



KENYA

Submission to the UN Universal Periodic Review

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Introduction and Summary

1. Equality Now is an international human rights organization with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organizations in over 190 countries.
2. FIDA Kenya is the premier women's rights organization in Kenya which for over 32 years has offered free legal aid to over 320,000 women and their children. The matters range from custody and maintenance, matrimonial disputes, discrimination in Employment, participation in public positions and sexual violence. FIDA Kenya similarly conducts education and advocacy programmes that positively impact on structural, institutional, and legal reforms within Kenya to ensure gender sensitivity and responsiveness. FIDA Kenya is a membership organization committed to the creation of a society that is free from all forms of discrimination against women in Kenya.
3. Life Bloom Services International (LBSI) is a non-profit organization registered with the NGO Coordination Bureau in Kenya on 23 September 2004, utilizing peer mentoring and healing relationships to invite women, girls and children into movement from victim to whole life health. Life Bloom has supported more than 10,000 women, girls, and children (and men too) who have experienced abuse, trafficking and exploitation to regain their dignity.
4. Rural Education and Economic Enhancement Program (REEP) is a non-governmental organization founded in Butula, Busia County, Kenya. REEP was founded to spearhead the fight against HIV/AIDS and human rights issues for change and works to prevent child marriage and helps those already caught in the cultural tradition. REEP also provides classes on teenage parenting, child-headed families and HIV/AIDS testing and education. REEP works to break the cycle of violence and abuse.
5. Kisumu Medical and Education Trust (KMET) is a health and education non-profit that works to expand and promote access to affordable, quality reproductive health care to communities in need of such services, with an emphasis on maternal and newborn health and adolescent reproductive health services.
6. Sauti ya Wanawake Organization – Pwani (SYWP) works with the poor and vulnerable women and girls at the grassroots level through working with like-minded agencies to advocate against all forms of violence against women and girls in the Coastal region of Kenya. Sauti ya Wanawake Organization – Pwani mobilises masses for change and seek to positively transform retrogressive beliefs and cultures and amplify the voices of women and girls to seek justice and equality whilst recognising the unique challenges facing women and girls in these contexts.
7. IL`laramatak Community Concerns is a local non-governmental organization in Kenya. The primary purpose of IL`laramatak Community Concerns is to empower

indigenous women and girls in the Maasai pastoral community to identify and achieve their own development initiatives and promote decision making. The organization's development approach is based on participation, women empowerment, local capacity building/training, gender equality, advocacy, sustainability and accountability.

8. Hope Beyond Foundation promotes SDG5 accountability in Kajiado County, Kenya. By advocating for equal opportunities for girls and women. Hope Beyond runs various programs including a rescue center, a school, community training, women's empowerment, clean water programs and supports international efforts to prevent the practices of FGM, child marriage, sexual and gender-based violence.
9. Tasaru Ntomonok Initiative is a community based organisation in Narok County. Tasaru means "RESCUE" in Maa language. It started in 1999 to provide a safety net for the girls who run away from female genital mutilation (FGM) and child, early and forced marriage (CEFM), as well provide empowerment for young girls and women.
10. In this submission, Equality Now, FIDA Kenya, Life Bloom Services International (LBSI), Rural Education and Economic Enhancement Program (REEP), Kisumu Medical and Education TRust (KMET), Sauti ya Wanawake Organization – Pwani (SYWP), IL'laramatak Community Concerns, Hope beyond Foundation, and Tasaru Ntomonok Initiative provide information as stipulated in the *Universal Periodic Review (Third Cycle): information and guidelines for relevant stakeholders' written submissions*. The submission details our concerns regarding gender equality in general and more specifically regarding harmful practices, particularly female genital mutilation and child marriage, sex trafficking and sex tourism, discrimination in the Marriage Act, and sexual violence. We make key recommendations for action by the government of Kenya, based on international law and the UN Sustainable Development Goals, to better address these areas of concern.

Achieve Gender Equality in Law and Practice with Resources

11. During its last two UPR reviews in 2010 and 2015, Kenya received and accepted notable recommendations to eliminate all forms of discrimination against women and ensure gender equality, which are still applicable today and are also addressed in further detail below on specific issues of gender equality. These included: allocate adequate resources to implement affirmative action policies for the protection and advancement of the rights of women and girls; continue efforts towards ensuring gender equality in the field of education, health and employment; make further efforts to properly handle cases of discrimination and violence against women, including the prosecution of alleged perpetrators; improve the implementation of the laws that protect the rights of women, girls and children; strengthen measures to ensure gender equality in law and in practice, in particular by applying positive measures for the participation of women in public life and the private sector; ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; and strengthen the

efforts to respect and protect women's rights and gender equality, which includes an effective implementation of an inter-sectorial policy and action plan on reproductive and sexual health and rights and prevention of violence against women.

