



Key Ingredients to Women's Legal Rights in Kenya

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Legislative reforms to increase gender equality before the law are often long and complex processes. This Brief focuses on a series of reforms in Kenya—specifically, the adoption of the Sexual Offenses Act of 2006, the Employment Act of 2007, and the Protection Against Domestic Violence Act of 2015. Strong evidence, broad coalitions, and incorporating the highest standards based on international best practice in early legal drafts are singled out as the key elements that led to the successful adoption of these landmark laws promoting women's rights in Kenya. The lessons in this Brief can provide important insights for policy makers, advocacy groups and international organizations involved in the pursuit of legal gender equality in Kenya and other countries.

Strengthening women's legal rights in Kenya

On July 25, 2014, a large group of committed women and men marched from Uhuru Park in Nairobi to the gates of the Kenyan Parliament. Shouting in unison “*jamii bila balaa*” (“society without violence”), they carried with them a petition prepared by a coalition of more than 10 civil society organizations. Their objective was to push Parliament to pass the Protection Against Domestic Violence (PADV) Bill. The Bill was the culmination of more than 20 years of research, advocacy, and lobbying by Kenyan civil society organizations, as well as a significant achievement for the Kenyan Women Parliamentary Association and the Kenya Young Parliamentary Association (KYPA). It became law on May 14, 2015, and entered into force a couple of weeks later.

This Brief focuses on restrictions on women's economic inclusion in Kenya and sheds light on the main lessons learned from reform processes, such as the adoption of the PADV Act, that lifted some of these barriers in Kenya. The experience in the country highlights three essential factors for a successful reform process: solid data and research, combined with compelling individual stories; broad coalitions; and strong legislative drafts. These were crucially important strategies for the passage of the Sexual Offenses Act (SOA) of 2006, the Employment Act of 2007, and the PADV Act of 2015. While these reform processes were deeply different—with the SOA and PADV Act spearheaded by civil society organizations¹ and the Employment Act the result of

compromise among the tripartite interests of government, trade unions, and employer federations—similar lessons can be drawn.

The Brief begins by framing the social, political, and economic context at the time of the reforms. It then highlights barriers and success factors that affected the passage of these reforms. It concludes with a review of the results and future challenges for activists and policy makers alike.

Social, political, and economic factors leading to reforms

Following two decades of stagnation in per capita income and high economic volatility, Kenya's economy moved to a path of accelerating growth after 2002. However, not long after, it experienced several adverse shocks, starting with postelection violence in January 2008, which brought gross domestic product (GDP) growth to a halt, followed by a slow recovery in 2009. Economic growth started to rebound in 2010, stabilizing at lower rates than before 2008. Despite hitting a stall in 2020, due to the COVID-19 pandemic, it rebounded in 2021 and the economic activity is projected to accelerate in 2022-23 (World Bank 2021; World Bank 2020).

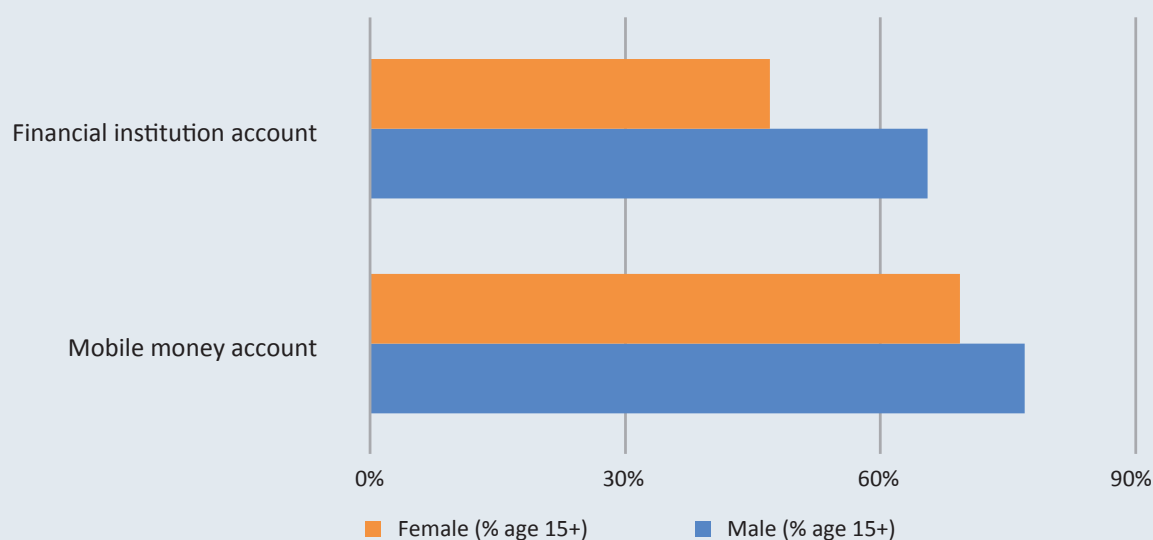
Female labor force participation in the country has been steadily rising, after a sharp drop in the early 2000s, reaching 72 percent in 2019, close to the male labor force participation rate of 76 percent. The pay gap between women and men has also

