



CONGREGATION OF OUR LADY OF CHARITY OF THE
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KENYA

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Individual submission to the 21st UPR session in Jan-Feb 2015 on **KENYA**

(1) Executive summary

This is an individual submission by the congregation of Our Lady of Charity of the Good Shepherd. It focuses on the themes of **Child rights, Gender Based violence and Domestic Violence.**

(2) Background to the Organisation

The Congregation of Our Lady of Charity of the Good Shepherd is present in 72 countries. It has been affiliated with the United Nations as Non-Governmental Organization in special consultative status with Economic and Social Council (ECOSOC) since 1996. The organization works with and for all women and children, especially those in need of healing and to promote justice and healing for all creation. The organization has been present in Kenya since 1981 and provides a variety of direct services to:

- Women and children living with poverty
- Women living in situations of domestic violence
- Women parenting alone
- Women in crisis situations
- Persons in prison

(3) CHILD RIGHT

The Constitution of Kenya 2010 protects children rights and fundamental freedoms. It is stated in the Constitution that all children have the right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative labor. However, from various reports and data collected in the organisation's projects in Kenya indicate an increase of violations of children rights despite the children's Act, which harmonized the national laws with international agreements which Kenya has signed such as the UN Convention on the rights of the child (CRC) and came into effect on 1 March 2002.

(4) Steps taken by the state:

The Review of the Children's Act

The state enacted the children's Act 2001, which seeks to make provisions relating to parental responsibility, fostering, adoption, custody, maintenance, care and protection of the children.

(5) Measures taken in relation to child commercial sexual exploitation

The government has held campaigns to create awareness among Hotels and Tour operators on the danger of child sexual exploitation and child sex tourism. Hotel workers have been encouraged to sign the code of conduct against child prostitution.

(6) Minimum age of marriage in Kenya.

Article 45 (2) of the Kenyan Constitution stipulates clearly that only an adult has the right to marry, based on the free consent of the parties.

(7) The Congregation of Our Lady of Charity of the Good Shepherd welcomes these measures and recommends that the state continue to improve the situation of children in Kenya through the following:

- 1. The state to ensure through adequate legal provisions and regulations that all children victims or witnesses of crimes for example children victims of violence, sexual exploitation, abduction and trafficking, and child witness of such crimes are provided with the protection required by the convention, taking fully into account the UN guidelines on justice in matters involving child victims and witnesses of crime.**
- 2. Set up mechanisms to fully implement the national child Act, which incorporates the Convention on the Rights of the Child, which is considered a positive step that grants applicable rights to Kenyan children.**
- 3. Strengthen its measures regarding Female Genital Mutilation and Early Marriages and ensure that the prohibition is strictly enforced and implemented.**
- 4. Conduct awareness –raising campaigns to combat and eradicate this practice and other traditional practices harmful to the health, survival and development of children especially girls.**
- 5. Introduce sensitization programs for practitioners and the general public to encourage change in traditional attitudes and engage the extended family, learning institutions, community elders and religious leaders in these actions.**
- 6. The state should ensure that the principle of the best interests of the child is integrated in all programs, policies and decisions that concern children by sensitizing and training parents, guardian's and all involved parties.**

7. **Ensure that persons under 18 years of age in conflict with the law have access to free legal aid as well as to independent and effective complaints mechanisms.**
8. **The state strengthen its legislative measures and develop an effective and comprehensive policy that addresses the sexual exploitation of children including the factors that place children at risk of such exploitation, and target areas where such exploitation has been identified as most prevalent.**
9. **Strengthen awareness raising and training of school officials and students, sensitization of children through media and the establishment of reporting and accountability mechanisms to ensure that all perpetrators of sexual offences against children are prosecuted.**

(11) GENDER BASED VIOLENCE

Many GBV issues are criminal in nature. It is therefore important for the case to be reported to the police who then open a police file and ensure that the matter is taken to court. However, in Kenya in most cases victims are unwilling to report the matter to the police for various reasons, which include:

- **Shame:** Particularly in cases of rape.
- **Fear:** Most times, a rapist threatens the rape victim that if she reports what has happened to her, she will suffer more and perhaps even death. This is especially so where the rapist is known to the victim. Such fears are quite real in circumstances where a rapist is granted bail pending trial or where even if he is convicted, the sentence is short. There cases were the victims have suffered the consequences of reporting and no protection has been given them.
- **Delayed reaction:** After a woman is raped, her first thought is generally not to reporting a crime and the delay in reporting may damage the strength of the evidence available.

