



EQUAL RIGHTS TRUST

Shadow report submitted to the 66th session of the Committee on the Elimination of All Forms of Discrimination against Women in relation to the eighth periodic report of

Kenya

February 2017

Introduction

1. The Equal Rights Trust makes this submission to the pre-sessional working group for the 68th session of the Committee on the Elimination of Discrimination against Women (the Committee) in advance of its consideration of a list of issues to be raised with Kenya.
2. The Equal Rights Trust exists to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. We focus on the complex relationship between different types of discrimination and inequality, developing strategies for translating the principles of equality into practice.
3. The Trust has been actively involved in challenging discrimination in Ukraine since 2010. Our work has included capacity-building and awareness-raising with civil society, lawyers, government and constitutional commissions, support to the development of and advocacy for the adoption of improved equality legislation and support to the provision of legal services for victims of discrimination.
4. Since 2011, the Trust has worked in partnership with the Federation of Women Lawyers – Kenya (FIDA-Kenya) on a project designed to train, support and empower community based organisations in different parts of Kenya to provide legal assistance to women victims of gender-based violence and gender discrimination in respect of land and property, or access to education. To date, this project has provided legal advice and assistance to 4,115 women in 28 different counties; this includes 1953 women who have experienced from domestic and other forms of gender-based violence, 1416 women who have experienced discrimination in respect of land, property or income, and 746 women and girls who have experienced discrimination impeding or preventing access to education.
5. In the course of this work, the Equal Rights Trust has gathered evidence on the extent to which Kenya has met its obligations under the Convention on the Elimination of all forms of Discrimination Against Women (the Convention). In particular, our experience supporting the delivery of legal assistance in communities throughout Kenya has led us to be concerned about (1) the extent to which Kenya is effectively meeting its obligations to ensure access to justice for women who have experienced discrimination, and (2) the extent to which the state has met its obligations to eliminate violence against women.

Article 2(c): Access to Justice

6. Under Article 2(c) of the Convention, states parties undertake to “establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination”. The Committee, in its General Recommendation No. 28 on the Core Obligations of State Parties under Article 2 of the CEDAW (General Recommendation No. 28) has noted that “the obligations enshrined in article 2 are inextricably linked with all other substantive provisions of the Convention”.¹ In respect of Article 2(c) in particular, the Committee has noted that:

*States parties must ensure that women can invoke the principle of equality in support of complaints of acts of discrimination contrary to the Convention, committed by public officials or by private actors. States parties must further ensure that women have recourse to affordable, accessible and timely remedies, with legal aid and assistance as necessary, to be determined in a fair hearing by a competent and independent court or tribunal where appropriate. Where discrimination against women also constitutes an abuse of other human rights, such as the right to life and physical integrity in, for example, cases of domestic and other forms of violence, States parties are obliged to initiate criminal proceedings, to bring the perpetrator(s) to trial and to impose appropriate penal sanctions. States parties should financially support independent women’s legal resource associations and centres in their work to educate women about their rights to equality and to assist them in pursuing remedies for discrimination.*²

7. More recently, in its 2015 General Recommendation No. 33 on Women’s Access to Justice, the Committee has elaborated on state obligations in this area. The Committee noted that six components are necessary to ensure access to justice: “justiciability, availability, accessibility, good quality, provision of remedies for victims and accountability of justice systems”.³
8. The Equal Rights Trust’s experience providing legal assistance to women and girls who have experienced discrimination in Kenya has led us to be concerned regarding the extent to which Kenya is meeting its obligations in respect of the *accessibility* of justice for women. We therefore urge the Committee to question Kenya regarding the measures which it has taken or is taking to ensure that women are effectively able to access justice.

¹ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 28 on the core obligations of States parties under article 2*, UN Doc. CEDAW/C/GC/28, 2010, Para 6.

² *Ibid.*, Para 34.

³ Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 33 on women’s access to justice*, UN Doc. CEDAW/C/GC/33, 2015, Para 14.

9. The Committee has noted that accessibility requires that states parties remove economic barriers by (a) providing legal and (b) ensuring that court and related costs are reduced for women from low incomes or those living in poverty.⁴ However, we have found no evidence that the state either provides legal aid or reduces or waives costs associated with bringing claims of gender discrimination. The Equal Rights Trust urges the Committee to ask Kenya: what measures it has taken to remove economic barriers to women's access to justice?
10. The Committee has recommended that states remove linguistic barriers to justice, by (a) providing independent and professional translation and interpretation, and (b) providing individual assistance for illiterate women.⁵ The Equal Rights Trust calls on the Committee to ask Kenya: what measures it has taken to ensure that women facing linguistic or literacy barriers to access to justice?
11. The Committee has also noted that the “physical environment and location of judicial and quasi-judicial institutions (...) are welcoming, secure and accessible to all women”.⁶ It has also highlighted the need to ensure accessibility for women with disabilities.⁷ The Equal Rights Trust calls on the Committee to ask Kenya: what measures it has taken to ensure that judicial and quasi-judicial are welcoming, secure and accessible to all women, including women with disabilities?
12. The Committee has called on member states to undertake “outreach activities” and distribute information on “justice mechanisms, procedures and remedies”. Through our work providing legal assistance to victims of gender discrimination in Kenya, we have noted and welcomed the presence of gender desks in police departments, which exist to provide services of the type recommended by the Committee. However, concerns have been raised by the organisations with whom we work about the effectiveness, appropriateness and quality of the service provided by these desks. Therefore, the Equal Rights Trust urges the Committee to ask Kenya: what measures has it taken to monitor and review the work of gender desks in police departments and to ensure that the service provided is effective and appropriate?
13. The Committee has also called on states to establish “one stop centres” in order to “reduce the number of steps that a woman has to take to gain access to justice”. It has noted that such centres could “provide legal advice and aid, begin the legal proceedings and coordinate support services for women” in areas such as violence, family, health, employment and property. Our project with FIDA Kenya has centred on the establishment and operation of community based legal assistance schemes hosted and maintained by community-based organisations trained, supported and funded by the project. Our

⁴ *Ibid.*, Para 17(a).

