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Kenya: The situation of women, including whether the practice of forced or arranged marriages exists and whether any laws punishing sex crimes exist (August 2006)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Current situation

Corroborating sources indicate that women in Kenya are subjected to various forms of violence (UN June 2006, 6; *ibid.* 11 July 2006; AI 1 May 2006; US 8 Mar. 2006, Sec. 5; OMCT June 2006, 67). Rape victims number in the thousands (*ibid.*; AI 1 May 2006; UN 27 Oct. 2005; Women's Enews 11 May 2006). One source reports an "epidemic of rape" (Jurist 1 June 2006) and another states that [translation] "a woman is raped every 30 seconds in Nairobi, the capital" (UN 11 July 2006; see also Jurist 1 June 2006).

Domestic violence is also widespread (UN June 2006, 14; *ibid.* 27 Oct. 2005; US 8 Mar. 2006, Sec. 5; AI 1 May 2006; OMCT June 2005, 68-69). Wife beating is a common and generally accepted practice in Kenyan society (*ibid.*; UN June 2006, 14; US 8 Mar. 2006, Sec. 5; OECD Aug. 2004, 27). Marital rape, which is frequent in Kenya (UN June 2006, 14), is not considered a crime (*ibid.*; OMCT June 2005, 71; Jurist 1 June 2006; OECD Aug. 2004, 27).

Kenyan women also face "discrimination" (AI 1 May 2006; see also OECD Aug. 2004, 27), particularly in terms of succession and inheritance (OMCT June 2005, 146; UN June 2006, 12; US 8 Mar. 2006, Sec. 5). Despite legislation that enables widows to inherit land and property from their deceased husbands (OECD Aug. 2004, 25; VOA 24 Dec. 2005; US 8 Mar. 2006, Sec. 5), Kenyan women are often deprived of the matrimonial home by their in-laws, who inherit the husband's assets after he dies (*ibid.*). Moreover, levirate marriage [a custom under which a widow is forced to marry another member of her deceased husband's family] is still common in Kenya (UN June 2006, 11; OMCT June 2005, 68; US 8 Mar. 2006, Sec. 5).

Female genital mutilation (FGM) is still practised in Kenya (BBC 23 June 2006; UN June 2006, 12; *ibid.* 9 Sept. 2005; US 8 Mar. 2006, Sec. 5; Women's Enews 8 Feb. 2005; OECD Aug. 2004, 27; OMCT June 2005, 146). In a study published by *The Lancet*, Ndubisi Eke and Kanu E.O. Nkanginieme indicate that, of the 4,167 pregnant women who went to three Kenyan obstetrics centres to give birth, 21 percent had undergone FGM I ("removal of the prepuce or clitoris"), 29 percent FGM II ("removal of clitoris and labia minora") and 10 percent FGM III ("removal of part or all of the external genitalia with stitching or narrowing of the vaginal opening") (June 2006). According to other studies, the percentage of women who have been subjected to FGM varies between 32 and 50 (UN June 2006, 12; OECD Aug. 2004, 27), and FGM is performed on 80 to 90 percent of women in certain regions, particularly in the eastern provinces and in the Rift Valley (*ibid.*; see also Women's Enews 8 Feb. 2005).

On the subject of forced or arranged marriages, sources indicate that early marriage is common in Kenya (UN June 2006, 12; *The Standard* 8 Apr. 2006; ANN 13 June 2006; Women's Enews 11 May 2006; *Womankind* n.d.), although Kenyan law prohibits anyone from marrying before age 18 (*The Standard* 8 Apr. 2006; Women's Enews 11 May 2006). A report published in June 2006 by the Joint United Nations (UN) Programme on HIV/AIDS (UNAIDS) estimates that 20 percent of Kenyan girls between 15 and 19 are already married (UN June 2006, 12; see also *ibid.* 2005, 11; OECD Aug. 2004, 22). Among certain ethnic groups, particularly the Masai, girls under 12 are often forced to marry adult men (*The Standard* 8 Apr. 2006; ANN 13 June 2006; see also UN June 2006, 12). In Kenya's southern regions, harsh socio-economic conditions reportedly drive an increasing number of fathers to "trade" their young daughters for money, cows and blankets (*The Standard* 8 Apr. 2006).

Protection offered by the state

According to some sources, perpetrators of violence against women in Kenya, particularly rapists and sex offenders, generally go unpunished or are let off with minor consequences when apprehended by police (UN 11 July 2006; *ibid.* 9 May 2006; *ibid.* 5 May 2006; see also OMCT June 2005, 73). A UN report suggests that such impunity discourages victims from filing complaints against their attackers (UN 9 May 2006). In a report published in June 2005, the World Organisation Against Torture (Organisation mondiale contre la torture, OMCT) indicates that, in Kenya, "police officers have turned women away . . . when they try to report sexual and domestic violence committed against them" (73; see also US 8 Mar. 2006, Sec. 5). Some police officers even ridicule the women or

ask for bribes (OMCT June 2005, 73; see also UN June 2006, 21). The OMCT's report cites several cases of women who have experienced violence, especially sexual violence, at the hands of police officers (June 2005, 75). According to that report, "ensuring adequate protection for women and protecting them from ill-treatment and human rights violations remains a challenge for the State and civil society organisations in Kenya" (OMCT June 2005, 69). A UN report notes that the Kenyan government's commitment to fight AIDS and violence against women has not resulted in any concrete actions (UN June 2006, 8).

