based violence are just as diverse. These can be grouped in the categories of awareness campaigns, legal initiatives, support services to women survivors of violence, research and documentation and education campaigns. As awareness and knowledge has developed on the nature and impact of gender based violence, the early awareness programmes have given way to more targeted initiatives. Projects targeting rural communities can now be found among the civil society actors. In the case of the government, statistics and data on gender based violence started to be compiled from the Kenya Police department from 1997.

96. One of the pioneer programmes was the awareness campaign launched by the Public Law institute in 1987/88. The campaign took the form of posters distributed by the Kenya Bus Company within the city of Nairobi, informing the public that, violence against women was against the law. The electronic and print media was also used to reach policy makers. The public responded to this early campaign with disquiet and discomfort. Overall the opinion was that PLI was wrong to discuss private matters in public. The myths about the value of domestic violence were commonly heard as men defended their behaviour by stating that beating their wives was a sign of love or that a woman could not be raped unless she wanted to be.

97. Since this early campaign, civil society has developed capacity to address gender-based violence. Existing CSOs have expanded their focus to include gender-based violence, while other organisations have been formed with a mandate dedicated to addressing gender-based violence. The Federation of Women Lawyers (FIDA) is in the former category. Its Legal Aid Programme handles test cases in order to set legal precedents in cases of women's rights abuse. Several such cases have been brought to the courts some of which have received wide press coverage. These include the Maasai woman who took her husband to court in 1997 because he had been beating her. Although she lost, the extensive press coverage that the case generated helped to introduce issues of domestic violence to the public. **The Domestic Violence (Family Protection) Bill 2002** is one of the products of collaboration between FIDA and other actors. The Bill seeks to provide for court intervention in cases of domestic violence and to establish a fund to financially assist survivors of domestic violence.

98. Coalition for Violence Against Women (COVAW) is dedicated to addressing and eradicating gender based violence. COVAW organizes annual campaigns and marches that serve to put a spotlight on the different forms of violence experienced by women in Kenya. COVAW and FIDA have also provided legal redress for women who have

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experienced violence. The Women Rights Awareness Programme (WRAP) formed in 1992 has run a shelter for battered women in Nairobi for some years now.

99. The impact of these initiatives is seen in how differently the public responds to gender based violence. Today there is widespread awareness and acknowledgement that gender based violence is a problem that the whole of society needs to address. It is rare to hear pro-gender violence myths expressed in public by policy makers.

100. Concerning an issue such as gender based violence, it is difficult to state conclusively whether these programmes have resulted in a decrease in the phenomenon. Among many other problems that make such conclusions difficult is the fact that the first baseline survey was conducted only in 2002. At this stage the impact of these programmes can be seen in the increasing numbers of organizations and in the growing diversity of initiatives aimed at addressing gender based violence. The mainstream media such as the Nation Media Group and the East African Standard routinely support awareness campaigns on gender based violence by providing free advertisement space and collaborating with NGOs on research for example. In 2001, the Nairobi Women's Hospital (NWH) started the Gender Violence Recovery Centre. The Centre provides free medical and counselling services to both female and male survivors of sexual assault and domestic violence. The programme was started partly in response to the growing wave of gender-based violence in the country and in Nairobi in particular. The centre works closely with WRAP, FIDA and the Centre for Rehabilitation and Education of Abused Women (CREAW).

101. The NGO Sanaa Art Promotion has developed an interactive campaign against gender based violence for rural communities. The programme is based in Meru North and Meru Central districts, which have high incidences of gender, based violence. The Sanaa approach is a participatory and interactive model targeted at producing behaviour change and uses both males and females as change agents.

c. Education

102. It is widely acknowledged that education makes significant contributions to enhancing the capacities of people to participate actively in the development process. Education-related statistics and indicators have been designed to capture different aspects of education in Kenya. The areas covered include:

- Early Childhood Education (ECE)
- Primary Education
- Secondary education
- Secondary Teachers
- Teacher Training Institutions
- Polytechnic/Teacher Training Institutions
- University Education
- Adult Education

103. The section on education reveals that Government has allocated 87.2% of its social spending to education. Despite this commitment, the combined enrolment rates have fallen from 91.4% in 1991 to 88% for 2002. At the primary school level, there was virtual parity between boys and girls in terms of enrolment; for girls' enrolment was 49.3% in 2001. The percentage of girls completing KCPE was 47.5%.

**Table 6: Primary School Enrolment by Sex, 1995 – 2001 (IN 000)**

Year	Boys	Girls	Total	% Girls
1995	2802.3	2734.1	5536.4	49.4
1996	2843.4	2754.3	5597.7	49.2
1997	2880.2	2797.1	5677.3	49.3
1998	2994.5	2925.1	5919.6	49.4
1999	3082.2	2982.1	6064.3	49.2
2000	3117.6	3037.9	6155.5	49.4
2001	3200.7	3113.8	6314.6	49.3

Source: Ministry of Education, Science and Technology

104. Transition rates from primary to secondary school are quite low. Only 23% of children aged between 14 and 17 years are enrolled in secondary school. Of the 23% who make it to secondary schools approximately 47% are female. The proportions dip against women when post-secondary education is considered e.g. in technical training and university. In this instance enrolment of women is 39% and 32% respectively.

105. Women's enrolment in public universities has been consistently lower than their male counterparts. In the 2001/2002 academic years, they were at 32.2%, which was the highest level it has been since 1995/1996. The reason for this was the reintroduction of affirmative action measures in which girls were allowed to enrol in public universities with one point lower than boys. The rationale for applying this measure was to factor in socio-cultural factors, which did not allow girls to focus on education in the same way as boys. Girls are expected to perform household chores, which limit the time available for studying. In contrast boys perform few household chores. (Table 11 of Annex 2 provides additional information.)

106. The reasons for low enrolment of women in higher levels of education can be tracked to demands for women and girls' time as well as the quality of education in secondary levels where many girls' schools do not offer much science and technology-based education. There have been attempts to redress this and encouragement of girls to study science and it is expected that this will bear fruit in the future. Studies in the early 1990s revealed that many girls' schools had been built by communities (Harambee schools) and did not have the requisite resources and facilities to be able to produce a large majority that would go to University. In addition many of the girls high schools offered Arts based courses for which competition for places in University was quite high and therefore cut-off points higher than for science based courses.

**Table 7: Total Student's Enrolment For Public Universities**

Year	Male	Female	Total	% Female
1995/96	28938	11127	40065	27.8
1996/97	27059	10914	37973	28.8
1997/98	30862	12729	43591	29.2
1998/99	28163	12360	40523	30.5
1999/2000	28361	12924	41825	30.9
2000/2001	29033	13475	42508	31.7
2001/2002	35870	17036	52906	32.2

Source: Ministry of Education, Science and Technology

107. University enrolment into private universities shows an interesting trend. There are six private universities in Kenya; Annex 1 reveals that female students maintained a higher composition than their male counterparts. Table 12 (Annex 1) shows that in 2001/2002, they constituted 54% of the total student body of all six universities.

**Table 8: Private Accredited Universities Enrolment By Sex, 1997/98 – 2001/2002**

Year	Male	Female	Total	% Female
1997/98	1812	1834	3646	50.3
1998/99	2072	1816	3888	46.7
1999/2000	3149	3771	6920	54.5
2000/2001	3297	3702	6999	52.9
2001/2002	3476	4163	7639	54.5

Source: Ministry of Education, Science and Technology

108. Discussions with Ministry of Education officials revealed that the reasons for this unusual trend were several, including:

- Most of the private universities offer mainly social science courses. They often cannot afford the costs of equipment and staff required in sciences. Women are well represented in social sciences.
- There is a backlog in the public universities of about two years. Female students are encouraged to proceed straight to university by their parents who pay for their education. According to the Ministry officials, parents do this to keep their daughters busy and lower chances of pregnancies

#### iv. Female/Male Participation In Development Decision-Making At Household, Local, And National Levels

##### a. *Decision-making at the Household Level*

109. Factors inhibiting women from participating in decision-making at the household and national levels are very much the same. At these two levels the patriarchal male culture that predominates in Kenya, manifests especially strongly to silence women, make them invisible and actively prevent them from participating in decision-making.

