

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. In this submission, Equality Now provides information as stipulated in the *Information and Guidelines for Relevant Stakeholders' Written Submissions*. Equality Now, in consultation with partner organizations Women Rights Institute for Peace, the Cana Rescue Center, and Tasaru Ntomonok Initiative, as well as its Solidarity for African Women's Rights (SOAWR) coalition partners in Kenya, highlights its concerns about female genital mutilation (FGM), child marriage and sexual violence against women and girls in Kenya and the government of Kenya's failure to effectively enforce laws that outlaw these violations. We note that during the first Universal Periodic Review (UPR) of Kenya during the eighth session of the UPR Working Group of the Human Rights Council held 3-14 May 2010, several States made recommendations for Kenya to address these three areas. Even though Kenya has taken steps to address these recommendations as indicated in its Mid Term Report, FGM, child marriage and sexual violence persist in Kenya. Equality Now makes a number of recommendations for action by the government of Kenya to address these areas of concern.

Promotion and Protection of Human Rights on the Ground

Female Genital Mutilation and Child Marriage in Kenya

3. FGM and early marriage are harmful traditional practices that occur in Kenya. Kenya's prevalence rates for FGM and child marriage are approximately 27 percent and 26 percent, respectively. FGM is generally performed on girls aged between 12 and 18, but recent studies have shown that girls are being cut as young as age seven, often without anesthetic. FGM can have detrimental lifelong health consequences including chronic infections, severe pain during urination, menstruation, sexual intercourse, and childbirth, infertility, psychological trauma, and in some cases even death. No one knows how many girls die from FGM. FGM is seen as a rite of passage into womanhood and an immediate precursor to marriage. Therefore once a girl has undergone FGM she is under pressure to marry as soon as possible and in most cases the parents find a husband for her.
4. Equality Now has been monitoring multiple cases of FGM and early marriage in Kenya. In October 2013, Equality Now and its partners issued an action calling on the government of Kenya to enforce its laws against FGM and child marriage. *Please see Annex 1 for more information on Equality Now's Action Campaign regarding FGM and early marriage in Kenya.* In January 2014, Equality Now also issued a child marriage report, which highlighted several examples of girls running away from FGM/early marriage:
 - Elizabeth from Churo village was barred from attending school by her parents who planned to subject her to FGM and marry her off. She found refuge with her aunt for a while and was attending school, but was forced to run away when her father tried to

- remove her from her aunt's home at age 16. She walked for three days before arriving at a rescue center for girls. Her father came to the center and tried to force her back home, but when the center's management threatened him with police action, he left and did not return.
- Alsine from Tangelbei village was pulled out of school by her parents at age 14 and subjected to FGM to 'prepare her for marriage'. She ran away to her older sister's home, but her father forcibly removed her from her sister's home and began marriage preparations. She managed to escape once more, and after spending two nights sleeping outdoors, was directed to a rescue center for girls where she is once again attending school.
 - Liloe fled to the Rescue Center run by TNI when she was 14 years old to escape FGM and child marriage. TNI staff arranged reconciliation with her family and her mother promised not to mutilate her. When Liloe was 16, her mother again tried to marry her off and Liloe again fled to Tasaru. FGM and early marriage are illegal in Kenya. This time TNI reported the case to the police who prosecuted Liloe's mother in court under the Children's Act 2001. Liloe's mother was found guilty and sentenced in 2013 to two years of community service. Liloe continues to attend school and has recently been reconciled with her relatives.
5. In late March 2014, Equality Now also wrote to Kenya's Director of Public Prosecutions (DPP) and highlighted several FGM/early marriage cases from Narok County that were facing persistent delays once before the court. Such delays are especially problematic for girls seeking protection via the criminal justice system, as their trust in the system wanes, witnesses are compromised or dissuaded from testifying, and at times community pressure against formal legal action persists, threatening the girl's safety.
 6. Many rescue centers are under-resourced and do not have the capacity to indefinitely house and educate all the girls seeking refuge. Unlike those in the cases noted above, many girls are not able to escape FGM and child marriage in Kenya.
 7. Kenya has taken some important steps to outlaw FGM and child marriage and enforce these laws, particularly in response to recommendations made during its 2010 UPR review. In Kenya's national legal framework, FGM is prohibited under the Prohibition of Female Genital Mutilation Act 2011, and both FGM and child marriage are prohibited under the Children's Act 2001. In addition, Kenya's Constitution contains provisions against both FGM and child marriage. In December 2013, Kenya appointed an anti-FGM advocate and former member of Parliament, Honorable Linah Jebii Kilimo, from an area with high FGM prevalence as new chairperson of the government's Anti-FGM Board. Most recently in April 2014, Kenya's Director of Public Prosecutions, Keriako Tobiko, established an Anti-FGM Unit, in order to streamline the prosecutorial management of FGM cases in Kenya. In April 2014, Equality Now met with representatives of the Office of the DPP's new unit to better understand their mandate and proposed operations to better address FGM and early marriage in Kenya. The unit has just completed a two month long roll-out program nationwide, which

included several proactive techniques being employed by prosecutors together with community sensitization programming.

