CENTER FOR REPRODUCTIVE RIGHTS

February 27, 2005

The Human Rights Committee

Re: Supplementary information on Kenya
Scheduled for Review by the UN Human Rights Committee During its 83rd Session

Dear Committee Members:

This letter is intended to supplement the periodic report submitted by Kenya, which is scheduled to be reviewed by the Human Rights Committee (the Committee) during its 83rd session. The Federation of Women Lawyers-Kenya (FIDA Kenya), a national women's rights non-governmental organization based in Kenya, and the Center for Reproductive Rights, a U.S.-based non-governmental organization, hope to further the work of the Committee by providing independent information concerning the rights protected in the International Covenant on Civil and Political Rights (ICCPR). This letter highlights several areas of concern related to the status of women's reproductive and sexual health and rights in Kenya and focuses specifically on discriminatory or inadequate laws and policies.

Because reproductive rights are fundamental to women's health and equality, States Parties' commitment to ensuring them should receive serious attention. Further, women's reproductive health and rights receive broad protection under the ICCPR. In its elaboration of equality of rights between men and women in General Comment 28, the Committee directs States Parties to report on laws as well as government or private action that interfere with women's equal enjoyment of the right to privacy in the area of reproductive health.[1] The Committee asks States Parties to eliminate any interference in the exercise of this right.[2] Women's lack of access to health services, and particularly reproductive health services, has been identified by the Committee as a violation of Article 3, which guarantees the right of equality of men and women.[3]

We wish to bring to the Committee's attention two areas of particular concern: women's lack of access to reproductive health care and violence against women, including female genital mutilation (FGM). These problems reflect shortfalls in the government's implementation of the ICCPR and directly affect the reproductive health and lives of women in Kenya.

A. The Right to Reproductive Health Care, including Family Planning and Safe and Legal Abortion Services (Articles 3, 6, 23, and 26 of the ICCPR)

The ICCPR's guarantee of the right to life in Article 6 requires governments to take "positive measures" aimed at preserving life.[4] Such measures should respond to the needs of both women and men, in keeping with Articles 3 and 26, which guarantee equal enjoyment of the rights in the

CENTER FOR REPRODUCTIVE RIGHTS
120 WALL STREET
NEW YORK, NEW YORK 10005
TEL 917 637 3600 FAX 917 637 3666
WWW REPRODUCTIVERIGHTS ORG

FEDERATION OF WOMEN LAWYERS-KENYA
AMBOSELI ROAD OFF GITANGA ROAD
P.O BOX 46324 NAIROBI. KENYA
TEL/FAX 573511, 570444. 569956
WWW FIDAKENYA ORG

Covenant and equality before the law.[5] Because reproductive health care is an essential condition for women's survival, these provisions collectively give rise to a governmental duty to ensure the full range of reproductive health services, including the means of preventing unwanted pregnancy, as well as safe abortion. As the Committee noted in General Comment 28, when reporting on compliance with the duty to fulfill the right to life, "States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions."[6]

The Committee has found possible violations of the ICCPR where women have difficulty accessing contraceptive methods to prevent unwanted pregnancies.[7] It has recognized that women's lack of access to contraceptives, including their high cost, is discriminatory.[8] The Committee has further called upon States to take measures "to ensure that women do not risk life because of restrictive legal provisions on abortion," i.e. being forced to seek abortions under clandestine, unsafe conditions.[9] In this regard, the Committee has recommended liberalization of laws that criminalize abortion.[10]

1. Contraceptive Access

According to the Kenya Demographic Health Survey 2003 (KDHS 2003), only 29.5% of all women surveyed were using some form of contraceptive.[11] The survey also showed that the steady increase of contraceptive use among married women since the 1980s had slowed considerably since 1998.[12] Dwindling donor support for family planning facilities, inadequate government funding for contraceptives, and logistical problems with contraceptive distribution have created barriers to contraceptive access.[13] Lack of access to contraceptives, in turn, contributes to unwanted pregnancies and unsafe abortions.[14]

