

MARITAL RAPE EXEMPTION IN KENYA: SOME LESSONS FROM INTERNATIONAL LAW

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Abstract: There is no doubt that, despite arguments supporting marital rape exemption, it is necessary to abolish marital rape exemption in our modern society which is characterized by many sexually transmitted infectious diseases such as HIV/AIDS. As Kenyan society is based on the principle of equality between men and woman, marital rape with impunity has no place. Kenya has to take some steps aimed at ending a conflict between the Sexual Offences Act and the HIV and AIDS Prevention and Control Act in order to achieve its goals of equality and freedom from discrimination. International law has shed some light on the subject by indicating that marital rape constitutes violence against women and that Kenya should follow suit and criminalize it. However, it must be noted that the criminalization of marital rape will not provide a complete solution to the problem but only a partial solution. The root of the problem is most likely situated in poverty and the social context. Further research and public education is thus necessary into the key factors relating to the behavior of marital rape.

Keywords: marital rape, gender Equality and health rights

Introduction

It is noted that numerous writings have emanated from the innovative pens of various scholars globally on marital rape exemption¹ and on criminalization of marital rape. This may appear to some as flogging the dead horse. However, this is may not be true because it appears that the debate of criminalizing or permitting marital rape is not yet put to rest. The fact that even the western countries have not yet reached consensus or took the same direction regarding the regulation of marital rape shows the complexity of it as Dlamini able put it as follows:

The fact that there are strong arguments for and against making marital rape a crime demonstrates the polemical and controversial nature of the issue. It also indicates that the decision whether to do so or not is not an easy one. It requires a judicious blending of various considerations. Moreover, the fact that no one uniform approach has been followed in many western countries also attests to this.²

¹ M Braverman "Prosecution May be Difficult under New Marital Rape Law" (1980) *The Western Law Journal* (Jan-Feb); G Coen "The Marital Rape Exemption: Time for Legal Reform" (1985) *Tulsa Law Journal* 21; MS Dicarlo "The Marital Rape Exemption in Pennsylvania: With this Ring..." (1978) *Dickinson Law Review* 86; Morris and Turner "Two Problems in the Law of Rape" (1952-55) *University of Queensland Journal* 247; Comments "Rape and Battery Between Husband and Wife" (1954) *Stanford Law Review* 719; Friedman "The Rape Corroboration Requirement" (1972) *Yale Law Journal* 1373; LE Grand "Rape and Rape Laws: Sexism in Society" (1973) *California Law Review* 919; Harris "Towards a Consent Standard in the Law of Rape" (1976) *The University of Chicago Law Review* 614; Livneh "On Rape and the Sanctity of Matrimony" (1967) *Israel Law Review* 415; Hahlo "Rape on Wife" (1955) *South African Law Journal* 92; Scutt "Reform and the Law of Rape: Common Law and Continental Directions" (1978) *CILSA* 1; Kaganas and Murray "Rape in Marriage: Conjugal Right or Criminal Wrong" (1983) *Acta Juridica* 125; Price "Issues in Marital Rape Exemption Dictate the Abandonment of Doctrine" (1984) *New York Law Journal* 38. For a long list of writings on marital rape see, Desiree Hansson, Diana Russell and Roberta Harmes "Documents: An International Bibliography on Marital Rape with A Comment on the Current Legal Position in South Africa" (1992) 8 *SAJHR* 587 at 589-597.

² CRM Dlamini "Rape Within Marriage" (1988) *Obiter* 1 at 8.

This article intends to discuss marital rape as a form of breach or contravention of gender equality. It will further discuss marital rape as a form of violence and the link between violence against women and the spread of HIV/AIDS. The article also intends to discuss the regulation of marital rape in Kenya and show what Kenya can learn from international law.

Gender equality

The United Nations ushered its deep concern about equality of women and men from the preamble of its Charter by indicating that, 'We the peoples of the United Nations...reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.'³ It appears that because of the work of the Commission on the Status of Women, the Economic and Social Council⁴ and the General Assembly that the concern about the equality of men and women resulted to a concrete action. The General Assembly proclaimed the year 1975 as the international women's year⁵. This is the year in which the first international conference on women was held in Mexico⁶. The first World Conference on Women decided to proclaim that 'equality between women and men means equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities'.⁷ They reiterated what appears in the preamble of the Charter of the United Nations regarding their deep concern about equality of men and women and dignity and worth of human person.

