

A STATUS REPORT

**ON KENYA GOVERNMENT
PREVENTION AND RESPONSE INTERVENTIONS
TO ERADICATE
VIOLENCE AGAINST WOMEN**

March 2008- May 2009

"From Breaking the Silence to Breaking the Cycle of Violence Against Women"

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LIST OF ABBREVIATIONS

AAAQ	Availability, Accessibility, Acceptability Quality
APRM	African Peer Review Mechanism
CEDAW	Elimination of all Forms of Discrimination Against Women
DEVAW	Declaration on the Elimination of Violence Against Women
KDHS	Kenya Demographic and Health Survey
KRCS	Kenya Red Cross Society
MDGs	Millennium Development Goals
NACC	National AIDS Control Council
NASCOP	National Aids Control Programme
NEPAD	New Partnership for Africa's Development-
PEP	Post Exposure Prophylaxis
SOA	Sexual Offences Act
STI	Sexually transmitted Infection
VAW	Violence Against Women

CHAPTER 1

Introduction

Violence against Women

Over the last two decades, the phenomenon of violence against women (VAW) has increasingly come to be recognized globally as a serious health, human rights, and development issue. While it is present in all societies, uncoded customary laws as well as social and community expectations can and do exacerbate the extent and incidence of the problem. According to UNICEF (2006):

'Violence against women (VAW) continues to be a global epidemic that kills, tortures, and maims. It is present in every society and cuts across culture, class, education, income, ethnicity, and age.'

The international community has come to acknowledge the range and frequency of gender-based violence and has re-defined how these acts of violence should be dealt with in international policies. This is manifested in the various international and regional instruments provided for the protection of the rights of women. The Declaration on the Elimination of Violence against Women was devoted entirely to the campaign to end VAW. It was adopted by the UN General Assembly in 1993. The declaration provides in its preamble that:

'Violence against women is a manifestation of historically unequal power relations between men and women which have led to domination over and discrimination against women.'

Efforts to prevent violence and promote women's rights at the community level have the powerful backing of international and regional human rights instruments. Though women are included in all the United Nations conventions for Human Rights, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) aims specifically to promote and protect women's fundamental human rights. CEDAW is an important document as it recognizes the injustices women experience and calls for state parties to take specific measures to protect and promote women's human rights.

Declaration on the Elimination of Violence Against Women (DEVAW) is the other major international instrument that informs efforts to prevent violence. This instrument is believed to be one of the most comprehensive documents on violence against women adopted by the UN General Assembly. DEVAW addresses cultural, public and private forms of violence that women experience. It also recognizes the root of violence against women as the unequal power relations between men and women. The instrument recognizes that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men. However, DEVAW is a

declaration not a convention and therefore does not legally bind state parties though it carries significant moral commitment for countries of the United Nations to introduce measures to combat gender based violence.

The African charter for Human and People's Rights (Banjul) makes reference to women's rights within article 18 that covers protection of the family. The charter calls on states to ensure the elimination of every discrimination against women and also ensure protection of the rights of women and children.

Efforts to prevent violence and promote women's rights at the community level have the powerful backing of international and regional human rights instruments.

More recently a regional instrument has been developed to deal specifically with the rights of women in Africa – the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. Article 4.2 of this protocol makes provision for commitment on the part of States parties to address Violence against Women. The protocol serves as a great champion for the rights of women and girls in Africa. It comprehensively embodies the rights and freedoms that women ought to be enjoying but sadly continue to be ignored. However, the protocol is one of the most progressive and visionary rights instruments of gender equality. It's a remarkable success for all of us.

Around the world women and girls are victims of countless acts of violence. In many instances, the violence is not random but rather because the women and girls are females. VAW also occurs in every segment of society regardless of class, ethnicity, culture or country. Violence against women is also termed as a social phenomenon by which women are forced into a subordinate position compared to men. It constitutes a violation of fundamental rights and freedoms of women, and both impairs and nullifies their enjoyment of these rights and freedoms thus presenting an obstacle to the achievement of equality, development and peace.

Although violence against women is a universal phenomenon, the social evil is compounded in Africa by the very patriarchal nature of traditional African societies. In Kenya the vestiges of the unholy but very convenient alliance between the Victorian colonial laws of the British, and the local patriarchal customary laws, resulted in keeping women subordinated to men, and women have had to fight every step of the way for their rights. In the post-independence era, countless laws in the former colonial states have been reviewed and reformed: in Kenya, the status of laws on issues touching on women has remained largely unchanged.

Definition of Violence against Women

Women are subject to violence and to threats of violence in their daily lives, such as economical, physical and psychological violence. Violence against women or girls is any act that violates their decency and privacy in public and

private places. Such acts may be physical or psychological including spousal battering, sexual abuse, rape, incest, defilement, indecent assault, harmful traditional practices such as Female Genital Cutting, forced marriage and widowhood rites, intimidation and sexual harassment at work, in school or in the community¹

The Declaration on Violence against Women which is the principal instrument dealing specifically with the subject of Violence against women defines violence as:

"Any act of gender based violence that results in or is likely to result in physical, sexual, or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life."

The Special Rapporteur on Violence against Women at the Human Rights Commission of the Economic and Social Council states that Violence against Women includes:

'All violations of the human rights of women in situations of armed conflict and in particular murder, systematic rape, sexual slavery, and forced pregnancy, as well as all forms of sexual harassment, exploitation and trafficking in women, (the elimination of) gender bias in the administration of justice and the (eradication of the) harmful effects of certain traditional or customary practices, cultural [prejudices and religious extremisms.]'

This type of violence encompasses at a minimum:

'... physical, sexual, and psychological violence occurring in the family as well as in the general community and where perpetrated or condoned by the state, including rape, sexual abuse, sexual harassment, incest, marital rape, dowry-related violence, female genital mutilation, or other harmful traditional practices exploitation, intimidation, trafficking in women and forces prostitution ...'

In the African context, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa provides under Article 1 that:

"Violence against Women means all acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm including the threat to take such acts; or to undertake the imposition of arbitrary restrictions or deprivation of fundamental

¹ *Violence Against Girls and Women: A Public Health Priority*, a Publication of United Nations Population Fund (UNFPA), 1998

freedoms in private or public life in peace time or during situations of armed conflicts or of war;'

The term *gender-based violence*² is widely used as a synonym for violence against women, in order to highlight the gender inequality in which much violence is rooted (IGWG of USAID, 2006). This review acknowledges that the overwhelming recipients of violence are female. Violence, and the fear of violence, severely limits women's contribution to development processes, delaying progress towards the achievement of the Millennium Development Goals (MDGs) and other national and international development goals. Rape and domestic violence account for 5-10% of healthy years lost by women (WHO, 2001). As described by the World Bank's Gender and Development Group, such violence can include, but is not limited to:

- Physical violence (slapping, kicking, hitting, or use of weapons)
- Emotional violence (systematic humiliation, controlling behavior, degrading treatment, threats)
- Sexual violence (coerced sex, rape, being forced into sexual activities considered degrading or humiliating)
- Economic violence (restricting access to financial or other resources with the purpose of controlling a person)

The range of gender- based acts of violence could occur quite literally from the womb to tomb. This is experienced at separate and multiple stages of the life cycle as indicated below:

Table 1: Types of Violence commonly experienced at various phases of the life cycle

Phase	Type of Violence
Prenatal	Prenatal sex selection, battering during pregnancy, coerced pregnancy (rape during war)
Infancy	Female infanticide, emotional and physical abuse, differential access to food and medical care
Childhood	Genital cutting and early marriages; incest and sexual abuse; differential access to food, medical care, and education; child prostitution
Adolescence	Dating and courtship violence, economically coerced sex, sexual abuse in the workplace, rape, sexual harassment, forced prostitution