110. At the household level, tradition and custom are still applied disproportionately to women to make them conform to a “traditional African woman ideal”. It is at the household level that women are socialised to be subservient to men. This subservient position is supported by patriarchal traditions, which assign men a privileged position in the family. For example, it is through the male line that ownership and inheritance of basic productive resources pass. The subservient position of women in the household has been supported by the post-independence *Constitution*, which has enshrined customary values, norms and practices, by recognising customary law as personal law for close to 40 years.

111. During the constitutional reform process initiated in 2000, some men were still championing this preference for customary law. In a submission to the Constitutional Review Commission in 2001, a Mr. Mweseli noted the following in support of traditional norms and women:

The African understanding of gender roles is that men and women played distinct roles, which were complementary. Nowadays women want to play the role of men thereby destroying the role of the man in society ... Traditionally there were four ways of making a living: through farming (i.e. agriculture); keeping of animals (i.e. nomadic pastoralism; the combination of farming and keeping of animals (i.e. agro-pastoralism) and hunting and gathering” (Mweseli, 2001: 25).

112. The impact of women’s lack of decision-making power can be witnessed in devastating HIV/AIDS infection rates amongst women, which are a proxy indicator of their decision-making power at the household level in Kenya. Women are economically and socially dependent on men and are rarely in a position to negotiate safe sex or to prevent/resist unprotected sex. Certain customs and socially accepted practices such as wife inheritance, men’s quest for multiple partners, property inheritance and divorce increase women’s risk of HIV infection.

##### b. *Decision-Making At the National Level*

113. Nzomo and Staudt have noted “although Kenya is considered a relatively ‘strong’ state, when it is examined with a gender lens, a new perception emerges...<sup>57</sup> This “new perception” is one of women’s exclusion in the national decision-making structures. The section on “*Women in Power and Decision Making*” in Annex 1 provides additional information that reveals just how underrepresented women are in decision-making at the national level. Women have poor representation in Parliament and the local authorities.

Women have registered slight gains since the reintroduction of the multiparty era. However, the figures are still abysmal. During the 1997 parliamentary elections, they were 5.7% candidates compared to 2.2% in 1992. In January 2003 there were 9 women MPs out of a total of 210 elected to Parliament. When the 8 out of 12 nominated members of Parliament are incorporated, there are a total of 17 female MPs out of 222. Although this is the highest number of women MPs ever it still only represents 7.7% of the total House.

**Table 9: Members of National Assembly by Sex, 1969 – 2003**

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
2003	17	205	222	7.7

Source: Electoral Commission, 1998 with authors' January 2003 amendment

For comparative purposes, the statistics for women in national level decision making positions are presented for five African countries including Kenya.

**Table 10: Figures for Women Members of Parliament From Five African Countries<sup>58</sup>**

Country	Women	Men	Total	% Women	
Mozambique	75	175	250	30	
South Africa	Lower House	119	280	399	29.8
	Upper House <sup>59</sup>	17	37	54	31.5
Uganda	75	299	304	24.7	
Tanzania	61	213	274	22.3	
Kenya	17	205	222	7.7	

**Table 11: A Few Important Statistics for Women in National Decision-Making in Uganda**

Numbers	National Position
1	Vice President
75	Members of Parliament
15	Ministers
7	Permanent Secretaries (Chief Secretaries)
1	Head of the Civil service

114. Why is there such wide disparity between Kenya and other African countries in women's participation in national decision-making? Scholars writing on this issue have noted that the answer lies in the nature of national level decision-making and in the nature of the Kenyan State. In any country, national decision-making is political, and it is about national resources. The Kenyan political machinery is concerned with power and control. Its base is male. In this scenario, a neo-patrimonial system created at independence is the root of both the system of government and the root of corruption in Kenya. This system, which has characterised the post independent Kenyan State, was created as a means of co-opting and rewarding the elite from all ethnic groups within Kenya, with the objective of incorporating them into the system of government. This system created a supply of patronage in the form of appointments to key decision-making national institutions, land, business opportunities and financial rewards. It was in turn used to control all facets of the political and economic activity in Kenya. For women who are the most marginalised social group, gaining access to national decision-making structures is an unlikely event as evidenced by the statistics. The impact of patriarchal domination at the household level works upwards ensuring that there are few women who can seek national positions.

c. Women and Decision-making at the Local Level

115. The section above discussing gender based disparities in access to, control over and use of assets and productive resources revealed women's primary role in agricultural production. The majority of farmers in Kenya are women, while virtually all women are economically active. As a social group, women clearly have economic clout at the local level. Despite this obvious economic contribution, women have not been able to harness their economic importance to give them a role in decision-making at the national or household level. The reasons for this have been elaborated on in the section above. Deep-seated cultural beliefs in society held by both men and women have supported this national paradox that allows men to control decision-making at the national and household level so thoroughly. In this scenario, women become just one more "resource" factor of production to control. Women have responded to this exclusion from the political machinery by forming their own organisations, which focus on poverty and basic survival.<sup>60</sup>

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d. Women Groups

116. Women's groups represent the primary decision-making outlet for women in Kenya. By the end of 1996, the government had registered 63,599 such groups with a total of 2 million members. Much of government's interaction with women groups is done through the Women's Bureau. In 2002, the government allocated Kshs 9 million to support women's groups and their projects. Other more substantial support comes from the civil society--- national and international NGOs, and religious organisations. Much of this support takes the form of grants, material support and training. Local level decision-making created by women in its various forms has also served as an entry point into national and household level decision-making. At election time, women's groups become important in determining the success of a candidate. Candidates for civic and parliamentary seats court local women groups as a means of capturing a substantial block vote.

117. The economic and social welfare activities that women engage in within the context of women's groups also serve to harness women's economic power at the community level. These activities often allow women access to household decision-making by creating a realm and resources, which they control, although the household as a whole is a beneficiary. These groups offer women protection from local patriarchy by providing a decision-making sphere, which excludes men.

118. Women have a higher decision-making profile in other local level institutions. In local government, 300 women were elected as councillors, resulting in a representation of 8.1% in 1998. A growing national trend is the election of women mayors in urban centres. Educational institutions also exhibit a greater presence of women. Women are present as headmistresses of many primary and secondary schools. They also play a significant role in school management committees as members of Parent teachers Associations (PTAs) and Board of Directors/Governors (BOD, BOG). A detailed analysis of women's organisations and civil society gender sector national non-governmental institutions is contained in the Country Context.

119. In sectors such as agriculture and at the community level, women are well organised particularly when compared to their male counterparts. However, at national level and in sectors such as the public sector and political arena, the reverse is true. It is men who are organised, and women have never been able to harness their grassroots counterparts in support of national issues or in support of women's candidates for parliament. Thus despite the fact that women make up the majority of voters, national level women leaders and institutions have never been able to capture the support of these voters for women based issues or candidates. In fact cultural traditions, which support male leadership, have enabled men to routinely harness and mobilise grassroots women in support of male led initiatives and agendas. The non-competitive political environment monopolised and controlled by the state further undermined women's efforts to organise in support of their issues.

## v. Legal, Institutional And Socio-Cultural Gender Discrimination

120. In her 1962 memorandum to the Lancaster House Constitutional Conference, Mrs. Priscilla Abwao, the only African woman delegate observed:

Present practises in Kenya prevent women from enjoying full rights to ownership of land and other properties. We consider this condition is inconsistent with the facts of the twentieth century life and consider anything less than the right to own property as reactionary and unbecoming a modern country.<sup>61</sup>

121. She was never allowed to present her memorandum. Forty years later the *Constitution of the Republic of Kenya* which women were excluded from participating in drafting has institutionalised their impoverishment and subjugation through the legalisation and perpetuation of discrimination on the basis of sex.<sup>62</sup>

122. The *Constitution*, which is the supreme law of the land, discriminates against women in two ways: firstly it does not provide for full protection from discrimination on the basis of sex and secondly it directly discriminates against women in its citizenship provisions. It does not provide full protection from discrimination on the basis of sex in that sections 82(4(b & c)) provide exemptions for discrimination in personal law justified on the basis of customary or religious law. In sections 90 and 91 the *Constitution* itself discriminates against women, by granting them a subsidiary form of citizenship. Kenyan men can automatically bequeath citizenship on their children and spouses whereas women cannot. Kenya's proposed National Policy on Gender and Development and national machinery for gender and development have been examined in detail in the Country Context in Chapter III above.

a. *Exemptions from prohibitions on discrimination on the basis of sex Sections 82 (4(b & c)) of the Constitution*

123. Section 82(1) of the *Constitution*, prohibits discrimination in law but makes an exemption in respect of section 82(4). Section 82(4(b)) provides that the prohibitions on discrimination in law will not apply to matters of:

- Adoption
- Marriage
- Divorce
- Burial
- Devolution of property on death (inheritance) or other matters of personal law

124. These are the areas in which women experience discrimination most. The situation is compounded by Section 82(4(c)) that provides that section 82(1) will not apply to the "members of a particular race or tribe" with respect to the application of their customary law. In doing so, Section 82(4(c)) provides an exemption for discrimination on the basis of customary and/or religious law, which, given Kenya's dominant patriarchy, are biased towards men.