From Mexico⁸ to Copenhagen⁹, to Nairobi¹⁰, and Beijing¹¹ praiseworthy steps and developments have been made in as far as accelerating the increase in the protection of rights of women. Numerous strategies, policies, declarations and commitments have been made internationally and regionally to enhance gender equality across all levels of economic, social and political spectrum. The international human rights instruments have been instrumental in enhancing gender equality. Those international instruments are, among other things, United Nations Charter¹², Universal Declaration of Human Rights¹³, the International Covenant on Civil and Political Rights (ICCPR)¹⁴, International Covenant on Economic, Social and Cultural Rights (ICESCR)¹⁵, the Convention on the Rights of the Child (CRC)¹⁶, the International Convention on the Protection of the Rights of Migrant Workers.¹⁷ Some international instruments are aimed at addressing specific grounds of discrimination such as the Convention on Elimination of All forms of Discrimination Against women (CEDAW) and the Declaration on the Elimination of Violence against Women (DEVAW) and I will turn to these instruments designed to address specific prohibited grounds of discrimination later.

There are also regional instruments designed to enhance gender equality such as the African Charter on Human and Peoples Rights (ACHPR)¹⁸, the Constitutive Act of the African Union,¹⁹The African Union Gender Policy,²⁰ The

³ See the Preamble of the Charter of the United Nations.

⁴ The Commission on the Status of Women recommended to the Council a programme of Activities to be carried out in the international women's year. See Official Records of the Economic and Social Council, 56th session, Supplement NO.4, E/5452, annex v.

⁵ General Assembly Resolution 3010 (xxvii) 1972 27th session.

⁶ Report of the World Conference of the International Women's Year 19 June -2 July 1975, E/CONF.66/34 (hereinafter referred to as 1st world conference).

⁷ First world conference at 4.

⁸ First world conference.

⁹ Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace 14-30 July 1980, A/CONF.94/35.

¹⁰ Report of the World Conference to Review and Appraise the Achievements of the United Nations Decade for Women: Equality, Development and Peace 15-26 July 1985, A/CONF.116/28/Rev.1.

¹¹ Report of the Fourth World Conference on Women 4-15 September 1995, A/CONF.177/20/Rev.1.

¹² Its preamble, articles 1 (3), 13 (1) (b), 55 (c) and 76.

¹³ Articles 2 and 7.

¹⁴ Articles 2, 3 and 26.

¹⁵ Articles 2 (1) (2) and 3.

¹⁶ Article 2.

¹⁷ Article 7.

¹⁸ Articles 2, 3, 18 and 28.

¹⁹ Article 4 (1).

²⁰ The African Union Gender Policy, 10 February 2009, REV 2.

American Convention on Human Rights (ACHR)²¹, and the European Convention for the Protection of Human Rights and Fundamental freedoms (ECHR)²²

It has been noted that despite the great achievement that have been done in enhancing the rights of women at international and regional level inequalities between men and women still persist. This appears in the concern of the African heads of state and government in their meeting that was held in Addis Ababa (Ethiopia) in July 2004 that was designed to ensure gender equality in Africa.²³ The Assembly of the African Union (AU) was deeply concerned about, among other things, the high percentage of the scourge of HIV/AIDS among girls and women, harmful traditional practices, violence against women and high population of refugee women. As a result of the latter problems confronting women in Africa, African Heads of state and government made a serious commitment of combating against problems experienced by women and these problems are rooted in inequality between men and women. African heads of state and government agreed to:

Initiate, launch and engage with two years sustained public campaigns against gender based violence as well as the problem of trafficking in women and girls; reinforce legal mechanisms that will protect women at the national level and end impunity of crimes committed against women in a manner that will change and positively alter the attitude and behavior of African society.²⁴

The African Union shows its serious commitment to gender equality not just by making mere Solemn Declaration but has gone an extra mile by adopting an implementation framework of the Solemn Declaration in Dakar in 2005²⁵ together with the guidelines for reporting with the purpose of assisting member states to report annually on the progress made in championing all issues raised in the Solemn Declaration.²⁶

The commitments, strategies, and declarations discussed above shows clearly the seriousness and concern of the international and regional communities in ending discrimination against women and all impediments that leads to the deprivation of basic human rights to women.

