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Re: Kenya – 71st pre-sessional working group of the Committee (8-12 June 2015)

27 February 2015

Distinguished Committee Members,

We respectfully submit this letter in advance of the Committee on the Rights of the Child's (the Committee's) discussion of Kenya at its 71st pre-sessional working group from 8-12 June 2015. Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries. Rural Education and Economic Enhancement Programme (REEP) is a local Kenyan NGO that works on HIV/AIDS prevention and mitigation and human rights issues, including awareness raising about gender-based violence particularly against the girl child as well as organizing girls' clubs, support groups, and facilitating access to paralegals and counselors for girls affected by gender-based violence.

This communication is made with reference to Equality Now's Action 52.1 (October 2013, updated 31 July 2014): *Kenya: Protect girls by enforcing FGM and child marriage laws*¹ and Action 54.1 (January 2014, updated 5 December 2014): *Kenya: Ensure justice for 16-year-old Liz & all victims of sexual violence*,² calling on Kenya to take steps to end FGM, child marriage, and sexual violence, practices and crimes which violate the Convention on the Rights of the Child and other

¹ Available at www.equalitynow.org/take_action/fgm_action521.

² Available at www.equalitynow.org/take_action/adolescent_girls_action541.

international human rights instruments. Further information is provided below.

Female Genital Mutilation and Child Marriage

Equality Now has long been monitoring the practices of FGM and child marriage in Kenya. FGM involves the partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. Kenya's prevalence rates for FGM and child marriage are approximately 27% and 26%, respectively. FGM is generally performed on girls aged between 12 and 18, though more recently as young as age seven. FGM can have detrimental lifelong health consequences including chronic infections, severe pain during urination, menstruation, sexual intercourse and childbirth, infertility, psychological trauma, and in some cases even death. In some communities in Kenya, FGM is seen as a rite of passage into womanhood and an immediate precursor to marriage. Therefore, once a girl has undergone FGM she is under pressure to marry as soon as possible and the parents find a husband for her.

Medicalization of FGM – the performance of FGM by a health-care provider – is also increasingly a concern in Kenya. Data indicates medicalization of FGM has been increasing in Kenya.³ Kenya has the third highest rate of medicalization at around 40% of all cases of FGM, just after Egypt and Sudan, among countries with practicing communities.⁴ Girls in Kenya are often taken to medical facilities under pretext of another ailment, or medical providers might be invited to the girl's home to do the practice.⁵ Many believe when a health practitioner does the procedure it will be safer, but that is simply not the case. Medicalization nullifies the on-going campaigns against the practice and ignores the negative social, physical and psychological impact on the lives of women and girls. Medicalization risks legitimizing and further entrenching the practice, and is a violation of medical ethical obligations to “do no harm.”

Equality Now has been monitoring multiple cases of FGM and early marriage in Kenya. In October 2013, Equality Now and its partners issued an action calling on the government of Kenya to enforce its laws against FGM and child marriage. In January 2014, Equality Now also issued a child marriage report, which highlighted several examples of girls running away from FGM/early marriage:

- Elizabeth from Churo village was barred from attending school by her parents who planned to subject her to FGM and marry her off. She found refuge with her aunt for a while and was attending school, but was forced to run away when her father tried to remove her from her aunt's home at age 16. She walked for three days before arriving at a rescue center for girls. Her father came to the center and tried to force her back home, but when the center's management threatened him with police action, he left and did not return.
- Alsine from Tangulbei village was pulled out of school by her parents at age 14 and subjected to FGM to ‘prepare her for marriage’. She ran away to her older sister's home, but her father forcibly removed her from her sister's home and began marriage preparations. She managed to

³ G.I. Serour, *Medicalization of Female Genital Mutilation/Cutting*, Vol. 19(3), AFRICAN JOURNAL OF UROLOGY, Page 145-149 (Sept. 2013), available at www.sciencedirect.com/science/article/pii/S1110570413000271.

⁴ UNICEF, *Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change*, Page 44-45 (July 2013), available at www.unicef.org/publications/index_69875.html.