Other resources and services for abused women

Information on the availability of resources and services for abused women in Kenya is limited among the sources consulted by the Research Directorate. According to a UN report, "there is only one shelter for women who are victims of domestic violence in Kenya" (June 2006, 23). Established 10 years ago, the shelter is run by the Women's Rights Awareness Programme (WRAP) and "receives women who are escaping abusive relationships" (UN June 2006, 23). The same report also alludes to other types of violence against women and explains that, "where the government has failed or neglected to respond to the issue of violence against women, civil society organizations consisting of women's groups, religious organizations, and human rights groups have taken [the] initiative to provide services, undertake civic education, provide shelter and halfway houses, and advocate for legislative and policy reforms" (ibid., 22; see also OCMT June 2005, 72).

Moreover, some sources report that, particularly in the southern region of the Rift Valley, there are centres that assist young girls who run away from forced marriages or FGM (UN 9 Sept. 2005; ANN 13 June 2006; *The Standard* 8 Apr. 2006). Among them are the Taseru Ntomonok Girls Rescue Centre (UN 9 Sept. 2005), the African Inland Church Girls Rescue Centre (*The Standard* 8 Apr. 2006) and the Adventist Education and Rehabilitation Centre (ANN 13 June 2006). A 9 July 2005 article posted on the Web site of the *Washington Post* reports the existence of a northern Kenyan village called Umoja (which means "unity" in Swahili), where dozens of abused women of all kinds have found refuge. According to that article, the village, founded by a Kenyan woman named Rebecca Lolosoli, enables the women to earn a living and send their children to school; they also "run a cultural center and camping site for tourists" (*Washingtonpost.com* 9 July 2005).

However, the UNAIDS report indicates that, "despite initial steps by government and [non-governmental organizations (NGOs)], current interventions do not yet fully address the needs of abused women" and that "most women in Kenya who are victims of violence (including girls and young women) [have] virtually no access to services of this kind" (UN June 2006, 8). Medical services are offered to rape victims, "but not in a coordinated way," and victims often do not have the means to pay for those services (UN 5 May 2006).

Legislation against sex crimes

Various sources indicate that the Kenyan parliament has [translation] "passed a bill targeting sexual offenders" (UN 11 July 2006; see also BBC 1 June 2006; Jurist 1 June 2006; *Zimbabwe Standard* 9 July 2006). According to a 15 July 2006 article published in the *East African Standard*, Kenya's president has already signed the Sexual Offences Bill, and it should come into effect following official publication. The new law stipulates that convicted sex offenders receive a minimum sentence (UN 11 July 2006; see also BBC 1 June 2006), which can be extended up to life imprisonment (*Mail and Guardian* 1 June 2006; Jurist 1 June 2006). The bill also sets the age of consent for marriage at 16 (ibid.; *Mail and Guardian* 1 June 2006), criminalizes the deliberate transmission of HIV (*East African Standard* 15 July 2006; see also UN 11 July 2006) and guarantees free medical care and counselling for victims (ibid.). The bill also "broadens the range of sex crimes to include gang rape, sexual harassment, child trafficking, sex tourism, rape, incest and wrongful accusation" (*East African Standard* 15 July 2006; see also Jurist 1 June 2006). A UN report cites a Kenyan member of parliament as saying that "[s]ixteen new sexual offences have been introduced" with the new bill, but those offences were not named in the report (11 July 2006) and no other sources consulted by the Research Directorate within the time constraints for this Response could corroborate that information.

Some observers think that the new bill is a step in the right direction (UN 11 July 2006; Jurist 1 June 2006), while others condemn the fact that it was passed not in its initial form but only after certain provisions were dropped from earlier drafts (*Mail and Guardian* 1 June 2006; see also BBC 1 June 2006). The new bill does not criminalize marital rape or FGM (*Mail and Guardian* 1 June 2006; BBC 1 June 2006; Jurist 1 June 2006). The 2001 *Children's Act* outlawed FGM only for those under 18 (Women's Enews 8 Feb. 2005; see also OMCT June 2005, 146). Likewise, the new Sexual Offences Bill does not shift "the burden of proof in rape cases from the accuser to the accused" (*Mail and Guardian* 1 July 2006; Jurist 1 June 2006), and "women found to have made false rape accusations now face the same sentences as rapists" (BBC 1 June 2006).

Some observers think that, in its current form, the new law will not sufficiently protect women against sexual abuse and will discourage them from filing complaints (UN 11 July 2006; BBC 1 June 2006). Moreover, according to the *Zimbabwe Standard*, Kenyans must wait "to see if the [federal] budget will include the resources needed to make this Bill a meaningful reality" before they can know how it will affect women's lives (9 July 2006). According to a counsellor who works with abused women, cited in a UN report, "greater political will" is needed (11 July 2006). The OECD indicates in its August 2004 report that [translation] "the problem is not reforming the laws but enforcing them" (Aug. 2004, 28).

A copy of the Sexual Offences Bill could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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