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Acknowledgements: This Brief is part of a series focusing on reforms in seven economies, as documented by the Women, Business and the Law team. Support for the series is provided by the Bill & Melinda Gates Foundation and the William and Flora Hewlett Foundation. The authors thank FIDA-Kenya for significant inputs to the research. This Brief was made possible with the generous and expert contributions of: Diana Gichengo, Human Rights and Equality Lawyer in Kenya; M/S. Judith A. Guserwa, Founder and Managing Partner at M/S. J.A. Guserwa & Co. Advocates, and member of the Law Society of Kenya; Grace Wangechi Kahuria, former Team Leader-Ending Violence Against Women and Girls at the UN Women Kenya Country Office; Hon. Priscilla Nyokabi Kanyua, first Nyeri County Women Representative and Commissioner at the National Gender and Equality Commission (NGEC); Isaac Kiema, National Programme Coordinator for Inclusive Growth Through Decent Work at the International Labour Organisation (ILO); Joyce Miguda Majiwa, Senior Counsel and Lead Consultant for the civil society engagement in the passage of the Protection Against Domestic Violence (PADV) Act, recipient of the Order of the Grand Warrior of Kenya; Virginia Nduta, Executive Director for the Women's Empowerment Link; Hon. Agostinho Neto, former Member of Parliament for Ndhiwa Constituency and co-convenor of the Kenya Parliamentary Human Rights Association (KEPHRA); and Sis Rose Omamo, General Secretary of the Amalgamated Union of Kenya Metal Workers and Board Member of the Central Organization of Trade Union in Kenya (COTU-K). The team thanks Norman Loayza, Tea Trumbic, and David Francis for guiding the publication process. Nancy Morrison and Jacob Bathanti provided excellent editorial assistance.

Objective and disclaimer: This series of Global Indicators Briefs synthesizes existing research and data to shed light on a useful and interesting question for policy debate. Data for this Brief are extracted from the Women, Business, and the Law database and supplemented by interviews conducted over the spring and summer of 2021 with women's rights experts from local civil society organizations, the public and private sectors, and international organizations in Kenya. This Brief builds on the information collected during these interviews to reconstruct the development of the legal reforms and the success factors that allowed the reforms to pass. These Briefs carry the names of the authors and should be cited accordingly. The findings, interpretations, and conclusions are entirely those of the authors. They do not necessarily represent the views of the World Bank Group, its Executive Directors, or the governments they represent. All Briefs in the series can be accessed via: <https://www.worldbank.org/en/research/brief/global-indicators-briefs-series>.

Figure 1 Kenyan women are less likely than men to own accounts at financial institutions or mobile money accounts



Source: Global Findex Database 2017.

Note: Financial institution account denotes the percentage of respondents who report having an account (by themselves or together with someone else) at a bank or another type of financial institution such as a credit union, a microfinance institution, a cooperative, or the post office (if applicable), or having a debit card in their own name. Mobile money account denotes the percentage of respondents who report personally using a personally using services included in the GSM Association's Mobile Money for the Unbanked (GSMA MMU) database to pay bills or to send or receive money in the past 12 months.