² although encompassing all forms of violence based on gender including that against such groups as transvestites

WRA³	Abuse of women by intimate partners, marital rape, dowry abuse and murders, partner homicide, psychological abuse, sexual abuse in the workplace, sexual harassment, rape, abuse of women with disabilities
Old Age	Abuse of widows, elder abuse (which affects mostly women)

Source: Heise, L. 1994. Violence Against Women: The Hidden Health Burden. World Bank Discussion Paper. Washington. D.C. The World Bank

In the last couple of years, the Coalition on Violence Against Women (COVAW) has been committed to 'breaking the silence'. This focused on bringing issues of VAW to the fore. Currently, the organization is focusing on 'breaking the cycle' of violence. This entails deeper outreach into society by shifting focus from the individual and placing greater responsibility on society. This ensures that the society at large (and its institutions) are accountable to ending VAW. It can be observed that VAW is deeply rooted in different aspects of society. Its eradication requires a multi-dimensional approach that works in a broad spectrum of the society to achieve the desired results. Hence violence deprives women of their ability to achieve equality by threatening their freedom, safety and autonomy in society.

³ Women of Reproductive Age

CHAPTER 2

Global interventions

The need to protect and make provisions for individual rights and freedoms has been universally acknowledged. From the drawing up of the landmark Universal Declaration for Human Rights - the very first human rights instrument - in 1948, through such Conventions as the International Covenant on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, and the African Union instruments which all recognize civil, political, economic, social, cultural, human, children's and women's rights as the principles of fundamental rights and freedoms of every human being. When it became apparent that gender inequalities persisted even at the level of basic and fundamental human rights and freedoms, women-specific instruments began to be drawn up, most notably, the Convention on the Elimination of all forms of Discrimination against Women and its Optional Protocol (1979) which sought not only to protect women and girls from crimes of violence and abuse, but also to investigate violations when they occur and to bring perpetrators to justice.

State Parties to these instruments have the obligation to sign and ratify them. Once that is done domestication of the provisions follows. This brings them to bear on domestic laws and policies. Participating governments similarly commit to report on the status of implementation to Committees that assess the status of implementation of the conventions and instruments. Non-government actors including civil society players prepare shadow reports to be presented simultaneously to the Committees. Courts such as the African Court on Human and Peoples' Rights have been set up however, they remain largely ineffective as each State Party remains sovereign and they are not bound by any ruling of the Committee or of the Court.

The Kenyan Context

The Government of Kenya has duly signed and ratified numerous international and regional human rights instruments bearing on discrimination against women, and specifically on violence against women. These include such landmark international women's rights instruments as the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), UN Resolution 1325 on Women, Peace and Security, the Declaration on the Elimination of Violence against Women, and the African Union Solemn Declaration on Gender Equality. Kenya was party to the International Conference on Population and Development, and the Beijing Platform for Action which brought to the fore issues of women's sexual and reproductive health rights hitherto unaddressed at the universal level. Indeed, Nairobi hosted the International Safe Motherhood Initiative Conference - the first global conference of its kind to be devoted to maternal mortality and morbidity - as

far back as 1987. Signs were and have been that Kenya would be a global if not regional leader in the women's rights arena.

And as it became apparent that the specific rights of women in Africa merited closer attention, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was elaborated to address these rights. The Protocol provides in its preamble that:

The States parties to this Protocol,

CONSIDERING that Article 66 of the African Charter on Human and Peoples' Rights provides for special protocols or agreements, if necessary, to supplement the provisions of the African Charter, and that the Assembly of Heads of State and Government of the Organization of African Unity meeting in its Thirty-first Ordinary Session in Addis Ababa, Ethiopia, in June 1995, endorsed by resolution AHG/Res.240 (XXXI) the recommendation of the African Commission on Human and Peoples' Rights to elaborate a Protocol on the Rights of Women in Africa;

This signifies that the Government of Kenya in its capacity as a 'State Party' to the instrument *recognizes* the shortcomings in the provisions of the African Charter with regard to the rights of women in Africa, but more importantly that the Government commits to implement the provisions of the Protocol. Kenya has not yet ratified any of the above protocols. An audit of the Kenya Government progress in addressing the prevention of violence against women and protection of women victims and potential victims would not be complete without gauging its performance against the provisions of Article 4.2 on the Right to Life, Integrity and Security of Person:

States Parties shall take appropriate and effective measures to:

a) enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public;

b) adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women;

c) identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence;

d) actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural

beliefs, practices and stereotypes which legitimise and exacerbate the persistence and tolerance of violence against women;

e) punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims;

f) establish mechanisms and accessible services for effective information, rehabilitation and repatriation for victims of violence against women;

With the exception of clause 4.2 (d) on the eradication of harmful traditional practices, and the first part of 4.2 (e) on the punishment of perpetrators of the violence, the Government of Kenya has not prioritized the domestication of the provisions of the Protocol with regard to violence against women. Notably, the Sexual Offences Act, covers matters of rape as well as other types of violence against women.

However, there is no legal provision for domestic violence which is the most common form of violence against women in Kenya, and also the most commonly accepted. The only tangible milestone reached has been the passing of the Sexual Offences Act (2006) which redefines sexual offences as crimes of violence and introduces new offences such as child trafficking, child sex tourism, prostitution of persons with mental disabilities inter alia. There is however a draft bill referred to as the Family Protection (domestic Violence) bill. This bill was introduced in parliament 2002/2003 but was never passed. It has since not been re-introduced in parliament. The bill remains in the periphery.

In terms of the policy framework put in place by the Government of Kenya, there are several general policies which remain largely theoretical including:

- The National Policy on Gender and Development of 2000 and Sessional Paper No2. Of 2006 on Gender Equality and Development- This policy framework addresses general issues on gender, violence against women, and sexual and reproductive health and rights
- The National Population Policy and Plan of Action
- The National Guidelines for the Medical Management of Rape and Sexual Violence
- The National Plan of Action on the Elimination of Female Genital Mutilation 1999- 2019

However, despite this there are legal institutions put in place by the government and mandated with the protection of human rights. These include:

- a). Judicial Authority- the high court is established by the constitution of Kenya. It has the inherent jurisdiction to hear cases of violation of fundamental rights.

b) Legislative authority- parliament of Kenya has the power to enact legislation. To address human rights issues, parliament has established several institutions including: Kenya National Commission on Human Rights, Gender Commission, Kenya Anti corruption commission, National council for children services, National council on persons with disabilities, Law Reform commission, the Sexual Offences Act Task force.

c) International and regional treaties- treaties are not considered part of Kenyan law though after ratification, legal and administrative structures are put in place to support them. Kenya follows a dualistic approach in treaty implementation which denies any direct internal enactment without an enabling statute.

CHAPTER 3

Audit of the Government of Kenya Interventions on Prevention and Response to Violence against Women (VAW)

According to the 2003 Kenya Demographic and Health Survey (KDHS), almost half (49%) of women reported experiencing some form of violence in their lifetime. One in every four women had experienced violence in the previous year and a majority (67%) of both women and men reported wife beating as justifiable in some circumstances (KDHS, 2003). More recent data from The Kenya Police Crime Report (2007) indicated that there were 876 cases of rape reported, 1,984 cases of defilement, 181 cases of incest, 198 cases of sodomy, 191 cases of indecent assault and 173 cases of abduction reported in 2007. Given this level of prevalence, the goal of this audit report is to benchmark how far Kenya has come in the prevention and response to violence against women. The report will map out the progress against the State's obligations with regard to the conventions signed and ratified. This audit will also establish a vital hub of advocacy around women's rights given State inertia to the implementation of changes.

