

Public

AI Index: AFR 32/005/2002

Distrib: PG/SC

To: Health professionals

From: Medical office / Africa Program

Date: 8 March 2002

MEDICAL ACTION

The role of medical evidence in prosecuting cases of sexual assault Kenya

Key words sexual assault / torture / doctors / medical evidence / ethics

Summary

Violence against women is widespread in Kenya. Every day, women are physically and sexually abused. Rape occurs in all social and ethnic groups. It is a crime that shocks and traumatizes the victim, and undermines the status of women in society. Amnesty International's concerns include violence against women committed by state actors as well as by private actors. Government authorities have failed to take action against such abuses, whether they are committed by state officials or private individuals.

Victims of rape often face insurmountable obstacles in trying to bring the perpetrators to justice. Many women who have suffered rape or other forms of abuse are too intimidated by cultural attitudes and state inaction to seek redress. This action looks at the role doctors can play in helping to secure successful prosecution of perpetrators by providing medical evidence.

Amnesty International is concerned about the inadequate investigations carried out by the Kenyan police into all allegations of torture and ill-treatment including domestic violence. Amnesty International is calling for the appropriate medical examination forms to be made widely available, for example in hospitals, in addition to their current availability only in police stations. The organization has reported a number of cases in which police officers have denied victims of rape medico-legal forms required for a medical examination and a police investigation. Rape victims have sometimes been denied these forms when they have accused a state actor of rape or they have not been taken seriously when reporting domestic violence. Amnesty International is also calling for the acceptance of medical reports and testimonies by all registered doctors - not only government doctors - as evidence in court. Furthermore, Amnesty International is urging the Minister of Health and the Kenya Medical Association to provide clear guidelines and training to doctors and other medical staff on skills, good practice and procedures to help women victims of sexual violence, including the provision of medical care and counselling.

For further information please also consult the report *Kenya: Rape - the invisible crime* (March 2002, AFR 32/001/2002) to be launched in Nairobi on 8 March on International Women's Day and three appeal cases (AFR 32/002/2002). The Main Action that accompanies this report is a Section Level Action so you can also contact your Campaign Coordinator to see if your Section or Structure is taking part.

Recommended actions & addresses

Please write letters, preferably in English, to the authorities below, using professionally-headed paper if you use this in your profession. Please use examples from the report *Kenya: Rape - the invisible crime* (AI Index: AFR 32/001/2002) in your letters.

- o introducing yourself in your professional capacity;
- o stating your concern at the widespread occurrence of violence against women in Kenya and the serious physical and mental health impacts associated with such acts;
- o noting that the Kenyan government has ratified the *United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and that violence against women is prohibited in international human rights instruments and within Kenya's own Constitution and national legislation;
- o emphasizing the importance of prompt and competent medical examinations in cases of sexual assault;
- o urging the authorities make the P3 medico-legal form widely available, for example in hospitals and medical centres, as a matter of urgency;
- o urging the authorities to take steps to improve the P3 form, for example by replacing it with comprehensive forms for medico-legal investigations such as those presented to the Attorney General by the Independent Medico-Legal Unit, Kenya Medical Association and other organizations in August 2001. Comprehensive forms for reporting sexual assault should be based on the principles contained in the *Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment*;
- o calling on the government to enable all registered doctors - not only government doctors - to examine victims of sexual assault and give evidence in court. This will cut possible delays faced by women in obtaining a medical examination, which may help to reduce victims' distress and preserve evidence for the prosecution of perpetrators.

In your letters to the Minister of Health, please also include a paragraph:

requesting that the Minister provides clear guidelines and training to doctors and other medical staff on skills, good practice and procedures to help women victims of sexual violence, including the provision of medical care and counselling.

Addresses

Professor Sam Onger
Minister of Health
Ministry of Health
PO Box 30016
Nairobi
Kenya

Mr Amos Wako
Attorney General
Office of the Attorney General
PO Box 40112
Nairobi
Kenya

Police Commissioner Philemon Abong'o
Kenya Police Headquarters
PO Box 30083
Nairobi, Kenya

Copies to:

Independent Medico-Legal Unit
PO Box 70548
Nairobi
Kenya

and to diplomatic representatives of Kenya accredited to your country.

Letters to the *Daily Nation*

Please send letters to the Kenyan newspaper, the *Daily Nation*, providing them with information about Amnesty International's concerns and requesting them to publicly support Amnesty International's recommendations and produce any articles they consider would be useful for Kenyan readers in relation to violence against women.