125. Even where customary law is not patriarchal the courts have placed a patriarchal interpretation on it. This was illustrated in the case of Virginia Edith *Wambui Otieno – v- Joash Ochieng Ougo and Omolo Siranga, Civil Appeal No. 31 of 1987* (hereinafter the *Wambui Otieno* case) where the couple came from two different cultures and had chosen to be married under statutory law, which theoretically is gender-neutral. In addressing itself to the matter of the burial of S.M. Otieno, Wambui Otieno’s husband, the Court of Appeal had the option of interpreting the matter according to Wambui Otieno’s customary law. Instead the Court of Appeal chose her husband’s customary law setting a precedent for the interpretation of Section 82 in favour of patriarchal customary law practise.<sup>63</sup>

b. *The impact of sections 82(4(b & c))*

126. Sections 82 (4(b & c)) have impacted the legal and regulatory framework that Kenyans live under particularly in respect of access to resources at both the household and market level in several ways:

- Through the persistence of discriminatory customary and religious laws
- Through double standards in the application of customary law
- Through the biased interpretation of statutory property laws such as the *Succession Act Cap 160 of the Laws of Kenya*
- Through discriminatory policies in both the public and private sectors such as banks requiring the permission of husbands in order to grant credit to wives.

127. The implications of sections 82(4(b & c)) become apparent when one examines the impact of customary law and the legacy of patriarchal judicial interpretation on access to productive resources in particular land.

128. The gender imbalance in the ownership of land has unrecognised repercussions. Membership of agricultural co-operatives requires that one hold a title deed. Thus although they constitute the majority of the rural populations women are underrepresented in the membership of agricultural co-operatives, denying them access to markets, and collective bargaining opportunities among others. Therefore, not only do sections 82(4(b & c)) allow the impoverishment of women, they facilitate the creation of a regulatory framework that institutionalises this gender inequality in access to resources. A detailed examination of the implications of sections 82(4(b & c)) on matrimonial, family and succession law is contained in the Country Context in Chapter III.

129. Inequitable access to resources also has implications for gender parity in decision-making. One of the inhibitory factors cited by women political candidates is the cost of running for elections. Leading to major inequalities in representation in Kenya’s Parliament. 95.7% of Kenya’s elected parliamentarians in the ninth Parliament are men, yet they constitute only 49.5% of the population. Quite unsurprisingly therefore Kenya’s lawmaking process is not gender-responsive. The fact that daughters do not inherit and therefore are theoretically not able to preserve family property is also a justification given

for son preference in access to education. Families prefer to educate sons. This practice can also be related to gender disparities in decision-making, as holding senior policy making positions requires high academic qualifications. As the supreme law of the land, therefore the *Constitution* institutes a fundamentally unequal regulatory framework, which underpins Kenya's national institutional framework.

c. *Discrimination in Citizenship Rights, Sections 90 and 91 of the Constitution*

130. Sections 90 and 91 of the *Constitution* govern the means by which citizenship is derived and/or bequeathed. The power to bequeath citizenship is instituted in men both as parents and spouses. Section 90 provides that a "person born outside Kenya... shall become a citizen of Kenya at the date of his birth, if at that date his father is a citizen of Kenya." Whereas section 91 provides that "a woman who has been married to a citizen of Kenya shall be entitled, upon making application in such manner as may be prescribed by or under an Act of Parliament to be registered as a citizen of Kenya." The implication of this is that in order to obtain national identification and travel documents Kenyan women need the permission of their spouse and or proof of their father's citizenship. In this age of regional integration and globalisation travel documents are important in the conduct of business, whilst it is necessary for one to have identification documents for daily movement and to obtain such items as voters cards.

d. *Light in the Tunnel: Potentially Gender Responsive Reform*

131. The Government has over the past ten years undertaken several initiatives the recommendations and/or outcomes of which, if implemented, would address most of the concerns regarding gender inequality. In particular:

- Enforcement of the constitutional amendments emanating out of the Inter-Parliamentary Parties Group Talks (IPPG)
- Publication, dissemination and implementation of the recommendations of the Taskforce on Laws Relating to Women
- The Poverty Reduction Strategy Paper
- The constitutional review process under the auspices of the Constitution of Kenya Review Commission (hereinafter CKRC)

132. During the IPPG talks, which took place in December 1997, Section 33(3) of the *Constitution* was amended to require political parties to ensure gender parity in nominating their nominated members of parliament. Section 33(3) was violated in 1998, resulting in fewer nominated women members of parliament in the Eighth Parliament, than provided for under the Constitution.

133. The Taskforce on Laws Relating to Women was appointed in 1993 and subsequently released its report in 1998. (An annex containing a summary of its recommendations is attached to this report). The Taskforce went throughout the country collecting citizens' views on how laws discriminated against women and what could be

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done to ensure a more gender equitable legal framework. Amongst its recommendations was the amendment to Section 82 of the Constitution to ensure full protection against discrimination on the basis of sex. It also recommended the introduction of legislation to operationalise the equality provisions of the Constitution and institute affirmative action. There were also recommendations made regarding equitable access to land and credit. The Taskforce also recommended the strengthening of state machinery for the advancement of women through the establishment of a National Gender Development Council. Subsequently several gender-responsive bills have emerged and are pending before Parliament. Where relevant, Parliament has gone further and referred the proposed legislation such as that on affirmative action, to the Constitution of Kenya Review Commission and other bodies. This Bill sought affirmative action not only in elective offices but also appointment of women to senior decision-making positions. Some of the recommendations contained in the report have also found their way into the *National Policy on Gender and Development*.

134. Some of the gender-responsive bills pending before Parliament at its dissolution and emanating out of the Taskforce are:

- The Family Protection Bill, which addresses domestic violence, which is yet to undergo a second reading.
- The Equality Bill, which *inter alia*, seeks to operationalise the equality provisions of the *Constitution*, the relevance of this particular bill would also depend on whether or not a new Constitution came into play, as it may need to be amended accordingly. This Bill has not undergone its first reading.
- The Affirmative Action Bill, which was referred to the Constitution of Kenya Review Commission (CKRC), which has incorporated some of its elements into the Draft Constitution.
- The National Gender Commission Bill 2003, which has undergone a first reading and is currently being debated.

The report of the Taskforce on Laws Relating to Women remains unpublished and has never been disseminated:

135. Recognising the high incidence of poverty in the country, currently standing at 52% of the populace living beneath the poverty line, the Government instituted the development of the Draft Poverty Reduction Strategy Paper (PRSP) in 2000. This process went far in recognising the relevance of a gender equitable approach in addressing poverty and established a Gender Thematic Group to address this crosscutting issue. Several excellent proposals were made including the recommendation of the implementation of the findings of the Taskforce on Laws Relating to Women. However, the Government did not operationalise the recommendations emanating out of the Draft PRSP through a Government Action Plan.

136. In June 2001 the Constitution of Kenya Review Commission embarked on the task of reviewing Kenya's *Constitution*. The legislation under which the CKRC itself was established set a precedent in gender responsive policy and law making in that it required of the Commission that it ensure the "review process accommodates the diversity of Kenyan people including socio economic status, race and gender, *inter alia*."<sup>64</sup> Furthermore, in reviewing the *Constitution* the Commission was to secure provisions therein that would, *inter alia*, establish a "free and democratic system of Government that enshrines good governance, constitutionalism, the rule of law, human rights and gender equity." Finally the organs of the review process including the CKRC itself were also engendered, thus there were provisions for women's organisations to nominate women onto the CKRC and one third of the district delegates to the National Constitutional Conference are required to be women. Of the twenty-seven commissioners, therefore, seven are women. Whilst it did not achieve the desired proportion of one third female membership in all its organs, the constitutional review process and its organs has by and far been the most representative body of its kind in the history of Kenya.