It is hoped that this process will play a particularly effective role in addressing issues of women's rights and empowerment at local levels feeding insights from the study into the national and international advocacy platform. We hope to sensitize the general public, the Government, politicians, parliamentarians, women's and human rights advocates on State obligations to ensuring the equality of women, and to make recommendations for actions to further this cause.

Methodology of the Audit

A team led by a Consultant and including Gender Based Violence experts initiated the audit. Investigations were undertaken in relevant government Ministries, a literature review was conducted including on the web, and one-on-one meetings were held with *Stop Violence against Women* activists. Several internationally recognized resources (UNIFEM; UNFPA; WHO; PATH) informed the audit focus and methodology too.

Investigation methods primarily included desk reviews on government partners, field workers, and representatives of agencies working in the legal, security, health, and psychosocial sectors.

Discussions were held with various government officers notably in the Ministry of Justice and Constitutional Affairs and other relevant Ministries, and this was supplemented by visiting Government and related websites.

The said process entailed activities to:

- Identify and describe the problem, the groups affected and rights involved;
- Study the Government's commitment towards domesticating and implementing regional and international conventions and agreements into national laws and policies;
- Assess the Governments' capacity to implement policy in terms of resource allocation (national budgets, human resources, infrastructure) and factors which may inhibit or advance the policy implementation;
- Assess the impact of the policy on the affected populations (both long and short term);
- Review State obligations under international law according to set human rights indicators such as AAAQ (Availability, Accessibility, Acceptability Quality) and respect, protect and fulfill guiding principles;
- Draw recommendations and map out action plans as per the gaps identified.

Limitations to the Audit

Due to the brevity of the period (March 2008- May 2009) allocated to the study, and in the still-prevailing context of national unrest, it was difficult to schedule interviews at the desired levels of authority⁴. Governments websites visited also did not seem updated which also limited the scope of information collected. It is however not clear how frequently the websites are updated consequently the information provided therein may not be as comprehensive and as accurate as would have been desired. However, efforts to prevent violence and promote women's rights have the powerful backing of international and regional human rights documents.

⁴ With the exception of Gender- based Civil Society Organizations.

CHAPTER 4

International and regional Instruments/ protocols

Table 2: Procedure for Ratification of Instruments:

Step 1: Signature

Step 2: Ratification

Ministry of Foreign Affairs receives and forwards the Instrument to the Parent Ministry

Parent Ministry Seeks legal advice from the AGs office

AG prepares cabinet memo

Cabinet discusses and ratifies or otherwise

Ministry of Foreign Affairs deposits the instrument with the relevant body e.g The African Union (AU)

Step 3: Domestication

Integrating the issues in the instrument into the local law e.g through Acts of parliament, in the Constitution

NB: Until and unless an instrument is deposited with the relevant body, it is not considered as ratified.

Obligations of 'States Parties' to instruments:

- **Ratification:** Ratification of an international agreement represents the official commitment of a State to uphold and adhere to the legal norms that it specifies.

- **Monitoring and reporting procedures:** Treaties have monitoring and reporting procedures to monitor the level of implementation of the treaty in each country. The reporting resembles a 'self-inspection'; governments report on their own compliance with human rights obligations. In other instances, a monitoring body (e.g. civil society/NGOs) initiates the report on government progress towards implementation.

- **Shadow Reports:** these are reports compiled by one or more NGOs that analyze the status of implementation of human rights obligations/commitments at the national level. In these reports, NGOs provide information that supplements government reports and thus assist the committees that monitor the treaties to address concerns that are

omitted, neglected or misreported by the government. Shadow reports are also referred to as alternative reports.

Making the commitments: Government action plans

Asked to rate Kenya government response to violence against women on a scale 1 – 10, a prominent lawyer and women’s rights advocate replied ‘4’ without hesitation saying:

‘The day a woman can walk into a Police Station to report domestic violence and have action taken without questioning her womanhood, Kenya will have reached level ‘5’, or gotten halfway through the battle.’

‘In signing up to the MDGs, 191 governments resolved to promote gender equality as a goal in its own right, but also the empowerment of women in order to combat poverty, hunger and disease and to stimulate sustainable development. NEPAD also stresses equality and enhances women’s rights through its African Peer Review Mechanism (APRM). All these conventions and policy frameworks commit governments to address gender equality, equity and women’s empowerment. They are subject to periodic reviews to measure the extent to which they have been delivered.

Over the past year these reviews have generally shown that Africa has made some progress at all levels. Most countries have developed national gender machineries and policies, but the majority of their strategies have not been implemented. Despite all these promises and first-class commitments, African women are no better off than when they started. The promises have moved a shoe size further on, if at all. The stagnation in some respects and deterioration in others are worrying, particularly given the level of mobilisation of women and advocacy by women’s rights activists from all over the continent. At the root of the problem lies the persistent lack of political will on the part of African governments to implement commitments to gender equality.’⁵

Instruments reviewed during the Audit include:

1. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

CEDAW was adopted by the UN General Assembly in 1979 and came into force in 1981. This instrument is often described as an international bill of rights for

⁵ Pambazuka 2007: Roselyn Musa, Advocacy Officer, FEMNET

women. It is recognized as one of the six major international human rights treaties also regarded as the principal international instrument that addresses women's rights and as the culmination of all international instruments which provided for women's rights. The instrument defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. As of July 2002, it had been signed by 170 countries around the world (Michau and Naker, 2003) Currently, 179 countries are party to CEDAW. CEDAW was the first legally binding international document dealing with discrimination against women. It recognizes the injustices women experience and calls for state parties to take specific measures to protect and promote women's human rights. Governments are under obligation to take affirmative steps to advance the equality of women.

On 6th October 1999, the general assembly adopted by consensus an optional protocol to CEDAW. The Optional Protocol was opened for signature, ratification and accession on 10th December 1999 and entered into force on 22nd December 2000. As of 1 June 2004, 60 state parties to the convention had become party to the Optional Protocol (Women2000 and Beyond, UN). This protocol contains two procedures: a communications procedure allowing individual women, or groups of women to submit claims of violations of rights protected under the convention. The Optional Protocol also creates an inquiry procedure enabling the committee to initiate inquiries into situations of grave or systematic violations of women's rights.

CEDAW Committee: This is the treaty body of the Convention on the Elimination of All Forms of Discrimination Against Women. The Committee consists of a group of 23 independent experts who monitor the implementation of the Convention by State parties. The experts have been elected on the basis of their knowledge of relevant topics. They are nominated by governments of State parties, but operate independently from the governments.

The CEDAW document consists of a preamble and 30 articles. Countries report on Articles 1 – 16 substantive issues including Article 1 on the definition of Discrimination against Women.

Reporting requirements:

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.

Kenya's situation:

The Government of Kenya is satisfied with its progress towards operationalizing the provisions of CEDAW in the country albeit at a slow pace. Notably, constitutional equality remains an unattained aspiration for Kenyan women. The definition of discrimination in the Kenyan constitution is still not compliant

with the convention as well. Women are still not granted equal citizenship rights under the constitution. In line with the reporting requirements for CEDAW, Kenya has submitted four reports so far:

- 1st Government of Kenya Report was due in 1985 but submitted on 4th December 1990
- 2nd Report was due in 1989 but submitted on 4th December 1990
- 3rd & 4th combined Report submitted in January 2003
- 5th & 6th combined Report submitted in 2007

Kenya ratified CEDAW in March 1984. However, much progress is yet to be seen in the domestication of this convention by the Kenyan government. The government has perpetually submitted its yearly reports late combining several years' reports into one which is not a very good indicator.