2. Abortion

According to the "National Assessment of the Magnitude and Consequences of Unsafe Abortion in Kenya" published by the Ministry of Health, approximately 300,000 spontaneous and induced abortions occur each year, putting the national incidence of abortion per 1,000 women aged 15-49 at 44.7%.[15] This same report estimated that 20,000 women are treated in public hospitals annually with abortion-related complications.[16] The Director of Medical Services at the Ministry of Health has stated that about 60% of the beds at Kenyatta National Hospital, the largest referral hospital in East and Central Africa, were occupied by patients suffering from abortion complications.[17] Unsafe abortion is the cause of 30 to 40% of maternal deaths in Kenya, according to the Kenya Medical Association and Kenya Obstetric and Gynecological Society.[18]

In a context where sexual violence is widespread and access to contraceptives inconsistent and limited, Kenya's highly restrictive laws pose a significant threat to the lives of Kenya's women. Kenya's penal code provisions on abortion, which have not been modified since they were put in place during the colonial period, permit abortion only where there is a threat to the life of the pregnant woman.[19]

Performing or procuring an abortion under other circumstances is a felony and liable to imprisonment.[20] Although the maximum prison sentence for performing an abortion is fourteen

years, a doctor and two nurses currently face capital murder charges for allegedly performing abortions.[21] This prosecution, which greatly exceeds the charge and sentence on the books for abortion, suggests a disturbing tendency to use the legal system to harass reproductive health providers and could discourage medical professionals from providing abortions even where the health exception is applicable. In addition, such prosecutions could have a chilling effect on the ongoing debate on whether abortion should be legalized.

There are other suggestions that the climate for the recognition of women's right to life and health is becoming increasingly hostile in Kenya. Proposed language in the Draft Constitution, which defines life as starting with conception, would put Kenya in a very small minority of countries that have accorded a fetus the same protections as the pregnant woman.[22] Even more unusual, the Draft Constitution specifies explicitly that abortion should be permitted only when "in the opinion of a registered medical practitioner, the life of the mother is in danger."[23] While it remains to be seen whether or not this language will remain in the final version of the Constitution, it is a troubling indicator and contrary to the movement towards liberalizing abortion law as reflected in the Protocol to the African Charter on the Rights of Women in Africa.[24]

Neither the narrow exception in the existing law nor the narrow proposed exception in the Draft Constitution explicitly provides for abortion in the case of rape and incest. This omission directly contradicts the Committee's General Comment 28, which emphasizes the need for access to safe abortion for women who have become pregnant as a result of rape as well as the provision for access to safe abortion provided for in the Protocol to the African Charter on Women's Rights.[25] The lack of access to safe abortion for victims of sexual violence is particularly troubling given the prevalence of sexual violence in Kenya, which is discussed in greater detail below. The widespread occurrence of rape coupled with inconsistent access to emergency contraception (EC) and the lack of access to safe abortion creates a situation that doubly victimizes women and seriously imperils their health and lives.

The recent draft of the National Guidelines for the Medical Management of Rape/Sexual Violence issued by the Division of Reproductive Health within the Ministry of Health is a somewhat positive development on this front. In recognition of the "psychological consequences of conceiving after being raped" the draft guidelines state that every non-pregnant woman and girl not using a reliable form of contraceptive who has suffered sexual violence should be offered EC.[26] According to the guidelines, EC should be available free of charge in government health institutions where rape victims are likely to present.[27]

The country's restrictive abortion laws are particularly harsh for low-income women who cannot afford a costly abortion under safe conditions in Kenya or abroad.[28] Poorer women are forced to have clandestine abortions, often in unsanitary conditions at the hands of untrained practitioners, greatly increasing the risk of abortion-related complications.

B. Violence Against Women and Girls Including Female Genital Mutilation (Articles 3, 6 & 7)

Article 7 of the ICCPR states that no one shall be subjected to torture, inhuman or degrading treatment, or punishment. Article 6 ensures the individual's right to life. Both of these rights are violated when women have no protection from rape and domestic violence. Article 3, which provides for the equal enjoyment by both sexes of the Covenant's rights, is violated where governments fail to enact and enforce laws protecting women's physical safety and integrity. The Committee has urged States to promulgate laws providing effective protection against rape, sex abuse, and violence against women.[29] The Committee's numerous comments to States Parties on domestic violence[30] reinforce state responsibility by placing a strong emphasis on the need for legislation to criminalize this violence.[31] In addition, the Committee has made numerous comments framing FGM as a violation of Articles 3, 6, and 7 of the Covenant, and has recommended that States Parties implement awareness and sensitization programs, as well as legislation to eliminate the practice.[32]