narrowed, with a female-to-male ratio in estimated earned income increasing from 68 percent to 72 percent between 2017 and 2021 (World Economic Forum 2017, 2021). Even so, Kenyan women, aged 25–60, are more likely to live in a poor household, especially if they are divorced or widowed (Pape and Mejia-Mantilla 2018). While the female labor force participation rate is high, reaching 80 percent among women aged 25 or older, according to International Labour Organization (ILO) data, most working women are engaged in the agricultural sector, which represents 59 percent of female employment (World Development Indicators). This sectoral segregation has driven large gender gaps in business profits and remuneration (World Bank Group 2020). Notably, because few women have been able to access certain male-dominated sectors, such as construction, few can reap the benefits of higher earnings (Pape and Mejia-Mantilla 2018). Access to business opportunities is also limited by the fact that Kenyan women are less likely to own land that can be used as collateral (12 percent of women aged 20–49), to use mobile internet, and to access financial services through the mobile phone-based service popular in Kenya, M-Pesa (Pape and Mejia-Mantilla 2018). The latest data from the Global Findex Database (2017) report that the percentage of female holders of a mobile money account is 8 percentage points lower than male account holders, 69 percent compared to 77 percent (see Figure 1).

With regard to women's political participation, the momentum generated by the prospect of Kenya's first multiparty elections in 1992 propelled women to increase their mobilization efforts, develop clear political platforms, and focus national attention on the reforms needed for their socioeconomic empowerment (Owuor 2016). In February 1992, the National Council of Women of Kenya (NCWK), in partnership with FEMNET (the African Women's Development and Communication Network), convened the first National Women's Convention with the goal of coordinating action and defining joint objectives ahead of the upcoming elections. Since winning 6 out of the 200 seats in the 1992 elections, women's representation in the National Assembly has grown steadily, reaching 21.8 percent in the latest elections of 2017 (Box 1). Increasing representation, coupled with the establishment of dedicated institutions—such as the

National Commission on Gender and Development in 2003 and the Ministry of Gender, Children and Social Development in 2008—ensured the development of policies supporting women's socioeconomic opportunities.

Key reforms toward gender equality in Kenya

From 1993 to 1998, a government-appointed Task Force for the Review of Laws Relating to Women reviewed the laws, policies, practices, and customs that constrained women's equal participation in society and their economic empowerment (Republic of Kenya 2004). Its key recommendations included a review of the Constitution on matters of citizenship and customary practices, the enactment of legislation guaranteeing equality in marriage, the improvement of working conditions for women, and the introduction of legal protections from domestic violence. This work led to the adoption of the Children's Act in 2001, the establishment of the National Commission on Gender and Development in 2003, the development of a Draft Constitution in 2004, the first draft of the Domestic Violence (Family Protection) Bill, and the writing of a memorandum by the Ministry of Labour and Manpower Development on women's inclusion in employment planning (Republic of Kenya 2004). The Sexual Offences Act of 2006 and the new Employment Act of 2007 tackled rights and protections for women in the workplace. Specifically, the SOA contains protections for women from sexual harassment in employment, while the Employment Act ensures equal compensation and women's ability to return to work after pregnancy.

On August 27, 2010, Kenya promulgated a new Constitution that contains landmark reforms for women's freedom of movement (*Women, Business and the Law 2012*). The new Constitution also establishes that customary law in Kenya is no longer exempt from constitutional provisions on nondiscrimination and is to be considered void if inconsistent with the Constitution. Until this reform was enacted, customary law prevailed in matters of marriage, property, and inheritance, and was completely exempted from constitutional principles of nondiscrimination and equality (*Women, Business and the Law 2012*).

In 2012, Kenya passed both the Land Act and the Land Registration Act. The former prohibits discrimination in land transactions and protects rights to the matrimonial home. The latter recognizes spousal rights over matrimonial property as an overriding interest in land, requires joint registration, grants an interest in land to a spouse who has worked the land, and requires both spouses' consent for transactions involving matrimonial property (*Women, Business and the Law 2014*). In 2013 the National Assembly enacted the Matrimonial Property Act which established partial community of property as the standard matrimonial regime and guaranteed equal rights to both spouses in the administration of joint property (*Women, Business and the Law 2016*). While these reforms improved the property rights of women, they stopped short of addressing inequalities in inheritance rights for female and male surviving spouses, as established by the Law of Succession Act of 1972 (sec. 36(1)) and in contrast with constitutional provisions. In 2014 the National Assembly passed the Marriage Act, which removed all exceptions to the legal age of

marriage, setting the minimum age at 18 for both boys and girls. Finally, in 2015, the PADV Act was enacted, introducing for the first time in the country protections against domestic violence.

