

To be a woman in Kenya: a look at sexual and gender-based violence

Ann Njogu &
Michelle McHardy

In 2006, the Centre for Rights Education and Awareness (CREAW) – a non-governmental organization promoting gender equality and justice through the empowerment of women and elimination of discrimination and violence – took on the case of a woman who was brutally attacked while waiting for a bus at the country's capital, Nairobi. She was dragged behind a bush and gang raped by 10 men for several hours. Later, in the public hospital, she was asked by the attending doctor (who said that he did not have gloves) to insert her fingers into her vagina and remove the semen with her own fingers and place it on the doctor's laboratory slab for examination.¹ Still ashamed, embarrassed, and sore from the attack, this completely inappropriate act by the doctor violated

1. Ann Njogu, personal interview, 29 May 2009

Ann W. Njogu is a highly motivated, creative and versatile Executive with over 18 years of experience in senior management in successful and fast growing organizations. She is a Co-founder and the Executive Director of the Center for Rights Education and Awareness (CREAW), as well as a lawyer, human right advocate, and women human rights activist. She obtained her law degree from the University of Nairobi and sat the Bar exam from the Kenya School of Law to qualify as an advocate of the High Court of Kenya. She is also a duly qualified and registered Certified Public Secretary (CPS) K, as well as an Associate and Member of the Chartered Institute of Arbitrators, London.

Michelle L. McHardy is a young Canadian woman currently living in Kenya, beginning her career in the field of human rights. Having graduated with Honours from the Langley Fine Arts School in Canada as a Visual Arts and Photography Major in 2003, Michelle travelled to Kenya to volunteer for six months. Living with a local family in an impoverished village, she taught English to orphans and other underprivileged children. Her experience was so profound, she returned to Kenya in 2005.

her all over again. It was as if she was attacked twice in one night.

Now in 2009, three years later, despite the Sexual Offences Act having been passed into law, similar stories are still being heard. A rape survivor, having actually won her court case against her attacker, found herself back in court on an appeal by the convicted perpetrator who she had positively identified, and who had been convicted on the basis of all the compelling evidence that was adduced in the lower court. The High Court Judge, Justice Makhandia sitting in court in Nyeri, quashed the conviction on the basis that since she had neither told her mother, teachers or to her church leaders, of her rape ordeal, it was unlikely that she had been raped as alleged. This in spite of the incontrovertible medical evidence and witness testimonies, including her report to the police that she had been raped and the basis upon which the lower court had found the perpetrator guilty of the charge of rape.² Just like the previous incident, this woman was violated twice – only this time it was once by her rapist and once by the court of “justice”.³

2. As reported in the Daily Nation, 24th February, 2007

3. Just this week, (June, 20 2009), a lady in the company of one prominent personality, was taken through a gruesome ordeal of intimidation, coercion, violation and abuse. According to reports in the press, the Prominent personality was car jacked and the thugs shot him, took off with the young woman, who was allegedly raped before being abandoned in yet another stolen vehicle. She went to report the incident to the police and was promptly arrested, kept in police custody for days, denied medical treatment within the mandatory 72 hours for the Post Exposure Prophylaxis (PEP). The women's movement in following through this case with the government agents including the police demanded to know what offence the lady was being held for and owing to the immense pressure from the women advocates, she was taken to the Gender Violence Recovery Centre (GVRC) where she denied ever having been raped, violated, or ever having been in the presence of the prominent personality. Worse still she denied that she had

Are these isolated instances of violation, trivialization of sexual violence by duty bearers in the country and or what then is the prevalence of sexual violence in the country? Have attitudes necessarily changed since the enactment of the Sexual Offences Act or are we still a country in denial?

The recent upheaval in response to the national sex boycott called by the G 10 women's movement placed this issue in the spotlight. The women's movement under the banner of the Gender 10 (G10), recently led a seven day sex boycott across Kenya demanding an accountable, responsible and issue driven leadership from the grand coalition partners in government – namely the President and his Prime minister.⁴ According to the G10, the clear lack of leadership by the two was unacceptable in a country that barely survived the post election crisis and violence in post 2007, a country struggling to deal with severe famine, extra-judicial killings, Vigilante mass killings and insecurity, assassinations of human rights defenders, attempts by the government to control the media, land feuds, and high crime rates. The G10 therefore called for the Sex Boycott as a means of not only calling for the entire country's reflection into the leadership crisis, but to also re-focus the country's leadership on the critical issues facing the Nation. This action was not

only successful in gaining awareness about problems within the executive, in parliament and in society but also in getting the two principals and their cabinet to sit down and discuss the issues raised, it was also suc-

ever been arrested. She was then whisked away under heavy police security and only released from custody the following day and asked to leave town. To date, no one knows if indeed she received medical assistance and or her whereabouts!

