

The Committee on the Economic, Social and Cultural Rights (CESCR)
Geneva, Switzerland

23 September 2008

Re: Supplementary information on the Kenya Government Report, scheduled for review by the Committee during its 41st session (3–21 November 2008)

Dear Committee Members:

We are making this submission to supplement the initial periodic report of the State of Kenya, which the Committee on Economic, Social and Cultural Rights (the Committee) will review in November 2008 during your 41st session. Ipas, an independent NGO, hopes that the information in this letter will contribute to your work in monitoring compliance with the rights protected in the International Covenant on Economic, Social and Cultural Rights (CESCR).

We are aware that the Committee is concerned with the right to health as evidenced by your General Comment No. 14 issued in 2000. In this letter, we will provide you with data related to the consequences of sexual assault, maternal mortality and abortion care. We would like to suggest that you ask the State of Kenya to respond to the questions below. Information on which the questions are based can be found in the subsequent text.

Questions for the State of Kenya during the 41st CESCR session

- 1. How does the State Party ensure that comprehensive sexual and reproductive rights for women are respected in the absence of sufficient measures to deal with unwanted pregnancies, especially resulting from rape, which has become an endemic problem in the country?**
- 2. What strategies will the State Party employ to decrease unsafe abortions, especially in the absence of comprehensive responses to the needs of survivors of sexual violence, young women and women from poor and rural communities?**
- 3. What measures has the State Party taken to ensure that young and adolescent women have access to reproductive health services, including the provision of information about contraceptives and safe legal abortion, and access to contraceptive supplies and legal safe abortion services?**

4. **What steps is the State Party taking to ensure that the views of specific religious groups do not prevent the legislature from considering new legislation to expand the indications for legal abortion?**

5. **What steps is the State Party taking to amend laws penalizing abortion to remove criminal penalties for adolescent girls and adult women who terminate unwanted pregnancies resulting from sexual assault and pregnancies that may endanger their health?**

We hope that the information which follows will be useful for your review of the State of Kenya's compliance with the CESC. We look forward to hearing the State of Kenya's responses to your questions and are confident that your Concluding Observations and recommendations will contribute to the advancement of the sexual and reproductive health and rights of girls and women in Kenya.

If any Committee members have any questions, or would like further information, please do not hesitate to contact us.

Sincerely,
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BACKGROUND INFORMATION FOR THE QUESTIONS

Part II

Article 2.2: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In 2008, the Federation of Women Lawyers (FIDA) and the Coalition on Violence Against Women drafted a Reproductive Health and Rights Bill 2008 which would expand women's rights, including definition of the right to abortion in cases of sexual assault. However, there is a question as to whether such a bill could get a fair hearing given the efforts of certain religious groups who argue that abortion is a moral rather than health issue.¹ One Minister has even stated that the government and churches should join forces to prevent passage of such a law, violating the principle of separation of State and religion.

The right to freedom of conscience and religion means that no one should be able to impose their beliefs on others. This right includes the freedom from being compelled to comply with laws designed principally to uphold doctrines of religious faith, such as the belief that a foetus should have rights which supersede the rights of women who are already living human beings.

Article 3: The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Sexual assault and gender: disproportionate consequences for female survivors

The State of Kenya must promote the comprehensive sexual and reproductive rights of women, including their access to medical services that only they, and not men, may need. Such services include emergency contraception and safe abortion care, especially in the case of women who have suffered sexual assault. It is well known that rape is a common occurrence in Kenya; in the wake of the post-election violence in late 2007 and early 2008, even more women became survivors of sexual violence. The chief nurse at the Nairobi Women's Hospital, which specializes in sexual violence, stated that the number of women admitted for rape had doubled during this period.² From 1 January to 30 April 2008, CSI Nairobi estimated that in Nairobi and its environs alone, more than 1400 women and children had been raped, which was almost double the number reported countrywide in 2007.³