Success factors and lessons learned from the reform process

The reform process in Kenya is characterized by three essential factors: data and research, broad coalitions, and strong legislative drafts based on internationally recognized standards. These approaches were pioneered by activists and policy makers dedicated to strengthening women's rights. Their efforts were based on lessons learned from previous national experiences and informed by good practices from other countries. Each approach will be discussed next in turn, along with relevant examples from the reform processes that led to the adoption of the Employment Act, the SOA, and PADV Act. The lessons can be adapted to other countries' unique political and socioeconomic context.

Box 1 Women's growing political representation in Kenya

A significant innovation of the new 2010 Constitution was the introduction of political quotas for women (Arts. 27, 97-98). According to Article 27 "*the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.*" This provision extends to the judiciary, the legislature, and local governments (*Women, Business and the Law 2014*). Articles 97 and 98 establish

quotas for the composition of the National Assembly and the Senate's membership, reserving 47 seats for women in the lower house (one for each of Kenya's counties) and 16 seats for women in the upper house. Political parties are also required to nominate Members of Parliament (MPs) representing special interests (equally divided between men and women).

Table B1.1. Women's representation in the National Assembly (1992–2022) and Senate (2013–22)

Legislature date	Constituencies	Elected women	Quota for Women representatives	Nominated members	Nominated women	Women/Total members
National Assembly						
1992–1997	188	6	n/a	12	1	7/200
1997–2002	210	4	n/a	12	5	9/222
2002–2007	210	10	n/a	12	8	18/222
2007–2013	210	16	n/a	12	6	22/222
2013–2017	290	16	47	12	5	68/349
2017–2022	290	23	47	12	6	76/349
Senate						
2013–2017	47	0	16	4	2	18/67
2017–2022	47	3	16	4	2	21/67

Source: CREAW 2019; IPU Parline Database.
n/a – not applicable, indicating no applicable provision.

The 2013 elections, the first held under the new legal framework (2010 Constitution, Elections Act of 2011, and Political Parties Act of 2011), saw a marked increase in the representation of women in Parliament, mainly thanks to the quota for women representatives. Since then, there has been a clear trend toward greater representation of women, thanks to a more conducive legal framework (political parties must comply with the two-thirds rule if they want to receive funding) and political mobilization at the local level.

That said, the implementation of the two-thirds principle in the National Assembly and in the Cabinet has

not been fully realized yet. It has been a source of litigation in front of the Supreme Court of Kenya twice since the Constitution's enactment. More recently, the National Assembly failed to enact the Constitution of Kenya (Amendment) Bill 2018, also known as the Gender Bill, which would have ensured the implementation of the principle and the allocation of seats in Parliament (Muthoni Kamuru 2019). Despite the fact that women's political representation in Parliament went from 3.6 percent in 1997 to 21.8 percent in 2017, the attainment of the two-thirds rule remains one of the main battles for human rights organizations in the country.

Evidence-based reform process backed by data, research, and compelling individual stories

Research and data about the Kenyan labor market, private sector competitiveness, and employment issues were key for each of the parties to the employment legislation negotiations. Arguments substantiated by evidence and data were critical to meaningful discussions around the draft legislative texts. Similarly, data on the pervasiveness and economic cost of gender-based violence (GBV) provided the evidence to call for specific protection measures to be established. Of equal importance, according to Members of Parliament and civil society organizations interviewed, were the individual stories of workers and the voices of the victims and survivors of violence. Advocates for reform used individual stories and data to develop compelling arguments to sway undecided MPs, build public support, and broaden coalitions in favor of the reform process, eventually ensuring the adoption of the legislation in Parliament.

The reform process to review and overhaul Kenya's labor laws, for example, was data driven from the start. The tripartite Taskforce, appointed by the Attorney General in 2001, carried out extensive consultations to identify current issues among employers and employees. In addition, research carried out by NGOs like the Kenya Human Rights Commission helped expose the poor working conditions of women workers, who were often forced to work overtime, with unfair compensation, and with limited protections from sexual harassment and repetitive strain injuries (Kenya Human Rights Commission 2012). The extreme stories of women working in precarious jobs in the cut-flower sector were used, along with data, to advocate and influence both MPs and members of the trade unions. Research and findings from the consultation guided the development of the legislative drafts and amendments.

