

KENYA¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 31 May 2017)

Family Law Matter	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognise marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and family relations codified or uncoded? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the pri-</i></p>	<p>Article 27(1) of the Constitution provides that:²</p> <ul style="list-style-type: none"> • Every person is equal before the law and has the right to equal protection and equal benefit of the law; • Equality includes the full and equal enjoyment of all rights and fundamental freedoms. • Women and men have the right to equal treatment, including the right to equal opportunities in political, economic cultural and social spheres; • The State shall not discriminate directly or indirectly against any person on any ground, including sex and marital status; • A person shall not discriminate directly or indirectly on any 	<p>The case of <i>R.B & R.G.O v H.S.B & A.S.B</i>¹⁴ held that petitioners who meet the requirements to bring a case in Kadhis' Courts (subject matter, both parties Muslim) can submit their complaint in either the High court or the Kadhis' court.</p> <p>Kadhis courts are empowered with unlimited powers to apply Muslim family law without any restrictions. Consequently, Kadhis court judges are free to adopt any Muslim <i>fiqh</i> they deem fit to apply in</p>	<p>Kenya acceded to CEDAW without reservations.¹⁶</p> <p>The Government of Kenya in its 2016 report to the CEDAW Committee informed that the Marriage Act 2014 repeals the previous numerous pieces of legislation that had governed the institution of marriage, thus making it easier and more user friendly for women seeking matrimonial justice. The enactment of the law is a major victory for women in Kenya as it champions equality in marriage as well</p>	<p>Kenyan Muslims are under no legal obligation to have matters relating to marriage and family relations adjudicated by the Kadhis Court. They may choose for their matters to be adjudicated by other competent courts including Magistrate courts and High Courts. However, these courts will also apply Muslim family law.¹⁸</p>	<p>According to the 2016 UNDP Human Development Report, Kenya 146 on the UNDP Human Development Index and 135 on the UNDP Gender Inequality Index.¹⁹</p> <p>According to Kenya's 2014 Demographic and Health Survey, about 32% of households in Kenya are headed by women.²⁰</p> <p>According to a Senior Principal Khadi, in practice:²¹</p> <ul style="list-style-type: none"> • The absence of a

¹ This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Kenya country table, we would also like to thank Alyssa Oravec from Harvard Law School, and Sheikh Suqyan Hassan Omar and Sureya Roble for their inputs in its preparation.

² Article 27(1) of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

<p><i>mary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 54-55 GR29</p>	<p>ground including sex and marital status.</p> <p>Article 45 of the Constitution provides that:³</p> <ul style="list-style-type: none"> • The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State; • Parties to a marriage are entitled to equal rights at the time of the marriage, during the marriage, and at the dissolution of the marriage; • The following legislation relating to marriage and family relations are to be enacted to the extent that any such marriages or systems of law are consistent with the Constitution: (i) marriage concluded under any tradition, or system of religious, personal or family law; and (ii) 	<p>the cases before their courts.¹⁵</p>	<p>as reiterates the minimum age of marriage for all women across religious and cultural divides as outlined in Section 4 of the Act.¹⁷</p>	<p>standard codified Muslim family law in Kenya gives practitioners who include kadhis, lawyers, scholars and Muslims in general a free hand to resort to their favoured Muslim school(s) of thought;</p> <ul style="list-style-type: none"> • Ultimately, the choice of <i>fiqh</i> adopted by a Kadhi Court judge may be dictated by his personal philosophical inclination towards certain school of thought, sect or opinion. <p>In addition, according to the Senior Principal</p>
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¹⁴ *R.B & R.G.O v H.S.B & A.S.B* [2014] eKLR, <http://kenyalaw.org/caselaw/cases/view/104814/>
¹⁶ United Nations Treaty Collection Website, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtsg_no=IV-8&chapter=4&clang=en
¹⁸ Information obtained from Kenyan advocate, February 2017
¹⁹ UNDP, "Human Development Report 2016", Table 5, pp. 214-217, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf
²⁰ Kenya National Bureau of Statistics, et al., "Kenya Demographic and Health Survey 2014", Table 2.9, p. 22, <http://dhsprogram.com/pubs/pdf/FR308/FR308.pdf>
²¹ Information obtained from Kenyan advocate, February 2017
³ Article 45 of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xq?actid=Const2010>
¹⁵ Information obtained from Kenyan advocate, February 2017
¹⁷ Kenya State party report, U.N. Doc. CEDAW/C/KEN/8 (2016), para. 195, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

	<p>any system of person and family under any tradition, or adhered to by persons professing a particular religion.</p> <p>Article 107(5) of the Constitution provides that the Kadhis Court has jurisdiction to determine questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion and submit to the jurisdiction of the Kadhi's courts. This constitutional provision is reflected in Section 5 of the Kadhis Court Act.⁴</p> <p>The Marriage Act is the main codified law that governs marriage and family relations in Kenya.⁵ The Act recognises five types of marriages: Civil, Customary, Christian, Hindu and Muslim.⁶</p> <p>The provisions of the Marriage Act are applicable to all Kenyans unless stated otherwise in the Act (mainly the respective Parts of the Act that specifically relate to each</p>				<p>Chief Khadi, during marriage, Muslim husbands and wives take on fairly traditional roles. The husband provides maintenance for the family while the wife takes care of the internal affairs of the family. They may both work or go into business jointly or separately.²²</p>
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⁴ Article 170(1) of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>; Section 5 of the Kadhis Court Act (1967), <http://kenyalaw.org/lex/actview.xql?actid=CAP.%2011>

⁵ Marriage Act (2014), http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

⁶ Section 6(1) of the Marriage Act (2014), http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

