

Kenya faces challenges towards fight against gender violence

As inadequate investigations and poor evidence preservation contribute to the low number of prosecutions and convictions

Over the last decade, Kenya has been successful in enacting laws and designing policies to fight **Sexual and Gender based Violence (S/GBV)**. The crime however, continues to be endemic.

The Constitution of Kenya recognizes GBV as a violation of human rights. Article 28 stipulates that:

“Every person has inherent dignity and the right to have that dignity respected”, and article 29 (c) stipulates that “Every person has the right to freedom and security of the person, which includes the right not to be- (c) subjected to any form of violence from either public or private sources (domestic violence)”



Panel at the Gender Forum 27FEB L-R Wangu Kanja (Founder WKF), Prof. Rose Odhiambo (CEO NGEC), Njeri Rugene (Editor NMG), Jane Serwanga (Advocate), Lydia Muthiani (Dep. FD COVAWI)

Furthermore, The Sexual Offences Act 2006 and the ratified Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol.) as well as many other ratified international conventions depict a nation that is keen on stemming gender discrimination and violence.

Many interventions by civil society organizations and international development partners have slowly and subtly opened up the otherwise conservative and deeply patriarchal society in reporting the crimes.

The **Gender Violence Recovery Centre (GVRC)**, a department of the Nairobi Women's Hospital report that the total number of S/GBV cases reported in 2011-12 increased by 45 cases from 2,909 to 2,954.

Furthermore, statistics from the Moi, Teaching and Referral Hospital (MTRH) indicate that there has been an increase in the number of SGBV survivors at the Centre for Assault Recovery of Eldoret (CAR-E) from 250 cases reported in 2007 to over 900 in 2010.

Very few S/GBV convictions in Kenya

Indeed these are indicators of the numerous programmes launched by different stakeholders geared towards prevention and early reporting of S/GBV. Unfortunately, there are very few convictions recorded caused by serious lapses by the police and judiciary in responding to the survivors' plight.

These were the concerns raised during the gender open forum held on February 28 at a Nairobi Hotel. The forum was hosted by **Heinrich Boell Foundation** in collaboration with The **African Women's Development and Communication Network (FEMNET)**, a Pan-African organization working towards advancing women's rights and **Africa UNiTE Kenya Chapter**, a national chapter of the regional UNiTE and global UNiTE campaign launched by UN Secretary General.

Under the theme '**Sexual and Gender based Violence in Kenya: losing or gaining ground**', scholars, law makers and implementers, civil activists, government institutions, students and the general public energetically humanized the issue of S/GBV and challenged one another on the effect of indifference and inaction by duty bearing institutions as well as communities and families.

The general overview of the situation sadly negates the progress made. More and more women and girls are falling victims of S/GBV. The youngest rape survivor in Kenya is a three month old baby and the oldest is aged 105 years. "Cultural practices such as Female Genital Mutilation, forced wife inheritance, widow cleansing and other derogatory practices are still rampant," says **Mr. Kennedy Otina, Men to Men Programme Coordinator FEMNET** who moderated the forum, adding that the statistics are worrying.



Photo: Mr. Kennedy Otina, Moderator at the Gender Forum on 27th February 2014
He is the Men to Men Programme Coordinator FEMNET

In illustration, the **former Deputy ED, FIDA Kenya, Ms Jane Serwanga** recounted how difficult it was for girls in Eastern Region of Kenya to find justice in courts. It took collective efforts by legal minds from Ghana, Malawi and Kenya for a Meru court to find police guilty of ineptitude. "It was a lengthy battle and the girls bravely faced their perpetrators who were closely known to them," said the human rights defender and an advocate of the High Court.

Ten girls were unable to attend the proceedings as they succumbed to injuries caused by the vice.

