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Follow-up to the Fourth World Conference on Women and to the special session of the General Assembly entitled “Women 2000: gender equality, development and peace for the twenty-first century”: implementation of strategic objectives and action in critical areas of concern and further actions and initiatives

Statement submitted by Federation of Women Lawyers in Kenya, a non-governmental organization in consultative status with the Economic and Social Council

The Secretary-General has received the following statement, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.



Statement

Background

In recognition that violence against women and girls is a violation of fundamental human rights, Kenya is a State party to various international and regional human rights instruments that condemn such behaviour and place obligations on States parties to work towards eradicating it. Although the Constitution passed in 2010 recognizes the rights of women and girls, most domestic statutes and national policy initiatives have not been amended to give effect to those rights. Despite the presence of progressive laws, violence remains a serious concern owing to the lack of implementation of laws and policies.

This statement will address some of the key challenges remaining in the eradication of violence against women and girls in Kenya and provide recommendations for reform.

Gender-based violence

The root cause of gender-based violence lies in gender inequality, which exists in Kenyan society. Women are socialized to accept and even rationalize gender-based violence by remaining silent about it, which leads to negative health, generational and demographic consequences. According to the Kenya Demographic and Health Survey 2008-2009, 53 per cent of Kenyan women believed that there were some circumstances in which a husband was justified in beating his wife, while only 44 per cent of men held the same view. The Bill of Rights under the Constitution provides a sound basis for the protection of women against gender-based violence.

Women representation and election threats

The principle of gender equality and parity has been incorporated into the Constitution, with the State tasked with promoting respect for gender equality and equity. It is, however, to be noted that laws in and of themselves are important as a statement of political will and the commitment of Kenya as a State to the principles outlined in those laws. Furthermore, there exist within the statutes many pieces of gender-blind legislation that hinder the promotion of gender equality, gender equity and the elimination of discrimination against women.

While a provision in the Constitution prohibiting discrimination on the basis of sex is a good starting point, it is practically ineffective unless it can be buttressed by more specific legislation that more explicitly and concretely addresses the issue of gender equality and gender-based discrimination with the specific aim of promoting and protecting the right to gender equality. Such legislation would include a general anti-discrimination law (which would also specifically outlaw gender-based discrimination) and specific sex-discrimination legislation, as well as women's rights laws and other local laws that would implement the principles contained in the Convention on the Elimination of All Forms of Discrimination against Women. It is submitted that contradictions still exist between general constitutional provisions that "guarantee" gender equality and other more specific laws where specific instances of gender discrimination might emerge, such as with regard to elections.

Following the general elections held in 2007, Kenya erupted into the worst violence of its independent history. More than 350,000 people were displaced and at least 1,133 people lost their lives. Damage to property was estimated at billions of Kenya shillings. Women suffered immensely during the violence with high rates of sexual violence. Women and witnesses reported severe cases of violent rape, often leading to sexually transmitted infections, including contraction of HIV/AIDS, unwanted pregnancies, sexual mutilation and death.

Measures taken to address the violence include the National Accord, which was signed on 28 February 2008 under the Kenya National Dialogue and Reconciliation framework. The framework identified four main goals, the last of which was the achievement of sustainable peace, stability and justice through the rule of law and respect for human rights. However, these efforts remain largely unimplemented owing to lack of political will.

As Kenya approaches its next elections, to be held in 2013, the State should have a discernible strategy to integrate the right to equality and freedom from discrimination into programming in a manner that ensures that the working environment is gender-sensitive, guaranteeing equal opportunities and treatment to both men and women and guaranteeing women equal representation in elective and appointive bodies.

Article 27 (4) of the Constitution states that the State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. Furthermore, on women representation, article 81 (b) states that not more than two thirds of the members of elective public bodies shall be of the same gender. Article 100 states that Parliament shall enact legislation to promote the representation in Parliament of women, persons with disabilities, youth, ethnic and other minorities and marginalized communities. It is a requirement for the State to realize gender representation in elective leadership positions.

Family protection bill

A bill on family protection is currently under review by Parliament. It is aimed at making provision for the protection and relief of victims of domestic violence and could provide a strong framework for combating gender-based violence. It is also of value to note that the bill was drafted 14 years ago. Various studies have documented the general high prevalence of domestic violence in Kenya.

A study by the Federation of Women Lawyers in Kenya in 2007 revealed that gender-based domestic violence and intimate partner violence was a common feature across Kenya and was overwhelmingly driven by factors ranging from the low status that society accorded to women to poor policy and legal frameworks that condoned or ignored the prevalence and perpetuation of domestic violence. Like their counterparts in other parts of the country, women in slums and informal settlements are victims of domestic violence, including rape, marital rape, physical assault and psychological violence, at the hands of spouses, partners and other family members. Domestic violence is the most prevalent form of violence that women face in slums and informal settlements.

Kenya has formal obligations under article 2 of the Constitution to promote and protect fundamental human rights by virtue of the treaties and conventions that it has ratified, including the Convention on the Elimination of All Forms of Discrimination against Women.

Recommendations

We urge the Government to take measures:

(a) To promote gender equality as guaranteed under article 27 of the Constitution and to undertake public education campaigns aimed at raising the awareness of Kenyans of the root causes of gender-based violence;

(b) To carry out public education campaigns on women's rights under various domestic and international legal regimes to encourage reporting;

(c) To educate law enforcement officials and community leaders about constitutional provisions protecting women against gender-based violence with the aim of ensuring their implementation against perpetrators and providing support services to victims;

(d) To ensure that the bill on family protection is passed and provide training to law enforcement officers and community leaders on its implementation;

(e) To provide education to victims of gender-based violence regarding avenues of legal redress and where support services may be obtained;

(f) To ensure that shelters providing psychosocial support, safe refuges and comprehensive community reintegration programmes are available and accessible to victims;

(g) To urgently ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, giving individuals the right to file complaints with the Committee on the Elimination of Discrimination against Women where domestic remedies have been exhausted;

(h) To increase focus on sexual violence in the next national reproductive health strategy, emphasizing the need for education and economic empowerment of women as means of mitigating sexual violence;

(i) To ensure that police stations are equipped with well-resourced gender desks that are staffed by well-trained officers.