2. UN Resolution 1325 on Women, Peace and Security (2000):

This instrument provides a framework for addressing women's need for and the right to protection during situations of conflict and acknowledges the importance of the role of women in peace building. Notably, Women and children, account for the vast majority of those adversely affected by armed conflict. It is precisely because conflict carries such devastating consequences for women and girls that efforts to build peace and prevent the recurrence of conflict must consider the role of women. Peace processes cannot undo the loss and suffering experienced by women and girls during war, but these processes can provide the starting point for accountability and redress.

The Resolution reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction. It stresses the importance of their equal participation and full involvement in all efforts for the maintenance and promotion of peace and security. Resolution 1325 urges all actors to increase the participation of women and incorporate gender perspectives in all United Nations peace and security efforts. It also calls on all parties to conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict. The Resolution provides a number of important operational mandates, with implications for Member States and the entities of the United Nations system.

Kenya's situation:

According to a Kenyan report presented at the 5555th meeting of the Security Council, The Department of Peacekeeping Operations made great strides in promoting gender balance among peacekeeping personnel. This was improved

through the incorporation of full-time gender advisers in peacekeeping missions.

Despite the modest progress made, numerous challenges still stand in the way of the implementation of resolution 1325. These include lack of leadership and commitment to the resolutions recommendations, lack of adequate accountability mechanisms as well as limited inter-agency coordination. Women still need considerable support to be effective in new democratic and legal structures, which had been traditionally dominated by men. Case in point are the recent appointments into various committees after the post elections period such as the Krieger Commission and Waki Commission, whereby the representation of women was marginal.

3. The Beijing Platform for Action:

This is a Consensus document adopted by the 1995 Fourth World Conference on Women in Beijing, which reviews and reaffirms women's human rights in all aspects of life, signed by representatives at the Conference and morally but not legally binding. It was followed by the Beijing+ 5 document and its progress was reviewed after 10 years, during the 49th session of the Commission on the Status of Women (2005). It reiterates the responsibility of all governments to take "*integrated measures to prevent and eliminate violence against women*". The 189 nations that adopted the Platform for Action committed themselves to developing comprehensive programmes to end gender-based violence. They also established a global agenda to promote equality and empowerment for women.

The "critical areas of concern" in the Beijing Platform for Action are:

- The persistent and increasing burden of poverty on women.
- Inequalities and inadequacies in and unequal access to education and training.
- Inequalities and inadequacies in and unequal access to health care and related services.
- Violence against women.
- The effects of armed or other kinds of conflict on women, including those living under foreign occupation.
- Inequality in economic structures and policies, in all forms of productive activities and in access to resources.
- Inequality between men and women in the sharing of power and decision-making at all levels.
- Insufficient mechanisms at all levels to promote the advancement of women.

- Lack of respect for and inadequate promotion and protection of the human rights of women.
- Stereotyping of women and inequality in women's access to and participation in all communication systems, especially in the media.
- Gender inequalities in the management of natural resources and in the safeguarding of the environment.
- Persistent discrimination against and violation of the rights of the girl child

Despite the good and positive aspects promulgated by this platform, the government has continued to reflect a snails pace towards its domestication and adoption.

4. The African Union Solemn Declaration on Gender Equality:

The African Union (AU) Solemn Declaration on Gender Equality in Africa was adopted by the Heads of State and Government of Member States of the African Union during the Third Ordinary Session of the Assembly in Addis Ababa, Ethiopia, in July 2004. Heads of States and Government committed themselves to report annually on progress made in gender mainstreaming and to support and champion all issues raised in the Declaration, both at the national and regional levels, and to regularly provide each other with updates on progress made during Ordinary Sessions of the Assembly.

Gender Equality in Africa is supported by the principle of gender equality as enshrined in Article 4 (L) of the Constitutive Act of the African Union, as well as other existing commitments, principles, goals and actions set out in the various regional, continental and international instruments on human and women's rights.

5. Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa (Maputo Protocol)

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted on the 11th day of July 2003 by Heads of State and Government of the African Union (AU) during the Second Ordinary Summit of the AU convened in Maputo, Mozambique-hence the name the Maputo Protocol. The Protocol supplements both previous international conventions touching on women's rights and the provisions of the African Charter by requiring States Parties to take appropriate measures to prohibit all forms of violence against women, identify the causes, punish the perpetrators and ensure effective rehabilitation and reparations for victims.

The adoption of the Protocol was pushed by widespread sentiments that African women continued to suffer human rights violations simply because they were women and the existing guarantees for the protection of their rights were felt

to be inadequate. This was therefore a landmark step in enhancing the promotion and protection of women's human rights on the continent through providing a comprehensive legal framework for holding African governments accountable for their violation.

In this light, the Protocol is in line with *Article 2* of the Universal Declaration of Human Rights (UDHR) which proclaims that "*everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind such as race, colour, sex...or other status*".

Guarantees under the Protocol: The Protocol has a preamble and 32 articles. It aims to give greater attention to the human rights of women in Africa. It also aspires to promote the principles of equality, peace, freedom, dignity, justice, solidarity and democracy. The Protocol defines what constitutes discrimination and violence against women and proceeds to outline measures which states parties are required to take in both the public and private spheres to put to an end such practices. The Protocol thus requires states to adopt legislative, institutional and other measures to eliminate all forms of discrimination against women. States parties must therefore integrate a gender perspective in their policy decisions, legislation, development plans and activities. States are also called upon to play a proactive role in order to eliminate harmful cultural, traditional and other practices based on the idea of the inferiority or superiority of either of the sexes, or on stereotyped roles for men and women.

Kenya's situation:

During the 41st Session of the African Commission on Human and Peoples' Rights held on 16-30th may,2007 in Accra, Ghana the Kenyan Government reported that it had ratified the Protocol. The then Minister for Justice and Constitutional Affairs indicated that the document would be deposited by the end of June that year. However, there has been contradictory information regarding the status of ratification of this document from the various ministries (Ministry of Justice and Constitutional Affairs, Ministry of Foreign Affairs and Gender ministry). The current position is that the document has not yet been deposited with the African Union (AU).

Various challenges have hampered appropriate consultations on the Protocol with the relevant players. This include: Lack of clarity on where and from whom to get information on status of ratification, unclear and undefined communication channels on ratification of instruments, there is also a general lack of awareness and education on human rights, Lack of budgetary allocation, VAW is still being trivialised by government and society at large hence Women are still being violated.

Table 3: Analysis of how Kenya has engaged and complied with each of the treaties discussed.

Compliance:

1. CEDAW:

Commitment to filing a progress report every 4 years. Kenya has sent in four reports to date. Notably, there is slackness in compliance by the government of Kenya as the reports have perpetually been handed in late. The next Report was due in April 2009, it has not yet been handed in to date.

2. Beijing Platform for Action

The Platform for Action committed governments to developing comprehensive programmes to end gender-based violence. Visible efforts including the establishment of the National Council on Gender and Development.

3. UN Resolution 1325 on Women, Peace and Security

This instrument provides a framework for addressing women's need for and right to protection during conflict and acknowledges the importance of their role in peace building. Kenya has incorporated full-time gender advisers in peacekeeping missions.

4. AU Solemn Declaration on Gender Equality

Governments commit themselves to report annually on progress made in gender mainstreaming and to support and champion all issues raised in the Declaration, during Ordinary Sessions of the Assembly. Kenya has not complied yet

5. Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. (2003)

The Government has not ratified this protocol yet. The instrument has also not been deposited with the AU.

