



POLICY BRIEF 2022

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ACCOUNTABILITY
TO REGIONAL AND
INTERNATIONAL
INSTRUMENTS
IS CRITICAL TO
REALISING GENDER
EQUALITY AND
RIGHTS OF GIRLS
AND YOUNG WOMEN**

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POLICY BRIEF:

STRENGTHENED ACCOUNTABILITY TO REGIONAL AND INTERNATIONAL INSTRUMENTS IS CRITICAL TO REALISING GENDER EQUALITY AND RIGHTS OF GIRLS AND YOUNG WOMEN

Introduction

All countries in the world have committed to achieving gender equality by 2030 in line with the Global Sustainable Development Goals (SDG). However, according to the 2021 SDG Gender Gap Report, no country is yet to fully achieve gender equality. There is much disparity between levels of progress in realising gender equality amongst countries.

This policy brief highlights progress, major challenges in achieving gender equality in Kenya and proposes key recommendations to the national and county governments, the Judiciary, and the Legislature on advancing gender equality.

State Obligation on Gender Equality and Rights of Girls and Young Women

In line with International Law and the Laws of Kenya, the state has the responsibility to protect, respect and fulfil human rights for all, including realising gender equality.

The obligation to respect means that the state must refrain from interfering with or curtailing the enjoyment of rights by girls and young women. The obligation to protect requires the state to protect girls and young women against human rights violations. The obligation to fulfil means that the state must take positive action to facilitate the enjoyment of basic human rights for all without discrimination on gender.

International and Regional Instruments on Gender Equality and Rights of Girls and Young Women

The Universal Declaration of Human Rights, the founding document on human rights for all, stresses on the right to equality before the law. It avers that all are equal before the law and are entitled without any discrimination to equal protection of the law.

Kenya has signed and ratified key international and regional instruments on girls' and women's rights and gender equality. Of the nine¹ (9) core international human rights instruments which Kenya has signed and ratified, three (3) have specific provisions on women and girls and gender equality. They include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The CEDAW Convention defines discrimination against women as any distinction, exclusion, or restriction made based on sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment, or exercise by women irrespective of any distinction. Kenya has adopted the definition and included it in key domestic instruments including the Constitution of Kenya, 2010.

Kenya has domesticated these conventions through several laws, policies, and programmes. In line with CEDAW² Convention and its principles, the government affirmed non discrimination on any grounds, rights of women and girls including to participation and freedom from violence in the Constitution of Kenya, 2010.

Kenya has further signed and ratified regional instruments on gender equality including The African Charter on Human and Peoples' Rights, the African Youth Charter, the African Charter on the Rights and Welfare of the Child, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

In line with Article 2 (5) and 2 (6) of the Kenyan Constitution 2010, these international and regional instruments on gender equality are part of the laws of Kenya and therefore binding.

The state has also committed to various international and regional commitments including the International Conference on Population and Development (ICPD) Programme of Action³,

the Beijing Declaration and Platform for Action⁴ and the Sustainable Development Goals (SDGs)⁵. The ICPD Programme of Action is among the few documents that make the link between population and development needs of women and girls. The Beijing Declaration and Platform for Action is the most progressive blueprint for advancing women's rights globally and identifies twelve (12) key areas where urgent action is needed to ensure gender equality and rights of women and girls. The SDGs puts women and girls at the centre of Sustainable Development and seeks a world where all human beings including women can fulfil their potential in dignity and equality and in a healthy environment. SDG Goal (5) Five on gender equality provides for empowering all women and girls, ending discrimination against all women and girls, eliminating violence against all women and girls, ensuring meaningful participation of women and girls and equal opportunities for leadership, and ending all forms all harmful practices.