The former General Secretary of the United Nations in one of his remarks on international women's day indicated that many women are still subjected to different forms of violence and denial of basic human rights. He described violence against women as the most shameful human rights violation and 'as long as it continues, we cannot claim to be making real progress towards equality, development and peace.'²⁷ In the following section there is a need for a discussion of the link between gender inequality, violence against women and spread of HIV/AIDS.

Violence against women

The United Nations Declaration on violence against women defined violence as follows:

For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.²⁸

The UN Declaration further came up with an extensive definition of the term "violence against women" that can shed the light on some uncertainties on whether certain specific acts constitute violence against women or not as follows:

Violence against women shall be understood to encompass, but not be limited to the following:

²¹ Articles 1 (1) and 24.

²² Article 14

²³ Solemn Declaration on Gender Equality in Africa (Solemn Declaration) Assembly/AU/Decl 12 (iii) Rev1 (2004) (hereinafter referred to as Solemn Declaration).

²⁴ See the Solemn Declaration.

²⁵ The Implementation Framework of the Solemn Declaration on Gender Equality in Africa adopted at the First African Union Conference of Ministers Responsible for Women and Gender, Dakar (Senegal) 12-15 October 2005, AU/MIN/CONF/WG/3 (I) (hereinafter referred to as the Dakar implementation framework of Solemn Declaration).

²⁶ Guidelines for Reporting on the AU Solemn Declaration on Gender Equality in Africa adopted at the First African Union Conference of Ministers Responsible for Women and Gender, Dakar (Senegal) 12-15 October 2005, AU/MIN/CONF/WG/2 (I).

²⁷ Kofi Annan Remarks on the International Women's Day, held in New York on 08 March 1999 Press Release SG/SM/6919 WOM/1113.

²⁸ Article 1 of the Declaration on Elimination of Violence against Women, General Assembly Resolution 48/104 of 20 December 1993 A/RES/48/104 (hereinafter referred to as UN Declaration on Violence against Women).

- a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- c) Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.²⁹

The UN Declaration on Violence against Women definition above has shed some light by stipulating clearly that marital rape constitutes violence against women. The main concern now is that the National laws of Kenya provide for marital rape exemption. This exemption means that the husband cannot be prosecuted for raping his wife and therefore marital rape is not a criminal offence in Kenya.³⁰ The national laws of Kenya decriminalizing marital rape will be discussed later in this article.

Despite numerous attempts in international and regional instruments to combat violence against women, it still persists and this is a matter of serious concern. In addressing a problem it is better to know the root of it so that it will be eradicated easily. However, it may not be easy to eradicate the cause of violence against women and it will be a process that requires a serious commitment. This is because violence against women is rooted in patriarchy and social attitudes towards the treatment of women in society and therefore remains an obstacle to the attainment of equality between men and women.³¹ In trying to address this problem of patriarchy that results to the gross violation of human rights for women in Africa, the Protocol to the African Charter on Human and Peoples Rights on the Rights of Women stipulates that:

State parties shall commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and information strategies, with a view to achieving the elimination of harmful cultural and traditional practices and all other practices which are based on the inferiority or superiority of either of the sexes, or on stereotyped roles for women and men.³²

The acts of violence perpetuated against women have a serious impact in the enjoyment of human rights of women. There is a link between violence against women and the enjoyment of other human rights. In other words, violence against women serves as a huge impediment to the attainment of other human rights and fundamental freedoms, among others, the right to health, dignity, life, development, education and security of the person.³³ The fact that there is a strong link between violence against women and the spread of HIV/AIDS and that it is a threat to the right to health, supports the latter argument, and therefore Karen Stefiszyn and Alex Prezanti can be quoted when they argued that:

Violence against women is both a cause and a consequence of HIV transmission. Women who are victims of sexual violence, in particular, are at risk of contracting the virus. An unequal balance of power in relationships, often exacerbated by violence, makes it difficult, if not impossible, for women to negotiate safe sex, particularly condom use. Fear of violence often prevents women from seeking testing and Counselling and other services. Women struggle to adhere to treatment regimes due to abuse by violent partners. Furthermore, women are at risk of violence upon disclosure of positive HIV status, accused of infidelity and bringing the virus into the home.³⁴

²⁹ Article 2 of the UN Declaration on Violence against Women.

³⁰ Concluding observations of the Committee on Elimination of Discrimination against Women, Kenya, CEDAW/C/KEN/CO/7 (2011) Para 21.

³¹ See the UN Declaration on the Elimination of Violence against Women (it stipulate that ‘violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men’..

³² Article 2 (2) of The African Charter on Human and Peoples Rights on the Rights of Women in Africa (hereinafter referred to as the Women’s Protocol).

³³ See article 3 of the UN Declaration on the Elimination of Violence against Women (it provide a list of rights that may be affected if there is violence perpetuated against women).

³⁴ Karen Stefiszyn and Alex Prezanti “The Impact of the Protocol on the Rights of Women in Africa on Violence against Women in Six Selected Southern African Countries: An Advocacy Tool” 2009 The Centre for Human

This shows that women who are victims of sexual violence are at risk of contracting the HIV virus and it has been argued in this section dealing with violence that marital rape constitute violence against women and has a strong link with the spread of HIV.

In the following section on marital rape exemption and its regulation it will be argued as to how it originated and how it contributes to the spread of HIV and AIDS and therefore further strengthening the argument showing that there is a strong link between the spread of AIDS and violence.

Historical background of marital rape exemption

Marital rape exemption is rooted in the main three separate theories, namely:

(a) The implied Consent Theory

The above theory is the reasoning originally asserted by Lord Mathew Hale, Chief Justice of England in the seventeenth century who was against criminalization of marital rape and argued that ‘the husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind unto her husband, which she cannot retract.’³⁵ Lord Hale’s argument was based on the contractual terms of the marriage and therefore supported the belief that marriage contract create an irrevocable consent to sexual relations and this protected sexually abusive husbands from facing prosecution.³⁶

(b) The Unities of Persons Theory

This theory does not regard either of the spouses in a marriage as separate persons. It is rooted in a belief that when two people get married they become one and therefore a wife is not a separate person that is capable of being raped. Since, according to this theory the being of a husband is incorporated to that of a wife then a husband cannot be able to rape himself.³⁷

(c) The Property Theory

According to this theory when a men and a woman get married, a woman becomes the property or chattel of her husband. Therefore sexual intercourse cannot be regarded as rape because the husband is merely using his property appropriately. This theory is no longer supported in our modern society because of the development in property rights that took place in many countries of the world. Today many countries guarantee same property rights and contracting rights to women and therefore the view regarding them as chattels in no longer persuasive enough.³⁸

In addition to the above main three theories supporting marital rape exemption, is the evidentiary problems in proving lack of consent in a continuous marriage relationship and the alleged possibility of women lying about rape in order to gain advantage in divorce. However, this may not be much convincing³⁹ because legal research in other countries indicates that marital rape has not been abused and therefore experts in the legal fraternity all over the globe ought to devise other strategies of dealing with the problems associated with marital rape. It is not within the parameters of this article to address or attempt to come up with such strategies.

Rights (Faculty of Law) University of Pretoria at 7 & 27; Jacquelyn C. Campbell and Peggy Alford “The Dark Consequences of Marital Rape” (1989) 89 *The American Journal of Nursing* 946 at 948.

³⁵ Quoted by Sonya A Adamo “The Injustice of the Marital Rape Exemption: A Survey of Common Law Countries” (1989) 4:555 *AM. U.J. INT’L L. & POL’Y* 555 at 557-558; Lisa R. Eskow “The Ultimate Weapon?: Demythologizing Spousal Rape and Conceptualizing Its Prosecution” (1996) 48 *Stanford Law Review* 677 at 679.

