**Working Group on discrimination against women in law and in practice**

**Questionnaire on good practices**

In accordance with its mandate, the UN Working Group on the issue of discrimination against women in law and practice has developed this questionnaire to gather information on “good practices” in eliminating discrimination and empowering women for its next thematic report. Given the centrality of the law to the Working Group’s mandate, the report will focus on the processes by which laws that support women’s equality and enjoyment of human rights come into being and are implemented in ways that support women’s enjoyment of their human rights and fundamental freedoms.

The questionnaire intends to solicit information on how a specific law aimed at addressing discrimination against women and promoting women’s substantive equality has come into being, was effectively implemented (I), and what impacts the law has had for women on the ground (II).

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) clearly establishes State obligation to respect, protect and fulfill women’s human rights, ensuring the de facto enjoyment of those rights by women. CEDAW’s framework is founded on the principle of substantive equality, which requires States to take active measures to not only eliminate laws and practices that directly discriminate against women, but to create an environment in which women’s rights can be fulfilled. Good practices in the promotion of women’s human rights thus require a holistic approach that addresses both the causes and consequences of discrimination, and aim at social transformation.

Recognizing the aspiration of the Working Group to better understand the processes and elements which contribute to build “good practices” in legislation and its implementation the Working Group requests that you provide detailed information on at least **one law** adopted in a State that has been successfully implemented in that it has had a notably substantial impact on eliminating discrimination against women in the specific area related to that law and has enhanced women’s enjoyment of their human rights in your national context, such that you consider it a “good practice.” Processes of substantive change often take place over a period of many years, so the law need not be new: this survey should focus on a law whose impact has been substantiated and the impacts of which are still being seen.

The Working Group wishes to thank all stakeholders for responding to this questionnaire **by 12 September 2016.**

**Questionnaire**

**For the following sections, please provide information about a law that has been selected as an exemplary case study of a “good practice” in eliminating discrimination and empowering women in your national context.**

**I. Identification of a law that has eliminated or substantially reduced discrimination and supported women’s empowerment.**

*Background Information on the Law*

1. Name/Title of the Legislation: \_*Matrimonial Property Act2013.*

2. Date the law passed and came into force: *Passed on 18th December 2013. Came into force on 16th January, 2014*

3. Was it a new law or an amendment of an existing law?

New ( ) Amendment ( √ )

 If it was an amendment of an existing law, please providing name/title of existing law and any pertinent information here: *Repealed Matrimonial Property Act “Married Women Property Act” of 1882*

4. Is the legislation focused specifically on discrimination against women/gender equality, or is it part of a larger piece of legislation (i.e. Labour law with provisions around gender)? Please explain. *Recognizes Women contribution towards acquisition of Matrimonial Property in Non-Monetary Terms.*

5. Please provide a summary of the content of the law, its preamble or explanatory note, policy measures, dissemination and implementation regulations, and provisions for access to justice, as well a link to where all these can be found online. ***kenya****law.org/****kenya****lawblog/highlights-of-the-****matrimonial****-****proper first introduced in parliament in 23rd nov 2012 but never passed due to partriachy of the male mps in kenyan parliament.***

 6. When was the first draft of this law introduced, and when was it adopted (please specify dates of first draft and adoption? Introduced on ***23rd nov 2012and rejected .*** *came into effect 16th January, 2014 after reintroduction in*

7. In your view, does the law in question place a positive duty on the State to achieve substantive equality for women?

Yes ( ) No ( √ )

 If yes, please explain:

8. Does the law contain a definition of discrimination that is in accord with Article 1 of CEDAW?

Yes ( ) No ( √ )

 If yes, please direct us to the section of the pertinent document. If not, please indicate if that definition is enshrined already in the constitution or charter of rights.