	<p>of the five types of marriage recognised by the Act).⁷</p> <p>Section 3(1) of the Marriage Act defines marriage as a voluntary union of a man and a woman whether in a monogamous or polygamous union and registered in accordance with the Act.⁸</p> <p>In line with Article 45(3) and other equality provisions in the Constitution, Section 3(2) the Marriage Act provides that parties to a marriage have equal rights and obligations at the time of the marriage, during the marriage and at the dissolution of the marriage.⁹</p> <p>However, despite Article 45(3) and other equality provisions in the Constitution as well as Section 3(2) of the Marriage Act:¹⁰</p> <ul style="list-style-type: none"> • Section 3(4) of the Marriage Act states that parties to a Muslim marriage shall only 				
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²² Information obtained from Kenyan advocate, February 2017; Abdulkadir Hashim, “Muslim Personal Law in Kenya and Tanzania: Tradition and Innovation”, (Journal of Muslim Minority Affairs, 25:3, 2005), pp. 450-451, https://profiles.uonbi.ac.ke/hashim/files/tradition_and_innovation.pdf

⁷ See for instance Part III (Christian Marriages), Part IV (Civil Marriages), Part V (Customary Marriages), Part VI (Hindu Marriages), Part VII (Marriages under Islamic Law) of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf; Information obtained from Kenyan advocate, February 2017

⁸ Sections 3(1) of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

⁹ Article 45(3) of Kenya’s Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>; Section 3(2) of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

¹⁰ Article 45(3) of Kenya’s Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>; Sections 3(2), 3(4), 49(3) of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

	<p>have the rights granted under Islamic law, albeit with a proviso that this section is subject to the requirements of Section 3(2); and</p> <ul style="list-style-type: none"> Section 49(3) states that any provision in the Marriage that is inconsistent with Islamic law and practices shall not apply to persons who profess the Islamic faith. <p>Kenya does not have specific codified laws relating to Muslim marriages and family relations. These areas are governed by a combination of <i>Shari'ah</i> principles and judicial precedence.¹¹ With Sunni Muslims of the Shafi'i School being the majority of Muslims in Kenya, generally, the rules of Shafi'i jurisprudence (<i>fiqh</i>) apply in Muslim personal status matters.¹² However, Kenya also has a sizeable Hanafi community as well as Jafari, Zaydi and Ahmadi minority communities. The diverse Muslim population in Kenya has in turn resulted in a diversity of applicable Muslim <i>fiqh</i></p>				
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¹¹ Information obtained from Kenyan advocate, February 2017; Kevin Odimbe Wanyonyi, "The Kadhis Court in Kenya: Towards Enhancing Access to Justice for Muslim Women", *University of Lund Student Paper*, 2016, pp.20-24, <https://lup.lub.lu.se/student-papers/search/publication/8879897>

¹² Kevin Odimbe Wanyonyi, "The Kadhis Court in Kenya: Towards Enhancing Access to Justice for Muslim Women", *University of Lund Student Paper*, 2016, p. 24, <https://lup.lub.lu.se/student-papers/search/publication/8879897>; AbdulKadir Hashim, "Muslim Personal Law in Kenya and Tanzania: Tradition and Innovation", (*Journal of Muslim Minority Affairs*, 25:3, 2005), p. 452, https://profiles.uonbi.ac.ke/hashim/files/tradition_and_innovation.pdf; Emory Scholar Blogs, "The Republic of Kenya," *Islamic Family Law*, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/kenya-republic-of/>

	governing Muslim personal status matters in Kenya. ¹³				
<p>Minimum and equal legal age for marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Does the minimum age of marriage match the age of majority? Is there a minimum age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(2) Paras. 36-39 GR21</p>	<p>The minimum legal age for marriage is 18 for females and males as per Section 4 of the Marriage Act.²³ Section 4 applies to all Kenyans across all religions.²⁴</p> <p>Section 11(1) provides that a union is not a marriage if, at the time of marriage, either party is below the minimum legal age for marriage.²⁵</p> <p>Section 87 states that any person who marries a person below the legal minimum age for marriage commits an offence and shall be liable to a penalty (imprisonment, fine or both).²⁶</p> <p>Section 92(1)(a) provides that a person commits an offence if that person celebrates or witnesses a union purporting to be a marriage where that person knows or should that at least one party is below 18 and shall be liable to a</p>				<p>According to UNICEF's State of the World's Children 2016 report, 23% of women aged 20- 24 in Kenya were first married by 18 and 4% were first married by 15.²⁹</p> <p>According to Kenya's 2014 Demographic and Health Survey, the median age at first marriage for women is 20.2 and men is 25.3.³⁰</p> <p>According to Girls Not Bride, socio-economic factors are the primary drivers for child/ early marriage in Kenya. These include: (i) girls,</p>

¹³ Emory Scholar Blogs, "The Republic of Kenya," *Islamic Family Law*, <https://scholarblogs.emory.edu/islamic-family-law/home/research/legal-profiles/kenya-republic-of/>
²³ Section 4 of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf
²⁴ Kenya State party report, U.N. Doc. CEDAW/C/KEN/8 (2016), para. 195, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>
²⁵ Section 11(1) of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf
²⁶ Section 87 of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

	<p>penalty (imprisonment, fine or both).²⁷</p> <p>Section 14 of the Children Act states that no person shall subject a child to early marriage.²⁸</p>				<p>particularly in the rural parts of Kenya often being perceived by their families an economic burden; and (ii) poor access to education. In addition, cultural norms play a part as well. Girls, again particularly in the rural parts of Kenya, are often viewed as capital for their exchange value in terms of goods, money and livestock. To justify these economic transactions, a combination of cultural, traditional and religious arguments are often employed.³¹</p>
<p>Women's consent to marriage</p> <p><i>Is a marriage valid without the woman's consent? Is the practice</i></p>	<p>A prospective bride who is an adult and has married at least once must consent to her subsequent marriage. However, it</p>			<p>The procedure for Muslim marriages is as follows: Where a marriage officiant</p>	<p>Media reports suggest that forced marriage is common in Kenya, especially,</p>