Harmful Practices - Female Genital Mutilation (FGM) and Child Marriage

12. FGM is a harmful practice that involves the partial or total removal of the female genitalia for non-medical reasons. It is recognised internationally as a violation of the rights of women and girls and an extreme form of violence. The physical and psychological effects are extensive and irreversible, and negatively impact the sexual, reproductive and mental health and wellbeing of survivors. The prevalence of FGM in Kenya currently stands at 21% according to the 2014 DHS. However, some communities such as the Gusii, Somali and Maasai have a high prevalence of 96%, 94% and 73% respectively.
13. As outlined above, Kenya received and accepted several UPR recommendations broadly touching on addressing gender inequality and gender-based discrimination as well as specific recommendations relating to ending harmful practices notably child marriage and FGM. In 2010, the recommendations largely touched on the need for Kenya to take measures to legislate and fully criminalise FGM. In the 2015 recommendations, Kenya was urged to continue with efforts to address child marriage and FGM. Further, Kenya received and accepted specific recommendations on the need to fully implement the Prohibition of Female Genital Mutilation Act which came into force in 2011 soon after Kenya's first UPR cycle.
14. Kenya's Prohibition of FGM Act (2011) criminalises FGM, including cross border FGM, medicalisation of FGM, and outlaws consent to FGM. The Act also established the Anti-FGM Board which coordinates all efforts to end FGM. The Board has been working with other State and non-State agencies to implement the law and engaging in dialogues with communities to accelerate abandonment of FGM.
15. Despite having the law, Kenyan authorities and law enforcement agencies continue to face challenges in prosecuting perpetrators such as the lack of evidence, intimidation of witnesses by community members and relocation of survivors. Other challenges include insufficient capacity and resources in key state agencies and emerging issues such as cross border FGM and medicalisation. Practicing communities also continue to evolve and change tactics to avoid facing the law and these include carrying out the practice in secrecy such as during male circumcision ceremonies.
16. Even though the Kenyan government continues to make progress and demonstrate political will to end FGM, there is need for acceleration of efforts against FGM to achieve full abandonment. These would include approval by Cabinet of the National Policy to eradicate FGM, which provides a roadmap for the implementation of the law and accelerating abandonment; an increase in resources for the Anti-FGM Board to enable it carry out its mandate of

coordinating all efforts and stakeholders working to end FGM; and working in partnership with neighbouring countries to tackle cross border FGM.

17. Kenya's child marriage prevalence stands at 23% for girls below the age of 18 years and 4% for girls under 15 years as per the UNICEF State of the World Children Report 2017. The absolute number of child brides in Kenya is 527,000 which is the 20th highest in the world.
18. So far, and in line with recommendations issued in the first and second review cycles, Kenya has enacted a minimum 18 years of age of marriage law and initiated review of the Children Act and the Sexual Offences Act to address child marriage and child sexual abuse and exploitation.
19. However, the criminal laws cited above do not address the underlying causes of child marriage in Kenya which include: adolescent pregnancy, poverty, girls driven by social and economic circumstances to drop out of school, and harmful cultural and traditional practices.
20. Adolescent girls do not have adequate access to contraceptives and sexual reproductive health education. Thus, many adolescent pregnancies force girls to drop out of school and end up in early marriages despite the existence of the laws. Therefore, the laws must be implemented through policies which support the retention of girls in school and their access to reproductive health rights.
21. The government also needs to ensure adequate security for school going girls to ensure girls are safe at home, on their way to school and in school. Recently, in 2019, two girls were abducted in Kaptlomwo Village in Kasei Ward, West Pokot and taken across the border to Uganda for child marriage. In 2016, a 12 year old girl was abducted in West Pokot County of Kenya and forcefully married in Uganda. We are concerned that if swift action is not taken by the State, this might turn into a trend that would affect many more girls in future.
22. Although Kenya has established an anti-child marriage prosecution unit within the Office of the Director of Public Prosecutions, many cases of child marriage are settled within the community with the assistance of local administrators known as chiefs who negotiate 'penalty' payments on behalf of the girls' parents thus evading the justice system especially in Kilifi and Kwale Counties in Kenya.