⁵ *Ibid.*, Para 17(b).

⁶ *Ibid.*, Para 17(e).

⁷ *Ibid.*, Para 17(c).

experience indicates that there is significant demand for such services at the community level, and that the approach of situating such services within existing community-based organisations is viable and effective. Therefore, the Equal Rights Trust urges the Committee to ask Kenya: what plans, if any, does it have to establish justice access centres at the community level, in order to enhance women’s access to justice?

Articles 1 and 2: Gender-Based Violence

14. As the Committee has noted in its General Recommendation No. 19 on Violence Against Women, violence against women “seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men” and is “discrimination within the meaning of article 1 of the Convention”.⁸ The Committee has clarified the state’s duty to eliminate violence against women and to provide redress, stressing in particular that under Article 2, state parties “may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation”.⁹
15. The Equal Rights Trust’s work in providing legal assistance to victims of gender discrimination in Kenya has raised a number of serious concerns regarding the extent to which Kenya has met its obligation to “take appropriate and effective measures to overcome all forms of gender-based violence”.¹⁰ In particular, we would urge the Committee to pose the following questions to Kenya regarding the effectiveness of the government’s legal, policy and institutional response to domestic violence:
16. In General Recommendation No. 19, the Committee noted that effective protection of women against gender-based violence includes “[e]ffective legal measures” and “[e]ffective complaints procedures”.¹¹ In General Recommendation No. 33, the Committee has elaborated on the need for specific safeguards for women seeking to vindicate their rights through the criminal justice system, and has recommended *inter alia* that states “[t]ake appropriate measures to create supportive environments that encourage women to claim their rights”, “[u]se a confidential and gender-sensitive approach to (...) evidence collection” and “ensure that the evidentiary requirements are not overly restrictive, inflexible or influenced by gender stereotypes”.¹² Through our work with survivors of gender-based violence in Kenya, we have learned that the evidentiary procedure for cases of sexual assault is inadequate to meet the needs of the women in question. In particular, we have repeatedly received evidence that healthcare providers apply a charge to issue a “P3” form, which is completed by health professionals as part of the assessment of injuries sustained during sexual assault; such charges are not provided for by law. Given the

⁸ Committee on the Elimination of Discrimination against Women, *General Recommendation No. 19 on Violence against Women*, UN Doc. A/47/38, 1992, Paras 1 and 7.

⁹ *Ibid.*, Para 9.

¹⁰ *Ibid.*, Para 24(a).

¹¹ *Ibid.*, Paras 24 (t) and (e).

¹² See above, note 3, Paras 51(d), (g) and (h).

impact which such charges can have on women’s ability to secure justice in cases of sexual violence, we urge the Committee to ask Kenya: what measures is it taking to ensure that charges are not applied for the completion and issuance of the P3 form which is required in cases of sexual assault?

17. In its General Recommendation No. 33, the Committee has recommended that states should “[e]nsure that remedies are adequate, effective, promptly attributed, holistic and proportional to the gravity of the harm suffered”.¹³ In respect of violence in particular, the Committee has noted that measures should include “criminal penalties where necessary” and “[e]ffective complaints procedures and remedies, including compensation”.¹⁴ Our work in Kenya has identified a number of cases in which local community or government representatives, exercising quasi-judicial functions, may propose – or indeed focus on – reconciliation in cases of domestic violence, rather than on taking measures to protect women and provide appropriate remedy and sanction. Therefore, the Equal Rights Trust urges the Committee to ask Kenya: what measures it has taken to ensure that, in cases of domestic violence, those exercising quasi-judicial functions understand the importance of safeguarding the rights of women, providing appropriate remedy and sanction?

18. In its General Recommendation 19, the Committee has stressed that state parties should ensure that laws against family violence and abuse should “give adequate protection to all women” and that “[a]ppropriate protective and support services should be provided for victims”.¹⁵ The Committee has stressed that “measures to overcome family violence should include (...) services to ensure the safety and security of victims of family violence, including refuges, counselling and rehabilitation programmes”.¹⁶ It has also stressed that specific support services should be provided “where incest or sexual abuse has occurred”.¹⁷ Our experience in supporting the provision of legal assistance to survivors of domestic violence is that many are unable to access protective services, including refuges in particular. As such, we call on the Committee to ask Kenya: what steps is it taking to ensure that women survivors of domestic violence – including those in remote and rural areas – are able to access refuges and other forms of protective services?

¹³ See above, note 3, Para 19(b)

¹⁴ See above, note 8, Paras 24(r) and (i).

¹⁵ *Ibid.*, Para 24(b).

¹⁶ *Ibid.*, Para 24(r).

¹⁷ *Ibid.*