⁵ Carolyne Njue and Ian Askew, *Medicalization of Female Genital Cutting Among the Abagusii in Nyanza Province, Kenya*, Page 13 (Frontiers in Reproductive Health Program, Population Council, December 2004), available at www.populationcouncil.us/pdfs/frontiers/FR_FinalReports/Kenya_FGC_Med.pdf.

escape once more, and after spending two nights sleeping outdoors, was directed to a rescue center for girls where she is once again attending school.

- Liloe fled to the Rescue Center run by Tasaru Ntomonok Initiative (TNI) when she was 14 years old to escape FGM and child marriage. TNI staff arranged reconciliation with her family and her mother promised not to mutilate her. When Liloe was 16, her mother again tried to marry her off and Liloe again fled to Tasaru. FGM and early marriage are illegal in Kenya. This time TNI reported the case to the police who prosecuted Liloe's mother in court under the Children's Act 2001. Liloe's mother was found guilty and sentenced in 2013 to two years of community service. Liloe continues to attend school and has been reconciled with her relatives.

We commend the increased efforts the Kenyan government has taken, particularly in the last year, to more proactively address the practices of FGM and child marriage. For example, Kenya appointed an anti-FGM advocate and former member of Parliament, Honorable Linah Jebii Kilimo, from an area with high FGM prevalence as new chairperson of the government's Anti-FGM Board. In April 2014, Kenya's Director of Public Prosecutions, Keriako Tobiko, established an Anti-FGM Unit, in order to streamline the prosecutorial management of FGM cases in Kenya. The unit completed a two month long roll-out program nationwide, and has begun to investigate and prosecute an increasing number of cases concerning FGM. The Directorate has also established an FGM and child marriage hotline to facilitate reporting of cases and timely intervention.

Equality Now met in November 2014 with the Anti-FGM Board and the Office of the Director of Public Prosecutions (ODPP) to advocate for enhanced systems of support and protection for girls during the upcoming year-end holiday period, when girls are at greater risk of being mutilated. Following our meeting, the ODPP released a warning letter to all parents, teachers and guardians and medical practitioners that anyone caught will be prosecuted and deployed a team of prosecutors and monitors to areas of high risk to monitor for cases of FGM. The ODPP also launched a hotline to rescue girls from FGM and child marriage. Despite the progress, we received reports of FGM procedures leading to the death of girls in Oloitoktok, West Pokot and Baringo and even reports of pregnant girls being subjected to FGM.

Until the practices of FGM and child marriage are completely eradicated, there is still more work to be done. There continue to be reports about cases of FGM and child marriage in Kenya and girls running away to avoid these practices. However, organizations such as Tasaru Ntomonok Initiative (TNI) cannot provide safe housing and education for all girls trying to escape indefinitely due to limited resources. Unlike those in the cases noted above, many girls are not able to escape FGM and child marriage in Kenya. We hope to see Kenyan authorities follow through with their commitments to provide increased support to girls escaping FGM and child marriage.

In addition, there are still many people, including chiefs and law enforcement officials who are not aware of the laws against FGM and child marriage, or how to effectively implement them. Anti-FGM work is also not always supported. In December 2014, chiefs and activists were attacked by the public while trying to save girls from undergoing FGM. When cases are brought forward, they are often not brought under the Prohibition of FGM Act or Children's Act, and are brought as lesser crimes. Many cases of FGM or child marriage in the past have not been reported or prosecuted, and those that are taken to court often face persistent delays. In late March 2014, Equality Now wrote to Kenya's ODPP and highlighted several FGM/early marriage cases from Narok County that were facing persistent delays before the court. Such delays are especially problematic for girls seeking

protection via the criminal justice system, as their trust in the system wanes, witnesses are compromised or dissuaded from testifying, and at times community pressure against legal action persists, threatening the girl's safety.

