

JOINT CIVIL SOCIETY RESPONSE TO THE QUESTIONS FROM THE COMMITTEE DURING ITS 57TH PUBLIC SESSION HELD AT THE PALAIS NATIONS ON 22ND FEBRUARY 2016.

1. Inequality of women- whether the harmful cultural practises we pointed out are provided for in the law –
2. Yes. Under the Constitution, cultural rights are provided for but only in so far as they are not inconsistent with the Constitution. Therefore harmful cultural practices are forbidden by the constitution, but continue to be practised because there is no deliberate action by the State to target the communities with information and other strategies aimed at eradicating these vices. Not all cultural laws are bad but majority are bad for women rights for example female genital mutilation, early marriage, wife inheritance and beading.
3. Are there other laws other than the Constitution that provide for women's rights, Gender equality and representation?

Yes. The Marriage Act, Matrimonial Property Act, Protections from Domestic Violence Act, Sexual Offences Act, Elections Act, Political Parties Act, Land Act, FGM Act. All have components of very progressive provisions on women empowerment. The difficulty has not been with lack of legislation but with lack of implementation of the laws. These provisions remain good on paper while the practice remains unfavourable for women.

4. Corruption and bad governance-is there a study or an analysis that has been done on the impact of corruption on economic and social rights?

The state is failing in its responsibility to hold county governments accountable as they implement economic social and cultural rights, as provided for by the constitution.

The Kenya human rights Commission and Transparency International have conducted research on the impact of corruption on economic and social rights have churned out several reports, among which have been highlighted below:

http://www.knchr.org/Portals/0/EcosocReports/Living_Large.pdf

<http://www.knchr.org/Portals/0/EcosocReports/Unjust%20Enrichment%20Volume%201.pdf>

[pdf](#)

<http://www.knchr.org/Portals/0/EcosocReports/Human%20Rights%20Dimensions%20of%20Corruption.pdf>

5. Anti FGM Act- why is it not working properly? Is it just attributed to the lack of community participation in its drafting? What is the progress/lack of progress on the implementation of the Act?

In theory, the Anti-Female Genital Mutilation Act has progressive provisions that forbid FGM from being carried out, and giving strict penalties for the perpetrator as well as those who aid and abet, including the parents, if culpable. There is established a Board under the Act to propose and recommend strategies to target the community so that the community understands the harm that the practise causes on their girls and women. However, the problem is with the implementation of the law. The Board established has not publicized any recommendations, the members do not visit the areas where prevalence of FGM is high, and therefore despite a few perpetrators being arrested by the authorities, the communities have come together to threaten the Police should they continue to arrest the perpetrators, the communities have changed tactics in the way they have traditionally circumcised the girls and therefore making it hard for the police to make any arrests.

6. What has changed after economic, social and cultural rights were recognized in the Constitution?

Quite a few things have changed for the good. Economic and social rights are now justiciable under the laws of Kenya, international and regional treaties that Kenya has ratified have formed part of the laws of Kenya which offers a broader and deeper understanding of the rights under the constitution. Subsidiary legislation has been passed/ are in the process of being passed to implement most economic social and cultural rights under the constitution.

However, because of the requirement for progressive implementation of these rights, state good will is paramount to the realization of economic social and cultural rights. The state is required to not only pass the laws, but to develop policies and guidelines on how to implement these laws. Further the state is required to ensure implementation of these rights progressively. However, this is lacking in Kenya. The state has not good will to realize these rights. This can be supported by the lack of compliance to court orders that have been made in favour of the public, laxity in the government to prosecute persons suspected of corruption and misappropriation of funds meant to improve the social economic status of Kenyans, etc.

7. Lack of implementation of the not more than 2/3 gender rule- what is the progress in formulation of rules to implement this principle?

The Technical Working Group (TWG) was established by the Government to come up with a mechanism of achieving the two thirds rule. TWG held national and grassroots

consultations and came up with a mechanism that was translated into a Constitutional Amendment Bill famously referred to as the *Duale Bill*. Though the bill is being fronted by the leader of majority in parliament it is very clear that there is a lack of political will to enact the law. It seems lip service since the same majority passed a law to extend the time for implementation of the rule by one year with a new deadline of August 2016. Currently there are three competing bills in Parliament Chepkonga Bill, Duale Bill and Duale Compromise Bill

Although the Prevention Protection and Assistance to Internally Displaced Persons and affected communities Act of 2012 established a rights based framework on human rights based response to internal displacement the methods of displacing these persons does not in fact adhere to these principles.

8. Implementation of African Commission decision on endorois community-have they received any monetary compensation from the state as advised by the task force?

No. they have not received any compensation. The reason is because, when the task force was put together, the Endorois community felt they were not adequately represented in the task force. Those that had been included in the task force as representing the Endorois community did not in fact represent them. Throughout the life of the task force, the community expressed their dissatisfaction with the composition of the task force. On seeing that nothing was being done about it, the community formed its own task force to come up with recommendations on how best to compensate them. When the government task force had made its recommendations, it was not surprising that they were not accepted by the community, who sought to have their own recommendations considered and adopted. This push and shove has been going on for about a year, with no head way. Meanwhile the real victims remain uncompensated.