137. Given the CKRC's terms of reference and the provisions made for gender parity in its organs the Draft Constitution that has been produced makes several gender responsive recommendations the implementation of which would greatly contribute to gender parity in Kenyan's legislative framework. To name just a few, the Commission approached the question of gender inequality in three ways; firstly, it recognised women as the marginalised gender and has provided for several ways in which their status could be improved. Secondly, it has recognised and made several recommendations to protect the principle of gender parity. Finally, there are several general provisions such as those pertaining to devolution of power, which if implemented will indirectly ensure gender equity.

Some of the important recommendations contained in the Draft Constitution include:

- The prohibition of discrimination on the basis of sex
- Some limited provisions for affirmative action on the basis of gender in access to appointive and elective offices
- Recognition of women as a marginalised group

138. There are still some gaps that need to be addressed, for instance the right to affirmative action itself is not provided for. That is to say, the Bill does not recognise that historically marginalised groups have a right to redress through affirmative action. This is important as the very right to redress is currently being questioned. Secondly, affirmative action is enshrined as a permanent measure, which it is not designed to be. Thirdly, rather than provide for a machinery for gender parity, such as an Equality Commission, which women did ask for, the Draft Constitution provides for a Gender Commissioner, a mechanism that would be even weaker than the existent national gender machinery. Finally, exemption from equality provisions on the basis of religion still exists as the Bill of Rights in article 31(4) of the Draft Constitution provides for an exemption in respect of Muslim personal law, pertaining to marriage, divorce and inheritance. Overall, however, the Draft Constitution holds much promise for effective progress in addressing the issue

of gender parity. (A summary of gender responsive clauses in the Draft Constitution is contained in the Annex 4 to this document).

e. Challenges to Gender Responsive Reform

139. There are two challenges to gender responsive reform; firstly there is a legacy of violation with impunity of gender responsive policies, regulations and laws. The 1998 violation of the IPPG amendment to section 33(3) was unsuccessfully challenged in Miscellaneous Civil Application No. 193 of 1998, Jean Kamau and Cecilia Kimemia – v – the Electoral Commission, H.E. Daniel Toroitich Arap Moi President of the Republic of Kenya and the Honourable Attorney General. In this case the fact that the Head of State was named as a party and he enjoys immunity whilst in office was evoked. Kenya also violated the terms of the East African Treaty in its nominations to the East African Legislative Assembly, which provided that a third of the representatives of the countries to the Legislative Assembly should be women. Kenya's representatives were one woman short. Secondly the non-completion and non-implementation of the findings of the Taskforce, CKRC and Poverty Reduction Strategies have ramifications for the journey towards gender parity.

f. Gender Responsive International Instruments That Kenya Is Party To

140. Kenya is signatory to and has ratified several international human rights instruments, the incorporation of which into domestic law would ensure gender equity. In particular it is important to note that the country ratified the *Convention on the Elimination of Discrimination Against Women* (the *Women's Convention*) in 1984.

141. In January 2003 the Government presented its Third and Fourth Reports to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW). The country is also a signatory to *the Beijing Platform for Action*.

**Table 12: Summary of Legal, Institutional And Socio-Cultural Gender Discriminatory Practises and Recommended Actions**

Sector	Key Gender Discriminatory Practises	Recommended Policy / Legal Reform Actions
Education/ Literacy	<p>Son preference</p> <ul style="list-style-type: none"> <li>• Early marriage</li> <li>• Bride price</li> <li>• Labour division that places responsibility for domestic tasks and child care on girls and women</li> </ul>	<p>Implement the <i>Children's Act</i> provisions in respect of early marriages</p> <p>? Harmonise all legislation to ensure a uniform minimum age for all marriages in keeping with the <i>Children's Act</i></p>

Health (including reproductive Health)	Early marriage ? Female genital mutilation (FGM) ? Son preference (nutritional preference given to boys)	? Amend section 24(3) of the <i>Children's Act</i> to ensure that men are also legally responsible for maintenance of children born outside of wedlock <sup>66</sup> ? Create a policy containing goals on eradication of harmful traditional practices
HIV/AIDS	Widow inheritance ? Polygamy ? Gender blind policy making ? Labour division that places responsibility for domestic tasks and child care on girls and women ? High incidence of sexual abuse and violence against women ? Lesser sentencing for rape of minors	Review matrimonial laws in keeping with provisions of Article 16 of the <i>Women's Convention</i> namely to provide for elimination of discrimination against women in relation to matters of marriage and family relations particularly to ensure: <ul style="list-style-type: none"> <li>• All marriages are registerable</li> <li>• Same rights and responsibilities during marriage and upon its dissolution</li> <li>• Right to choose a spouse and enter into marriage with consent</li> </ul> ? Draft and implement of a gender responsive policy on care of HIV/AIDS patients ? Enact the Family Protection Bill <sup>67</sup>
Labour and Social Security	Perception of women as minors and dependants on husbands used to justify excluding them from benefits <sup>68</sup> ? Discrimination on the basis of pregnancy ? Reservation on Article 13 of the <i>Women's Convention</i> <sup>69</sup>	Ensure constitutional equality of women in keeping with Article 2 of the <i>Women's Convention</i> ? Publish, disseminate and implement the findings of the Taskforce on Laws Relating to Women (see Annex 6)

<p>Agriculture/ Rural Development</p>	<p>Gender blind policy in provision of extension services ? Timing of extension services ? Division of labour. Domestic labour primarily undertaken by women and girls ? Patriarchal inheritance practises that do not allow women and girls to inherit land ? Lack of title prevents women from belonging to co-operatives and results in their not being able to access consequential benefits such as inputs</p>	<p>? Review, complete and implement the <i>National Policy on Gender and Development</i>. ? Complete and implement the Poverty Reduction Strategies ? Amend the <i>Succession Act</i> to cover agricultural land and resources and to be in keeping with equitable gender responsive land tenure regulations and policies ? Conduct national time allocation studies to enable</p>
<p>Access to Property Rights and Land Tenure</p>	<p>Section 32 of the <i>Succession Act</i>, which excludes agricultural land and produce from the provisions of the act. ? Sections 82 (4(b &amp; c)) of the Constitution which permit discriminatory customary and religious law that do not allow women to inherit property ? Inequitable multiple matrimonial laws ? Non-registerable categories of marriage<sup>71</sup></p>	<p>assessment of cost of reproductive labour. ? Complete the constitutional review process as the Draft Constitution contains provisions for equality rights. ? Conduct gender responsive land tenure legal and policy reform ? Review matrimonial and family law in order to ensure compliance with the provisions of Article 16 of the Women's</p>
<p>Access to Financial Resources</p>	<p>Sections 90 &amp; 91 of the <i>Constitution</i>, which institutionalise perception of women as minors. Women not able to access mortgages and financial services without husbands' permission (See Annex 6) ? Lack of access to title results in lack of access to collateral</p>	<p>Convention, namely State commitment to ensure to women and men: The same rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for a valuable consideration ? Review and enact the</p>

Access to Decision-making	Legacy of impunity in respect of non-implementation of gender responsive policy and law ? Son preference in access to education ? Perception of women as minors and not fit to lead ? Resistance to and lack of affirmative measures to redress gender based discrimination	Affirmative Action Bill and Equality Bill. ? Review and implement the National Commission for Gender and Development Bill 2002
All and general	Absence of a national policy on gender and weak national machinery for gender and development	

## V. THE COST OF GENDER EXCLUSION

### i. Social Cost of Marginalisation

142. There are consequences of gender based marginalisation. As it stands women pay this cost of exclusion and marginalisation in many ways. From exclusion in decision-making to lack of access to productive resources such as land and credit. When disasters occur, women as the vulnerable group suffer the impact and bear the burden more than their male counter parts. HIV/AIDS infection rates for Kenya show more women being infected than men over the last five years or so. Violence against women and girls in Kenya is one of the appalling costs of a subservient position. These costs could be summarised as follows:

#### a. Alienation and Anomie

143. A recent baseline survey entitled, “*Kenya: State of the Nation*”, captured the impact of marginalisation and exclusion on women’s attitudes and sense of belonging. The study sought to systematically explore the state of the nation by highlighting the attitudes of Kenyans to the changes taking place and by exposing the aspirations and expectations of Kenyans about future change, among other things. In the chapter entitled, “*Life in Kenya*”, which explored attitudes and opinions towards such issues as quality of life, ethnicity, security and so on, an important finding was the high level of alienation and anomie among women. The study noted, “...Levels of alienation and anomie were relatively high, particularly among women, older respondents and rural residents....”<sup>72</sup>

144. This section discusses some of the identified costs of gender-based exclusion and women's low status. It shall not be possible to quantify these costs without additional information and data not freely available. Quantifying these costs and attaching numbers to it, would require another exercise and more quantitative information and other assumptions e.g. on returns to labour in different sectors in the country and average wages for different categories of professionals. The discussion in this chapter highlights the existence and implications of the cost of gender based exclusion on the national economy. Though this information is qualitative, we are of the opinion that the information provided is an indication of both the individual and social cost of women's low status in Kenya and results from exclusion and marginalisation, whether these were intended or not.

b. Loss of Life Through HIV/AIDS

145. HIV/AIDS infection rates for Kenya show more women being infected than men over the last five years or so. The impact of the HIV/AIDS epidemic is being felt in every sphere of the country. There are consequences for the economy. Women's pivotal role in household and national production is impacted by the gender based infection rates. The country and household therefore spend more on the treatment of unnecessary and inadvertent female infections that arise from women's vulnerability and lower social status.

146. As households fall deeper into poverty and economies are undermined, the burden on women increases. Women become the workers, educators, and ultimately care givers when family members fall ill as a consequence of the virus. Home-based care for HIV/AIDS sufferers is in many ways an additional cost to women who provide this care. Given the intense nature of the treatment, women's productive time is reduced and many are unable to concentrate on their farms and enterprises, thus further increasing dependency and economic vulnerability. Rural households, which have suffered from HIV/AIDS, are observed to be poorer. The *November Gender Plan* found that in some communities in South Nyanza District there were no girls in the standard eight classes. All the girls had been withdrawn from school to take up household duties that their mothers and other older female relatives could no longer perform because they were now engaged in full time care of ailing family members<sup>73</sup> While there are a lot of compelling reasons for home-based care for HIV/AIDS victims, it can also be argued that the pursuit of the policy was not accompanied by a comprehensive gender analysis as it unfairly burdens women, without any compensation at all. It does result from a dysfunctional health care system but there is no compelling reason why such costs should be unfairly borne by women.

147. Women bear special additional costs as a consequence of their higher infection rates. 30% of infected women are likely to pass on the virus to their babies. In some communities women are being held responsible for the spread of epidemic and are being stigmatised as a gender and being accused of killing men. The creation of a new mythology that further undermines women's social standing in society will have negative

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consequences for women in all spheres of society as it will further entrench their subservient position.

148. Young women who are in the most productive age group are lost to the household and national economies. The cost identified here is that of lost labour from one of the most productive age-brackets in the country. As indicated by the Kisumu figures (Table 5 above), the infection rate for females between 15 and 29 is 2-3 times that of men in the same bracket and almost similar to that of men between 30 and 49. 2-3 times more women than men are taken off the labour market as a result of HIV before they are 30 years old!

149. In terms of costs this differential incidence rate has an impact on potential livelihoods of men and women. Assuming that the Kisumu figures were representative of the nation, this would mean that while 71,000 boys of the 15-19 year age group were infected by AIDS, almost 385,000 girls of the same age group were infected. Assuming they all die before maturity and are unable to work, and assuming average earnings of Kshs. 360,000 per annum this represents a loss of Kshs. 756 billion for the men and Kshs. 4.3 trillion for the women.<sup>74</sup> This differential infection rate for men and women of this age group has an impact on potential earnings and therefore income of the country. Whereas lost earnings by men is almost equivalent to Kenya's current GDP, lost earnings from women is equivalent to 5 times Kenya's present GDP! The same simulation can be undertaken for the other age groups with differential prevalence of HIV/AIDS between men and women.

c. Proneness to Gender based Violence

150. Gender violence is one of the costs that women in Kenya must pay for their subservient position vis-à-vis men. The impact of this violence has far reaching implications for the type of society that Kenya has become. Violence against women is arguably a key determinant in the high statistics reported for HIV/AIDS. As noted above (paragraph 94), 24% of women have been victims of rape in Kenya. Furthermore the report of the nationwide NCWK study on violence against women found that only 12 % of physical and sexual abuse cases were reported to any authority for action, while only 6.8 % of all abuse is reported to the police. Considering that rape is the most under reported crime in any country and Kenya is not an exception, clearly the actual statistics for rape in the country must be extremely high. Given the nexus between sexual abuse and the high incidence of HIV/AIDS; addressing violence against women would be an important step in preventing the spread of HIV/AIDS. Some of the intended legislation at the close of the Eighth Parliament speaks to this concern in particular the recently passed Criminal Amendment Act, which has increased the penalty for the rape of minors from 14 years to life imprisonment, and the proposed Family Protection Bill. One of the contributing factors in women staying in abusive relationships is economic dependency. The Family Protection Bill proposes a Domestic Violence Fund, for victims of domestic violence.

d. Low Education Attainment

151. We have seen (p. 38) that more women enrol in private universities than public. Public universities are cheaper than private universities. In addition, there is a loan facility available to students in public universities. The gross under-representation of women in public universities probably results from shortage of places and especially in Arts based courses where women would predominate as a result of the preparation they received in secondary school. However, it therefore means that a loan facility and cheaper higher education is not available to women to the same extent as to men.

152. The result is that there are fewer women in the labour force in high reward jobs. This would also explain the absence of women in key decision making positions and leadership. Instead, women predominate in the informal sector and agriculture where at 80%, they make up a significant part of the labour force. Informal sector businesses are not very secure. Other studies on enterprises indicate that informal sector businesses have a high mortality rate and do not last for more than 3-5 years. Via exclusion from higher education, women are trapped in unrewarding agriculture and the vulnerable informal sector. Urban employment in the modern sector - the higher paying sector has only 28% female participation. The Informal sector both urban and rural has 45% female participation. Small-scale farming and pastoralist activities--- two of the most vulnerable sources of livelihoods in Kenya--- presently has 60% female participation (see table below).

**Table 13: Working population aged 15 – 64 by sex and sector, 1999**

Sector	Sex		
	Male	Female	Total
<b>Modern Sector</b>			
Rural	719174	224727	943898
Urban	1085581	477806	1563389
Total	1804755	702533	2507287
<b>Informal</b>			
Rural	1182813	939547	2122357
Urban	635399	569188	1204588
Total	1818212	1508735	3326945
<b>Small scale farming &amp; pastoralist activities</b>			
Rural	1705223	2570994	4276217
Urban	635399	86550	152001
Total	1770673	2657544	4428218
<b>Not stated</b>			
Rural	45082	69576	114658
Urban	35086	113413	148499
Total	80168	182989	263157
<b>Total</b>	<b>5473808</b>	<b>5051801</b>	<b>10525607</b>

Source: Economic Survey 2002

153. Benefits to the individual aside, higher education attainment by women often lead to other social benefits e.g. lower fertility rates and better nutrition for children. Women who stay in the education cycle for long tend to marry late and hence have fewer children who are also likely to be better looked after than those who do not. Though Kenya's fertility rate is starting to drop, this could have happened earlier had more women made it to higher levels of education.

154. Though there is increasing parity in education at the lower level i.e. in Primary and Secondary School, there is still a significant difference in male and female literacy rates. While this has improved over time, it still stands at 77.6% for men and 70.2% for women. Lower education levels for women and higher literacy rates combine to keep the status of women low and to reduce their freedoms and abilities to engage in profitable productive activities on their own, reduces independence and reduces commercialisation of women's labour.

e. *Decline in Agriculture Production*

155. Agriculture contributes 25% to Kenya's GDP and is therefore a significant contributor. In the section on agriculture, it has been observed that women constitute more than 80% of the labour force. However in many communities, women do not have control over land, or agricultural produce though they may be free to till it for the production of food crops and other subsistence. The earlier section contains an extensive analysis of the implications of women's limited control and ownership of land. (Section IV ii. b)

156. Gender blind policy-making can be said to have had implications for the agricultural sector and the economy as a whole. The agricultural sector is in decline, with very little value added except in the case of market farming and horticulture. By extension, women are trapped in the least rewarding sector of the Kenyan economy and therefore enjoy lower returns and lower household welfare as confirmed in the Household Welfare and Monitoring Surveys and the Poverty reports which recorded higher incidences of rural poverty, especially among female-headed households. The full implications of gender blind policy making in respect of agriculture can be observed in earlier findings that women receive only 7% of the extension information men do. If similar extension information as that provided to men farmers was availed to women as well, it has been argued in the past that yields from women farmers would increase by a factor close to 10%.