1 <https://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>

2 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKEN%2f8&Lang=en

3 https://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf

4 https://www.un.org/en/events/pastevents/pdfs/Beijing_Declaration_and_Platform_for_Action.pdf

5 <https://sustainabledevelopment.un.org/post2015/transformingourworld>

Gaps and Challenges in Realising Gender Equality

Despite these international and regional commitments and national laws and policies, achieving gender equality has remained elusive. According to the 2021 Global Gender Gap Report⁶, Kenya is ranked 95th in the world with a gender parity score of 69.2 with major inequalities in key areas including education, economic participation, health, political empowerment among others.

This can be attributed to several reasons key among them inadequate accountability and follow up of these international and regional commitments and instruments at the national level. The inadequate political will to realize gender equality and conservative socio-cultural norms on gender equality and women's rights are also key contributors. These have been enabled by weak institutional structures and systems to advance gender equality.

Despite signing and ratifying the international instruments such as CRC, CEDAW and ICESCR, Kenya is yet to sign and ratify their optional protocols that recognizes the competence of the Committees, the Treaty monitoring bodies that follow up on the implementation of the Conventions, receives and considers communications including interstate and individual complaints and allows the committees to conduct visits and inquiries on the rights of women and girls.

Further, the state has not consistently reported to these and other relevant international and regional committees about the progress of gender equality and on the rights of women and girls in line with the reporting obligations by the treaties. There has also been a weak multisectoral approach and coordination among state arms in developing and implementing concluding observations and recommendations after reviews by these treaty monitoring bodies.

Kenya is also yet to enact an Act of Parliament to address the inadequate representation⁷ of women in political leadership in line with the CEDAW Convention and the Constitution of Kenya, 2010 that requires that neither gender should have more than two-thirds in elective positions.

The CEDAW, CRC and ICESCR committees have highlighted dominant religious and cultural beliefs and practices that hinder enjoyment of human rights of women and girls, inadequate resource allocation for implementation of these instruments and weak institutions as among the key challenges limiting gender equality in Kenya in their concluding observations⁸.

Key Recommendations to the Government of Kenya

- 1) Comply with reporting obligations and develop and submit timely state reports on efforts to improve the rights of girls and young women.
- 2) Sign and ratify optional protocols for international and regional instruments that recognizes the competence of the committees and enable the Treaty monitoring bodies to follow up on the implementation of the Convention at the national level, receive and consider communications including interstate and individual complaints and allows the Committee to conduct visits and inquiries on the rights of girls and young women.

6 https://www3.weforum.org/docs/WEF_GGGR_2021.pdf

7 <https://www.sidint.net/content/actualization-and-implementation-two-thirds-gender-principle-kenya.html>

8 https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fKEN%2fCO%2f8&Lang=en

- 3) Incorporate concluding observations and recommendations from treaty monitoring bodies into national and county level policies and plans and provide for their implementation.
- 4) Strengthen multisectoral coordination and partnerships amongst arms of the state and with non-state actors to ensure synergy in advancing the rights of girls and young women.
- 5) Disseminate, popularize, resource, and implement existing international, regional, national, and sub-national instruments on gender equality and rights of girls and young women.
- 6) Strengthen information management, research, and further disaggregation of data by age, sex, and other categories as the basis of empirically founded programming, planning, and policy development.

Conclusion

Commitments to key international and regional instruments, whereas critical to advancing gender equality and rights of girls and young women, are not enough. The state must be accountable to its commitments and adhere to its obligations. The obligations to protect, respect, and fulfil the rights of girls and young women do not fall only on the executive, but on other arms of the state as well. The legislature and the Judiciary must also do their oversight, law making and representation roles as well as progressive interpretation of these instruments. The county governments must also fulfil their roles as per the Fourth Schedule of the Constitution of Kenya 2010.

Acknowledgment

This policy brief was developed by African Gender and Media Initiative (GEM) through the technical and financial support of Terre des Hommes Netherlands (TdH NL) under the She Leads Programme.

The African Gender and Media Initiative Trust (GEM) is a research organization that works to advance gender equality through research and action on women's human rights.

The views expressed in the brief remain those of the authors. The contents are the responsibility of GEM and do not necessarily reflect the views of Terre des Hommes Netherlands.

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