The violation of a female sexual violence survivor's psychological and emotional health should not be aggravated because the State obliges her to carry to term a pregnancy against her will. On the contrary, the State should provide her with medical, psychological and legal care to

cope with the resulting injuries. The Sexual Offences Act makes the Government responsible for treating survivors of sexual offences but FIDA Kenya reports that few people are aware of the Act and that sexual offences are still being tried under the Penal Code although all sexual offence provisions have been repealed in that Code.⁴

In cases of sexual assault, it is obviously only women who can suffer the consequence of an unwanted pregnancy; the Sexual Offences Act also does not offer safe legal abortion as an option for dealing with unwanted pregnancies arising from rape and incest. The right to security of person implies that a legal requirement to continue an unwanted pregnancy (forced pregnancy) may constitute a government intrusion on a woman's body in violation of the right to physical integrity.

The denial of abortion services further constitutes discrimination based on sex because women are left with a result of sexual violence which a male victim would not have to endure. Moreover, men are not exposed to criminal penalties, while women are denied the option of having a legal abortion to preserve their health and life and suffer punishment if they turn to an illegal abortion.

Sexual assault and minors: infringements of the rights of adolescent girls

The State Party mentioned in its periodic report that the 2001 Children's Act stipulates no child shall be discriminated against on the basis of sex.⁵ However, female adolescents are often subject to sexual violence and its consequences. While comprehensive data on sexual violence against children in Kenya is lacking, data from the Nairobi Women's Hospital Gender Violence Recovery Centre collected through 2005 showed that up to 60% of sexual offences occurred in young people younger than 20 years, 40% were committed against children younger than 15 years, with the youngest rape survivor being recorded as five months old.⁶

Data collected in other hospitals and by community-based organizations estimated that there were as many as 16,482 rape cases occurring each year.⁶ In a 2002–2003 school-based study of 1000 public secondary-school students in Nairobi, 40% of sexually-experienced secondary school girls reported that their first sexual contacts were unwanted.⁷

It is the fact that cases of incest and domestic abuse account for a large proportion of child abuse in Kenya that led to the initiation of the "Stop the Violence against Children" campaign in July 2006.⁸ A report by the Chamber of Justice, Care Kenya and Cradle, entitled *The Defilement Index*, estimated that incest accounts for about 75% of abuse cases suffered by young girls in urban areas.⁹ In addition, children and adolescents are raped by teachers and older students.¹⁰

Early pregnancy, maternal mortality and abortion among adolescent girls

Despite the high prevalence of sexual abuse of young girls, the State Party has not succeeded in protecting the lives of young women by eliminating unnecessary deaths among adolescents due to clandestine unsafe abortions. In the afore-mentioned school-based study, 45% of

students reported knowing a peer who had had an illegal abortion.⁷ The Government has acknowledged a high mortality rate among adolescents due to unsafe abortions,¹¹ but they continue to focus on providing post-abortion care, rather than taking steps to increase access to safe legal abortions.

In 2007, the Committee on the Rights of the Child (CRC) noted that it was “concerned over the high rates of teenage pregnancies, the criminalisation of the termination of pregnancies in cases of rape and incest” and they recommended that the State Party “undertake a comprehensive study to assess the nature and the extent of adolescent health problems and, with the full participation of adolescents, use this as a basis to formulate adolescent health policies and programmes in the school curriculum with particular focus on the prevention of teenage pregnancies, unsafe abortions and sexually transmitted diseases including HIV/AIDS.” In 2005, the Human Rights Committee had already recommended that the Government of Kenya “should review its abortion laws, with a view to bringing them into conformity with the Covenant.”

In this regard, it is important to note that the CRC’s General Comment 4 (2003) states that: “Adolescent girls should have access to information on the harm that early marriage and early pregnancy can cause, and those who become pregnant should have access to health services that are sensitive to their rights and particular needs. States parties should take measures to reduce maternal morbidity and mortality in adolescent girls, particularly caused by early pregnancy and unsafe abortion practices, and to support adolescent parents. Young mothers, especially where support is lacking, may be prone to depression and anxiety, compromising their ability to care for their child. The Committee urges States parties (a) to develop and implement programmes that provide access to sexual and reproductive health services, including family planning, contraception and safe abortion services where abortion is not against the law...” (Paragraph 31).