157. The other cost to the economy of gender blind and discriminatory agricultural and land policy has been the slow pace of tenure reform, which would have commercialised land a lot faster and enabled the state to develop a comprehensive land use policy. Subsequently much of Kenya's land is not available for the land market, land use is not consolidated and the whole agricultural sector is currently trapped in a cycle of unproductively and low returns.

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f. *Inequitable Access to Leadership and Decision Making at the National Level*

158. As discussed above, women are least represented in positions that require electoral contest. They occupy 4.3% of the elective seats in Parliament and 8.1% in local authorities.<sup>75</sup> Women are slightly better represented in the judiciary and in the civil service. In the judicial service, women make up 34%. They are predominantly in lower grades below Commissioners of Assize. 17% of high court judges are women and only 9.1% of the Judges of Appeal are women. Women make up 27% of the civil service though once again, they are under represented in the very top positions e.g. as permanent secretaries, provincial commissioners and envoys.

159. One of the unintended consequences of this is the pressure created on women in such positions to engage on many fronts in order to ensure their visibility and that of their concerns. In the case of the judiciary this is probably exemplified by the battles around the establishment of the Family courts and activism on children's issues. Women members of the judiciary have predominantly championed this. Whereas this is welcome, this no doubt puts pressure on these women to over-extend themselves.

160. Another cost to this is that, in the absence of critical numbers from leadership, the few women that are there are increasingly judged not according to how well they undertake their ascribed tasks, but on alternative criteria, which infuse feminine qualities. Women in marketing complain about this a lot. They are not judged by how well they perform, for example, an account acquisition and maintenance but by how much they have contributed to the development of a caring and homely environment in the workplace.<sup>76</sup> Women in marketing increasingly find that they have to over exert themselves in persuading the over represented men at decision-making levels to see and accept their views. Smart women who succeed in this regard, find their success explained not by their abilities but by the use of sexual innuendos and presumption that it is made easier by male-female dynamics.

161. Women in public sector decision and policy-making positions are assumed capable of contributing to gender and women's concerns only. Gender activists who might have used the rhetoric of exclusion to gain positions (and even those who may not have) find themselves pigeon-holed into expectations only with regard to gender and women's issues. Given the low status of women in society, this sends the message of women's professional and conceptual inferiority.

162. The absence of women in decision-making has fostered the slow pace of societal change. In many ways, Kenyans are not yet familiar with women in leadership and each appointment is treated as a novelty. This has two consequences: there are few female role models, and women in senior positions are under more scrutiny than their male counterparts.

g. *Inequitable Access to Productive Resources*

163. Ownership rights over land and landed property and education attainment determine women's access to other productive resources such as labour, capital and enterprise.

164. Land has traditionally been used as collateral for loans and other credit and it can be inferred that credit has not been availed to women farmers on this basis.<sup>77</sup> This was discussed in the section on Agriculture above. Many female farmers therefore struggle on their own and mobilise resources from relatives and friends for investment. The emergence of credit providing NGOs and other social groups has assisted these women in accessing credit. Because of the success of these NGOs and other groups, it will be rather difficult to quantify the cost of insufficient access to credit for women that non-ownership of land imposes on them.

165. Labour is another resource, which women require for productivity. In the case of agriculture, given the size of land holdings and proceeds from subsistence farming, increasingly women rely on their own labour, that of their children and fellow women—usually through labour merry-go-rounds. Many women cannot afford to employ constant hands on the farm. The same applies to women in the informal sector. The only women who might have greater access to hired and good quality labour are those in enterprises, which have a track record and are already productive. While these are commendable, they are in the minority among women's enterprises.

166. Women, who have had access to education, are better able to get into higher paying jobs or start to own successful businesses. Education (not necessarily all formal) is the key that unlocks enterprise in many women and provides them with confidence. Many women who have not had higher education are less likely to venture out into businesses and enterprise. However, besides business start-ups, the low level of education attainment by women is evident in business management and enterprise growth. NGOs who work with women entrepreneurs confirm that many women lack business management skills. These can be availed through short trainings but it means that women start off at a worse position than their male counterparts.

*The Cost of Gender Exclusion and the Myth that Redress is Expensive*

167. One of the emerging challenges to attempts to introduce affirmative action and other measures to ensure gender parity is an argument that alleges that redress is too expensive. In a recent article in *The East African*, a commentator critiqued the proposals put forth in the Draft Constitution precisely on these grounds when he asserted:

Patriarchy is probably also to blame for economic inequality and because it is the main taxpaying constituency, it will fund the state's additional commitments under the draft constitution that include support to the elderly, support to persons with disability. By so strongly emphasising affirmative action, the draft constitution may create something worse than anticipated, a culture of victimhood and a permanent underclass that is forever seeking redress and entitlement that is due to it from the Government.<sup>78</sup>

168. In doing so, the commentator is essentially arguing that the implementation of affirmative measures places undue burden on male taxpayers. The insinuation being that women and other marginalized groups do not pay taxes and ergo do not contribute to the economy. This argument contains several fallacies: that affirmative action is a permanent measure; that Kenya's economic wealth is generated solely by taxpayers – a class to which women and other marginalized communities purportedly do not belong and therefore do not contribute to the economy. This argument also presumes that women's continued exclusion does not cost the economy. Yet their lack of property rights is probably one of the inhibitory factors in women's ability to fully contribute to the economy. As has been illustrated earlier gender blind data collection systems also make it difficult to track women's exact contributions to the economy, for example, in respect of cash crops. It has never been more important to illustrate that women's marginalization is not economically viable.

169. Kenya is a State Party to the Convention on the *Elimination of All Forms of Discrimination Against Women (CEDAW)* under Article 4 of which it has committed to undertake temporary measures – these include affirmative action – to ensure that women attain equal status and access to resources with men. Priscilla Abwao's 1962 Memorandum illustrates the lack of an institutional memory within the struggle that has been waged against gender inequality. So that forty years later Kenyan women are back at the negotiating table asking for the same fundamental concerns to be addressed.

170. There is too the cost of non-implementation of national policy processes illustrated in the tendency to embark on expensive policy and legal formulation processes and then ignore the recommendations by the people. This can be witnessed in the culmination of both the CKRC and Draft PRSP processes. As the majority of the poor and a group that is marginalized from decision-making, women pay the cost of the non-implementation of these processes. The cost of gender exclusion is a primary indicator of the cost of financial mismanagement and a lack of political will.

## **VI. PROPOSED GENDER-RESPONSIVE PRIORITY POLICY AND OPERATIONAL INTERVENTIONS**

171. The recommended interventions emerged from a stakeholder workshop, which reviewed the draft SCGA, and pulled together what became apparent and reinforced from the assessment process and what other agencies in the United Nations system, the civil society, the donor community as well as in Government have been working on as they address the gender question. Focus was on interventions that met common ground and could be acted upon. The workshop identified who would form the team to spearhead necessary action. Follow-up to the SCGA, to be undertaken through the country office support would work with these teams, once the internal clearances are completed. The interventions:

- Undertake countrywide Time-Use studies. This would yield important tools and instruments for quantitatively assessing women's overall economic contributions in various sectors, as well as assessing the economic cost of gender exclusion, the cost of gender violence and of HIV/AIDS for example. <sup>79</sup>

- Broaden gender violence work currently underway in Kenya, and spearheaded by CIDA/GESP, to capture HIV/AIDS. The most effective and desirable legal framework for curtailment of this should be considered. The economic costs of gender violence including HIV/AIDS, need to be assessed and taken into account.
- Support the process for strengthening the capacity of the Ministry of Gender, Sports and Social services. This may involve assisting the ministry in updating/developing the gender policy, and as it seeks to mainstream gender in development activities in other ministries and in its dialogue with the civil society and donor community. [80](#)
- Ensure that key gender issues emerging from the SCGA inform on one hand critical instruments underway in the country in which Government is playing the lead role: the Economic Recovery Strategy; Land Reform; implementation of Poverty Reduction Strategies and the Constitutional process, and on the other the Bank's country assistance strategy (CAS) and other instruments.