Government Ministries involved in the implementation of the instruments include:

a) Office of the President: Police Department

Even though women's and children's desks exist in many of the police stations in some of the larger urban areas and towns, interviews with police suggest that there has not been widespread training on general GBV /VAW issues and/or appropriate response to sexual violence. The police also do not have the resources to ensure that all sexual-violence related complaints are investigated. Even if a police officer has a heightened awareness and sensitivity about sexual violence, lack of resources may make it particularly challenging to ensure the safety and security of survivors. Therefore the AAAQ⁶ of gender desks in the police is not complied to in totality.

"Even if the gender desks are manned by police women, it is well known that there are women that may not be sensitive to or even believe in women issues. Training and sensitization of the police force is required. The progressive bit in meeting this requirement is that gender is incorporated in the police training. However it will be a while before we can see any impact because new trainees are usually not deployed in areas of decision making immediately after graduation from the forces academies"⁷

b) Ministry Of Justice and Constitutional Affairs: Legal Sector

Despite the progress that has been made in legal sector reforms, a number of challenges curtail victims' access to legal justice. Informants revealed that funding limitations make witness transportation to/from police stations and courts difficult. Investigations also more often than not last longer than the 24-hour limit to detain a suspect before arraignment. The said period often does not even allow for the conclusion of a medical report for victims who may need one. However, even when a Medical Examination Report is successfully completed and the accented charged, it often takes as long as three for a case to go through legal proceedings.

c) Ministry of Health: Division of Reproductive Health (DRH)

In the year 2004/5, the Division of Reproductive Health formed a Post Rape Care committee. This comprised stakeholders interested in post rape care as part of the Gender and Reproductive Health Rights working group. The mandate of this committee was to support the development of national protocols and make recommendations for the development and implementation of a regulatory framework for post rape care as required by the Ministry of Health in Kenya.

Strengthening care services: Responding to the needs of survivors of sexual violence.

⁶⁶Anne Amadi, the National Legal Aid co-ordinator, Ministry of Justice and constitutional affairs.

Achievements of The Post Rape Care Committee:

The Ministry of Public Health through the National AIDS and STI Control Programme (NAS COP) facilitated the scale-up of access to Post Exposure Prophylaxis (PEP) following sexual violence as part of the Anti-RetroViral (ARV) scale-up plan. This process was concomitant to the Division of Reproductive Health scale-up plan thus allowing the smooth delivery of post rape care services. In addition, NAS COP entrenched training of PEP delivery and administration into the ARV training curriculum for Kenya, strengthening service delivery at the local level.

The National AIDS Control Council (NACC) is Kenya's coordinating agency for the national HIV response. The NACC identified sexual violence as a concern for HIV prevention and thus treatment and care. They articulated these concerns with survivors of sexual violence categorized as a vulnerable group and thus require attention in the national response to HIV.

Gender and Reproductive Health Rights

The Kenyan Government's Gender and Reproductive Rights Programme, implemented by the Division of Reproductive Health with other local and international partners, aims to:

- change legislation, policies, and traditional or cultural practices that discriminate against women and girls
- promote and provide comprehensive reproductive health services for women
- achieve equality and equity between men and women
- ensure that women have access to information, education, and services needed for them to achieve good health and to exercise their reproductive rights and responsibilities

Future efforts will include scaling-up of services for victims of rape and other sexual violence, and a project to integrate gender issues into HIV/AIDS policies and services.

d. Ministry of Gender and children affairs (National Commission on Gender and Development)

The National Commission on Gender and Development (NCGD) was established by an Act of Parliament No.13 of 2003 in December 2003. It was launched in November, 2004 as a parastatal within the Ministry of Gender and children affairs, the Ministry responsible for gender affairs in the country and has its headquarters in Nairobi. The objective and purpose for which the Commission was established is to coordinate, implement and facilitate gender

mainstreaming in national development, and to advise the Government on all aspects thereof.

However it was not until 2007 that the Commission got funding to roll out any of its plans.

'The Gender Commission was formed to address women's issues, but was not given an operational budget during the first five years of its life ... Issues touching on women's lives will move the day the Government shows political will to address them ...'

Despite the establishment of the Ministry of Gender and children affairs, as well as the establishment of the National Commission on Gender and Development (both recently established), the Government has not allocated sufficient resources to these institutions to enable them carry out their mandate effectively. Furthermore, there was no specific budgetary allocation for gender work in the past. The Government needs to strengthen the national gender machinery by allocating sufficient resources to the Gender Commission and appointing leadership on merit.

f. Special Programs Ministry: (response to Internally Displaced Persons)

The findings of an assessment by UN bodies confirmed reports from that sexual violence and Violence against Women increased during the post-election crisis that began on December 30, 2007. Evidence suggested that perpetrators exploited the conflict by committing sexual violence with impunity, and efforts to protect or respond to the needs of women and girls were remarkably insufficient.

Sexual violence was not only occurring as a by-product of the collapse in social order in Kenya brought on by the post-election conflicts, but it was also being used as a tool to terrorize individuals and families and precipitate their expulsion from the communities in which they lived. The threats of sexual violence being used as a fear-instilling tactic, in so far as women were told they and their children would be raped if they did not vacate their property within a designated timeframe.

Despite efforts by the Kenya Red Cross Society (KRCS) and other humanitarian actors to introduce some basic protective mechanisms, cases of sexual assault in the IDP camps appeared to be on the rise. Exact numbers, however, were impossible to ascertain at the time of the survey, not only because the encampments did not have standardized reporting mechanisms, but also because of challenges associated with acknowledging victimization, including availability of services, the level of awareness about the value of medical

assistance, the degree of trust in police and other security-related issues, as well as the cultural acceptability of disclosing rape.

Sexual exploitation was also a major concern amongst the IDPs. Both women and humanitarian actors across multiple sites reported cases in which women and girls were coerced into exchanging sex for basic resources, such as food, sanitary supplies, transport, etc. Perpetrators were identified as men from the encamped population, the community and, in some cases, security personnel. Some reports suggest that sexual exploitation “rings” were being organized by profiteering men from the camps and/or host communities.

Domestic violence was identified as an issue among the encamped population due to shifts in traditional spousal roles, idleness among the men, stressors associated with camp living, etc. Increased rates of divorce and separation were also noted--sometimes occurring along tribal lines--often leaving women as the sole caretaker of their children.

Commonly reported concerns for young girls include early marriage, prostitution and trafficking for domestic labor due to increased poverty and the inability of parents to provide for their children. Another concern for girls echoed throughout the camps was withdrawal from school due to security risks or because mothers need the assistance of girls to manage increased domestic responsibilities.

These issues of poor capacity within the key service-delivery sectors were compounded by lack of coordination across the sectors. In the absence of pre-existing national coordination mechanisms to address sexual violence, a GBV sub-cluster was established by UNFPA and is co-chaired by KRCS to coordinate multi-sectoral action related to the Kenya crisis among the health and social services actors, and the legal, human rights and security sectors. The sub-cluster focused on strategic planning, gathering information and resources, capacity building, policy development, data management, resource mobilization, and maintaining effective action for both prevention and response. While the GBV sub-cluster was developed in response to the IDP situation in Kenya, it was anticipated that the responsibilities of the group would be transitioned to the appropriate government bodies such as the Gender Commission when the crisis diminished and would therefore be a sustainable mechanism to lead GBV co ordination nationwide. The GBV sub-cluster has since transitioned and is now housed under the National Commission on Gender and Development. It is hoped that through strategic planning of interventions with the commission, there will be room for more Government interaction and action on issues around GBV and VAW.