²⁹ UNICEF, "The State of the World's Children 2016", Table 9, pp. 150-153, https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf
³⁰ Kenya National Bureau of Statistics, et al., "Kenya Demographic and Health Survey 2014", p. 55, <http://dhsprogram.com/pubs/pdf/FR308/FR308.pdf>
²⁷ Sections 92(1)(a), 92(2) of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf
²⁸ Section 14 of the Children Act (2001), <http://www.unesco.org/education/edurights/media/docs/f587bfa8b9536d479977207b897df7a3223f57ed.pdf>
³¹ Girls Not Brides, "Kenya", *Child marriages around the world*, <http://www.girlsnotbrides.org/child-marriage/kenya/>

<p><i>of forcing women to marry against their will (ijbar) prohibited? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise? Is it mandatory to register a marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(b) Paras. 15-16 GR21 Paras. 25-26, 33-34 GR29</p>	<p>is generally understood that based on the rules of Shafi'i <i>fiqh</i>, a father has the right to conclude a marriage on behalf of a virgin daughter of any age even if it is against her will. Consequently, <i>ijbar</i> marriage of a prospective bride who has not attained puberty or who has never been married may occur "behind the scenes" in Kenya.³²</p> <p>This is despite the following constitutional and legal provisions stating otherwise:³³</p> <ul style="list-style-type: none"> Article 45(2) of the Constitution provides that every adult has the right to marry a person of the opposite sex based on the free consent of the parties; Section 3(1) of the Marriage Act provides that marriage is a voluntary union between a man and a woman; 			<p>(kadhi, sheikh, mukhi or imam) authorised by the Registrar of Marriages (Registrar) celebrates a Muslim marriage, the official must record the details of the marriage, issue the parties to the marriage with a certificate of marriages and deliver the record and certificate to the Registrar. If the Registrar is satisfied that the provisions of the Marriage Act are met, the Registrar will register the marriage.³⁵</p>	<p>among young girls and in rural areas.³⁶</p>
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³² Information obtained from Kenyan advocate, February 2017; Woodrow Wilson International Centre for Scholars, "Best Practices": Progressive Family Laws in Muslim Countries", 2005, p. 16, <https://www.wilsoncenter.org/sites/default/files/Best%20Practices%20%28English%29.pdf>

³³ Article 45(2) of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>; Sections 3(1), 11(1)(e), 89 of the Marriage Act (2014), http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

³⁵ Part VIII of the Marriage Act (2014), http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

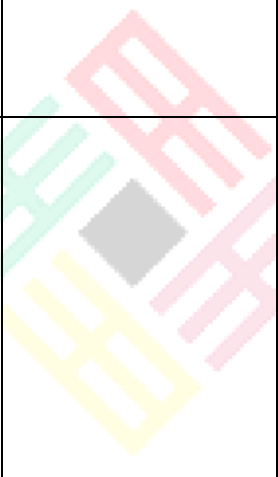
³⁶ Irisshel Shanzu, "Five girls walk for days to avoid their planned early marriage in West Pokot", *Standard*, 22 January 2016, <https://www.standardmedia.co.ke/article/2000189021/five-girls-walk-for-days-to-avoid-their-planned-early-marriages-in-west-pokot>; Catherine Soi, "Underage girls forced to marry in Kenya", *Al Jazeera*, 27 December 2013, <http://www.aljazeera.com/video/africa/2013/12/underage-girls-forced-marry-kenya-201312278350728652.html>; Anthony Aisi, "Illegal underage marriages high in rural Kenya, report finds", *Key Correspondents*, 11 December 2012, <http://www.keycorrespondents.org/2012/12/11/illegal-underage-marriages-high-in-rural-kenya-report-finds/>

	<ul style="list-style-type: none"> Section 11(1)(e) of the Marriage Act states that a union is not a marriage if at the time of the making of the union the consent of either party has not been freely given; Section 89 of the Marriage Act states that a person who enters a marriage with knowledge or who has reason to believe that consent was induced by coercion or fraud commits an offence and shall be to a penalty (imprisonment, fine or both). <p>The mandatory registration of marriages is provided for in Part VIII of the Marriage Act.³⁴</p>				
<p>Women’s capacity to enter into marriage</p> <p><i>Is consent of a marital guardian (wali) required? If so, can a woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refus-</i></p>	<p>Regardless of her age, a prospective bride requires the consent of a marital guardian (<i>wali</i>) to enter into marriage based on the rules of Shafi’i <i>fiqh</i>.³⁷ If the <i>wali</i> opposes the marriage, the prospective bride may seek the authorisation of a Kadhis court judge to get married.³⁸</p>	<p>According to a Senior Principal Khadi, the Kadhis court is “readily available to grant relief” to prospective brides whose <i>wali</i> has refused them consent to get</p>			

³⁴ Part VIII of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

³⁷ Information obtained from Kenyan advocate, February 2017; Woodrow Wilson International Centre for Scholars, “‘Best Practices’: Progressive Family Laws in Muslim Countries”, 2005, p. 16, <https://www.wilsoncenter.org/sites/default/files/Best%20Practices%20%28English%29.pdf>

³⁸ Information obtained from Kenyan advocate, February 2017

<p><i>es to consent to her marriage? Can a woman negotiate her marital rights prior to marriage and can these rights be changed during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p>Applicable CEDAW Provision Articles 16(1)(a), 16(1)(b) Paras. 15-16 GR21 Para. 34 GR29</p>		<p>married.³⁹</p>			
<p>Polygamous marriages</p> <p><i>Does the law prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of an existing wife required for a polygamous marriage? Is it necessary to inform an existing wife of the polygamous marriage? Are temporary marriages such as traveler's marriages (misyar) recognised? Is it necessary to register a polygamous marriage? Can a woman stipulate in the marriage contract that her intended husband cannot enter into a polyga-</i></p>	<p>A Muslim man may marry up to four wives at one time. There is no legal requirement for him to seek the permission of the court or his existing wife or wives to enter into a polygamous marriage.</p> <p>Section 3(1) of the Marriage Act states that a marriage may be a monogamous or polygamous.⁴⁰</p> <p>Section 6(3) states that an Islamic marriage is presumed to be polygamous or potentially polygamous.⁴¹</p> <p>Section 8 provides for a couple to declare their intention to convert</p>		<p>The Government of Kenya in its 2016 report to the CEDAW Committee acknowledged that contrary to Article 45(3) of the Constitution which provides for that parties to a marriage are entitled to equal rights at the time of marriage, during the marriage and at the dissolution of the marriage, the Marriage Act not only recognises</p>		<p>According to Kenya's 2014 Demographic and Health Survey, 11% of marriages in are polygamous. The survey also found that.⁴⁴</p> <ul style="list-style-type: none"> • Women in the Northern Eastern region of Kenya were most likely to report having co-wives (32%), followed women in the Nyanza (19%) and

