



SUPPORTING COUNTIES PREVENT AND RESPOND TO SEXUAL AND GENDER BASED VIOLENCE: POLICY BRIEF



GENDER CENTRE
Collaborative Centre for Gender & Development

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JAMII THABITI
USALAMA WETU UBORA WETU

Prosperity House, Ground Floor, Westlands Road,
Landline: +254 20 2710484/5

Twitter: @jamiithabiti
www.jamiithabiti.co.ke
P. O. Box 4320, 00100,
Nairobi, Kenya



GENDER CENTRE

Collaborative Centre for Gender & Development

Email: info@ccgdcentre.org;
collaborative.centre@gmail.com

Website: www.ccgdcentre.org

Tel: (020) 2252058 Cell phone: 736-474556

P.O. Box 27559-00506

Nairobi | Kenya

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Collaborative Centre for Gender and Development (CCGD) is a Non-Governmental Organization working mainly on gender mainstreaming programs at County, National and Regional levels. CCGD is supporting County Governments to develop policies and laws that are aimed towards response to and prevention of violence against girls, boys, women and men. This policy brief is intended to guide counties on how to use legislation to support programs seeking to deal effectively with sexual and gender-based violence.

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ABSTRACT

Despite a comprehensive national policy and legal framework, Sexual and Gender Based Violence (SGBV) and in particular violence against women and girls (VAWG) is still of critical concern. Devolution has placed responsibility on counties to operationalize national frameworks at their levels in part through facilitative legislation, policies and coordinated plans of action that elaborate effective prevention and response measures.

EXECUTIVE SUMMARY

The constitution envisages devolution among far reaching reforms for accountable, effective and inclusive governance at national and county levels. Devolved mandates include county legislation that so far has been hindered by insufficient technical capacity in particular regarding enactment and implementation of laws and policies that support efforts to prevent and manage violence against women and girls (VAWG)/sexual and gender based violence (SGBV). Patriarchal cultures still prevalent in many counties often threaten to reverse anti gender/sex discrimination gains made at national level in exchange for local cultural practices still popular with a significant constituency of county citizens. Article 185 of the constitution gives county assemblies power to enact any laws that are necessary or incidental to the effective performance of the functions and exercise of their powers and a duty to ensure that laws passed are well implemented by keeping the county executive in check however county assemblies are struggling to meet expectations.

A rapid assessment conducted in Wajir, Baringo and Kwale counties showed capacity gaps in human resources, finance and legislation. The study revealed that coordinated efforts among both national and county governments as well as CSO and PSO stakeholders to prevent and prevent VAWG/SGBV is weak. Further there is no specific budgetary allocation to fund SGBV/VAWG initiatives with some counties believing that such initiatives do not present a funding priority.

Despite some counties showing efforts at starting to address VAWG/ SGBV, capacity to formulate effective policies or to initiate bills and oversee implementation was clearly an area of improvement.

The above situation leads to the conclusion that available means to accelerate adoption of legislation, policies and institutional mechanisms to resource SGBV/VAWG prevention, protection, and service delivery be accelerated. Multi stakeholder consultations including with county executives, members of county assemblies, representatives of national government sectors and participation of CSOs and PSOs should form an integral part of advocacy and development of county laws and policies. These should go hand in hand with systematic technical support to ensure that county law making processes are inclusive and consider protection rights of women and girls. Further, it is recommended that county legislative gap be addressed and multi sector coordination of prevention and service delivery be put in place and financing enhanced.

BACKGROUND

In 2010, Kenya ushered in a new constitution that envisaged far reaching reforms with a view to achieving more accountable, effective and inclusive governance. Key to these reforms is devolution, which creates county government with both an executive and legislative arm. The county assemblies' core mandate includes inter alia oversight and passing essential county legislation that enables the full implementation of devolved functions. However, being entirely new entities, the effective exercise of this legislative function by county assemblies has to a larger extent been hindered by insufficient technical legislative capacity and the absence of proper systems and structures at county level.