CHAPTER 5

Achievements, Gaps and Recommendations

Achievements

According to the most recent report submitted (2007) to the CEDAW Committee Kenya was commended for the following achievements:

- Free primary education
- Enactment of Children's Act, 2001
- Enactment of Persons with Disabilities Act & establishment of Council
- Enactment of the Public Officer Ethics Act, 2003
- Establishment of CDF (Constituency Development Fund)
- Reporting to the CEDAW Committee

At the time the report was filed the Sexual Offences Act (SOA) had not been enacted but it represents a land mark achievement for Kenya. In participating in this reporting process the country demonstrated:

- Political will and commitment to addressing inequalities
- Facilitation of popular participation and public scrutiny of government policies
- Reflects positively on government and enables further engagement through exchange of information at the international level aimed at understanding common problems faced by states & measures which might be taken to overcome obstacles in the implementation of the convention

Participating in designated days such as November 25 which is the International Day for the Elimination of Violence against Women, the 16 Days of Violence as well as establishing gender desks at police stations, having one stop Gender Based Violence Recovery centers (at KNH and other Provincial General hospitals) shows government effort and willingness towards the fight on putting and end to GBV.

Meanwhile documentation of the incidences, extent and cost of VAW is being improved by advances in research. However, according to a presentation to CEDAW by 13 civil society organizations the following 5 key gaps emerged from the report:

- Poor participation by women in politics and public life
- Inadequate laws to address gender- based violence
- Inequality in ownership of matrimonial property
- Lack of a national legal aid scheme (which was subsequently launched in October 2008 but is yet to fully roll out)
- Inadequate national machinery to address gender issues

Additionally, the influence of the faith based organizations cannot be underestimated in the fight against gender based violence. These organizations have been at the fore especially in matters of laying a platform of action in matters of reproductive health. They have been loud on some reproductive health matters and have worked hard in fighting for the rights of women on various issues such as FGM, early marriages, violence and others.

Gaps:

Poor Participation by Women in Politics and Public Life

The Government's report was generally reflective of the modest improvement in women's participation in political life; appointments to public office continue to reflect age-old trends whereby women are heavily represented at the lower and middle level management with their numbers dwindling at the higher levels.

Inadequate Laws to address Gender Based Violence

The enactment of the Sexual Offences Act has not been matched with adequate training and dissemination of the Act to law-enforcement officers and relevant judicial system agents. Most of the awareness that has been created on the Act has been conducted by Civil Society Organizations while it is the Government's role to ensure that its citizens are made aware of any new laws. Furthermore poor investigation of cases results in the lack of conviction of offenders thus denying justice to survivors of violence. The Act does not criminalize FGM for women above the age of 18 years thus rendering them vulnerable to harmful cultural practices.

There is still no law to address domestic violence despite the fact that the Domestic Violence (Family Protection) Bill was drafted 8 years ago.

For example, many women have reported assault and molestation for being a parliamentary aspirant in a heavily chauvinistic community. This may cause fear among women over seeking political office. This goes to show government failure to ensure that the political environment is one that is not safe for women. There is also the issue of the equal opportunity bill which is another gender related bill that is still pending.

Inequality in Ownership of Matrimonial Property

Discrimination against women is most evident upon dissolution of a marriage when the women are kicked out of their matrimonial home with nothing but the clothes on their backs. This discriminative effect has been reinforced by the Kenyan Court of Appeal in the case of *Peter Mburu Echaria Vs Priscilla Njeri Echaria* (Feb, 2007). In this particular case the court held that neither the status of marriage nor the performance of domestic duties entitled a woman to a beneficial interest in matrimonial property upon dissolution of marriage. This is a departure from previous case law from the same court precedence which was to the effect that matrimonial property, ought to be divided equally

between the spouses upon dissolution of the marriage. This situation has been aggravated by the lack of Kenyan legislation on this issue. The Matrimonial Properties bill which was proposed to deal with all issues pertaining to matrimonial property. The bill however remains one of the gender related bills that are yet to be passed by parliament.

National Legal Aid Scheme

In theory both men and women have equal access to courts and legal redress. In reality however, women who constitute the majority of the poor population and illiterate do not have adequate access to legal services. The work of providing legal aid has largely been left to Non-Governmental Organizations. While the government has taken a positive step in launching the national legal aid scheme, there is need to do more to ensure that access to justice becomes a reality for all. There is need for the government to begin to facilitate the roll out of the pilot programme.

Recommendations: An agenda for moving forward

Policy: Anti-violence policies should contain clear and encompassing definitions of violence against women; designate consultation processes that bring together all sectors; lay out frame works for monitoring and indicators to measure progress.

Budgets: Budget lines should identify specific actions, policies and measures; the budget allocated to violence against women should be measured against gross domestic product.

Legislative frame work: Legislation should clearly address all forms of gender based violence, and should specify criminal and civil law responses, unambiguously stipulating sanctions and including measures to prosecute state agents who are perpetrators of violence.

We urge the Committee to recommend that the Government enacts legislation on Affirmative Action to increase women's participation in politics and public life. Ensuring that there is quality of opportunity at all levels for both sexes, ensuring that there is a safe environment in which women can exercise their political ideologies and ambitions.

Actions

- Training of professionals: Service provision; Civil society; Data collection (disaggregated data); Prevention
- Strengthen the National Commission on Gender & Development and the Ministry of Gender to ensure strong institutional mechanisms to coordinate enactment of Domestic violence/ family protection laws.

- Give priority to combating violence against women and adopt comprehensive measures to address all forms of violence against women and girls
- Raise public awareness on all forms of violence including FGM
- Avail legal aid to all victims of violence
- Train law enforcement officers and medical personnel on all forms of violence
- Provide comprehensive information on situation of refugees and internally displaced women: their protection and mechanisms to investigate and punish perpetrators
- Strengthen and implement measure to increase number of women in elected and appointed office – (Use temporary measures to accelerate full participation)
- Recommended awareness raising, training on importance of women’s participation in decision-making
- Expedite adoption of the Trafficking in Persons Bill for effective prosecution and punishment of traffickers
- Amend the Citizenship Act to ensure equal citizenship rights for women
- Take steps to overcome traditional attitudes that deny girls and women education
- Implement measures to ensure equal access of girls and women to all levels of education
- Full operationalization of the bills/laws
- Fully implement the political parties Act
- Provide in its next report data disaggregated by sex, situation analysis of women in employment, trends, measures and impact in realizing equal opportunities
- Step up measures to reduce maternal & infant mortality
- At the smallest village administrative unit if there is to be any meaningful change, one must influence that unit. Because formative values and socializations process are impacted that village level environment.
- Come up with a National Rapid response mechanism that will cater for the needs of women and girls in conflict situations.
- The Department of Peacekeeping Operations should develop and disseminate effective guidelines to ensure sustained efforts in gender mainstreaming at all levels of peacekeeping operations.

Table 4: Recommendations to different stakeholders in contributing to the alleviation of violence against women:

Key stakeholders	Action points
Women	<ul style="list-style-type: none"> ▪ Women need to report abusers. ▪ Women and girls should be trained on women’s and humans rights. ▪ Women need to advocate for human and women’s rights. ▪ Women need to openly discuss VAW and gender issues. ▪ Women need to build and promote rights awareness, self confidence and self reliance amongst girls and their daughters. ▪ Women need to be economically empowered. ▪ Abused women need to be counseled.
Men	<ul style="list-style-type: none"> ▪ Men and abusers should be counseled on their behavior and how to deal with their emotions. ▪ Men and boys should be sensitized on gender issues. ▪ Men and boys should be trained on human and women’s rights. ▪ In all discussions on gender issues, men should be involved.
The Police	<ul style="list-style-type: none"> ▪ The police require training on human and women’s rights. ▪ The police need to be sensitized on gender issues. ▪ The police need to recruit more gender sensitive police officers to specifically work on women abuse and gender issues. ▪ The police need to establish a department specialized in dealing with women’s abuse cases. ▪ The police need to be brought closer to the public through community policing and Community Police Forums. ▪ The police need to offer protection and shelter to abused women. ▪ The police need to offer abused women services they might require, such as professional counseling and medical care.