Law enforcement agencies are often under-resourced, or lack sufficient capacity and training to effectively investigate and prosecute cases of FGM and child marriage. The Anti-FGM Board itself still requires additional funding and resources to effectively carry out its mandate. We hope Kenyan authorities will continue to proactively address these persisting challenges. Kenyan authorities also have a responsibility to ensure girls are able to obtain the support they need when they try to escape and avoid FGM and child marriage, and ensure the girls are able to stay in school.

Sexual Violence

Concerning sexual violence, the 2008–09 Kenya Demographic and Health Survey showed that 1 in 5 Kenyan women will experience sexual violence in their lifetime.⁶ An estimated 45% of Kenyan women aged 15 to 49 have experienced physical or sexual violence – and these numbers are likely to be much higher, as the Coalition on Violence against Women (COVAW) estimates that only 8% of rape survivors report the attack to authorities. In addition, survivors of sexual violence often face re-victimization when reporting their cases, as authorities often engage in harmful behaviors that diminish the survivor's sense of confidence in the judicial process, including showing disbelief or skepticism towards complainants, employing aggressive interviewing techniques that are embarrassing and invasive, victim-blaming, and questioning the victim's motives for reporting the crime. A 2009 case study of gender desks at Nairobi police stations illustrated that 52% of people who reported gender violence considered the police “not helpful” and 39% said police were “reluctant to record statements.” Another 20% were asked for bribes to pursue their case, and 28% felt “humiliated and handled without courtesy and dignity.”⁷

While Kenya in its midterm report to the Universal Periodic Review reported that the Office of the Department of Prosecutions has made efforts to train and sensitize investigators, police prosecutors and judicial officers on addressing cases of gender based violence, the following examples show this has not been as effective as Kenyan authorities might have hoped.

The Kenyan High Court in May 2013 handed down a landmark judgment in a case known as the *160 Girls Case*, finding police had mishandled over 160 cases of sexual violence. The Court held that “the neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations” into the many complaints of sexual violence violated the girls' fundamental rights and freedoms by creating a “climate of impunity.” The High Court held that police officers have an obligation to conduct “prompt, effective, proper and professional investigations” into all allegations of sexual violence.⁸ However, this ruling has not been fully implemented since then, as evidenced by the ongoing case of Liz, a girl who was gang raped in Busia, Kenya in June 2013.

⁶ 2008–09 Kenya Demographic and Health Survey, Kenya National Bureau of Statistics and ICF Macro (2010), available at dhsprogram.com/pubs/pdf/fr229/fr229.pdf.

⁷ Status of Gender Desks at Police Stations in Kenya, Institute of Economic Affairs-Kenya (September 2009), available at www.ieakenya.or.ke/publications/doc_download/49-status-of-gender-desks-at-police-stations-in-kenya.

⁸ C.K. & 11 others v Commissioner of Police/Inspector General of the National Police Service & 3 others, Petition No. 8 of 2012, High Court at Meru (27 May 2013), available at kenyalaw.org/CaseSearch/view_preview1.php?link=14124008394810652963617.

It took a year for Liz's case to go to trial, and only three of the six suspects have been apprehended. In April 2014, the Director of Public Prosecutions (DPP) finally issued arrest warrants for the suspects who remained at large at that time.⁹ When the trial finally started on 24 June 2014 (now adjourned until 6 March 2015), the hearing was held *in camera* and Liz was initially required to testify alone, despite having been declared a vulnerable witness and thus entitled to an intermediary under the Sexual Offences Act. Observers and NGOs, including COVAW who had been appointed by the DPP as Liz's intermediary, were not allowed in the courtroom.

Some progress has been made. The DPP elevated the charges from "grievous bodily harm" to "gang rape" under the Sexual Offences Act. The DPP also appointed two special prosecutors to the case. Due to our advocacy with the DPP, Liz was later provided an intermediary and allowed to testify via video to avoid undergoing further trauma. The judge also granted the special prosecutor's request to allow Liz to not attend the rest of the court sessions. However, the DPP appeared to only move the case forward after significant public pressure and widespread publicity of the case. This case indicates Kenya's continuing failure to adequately investigate and prosecute all crimes of sexual violence. In light of examples like the *160 Girls Case* and Liz's case, it is clear that there are too few prosecutions of sexual violence crimes, particularly as compared to the high rate of sexual violence in Kenya.