Despite the initiatives at both national and county levels, Sexual and Gender Based Violence (SGBV) and in particular violence against women and girls (VAWG) is still of critical concern and therefore must be dealt with at the county level in both legislation and programmatic areas to enhance a state of security for everyone in the community. To address this problem, county assemblies are expected to make laws that conform to the constitution and statutes. County assemblies therefore face various challenges when making laws not least the requirement that they proceed from an understanding of existing laws in Kenya as they set to address local county challenges that require legislation. There is an additional challenge regarding laws affecting women and girls that relates to the fact that most that have been formulated or reviewed in the past 5 years are not well known or understood across the board. Such laws also tend to purposively address gender and sex discrimination embedded in the most patriarchal cultures customs,

traditions and cultures of Kenya in different shades and concentrations. The temptation at the county assembly level is to reverse anti-discrimination gains made at national level and entrench local cultures and practices that are still popular with a significant constituency of county members.

County governments are additionally faced with unresolved gender issues requiring legal and policy interventions in general but also specific to VAWG in different degrees of intensity depending on the cultural context. Therefore, they may need to legislate targeting specific local dimensions of discrimination. For instance, Female Genital Mutilation (FGM) is popularly practiced in some counties against existing laws that are rather general and relatively difficult to apply locally making it necessary to enact more specific county laws that are implementable within local contexts.

¹By Collaborative Centre for Gender and Development (CCGD)

PREVAILING CONTEXT OF COUNTY LEGISLATION ON VAWG/SGBV

County governments face considerable pressure to legislate but being relatively new, they are challenged with regards to legal drafting of county assembly bills and moving the bills through the county law making process especially with regards to violence against women and girls. Despite these challenges being apparent, little has been done by the National Government to prepare county assemblies to make good laws to counter violence against women and girls. Most training has been on enactment of procedural motions (laws) to allow counties to legitimize their operations and receive budgetary allocations from the National government to fund their operations.

A key challenge to county government formulation of policies and laws has to do with what has been widely acknowledged as an exhaustive SGBV legal policy framework at national level that includes; chapter 4 of the constitution, Sexual Offences Act 2006, the Protection Against Domestic Violence Act 2015, the Prohibition of Female Genital Mutilation Act 2011, Counter Trafficking in Persons Act 2011, Employment Act 2007 and Children's Act 2010. At least six policies and related frameworks are in place to deal with SGBV; the National Policy for Prevention and Response to GBV; National Guidelines on the Management of Sexual Violence; the National Framework towards Response and Prevention of GBV; the National Gender Policy of 2000; Monitoring and Evaluation Framework of 2014; and the GBV Implementation Framework. These laws and policies need to be cascaded to the counties factoring in specific county socio cultural and

dynamics of prevalence contexts. It does not help that all commentators agree that implementation of national policies and laws remains the biggest challenge that counties are expected to leverage as they have the advantage of being in closer touch with communities where most of the violations occur.

The Constitution has elaborately enshrined the provisions that give powers to the county governments to make laws. For instance, Article 1 declares that all sovereign power (including legislative authority) belongs to the people and is delegated to, among others, Parliament and County Assemblies. Article 185 further dictates that county assemblies are required to enact any laws that are necessary or, incidental to, the effective performance of the functions and exercise of the powers of the county government. The Constitution also grants the county assembly an oversight role over the county executive committee and any other county executive organs. Hence, they have a duty to ensure that laws passed are well implemented by keeping the county executive in check.

The Constitution, has elaborated the provisions that give powers to the National Assembly and Senate to legislate on Bills concerning counties under Article 96, 109, 110 and 111 and 112. This is aimed at representing and protecting the interests of the counties. These Bills may relate to the functions of county governments under Fourth Schedule of the Constitution, elections of county government members and revenue allocations. Article 189 of the Constitution further emphasizes on cooperation between county and national governments to the implementation of national and county legislations, procedures and policies to ensure that rights of citizens including women and girls are upheld.