*Kenya compelled by the Constitution to do Affirmative Action on Women Articles 56 and 227.*

*That definition is included in Article 27 of the Constitution which calles upon States to make laws that are non-discriminatory to women and outline 14 basis upon which women are not to be discriminated.*

9. Does the law’s definition of discrimination include and define both direct and indirect discrimination?

Yes ( ) No ( √ )

 If yes, please explain: *The Law denies women access to ancestral Property of husband and any property acquired before marriage.the law seeks consent of the fisrt wife only in the case of polygamous unions and does not consider the rights of co wives even if they live on this property.*

10. How has the Constitution supported the process of adoption and implementation of the law? Does the Constitution have an equality and non-discrimination provision? *Yes. Article 27 provides equality, equity, freedom and non-discrimination for all persons.* Ch 1. Article 2(5) of the Constitution of Kenya incorporates international law.[6](http://www.impowr.org/content/current-legal-framework-marital-assets-and-property-kenya#footnote6_msfjw7a)  Kenya has ratified the following international human rights conventions: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the United Nations Universal Declaration of Human Rights; and the African Charter on Human and Peoples’ Rights (African Charter).  All of these conventions protect a women’s equal right to property.[7](http://www.impowr.org/content/current-legal-framework-marital-assets-and-property-kenya#footnote7_lhux0jq)  Article 15 of the CEDAW protects the equality of women and men

The Constitution of Kenya established the Kenya National Human Rights and Equality Commission.[4](http://www.impowr.org/content/current-legal-framework-marital-assets-and-property-kenya#footnote4_u601zq7)  One of the functions of the Commission is “to promote gender equality and equity generally and to coordinate and facilitate gender mainstreaming in national development and to monitor observance of womens rights.

11. Does the law contain provisions that address discrimination against women from an intersectional perspective, taking into account a diversity of women’s social identities, statuses and experiences?

 Yes ( ) No ( √ )

 If yes, please explain which social identities, statuses and/or intersectional factors are explicitly noted in the law: *Spousal consent is required in monogamous marriage but not in polygamous ones even when such women live on the land.*

12. Whom of the following are bound by the law?

 The State Yes ( √ ) No ( )

Public Authorities/Bodies Yes ( √ ) No ( )

Civil society organisations Yes ( √ ) No ( )

Private companies Yes ( √ ) No ( )

Individuals Yes (√ ) No ( )

**II. How the law came into being and was implemented**

1. What was the impetus for the development of this law (i.e. social movement activism, political platform, a Supreme Court ruling, an egregious case of discrimination, constitutional reform…)? *Men felt that women could abuse this law if accorded equal rights over property by filing for divorce and demanding equal share where they never contributed.They defeated the clause on equal share of property between spouses at divorce and called for shairing according to contribution which wives have to prove but recognize their non financial contribution to acquisition of property a major gain for women. The law is silent on property held in companies. It is silent on rights of children in the marriages.*

*There was a lot of disinheritance of women from there matrimonial properties by relatives of their late husbands hence kewopa brought he bill to parliament.*

*There was need to protect the right of property by spouses in Kenya.*

2. Were there any conditions in the political context that made it possible for this law to be developed and adopted at the time that it was (i.e. a particular political party in power, a conflict/post-conflict situation, a recent ratification of an HR instrument, etc.)?

Yes ( ) No ( √ )

If yes, please explain:

* *The New Constitution obligates Government to make favourable laws to women – Article 27.*
* *Increased number of female parliamentarians brought this but it was every passed as they intended. 28 out of 34 women opposed the Bill but men overwhelmingly supported it.*
* *The Jubilee key ain is women empowerment and is keen to support women friendly laws.*
* *The Constitution recognizes international conventions like CEDAW.*
* *Many women are calling for equity.*

3. What actors were consulted and how were they consulted in the law’s development and formulation? Check all that apply, and, where possible, provide names of involved individuals, agencies, organizations, etc.

Legal Experts/scholars (please specify) ( √ ) *Kenya Women Parliamentarians ( KEWOPA)*

Government Ministries ( ) *Ministry of Devolution and Planning Gender Director.*

NHRI ( ) *Kenya National Human Rights Commission*

NGOs/CSOs ( ) *Coalition of Covaw Women Council of Kenya.*

Other social groups (specify) ( ) State Law Office. UN Women.