Sex Trafficking and Sex Tourism

23. Kenya is a source, transit, and destination country for sex trafficking. A majority of the victims of trafficking for sexual exploitation and sex tourism are vulnerable due to poverty, lack of economic opportunity and discrimination in a widely patriarchal society. Children are trafficked for sexual exploitation by people working in mild narcotic cultivation areas, near gold mines in western Kenya, by truck drivers along major highways, and by fishermen on Lake Victoria. Women are recruited and trafficked both internally and to other countries in the Middle East where they end up in sexual exploitation. The government generally requires refugees to live in refugee camps. Women and girls in refugee camps

are particularly vulnerable to sex trafficking because of limited access to education and livelihood opportunities.ⁱ In addition, girls and young women are affected by diverse forms of sexual violence, most commonly sexual exploitation, transactional sex, rape, child, early and forced marriage. This is because of the high levels of poverty, low levels of education and societal values that have normalized sexual violence in a background of social and cultural beliefs that discriminate against girls and women. With lack of education/skills and high number of girls not enrolled in school, girls have become sexually exploited.

24. Sexual exploitation in travel and tourism is also rife in Kenya, particularly in popular tourist areas such as Mombasa, Malindi and Naivasha with the majority of victims being adolescent girls. A UNICEF study (2006) found that in the coastal region, 30 percent of teenage girls are victims of sexual exploitation in travel and tourism, with 10 percent involved before the age of 12 years. The report also states that as many as 45 percent of girls have been trafficked into these tourist resorts from other parts of Kenya. In the majority of situations, the sexual exploitation of girls continues into adulthood. Recently, IOM released a reportⁱⁱ which indicated that tourism remains the number one reason for the trafficking of persons in Coastal Kenya, with women and girls as the majority of victims of sexual exploitation.
25. During its 2015 Review, Kenya received and accepted the following recommendations in relation to sex trafficking and sex tourism including: the need to take necessary measures to eliminate the vulnerability of girls and women to sexual exploitation; prosecute the perpetrators of trafficking and sexual exploitation of women and children; ensure the full operationalization of the National Policy and Action Plan on Human Rights; end early marriages and the trafficking of minors; continue implementing decisive measures to prevent and eliminate cases of sexual exploitation of women and children; consider increasing efforts to address the sexual exploitation of women and girls; combat the trafficking and sexual exploitation of women and girls by means of adoption of a comprehensive national action plan in this domain; take measures to develop an integral plan of action to combat trafficking and the sexual exploitation of women and girls, including through medical and psychological assistance to victims of these crimes; and continue addressing the issues of sexual exploitation of women and girls.
26. Although Kenya has significantly invested in the investigation and prosecution of offenders of child sex tourism, significant efforts need to be made in arresting buyers of adult women in prostitution and those exploited in the tourism industry. Kenya had a National Action Plan for the implementation of the Anti-trafficking in Persons Act (2013-2017) and is currently developing the next action plan. Significant efforts have also been put in place to involve a wide range of stakeholders in the development of the National Action Plan (2019-2023).
27. There are some challenges with current laws relevant to sex trafficking and sexual exploitation as follows:
 - a) The Children Act provides for child trafficking offences, but does not provide a definition of child/human trafficking.

- b) The definition of child trafficking in the proposed Draft Children Bill (2017) excludes two key aspects that are provided under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (hereinafter called the Palermo Protocol) and the Counter Trafficking in Persons Act (2010), namely that the consent of the victim to the intended purpose is not relevant where any of the means have been used, and that the “recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means outlined”.
- c) There are different penalties and custodial sentences for comparable offences between the Children Act and the Counter Trafficking in Persons Act. For example, Section 13 (2) provides that a person convicted of child trafficking shall be liable to “...imprisonment not exceeding twelve months, or to a fine not exceeding fifty thousand shillings or to both such imprisonment and fine”. On the other hand, the Counter Trafficking in Persons Act in Section 5 provides a penalty of “not less than thirty years or to a fine of not less than thirty million shillings or to both and upon subsequent conviction, to imprisonment for life” for any person convicted of trafficking.
- d) The Sexual Offences Act in Section 14(1)(a)(b)(c) provides for the crime of “child sex tourism” and does not take into account that adult women are also victims of this crime and that often children who are sexually exploited in the tourism industry continue to be exploited into adulthood.

Discrimination in the Marriage Act No. 4 of 2014

28. Sections 2, 3 and 6 of Kenya’s Marriage Act No. 4 of 2014 promote inequality as they allow a man to have more than one wife. This is in direct contradiction to Article 27(1) of Kenya’s Constitution which states that, “Every person is equal before the law and has the right to equal protection and equal benefit of the law.” In addition, these provisions violate Kenya’s obligations under international law and the UN Sustainable Development Goals (SDGs); both the CEDAW Committee and the Human Rights Committee have found that polygamous marriages discriminate against women and violate a woman’s right to equality in marriage.
29. No specific recommendations regarding polygamy were made to Kenya in the previous UPR cycles in which Kenya participated.