³⁹ Information obtained from Kenyan advocate, February 2017

⁴⁰ Section 3(1) of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

⁴¹ Section 6(3) of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

⁴⁴ Kenya National Bureau of Statistics, et al., "Kenya Demographic and Health Survey 2014", Table 4.2.1, p. 57, <http://dhsprogram.com/pubs/pdf/FR308/FR308.pdf>

<p><i>mous marriage?</i></p> <p><u>Applicable CEDAW Provision</u> Para. 14 GR21 Para. 34 GR29</p>	<p>their potentially polygamous marriage to a monogamous marriage under the following conditions: (i) each spouse must voluntarily declare their intent to convert the potentially polygamous marriage to a monogamous one; and (ii) at the time the declaration is made, the husband must only have one wife. The declaration must: (i) be made before a marriage officer and must be recorded in writing and signed by each spouse; and (ii) registered with the Registrar of Marriage.⁴²</p>		<p>polygamous marriages but also allows the man to marry another wife without the first one's consent. The Kenyan government also declared that there is urgent need to bring those laws and customs in conformity with the Constitution.⁴³</p>	<p>Western (15%) regions. Women in the Central region were least likely to report having co-wives (3.9%);</p> <ul style="list-style-type: none"> • Older women were more likely than younger women to have co-wives. For instance, 18% of married women aged 45-49 reported having co-wives, as compared with 6% of women aged 20-24; • Rural women were more likely to report having co-wives than urban women (14% versus 7%); • Women living in poorer households were more likely than women living in
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⁴² Section 8 of the Marriage Act (2014), http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

⁴³ Kenya State party report, U.N. Doc. CEDAW/C/KEN/8 (2016), para. 30, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

					<p>richer households to have co-wives. For instance, 24% of women living in households in the lowest wealth quintile reported having co-wives, as compared with 5% of women living in households in the highest quintile; and</p> <ul style="list-style-type: none"> • Lower educated women were slightly more likely to report having co-wives than higher educated women. For instance, 32% of married women with no education reported having co-wives, as compared with 6% of women who has attained secondary or higher education.
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<p>Divorce rights</p> <p><i>Is there equal right to divorce between women and men? Can the husband divorce without reason and without having to go to court? What are the main forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce by repudiation (talāq) prohibited? If unilateral divorce is not prohibited, what is the procedure i.e. is the presence of the spouse to be divorced required, are witnesses required, does the spouse seeking divorce need to go to court, is the divorced spouse informed of the divorce? Is the unilateral right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p>	<p>Article 45(3) of the Constitution and Section 32(2) of the Marriage Act provide for equal rights between women and men at the dissolution of the marriage.⁴⁵ However, Section 71 of the Marriage Act states that the dissolution of an Islamic marriage is governed by Islamic law.⁴⁶</p> <p>There are four main ways in which Muslims can seek for divorce in Kenya:⁴⁷</p> <ul style="list-style-type: none"> • <i>Unilateral repudiation of the marriage (talaq)</i>: No legislation or administrative practice governs <i>talaq</i> divorce in Kenya.⁴⁸ Consequently, a husband can unilaterally repudiate a marriage without much restrictions,⁴⁹ • <i>Divorce by mutual consent of the husband and wife (mubarat)</i>: This can be initiated 	<p>The case of <i>N H A v M M M S A</i>⁵¹ held that for Muslim marriages, the types of and grounds for divorce are issues of law to be argued at trial. It is for the court to adjudicate the divorce according the principles of <i>Shari'ah</i>.</p>		<p>A husband may unilaterally repudiate a marriage without judicial supervision. A wife must always petition a court for divorce regardless of whatever form of divorce she is seeking (e.g. <i>khu'</i> etc.).⁵²</p> <p>The procedure for Muslim marriages is as follows: Where a kadhi, sheikh, imam or person authorised by the Registrar grants a decree for the dissolution of a Muslim marriage, the kadhi, sheikh, imam, Mukhi or authorised person must deliver a copy</p>	<p>According to a Senior Principal Khadi, in practice, among the challenges faced by Muslim women when seeking redress in court include:⁵⁴</p> <ul style="list-style-type: none"> • <i>High court fees</i>: Due to poverty of among many Muslim women, many cannot afford to bring a matter to court. The courts fees and other incidental costs are relatively high leading one to conclude that in Kenya litigation is commercialised without check;
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⁴⁵ Article 45(3) of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>; Section 3(2) of the Marriage Act (2014), http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

⁴⁶ Section 71 of the Marriage Act (2014), http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

⁴⁷ Kenya Law Resource Centre, Divorce in Islamic Law, 2011, <http://www.kenyalawresourcecenter.org/2011/07/divorce-under-islamic-law.html>; See also Arjungupta, "Divorce by Mutual Consent – Mubarat", 2015, <https://arjungupta1993.wordpress.com/2015/03/22/divorce-by-mutual-consent-in-muslim-law-mubarat/>

⁴⁸ Information obtained from Kenyan advocate, February 2017

⁴⁹ See for example, *B M S v M H M* [2015] eKLR, <http://kenyalaw.org/caselaw/cases/view/107530/>

⁵¹ *N H A v M M M S A* [2015], eKLR, <http://kenyalaw.org/caselaw/cases/view/107531/>