In the same year 2013, activists and the public in general reacted angrily towards the government's complacency, indifference and ineptitude in dealing with a case that saw six perpetrators walk free after violently **raping Liz, a 16-year old girl in Busia..**

According to the journalist and parliamentary editor at **Nation Media Group Ms. Njeri Rugene**, she has since discovered that this case is only one of many other

unprofiled cases of child defilement in and beyond the region. "I felt impotent in my career as the police and leaders proved insensitive to the survivors' plight," she said admitting that the media is not doing enough towards fighting the vice.

No goodwill from the police

A petition that saw more than 1.3 million signatures gathered globally has laid pressure on the Inspector General of police to open up investigations against the perpetrators as well as an inquiry into the reports of complacency of the police who initially handled the case.

The police accused the family of having initially sought intermediary interventions in a bid to resolve the case and only exposed it when the health of the survivor deteriorated. This, according to **Ms. Lydia Muthiani, Deputy Executive Director and programmes Manager COVAW** are among challenges hampering justice for S/GBV victims.

"The first point of referral, which is very crucial, determines the fate of the case," she said. The community shuns the survivors and coupled by delays in the justice system, families opt for traditional systems that are geared towards reaching a consensus rather than securing justice. "A point in case is a recent incident in Wajir," she pointed out.

Point of service is the second stage and this involves the police and health care providers. Various reports indicate that service providers are unaware or unable to follow guidelines and protocols when handling survivors. Due to poor infrastructure, lack of training and lack of budgetary allocation, hospital attendants are incapacitated in offering needed services such as collection of evidence and psychological counseling.

Cases are therefore weakened due to the destruction or unavailability of forensic evidence, coupled with weak testimonial evidence. "We are insisting that any actionable evidence available should be presented and tested in court," said **Ms. Muthiani**.

What have you done?

In fact, most police personnel encourage arbitration and sometimes take bribes to forgo investigating the case further frustrating the ability of prosecution agencies to secure convictions. “The situation worsens by the day,” said **Wangu Kanja, founder of Wangu Kanja Foundation**. She adds,

“With no clear guidelines and structures on data collection, we are fighting a losing battle.”

The devastation of the crimes is far-reaching as it touches on the physical and psychological state of the victim. “It robs them of their dignity,” **Ms. Kanja** said as she emphasized that the fight has to be personalized for progress to be realized. “What have you done when you have encountered a case of S/GBV?” she posed to the audience.

Her clarion call was backed by the secretary and chief executive officer of the **National Gender and Equality Commission (NGEC) Prof. Rose Odhiambo**. The Constitutional office was established in 2011 with a mandate to oversee, coordinate, research and advice on actions to reduce gender inequalities and discrimination on any grounds as listed in the Constitution.

Their oversight and advisory functions is handicapped by lack of data. “We are in the process of gathering data both at the national and county levels to build our capacity of sensitizing the country on the situation and the way forward,” said **Prof. Odhiambo**.

The commission also brings together and co-ordinates activities of all stakeholders that are involved in S/GBV. It takes interest in difficult cases reported to them that are not getting resolved as in the case of Liz where after carrying out independent investigations, wrote to the Inspector General asking for action to be taken.

Launching cost implications study on S/GBV

Furthermore, the commission has launched sensitization campaigns to encourage exposure of S/GBV crimes. To strengthen this move, a study to find out the cost implications of managing the crime has been launched. This certainly resonated with the participants at the

forum who projected that management of S/GBV significantly impacts the economy.

But the sensitization campaigns are not sufficient. Police and health workers need **intensive training** on handling S/GBV cases. A baseline survey done by COVAW indicates that community awareness is still very low. The police are still reluctant to enforce law such as the Prohibition of Female Genital Mutilation Act 2011 for example in Isiolo and Narok. “The areas are still riddled by the vice,” said **Ms. Muthiani** adding that some of them are ignorant of the law and do not know how to book the cases.

Ms. Jane Serwanga opined that mechanisms to pursue justice however are wide. Litigants now have judicial avenues from magistrate courts up to the Supreme Court. Regionally, The African Court on Human and Peoples Rights and Treaty Monitoring Committees such as the CEDAW Committee or the Human Rights Committee offer respite. Policy makers and community leaders need to be utilize these mechanisms and formulate workable strategies. According to Ms. Rugene, there is need for leaders to denounce the crimes and take the lead to demand action against perpetrators. “Silence makes these crimes endemic and the community becomes complacent if they think their leaders and law enforcers will do nothing,” she said.