Sexual Violence

30. According to the 2014 Kenya Demographic Health Survey, 44% of women have experienced physical violence and 14% of women have experienced sexual violence in their lifetime. Gender stereotypes, inequalities, harmful cultural norms and patriarchal system that are embedded in the Kenyan society are some of the root causes of sexual and gender-based violence (SGBV).

31. The Sexual Offences Act, enacted in 2006, makes provision for sexual offences, their definition, prevention and protection from unlawful sexual acts. The Sexual Offences Act heralded a new era in as far as State's duty to prevent, protect and fulfil human rights is concerned specifically on cases of sexual violence. Stiffer penalties and the minimum sentences provided in the Act have served as a deterrent factor. However, the enforcement of this legislation in its entirety remains one of the biggest impediments to addressing sexual violence in Kenya. Despite a provision for a data bank for convicted perpetrators of sexual violence in section 39 of the Sexual Offences Act, this register is yet to be operationalized.
32. Inadequate political will and failure to invest in initiatives aimed towards prevention and protection against SGBV, and prosecution of SGBV cases remains a huge challenge too. Victims of SGBV lack the requisite support in as far as accessing justice is concerned. No government funded shelters or safe houses for victims of SGBV exist, and this poses a challenge in as far as access to justice is concerned. Perpetrators of sexual violence are more often than not people who are close to the victim. Living in the same environment with the perpetrator further traumatizes the victim, and additionally, victims have to take care of their medical costs, psychosocial support and other expenses incurred in their quest for justice.
33. Although the Sexual Offences Rules of 2014 provide for expedition of cases of sexual violence, there is no specific timeline in which these cases ought to be heard and determined. Therefore, cases of SGBV more often than not take long in the courts to the detriment of the victims of sexual violence.
34. In both the 2007/2008 and 2017 post-election violence (PEV), women and girls were sexually violated. In 2017, the majority of sexual violence perpetrators were State agents (security officers). According to the Kenya National Commission on Human Rights, 201 cases were reported during the PEV in 2017. Of all those cases, none of the perpetrators have been brought to book.
35. In 2015, the Government enacted the Protection Against Domestic Violence Act. The Act seeks to provide for protection and relief of victims of domestic violence, including sexual violence. The implementation of this Act will ensure that victims of domestic violence get the necessary support in access to justice.
36. The National Gender and Equality Commission has been instrumental in advancing gender equality. In 2017, NGEN developed the County Model Legislative Framework and the Model County Policy on SGBV. These documents are aimed at coordinating response to SGBV and provide guidance to the County Government on critical elements and considerations for law on SGBV.
37. The June 2019 decision by the High Court of Kenya in Petition 266 of 2015 that held that women and girls in Kenya who get pregnant as a result of sexual violence have a right, under Kenyan law, to have an abortion performed by a trained health professional, is a step in the right direction as this will ensure that victims of SGBV are accorded the services they require especially in cases where they get pregnant.

38. Currently, the DHS captures data for women between 15-49 years. This leaves out a majority of younger adolescent girls who are equally affected and are victims of sexual violence.
39. During its last UPR review, Kenya received and accepted numerous recommendations in relation to ending sexual violence. These included the setting up of special units in the justice and health systems to deal with gender-based violence, strengthening the protection for women and children and putting in place measures to guarantee effective access to protection and redress for women victims of violence. Kenya has so far enacted the Prevention Against Domestic Violence Act, in 2015, that seeks to offer protection and relief for all victims of domestic violence. The implementation of this Act will ensure that victims of domestic violence get the necessary support in access to justice.

Recommendations for Action by the Government of Kenya

We respectfully urge the Human Rights Council to call on the government of Kenya to:

FGM and Child Marriage

1. Increase resourcing to key agencies critical in combatting child marriage and FGM; specifically, the Anti-FGM Board to enable it carry out its mandate of coordinating all efforts and stakeholders against FGM, especially in the Counties with highest FGM prevalence, and the Directorate of Criminal Investigations in charge of investigating crimes against children to ensure that it is able to respond adequately and in a timely manner to cases of girls abducted for child marriage.
2. Put in place measures to enhance capacity of county administrators including the police and chiefs on the laws against FGM and child marriage. Emphasis should be placed on building capacity to investigate and prosecute FGM cases within the available legal framework and sensitisation of chiefs to desist from negotiating “penalty” payments on behalf of the parents of the victims of child marriage, thus aiding the perpetrators to evade criminal prosecutions.
3. Engage communities through dialogues to accelerate abandonment of child marriage and FGM while at the same time create awareness of existing legal frameworks that seek to respond to these violations.
4. Develop a national action plan to end child marriage and approve the National FGM policy that provides the road map towards elimination of FGM.
5. Launch awareness-raising campaigns in all sectors of society particularly at Counties (localized administrative units) targeting barazas (local community gatherings led by local administrators such as chiefs or village elders), families, children, prosecutors, judiciary, police) with a long term view to ending harmful practices (child marriage and FGM).