As a result of working on Liz's case, Equality Now has begun monitoring dozens of troubling sexual violence cases from Busia County. These cases – like Liz's case – highlight the prevalence of sexual violence plaguing girls, and the tremendous obstacles faced by girls in accessing justice. On 23 June 2014, Equality Now wrote to Kenya's DPP highlighting around 70 of such cases. We welcome the positive response of the DPP to initiate speedy and thorough investigations of these cases by senior staff with expertise in handling cases of sexual violence. On 3 December, the Directorate of Criminal Investigations resumed its investigation of these cases. We hope to see the DPP continue to follow through with these efforts. Some examples of these cases include:^{*}

- 14-year-old girl *F.*, who was raped by a senior ranking police corporal in Butula sub-county. When the case was reported by a fellow female police officer, that officer's job, security and life were threatened. A day after a doctor examined *F.* thanks to the help of local organizations, officers from the local Criminal Investigation Department took *F.* alone in the same vehicle with her rapist for new medical investigations which contradicted the original medical report. *F.* still awaits justice.
- 12-year-old *A.*, who was defiled, impregnated twice, and infected with HIV by a prominent teacher who had employed her as domestic help. *A.* comes from a very poor family and is mentally disabled, but was able to communicate clearly what had happened to her. There are reports that officials from the local children's office in Busia protected the perpetrator, who is still teaching and is rumored to be transferred soon to another school.
- 15-year-old *Am.*, in very similar circumstances to Liz's case, was gang raped walking home from a funeral.
- 13-year-old *Mo.*, who is severely mentally handicapped and was defiled by a man who was found with her undergarments in his pocket. He was eventually set free because *Mo.* could not, two years later, identify in court that the undergarments were indeed her own.

⁹ Office of the Director of Public Prosecutions, *Press Release: Gang Rape Case in Busia Update* (8 April 2014), available at www.scribd.com/doc/217009997/Press-Release-Gang-Rape-Case-in-Busia-Update.

^{*} Names have been changed to protect their identities.

Kenyan authorities have an obligation to ensure that girls in Kenya are protected from all forms of violence, including sexual violence. Girls must also be able to effectively access the justice system without being re-victimized by the very authorities intended to assist them and protect their rights.

Discriminatory Legislation

We also are very concerned about discriminatory provisions in recently enacted Kenyan legislation, namely the Matrimonial Property Act No. 49 of 2013¹⁰ and the Marriage Act No. 4 of 2014,¹¹ both of which are retrogressive in nature and in clear violation of Kenya's 2010 Constitution, and Kenya's regional and international treaty obligations.

The Matrimonial Property Act, defines matrimonial property as only property that is jointly owned by the spouses, and only allows women the right to marital property upon the death or divorce of their spouse if they can prove their contribution to the acquisition of the property during the marriage. Given that many Kenyan women do not work in paid employment, many are unable to contribute financially in the acquisition of matrimonial property. Even though the Act recognizes non-monetary contributions, the Solidarity for African Women's Rights (SOAWR) Coalition has called for any such contribution to automatically be accorded equal value and for women to be entitled to an equal share in matrimonial property without having to prove such contribution.¹²

In late March 2014, Kenyan Members of Parliament voted to include a provision in the new Marriage Bill that formally permits polygamy in customary marriages, and omits the critical long existing cultural context that permitted first wives to weigh in or veto a husband's choice. The Marriage Act received presidential assent on 20 April 2014. Polygamy undermines a woman's right to enjoy equal rights in and be regarded as an equal partner in marriage. Specifically in relation to girls, these laws have a particularly negative impact in light of the fact that child marriage is widespread in Kenya and girls will be far less able generally to negotiate any rights in marriage. It is imperative that the prevailing legal framework adequately protects women's and girls' right to assert control over their own lives and partner choices.¹³ Kenyan authorities must take immediate steps to repeal all discriminatory provisions in these laws, and enforce the Children's Act to protect girls from child marriage.