(12) Incest

In Kenya, women are worried about reporting their own family members to the police; they are afraid it might break the family or the family will be victimised by the community. Some girls actually consider incest as normal and therefore do not share information until questioned by elder persons about what is happening.

(13) Attitudes of the Police

Through a series of individual interviews with women victims and focus group sessions women victim of rape have reported to the organisation that many police laugh at the victims, and ask them embarrassing questions. The police also do not treat the victim's statement as confidential but talk about it in the local community. This is a traumatic experience for the victim. Male police may not particularly be willing to prosecute men accused of rape and in most cases blame the victim for carelessness.

(14) All for Nothing

Because rape is sometimes difficult to prove, and because the police and the courts tend to distrust what the victims say, many victims are worried that they will go through the ordeal of a court case all for nothing. They fear that the rapists will not be convicted, or even if they were convicted, only a very short sentence will be meted out.

(15) Steps taken

The establishment of the Truth Justice and Reconciliation Commission (TJRC) provides women with a political space through which legacies of abuse and violence against them are likely to be addressed. It is anticipated that the TJRC, will amongst other things, identify and illuminate patterns of abuse, give voice to victims, and make strong recommendations for gender responsive legal and institutional reforms and improvements. The mainstreaming of women rights and gender based violence are key themes in the TJRC report as a result of the post-election violence survivors.

The country's long term development goal is contained in the Vision 2030 document which has set out to reduce gender-based violence through the increased capacity of the police to handle cases of violence against women. In connection the state has made an effort to have gender desks (special police units) in the normal police stations to take care of gender issues. There is a woman police officer in charge.

The Government has also adopted Results Based Management as a strategy aimed at enhancing service delivery to Kenyans. To facilitate the process Government Ministries and State Corporations are expected to include gender concerns targets in their Performance Contract. These agencies are expected to develop workplace sexual and gender base violence policies. The same principle is adopted by civil society organisations working in the county.

In relation to the above the government with the assistance of UNICEF is developing a national policy on gender based violence. The Policy is expected to provide national guidance on eliminating GBV, with particular reference to violence against women and girls and should be anchored on existing laws and policies that are in place that address Sexual and Gender based Violence guided by the constitution of Kenya 2010.

The government has enacted, the Prohibition of Female Genital Mutilation Act, 2011 which criminalizes the practice. This act provides new opportunities for eradication of FGM.

(16) RECOMMENDATION

10. Develop a coherent and multi-sectorial action plan to combat all forms of violence against women

11. On sexual orientation, the state had not taken any steps to protect sexual minorities. The state must enact a comprehensive anti- discrimination law that recognizes sexual orientation and gender identity as a prohibited ground for discrimination.

12. Many sexual violations are not recognized within the law and there is need to define, amend and consolidate laws on sexual offences to enhance protection of all persons from these offences including prosecuting the deliberate transmission of HIV or other sexual transmitted diseases.

13. In case of domestic assault, the wife has a right to make a complaint by reporting the matter to the police. Sometimes police decline to intervene arguing that they cannot interfere in family quarrels or by trivializing the injuries. The law says that the police must help but in most cases the police do not help. The state must ensure the implementation of the law without favor, and free from corruption.

14. That the state declares GBV a national emergency.

(17) DOMESTIC VIOLENCE

Kenyan women especially those in abject poverty and those who are illiterate continue to be victims of domestic violence. The most common forms of domestic violence in Kenya are physical abuse, sexual abuse, economic abuse and gender discriminatory customs. These are the common cases reported to the organisations across all its projects throughout Kenya. The patriarchal culture is still strong and denies women the opportunity of access to resource ownership and to education.

(18) STEPS TAKEN

- Parties in a conflict can embrace dispute resolution like mediation
- The constitution of Kenya protects the rights of a person not to be subject to physical abuse/domestic violence. Article 28 further states the constitution provides that every person has inherent dignity and the right to have the dignity respected and protected and ensures freedom and security of the person.
- A woman can sue in court if the husband has been cruel to her or her children. She can also demand the husband to provide reasonable maintenance for her or her children as well get a divorce and custody of her younger children below the age of 18.
- Section 234 of the penal code provides that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

(19) RECOMMENDATIONS

15. The state has to implement the constitution article 27(3) which provides that women and men have equal treatment including, the right to equal opportunities in economic, cultural and social sphere.

16. The state to provide survivors of domestic violence with free legal aid and free medical services the lack of which is a determining factor for many in non-reporting of domestic violence.