³⁶ Note “To Have and To Hold: The Marital Rape Exemption and The Fourteenth Amendment” (1986) 99 *Harvard Law Review* 1255 at 1255-1256; Anne L Buckborough “Family Law: Recent Developments in the Law of Marital Rape” (1989) *Annual Survey of American Law* 343 at 345-346; Theresa Fus “Criminalizing Marital Rape: A Comparison of Judicial and Legislative Approaches” (2006) *Vanderbilt Journal of Transnational Law* 1 at 1; Rebecca M Ryan “The Sex Right: A Legal History of the Marital Rape Exemption” (1995) 20 *Law and Social Inquiry* 941.

³⁷ Note n 36 at 1256.

³⁸ *Ibid* at 310.

³⁹ See Dlamini n 2 at 6 and 7.

Regulation of Rape in Kenya

It appears that social toleration of marital rape makes it difficult for women to report violence associated with it or get any help to end it.⁴⁰ This led to a situation where many women feeling like they are naturally obliged to submit to sex in their marriages, and husbands believing that marriage give them an absolute right to have sex with their wives whenever they want to.⁴¹ This may be the rationale that led Kenya to draft its laws regulating rape as follows:

1. A person commits the offence termed rape if-
 - a) He or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;
 - b) The other person does not consent to penetration; or
 - c) The consent is obtained by force or by means of threats or intimidation of any kind.
2. In this section the term-intentionally and unlawfully- has the meaning assigned to it in section 43 of this Act.
3. A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life.⁴²

In order to make a clear analysis of one of the main argument discussed in this article, I can do no better than further referring extensively to section 43 of the Sexual Offences Act that may be interpreted as providing for marital rape exemption. This section provides as follows:

S 43 (1) an act is intentional and unlawful if it is committed-

- a) In any coercive circumstances;
 - b) Under false pretenses or by fraudulent means; or
 - c) In respect of a person who is incapable of appreciating the nature of an act which causes the offense.
2. The coercive circumstances, referred to in subsection (1) (a) include any circumstances where there is-
 - a) Use of force against the complainant or another person or against the property of the complainant or that of any other person;
 - b) Threat or harm against the complainant or another person or against the property of the complainant or that of any other person; or
 - c) Abuse of power or authority to the extent that the person in respect of whom an act is committed is inhibited from indicating his or her resistance to such an act, or his or her unwillingness to participate in such an act
 3. False pretenses or fraudulent means, referred to in subsection (1) (b), include circumstances where a person –
 - a) In respect of whom an act is being committed, is led to believe that he or she is committing such an act with a particular person who is in fact a different person;
 - b) In respect of whom an act is being committed, is led to believe that such an act is something other than that act; or
 - c) Intentionally fails to disclose to the person in respect of whom an act is committed, that he or she is infected by HIV or any other life threatening sexually transmissible disease...

This section shall not apply in respect of persons who are lawfully married to each other.⁴³

The above section indicates clearly that it is not an offence to coerce another person into a sexual act by using force or threat of harm if you are legally married to that person. Therefore section 43 referred to above is in conflict with gender equality and it constitute violence against women as argued in the above sections of the article dealing with gender equality and violence against women. It is submitted in this article that Kenya ought to act swiftly in abolishing section 43 (5) of the Sexual Offences Act because it violates and undermines international and regional instruments dealing with gender equality and violence against women.

⁴⁰ Irene Hanson Frieze “Investigating the Causes and Consequences of Marital Rape” (1983) 8 Signs, Women and Violence 532 at 533.

⁴¹ See Lisa R Eskow n 35 at 688.

⁴² See s 3 of the Sexual Offences Act 3 of 2006.

⁴³ See s 43 of the Sexual Offences Act 3 of 2006.