<p>Government Ministries: 1.Ministry of Justice 2.Ministry of Health 3.Ministry of Gender</p>	<ul style="list-style-type: none"> ▪ Government officials as well as politicians need to be sensitized on gender issues. ▪ Government officials require training on human and women’s rights. ▪ Government needs to promote women leaders and women in strategic positions within its structures. ▪ Government needs to promote economic empowerment of women. ▪ Government needs to enact laws to better protect women from abuse and violence. ▪ Government needs to enforce and implement laws that protect human and women’s rights. ▪ Government needs to contribute to and facilitate public education and rights awareness creation. ▪ Government needs to offer shelter and protection to abused women. ▪ Government needs to improve availability and accessibility of counseling for abused women. ▪ Government needs to offer legal advice and assistance and/or make it easier, accessible and affordable. ▪ Government is required to improve the general security in Nairobi by installing street lights and ensuring regular police patrols in all areas of Nairobi. ▪ Local Administration, chiefs and District Officers, should be sensitized on violence against women and gender issues to in turn create awareness in their local communities. ▪ Push for implementation of SOA ▪ Ministries need disaggregate data on needs ▪ Ministries need to look at current economic trends and purpose to assist women e.g giving women seed money to start up income generating activities.
<p>The Judiciary</p>	<ul style="list-style-type: none"> ▪ Magistrates, chief justices, prosecutors and attorneys need to be sensitized on gender issues. ▪ Expedite matters of VAW. ▪ Fully Implement SOA: have strict sentencing, adhere to procedures e.g hearing sexual violence cases in camera. ▪ The judicial system needs to ensure protection of abused women. ▪ Women’s abuse cases need to be dealt with swiftly so as to minimize the risks that many abused women are exposed to because they live with the abuser. ▪ The judicial system needs to inform the government on laws that require implementation to better protect women.
<p>The Education System</p>	<ul style="list-style-type: none"> ▪ Teachers should be trained and sensitized on gender issues, human and women’s rights. ▪ Teachers should be trained so that they can identify cases of domestic violence and they should be enabled to act in order to prevent it. ▪ Teachers should contribute to rights awareness amongst children and youths, especially girls. ▪ Teachers should discuss domestic violence, women abuse and male and female role models in the classrooms for purposes of sensitization and to allow children who experience violence or abuse to come forward. ▪ Teachers should invite police officers and experts on gender issues and human rights to assist in the discussions and bridge the gap between the public and the police. ▪ Teachers should stimulate girls to actively participate in the classroom

	<p>and in extra-curricular activities to boost their self-confidence and self-reliance which are required in later life.</p> <ul style="list-style-type: none"> ▪ Schools should facilitate discussions on causes and consequences of drug and alcohol abuse. ▪ Schools need to be serious on punitive measures against teachers that abuse children/ pupils/ students.
The Media	<ul style="list-style-type: none"> ▪ The media should contribute to public education and rights awareness creation through radio, television and the newspapers. ▪ The media should facilitate a public debate on gender issues and domestic violence. ▪ The media should facilitate in bringing the key stakeholders together to formulate strategies to address women’s abuse.
Non-Governmental Organizations (including Religious Groups)	<ul style="list-style-type: none"> ▪ NGOs should contribute to public education and rights awareness creation at the community and neighborhood levels. ▪ NGO’s should offer counseling , shelter, legal and other practical advice to abused women, but also to men and married /cohabiting couples. ▪ Counseling should include reference of rape victims to baby adoption centers to avoid abortion which is itself an abuse of innocent lives. ▪ NGOs should assist in training and sensitizing police officers, magistrates, prosecutors and government officials. ▪ NGOs should collaborate with the media for purposes of public education and sensitization and bringing the key stakeholders together. ▪ NGOs should sensitize the public on causes and consequences of GBV and VAW.

Table 5: Comparative analysis of Moi Vs NARC Vs Coalition Government eras with regard to milestones in the fight against VAW

Era	Year	Treaty	Signature	Ratification	Domestication
Moi	1984	The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	√	√	Partly through SOA
	1989	UN Convention on the Rights of Children (UNCRC)	√	√	Children's Act
	1994	African Platform for Action (Dakar)	√	X	X
	1995	The Beijing Platform for Action	√	X	X
	2000	UNSC Resolution 1325 on Women, Peace and Security;	√	X	X
The NARC Government	2003	The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)	√	X	X
	2004	The Solemn Declaration on Gender Equality in Africa	√	X	X
Coalition Government	!	!	!	!	!

√ Means Signed or ratified
 Means none

X Means Not Signed or ratified !

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CHAPTER 6

Conclusion and Way forward

Violence against women is a hidden problem. It occurs in private and personal spheres that women cannot easily talk about – within the family and at home. Cases of rape have also been reported to take place in public transport (such as matatus), gang rapes by thugs etc. In some instances, the perpetrators are known to the victims and often they are their husbands and boyfriends.

The emotional bond between the victim and the abuser, which is often a characteristic of women's abuse cases, complicates the situation and magnifies the impact of the abuse on the victim. The victims often feel forced to stay in the abusive environment, because of the children or because of economic dependency. Furthermore, the victims tend to feel responsible for the behavior of the abuser and blame themselves. They often show complacency with the man's behavior, because women are abused anyway, out of fear for men or the abuser, or because of fear of stigmatization of single women/mothers.

As a result, many women remain in a cycle of abuse without reporting to any authorities. This has been so since abuse is in most cases considered as a private or family matter that is not supposed to be exposed/ revealed to anyone. Additionally, women who do talk about the abuse or report to the police fail to have their cases effectively addressed.⁸ The criminal justice system fails to take proper action, not only because of limited reporting but because the criminal justice system is ill equipped and the officers are not well trained to deal appropriately with cases of women abuse.

That survey showed that violence against women is not taken seriously⁸. Men deny it, women hide it and authorities neglect it. It is a widespread problem that endangers the lives of many women and children who are often exposed to multiple forms of domestic violence. Research has shown that children's exposure to violence and abuse hampers their intellectual and social development and contributes to abusive, anti-social and criminal behavior, thus perpetuating the cycle of violence.

Therefore, activities and strategies to address violence against women should involve all key actors: men, women, children and the youth. The police, the justice system, local, provincial and national governments and non-governmental organizations, religious groups, the media and the general public.

To address the issue of violence and discrimination against women, it is essential that everybody takes responsibility and learns to understand the links between women's safety and overall community safety. Furthermore, a shared

⁸ Only 2 out of 195 cases of abuse examined were arrested and charged accordingly. Survey by UN Habitat, 1995

sense of responsibility between individuals, the government and civil society is required. Ideally, partnership is also key to winning back the confidence of the people. A sensitization and training campaign and the development of a partnership have to involve police and judiciary to bridge the gap between government, criminal justice system and society. In order to be credible, priorities should correspond with the most urgent problems perceived by the public, particularly women in this case.

Glossary of Terms

Accession: When a State becomes party to a treaty after it has already been negotiated and signed by other States (generally when the treaty has already entered into force). It has the same legal effect as ratification. The conditions under which accession may occur and the procedure involved depend on the provisions of the treaty (see also see Ratification).