4. Bornice Biomndo, "Women Now Turn the Heat on Politicians," *Daily Nation* (29 April 2009)

cessful in raising awareness about women's rights.

Once the ban was launched, it was incredible to observe the most chauvinistic statements from some who categorically stated that women had no business saying no over matters of their own sexuality. Some even threatened to beat up their wives into sexual submission; others said that sex was a taboo issue in Africa and must not be discussed in the open- this despite the wanton rapes, defilements and HIV prevalence in the country. Some groups were also mobilized by politicians to condemn the sex boycott while journalists

in some leading media houses called the members of the G10 some unpalatable names and wrote extremely demeaning articles⁵.

However, there were also very incredible and powerful articles and debates on all media, amongst people from all tribes, background, diversity, in schools, in churches and on the streets on this issue that brought out questions of marital rape, gender based violence, women's position in society, and even those that brought home the concepts of the "Personal being Political".

Despite the operationalization of the Sexual Offences Act – an act that provides the strictest penalties for sexual offences in Kenya's history – the level of violence against women is still very prevalent if not on the rise. While the passage of the Act

was a major milestone, several issues require urgent attention. One such issue is the glaring inclusion of Sec. 38 of the Act that states that if one reports a crime of rape, and the perpetrator is found not guilty by the court, then such a person would be liable for malicious prosecution and once found guilty would serve a court sentence equivalent to the sentence the perpetrator would have served if he had been found guilty by the said court. Kenya becomes the only country in the world, where a victim of rape could end up being

5. A collection of articles available on request.



Ayaan Ali Hirsi (Kenya/Somalia)
Human Rights Activist - Somalia Girls Human Empowerment

a criminal serving a sentence issued by a court of justice. The most ridiculous part of this law is that, the victims of such crime as rape are not in charge of any part of the criminal justice system, yet a very heavy responsibility and burden is placed on their shoulders by the same law that ought to be their shield and defender. This proviso thus acts as barrier for victims of rape to seek access to justice for fear of prosecution.

Continued resistance from the government to pass legislation and policies that protect and secure the place of women and the clear lack of enforcement and or political will has greatly hindered the efforts to protect the women and children of Kenya. The police department has yet to customize their stations to accommodate sexual violence victims and many times those who go to report a crime turned away.⁶ In addition, the government has not only refused to domesticate international law, such as ratification of the African Union's Protocol on the Rights of Women in Africa, but has greatly procrastinated in the creation of their own legislation. There are several very important bills fundamental to the fight against gender-related injustices, known as the "Gender Bills", including the Domestic Violence Bill (a.k.a. Family Protection Bill), Equal Opportunities Bill, Marriage Bill, and the Matrimonial Property Bill that have yet to be passed – some of which have been pending since 2001 for enactment. These behaviors are evidence of a government and legislature that is not committed to combatting SGBV, women's rights and protecting its citizens.

The height of all these inequalities and injustices was experienced during the post-election violence that occurred in 2007-2008 after the legitimacy of the presidential elections result was highly disputed. With the incumbent administration and opposition party failing to reach an agreement over the stolen election, the country plunged into absolute mayhem. Divisions along political lines began to emphasize divisions along cultural lines, and a form of ethnic cleansing began to take place, pushing the country to the brink of civil war. Thousands of people were killed and hundreds of thousands were injured and/or displaced. Women and girls paid the highest price for a failed government and faced a significantly increased risk of physical and sexual violence and sexual attacks. Gang rape, forced marriage to enemy soldiers, sexual slavery, and forced mutilation were commonplace and

6. George Ochich and Ekuru Aukot, 2008 *Human Rights Report* (Nairobi: The Law Society of Kenya, 2008), 6.

most survivors did not have access to adequate medical care or nay care or at all. According to the Gender Violence Recovery Centre in Nairobi, a total of 650 survivors of sexual and gender-based violence (SGBV) related to the crisis were treated, with nearly 450 being seen in a short period of two months immediately after the election.⁷ These numbers, as shocking as they are, merely represent statistics from one hospital in Nairobi and consist only of those that were actually reported to this hospital at the time of the said crisis. More than a year has passed since the destructive uproar of the post-election violence ripped the country apart – we still have internally displaced persons in the camps.