In April 2004 the Taskforce submitted draft texts for five proposed laws to the Attorney General: the Employment Act; the Labour Institutions Act; the Labour Relations Act; the Occupational Safety and Health Act; and the Fair Administrative

Actions Act. In the same year, legislative drafts of these acts were made available for public participation, followed by Parliamentary readings. All the acts, with the exception of the Fair Administrative Actions Act (enacted in 2009), were approved by the National Assembly and enacted in 2007.

A similar role was played by data about intimate partner violence. Following a National Violence Against Women Survey (NVAWS) undertaken in the United States, studies on the prevalence and impact of gender-based violence were carried out by the Kenya National Bureau of Statistics and the National Gender Equality Commission, with the support of UN Women (NGEC 2014). The US study revealed that victims of intimate partner violence in the country lost nearly eight million workdays of paid work, equivalent to more than 32,000 full-time jobs, and almost 5.6 days of household productivity as a result of violence per year (National Center for Injury Prevention and Control 2003). The 2014 Kenya Demographic and Health Survey, carried out between May and October 2014, highlighted the endemic issue of gender-based violence, finding that nearly half (45 percent) of Kenyan women aged 15–49 had experienced physical violence at some point in their lifetime and almost half of all women who were or had been married experienced at least one form of intimate partner violence (Kenya National Bureau of Statistics 2015). A 2016 report, published by the National Gender and Equality Commission, estimated that Kenya could be losing about 46 billion Kenyan Shillings annually to gender-based violence, equivalent to approximately 1.1 percent of the country's GDP (NGEC 2016). Preliminary findings from this research were used during advocacy efforts and also referenced during the deliberations in Parliament in support of the adoption of the PADV Act.

Reforming laws by building partnerships

Broad coalitions were highlighted by many of the stakeholders interviewed as a success factor. As stated by Hon. Priscilla Nyokabi (first Nyeri County Women Representative and Commissioner at the National Gender and Equality Commission), "Reforms are about heavy lifting, they require many more lifters, everybody

Table 1 A decade of reforms in Kenya measured by Women, Business and the Law 2005-2015

Year	WBL index score	Indicator	Law	Reform description
2006	58.1	Workplace	Sexual Offences Act of 2006	Kenya enacted legislation protecting women from sexual harassment in employment. It also adopted criminal penalties for sexual harassment in employment.
2007	75.6	Parenthood	Employment Act of 2007	Kenya prohibited the dismissal of pregnant workers. It also introduced paid paternity leave.
		Pay	Employment Act of 2007	Kenya mandated equal remuneration for work of equal value. It also eliminated the ban on women's employment in mining and in industrial undertakings at night.
		Workplace	Employment Act of 2007	Kenya prohibited gender discrimination in employment.
2013	78.1	Assets	Matrimonial Property Act of 2013	Kenya recognized the value of nonmonetary contributions to household income and welfare.
2015	80.6	Marriage	Protection Against Domestic Violence Act of 2015	Kenya enacted legislation protecting women from domestic violence.

Source: The WBL index scores 35 data points across eight indicators composed of four or five binary questions, with each indicator representing a different phase of a woman's life. Indicator-level scores are obtained by calculating the unweighted average of responses to the questions within that indicator and scaling the result to 100. For each question, Yes = 1 and No = 0. Overall scores are then calculated by taking the average of each indicator, with 100 representing the highest possible score.

pushing from their end.” These can be seen at play on several levels, especially in the reform process leading to the PADV Act. Popular support for the PADV Act, secured through the active involvement of the media and the wide dissemination of data and stories on the prevalence of gender-based violence, helped to strengthen the sense of urgency and momentum for the reforms, which had been lingering for years. Better coordination among civil society organizations, led by the Women Empowerment Link, maximized the advocacy impact by creating a united front for engagement with the MPs, who could identify a clear constituency and coordinated set of requests for the reform. At the same time, this alignment streamlined partnerships with donors and international organizations, which helped by funding research, convening activities, and supporting advocacy work. Coalitions were also key inside Parliament to ensure that the legislation would not be seen as favoring a specific segment but society as a whole. It was crucial that male lawmakers also supported the bill. This was accomplished through an alliance between the Kenyan Women Parliamentarian Association, Kenya Young Parliamentarians Association, and the Kenya Parliamentary Human Rights Caucus. The repositioning of the PADV Bill as a piece of legislation ensuring the safety and security of families more broadly, rather than only women, also helped secure support from men.