Domestic and International Legal Obligations

Kenya's Constitution and Domestic Legislation

Kenya is bound by its own Constitution and domestic laws to protect the human rights of women and girls. Kenya's Constitution gives significant prominence to human rights and international law, and protects the right to equality and freedom from discrimination and violence.¹⁴ In addition,

¹⁰ Matrimonial Property Act No. 49 of 2013, *available at* kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/MatrimonialPropertyAct2013.pdf.

¹¹ Marriage Act No. 4 of 2014, *available at* kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/TheMarriage_Act2014.pdf.

¹² Solidarity for African Women's Rights Coalition (SOAWR), *SOAWR Strongly Condemns Discriminatory Kenyan Legislation* (11 April 2014), *available at* www1.chr.up.ac.za/images/files/news/news_2014/FINAL%20SOAWR%20Statement%20re%20Discriminatory%20Kenyan%20Legislation%20%28ENG%29.pdf.

¹³ *Id.*

¹⁴ Constitution of Kenya 2010, *available at* www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010.

Kenya's Constitution contains provisions against both FGM and child marriage. Kenya's Sexual Offences Act,¹⁵ Prohibition of FGM Act,¹⁶ and Children's Act¹⁷ prohibit all forms of sexual violence, FGM, and child marriage. In addition, Kenya has developed National Guidelines on Management of Sexual Violence, which prescribe how law enforcement and medical responders must handle sexual violence cases, and how police are to collect evidence.¹⁸

Convention on the Rights of the Child

FGM and child marriage violate the principles of non-discrimination and rights to basic health and welfare of the girl child under the Convention on the Rights of Child. In 2007 this Committee already expressed concern over the practices of FGM and child marriage in Kenya. It encouraged Kenya to strengthen its measures regarding FGM and forced marriage to "ensure that the prohibition is strictly enforced"; "[c]onduct awareness-raising campaigns to combat and eradicate this and other traditional practices harmful to the health, survival and development of children, especially girls"; and "[i]ntroduce sensitization programmes for practitioners and the general public to encourage change in traditional attitudes, and engage the extended family and the traditional and religious leaders in these actions."¹⁹

We also note the Committee's General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24), which states, "Gender-based discrimination is particularly pervasive, affecting a wide range of outcomes.... Attention also needs to be given to harmful gender-based practices and norms of behaviour that are ingrained in traditions and customs and undermine the right to health of girls and boys."²⁰ The Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women in 2014 also issued a joint general comment/general recommendation calling for the "prevention and elimination of harmful practices", explicitly encompassing FGM, child marriage and polygamy, including through the "development, enactment, implementation and monitoring of relevant legislation".²¹ We hope the Committee will reaffirm the urgent need for Kenyan authorities to continue to address these practices.

The Convention on the Elimination of All Forms of Discrimination against Women

In 2011, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) issued its Concluding Observations to Kenya, expressing concern about the persistence of FGM and the "widespread incidents of sexual violence."²² This Committee called on Kenya to ensure the effective implementation of laws outlawing FGM and the "prosecution and punishment of

¹⁵ Sexual Offences Act No. 3 of 2006, available at

www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2062A.

¹⁶ Prohibition of Female Genital Mutilation Act No. 32 of 2011, available at

www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2062B.

¹⁷ Children's Act No. 8 of 2001, available at www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%20141.

¹⁸ Ministry of Public Health and Sanitation and Ministry of Medical Services, *National Guidelines on Management of Sexual Violence in Kenya* (2nd edition, 2009), available at www.svri.org/nationalguidelines.pdf.

¹⁹ Committee on the Rights of the Child, *Concluding Observations on Kenya*, U.N. Doc. CRC/C/KEN/CO/2, ¶¶ 53-54 (19 June 2007).

²⁰ Committee on the Rights of the Child, *General Comment No. 15*, U.N. Doc. CRC/C/CG/15, ¶ 9 (17 April 2013).