## VII. NOTES

<sup>1</sup> See, Government of Kenya, *Economic Strategy for Wealth and Employment Creation 2003 –2007* (Nairobi: Government Printer, 2003) xvii

<sup>2</sup> Welfare Monitoring Survey 3 of the Central Bureau of Statistics 1997.

<sup>3</sup> This is the percentage for all parliamentarians both elected and nominated. Of the 210 elected Members of Parliament, 9 are women and of the 12 nominated Members of Parliament 8 are women making a total of 17 women parliamentarians out of the total 222 members of the House.

<sup>4</sup> One of the election commitments that the governing party, National Rainbow Coalition (NARC) made was that it would complete the constitutional review process.

<sup>5</sup> The statistic on women's ownership of land is derived from, Republic of Kenya, *National Development Plan, 1994 to 1996* (Nairobi: Government Printer, 1994). Whereas that on the agricultural labour force is drawn from Ministry of Agriculture, *Gender Agricultural Sector Investment Program Study*, 1998

<sup>6</sup> Electoral Commission of Kenya, 1998

<sup>7</sup> See Tony Kago and Mburu Mwangi, *Kosgei Goes in Major Civil Service Changes*, the *Daily Nation*, 1<sup>st</sup> February 2003, 1 & 3.

<sup>8</sup> The National Commission on Gender and Development is one of the proposals emanating from the Taskforce on Laws Relating to Women and was further suggested in the proposed National Gender and Development Policy, for more on this see annexes number 2 and 5. A bill for the National Commission on Gender and Development has been gazetted. See also *Kenya's Introductory Statement During the Presentation of It's Third and Fourth Periodic Reports to the 28<sup>th</sup> Session of the United Nations Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW)*

<sup>9</sup> See, Government of Kenya, *National Gender and Development Policy, February 2000*, 3 where it is observed:

The need for a national policy on Gender and Development arose from the Government's realisation that without a coherent and comprehensive overall framework for guiding the different sectors and agencies involved in development, tremendous resources may continue to be lost unless the thrust of mainstream development directly addresses gender concerns .

<sup>10</sup> GOK, *National Gender and Development Policy, February 2000*, 5

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<sup>11</sup> Blumberg Lesser Rae, *African Women in Agriculture: Farmers, Students, Extension Agents, Chiefs* (Arkansas: Winrock International Institute for Agricultural Development, 1992)

<sup>12</sup> National AIDS Committee, *HIV/AIDS in Kenya: Situation Analysis for National HIV/AIDS/STD Control Programme*, September 1998

<sup>13</sup> This was a community in South Nyanza, see, Office of the President, The Gender and HIV/AIDS Technical Sub-committee of the National AIDS Control Council, *Mainstreaming Gender into the Kenya National HIV/AIDS Strategic Plan, 2000 – 2005* (Nairobi: Government of Kenya: November 2002)

<sup>14</sup> See the section on the Cost of Gender Exclusion, p.53

<sup>15</sup> This study, the first comprehensive study on violence against women, was conducted in 2002 by the National Council of Women of Kenya (NCWK) and Population Communication Africa and covered six out of the eight provinces of Kenya.

<sup>16</sup> NB the figure of 4.3% is based on the (elected) not total number of women Members of Parliament i.e. out of 210 elected Members of Parliament, 9 were women.

<sup>17</sup> Patrifocal means that when a marital home is set up it is at the man's home area.

<sup>18</sup> There is no uniformity in the age of consent under these legal systems, African customary law considers a girl ready at adolescence, Muslim law at 16 whilst statutory law marriages require that one be an adult. The lack of uniformity renders girls vulnerable to early marriage. The *Children's Act 2001* however, prohibits harmful traditional practices such as early marriage and recognizes all persons under the age of 18 as children.

<sup>19</sup> Section 32 of the Act excludes agricultural land, crops and livestock from the mandate of the legislation.

<sup>20</sup> Section 90(e) of the *Children's Act 2001*, further provides that:

Unless the court directs and subject to any financial contribution ordered to be made by any other person, the following presumption shall apply with regard to the maintenance of a child.... [W] here the mother and father of a child were not married to each other at the time of birth of the child and have not subsequently married, but the father of the child has acquired parental responsibility for the child, it shall be the joint responsibility of the mother and father to maintain that child.

<sup>21</sup> See *Republic of Kenya Third and Fourth National Report To CEDAW, March 2000*, 3 where it reads:

More recently there has been a re-orientation from project focus to a more sectoral and policy orientation, based on Gender and Development (GAD).

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<sup>22</sup> In the *National Gender and Development Policy*, the Government notes that “without quality gender disaggregated data, the planning and programming process cannot be efficient and productive.”

<sup>23</sup> *National Gender and Development Policy, p.5*

<sup>24</sup> The Government in, *Republic of Kenya Response to the Draft Report of the Pre-Session Working Group of CEDAW, August 2002*, 3 notes:

The Economic Survey analyses the economic trends in various sectors. Though the past issues of the Survey did not take in to consideration the gender concerns in the respective sectors, measures are being put in place to ensure that this is addressed in the future.

<sup>25</sup> See Annex 3 for a summary of the proposals regarding the National Gender and Development Commission contained in the National Gender and Development Policy and a full critique of the National Gender and Development Policy

<sup>26</sup> The National Policy for Gender and Development indicates the creation of a database and approaches on collation of gender-disaggregated data as a concern. In interview with the then Permanent Secretary in the Ministry of Gender, Sports, Culture and Social Services, Mrs. Deborah Ongewe, she expressed a similar concern. Building a skills base necessary for macro-economic gender responsive analysis is therefore a shared concern between Government and Civil Society.

<sup>27</sup> Under its gender series, GDA/GESP has undertaken and published studies on gender-based violence. To date, six publications on domestic, physical, and sexual abuse of women and girls have been brought out.

<sup>28</sup> It took three weeks to get a response from the Ministry of Finance; an interview with the Women’s Bureau was not possible even after a written request, whilst the Permanent Secretary in the new Ministry of Gender, Sports, Culture and Social Services was transferred the day after having granted an interview to the consultant. All of which serve to illustrate the importance of an institutionalised, co-ordinated approach towards gender.

<sup>29</sup> See *Kenya – Draft Interim Country Strategy Note July 15, 2002* at page 4

<sup>30</sup> It is not uncommon for one to read in the newspapers or see on television a case where a woman has attempted to stop a church wedding claiming that the groom is already married to her.

<sup>31</sup> See Muragu Anne, *Women and Land Rights in Kenya*, (Kenya Human Rights Commission, Nairobi: 1998) 14.

<sup>32</sup> Under some African customary law a girl can be married as soon as she is an adolescent whereas under Muslim law, once she is 16. *The Children’s Act 2001* provides

that a person under the age of 18 is a child and proscribes early marriage, there have not yet been test cases pitting this Act against Muslim or African customary law. Early marriage is attractive due to bride price, which makes a girl more valuable married off than educated. Where female genital mutilation (FGM) is practised it is often related to marriage as in those African cultures that permit it, it is a prerequisite for marriage. FGM carries with it various negative health consequences.

<sup>33</sup> Ironically whilst the law of succession makes a man responsible for all his children in death, he has no legal obligation to those born outside wedlock during his lifetime. The *Children's Act 2001* creates parental responsibility obligations on both parents where they are married, but only in the mother where a child is born out of wedlock. Under section 24(3), women are solely responsible for the maintenance of children born outside wedlock. Men can choose to undertake parental responsibility for children born outside wedlock under section 25.

<sup>34</sup> Republic of Kenya, *National Gender and Development Policy*, February 2000, 4

<sup>35</sup> CSOs here means civil society organisations.

<sup>36</sup> National Gender and Development Policy, 32 - 35

<sup>37</sup> See the section on the Cost of Gender Exclusion, p.53.

<sup>38</sup> See Constitution of Kenya Review Commission, *The People's Choice – Report of the Constitution Review Commission of Kenya*, (Mombasa: Constitution of Kenya Review Commission 2002) 10, where it reads:

Many submissions identify problems with the policies of governments in the past. Apart from failures to address issues of livelihood and basic needs mentioned before, there is a chorus of protest about economic mismanagement – the impoverishment of the nation.... A very strong message about government was that it should be brought closer to the people. They wanted decisions that affect them made by people they trusted and could have contact with.