All in all, enhancing community awareness of the vice is important. “Family is the first point of contact and their support determines the recovery of the survivor,” said **Ms. Kanja** while **Ms. Muthiani** added that everything starts from reporting the case. “It is a very lonely affair.”

She revealed that in 2013 COVAW received 560 cases in which the majority was walk-ins. The institution handles about 1,000 cases each year.

Plenary World Café.

The participants actively interacted and debated three questions in various groups.



These were some of their views:

Group 1

1. What practices and norms allow or disallow sexual violence in Kenya? What do we do to stop/strengthen them?

Firstly, there was general agreement that the patriarchal norms deeply ingrained in Kenyan communities are rearing grounds for S/GBV. Practices such as FGM, early marriages, wife inheritance and dowry denote women as property.

Secondly, women have been marginalized in education hence unable to earn a decent income for themselves and their families. Economic disempowerment potentially leads to vulnerability resulting in the inability to understand and claim rights. The emphasis on girls' education must be encouraged as it opens up opportunities to be self sustaining in future and hence avoid exploitative circumstances.

Many cultures are yet to acknowledge rape especially in marriage as a crime and hence it is never reported or acted upon.

The recent mutilation of the Matrimonial Property Act regressed progress made in equality for women over matrimonial rights although A45 of the Constitution declares spousal equality at, during and on dissolution of marriage.

Unfriendly police environment and culture prevents women from reporting and speaking out against the crimes.

There needs to be demonstrated political will to fight the vice. A zero-tolerance culture should be demanded from top level of government.

Modern lifestyle which allows for diverse media and internet that is still unregulated encourages the vice.

Solutions suggested are:

- ✓ Empowering the girl child through education and enhancing women's economic emancipation – knowledge and resources would enable women to know, assert and claim their rights.
- ✓ Enhance sensitization on the vice and its devastation to the family and country at large.
- ✓ The narrative on S/GBV should not demonize men and boys rather; programming should incorporate them as agents of change as well as respond to their needs as victims/survivors.
- ✓ The matrimonial and property law should be reviewed.
- ✓ Implementing the 'no more than two thirds' gender rule would ensure women are fully and effectively incorporated in decision making.
- ✓ S/GBV should be a constant talking point in open forums to allow internalization and humanization of solutions.

2. In what ways is a country as a collective affected by S/GBV?

Firstly, is the high cost of health care to the survivor of abuse, the family and the country. It has implications on mental and physical health.

Secondly, there is a breakdown in the social fabric as mistrust, stigmatization and victimization within family members and within communities is enhanced by the crime.



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- ✓ It lowers productivity and robs of a productive workforce.
- ✓ If the violent incident is not redressed adequately and systematically, the survivor suffers low self-esteem and could deteriorate into a negative cycle of violence and depression.
- ✓ It robs the survivor of their dignity
- ✓ It contributes to preventable mortality statistics
- ✓ The society degenerates to complacency that the vice will never be defeated hence exacerbating it.
- ✓ Women get discouraged from actively participating in public duty due to fear of gender based attacks and attention; as depicted by low statistics of female candidates to public office.

3. Is S/GBV my problem? In what ways does the issue affect me?

There was emphatic agreement that the vice affects everyone personally. Children and people living with disability are most vulnerable. Subtle sexual and gender derogatory undertones and remarks often get brushed aside as harmless but could be the first indicator of a problem.

Solutions suggested were:

- ✓ Condemn and curb subtle inappropriate sexual innuendo as it is a thin line which if left unchecked ultimately leads to S/GBV
- ✓ Reject the objectifying of women particularly in the public sphere.
- ✓ Know your rights and take an interest to support survivors of S/GBV in any way possible.