8. Despite these efforts by Kenyan authorities to address FGM and child marriage, these human rights violations persist and implementation of the relevant laws has been inadequate. Despite frequent reports about cases of FGM and child marriage and girls escaping to avoid these practices, there have been no known investigations or prosecutions to date in some areas of Kenya, such as the Pokot region where FGM is prevalent, and the government has taken no steps to protect the girls who are running away to avoid being violated. There are still many people, including chiefs and law enforcement officials who are not aware of the laws against FGM and child marriage, or how to effectively implement them. Many cases of FGM or child marriage are not reported or prosecuted, and those that are taken to court are often prosecuted as lesser crimes. When cases are brought forward, they are often not brought under the Prohibition of FGM Act or Children's Act, and are brought as lesser crimes. Cases often take a long period of time or are delayed. Law enforcement agencies are often under-resourced as well, or lack sufficient capacity and training to effectively investigate and prosecute cases of FGM and child marriage. In addition, while the appointment of the head of the Anti-FGM Board is a welcome step toward implementing the Prohibition of FGM Act, the Board has yet to be funded which hinders their overall effectiveness to combat the practice.
9. The government of Kenya must do more to implement and enforce the relevant laws, and put an end to FGM and child marriage – thus ensuring the protection of girls. Kenyan authorities also have a responsibility to ensure that these girls are able to obtain the support they need when they try to escape and avoid FGM and child marriage.

Sexual Violence in Kenya

10. A 2013 report by the Kenyan Minister for Gender, Children and Social Development, detailed a grave picture of sexual violence in Kenya: 1 in 5 Kenyan women will experience sexual violence in their lifetime. An estimated 45 percent of Kenyan women aged 15 to 49 have experienced physical or sexual violence – and these numbers are likely to be much higher, as the Coalition on Violence Against Women estimates that only 8 percent of rape survivors report the attack to authorities.
11. The ongoing case of Liz, involving a 2013 gang rape in Busia, Kenya, has garnered considerable national and international media attention, particularly because it highlights the challenges involved in addressing sexual violence in Kenya. *See Annex 2 for further information on the case and Equality Now's action campaign for Liz's case and survivors of sexual violence in Kenya.* One year later, little progress has been made in attaining justice for Liz. The authorities have re-apprehended only one of the six suspects. The case is finally scheduled to go to trial in June 2014, and the charges against the one suspect in custody have finally been elevated from “grievous bodily harm” to “gang rape” under the Sexual Offences Act. The DPP also appointed two special prosecutors to the case, and has consistently followed up with the Inspector General of Police to ensure that the remaining

suspects are arrested ahead of trial. However, the DPP appeared to only move the case forward after significant public pressure and the widespread publicity of the case.

12. Kenya's Constitution gives significant prominence to human rights and international law, and entrenches the rights and fundamental freedoms of all, including the right to equality and freedom from discrimination. Under Kenya's Sexual Offences Act, rape is illegal and a person convicted of committing rape faces a sentence of ten years to life in prison. In addition, Kenya has developed National Guidelines on Management of Sexual Violence, which prescribe how law enforcement and medical responders must handle sexual violence cases, and how police are to collect evidence.
13. Liz's case occurs on the heels of a landmark judgment for victims of sexual violence passed by the Kenyan High Court in May 2013 in a class action suit, known as the *160 Girls Case*, on behalf of girls whose cases of sexual violence had been mishandled by the police. The Court held that "the neglect, omission, refusal and/or failure of the police to conduct prompt, effective, proper and professional investigations" into the many complaints of sexual violence violated the girls' fundamental rights and freedoms by creating a "climate of impunity." The High Court held that police officers have an obligation to conduct "prompt, effective, proper and professional investigations" into all allegations of sexual violence. However, this case indicates Kenya's continuing failure to adequately investigate and prosecute all crimes of sexual violence. In light of examples like the 160 Girls Case and Liz's case, it is clear that there are too few prosecutions of sexual violence crimes, particularly as compared to the high rate of sexual violence in Kenya.
14. As a result of working on Liz's case, Equality Now has begun monitoring dozens of troubling sexual violence cases from Busia County. These cases – like Liz's case - highlight the prevalence of sexual violence plaguing women and girls, and the tremendous obstacles encountered at every stage of the criminal justice process. Some of these cases that highlight the systemic problems of corruption, witness intimidation and compromised medical evidence in Kenya include:
 - The case of 14-year-old girl Faith, who was defiled by a senior ranking police corporal in Butula sub-county. When the case was reported by a fellow female police officer, she has faced threats to her job, security and life. After a medical doctor examined the survivor thanks to the help of local organizations, the following day officers from the local Criminal Investigation Department arrived and took the child, alone in the same vehicle with the corporal/perpetrator for new medical investigations which contradicted the original medical report.
 - The case of 12-year-old Adlight who was defiled, impregnated twice, and infected with HIV by a prominent teacher in the community who had employed her as domestic help. The girl is from a very poor family and has mental disabilities, but has communicated clearly what happened to her. There are reports that officials from the local children's office in Busia protected the perpetrator, who is still teaching and is rumored to be transferred soon to another school.