⁵² Information obtained from Kenyan advocate, February 2017

<p><u>Applicable CEDAW Provision</u> Article 16(1)(c) Paras. 17-18 GR21 Paras. 34, 39-40 GR29</p>	<p>by either party. The wife loses any right she may have to her dower (<i>mahr</i>) but the husband remains liable to maintain the children;</p> <ul style="list-style-type: none"> • <i>Redemptive divorce (khul')</i>: This is initiated by the wife if she feels that she is unhappy with the marriage. The wife returns the <i>mahr</i> to her husband and any other marriage gifts that he may have given her. The husband must consent to the <i>khul'</i> divorce; • <i>Court-decided divorce</i>: This is usually initiated by the wife by specifying her ground(s) for divorce and arbitrated by the court. Valid grounds for seeking a judicial divorce by a wife include a husband's: (i) failure to provide maintenance; (ii) prolonged absence; (iv) imprisonment; (v) failure to his marital obligations; (vi) severe illness. <p>The mandatory registration of a dissolution of a Muslim marriage is provided for by Section 72 of the Marriage Act.⁵⁰</p>			<p>of the decree to the Registrar.⁵³</p>	<ul style="list-style-type: none"> • <i>Submission</i>: Under the Constitution, all litigation in the Kadhis court must submit to its jurisdiction. Since over 80% of Kadhis court users are Muslim women, men have resorted to using the “submission clause” under the Constitution to frustrate women’s access to justice. The clause not only allows men to cause delays in the dispensation of justice but also lead to higher costs of litigation and ultimately mental torture for women; • <i>Distance</i>: There are a few Kadhis courts in Kenya,
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⁵⁴ Information obtained from Kenyan advocate, February 2017

⁵⁰ Section 72 of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

⁵³ Section 72 of the Marriage Act (2014), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf

					<p>thereby forcing Muslim women, many of whom are poor, to travel a long distance or stay in agony. The judiciary have been reluctant to introduce mobile Kadhis court which may be stationed in a particular town but make visit to other parts of the counter. The judiciary Transformation Framework 2012-2016 provides for bringing justice closer to the people;</p> <ul style="list-style-type: none"> • <i>Cumbersome laws and procedure:</i> Laws and procedure are generally difficult to comprehend. This leaves an impression that access to justice is only for the elite class of the
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					<p>society to the disadvantage of the less disadvantaged members of the society who constitute the majority of the court users. Muslim women are particularly disadvantaged mainly due to their poverty and illiteracy.</p>
<p>Women's financial rights after divorce</p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property upon dissolution of the marriage? Is the woman's role as wife and mother recognised as contribution to the acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a consolatory gift or compensation upon divorce (mut'ah)? Who is responsible for the financial</i></p>	<p>Generally, upon divorce, a woman may be entitled to:⁵⁵</p> <ul style="list-style-type: none"> Financial maintenance during the waiting period after the divorce (<i>iddah</i>) provided that she has observed all the rules; A consolatory gift or compensation (<i>mut'ah</i>); Any balance of the marriage dower (<i>mahr</i>) that remains unpaid; Compensation if: (i) her husband abuses his powers and divorces her arbitrarily and 	<p>In the case of <i>B M S v M H M</i>,⁵⁸ the wife claimed that her husband had divorced her arbitrarily and claimed for: (i) <i>iddah</i> maintenance; (ii) the balance of her <i>mahr</i>; and (iii) <i>mut'ah</i> compensation. The court awarded the wife:</p> <ul style="list-style-type: none"> <i>Iddah</i> maintenance for 90 days, calculated on the 			<p>According to a Senior Principal Kadhi, from a practice point of view claims for matrimonial assets are not popular in the Kadhi court. However, if such cases are strongly presented and argued in the Kadhi courts, many kadhis will recognise contribution of women including housewives to the property acquired</p>

⁵⁵ See for example, *B M S v M H M* [2015] eKLR, <http://kenyalaw.org/caselaw/cases/view/107530/>; Information obtained from Kenyan advocate, February 2017

⁵⁸ *B M S v M H M* [2015] eKLR, <http://kenyalaw.org/caselaw/cases/view/107530/>

<p><i>maintenance of children following a divorce? Can the couple agree to the division of assets acquired during marriage in the marriage contract? Can this stipulation be amended? If so, by who and on what basis e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(c), 16(1)(h) Paras. 30-33 GR21 Paras. 34-35, 43-48 GR29</p>	<p>without valid reason; and (ii) the matter ends up in the Kadhis courts. In such instances, the court, where practicable, may grant relief to the wife.⁵⁶</p> <p>The Matrimonial Property Act provides for a legal concept of matrimonial assets. However, Section 3 provides that Muslims may be governed by Islamic law in all matters relating to matrimonial property.⁵⁷</p>	<p>basis of 500 Kenyan Shilling per day (just under USD5/day);</p> <ul style="list-style-type: none"> <i>mu'tah</i> compensation. The court noted that <i>mu'tah</i> compensation is a discretionary form of compensation due to the lack of consensus on the matter among jurists. <i>Mut'ah</i> compensation is encouraged to be given to a divorced women to console them and to assist them in their new life. It is also aimed at reducing the rate of divorce. The court ruled that the wife had demonstrated 			<p>during the marriage and thereby setting strong foundation for a strong jurisprudence leading to a case law.⁵⁹</p>
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⁵⁶ Information obtained from Kenyan advocate, February 2017

⁵⁷ Section 3 of the Matrimonial Property Act (2013), <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/MatrimonialPropertyAct2013.pdf>