²¹ *Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful practices*, U.N. Doc. CEDAW/C/GC/31-CRC/C/GC/18, ¶¶ 33, 40 (14 November 2014).

²² Committee on the Elimination of Discrimination against Women, *Concluding Observations on Kenya*, U.N. Doc. CEDAW/C/KEN/CO/7, ¶¶ 17, 19, 21, 23 (5 April 2011).

perpetrators” of FGM, “[c]ontinue and increase its awareness-raising and education efforts targeting families, practitioners and medical personnel, with the support of civil society organizations and religious authorities, in order to completely eliminate” FGM, as well as “[e]stablish support services to meet the health and psychological needs of women and girls who are victims of this practice.”²³ In addition, the Committee urged Kenya to prioritize “combating violence against women and girls and adopting comprehensive measures to address such violence.”²⁴

In its General Recommendation No. 14, the CEDAW Committee called on States to “[t]ake appropriate and effective measures with a view to eradicating the practice of female circumcision” and “[i]nclude in their national health policies appropriate strategies aimed at eradicating female circumcision in public health care” with a special focus on the responsibility of health personnel “to explain the harmful effects of female circumcision...” In its General Recommendation No. 21, the CEDAW Committee also noted that women and men should have “the same right freely to choose a spouse and to enter into marriage only with their free and full consent” and that “[t]he betrothal and the marriage of a child shall have no legal effect...”

The CEDAW Committee further expressed concern about “customs and practices [that] perpetuate discrimination against women . . . in marriage and family relations” and explicitly urged Kenya to prohibit polygamy.²⁵ The Committee also urged Kenya to “[e]stablish a clear legislative framework to protect women’s rights to . . . ownership of land; and [i]ntroduce measures to address negative customs and traditional practices, especially in rural areas, which affect full enjoyment of the right to property by women.”²⁶ More specifically, the Committee urged Kenya to ensure that under the law, “non-monetary contribution to matrimonial property is accorded equal value and women are awarded equal share in matrimonial property regardless of the nature of their contribution.”²⁷ The CEDAW Committee, in General Recommendation 21, condemned polygamy by asserting that “polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.”

The International Covenant on Civil and Political Rights

In its 2012 Concluding Observations to Kenya, the Human Rights Committee expressed concern about the prevalence of FGM despite the passage of the Prohibition of FGM Act in 2011, and about gender-based violence in Kenya.²⁸ The Human Rights Committee urged Kenya to “adopt a comprehensive approach to preventing and addressing FGM, and gender-based violence in all its forms and manifestations.”²⁹ It also urged the state to “vigorously implement the Sexual Offences Act of 2006” as well as ensure cases of FGM and violence against women “are thoroughly investigated and that the perpetrators are brought to justice, and the victims adequately compensated.”³⁰ The Committee also noted “that polygamous marriages undermine the non-discrimination provisions and are incompatible with the” International Covenant on Civil and Political Rights.³¹ The Committee further

²³ *Id.* at ¶ 20; *see also Id.* at ¶¶ 18, 22, 24.

²⁴ *Id.* at ¶ 22.

²⁵ *Id.* at ¶¶ 17, 18, 46.

²⁶ *Id.* at ¶¶ 41, 42.

²⁷ *Id.* at ¶¶ 45, 46.

²⁸ Human Rights Committee, *Concluding Observations on Kenya*, U.N. Doc. CCPR/C/KEN/CO/3, ¶ 15 (31 August 2012).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at ¶ 7.

urged Kenya to “take concrete measures to prohibit polygamous marriages” and to “guarantee equality between men and women in the devolution and succession of property after the death of a spouse.”³²

The International Covenant on Economic, Social and Cultural Rights

In its Concluding Observations to Kenya in 2008, the Committee on Economic, Social and Cultural Rights expressed concern about FGM and encouraged the state to “train the police, prosecutors and judges on the strict application of laws prohibiting female genital mutilation; continue promoting alternative rite of passage ceremonies; educate parents, especially mothers, children and community leaders on the harmful effects of female genital mutilation; and combat traditional beliefs about the usefulness of female genital mutilation for the promotion of marriage prospects of girls.”³³