1. Sexual Violence

While sexual violence is widely under-reported, making it difficult to gather fully comprehensive statistics on its prevalence, figures indicate that it is a serious blight on the lives of Kenyan women. According to police sources, 2,308 cases of rape were reported in 2003 and 2,908 were reported for 2004.[33] In a 2003 survey of 1652 Kenyan women between the ages of 17 and 77, 52% reported being sexually abused in their lifetime while over 30% of the surveyed women reported an experience of forced sexual intercourse in their lifetime.[34] Other statistics indicate that a woman is raped in Kenya every thirty minutes.[35]

However, the legislative and law enforcement framework does not adequately protect women or provide means for redress.[36] As the Chairperson of the Kenyan Law Reform Commission has pointed out, the piecemeal provisions that currently address acts of sexual violence are both insufficient and outdated.[37] Sexual offences are still classified as offences against morality rather than offences against persons or as crimes, a characterization that de-emphasizes the seriousness of sexual offences and their concomitant harmful effects.[38] Furthermore, evidence laws allow the morality of the rape victim to be called into question although the defendant's morality is not. Under Section 163 of the Evidence Act, the defendant in a rape trial can introduce evidence that the victim is of "generally immoral character" as part of the defense, making it possible to expose a victim's sexual history regardless of its relevancy.[39] In the rare instances where sexual offences are successfully prosecuted, the sentences handed down are inconsistent and often inappropriately lenient. The lack of minimum sentences or sentencing guidelines leaves judges and magistrates with wide discretion, which is open to abuse. A Draft Sexual Offences Bill that comprehensively addresses sexual violence is supposed to be proposed in Parliament in March or April of this year.

Certain law enforcement practices also deter prosecution in cases of sexual violence. The P3 form, used by police and doctors to document sexual assault, must first be obtained from a police officer before the victim can be examined by a doctor. Courts tend to prefer evidence gathered

by government doctors. However, government doctors are frequently overstretched and unable to see the victim right away. These personnel shortages can require multiple trips for the victim, cause additional trauma and stress, and delay or impair the process of gathering evidence. The problems of finding a government doctor to complete a P3 form are exacerbated in rural areas where there are even fewer doctors per patient and there is a greater distance from health care facilities, particularly government run facilities.[40] Many clinics in rural zones are either private or staffed by medical officers not doctors.

In addition, there have been reports of police officers charging for P3 forms although they are supposed to be free.[41] Monitors and chiefs in the field who work with FIDA Kenya have reported that in many rural areas, the standard fee to acquire the P3 form is 500 Kenyan shillings (approximately 6.25 U.S. dollars or 5.10 Euros) and an additional 500 shillings must be paid at the hospital to have the form filled out by a doctor.[42] Given the poverty experienced by women in Kenya, especially in rural areas, these costs are prohibitive and can effectively deny a woman access to justice. (In cases where the perpetrator is a police officer, the need to acquire the P3 form from the police station can deter the victim from pursuing the case at all.[43])

Even when a P3 form is completed, it can often be difficult to locate the form within the police station.[44] Government doctors are not allowed to keep the forms themselves even though they need the form to give evidence in the rare instances when they are called upon to do so.[45] These barriers to collecting material evidence greatly impair women's access to justice because, under current evidentiary rules, the testimony of a complainant in a sexual offence case must be corroborated by material particulars.[46]

Finally, a frequently cited barrier to the effective prosecution of sexual offences is the lack of sensitivity and commitment to prosecute on the part of the police.[47] Amnesty International has voiced concerns about the fairness, transparency, impartiality and independence of police investigations of sexual assault.[48]

The recent draft of the National Guidelines for the Medical Management of Rape/Sexual Violence issued by the Division of Reproductive Health in the Ministry of Health seeks to address some of the problems detailed above. The draft guidelines outline the importance of providing counseling, EC, and post-exposure prophylaxis for victims of sexual violence as well as the importance of properly gathering evidence that can be used in prosecution.[49] The draft guidelines include a Post Rape Care Form 1 (PRC1), which is more comprehensive than the P3 form.[50] According to the draft guidelines, the PRC1 can be filled out as soon as the rape victim presents at the hospital and the information can then be used later to provide clinical notes for completing the P3 form.[51] However, the success of these guidelines will hinge on appropriate financial support and publicity.