⁵⁹ Information obtained from Kenyan advocate, February 2017

		that she has been arbitrarily divorced by her husband. The court found that divorcing a 31-year-old woman after only 15 months of marriage is irresponsible, inhuman and inconsiderate. Consequently, the court awarded the wife 300,000 Kenya Shillings (just under USD3,000) as <i>mu'tah</i> compensation			
<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority right over the custody of the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon re-marriage or if she is deemed dis-</i></p>	<p>Custodial rights between women and men are equal.⁶⁰</p> <p>During marriage, pursuant to Section 24 of the Children's Act, a mother and father have parental responsibility for the child and neither the father nor the mother of the child shall have a superior right or claim against the other in</p>	<p>The case of <i>H M M v K J D</i>⁶³ held that the Constitution and the Kadhis Court Act do not confer Kadhi courts with jurisdiction over custody and maintenance and the Children Act</p>		<p>The Children's court adjudicate all matters regarding custody and maintenance of the children regardless of religion.⁶⁴ Kadhis court do not have jurisdiction over matters relating to</p>	<p>According to a Senior Principal Kadhi, limiting cases regarding children to the Children's court has caused confusion among Muslim women in addition to costly litigation. If a Muslim</p>

⁶⁰ Sections 81(1)(a) and (b) of the Children Act define "care and control" as the actual possession of a child, whether or not that possession is shared with one or more persons and "custody" with respect to a child to mean the parental rights and duties as relate to the possession of the child;
<http://www.unesco.org/education/edurights/media/docs/f587bfa8b9536d479977207b897df7a3223f57ed.pdf>

<p><i>obedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>	<p>exercise of such parental responsibility.⁶¹</p> <p>Upon divorce, based on Section 83(1) of the Children Act, when deciding on custody matters, the court must take into account the following factors:⁶²</p> <ul style="list-style-type: none"> • The conduct and wishes of the parent or guardian of the child; • The ascertainable wishes of the relatives of the child; • The ascertainable wishes of any foster parent, or any person who has had actual custody of the child and under whom the child has made his home in the last three years preceding the application; • The ascertainable wishes of the child; • Whether the child has suffered any harm or is likely to suffer any harm if the order is not 	<p>grants exclusive jurisdiction over all children matters including custody and/or maintenance only to Judicial Officers who are gazetted under the Children Act. Therefore Kadhis' court cannot preside on matters relation to custody and maintenance of children.</p>		<p>custody and maintenance of children.⁶⁵</p>	<p>woman wishes to file a suit for her own maintenance and that of her children, she may have to bring cases in both the Kadhis court for herself and the Children's court for the children's maintenance.⁶⁶</p>
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⁶³ H M M v K J D [2014] eKLR, <http://kenyalaw.org/caselaw/cases/view/101618/>

⁶⁴ Section 73 of the Children Act (2001), <http://www.unesco.org/education/edurights/media/docs/f587bfa8b9536d479977207b897df7a3223f57ed.pdf>

⁶¹ Section 24 of the Children Act (2001), <http://www.unesco.org/education/edurights/media/docs/f587bfa8b9536d479977207b897df7a3223f57ed.pdf>

⁶² Section 83 of the Children Act (2001), <http://www.unesco.org/education/edurights/media/docs/f587bfa8b9536d479977207b897df7a3223f57ed.pdf>

⁶⁵ AbdulKadir Hashim, "Muslim Personal Law in Kenya and Tanzania: Tradition and Innovation", (Journal of Muslim Minority Affairs, 25:3, 2005), p. 452,

⁶⁶ https://profiles.uonbi.ac.ke/hashim/files/tradition_and_innovation.pdf

Information obtained from Kenyan advocate, February 2017

	<p>made;</p> <ul style="list-style-type: none"> • The customs of the community to which the child belongs; • The religious persuasion of the child; • Whether a care order, or a supervision order, or a personal protection order, or an exclusion order has been made in relation to the child concerned and whether those orders remain in force; • The circumstances of any sibling of the child concerned, and of any other children of the home, if any; • The best interest of the child. 				
<p>Guardianship of Children</p> <p><i>Do parents have equal rights over the guardianship of their children? If no, who has priority right over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p>	<p>Under Section 102 of the Children Act “guardian” means the person appointed to assume parental responsibility for the child upon the death of the parent of the child.⁶⁷ Guardianship determined is based on the best interest of the minor in question.⁶⁸</p>				

⁶⁷ Sections 81(1)(a) and (b) of the Children Act define “care and control” as the actual possession of a child, whether or not that possession is shared with one or more persons and “custody” with respect to a child to mean the parental rights and duties as relate to the possession of the child;

<http://www.unesco.org/education/edurights/media/docs/f587bfa8b9536d479977207b897df7a3223f57ed.pdf>

⁶⁸ Information obtained from Kenyan advocate, February 2017

<p><u>Applicable CEDAW Provision</u> Articles 16(1)(d), 16(1)(f) Paras. 19-20 GR21</p>					
<p>Family Planning</p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilisation in law or in practice?</i></p> <p><u>Applicable CEDAW Provision</u> Articles 16(1)(e), 12 Paras. 21-23 GR21</p>	<p>Abortion is strictly prohibited unless in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law.⁶⁹</p>				<p>According to World Bank data, the total fertility rate decreased from 7.9 children per woman in 1960 to 4.3 in 2015.⁷⁰</p> <p>According to Kenya's 2014 Demographic and Health Survey.⁷¹</p> <ul style="list-style-type: none"> • The median birth interval in Kenya is 36.3 months, with 18% of children being born less than 24 months after their siblings; • 18% of married women have an unmet need for family planning services, with 9% having an unmet

⁶⁹ Article 26 of Kenya's Constitution, <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

⁷⁰ World Bank, "Fertility rates, total (births per woman)", <http://data.worldbank.org/indicator/SP.DYN.TFRT.IN>

⁷¹ Kenya National Bureau of Statistics, et al., "Kenya Demographic and Health Survey 2014", Tables 5.5, 7.1, 7.4, 7.12, pp. 72, 90, 94, 103, <http://dhsprogram.com/pubs/pdf/FR308/FR308.pdf>

					<p>need for spacing and 8% an unmet need for limiting of children;</p> <ul style="list-style-type: none"> • 58% of married women are using a method of contraception, with 53% of women using a modern method; and • Knowledge of at least one method of family planning is very high (99%) among married women in Kenya. <p>According to a Senior Principal Khadi, family planning is decided based on mutual consent in Kenya, which means that the husband should be involved in the process and his consent should be obtained.⁷²</p> <p>A Reproductive</p>
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⁷² Information obtained from Kenyan advocate, February 2017