There are numerous international⁴⁴, regional⁴⁵, and sub-regional⁴⁶ instruments dealing with HIV/AIDS and therefore the provisions of section 43 (3) (c) above does not seem to be in line with them. This is because section 43 (3) (c) protect a married person who ‘intentionally fails to disclose to the person in respect of whom an act is committed, that he or she is infected by HIV or any other life threatening sexually transmissible disease’. This is a matter of serious concern because it also conflicts with section 24 (1) and (2)⁴⁷ dealing with prevention of transmission of HIV which stipulates that:

Sec 24 (1) a person who is and is aware of being infected with HIV or is carrying and is aware of carrying the HIV virus shall-

- a) Take all reasonable measures and precautions to prevent the transmission of HIV to others...

Sec 24 (2). A person who is and is aware of being infected with HIV or who is carrying and is aware of carrying HIV shall not, knowingly and recklessly, place another person at risk of becoming infected with HIV unless that other person knew that fact and voluntarily accepted the risk of being infected.

Section 24 (3) of the HIV and Prevention Act of Kenya further stipulate that a person who breach provisions of subsection 1 and 2 above commits a criminal offence and can be sentenced or given a fine for doing so. Kenya has to act quickly in addressing the latter problems because that may lead to difficult questions of interpretation when one of the spouses in a marriage want to sue another spouse for contravening the provisions of section 24 (2) above. It is not clear as to which Act will supersede the other in the above situation. However, it is submitted in this article that section 43 (3) (c) of Sexual Offences Act ought to be abolished in order for Kenya to be able to further its objectives to ‘promote utmost safety and universal precautions in practices and procedures that carry the risk of HIV transmission’ and ‘positively address and seek to eradicate conditions that aggravate the spread of HIV infection’.⁴⁸

Conclusion

There is no doubt that, despite arguments supporting marital rape exemption, it is necessary to abolish marital rape exemption in our modern society that is characterized by many infectious diseases such as HIV/AIDS. And again in a society that is based on the principle of equality between men and woman, marital rape with impunity has no place altogether. Kenya has to take some steps aimed at ending a conflict between the Sexual Offences Act and the HIV and AIDS Prevention and Control Act in order to achieve its goals of equality and freedom from discrimination⁴⁹ and decreasing the spread of HIV/AIDS by adhering to the direction that have been taken in international law. International law has shed the light by indicating that marital rape constitutes violence against women and that Kenya ought to criminalize it.⁵⁰ However, it must be noted that the criminalization of marital rape is not providing a complete solution but it provides a partial solution to the problem and therefore there is a lot of research that ought to be undertaken in order to address problems associated with marital rape.⁵¹

⁴⁴ World Health Organization Guidelines on HIV Infection and AIDS in Prisons (1983); UN Millennium Development Goals (MDGs) (2000); UNCHR Resolution on the Protection of Human Rights in the Context of HIV and AIDS (2001); UNGASS Declaration of Commitment on HIV/AIDS (2001); and Political Declaration on HIV/AIDS (2006) as cited in the Compendium of Key Documents Relating to Human Rights and HIV in Eastern and Southern Africa (2008) Pretoria University Law Press (PULP).

⁴⁵ Progress Report on the Implementation of the Plans of Action of the Abuja Declarations on Malaria (2000), and Resolution on the HIV/AIDS Pandemic – Threat against Human Rights and Humanity (2001) as cited in the Compendium of Key Documents Relating to Human Rights and HIV in Eastern and Southern Africa (2008) PULP.

⁴⁶ East African Community (EAC) Regional Integrated Multispectral HIV and AIDS St in the Compendium of Key Documents Relating to Human Rights and HIV in Eastern and Southern Africa (2008) PULP.

⁴⁷ See s 24 of the HIV and AIDS Prevention and Control Act 14 of 2006 (hereinafter referred to as the HIV and AIDS Prevention Act of Kenya).

⁴⁸ See s 3 (containing the object and purpose of the Act) of the HIV and AIDS Prevention Act of Kenya supra.

⁴⁹ See s 27 of the Constitution of Kenya of 2010.

⁵⁰ See the Concluding Observations of the Convention on Elimination of Violence against Women on Kenya n 30 at Para 21 and 22.

⁵¹ See Dlamini n 2 at 9.