The County Governments Act of 2012 under sections 21 and 24 states that members of county assemblies should exercise their legislative power by introducing bills which if passed are assented to by the governor. This gives them the opportunity to introduce, debate and pass laws that protect women and girls from violence and support redress mechanisms. Article 100 of the same Act also instructs county governments to put in place civic education programmes which will create awareness amongst citizens on government processes including legislation.

To enable this process, Kenya Law Reform Commission developed a comprehensive Guide to the Legislative Process in Kenya that clearly delineates each stage of the process, the key players involved, their respective roles and expected outputs. The guide serves to advise county governments on procedures of the law-but available evidence shows it still remains a challenge.

A rapid assessment conducted in the counties of Baringo, Kwale and Wajir revealed the following:

- The main victims/survivors of VAWG were women and girls with very few reported cases affecting men and boys but inadequate awareness was reported as a major hindrance to presentation and response to VAWG cases. This is supported by the 2014 Kenya Domestic Household Survey (KDHS) that shows that women are more likely to experience physical violence than men; 38 percent of women aged 15-49 reported physical violence and 14 percent reported having experienced sexual violence.

- County government executives perceive SGBV and gender related programs as sectors that are not devolved meaning the national government ought to be responsible for implementation. This is partly because of limited understanding of the implications of gender as a cross cutting issue which requires identification and prioritizing of concerns in every sector devolved to counties and utilizing available resources to tackle respective gender issues through programs. In their understanding, “gender” is a responsibility of the State Department of Gender and “department in charge of social services”.
- County government executive officers preferred that purposive “gender” legislative and policy frameworks be put in place in each of the counties to enable them allocate funds to identified priority projects within existing devolved sectors.
- Lack of coordinated efforts among national government officials, county officials and other community stakeholders continues to inhibit sustainable actions towards prevention and response to VAWG cases
- There was no specific budgetary allocation on VAWG by county government. However, some counties had already partnered with other development partners to generate resources. In some counties, it was believed that VAWG/SGBV is not a priority and therefore no need for separate funding
- Counties lack laws to support efforts at addressing VAWG
- Policy legal efforts by county governments include drafting Gender Main streaming Policy, draft GBV Policy, Draft Affirmative Action Bill, revolving fund for alleviation of poverty, talent development

program, Strategy Paper on VAWG and establishment of Gender Technical Working Group

- It was generally reported that despite the efforts by the County Governments, there was still need for increased funding for among others: response to and prevention of VAWG cases, establishment of rescue centers, One Stop Gender Violence Centers and sensitization of community on VAWG.
- Staff capacity to effectively formulate policies or to initiate bills and oversee implementation was also reported as an area of weakness.

Counties have additionally to act through relevant laws, policies and action plans appropriate to their circumstances to enable more women to seek justice. According to the Access to Justice Report, conducted by UN Women in 2015, 72.6 percent of survivors were unwilling to pursue justice; while only five percent of the survivors seen in facilities in 2014 were willing to go to court owing to what they considered insensitivity of law enforcers. The report further notes that the victim protection system is weak and worsened by high levels of legal illiteracy in the country, especially among GBV survivors.

²By Collaborative Centre for Gender and Development (CCGD)

³which was a follow up to the National Gender and Equality Commission's (NGEC) campaign on "Keeping the Promise to End GBV" as part of the Jamii Thabiti project. The three counties were randomly selected from the eight Jamii Thabiti project. Key informant interviews were conducted with selected representatives from the county assembly, county executive. The personnel interviewed included: gender and youth officers (including CECs), gender and deputy gender directors and legal officers, clerks. At the National level, CCGD team interviewed the Kenya Law Reform Commission specifically on county legislation.