Part III

Article 12: 1: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

It is important to acknowledge that the right to health implies enjoyment of the highest possible level of mental and physical health, which is recognized in many international treaties and by the World Health Organization (WHO), which conceptualizes the right to health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.” Women’s rights to health, as well as liberty, are threatened when women are deterred from seeking medical care because they are afraid of being reported to police authorities by doctors or other medical professionals who suspect unlawful behaviour.

The Committee has shown its concern about high maternal mortality rates, including those attributed to illegal abortions, in recommendations to other States and we believe that this

concern is also warranted regarding Kenya. The State's periodic report to the Committee states that: "maternity care, which is an indicator of the health system's ability to reduce maternal mortality, has deteriorated."⁵ It is estimated that as many as 14,700 girls and women die because of pregnancy complications each year in Kenya;¹² in 2005, there were 560 maternal deaths per 100,000 live births.¹³ The adolescent proportion of the fertility rate was 11.7% in 2002;¹⁴ it is known that adolescents have greater risks of complications during pregnancies than adult women — for girls who give birth before the age of 14 years, the risks of maternal mortality may be five times higher.¹⁵ It is therefore not surprising that many girls seek to terminate unwanted pregnancies which might moreover endanger their health. In the cited school study, more than 10% of students stated they would resolve an unintended pregnancy through recourse to abortion.⁷

A study done in 2004 by Ipas Africa Alliance in partnership with the Ministry of Health, Kenya Medical Association and FIDA Kenya showed that an estimated 316,560 abortions occur in the country annually with an estimated 20,893 women being hospitalized with abortion-related complications in public hospitals alone.¹⁶ About 1% of women admitted to public hospitals were dying from abortion-related complications and about 50% of abortions occurred in women aged 14 to 24 years old.

No data on treatment of abortion-related complications in the private sector are currently available. However, in 1999, Kenya's capacity for health centres to provide emergency obstetric care was assessed, revealing that provision of vacuum aspiration of the uterus for postabortion care was the least available service;¹² this constitutes an infringement of women's right to enjoy the benefits of scientific progress since this relatively inexpensive technology is also safer than the more commonly-used dilatation and curettage technique. A comparison of access to services for rural and urban areas showed that abortion-related care was least accessible: services for abortion complications were noted for only 54% of urban areas and 15% of rural areas, while safe abortion services were available to only 36% of urban women and 8% of rural women.¹²

Unwanted pregnancies continue to occur among girls not only because of sexual abuse and early child marriage, but also because of adolescents' limited access to contraceptive information and supplies. However, the Government admits in its own report that "Abortion is illegal in Kenya. Unfortunately, whereas campaigns by Government and civil society in the 1980s led to significant success with regard to family planning, recent studies show a reversal in these gains in the 1990s and 2000s."⁵

Large numbers of adolescents still lack accurate information about family planning and this contributes to the low use of contraceptives seen among young people. Data from the 2003 Kenya Demographic and Health Survey show that 74% of sexually-active teenagers do not use any form of contraception.¹⁷ In the afore-mentioned study of secondary school students, about 50% knew what emergency contraception is, but less than one third knew where to obtain it.⁷ Furthermore, 40% of married adolescents do not talk to their spouses about

contraceptives. The 1999 assessment of reproductive health services also showed that contraceptive counselling in the context of postabortion care was the least available form of family planning service.¹²

In this context, we would like to remind you that the CEDAW Committee and Human Rights Committee (HRC) have already expressed their concerns to the Kenyan Government about the difficulties that women have in obtaining access to legal abortion services. In 2007, the CEDAW Committee noted that the maternal mortality rate, including deaths resulting from unsafe abortions, remains high and they recommended that the State Party take “measures to increase knowledge of and access to affordable contraceptive methods, so that women and men can make informed choices about the number and spacing of children, and access to safe abortion.”

Conclusion

We hope that the Committee will consider the above-mentioned questions in your meeting to review the State of Kenya’s report. We also hope that you will include the questions in your Concluding Observations to the Kenyan Government.

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