15. Survivors of sexual violence in Kenya often face re-victimization when reporting their cases, as authorities often engage in harmful behaviors that diminish the survivor's sense of confidence in the judicial process, including: showing disbelief or skepticism towards complainants, employing aggressive interviewing techniques that are embarrassing and invasive, victim-blaming, and questioning the victim's motives for reporting the crime. While Kenya in its midterm report reported that the Office of the Department of Prosecutions has made efforts to train and sensitize investigators, police prosecutors and judicial officers on addressing cases of gender based violence, the *160 Girls Case* and Liz's case show that this has not been as effective as Kenyan authorities might have hoped.
16. Kenyan authorities have an obligation to ensure that women and girls in Kenya are protected from all forms of violence, including sexual violence. Women and girls must also be able to effectively access the justice system without being re-victimized by the very authorities intended to assist them and protect their rights.

Recommendations for Action by the Government of Kenya

Female Genital Mutilation and Child Marriage in Kenya

17. Equality Now respectfully urges the Human Rights Council to call on the government of Kenya to address the issues of FGM and child marriage by ensuring:
 - a. Immediate steps are taken to protect, and provide support and shelter to, girls escaping FGM and child marriage and to ensure that at-risk girls are not subjected to FGM at any time and in particular during the school holidays.
 - b. Law enforcement officials work together with local NGOs and rescue centers to ensure laws against FGM and child marriage are effectively implemented with proper investigation and prosecution of violations, accompanied by strong penalties.
 - c. National and local authorities and law enforcement officials work with chiefs from practicing villages and practicing communities to put into place protective measures within at-risk communities to protect girls from both child marriage and FGM, and to ensure that they are able to continue their education.
 - d. Awareness-raising and education campaigns are conducted to change cultural perception and beliefs on FGM and child marriage and acknowledging the practices as human rights violations with harmful consequences.
 - e. The Anti-FGM Board is adequately funded and fully constituted.
 - f. Law enforcement offices, police stations, and particularly gender desks in police stations have adequate logical support, capacity and training in issues concerning FGM and child marriage in order to effectively implement the laws against FGM and child marriage.

- g. That national efforts to eradicate the harmful cultural practice of FGM and early marriage in Kenya are better coordinated in order to ensure that the DPP, the anti-FGM Board, and the national coordinating committee on the abandonment of FGM are working effectively and collaborating where necessary with civil society. It is suggested that these institutions convene a stakeholders meeting together with civil society to discuss positive synergies and collaboration to work collectively on anti-FGM initiatives in Kenya.

Sexual Violence in Kenya

18. Equality Now further respectfully urges the Human Rights Council to call on the government of Kenya to address sexual violence by ensuring:
 - a. Immediate steps are taken to ensure the Sexual Offences Act is effectively implemented with prompt, effective, proper and professional investigations and prosecutions of all cases of sexual violence.
 - b. Immediate steps are taken to ensure Kenya's National Guidelines on Management of Sexual Violence are effectively implemented and enforced, and that law enforcement are effectively trained in the collection and preservation of evidence in cases of sexual violence.
 - c. That all players within Kenya's criminal justice sector - i.e. the police, DPP, and the judiciary work together more effectively to ensure justice for victims and survivors of SGBV, especially as it pertains to the sensitivity required in handling such cases, especially those involving children and other vulnerable witnesses.
 - d. Training law enforcement officials and gender desks in police stations to ensure that sexual violence complaints are appropriately handled and that officials are equipped to deal with survivors of sexual violence by rectifying harmful behaviors that might further distress victims or impede their access to justice.
 - e. Awareness-raising and education campaigns are conducted, particularly in primary and secondary schools, to change cultural perceptions and stereotypes about the roles of women and men, and gender based violence, in order to build acceptance of gender-based violence as a human rights violation.