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Committee against Torture in 2009 called on Kenya to end FGM and also expressed concern about “persistence of widespread violence against women and children . . . as well as the high levels of impunity for such crimes” and particularly encouraged the state to provide training on responding to cases of sexual violence to “all law enforcement personnel, particularly to the personnel who are in direct contact with women victims of violence.”³⁴ The Committee also noted concern about FGM in Kenya, and recommended that Kenya “take all necessary steps to eradicate the practice of female genital mutilation, including through the intensification of nationwide awareness raising campaigns, and to punish the perpetrators of such acts.”³⁵ The Committee also encouraged Kenya to guarantee “equal rights of women to matrimonial property during marriage and at its dissolution.”³⁶

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa

Kenya has also ratified the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Protocol), which has several provisions that explicitly prohibit the human rights violations outlined in this submission. The Maputo Protocol requires Kenya to guarantee the right to freedom from discrimination (Article 2), the right to inherent human dignity (Article 3), the right to integrity and security of the person (Article 4, clearly prohibiting FGM), the right to freedom from female genital mutilation and other harmful practices (Article 5), equal rights in marriage including mandating 18 as the minimum age of marriage and discouraging polygamy (Article 6), the right to access to justice and equal protection before the law (Article 8), the right to health (Article 14), and the right for women to live in a positive cultural context and participate in the determination of cultural policies (Article 17).

Specifically, the Protocol obliges states parties to “*combat all forms of discrimination against women through appropriate legislative, institutional and other measures*”, to “adopt and implement appropriate measures to ensure the protection of every woman’s right to respect for her dignity and

³² *Id.*

³³ Committee on Economic, Social and Cultural Rights, *Concluding Observations on Kenya*, U.N. Doc. E/C.12/KEN/CO/1, ¶ 23 (1 December 2008).

³⁴ Committee against Torture, *Concluding Observations on Kenya*, U.N. Doc. CAT/C/KEN/CO/1, ¶¶ 26-27 (19 January 2009).

³⁵ *Id.* at ¶ 27.

³⁶ *Id.* at ¶ 14.

protection of women from all forms of violence, particularly sexual and verbal violence”, and to “ensure the prevention, punishment and eradication of all forms of violence against women.” Furthermore, the Protocol requires that Kenya establish “mechanisms and accessible services for effective information, rehabilitation and reparation for victims” and direct adequate State resources towards the implementation and monitoring of preventative action.

The African Charter on Human and Peoples’ Rights

Kenya has also ratified the African Charter on Human and Peoples’ Rights, which also has various provisions that prohibit the practices outlined in this submission. The African Charter requires Kenya to guarantee the right to freedom from discrimination (Article 2), equal protection before the law (Article 3), the right to integrity of the person (Article 4), the right to dignity and freedom from torture, cruel, inhuman or degrading treatment (Article 5), the right to security of the person (Article 6), the right to education (Article 17), and the right to equality in the family (Article 18).

The African Charter on the Rights and Welfare of the Child

Kenya has also ratified the African Charter on the Rights and Welfare of the Child, which also has various provisions that prohibit the practices outlined in this submission. The African Charter on the Rights and Welfare of the Child requires Kenya to protect the right to freedom from discrimination (Article 3), the best interests of the child (Article 4), the right to education (Article 11), the right to health and health services (Article 14), the right to protection against harmful social and cultural practices (Article 21), and the right to protection from sexual abuse (Article 27).