2. Domestic Violence

Domestic violence constitutes a serious threat to the lives and health of women in Kenya. According to the KDHS, 47% of ever-married women reported emotional, physical, or sexual abuse by their husbands, while 8% reported experiencing all three forms of violence by their current or most recent husband.[52]

There is a pressing need for legislation addressing domestic violence. A proposed Family Protection (Domestic Violence) Bill, which defines domestic violence to include sexual and psychological abuse as well as physical violence, has been in existence since 2001 but has yet to be adopted into law. The Bill would allow courts to intervene in cases of domestic violence and to issue protective orders. It would also create a Family Protection Fund to help establish and maintain shelters and services for victims of domestic violence.

Marital rape is not presently recognized as a crime nor is it referred to by name in the draft legislation on domestic violence.

In addition, there are insufficient resources for women who suffer domestic violence. In rural communities, there are no shelters and little professional help for those experiencing domestic violence. The situation is not much better in urban areas. In the capital city of Nairobi, there is only one shelter where abused children can stay for up to six months and one shelter for abused women where they can stay for six weeks. The shelter for abused women is run by a non-governmental organization which is dependent upon donor funds. There are no government-run shelters for women who suffer domestic violence.

3. Female Genital Mutilation

According to the Kenya Demographic and Health Survey 2003 [KDHS], 32% of the 8200 women participating in the survey had undergone female genital mutilation (FGM).[53] Rural women (at 36%) were more likely to be circumcised than urban women (21%).[54] The Minister of State for Home Affairs estimates that 38% of women have undergone FGM with that figure reaching 80 to 90% for girls and women in certain rural districts.[55]

The FGM of children, defined as those under the age of 18, is outlawed in Section 14 of the Children's Act 2001.[56] While the Act has been used by groups like the Centre for Human Rights and Democracy in Eldoret to get court orders protecting girls from FGM,[57] the law has been faulted for not providing for punishment for offenders.[58] In addition, the fact that FGM of adult women is not prohibited has been criticized by, among others, the women's umbrella group Maendeleo Ya Wanawake (Women in Development) and Assistant Minister for Higher and Technical Education, Beth Mugo, because it means that women who reach age 18 without undergoing FGM can still be coerced into the practice.[59]

Furthermore, in spite of the legal prohibition, the practice continues. For example, a study performed by the Centre for Human Rights and Democracy in Eldoret estimated that 6,000 girls in two provinces would undergo FGM during the December 2004 holidays.[60] An additional concern is the "medicalization" of FGM, which could undermine efforts to stop the practice. Reports suggest that the awareness of the health risks involved with FGM is not leading parents to abandon the practice but rather to turn to medical professionals to perform the procedure.[61] Anti-FGM activists report that up to 90% of women in the Kisii community of Southern Kenya are being circumcised illegally by medical professionals.[62] Government authorities have denied that FGM is taking in place in health facilities.[63]

We hope the Committee will consider addressing the following questions to the Government of Kenya:

1) What measures are being taken to address the issue of unsafe and illegal abortion, which is one of the primary causes of maternal mortality? What governmental efforts exist to ensure post-abortion care for complications as well as for reproductive health counseling? What measures are being taken to ensure that women who develop complications are not doubly victimized by both the health care and the criminal justice system?

2) Is the government taking the necessary measures to ensure that medical professionals who may provide or advocate for safe abortions are not harassed or unjustly targeted for criminal prosecutions?

3) Are suitable measures being taken to ensure that victims of sexual violence have access to EC as outlined in the draft guidelines issued by the Ministry of Health? Is the government committed to providing the funding that will ensure the availability of EC in health centers?

4) What efforts are being made to create an adequate institutional infrastructure to conduct proper investigations for sexual crimes? Is the government committed to ensuring the fulfillment of the guidelines for the treatment of sexual violence survivors as issued by the Ministry of Health? Will medical professionals and law enforcement officers receive the necessary training on these guidelines once they are finalized? Will the necessary funding be provided?

5) Is the government committed to the passage of comprehensive and updated sexual offences legislation? What current measures are being taken to ensure that police and the judiciary are sensitive to the needs of victims of sexual violence? More specifically, what is the status of the proposed all-women police station in Kilimani and the formation of gender desks in other police stations?

6) What governmental efforts have been made to pass legislation that effectively protects victims of domestic violence? Are there plans to increase the number of shelters for women faced with violence within the family?