					Health Care Bill is being debated in the Senate. ⁷³
<p>Personal rights of spouses</p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name? Can a woman protect her personal rights through her marriage contract?</i></p> <p><u>Applicable CEDAW Provision</u> Article 16(1)(g) Para. 24 GR21 Para. 34 GR29</p>	<p>Article 39 of the Constitution states that every person has the right to freedom of movement and Kenyan have the right to freely choose their place of residence.⁷⁴</p> <p>Article 43(1)(f) of the Constitution states that every person has the right to education.⁷⁵</p>			<p>Muslim women retain their maiden name.⁷⁶</p>	<p>According to a Senior Principal Khadi, Kenyan women have the freedom of education and movement, her husband or guardian also has the right to be involved in these decisions to ensure her safety.⁷⁷</p> <p>According to Kenya's 2014 Demographic and Health Survey.⁷⁸</p> <ul style="list-style-type: none"> • 75% of married Kenyan women were employed at the time of the survey;

⁷³ Geroge Githinji, "The Reproductive Health Care Bill Will Address Teenage Sex", *Political Kenyan*, 17 January 2017, <https://www.politicalkenyan.com/the-reproductive-health-care-bill-2014/>; Howard Akimala, "Kenya: Senate to Debate Reproductive Health Care Bill," *DSW*, July 2015, <http://www.dsw.org/en/2015/07/kenya-senate-to-debate-reproductive-health-care-bill>

⁷⁴ Article 39 of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

⁷⁵ Article 43(1)(f) of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

⁷⁶ Information obtained from Kenyan advocate, February 2017

⁷⁷ Information obtained from Kenyan advocate, February 2017

⁷⁸ Kenya National Bureau of Statistics, et al., "Kenya Demographic and Health Survey 2014", Tables 15.1, 15.2.1, 15.4.1, 15.6.1, 15.7.1, pp. 274, 275, 278, 281, 284, <http://dhsprogram.com/pubs/pdf/FR308/FR308.pdf>

					<ul style="list-style-type: none"> • 50% of married women earning cash made independent decisions on how to spend their earnings; • 58% of married women aged 15-49 do not own a house while 61% do not own land; among women who do own assets, 8% and 7% of women own a house and land by themselves, respectively; • 54% of married women participate either alone or jointly with their husband in making decisions pertaining to their own healthcare, major household purchases, and visits to their family or relatives; and • 42% of women aged 15-49
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					<p>accept at least one reason as a justification for wife beating. Women are most likely to agree that if a wife neglects the children, it justifies wife beating (33%).</p> <p>According to World Bank data, female labour force participation decreased from 70% in 1990 to 62% in 2016.⁷⁹ During the same period, male labour force participation fell from 80% to 72%.⁸⁰</p> <p>According to the 2016 UNDP Human Development Report:⁸¹</p> <ul style="list-style-type: none"> • 28% of women over 25 have at least some secondary education as compared to
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⁷⁹ World Bank, “Labour force participation rate, female (% of female population ages 15+) (modelled ILO estimate)”, <http://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS>

⁸⁰ World Bank, “Labour force participation rate, male (% of male population ages 15+) (modelled ILO estimate)”, <http://data.worldbank.org/indicator/SL.TLF.CACT.MA.ZS>

⁸¹ UNDP, “Human Development Report 2016”, Tables 5, 9, 14, pp. 214-217, 230-233, 250-253, http://hdr.undp.org/sites/default/files/2016_human_development_report.pdf

					<p>34% of men of the same age group;</p> <ul style="list-style-type: none"> • 87% of females aged 15-24 are able to read and write a short simple sentence as compared to 85% of males in the same age group; and • 76% of women are satisfied with their freedom of choice as compared to 82% of men.
<p>Inheritance rights</p> <p><i>Are women and men in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession? Are there procedures to address any inequalities in inheritance between</i></p>	<p>Generally, inheritance rights between women and men are unequal.</p> <p>The devolution of the estate of a person who, at the time of their death is a Muslim, shall be governed by Muslim Law.⁸² Thus, Muslim women are entitled to</p>				

⁸² Section 2(3) of the Law of Succession Act (2012), <http://www.kenyalaw.org/lex/rest/db/kenyalaw/Kenya/Legislation/English/Acts%20and%20Regulations/L/Law%20of%20Succession%20Act%20Cap.%20160%20-%20No.%2014%20of%201972/docs/LawofSuccessionAct14of1972.pdf>

<p>women and men e.g. can a will be written, can beneficiaries agree to inherit equal shares of the estate or can the children agree to forgo their inheritance in favour of their mother upon the death of their father?</p> <p>Applicable CEDAW Provision Paras. 34-35 GR21 Paras. 49-53 GR29</p>	<p>inheritance as provided by Shari'ah.⁸³ In many instances, for example in the cases involving widows and widowers as well as siblings, a woman is entitled to half the share of a man.⁸⁴</p>				
<p>Violence against women in the family</p> <p><i>Are there laws that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault and violence that affect a woman's mental health which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Is the husband allowed to discipline his wife? Can a suspected perpetrator marry his alleged abused victim to avoid punishment? Are</i></p>	<p>Article 28 of the Constitution provides that every person has the right to inherent dignity and the right to have that dignity respected and protected.⁸⁵</p> <p>Article 29 of the Constitution provides that every person has the right not to be:⁸⁶</p> <ul style="list-style-type: none"> • Subjected to any form of violence from either public or private sources; • Subjected to torture in any manner, whether physical or psychological; 		<p>The Kenyan government has developed a National Policy on Prevention and Response to Gender Based Violence.⁹³</p>		<p>According to Kenya's 2014 Demographic and Health Survey.⁹⁴</p> <ul style="list-style-type: none"> • Overall, 47% of married women aged 15-49 reported having experienced emotional, physical and/or sexual violence from their spouse at least once, and 33% reported having