CONCLUSION

There is an urgent need to use available means to accelerate counties adoption of legislation, policies and institutional mechanisms that shall facilitate appropriate resource allocation to implement programs to prevent, protect and manage services for women and girls affected by SGBV

1. County governments ought to be supported to use ways and means they understand to direct resources and other kinds of supportive mechanisms to initiatives that address SGBV/VAWG
2. Continuous consultations with county executives, members of county assembly, representatives of national government and participation of CSO and PSO stakeholders should be an integral part of advocacy for and development of county laws and policies
3. Systematic technical support will ensure that the county law making processes are inclusive and consider the rights of women and girls including those that protect them from violence.
4. There is need for national government agencies and non-state actors to build synergy with county government to promote sustainability of initiatives on VAWG/SGBV.

POLICY RECOMMENDATIONS

1. **Addressing the legislative gap:** County governments should be supported to develop policies and legislation that will ensure that all initiatives towards prevention, protection and response to VAWG/SGBV are anchored in a legal framework. Such support may include technical assistance in form of guidelines from national law making and law reform institutions such as parliament/senate as well as government agencies charged with oversight on gender legal/policy implementation such as the State Department of Gender Affairs and The National Gender and Equality Commission (NGEC) in partnership with CSO and PSO actors working within the sectors. This activity needs to be immediate to take advantage of newly elected county governments to avoid losing time.
2. **Improving coordination and effective service delivery for victims/survivors:**
 - (a) **Establishment of Multi Sector County Coordination Mechanisms:** Gender Technical Working Groups should be established (strengthened) in every county comprising of county, national and community stakeholders on VAWG/SGBV. The objective of the groups shall be to coordinate prevention and response to SGBV/VAWG cases. In addition, the group will also act as accountability and reporting forum. The working groups shall be decentralized as appropriate to sub-counties, ward and village levels.

(b) Establish and support to One-Stop Gender Based Violence

Centers in all County Referral Hospitals. Counties to provide free specialized emergency medical treatment and psychosocial support to survivors of Gender Based Violence (GBV) as well as timely linkages to law enforcement.

(c) Enhance protection of VAWG/SGBV survivors: County Governments should establish and support Safe Shelters/Houses which shall offer temporary stay as well as post-trauma care facilities for survivors of SGBV.

(d) Enhance financing of VAWG/SGBV: Counties should allocate funding within sectors such as health and education to address finance needs of identified SGBV issues and concerns within the sectors using a gender responsive budgeting framework., National government should also allocate funds in annual budget to support both national and county level awareness campaigns on VAWG among other gender issues. Additionally, county governments should also be proactive in sourcing for funds from alternative sources such as international bilateral and multilateral donors as well as PSOs and CSOs to supplement budget allocation from the national government.

APPENDIX ONE: COUNTY LEGISLATIVE PROCESS

Development of legislation is a significant aspect of governance in modern democratic States. Article 1 of the Constitution declares that all sovereign power (including legislative authority) belongs to the people and is delegated to, among others, Parliament and County Assemblies. According to Kenya Law Reform Commission, the key actors in the legislative process at the county level include: The County Executive; Members of the County Executive Committee; County Attorney; County Assembly; The Public; and the civil society and other non-state actors .