The Editor
Daily Nation
PO Box 49010
Nairobi
Kenya
E-mail: comments@nationaudio.com

Letters to Kenya Medical Association Executive and divisions of the Kenya Medical Association

Can all sections listed below please write to the Kenya Medical Association National Executive to request them to write to the Minister of Health in support of the above recommendations

NATIONAL EXECUTIVE
Dr. G W Nyikar
PO Box 48502
Nairobi
Kenya

Can the following sections please write to the Kenya Medical Association's branches to request them to write to the Minister of Health in support of the above recommendations. Urge them also to take whatever other steps the divisions themselves can to ensure that the recommendations are implemented :

Benin members / Canadian section:

NAIROBI DIVISION
Dr. A Phakker
PO Box 46999
Nairobi
Kenya

KITALE DIVISION
Dr. A M Ufagi
PO Box 1320
Kitale, Kenya

Danish section / Mali members:

EMBU DIVISION
Dr. J E Thiong'o
PO Box 1569
Embu, Kenya

NYERI DIVISION
Dr. I Mwangi
PO Box 12475
Nyeri
Kenya

KISII DIVISION
Dr. G N Ragi
PO Box 153
Kisii

Kenya

Dutch section / Nigeria members:

NAKURU DIVISION
Dr. F N Odongo
PO Box 2117
Nakuru
Kenya

KISUMU DIVISION
Dr. S Okewo
PO Box 2159
Kisumu
Kenya

THIKA DIVISION
Dr. P N Oncjaari
PO Box 1214
Thika
Kenya

French section:

MERU DIVISION
Dr. G Riara
PO Box 2100
Meru
Kenya

ELDORET DIVISION
Dr. S K Ndege
PO Box 4939
Eldoret
Kenya

South Africa health professional members:

MOMBASA DIVISION
Dr. A A Kidwana
PO Box 88982
Mombasa
Kenya

KAKAMEGA DIVISION
Dr. M Said
PO Box 498
Mumias
Kenya

If you receive no reply from the government or other recipients within two months of dispatch of your letter, please send a follow up letter seeking a response, referring to your previous letter(s). Please check with the medical team if you are sending appeals after 31 May 2002, and send copies of any replies you do receive to the International Secretariat (att: medical team).

Monitoring of action

If you have access to e-mail you can help our attempt to monitor letter-writing actions. If you write one, two, three or more letters, please send us an e-mail and let us know. Please write in the subject line of your e-mail the index number of the action and the number of letters you write e.g. AFR 32/005/2002 - 2 (if you write 2 letters).

Please send your message to medical@amnesty.org Thank you.

PUBLIC

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MEDICAL CONCERN

The role of medical evidence in prosecuting cases of sexual assault Kenya

Introduction

Violence against women is widespread in Kenya. Every day, women are physically and sexually abused. Rape occurs in all social and ethnic groups. It is a crime that shocks and traumatizes the victim, and undermines the status of women in society. Amnesty International's concerns include violence against women committed by state actors as well as by private actors. Government authorities have failed to take action against such abuses, whether they are committed by state officials or private individuals.

Victims of rape often face insurmountable obstacles in trying to bring the perpetrators to justice. Many women who have suffered rape or other forms of abuse are too intimidated by cultural attitudes and state inaction to seek redress. This action looks at the role doctors can play in helping to secure successful prosecution of perpetrators by providing medical evidence.

Amnesty International is concerned about the inadequate investigations carried out by the Kenyan police into all allegations of torture and ill-treatment including domestic violence. Amnesty International is calling for the appropriate medical examination forms to be made widely available, for example in hospitals, in addition to their current availability only in police stations. The organization has reported a number of cases in which police officers have denied victims of rape medico-legal forms required for a medical examination and a police investigation. Rape victims have sometimes been denied these forms when they have accused a state actor of rape or they have not been taken seriously when reporting domestic violence. Amnesty International is also calling for the acceptance of medical reports and testimonies by all registered doctors - not only government doctors - as evidence in court. Furthermore, Amnesty International is urging the Minister of Health and the Kenyan Medical Association to provide clear guidelines and training to doctors and other medical staff on skills, good practice and procedures to help women victims of sexual violence, including the provision of medical care and counselling.

For further information please also consult the report *Kenya: Rape - the invisible crime* (March 2002, AFR 32/001/2002) to be launched in Nairobi on 8 March on International Women's Day and three appeal cases (AFR 32/002/2002).

Gathering medical evidence

The lack of an effective system to investigate allegations of sexual violence and rape in Kenya is reflected in the procedure that a woman victim must go through in order to bring her case to court. Women face obstructions in the criminal justice system and in the lack of facilities for gathering essential medical evidence.

The majority of police officers are not trained in gender issues or how to handle cases of violence against women, whether perpetrated by state agents or private individuals. Women who report rape are often not taken seriously or even verbally abused by police officers. If a woman does decide to report sexual assault, she must obtain a medical examination form - otherwise known as a P3 form -

from the police station before she can be examined by a doctor. The P3 form is divided in two sections. The first section is filled in by the police, requesting a doctor to examine the victim for evidence of a crime. The second section is filled in by the doctor to record injuries.