7) What governmental efforts have been made to combat the continued practice of FGM? Rather than calling on non-governmental organizations to address the problem, is the government taking the necessary measures to both change attitudes and actively enforce the ban on FGM? Will the government take measures to outlaw FGM entirely? Are government authorities taking seriously allegations that FGM is being performed by medical professionals?

There remains a significant gap between the provisions of the ICCPR and the reality of women's reproductive health and lives. We appreciate the active interest that the Committee has taken in the reproductive health and rights of women, stressing the need for governments to take steps to ensure the realization of these rights.

We hope that this information is useful during the Committee's review of the government of Kenya's compliance with the ICCPR. If you have any questions, or would like further information, please do not hesitate to contact us.

Very truly yours,

Jane Onyango
Executive Director
Federation of Women Lawyers—Kenya

Laura Katzive
Legal Adviser for Global Projects
Center for Reproductive Rights

[1] Human Rights Committee, *General Comment 28, Equality of Rights Between Men and Women* (Article 3), 68th Sess., 1834th mtg., para. 20, U.N. Doc. CCPR/C/21/Rev/1/Add/10 (2000) [hereinafter HRC, *General Comment 28*].
[2] *Id.*
[3] *See, e.g., Concluding Observations of the Human Rights Committee: Ecuador*, 63rd Sess., 1692nd mtg., para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998); *Concluding Observations of the Human Rights Committee: Poland*, 66th Sess., para. 11, U.N. Doc. CCPR/C/79Add.110 (1999) [hereinafter *HRC Concluding Observations: Poland 1999*].
[4] Human Rights Committee, *General Comment 6, Right to Life (Article 6)*, 16th Sess., para. 5 (1982).
[5] International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc A/6316 (1966), art. 3, art. 36, 999 U.N.T.S. 171 *(entered into force* Mar. 23, 1976) [hereinafter Civil and Political Rights Covenant].
[6] Human Rights Committee, *General Comment 28*, *supra* note 1, para. 10.
[7] UNITED NATIONS CENTER FOR HUMAN RIGHTS, MANUAL ON HUMAN RIGHTS REPORTING 120, para. 239, U.N. Doc. HR/PUB/91/1 (1991).
[8] *See, e.g., HRC Concluding Observations: Poland 1999, supra* note 3, para. 11(b).
[9] *Report of the Human Rights Committee*, Vol. 1, 52nd Sess., Supp. No. 1, para. 167, U.N. Doc. A/52/40 (1997) [hereinafter *HRC Report*].
[10] *See, e.g., Concluding Observations of the Human Rights Committee: Chile*, 65th Sess., 1740th mtg., para. 15, U.N. Doc. CCPR/C/79/Add.104 (1999). *Concluding Observations of the Human Rights Committee: Poland*, 82nd Sess., 2240-2241st mtg., para. 8, UN Doc. CCPR/CO/82/POL/Rev. 1 (2004).
[11] CENTRAL BUREAU OF STATISTICS (CBS) [KENYA], MINISTRY OF HEALTH (MOH)[KENYA], AND ORC MACRO, KENYA DEMOGRAPHIC AND HEALTH SURVEY 2003 68 (2004) [hereinafter KDHS 2003].
[12] *Id.*
[13] Jane Godia, *Threatened Lives*, SUNDAY STANDARD, Nov. 14, 2004, at 20; Joyce Mulama; *Contraceptives? You're Lucky if You Get Them*, INTER-PRESS SERVICE, GLOBAL INFORMATION NETWORK, Nov. 8, 2004 *available at* http://www.ipsnews.net/new_nota.asp?idnews=26165.
[14] Joyce Mulama, *supra* note 13.
[15] MINISTRY OF HEALTH (KENYA), A NATIONAL ASSESSMENT OF THE MAGNITUDE AND CONSEQUENCES OF UNSAFE ABORTION IN KENYA xi (2004) [hereinafter NATIONAL ASSESSMENT OF UNSAFE ABORTION].
[16] *Id.* at 21.
[17] Joyce Mulama, *supra* note 13.
[18] *Kenyan Medics Call for Legalization of Abortion to Reduce Maternal Deaths*, BBC MONITORING INTERNATIONAL REPORTS, Jan. 29, 2004.
[19] Kenya Penal Code, Provision 240. The Ministry of Health, in its draft guidelines on the care of survivors of rape and sexual violence, has indicated that abortion may be available when pregnancy is a result of rape. However, the legal basis for this policy is not explicit in existing legislation. DIVISION OF REPRODUCTIVE HEALTH, MINISTRY OF HEALTH (KENYA), NATIONAL GUIDELINES: MEDICAL MANAGEMENT OF RAPE/SEXUAL VIOLENCE (DRAFT) 2 (2004).
[20] Kenya Penal Code, Provisions 158-160.
[21] The prosecution of providers is not limited to the case of Dr. John Nyamu and the two nurses who worked in his clinic. A January 14, 2005 NATION article reports that police in Mombasa were searching for a nurse suspected of performing five abortions and police commented that they would be pursuing other suspects shortly. *Nurse Linked to Abortion Saga Sought by Detectives*, NATION, Jan. 14, 2005.
[22] National Constitutional Conference, Draft Constitution of Kenya 2004, art. 34 (1), 34 (2) (adopted by the National Constitutional Conference on March 15, 2004).
[23] *Id.* art. 34 (3).
[24] Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, *adopted* July 11, 2003, 2nd African Union Assembly, Maputo, Mozambique. Article 14(2)(c) of the Protocol states that States Parties shall take all appropriate measures to "protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus." Kenya has signed but not ratified the Protocol. *List of countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, available at* http://www.africa-union.org/home/Welcome.htm.