Advocacy: A process aimed at influencing decisions regarding policies and laws at national and international levels; actions designed to draw a community's attention to an issue and to direct policymakers to a solution. Advocacy requires the existence of explicit mechanisms for the participation of organizations of civil society.

Benchmark: Self-set goals or targets to be reached at some future date. National and international benchmarks are the framework for measuring progress in implementing the right to health and are normally used for assessing the effectiveness of policies.

Cairo Program of Action: Outcome document of the International Conference on Population and Development, adopted by the United Nations in September 1994, in Cairo, Egypt.

Civil and Political Rights: Classical rights and freedoms. Rights of citizens to liberty and equality. In principle citizens should be able to exercise these rights without interference from the government. Civil and political rights include the right to life, the right of fair trial, free choice of religion, to think and express oneself, to vote, to take part in political life and to have access to information.⁹

Committee(s): Treaty-monitoring bodies created under various Conventions to monitor the implementation of the treaty. Committees consist of independent experts. They examine State reports about the application of the treaty and deal with cases involving violations of rights. See also CEDAW, Human Rights Committee and ICESCR. The term 'Human rights committee' is meant to refer specifically to the treaty-monitoring body of the International Covenant on Civil and Political Rights

Consensus documents: Documents which have been adopted by declaration. Though they are not legally binding, these documents are important because governments feel a moral obligation to abide by them, as they are based on political agreement. Therefore, they are also called political documents. One of the oldest and most influential consensus documents is the Universal Declaration for Human Rights. Other famous examples are the Beijing Platform for Action and the Millennium Development Goals.

Convention on the Elimination of All Forms of Discrimination against Women: CEDAW was adopted in 1979 and entered into force in 1981. It is the first legally binding international document prohibiting discrimination against women and obligating governments to take affirmative steps to advance the equality of women.¹⁰ Currently, 180 countries are party to CEDAW. In 1999, an optional protocol (see: Optional Protocol) to CEDAW was adopted, which entered into force in 2000. It established two new procedures: a procedure for individual complaints to the Committee and an enquiry procedure on the basis of which the Committee can start an investigation about an alarming situation in a specific country.

CEDAW (the Committee): Treaty body of the Convention on the Elimination of All Forms of Discrimination against Women. The Committee consists of a group of 23 independent experts who monitor the implementation of the Convention by State parties. The experts have been elected on the basis of their knowledge of relevant topics. They are nominated by governments of State parties, but operate independently from the governments.

Core obligations: Obligations that ensure the minimum core content of each right. See chapter 5, step 5 question 4 for a list of core obligations regarding the right to health.

Covenant: See Convention. See also International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR).

Declaration (document): Document which contains agreed upon standards but which is not legally binding. UN conferences, such as the 1993 UN Conference on Human Rights in Vienna and the 1995 World Conference for Women in Beijing, usually produce two sets of declarations: one written by government representatives and one by NGOs. The UN General Assembly often issues influential but legally non-binding declarations.¹³

Declaration (statement): Sometimes a State wants to make a general statement about a treaty, for example, the way it interprets a definition/word included in the treaty. This is done by way of a declaration. In cases where the treaty prohibits reservations, States sometimes (abusively) make use of declarations in order to limit the content of certain provisions or scope of application.¹⁴

Discrimination: Discrimination means 'any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights

and fundamental freedoms in the political, economic, social, cultural, civil or any other field.’¹⁵

Gender: While ‘sex’ refers to the biological differences between males and females, gender describes the socially-constructed roles, rights and responsibilities that communities and societies consider appropriate for men and women. We are born as males and females, but becoming girls, boys, women or men is something that we learn from our families and societies. It is this learned behavior that forms gender identity and determines gender roles; these are not necessarily the same all over the world, or even within a country or region.

Human rights: The rights possessed by all persons, by virtue of their common humanity, to live a life of freedom and dignity. These rights and freedoms are irrespective of citizenship, nationality, race, ethnicity, language, gender, sexuality or abilities. They are universal and indivisible. Human rights become enforceable when they are codified as Conventions, Covenants or Treaties, or when they become recognized as Customary International Law.

Life-cycle approach: Health is a lifetime concern for both women and men, from infancy to old age. In many cultures, the discrimination against girls and women that begins in infancy can determine the course of their lives. Health policies therefore need to be tailored to the differing challenges people face at different times in life.

Lobbying: Lobbying is the practice of seeking to influence the legislature or policy development. Lobbying can be conducted by an individual, a group, an organization or an association which actively tries to influence a governing body so that its point of view becomes reflected in the legislature or policy development.

Millennium Development Goals: The eight Millennium Development Goals (MDGs) – which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, all by the target date of 2015 – form a blueprint agreed to by all the world’s countries and all the world’s leading development institutions. In the UN Millennium Declaration the UN member states also stress values such as freedom, equality and solidarity.

Monitoring and reporting procedure: Treaties have a monitoring and reporting procedure to check the implementation of the treaty in each country. The reporting resembles a ‘self-inspection’; governments report on their own compliance with human rights obligations. In other cases, a monitoring body (e.g. NGOs) initiates the report on government behavior.

Non-governmental organizations (NGOs): Organizations formed by people outside the government. They can operate on an international, national, regional or local scale on the basis of different mandates, agendas and priorities. Women's organizations and NGOs play a substantial role in influencing UN policy, for example, by writing shadow reports.

Policy: A purposive course of action followed by an actor or set of actors in dealing with a problem or a matter of concern. Policies can vary considerably in scope. The term policy can refer to a nationwide 5-year health strategy as well as to decisions of a more limited scope, such as a reduction of the funding to the maternity wards in a certain district. The actors can be local or national governments, organizations, enterprises or individuals.³⁰

Ratification/ ratified: Ratification of an international agreement represents the official promise of a state to uphold it and adhere to the legal norms that it specifies. ³⁴

Respect/ protect/ fulfill: States parties have the obligations to respect, protect and fulfil human rights. The obligation to respect requires States parties to refrain from interfering with the enjoyment of rights. The obligation to protect requires States parties to prevent rights abuses by third parties. The obligation to fulfil (in the meaning of facilitate) requires States parties to pro-actively engage in activities that strengthen access to and the utilization of resources and means to ensure the realization of rights. Fulfil (in the meaning of provide) requires States to take measures necessary to ensure that each person within its jurisdiction may obtain basic rights whenever they, for reasons beyond their control, are unable to realize these rights through the means at their disposal.³⁶

Rights-based approach: A human rights-based approach is based on the idea that every human being has human rights. States are responsible for the realization of these human rights. This means that citizens can hold the State accountable for its obligations to respect, protect and fulfil human rights. The basis of a human rights approach is that a human rights violation needs to be addressed, even when the number of people involved is small or not known exactly. In other words, each human rights violation stands on its own and should be taken seriously. A decrease in numbers of a certain type of human rights violation is a positive development, but does not justify other violations still taking place.

Shadow report: Reports created by one or more NGOs that analyse the status of implementation of human rights obligations/commitments at the national level. In these reports, NGOs provide information that supplements government reports and thus assist the committees that monitor the treaties to address concerns that are omitted, neglected or misreported by the government. Shadow reports are also referred to as alternative reports.

State obligations: State party obligations describe what a state must do, and must not do, in order to ensure that the population of the country is able to enjoy the rights set out in the Convention. See Respect, protect, fulfill.

States Party (ies): Those countries that have ratified a covenant, convention or treaty and are thereby legally bound to conform to its provisions.³⁹ See also State obligations.

Treaty: A contract or other written instrument binding two or more states under international law; used synonymously with Convention and Covenant. All countries that have agreed to be bound by a treaty through ratification or accession have a legal obligation to implement these rights and principles at the national level. See also Ratification and accession.

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