

WOMEN'S AND GIRLS' RIGHTS IN KENYA

LEGAL EQUALITY

UNIVERSAL PERIODIC REVIEW - PRE SESSION 35

ISSUE:

Sections 2, 3 and 6 of Kenya's Marriage Act No. 4 of 2014 promote inequality as they allow a man to have more than one wife. This is in direct contradiction to Article 27(1) of Kenya's Constitution which states that, "Every person is equal before the law and has the right to equal protection and equal benefit of the law." Further, the law contravenes Article 6 (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, that specifically encourages monogamy as the preferred form of marriage.

PROGRESS SINCE KENYA'S LAST UPR:

None and no specific recommendations regarding polygamy were made to Kenya in the previous UPR cycles in which Kenya participated.

CHALLENGE:

These provisions violate Kenya's obligations under international law and the UN Sustainable Development Goals (SDGs); both the CEDAW Committee and the Human Rights Committee have found that polygamous marriages discriminate against women and violate a woman's right to equality in marriage. In addition, Article 27(1) of the Constitution is unfortunately limited by Article 24(4) of the Constitution of Kenya: The provisions of this Chapter on equality shall be qualified to the extent strictly necessary for the application of Muslim law before the Kadhis' courts, to persons who profess the Muslim religion, in matters relating to personal status, marriage, divorce and inheritance.

RECOMMENDATION:

The Kenya Government should amend the Marriage Act to prohibit polygamous marriages, regardless of religion or custom, going forward and review, amend or repeal all sex discriminatory laws and policies. Amend the Constitution so that there are no exceptions to the right to equality.