[25] Human Rights Committee, *General Comment 28*, *supra* note 1, para. 11; Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, *supra* note 24

[26] DIVISION OF REPRODUCTIVE HEALTH, MINISTRY OF HEALTH (KENYA), NATIONAL GUIDELINES: MEDICAL MANAGEMENT OF RAPE/SEXUAL VIOLENCE (DRAFT) 2 (2004). (The draft guidelines are currently in the testing phase.)

[27] *Id.*

[28] The price for a safe abortion in private facilities in Kenya has been estimated to be approximately $625 while a "backstreet" abortion can be obtained for a few dollars. Joyce Mulama, *supra* note 13.

[29] *HRC Report*, *supra* note 9, para. 167.

[30] *See, e.g., Concluding Observations of the Human Rights Committee: Armenia*, 64th Sess., 1721st & 1725th mtgs., para. 16, U.N. Doc. CCPR/C/79/Add.100 (1998) [hereinafter *HRC Concluding Observations: Armenia*]; *Concluding Observations of the Human Rights Committee: Costa Rica*, 65th Sess., 1751st mtg., para. 12, U.N. Doc. CCPR/C/79/Add.107 (1999); *Concluding Observations of the Human Rights Committee: Japan*, 64th Sess., 1726-1727th mtgs., para. 30, U.N. Doc. CCPR/C/79/Add.102 (1998); *Concluding Observations of the Human Rights Committee: Mexico*, 50th Sess., 1315th mtg., para. 17, U.N. Doc. CCPR/C/79/Add.32 (1994).

[31] *See, e.g., HRC Concluding Observations. Armenia, supra* note 33, para. 16; *Concluding Observations of the Human Rights Committee: Ireland*, 69th Sess., 1858th mtg., para. 29f, U.N. Doc. A/55/40, paras. 422-451 (2000); *Concluding Observations of the Human Rights Committee: Senegal*, 61st Sess., 1640th mtg., para. 13, U.N. Doc. CCPR/C/79/Add.82 (1997) [hereinafter *HRC Concluding Observations. Senegal*].

[32] Human Rights Committee, *General Comment 28*, *supra* note 1, para. 11; *See e.g., HRC Concluding Observations: Lesotho*, 65th Sess., 1743-1744th mtg., para. 12, U.N. Doc. CCPR/C/79/Add.106 (1999); *HRC Concluding Observations: Netherlands*, 72nd Sess., 1928-1930th mtg., para. 11, U.N. Doc. CCPR/CO/72/NE T (2001); *HRC Concluding Observations: Senegal*, *supra* note 34, para. 12.

[33] KENYA POLICE, RAPE CASES FOR THE YEARS 2000, 2001, 2002, 2003 AND 2004, KENYA POLICE INTERNAL STATISTICS 2000-2004.

[34] TONY JOHNSTON, POPULATION COMMUNICATION AFRICA, THE SEXUAL ABUSE OF KENYAND WOMEN AND GIRLS: A BRIEFING BOOK 6, 14 (2003).