6. Enhance services and support to survivors of child marriage and FGM by investing in their emotional wellbeing including through psycho-social support and provision of safe spaces.
7. Collaborate with neighbouring countries to tackle cross-border FGM and child marriage.
8. Take appropriate measures to ensure the health sector recognises its critical role in mitigating the growing rate of medicalisation of FGM in Kenya.

Sex trafficking and sex tourism

9. Ensure that the definition of child trafficking in a new Children Act is similar to that provided in the Counter Trafficking in Persons Act, and that it meets the Palermo Protocol standard including definition of exploitation to include “at a minimum the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.
10. Review and harmonise sentences between the Children Act and the Counter Trafficking in Persons Act, with a preference to uphold those in the Counter Trafficking in Persons Act as they are stiffer and more deterrent.
11. Extend the protection from sexual exploitation in travel and tourism beyond children. This would make it necessary for Kenya to consider reviewing the Penal Code’s provisions that criminalise living off the earnings of prostitution so as not to criminalise women in prostitution, and clarify the responsibility and liability of those who buy sex.
12. Ensure clear provisions for a mechanism that will enable proper allocation of resources to the institutions mandated to provide support to victims of sex trafficking to enable their access to social and legal services and protection including compensation. This would include ensuring effective implementation of the National Assistance Trust Fund for Victims of Trafficking in Persons.
13. Put an appropriate framework for data collection around sex trafficking and sexual exploitation, disaggregated by gender as well as a monitoring and evaluation of the progress of implementation.
14. Establish a comprehensive programme for the protection of victims of sex trafficking including shelters, psycho social support and holistic integration programme to the community. Section 15(1) provides that *‘the Minister for Labour in consultation with the advisory committee on trafficking, should make provision for the comprehensive protection programmes for victims of trafficking including—return to and from Kenya, resettlement, re-integration, appropriate shelter and other basic needs, psychosocial support, appropriate medical assistance, legal assistance or legal information, including information on the*

relevant judicial and administrative proceedings or any other necessary assistance that a victim may require.'

15. Ensure access to justice for victims of human trafficking, through a comprehensive and holistic approach to care and protection.
16. Adoption of laws and policies in the counties most affected by sex tourism, sex trafficking, by putting in place laws and policies that guard against the sexual exploitation of women and girls.
17. Take steps to address the root causes of trafficking in persons, including addressing gender inequality and discrimination of women and girls in all sectors.

Polygamy and sex discriminatory laws

18. Amend the Marriage Act to prohibit polygamous marriages, regardless of religion or custom, going forward and review, amend or repeal all sex discriminatory laws and policies.

Sexual violence

19. In an effort to prevent SGBV and its consequences, create public awareness on the gender inequalities and stereotypes that are the root cause of cases of SGBV.
20. Provide specific timelines and guidelines under which cases of sexual violence should be heard and determined.
21. Establish a SGBV Unit at the police, prosecution and judiciary level to ensure cases of sexual violence are fast-tracked and there is coordination in the access to justice chain.
22. Allocate sufficient resources to operationalize the Protection Against Domestic Violence Act, the Witness Protection Act among others.
23. Undertake continuous and comprehensive capacity building training for all law enforcement agents on the various statutes that address sexual violence and their duties in as far as handling cases of sexual violence is concerned.
24. Ensure that the decision of the High Court of Kenya in Petition 266 of 2015 is fully implemented and withdraw the notice of appeal.
25. Lift the reservations entered on Article 14 (2) (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and ensure the full implementation of the Protocol.
26. Put in place a comprehensive data collection mechanism that encompasses all forms of sexual violence and also all ages.

ⁱ For further analysis on the situation of sex trafficking in Kenya, please see the 2019 US State Department Trafficking in Persons Report, Page 274, <https://www.state.gov/wp-content/uploads/2019/06/2019-TIP-Report-Narratives-J-M.pdf>

ⁱⁱ IOM Assesment report of Human Trafficking in Kenya, Situation in the Coastal Region of Kenya, May 2018, Pages 19-20.