4. Was there opposition to the law?

Yes ( √ ) No ( )

If yes, please explain from whom and why, and how it was addressed:

 *28 of the 34 women legislators opposed this law and these issues have not been addressed.*

6. Were there other laws that needed to be reformed in order to enact this law?

Yes ( √ ) No ( )

If yes, please list and explain: *This law annulls the Married Women Act 1882 which denied women property rights and was discriminatory.*

7. Were any international human rights treaties or mechanisms referenced in the law’s creation?

Yes ( ) No (√ )

If yes, please list and explain:

8. Did any international/regional/national human rights mechanism issue recommendations to the State in regard to amendment or formulation of this law, or regarding effective implementation? If yes, was this recommendation formulated prior, during or after the adoption of the law?

Yes ( ) No ( )

If yes, please list and explain: *That women and men have equal rights to matrimonial property during marriages and at divorce as per Article 45 Clause 3 in the Constitution.*

9. What measures to support implementation were built into the law or developed immediately after (and as a result of) its passing? This could include such measures as budgetary and resource allocation, monitoring mechanisms, data collection, impact measurement mechanisms, independent monitoring, etc. Please list and explain, providing any relevant documents. *The Government has various women empowerment programmes. \*\*\*Echaria Law that only recognized financial contribution only to acquisition of matrimonial property was repelled:*

*- Public education on the Law;*

*- Law is available in the Kenya Law Report;*

 *- FIDA assist women to claim their rights when violated; and*

 *- Probono or free legal services to distressed women.*

10. How was the law made accessible to the public? Did it include formal training on the new law for all stakeholders involved? Were specific groups of women targeted for these activities? Who was involved in these initiatives, and where did the funding come from? Please answer in detail. *Regulation on implementation is in process of being made. Law is available to public through Kenya Law reports website*.

11. Have there been any barriers to the law’s full and successful implementation?

Yes ( √ ) No ( )

If yes, please explain the barriers and how they were/are being addressed:

* *Patriachy – Male dominance over women in most Kenyan communities.*
* *Resistance by men to accord equal rights on property to spouses as per Article 45 (3) of the Constitution.*

12. What kinds of roles are being carried out by civil society/women’s organizations in supporting the implementation and impact of the law? How are these activities being financed?

* *Social activitism by women;*
* *NGO’s for recognition of women property rights;*
* *The Courts are enforcing the law. KEWOPA lobbying*

**III. The impacts that the law has had for women on the ground**

1. Did the adoption of the law result in the creation of any policies?

Yes ( √ ) No ( )

If yes, please list and explain:

* *More women are claiming their rights;*
* *Men now treat their spouses with caution for fear of divorce to avoid splitting of properties and paying for upkeep of children;*
* *Men treat women fairly now.*

2. Have court cases/decisions resulted from the law? Has this data been systematically collected? If so, please provide details about the number of cases, convictions, decisions made.

* *The Law repealed the Echaria and Echaria precedent judgement which did not recognize women contribution indirectly to acquisition of property favouring financial aspects only.no data but law enforced .*

3. What specific and measurable outcomes showing the impact of the law on society and on women’s enjoyment of their rights have been recorded as a result of the adoption and implementation of the law? How have these been monitored and by whom?

4. Are there other impacts of the law that have been observed?

Yes ( √ ) No ( )

If yes, please list and explain what they are, as well as monitoring mechanisms used to observe and/or measure those impacts:

* *Repeal of Married Women Property Act of 1882 and Echaria and Echaria which conferred more rights to women over property;*
* *Sharing of liabilities incurred over matrimonial properties;*
* *Recognition of women non-financial contribution to property.*
* *Women matrimonial property rights recognized.*

5. What mechanisms have been set up to review and assess the implementation of the law?

* *Kewopa is still lobbying for amendment to this law to remove unfriendly to women but this may be hard as when Members of Parliament do support this.*

6. Is there data on how the law has affected some groups of women differently (i.e. based on race, ethnicity, religion, social class, age, etc.)?

Yes ( ) No ( )

* *Muslim couples follow the Islamic Law and Polygamous women follow the African Customary Law;*
* *The first wife has greater rights over property than subsequent wives;*
* *Spousal consent required in monogamous marriage before selling, leasing matrimonial property but in polygamous unions this is not required apart from only the first wife.*

If yes, please explain the differential impacts and provide any relevant documents.

7. Has there been independent monitoring of the law?

Yes ( √ ) No ( )

Please provide information.

* *Kenyan women parliamentarians still lobbying to have the law compliant with the Constitution.*

2013