<sup>39</sup> World Bank “*World Development Report 2003*”

<sup>40</sup> In the *National Gender and Development Policy* at page 5 it is observed that:

The development and introduction of agricultural technology are frequently done without the involvement of and consultation with women. Some technologies have increased the workload of women, especially when such technologies are targeted at men's role in agriculture. The development of technologies relevant to the roles of women in agricultural production and food process has significantly lagged behind.

<sup>41</sup> Further analysis of the differential time allocation between men and women and its impact on livelihoods is difficult to undertake, as Kenya has not carried out studies on this at the national level. Many NGOs and CBOs have undertaken this as part of their own projects but the results are hard to generalise. In addition, information from these NGOs is not available in a centralised place and given the time for this assessment, the

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consultants were not able to visit any of the NGOs that have been known to undertake time-allocation studies.

<sup>42</sup> Republic of Kenya, *Kenya Rural Development Strategy* (Nairobi: Government of Kenya, 2002), p.10.

<sup>43</sup> Kathleen Staudt in Bay E ed., *Women Farmers and Work in Africa* (Investor Press: 1982) see also Jean Davison, *Agriculture, Women and Hand; The African Experience* (Westview Press: 1988).

<sup>44</sup> In Kenya cash crops include tea, coffee, pyrethrum, sugar cane, sisal, horticultural crops, oil crops sunflower, coconut, groundnut and cashew nuts. Some of these crops are grown in plantations such as tea, coffee, wheat and maize. Sufficient literature exists on Kenya's cash crop production. However, there is limited attention on the roles played by women and girls. The burden of women and girls in cash crop production has increased significantly because most of the duties and tasks undertaken by women and girls are manual. This includes activities like harvesting pyrethrum, coffee, tea (the concept of nimble fingers), weeding coffee, cultivating sugar cane, harvesting sunflowers and active participation in a diversity of horticultural produce. Therefore, adoption of modern agricultural technology has not reduced the burden of women and girls in cash crop production. See, Stamp Patricia, *Gender Technology and Power in Africa* (1989)

<sup>45</sup> Okoth-Ogendo (1989) argues that rights denote powers allocated to individuals for specific purposes and where such powers are equated to exclusive control then ownership exists.

<sup>46</sup> Dasgupta P, *An inquiry into well-being and distribution* (1993)

<sup>47</sup> Meinzen et al "Gender property Rights and Natural Resources" in *World Development* (1997)

<sup>48</sup> Staudt, K (1985) *Agricultural Policy Implementation: A case from Western Kenya*.

<sup>49</sup> National Gender and Development Policy

<sup>50</sup> Extension officers have a key role to play. Extension officers should facilitate linkages between farmers and investors seeking to sub-contract farming. Such firms should provide technical input to ensure that their quality requirements are met; they provide inputs according to their standards and eventually purchase the produce. It is important to highlight some constraints to active and successful participation in global market opportunities. This include among others; inadequate infrastructure facilities, poor marketing and market outlets and inadequate processing factories for high value crops.

<sup>51</sup> Office of the President, The Gender and HIV/AIDS Technical Sub-committee of the National AIDS Control Council, July 2002. Mainstreaming Gender into the Kenya National HIV/AIDS Strategic Plan, 2000 – 2005.

<sup>52</sup> Ibid P. 3

<sup>53</sup> Ibid P. 3.

<sup>54</sup> Ibid P. 15

<sup>55</sup> Office of the President, The Gender and HIV/AIDS Technical Sub-committee of the National AIDS Control Council, *Mainstreaming Gender into the Kenya National HIV/AIDS Strategic Plan, 2000 – 2005* (Nairobi: Government of Kenya: November 2002) 2

<sup>56</sup> Pangas are a form of machete

<sup>57</sup> Maria Nzomo and Kathleen Staudt 1994, p. 416

<sup>58</sup> These figures are based on those of the Inter Parliamentary Union is website: <http://www.ipu.org/wmn-e/classif.htm>, which is updated to March 2003.

<sup>59</sup> This figure and the %ages for the South African Upper House do not take into consideration the 36 special rotating delegates appointed on an ad hoc basis and are only calculated on the basis of the 54 permanent seats of the Upper House.

<sup>60</sup> Maria Nzomo and Kathleen Staudt. 1994. P. 416.

<sup>61</sup> Abwao Priscilla, *Memorandum on Behalf of the African Women To the Kenya Constitutional Conference in London, February 1962*

<sup>62</sup> There was another woman delegate, a white Kenyan woman who never spoke. At the time, Kenya had a legalised racially segregated system.

<sup>63</sup> In reaching their decision, the Court of Appeal stated:

The appellant [Wambui Otieno] as the deceased's wife has to be considered in the context of all wives married to Luo men irrespective of their life-styles who become subject to the customary laws. The fact that her marriage was mixed one would not confer on her any special status under Luo customary law.... [Sections] 82(3) and 82(4(b)) of the Constitution of Kenya allow for discriminatory rules respecting burial.

For a full analysis of this case and its implications for the interpretation of Section 82 see Chesoni Atsango, *Second Class Citizenship, The FIDA Annual Report on the Legal Status of Kenyan Women 1996*, (FIDA: Nairobi, 1997) 9

<sup>64</sup> *The Constitution of Kenya Review Act Chapter 3A of the Laws of Kenya Revised Edition 2001*

<sup>66</sup> Under the current provisions of section 24(3) only women have a legal parental responsibility obligation for children born outside wedlock.

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<sup>67</sup> This Bill contains provisions for a Domestic Violence Fund, for victims of, for domestic violence. Many women do not leave a situation of violence because they cannot afford to do so. See the Cost of Gender Exclusion for more on this issue.

<sup>68</sup> Some institutions, for example the Central Bank of Kenya, do not provide married women with family benefits on the same scale as they do men holding equivalent office; the provisions of the Constitution on equality only apply to public institutions

<sup>69</sup> Under Article 13, State Parties commit to eradicating discrimination in respect of benefits. Kenya has placed a reservation on Article 13, see *Republic of Kenya Third and Fourth National Report to CEDAW, March 2000*, 30 where it reads, “Article 13 (Reserved by GOK).

<sup>70</sup> Under Article 13 State Parties commit to eliminate discrimination against women in respect of economic life in particular the right to family benefits, bank loans, mortgages and other forms of financial credit

<sup>71</sup> There are categories of marriage such as the African customary law marriages that are non-registerable; this results in situations where it is possible for one to unknowingly enter into a potentially polygamous union.

<sup>72</sup> Kenya: State of the Nation, 2001.

<sup>73</sup> Ibid P. 3

<sup>74</sup> Calculated by multiplying the number of infected with an annual income of Kshs. 360,000 and maximum productive work life of 30 years.

<sup>75</sup> 4.3% is based only on the number of elected women members of parliament i.e. 9 out of 210 elected members of parliament.

<sup>76</sup> Presumably because there is a great representation of women in the marketing profession.

<sup>77</sup> This may however be a rather tenuous argument as the difficulty of realising it in case of non-repayment has made rural land less attractive as collateral. Many financial institutions prefer to use other forms of collateral e.g. share certificates and the proceeds from the farm. In many instances however, partly because of the recent economic decline, many financial institutions have not been actively lending to local enterprises or made credit very expensive as to be discouraging to those interested.

<sup>78</sup> See, Mwale Sam, *The People Shall Govern*, *The East African*, October 28 – November 3, 2002, II

<sup>79</sup> The National Policy for Gender and Development indicates the creation of a database and approaches on collation of gender-disaggregated data as a concern. In interview with

the then Permanent Secretary in the Ministry of Gender, Sports, Culture and Social Services, Mrs. Deborah Ongewe, she expressed a similar concern. Building a skills base necessary for macro-economic gender responsive analysis is therefore a shared concern between Government and Civil Society.

<sup>80</sup> As mentioned in the Country Context, the legal section of the National Policy on Gender and Development does not address itself to the issue of constitutional discrimination. Although the policy does propose the implementation of the recommendations of the Task Force on Laws Relating to Women, which does recommend constitutional amendment. It is important that the issue of constitutional discrimination be addressed, as it is the root cause of legal and institutional discrimination.