The Universal Periodic Review and United Nations General Assembly

During the 2010 Universal Periodic Review, several states made recommendations for Kenya to take measures to end sexual violence, FGM and child marriage.³⁷ Several states also expressed concern about “systematic discrimination against women,” and one state recommended Kenya “[r]eview its national laws so that they fully uphold the principle of nondiscrimination, in particular on grounds of gender . . .”³⁸ In preparation for the 2015 session of the UPR where Kenya will be reviewed again, the summary of stakeholders’ information also highlights concerns for sexual violence and FGM and child marriage, which Equality Now raised in its submission to the UPR.³⁹

In addition, the continued practice of FGM runs counter to a recently passed UN General Assembly resolution on eradicating FGM which urges member states to “condemn all harmful practices that affect women and girls, in particular [FGM] . . . and to take all necessary measures, including enacting and enforcing legislation to prohibit [FGM].”⁴⁰

Suggested Questions for the State Party’s List of Issues

We would respectfully urge the Committee to raise with the Kenyan government in its List of Issues the following questions with regard to violations of the CRC addressed in this letter:

³⁷ Outcome of the Universal Periodic Review on Kenya, U.N. Doc. A/HRC/15/8, ¶¶ 47, 48, 60, 71, 74, 101.48-101.57, 101.86 (17 June 2010).

³⁸ *Id.* at ¶¶ 60, 101.40.

³⁹ Summary of Stakeholders’ Information, Universal Periodic Review – Kenya (Second Cycle).

⁴⁰ U.N. General Assembly Resolution 67/146, *Intensifying global efforts for the elimination of female genital mutilations*, U.N. Doc. A/RES/67/146, ¶ 4 (20 December 2012).

Female Genital Mutilation and Child Marriage in Kenya

1. What further steps does the Kenyan government plan to take to ensure laws against FGM and child marriage are effectively implemented with proper investigation and timely prosecution of violations, accompanied by strong penalties?
2. How do Kenyan authorities plan to work with practicing communities to protect, and provide support and shelter to girls escaping FGM and child marriage and to ensure that at-risk girls are not subjected to FGM or child marriage, and to ensure that girls are able to continue their education?
3. What are the government's plans to conduct awareness-raising and education campaigns to change cultural perception and beliefs on FGM and child marriage and acknowledge the practices as human rights violations with harmful consequences?
4. What are the government's plans to increase funding and resources for the Anti-FGM Board so that it can effectively carry out its mandate?
5. What are the government's plans to ensure law enforcement offices and police stations have adequate logical support, capacity and training in issues concerning FGM and child marriage in order to effectively implement the laws against FGM and child marriage, collect evidence, provide sensitive support to victims, as well as monitor ongoing cases and outcomes?
6. How is Kenya engaging health professionals to take a leading role in eliminating the practice by refusing to perform it, educating communities about its harmful consequences and providing services for women who have undergone FGM?

Sexual Violence in Kenya

7. What further steps does the Kenyan government plan to take to ensure the Sexual Offences Act and the National Guidelines on Management of Sexual Violence are effectively implemented with prompt, effective, proper and professional investigations and prosecutions of all cases of sexual violence, accompanied by strong penalties?
8. What are the government's plans to ensure law enforcement offices, police stations, and particularly gender desks in police stations have adequate logical support, capacity and training in issues concerning sexual violence in order to effectively implement the laws against sexual violence, collect evidence, provide sensitive support to victims, as well as monitor ongoing cases and outcomes?
9. What are the government's plans to train law enforcement officials and gender desks in police stations to ensure that sexual violence complaints are appropriately handled and that officials are equipped to deal with survivors of sexual violence by rectifying harmful behaviors that might further distress victims or impede their access to justice?
10. What are the government's plans to conduct awareness-raising and education campaigns to change cultural perceptions and stereotypes about the roles of women and men, and gender based violence, in order to build acceptance of gender-based violence

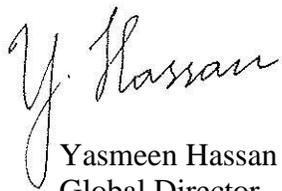
as a human rights violation?

Discriminatory Legislation

11. Does the government of Kenya have any plans to repeal discriminatory and unconstitutional provisions from the Matrimonial Property Act and the Marriage Act to ensure that women and married girls have equal rights and opportunity before the law?

Thank you very much for your kind attention, and please do not hesitate to contact us if we can provide further information.

Sincerely,



Yasmeen Hassan
Global Director
Equality Now



Mary A. Makokha
Executive Director
Rural Education and Economic
Enhancement Programme (REEP)