A number of problems can be identified in this process. First of all, the P3 forms can only be obtained in police stations and not at health centres. This has actively discouraged many victims of torture and ill-treatment from requesting a form and few have come forward to have their injuries recorded for the purposes of a prosecution. In cases in which abuses have been committed by the police themselves, women have feared trying to obtain a form, especially if the abuse took place at the station where they had to apply. In other cases, victims of police torture have been threatened by police officers when they tried to make a statement implicating police officials. In cases of domestic violence rape is often not regarded as unlawful by police officers. Doctors interviewed by Amnesty International argued that the P3 form should be placed in their surgeries to make it readily accessible and available to the public. Better access to a P3 form would enable the doctor to see the victim and record the medical evidence as soon as possible, regardless of when the crime is reported to the police.

Secondly, Western Kenya Human Rights Watch, a Kenyan human rights organisation, told Amnesty International: “[T]o get a P3 form you have to bribe the police. This [form] is meant to be free, but they usually sell them for 100 shillings” (US\$ 1.25 - approximately 25% of the average weekly income). The organization therefore usually accompanies the person they are assisting to the police station to ensure they receive the form and do not have to pay for it.

Thirdly, professional organizations told Amnesty International that the present P3 form provides no opportunity to record a detailed examination of a rape victim. An amended P3 form was presented to the Attorney General by the Kenyan Independent Medico-Legal Unit (IMLU), the Kenyan Medical Association (KMA) and other organizations in August 2001. The amended form allows for the reporting of a more detailed examination of the rape victim, including provision for the examination of the whole body for cuts and bruises and not only of the genitals.

Furthermore, most courts only accept P3 reports signed by a government doctor. There have been cases where private doctors have submitted medical evidence on injuries sustained by women victims to the court, but this is rare. When the police escort a woman complainant to a government doctor for medical examination and completion of the P3 form, the woman often cannot be seen straight away and must wait a number of days before being examined because the doctor is too busy. The lack of care and assistance for the victim at this time can exacerbate the post-traumatic stress that the woman may be experiencing. Delays in obtaining a medical exam can also lead to vital evidence being lost.

Recommendations

Amnesty International is urging the Attorney General and the Minister of Public Health to make the P3 form widely available, for example in hospitals, as a matter of urgency. The current limited availability of P3 forms has stopped some women from reporting sexual assault and has delayed medical examinations in some cases.

Furthermore, Amnesty International is urging the authorities to take steps to improve the P3 form, for example by replacing it with comprehensive forms for medico-legal investigations such as those presented to the Attorney General by the IMLU, Kenyan Medical Association and other organizations in August 2001. Comprehensive forms for reporting sexual assault should be based on the principles contained in the *Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment*. The Istanbul Protocol describes in detail how to obtain and report on both physical and psychological evidence of torture. The Istanbul Protocol has a specific section on sexual torture including rape. The principles underlying the application of the Istanbul Protocol are the *Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment*. These principles include guidelines for medical experts on the minimum requirements for an accurate report (see appendix). (The *Istanbul Protocol* is available in PDF format at the web-site of the UN High Commissioner for Human Rights: <http://www.unhchr.ch/pdf/8istprot.pdf>)

Finally, registered doctors other than government doctors need to be able to examine victims of sexual assault and give evidence in court. This will cut possible delays faced by women in obtaining a medical examination, which may help to reduce stress and preserve evidence for a prosecution.

APPENDIX

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1]

The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter referred to as torture or other ill-treatment) include the following: clarification of the facts and establishment and acknowledgment of individual and State responsibility for victims and their families, identification of measures needed to prevent recurrence and facilitation of prosecution or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission, investigations by impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.

The investigative authority shall have the power and obligation to obtainable the information necessary to the inquiry.[2] Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence. Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation and shall be entitled to present other evidence. In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure.

Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles. [3]

A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation, and, as appropriate, indicate steps to be taken in response. Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must follow established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

The medical expert should promptly prepare an accurate written report. This report should include at least the following:

- (a) The name of the subject and the name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house); and the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner) and any other relevant factors;
- (b) A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- (c) A record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;
- (d) An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and further examination should be given;
- (e) The report should clearly identify those carrying out the examination and should be signed.

The report should be confidential and communicated to the subject or a nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such transfer.

[1] The Commission on Human Rights, in its resolution 2000/43, and the General Assembly, in its resolution 55/89, drew the attention of Governments to the Principles and strongly encouraged Governments to reflect upon the Principles as a useful tool in efforts to combat torture.

[2] Under certain circumstances professional ethics may require information to be kept confidential. These requirements should be respected.

[3] See footnote above.

[Note: The footnotes above are numbered 132-134 in the published version of the Istanbul Protocol.]