One of the turning points for the PADV reform process occurred in the summer of 2014. Advocates were concerned about the future of the PADV bill ahead of its second reading in Parliament in August 2014. It was feared that without strong public support, the bill would undergo several amendments that would render it unusable or shelve it again, as had happened several times since 1999. Eventually, a coalition of civil society organizations, legal activists, the donor community, the Kenya Young Parliamentary Association (KYPA), the Kenya Parliamentary Human Rights Association (KEPHRA), and the Kenya Women Parliamentary Association (KEWOPA) came together to ensure that the bill would have enough support among the public and inside the National Assembly. A key role was played by supporting MPs, one of them Hon. Priscilla Nyokabi, at the time Nyeri County Woman Representative, Deputy Chairperson of the Justice and Legal Affairs Committee (JLAC), and a member of the House Business Committee. The work of advocates like her in the National Assembly ensured the cooperation of crucial committees, such as the JLAC, the Labour and Social Welfare Committee, and the House Business Committee.

Among civil society organizations, a catalytic role was played by the Women Empowerment Link (WEL), which brought together different women’s organizations with the goals of aligning their advocacy efforts and influencing lawmakers. WEL’s involvement focused on increasing women’s political participation and securing access to policy makers. Previous attempts to get the bill approved had failed because of a lack of coordination and momentum. Building on this lesson learned and on the momentum from the enactment of the 2010 Constitution, WEL mobilized women from all 47 counties, asking them to voice their opinions and needs in relation to gender equality. In addition, WEL partnered with organizations like the Men Engage Kenya Network (MENKEN) to identify, mobilize, and convene male champions in Parliament through workshops and by organizing discussions. Findings, materials, and key messages were disseminated to lawmakers and to the public through the media, in order to equip MPs with robust arguments and strengthen public support for the reform. International organizations such as UN Women and the International Rescue Committee (IRC) played an important convening role, facilitating discussions among civil society organizations and policy makers. They also provided funding, technical expertise (including international standards and best practices), and informational material.

While support for the bill grew steadily, there still was not a majority of MPs ready to adopt it. The MPs opposing the bill

framed it as legislative draft against men and questioned the rationale for the bill itself. “We do not want to create laws to manage our bedrooms,” one MP said during parliamentary debate, while another claimed that “there is nothing like ‘sexual abuse’ between a husband and wife,” and a third member warned that “we are trying to introduce activism in our homes.” Main sources of disagreement were the definitions of economic and psychological violence, and the powers granted to the police by the bill. In response to this, the media campaign “*jamii bila balaa*” (“society without violence”) was launched to reframe the bill as an instrument meant to protect families and ensure prosperity by preventing violence in the home.

Several male MPs advocated in favor of the legislation and helped to push back against the arguments raised during the readings of the bill. Among them were Hon. Samuel Chepkonga, who was Chair of the JLAC; Hon. Agostinho Neto, a member of the JLAC and Delegated Legislation Committee; and Hon. David Ochieng, also a member of the JLAC. Eventually, they greatly helped to secure the needed majority for the approval of the bill, which went through its third and final reading while many of the female MPs were in New York for the meetings of the United Nations Commission on the Status of Women (CSW). On March 24, 2015, the PADV Act was finally passed, thanks to the tireless work done by both civil society organizations and Members of Parliament, who were able to coordinate and influence lawmakers to achieve a decisive majority, and through the eventual support of MPs who initially opposed the bill.