[35] *Women and Gender: Every 30 Minutes, a Woman is Raped*, EAST AFRICAN STANDARD, Nov. 24, 2004.

[36] In addition, recent remarks by Justice Minister Kiraitu Murungi have raised questions about the government's commitment to combating sexual violence. While commenting upon donors freezing funds in response to a perceived failure on the part of the government to tackle corruption, the Justice Minister said: "What the donors are doing is like raping a woman who is already too willing." The comment has sparked national outrage and has received international attention. Evelyn Kwamboka & Athman Amran, *Minister's 'Rape' Slur Sparks Outrage*, EAST AFRICAN STANDARD, Feb. 10, 2005; *Minister's Rape Comment Sparks Row*, REUTERS (via CNN.COM), Feb. 10, 2005, *available at* http://www.cnn.com/2005/WORLD/africa/02/10/kenya.donors.reut/.

[37] Kathurima M'Inoti, Overview of the Primary Sexual Offences Legislation in Kenya 5 (unpublished paper, on file with FIDA Kenya).

[38] *Id.* at 3.

[39] *Id.* at 5.

[40] SOCIETY FOR INTERNATIONAL DEVELOPMENT, PULLING APART: FACTS & FIGURES ON INEQUALITY IN KENYA 21 (2004) *available at* http://www.sidint.org/Publications/Docs/pulling-apart.pdf.

[41] FIDA Kenya, Draft Memorandum to the Commissioner of the Police, Major-General Hussein Ali, Nov. 2004 [hereinafter Draft Memorandum to the Commissioner]. *See also* Amnesty International, *Kenya: Rape: The Invisible Crime*, March 2002 *at* http://web.amnesty.org/library/Index/engafr320012002.

[42] Draft Memorandum to the Commissioner, *supra* note 44.

[43] Amnesty International, *supra* note 44.

[44] *Id.*

[45] *Id.*

[46] Kathurima M'Inoti; *supra* note 40; Amnesty International, *supra* note 44.

[47] Amnesty International, *supra* note 44.

[48] *Id.*

[49] DIVISION OF REPRODUCTIVE HEALTH, MINISTRY OF HEALTH (KENYA), NATIONAL GUIDELINES: MEDICAL MANAGEMENT OF RAPE/SEXUAL VIOLENCE (DRAFT) (2004).

[50] *Id.* at 17-19

[51] *Id.* at 12.

[52] KDHS 2003, *supra* note 11, at 243. One study found that among 1267 women, 60.9% of Kenyan married women experience single or multiple abuse in their homes. Thirty-seven percent report multiple episodes; 23.9% report single episodes of domestic violence; 54% report frequent abuse; 52.2% of the surveyed women were abused physically; 40.7% reported sexual abuse and more than 64% reported psychological and emotional abuse. POPULATION COMMUNICATION AFRICA, DOMESTIC ABUSE IN KENYA 10 (2002).
[53] *Id.* at 250.
[54] *Id.*
[55] Ochieng' Ogodo, *FGM in Kenya: Outlawed, Not Eradicated*, INTER PRESS SERVICE, GLOBAL INFORMATION NETWORK, Feb. 8, 2005.
[56] Children's Act 2001, s. 14.
[57] Ken Wafula, *Despite NGOs' Spirited Fight the Female 'Cut' Won't Go Away*, DAILY NATION, Nov. 11, 2004. (Ken Wafula is the Executive Director for the Centre for Human Rights and Democracy in Eldoret.)
[58] *Kenya: Boost for Anti-FGM Efforts as 200 Circumcisers Quit*, IRIN NEWS, March 10, 2004 at www.irinnews.org/report.asp?ReportID=39965.
[59] Joyce Mulama, *Kenya: In the Name of Chastity, Girls Go Through Pain, Humiliation*, ALL AFRICA, Sept. 27, 2004; Ochieng' Ogodo, *supra* note 58.
[60] *6,000 Girls Set To Be 'Cut' in North Rift*, DAILY NATION, Nov. 12, 2004.
[61] IRIN NEWS, *supra* note 61.
[62] *Id.*; Joyce Mulama, *Kenya: Women Say Genital Mutilation Goes on Unabated*, INTER PRESS SERVICE-GLOBAL INFORMATION NETWORK, June 9, 2004.
[63] *Id.*