SGBV includes such acts as, rape and defilement, wife inheritance, dowry-related violence, domestic abuse, and female genital mutilation (FGM), and all of these violations are still rampant throughout the country today. A woman recalls how she was brutally attacked in her own home during the crisis :

They accused my husband of being a traitor, and they dragged the two of us out of the house. They then took us to the forest and raped me for days, taking it in turns and saying that I would pay the price on behalf of my husband, forgetting that they had already killed him. He was beheaded as I watched, and they buried him.⁸

While this story is particularly brutal, women across the country continue to fear violence everyday and feel as if they have no control over what happens to them or to their bodies. It is estimated that a woman in Kenya is sexually violated every 30 minutes, with survivors ranging in age from 5 months to 82 years⁹. In Kuria district alone, more than 200 girls are forced to undergo circumcision (Female Genital Mutilation) everyday.¹⁰ The sexual, economic and social inequali-

7. CREAM, *Women Paid the Price!!! Sexual and Gender-based Violence in the 2007 Post-election Conflict in Kenya* (Nairobi: CREAM, 2008), 3-5.

8. "Kenya: Battle for Land Fought Over Women's Bodies," IRIN News (17 December 2008), <http://www.irinnews.org/Report.aspx?ReportId=81998>

9. George Ochich and Ekuru Aukot, 2008 *Human Rights Report* (Nairobi: The Law Society of Kenya, 2008), 10.

10. "Girls Flee Circumcision in Kenya," BBC News (5 December 2009), <http://news.bbc.co.uk/2/hi/africa/7766806.stm>

ties that exist in Kenya have come to be somewhat accepted and even seen as normal. Today, violence is seen as an acceptable way of disciplining women and maintaining a sense of order and control in the household, especially when a woman refuses sex, disobeys orders, or asks questions considered to be none of their concern, such as family finances.

SGBV has become deeply entrenched in Kenyan culture through rites and traditions that are not only physically and psychologically harmful, but instill the perception that women are objects to be used, abused, or misused. Bride price and wife inheritance are two such traditions that perpetuate these beliefs and contribute to increased rates of marital rape, domestic violence, and the overall poor economic status of women. A woman tells such a story:

My brother in-law, who inherited me after the death of my husband, would come home late at night very drunk and demand sex...I had a friend who refused to be inherited and was forced out of the home with her children. She never returned and she died and suffered the ultimate insult of being denied burial in her home village. I did not want to subject myself and my children to such extremes.¹¹

Sadly, due to social stigma, fear of reprisal, ignorance of the law and one's rights, insensitive medical procedures, inefficient judiciary, and stigma associated with most crimes against the person, very few cases are officially reported and even fewer are successfully tried in court. Feeling trapped and often helpless, women feel as if they have nowhere to turn and often suffer in silence.

The expounding nature of patriarchal ideology has not only consumed the majority of households in Kenya (95% of all land in Kenya is owned by men¹²), but has also reached other basic institutions, making it difficult to push for the protection of the rights women deserve. With women holding less than 9% of the parliamentary seats, they are often belittled and insulted, such as when fellow MPs declare on national television that when women say "no" they actually mean

11. CREAM, *Wife Inheritance: A Death Sentence Behind the Mask of Culture* (Nairobi: CREAM, 2008), 25.

12. *Kenya Women's Manifesto* (Nairobi: Friedrich Ebert Stiftung and The League of Kenya Women Voters, n.d.), 17.

"yes".¹³ With current legislation acting as a "window-dressing", the fact that things on the ground and in the courts are really no better than they were three years ago is overlooked. Women need to be placed in positions of power and have a direct hand in instituting reforms.

Although the situation in Kenya may seem dire and overwhelming, Kenyan women have not given up hope. Taking the Swahili saying "*Msilale wanawake*" (Women - do not fall asleep) to heart, women are "waking up" and taking a stand. They are banding together in record numbers and continuing to increase public awareness and advocate for change. Movements like the G10 that seek to re-define the political space and put people at the centre of leadership are gathering momentum. While it is important that change come from within Kenya and be implemented with the unique Kenyan dynamics in mind, continued international support for Kenyan women's efforts and international pressure on the government to combat SGBV and other social ills is critical. The path to a free life in which everyone's rights are respected and protected is a long and difficult one, but the women of Kenya are committed to making sexual and gender-based violence a thing of the past.

13. Joyce Mulama, "RIGHTS: Kenya's Parliament Hears That Women Who Say 'No' Often Mean 'Yes'," IPS News (27 April 2009), <http://ipsnews.net/news.asp?idnews=33033>