International and regional best practices set high standards for legal reform

Broad coalitions are only successful if they can rally behind strong legislative drafts. Drafts are robust when they comprehensively address existing issues. As explained by Hon. Agostinho Neto, former Member of Parliament for Ndihiwa Constituency and co-convenor of the Kenya Parliamentary Human Rights Association (KEPHRA), “It is easier to remove than to add.” Evidence from research and data, recognized international best practices, international conventions, and the experience from countries that had already undertaken reforms were all considered during the process of drafting legislation. International organizations, such as the ILO and UN Women, played a particularly strong role here, providing opportunities to learn from, and convene around, international and regional best practices. The donor community also supported the drafting process by allocating funding to bring on board experts who could draw from and adapt examples of leading legislation from other countries. The Sexual Offences Bill, for instance, benefitted from the engagement of civil society organizations and international organizations that supported a comparative analysis of the legislation on sexual violence in Australia, Ghana, South Africa, Tanzania, and the United States. After Hon. Justice Njoki S. Ndung’u, a member of the National Rainbow Coalition at the time, gave notice in September 2004 that she intended to bring a motion on sexual offenses through a private member’s bill in the 9th Parliament, the bill underwent several rounds of drafting (Association for Women’s Rights in Development 2007). The Sexual Offences Bill was reviewed by the Justice and Legal Affairs Committee (JLAC) and amended extensively between August 2005 and March 2006, prior to the parliamentary debate. Additional changes and amendments were put in place before the final passing in the National Assembly in July 2006 (Onyango-Ouma, Njoki Ndung’u, and Birungi 2009). The final draft eventually borrowed heavily from the Sexual Offences Act, 2003 of the United Kingdom. This experience highlights how important it is for drafters and advocates of draft legislation to identify the inalienable elements that cannot be compromised without losing the essence of the reform, along with components that allow more flexibility, to leave room for the natural process of lawmaking, which is often characterized by negotiations and compromise.

As a result, the Sexual Offences Act of 2006 condensed into one law provisions that had been spread across different legal instruments, such as the Penal Code, the Criminal Procedure Code, and the Criminal Law Amendment Act of 2003. The SOA criminalizes and clearly defines sexual offences, establishing paths and procedures for prevention and protection. It further introduces minimum sentences and innovative measures, such as a DNA data bank, a registry of convicted sexual offenders, and the extension of liability to companies for multiple types of sexual offences, in particular those directed against children. In an effort to fill the gaps not addressed by the Sexual Offences Act of 2006, the PADV Act introduced protections specifically targeting intimate partner violence. Among the notable provisions introduced are: the possibility for third parties to file protection order requests; a more exhaustive definition of domestic violence (which includes physical, psychological, sexual, and economic abuse); and the ability to claim compensation in cases when a victim of domestic violence suffers personal injuries, damage to property, or financial loss as a result of the abuse.

The Employment Act of 2007 is another example showing the importance of robust and comprehensive drafts, especially when considering its provisions and policies on equal pay and leave. The new Employment Act, Law No. 11 of 2007, repealed an obsolete text from 1976 and introduced several rights and protections, including provisions establishing three months of maternity leave for women and two weeks of paternity leave for men; the definition of sexual harassment in employment and the requirement for employers (with more than 20 employees) to adopt a policy on the matter; the prohibition of discrimination in employment (recruitment, training, and promotion) “on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status”; equal remuneration for work of equal value; and the prohibition of the dismissal of pregnant workers. Finally, the Act also eliminated the ban on women’s employment in mining and industrial undertakings at night.

While the intention of reform proponents is always to set the highest standards, negotiations and the need to safeguard crucial partnerships can lead to compromises. The final text of a law may in some instances represent a significant improvement, all the while not matching the original intent of the reformers. One such example can be found in the area of maternity leave, where Kenya still falls short of the 98-day threshold established by the ILO Maternity Protection Convention No. 183. As the government was not prepared to cover the costs of such benefits when the Employment Act was drafted, the administration of maternity leave benefits is currently still a responsibility of the employer. Despite the efforts of the legislators, the negotiations between the members of the tripartite Taskforce (government, Federation of Kenya Employers, and Central Organization of Trade Union in Kenya) resulted in the adoption of 90 days (three months) of maternity leave and two weeks of paternity leave. Nonetheless, securing three months of leave versus the original two established in the 1976 Employment Act was considered a success for women.

Another example of legislative gaps comes from the PADV Act. As adopted, the law fell short of the expectations of the original drafters and civil society organizations that supported it, due to the amendments that removed important clauses and implementation provisions during the process in Parliament. Rules of procedure, initially included in earlier drafts of the bill, were dropped and their absence meant that there were severe gaps in the enforcement and implementation of the law, visible especially in the lack of capacity of the judiciary, prosecution officers, and the police.