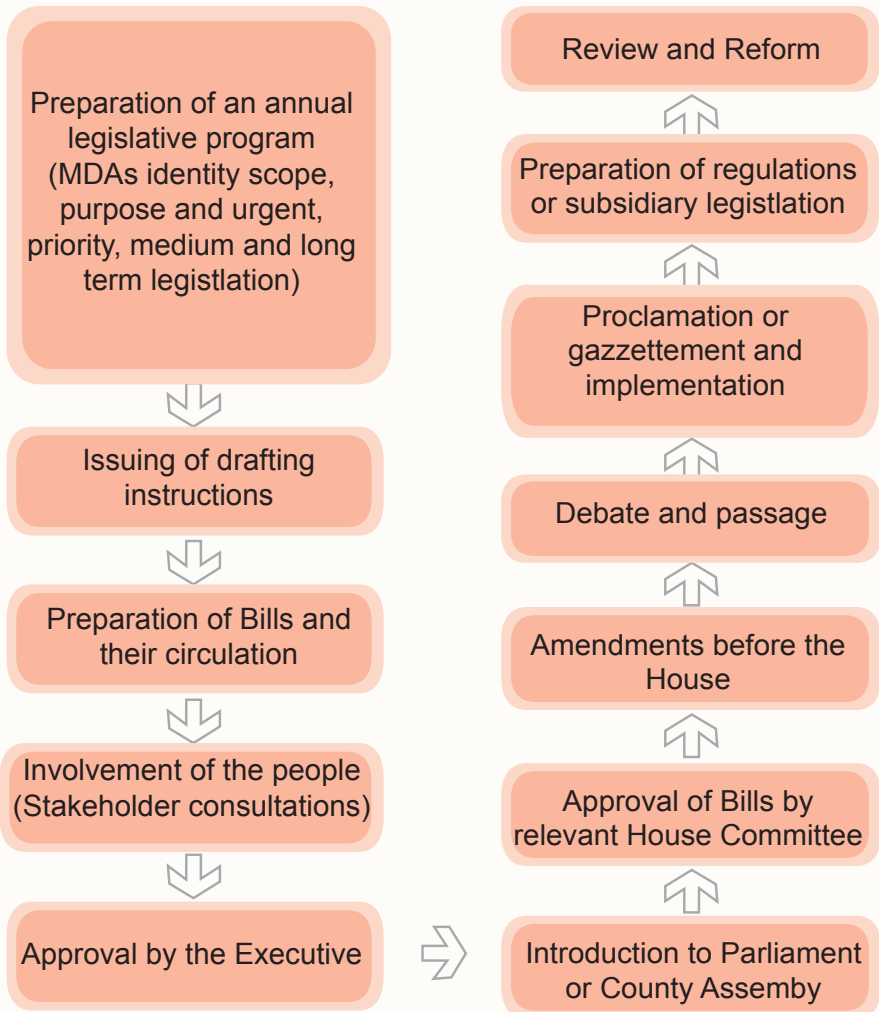
Main Stages in the legislative Process.

As indicated below, the legislative process is a long technical and political process. If a Bill is originated by the Executive Arm of the County Government, it undergoes a series of consultations among the key departmental head before it is subjected to public participation in all sub-counties. In some instances, the consultations may go beyond just the departmental heads to even include other stakeholders who may not be members of the executive. It is after public participation that the executive will debate and approve the Bill before tabling it to the Assembly. In the Assembly, the Bill is forwarded to the relevant House Committee for initial review and discussions.

In summary, a Bill passes through the following stages before it becomes an Act:

- (i) Preparation of an annual legislative program ministries departments and state agencies (MDAs) identify scope, purpose priority, medium and long term legislation;
- (ii) Issuing of drafting instructions;
- (iii) Preparation of Bills and their circulation;
- (iv) Involvement of the people (Stakeholder consultations);
- (v) Approval by the Executive;
- (vi) Introduction to Parliament or County Assembly;
- (vii) Approval of Bills by relevant House Committee;
- (viii) Amendments before the House;
- (ix) Debate and passage;
- (x) Publication;
- (xi) Preparation of regulations or subsidiary legislation;
- (xii) Implementation; and
- (xiii) Review and reform

The main stages in the legislative process may be broadly summarized into the following -





GENDER CENTRE

Collaborative Centre for Gender & Development

Muguga Green Road, Off Waiyaki Way (Behind New Safaricom House),
House No. 331, Westlands.

Tel (020)2252058, Cell Phone: 0736-474556

Email: info@ccgdcentre.org, collaborative.centre@gmail.com

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