⁸³ Information obtained from Kenyan advocate, February 2017; AbdulKadir Hashim, "Muslim Personal Law in Kenya and Tanzania: Tradition and Innovation", (Journal of Muslim Minority Affairs, 25:3, 2005), pp. 456-457, https://profiles.uonbi.ac.ke/hashim/files/tradition_and_innovation.pdf

⁸⁴ OECD Development Centre, "Kenya", *Social Institutions and Gender Index*, 2013, p. 2, <http://www.genderindex.org/sites/default/files/datasheets/KE.pdf>

⁸⁵ Article 28 of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

⁸⁶ Article 29 of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

⁹³ Kenya State party report, U.N. Doc. CEDAW/C/KEN/8 (2016), para. 63, <http://www.ohchr.org/en/hrbodies/cedaw/pages/cedawindex.aspx>

⁹⁴ Kenya National Bureau of Statistics, et al., "Kenya Demographic and Health Survey 2014", Tables 16.9.1, 16.14.1, 16.17.1, 16.18.1, pp. 308, 317, 323, 325, <http://dhsprogram.com/pubs/pdf/FR308/FR308.pdf>

<p><i>there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u> GRs 12 & 19 Para. 40 GR21</p>	<ul style="list-style-type: none"> • Treated or punished in a cruel, inhuman or degrading manner. <p>The Protection Against Domestic Violence Act criminalises a number of acts of domestic violence such as:⁸⁷</p> <ul style="list-style-type: none"> • Abuse that includes child marriage, female genital mutilation, forced marriage, forced wife inheritance, interference from in-laws, sexual violence within marriage, virginity testing and widow cleansing; • Damage to property; • Defilement; • Depriving the victim of access to the victims place of residence; • Economic abuse; • Emotional or psychological abuse; • Harassment; • Incest; • Intimidation; • Physical abuse; • Stalking; • Verbal abuse; and • Any other conduct against a person, where such conduct harms or may cause imminent 				<p>experienced one or more of these forms of violence in the past 12 months;</p> <ul style="list-style-type: none"> • 32% of married women aged 15-49 reported having experienced emotional violence from their spouse at least once, and 24% reported having experienced such violence within the 12 months prior to the survey; • 37% of married women aged 15-49 reported having experienced physical violence from their spouse at least once, and 23% reported having experienced such violence within the 12 months prior to the survey;
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⁸⁷ Section 3 of the Protection Against Domestic Violence Act (2015), http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProtectionAgainstDomesticViolenceAct_2015.pdf

	<p>harm to the safety, health or well-being of the person.</p> <p>Section 8(1) allows a victim to apply to the court for a protection order.⁸⁸</p> <p>Section 32(1) states that, where the victim of domestic violence suffers personal injuries or damage to property or financial loss as a result of the domestic violence, the court may award compensation as it deems just and reasonable.⁸⁹</p> <p>Other legislation that may be applicable to domestic violence include the Sexual Offences Act⁹⁰ and the Penal Code.⁹¹</p> <p>Section 43(5) of the Sexual Offences Act however, specifically, exempts marital rape as an offence.⁹²</p>				<ul style="list-style-type: none"> • 13% of married women aged 15-49 reported having experienced sexual violence from their spouse at least once, and 10% reported having experienced such violence within the 12 months prior to the survey; • Among married women who had experienced spousal violence (physical or sexual) in the past 12 months, 43% reported experiencing
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⁸⁸ Section 8(1) of the Protection Against Domestic Violence Act (2015), http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/ProtectionAgainstDomesticViolenceAct_2015.pdf

⁸⁹ Section 32(1) of the Protection Against Domestic Violence Act, 2015, http://kenyalaw.org/ki/fileadmin/pdfdownloads/Acts/ProtectionAgainstDomesticViolenceAct_2015.pdf

⁹⁰ Section 3 of the Kenyan Sexual Offences Act (2006), <http://kenyalaw.org/lex/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/S/Sexual%20Offences%20Act%20Cap.%2062A%20-%20No.%203%20of%202006/docs/SexualOffencesAct3of2006.pdf>

⁹¹ Penal Code (1930), <http://kenyalaw.org/lex/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/P/Penal%20Code%20Cap.%2063%20-%20No.%2010%20of%201930/docs/PenalCode81of1948.pdf>

⁹² Section 43(5) of the Kenyan Sexual Offences Act (2006), <http://kenyalaw.org/lex/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/S/Sexual%20Offences%20Act%20Cap.%2062A%20-%20No.%203%20of%202006/docs/SexualOffencesAct3of2006.pdf>

					<p>physical injuries; and</p> <ul style="list-style-type: none"> • 41% of women in Kenya never sought help and never told anyone about the violence they have experienced. Among women who have sought help, most sought help from their own family (65%) or their husband's family (31%). Only 7% sought help from the police. <p>According to a Senior Principal Kadhi, although the law prohibits any form of violence against the women, some forms of domestic violence such as wife battering, are rampant. Among Kenyan Muslims, there are some who believe that what the law considers as violence against women, are actually</p>
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					their religious rights. Such acts include female circumcision, marital rape, etc. ⁹⁵
<p>Nationality rights</p> <p><i>Does a wife have the right to confer her citizenship on foreign husbands and children? Can the nationality of an adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u> Article 9 Para. 6 GR21</p>	<p>A Kenyan woman or man may pass their nationality to their non-Kenyan spouse provided after at least seven years of marriage.⁹⁶</p> <p>A Kenyan mother or father may pass their citizenship to their children regardless of whether the child was born in Kenya or abroad.⁹⁷</p>				

⁹⁵ Information obtained from Kenyan advocate, February 2017

⁹⁶ Article 15(1) of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>

⁹⁷ Article 14(1) of Kenya's Constitution (2010), <http://www.kenyalaw.org/lex/actview.xql?actid=Const2010>