Next steps toward meaningful implementation of reforms

“Reforms are not an end but a means to an end. We need to prepare for both the legislation and its implementation.”

—Hon. Priscilla Nyokabi Kanyua, first Nyeri County Women Representative and Commissioner at the National Gender and Equality Commission (NGEC)

The legal reform process in Kenya has been the result of ever-increasing participation by women in the public sphere, coordinated activism of a vibrant civil society, and the strengthening and establishment of dedicated institutions. It was driven by evidence and research, broad coalitions, and well-drafted legislation that led to significant reforms and the expansion of rights and protections for women. The comprehensive overhaul of the country’s labor laws was crucial to establish a series of rights and protections for Kenyan workers in general, and for women employees in particular. Similarly, addressing gender-based violence in the private and public spheres was also critical to ensure women’s health and safety, as well as their more active participation in both private and public life.

To date, these reforms have also encouraged the development of various national policies to ensure the establishment of vital services, data monitoring processes, and institutions to support the implementation of the legislation. One example is the National Policy on Gender and Development (2019), which identifies key issues and policy actions on a host of different areas, from women’s active participation in the economy to sexual- and gender-based violence (GBV). In the areas of GBV and female genital mutilation (FGM), the government renewed its commitment during the 2021 Generation Equality Forum by pledging to take action in four areas by 2026: aligning domestic legislation with international standards and ensuring its implementation; monitoring and researching GBV to boost evidence-based programming; adequately resourcing and financing GBV prevention, response, and support services; and strengthening partnerships with civil society organizations to develop multisectoral approaches. Another example is the Third Generation Decent Work Country Programme 2021–2024, which highlights the persistent economic attainment gaps for women and prioritizes access to decent jobs and economic opportunities for vulnerable groups, including women (Ministry of Labour 2021).

When reforms encompass solid data and research, broad coalitions, and strong legislative drafts, as discussed, results can be seen on the ground and are revealed by economic indicators, such as those measuring female labor force participation and the gender pay gap. Despite reforms and economic progress, however, women in Kenya continue to be disproportionately affected by high poverty rates and still face obstacles to exercise their voice and agency.

The success factors and lessons learned identified throughout this Brief can guide the Kenyan civil society, private sector, and government in addressing existing gaps and emerging challenges. In the area of employment this may include alignment with the ILO Maternity Protection Convention No. 183, which Kenya has not yet ratified. This standard establishes a minimum threshold of 98 days of maternity leave paid by the government. Efforts should also focus on establishing provisions that help new parents better balance childcare responsibilities, as highlighted by a recent petition filed by Dr. Benjamin Magare Gikenyi in front of the High Court of Nairobi requesting that the court extends paternity leave to three months. With regard to the SOA, one of the topics under discussion for possible reform is decriminalizing and removing penalties for consensual sex undertaken by adolescents. Scholars and CSOs recommend that Kenya’s legislation be reformed to create a legal regime that protects juveniles from sexual violation without victimizing or criminalizing those adolescents (Centre for Reproductive Rights and FIDA Kenya 2019; Njue and Materu 2021). In 2020, the Chief Justice and Chairman of the Rules Committee finally approved the rules of procedure for the implementation of the PADV Act, filling a legislative gap highlighted by civil society organizations. Advocacy groups still lament the lack of budget allocation for efforts to prevent gender-based violence and protect victims, which has resulted in

insufficient awareness and lack of services. Specifically, counties are expected to establish shelters, counseling services, and safe spaces but lack funding to do so. The allocation of resources and the establishment of key services for survivors of violence is even more pressing in light of the fact that gender-based violence is being exacerbated in all its forms by the COVID-19 crisis (HRW 2021; UN Women 2020). In the first half of 2020, GBV cases jumped by 92.2 percent when compared to 2019, with the most common forms of GBV recorded by authorities being murder, sexual offences and defilement (National Crime Research Centre 2020).

The developments of the past decades have shown that change is possible and can be effective. But filling remaining gaps will require the continued participation and representation of women in public spaces and decision making, as well as the concerted effort of civil society organizations, policy makers, international organizations, and the private sector.

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