



Marital Rape and its Impacts: A Policy Briefing for Kenyan Members of Parliament

Marital rape is any case where someone uses violence or the threat of violence to force their wife or husband to have sex. In Kenya, rape is a criminal offence punishable with a prison sentence, but there is no legal protection from rape within marriage.

This briefing focuses on rape within marriage, which is an aspect of domestic violence that is rarely considered. Both men and women experience sexual violence and coercion within relationships. Although this policy brief examines the rape of women by their male partners, the issues may be relevant for other abusive relationships.

Marital rape happens frequently, causing health problems, pain and distress to abused women. Children in households where marital rape occurs also often suffer from the psychological effects of witnessing violence, and because it can undermine the ability of their mothers to care for them. The 2008-09 Kenya Demographic and Health Survey - Preliminary Report shows that 13 per cent of married women - more than one out of every 10 women - reported being raped by their male partners within the past year.

Marital rape is one of the under-reported violent crimes because it is socially tolerated. Some abused women are afraid to report the violence because they rely financially on their husbands for their upkeep and children's maintenance. Others feel unable to speak out due to fear and humiliation.

The aim of this policy brief is to demonstrate that forced sex within relationships is rape. This needs to be acknowledged and addressed by Members of Parliament.

The Women's Rights Awareness Programme

This briefing is based on a research project that examined the client records of the Women's Rights Awareness Programme (WRAP) to investigate experiences of intimate partner violence among women in Kenya.

WRAP is a non-governmental organisation that provides shelter, counselling, practical and legal advice and other services to survivors of gender-based violence in Nairobi, Kenya. The study drew on evidence from more than 1,200 Kenyan women who used WRAP's services between 1999 and 2005.

The Impacts of Marital Rape

Women who have been raped by their partners experience pain, humiliation and distress. This policy brief looks at client records from the Women's Rights Awareness Programme (WRAP) in Kenya to highlight the experiences of women who have gone through this form of violence.

Marital rape causes public health problems including poor maternal and child health, repeat-infections with Sexually-Transmitted Infections (STIs) and long-term exposure to the risk of HIV infection.

WRAP's record about Tessy*, a 30-year-old client who sought their services, explains that:

She has been married for 12 years and is blessed with two children. Her husband battered her and she now suffers from pains in her body, but Tessy's worst problem is the way her husband uses force to have sex and this hurts her badly because she suffers from the wounds he causes during forced sex.

Health Impacts of Marital Rape

Worldwide, studies show that health problems caused by marital rape include HIV and other sexually-transmitted infections, vaginal bleeding or infection, genital irritation, pain during sex, chronic pelvic pain, and urinary-tract infections. The physical violence associated with marital rape can also lead to complications during pregnancy, resulting in health problems for both women and their children.

Mental health impacts associated with marital rape and other forms of abuse by partners include depression, anxiety, emotional distress and suicidal thoughts. Marital rape and violence also undermine children's health and well-being, both through the psychological impacts of witnessing violence and because it can undermine the ability of mothers to care for themselves and their children.

Marital rape maybe accompanied by other forms of violence that may cause physical injuries.

Mary, aged 27, says her husband strangles her with his legs and hands, then forces her to have sex in a very rough way [...] She says that the silence has killed her slowly and has now decided to come to WRAP for help.*

Marital rape prevents individuals from being able to take control of their own sexual and reproductive

health. Some of WRAP's clients describe how marital rape caused them profound anxiety because of concerns that their partners are unfaithful and fears that they could be infected with STIs or HIV. Some clients reported that their husbands refused to use condoms. Others said that they did not feel able to ask their partners to use a condom because they feared this could lead to further abuse.

Twenty eight-year-old Sally reports that her late husband used to force her into sex, which resulted in fights. [She] was not comfortable with her husband since he had signs of a sexually-transmitted disease. Her husband's death made her go to a Voluntary Counselling and Testing Center (VCT) so she could know her status and that was when she found she was HIV-positive.*

Alice is 36 years old. Her husband forces her to have sex and this is one of the main reasons for the continuous abuse. She says she knows he has many girlfriends and sleeps around a lot. She knows of HIV/AIDS and does not want to get it but in her efforts to avoid getting any diseases she is severely beaten up.*

*Pseudonyms were used to protect confidentiality

In cases where husbands refuse to use contraception, forced sex and associated sexually transmitted infections can lead to maternal and child health problems. For instance:

When 20-year-old Amina* became pregnant, she developed a dislike for her husband. [...] He would beat her up when she had not done dishes by the time he came home. He had other girlfriends but denied it. He would insist on forced sex. Amina lost the baby as a result of stress and abuse. He infected her with syphilis. She conceived again but lost the baby at two months.

Addressing Marital Rape in the Law

The right to be free from coercion and violence in relation to sex is a human right that is defined in several regional and international laws that the Government of Kenya is a signatory to. These laws include the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol on the Rights of Women in Africa. Kenya is a state party to CEDAW. The Government of Kenya last presented its report on the implementation of the Convention to the CEDAW Committee in 2007, and is due to present again in 2010.

However, Kenyan law fails to prohibit rape within marriage. The only legal protection for Kenyan women in cases of domestic violence is the general law on assault. This law is inadequate for protecting women from marital rape because it requires witnesses or evidence of a physical struggle. WRAP's clients explain that they do not feel able to struggle when their husbands try to force them into sex, in order to avoid further violence or to protect their children from witnessing the abuse.

The introduction of the Sexual Offences Act in 2006 tightened the legal definitions of sexual offences and penalties. However, the Act explicitly excluded protection for married women from sexual violence within their relationships. So according to Section 43.5 of the Sexual Offences Act, it is not an offence to coerce someone into a sexual act by using force or threat of harm if you are legally married to that person.

*Pseudonyms were used to protect confidentiality



“Forced sex within marriage is a reality in Kenya... More than one in 10 married women admit to an experience of rape by husbands within the past year”

The inadequacy of national law for protecting women who are raped by their husbands is demonstrated in the case of Josephine* (aged 39):

Josephine's husband regularly abuses her sexually and she experiences sore wounds in her private parts. [...] She wants to know if there is any law that can be used to address this use of force by her husband. [WRAP's staff informed her] that the only law that takes care of this is limited to assault and she would need to get a [police medical report] and follow the procedure of a criminal case.

Some women feel unable to end the abuse or prevent the negative impacts on themselves and their children. This can be due to tolerance of marital rape and other forms of violence against women within their families or communities, or because they lack the confidence, skills or resources to support themselves financially.

Members of Parliament are influential and respected and have the power and responsibility to speak out about forced sex in marriage, and to unequivocally condemn it. They are also sworn defenders of the rights of all Kenyans to live safely, peacefully, and happily. Parliamentarians can change the law so that it prohibits marital rape and they can raise awareness that sex within relationships should be consensual, not forced.

Recommendations for Members of Parliament:

- Call for marital rape to be explicitly prohibited in national law and for Section 43.5 of the Sexual Offences Act to be repealed.
- Participate in raising awareness among the public that marital rape is a crime.
- Call for greater government investment in health, legal and rehabilitation services for people affected by domestic violence

Relevant Organizations Working to Address Gender-based Violence in Kenya

The Africa Population and Health Research Center www.aphrc.org
 Center for Rights, Education and Awareness (CREAW) www.creawkenya.org
 Coalition of Violence Against Women – Kenya www.covaw.or.ke
 Federation of Women Lawyers Kenya www.fidakenya.org
 Liverpool VCT Care and Treatment www.liverpoolvct.org
 Men as Partners www.engenderhealth.org/our-work/gender/men-as-partners.php
 Realising Rights www.realising-rights.org
 Women's Rights Awareness Programme www.wrapkenya.or.ke