



fidh



Sexual Violence as a Political Tool During Elections in Kenya.

State Actions Needed Ahead of the 2022 Polls

Fact-finding mission report

Cover photo: Kenyan police officers remove stones and rocks set up as barricade by National Super Alliance (NASA) supporters in Ahero, about 25km east from Kisumu, Kenya, on October 26, 2017, during Kenya's re-election voting. Kenya's polls chief said the presidential election re-run would be postponed in four counties hit by violence during voting on October 26, resulting in at least three deaths. © YASUYOSHI CHIBA / AFP

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EXECUTIVE SUMMARY

The next general elections in Kenya are scheduled to take place on 9 August 2022. Existing political tensions raise serious concerns over a possible escalation of violence in the run-up to and during the polls. In this joint report, the International Federation for Human Rights (FIDH) and Kenya Human Rights Commission (KHRC) warn of the risk that, in the absence of urgent State action, the sexual and gender-based violence (SGBV) that has characterised past election-related violence will be repeated.

The Kenyan political scene is marked by recurring election-related violence, including killings, severe physical injuries, destruction of property, intimidation, harassment and threats. A comparative analysis of the violence perpetrated during the general elections held in 2007, 2013 (to a much lesser extent) and 2017 suggests that SGBV constitutes one of the major components of election-related violence in Kenya.

In relation to the 2007-2008 election period, the Commission of Inquiry into the Post-Election Violence (CIPEV) documented 900 cases of sexual violence perpetrated, noting that the actual figure was likely to be much higher. Such violence included rape – in particular gang rape –, genital mutilation and forced male circumcision. In 2013, while electoral violence did not reach the magnitude and gravity of that experienced in 2007-2008, verbal and physical violence, threats, and intimidation against several female politicians were reported. In the context of the 2017 election period, the Kenya National Commission on Human Rights (KNCHR) documented at least 201 cases of sexual violence, in particular gang rapes, concluding that sexual violence represented the second most important form of election-related violence, after physical injuries.

Following the 2017 election violence, FIDH and KHRC conducted a series of fact-finding missions to document cases of sexual violence in the counties of Kisumu, Migori and Vihiga. This report highlights the findings of these missions, including testimonies from survivors, analyses them in the context of SGBV committed during previous elections, and makes recommendations ahead of the 2022 elections.

At least three risk factors have led our organisations to call on Kenyan authorities to take urgent and concrete measures to address the risk of SGBV during the forthcoming elections. Firstly, previous elections have shown that, when fierce political tensions generate acts of violence, such violence often includes SGBV. Latent tensions and disagreements, in particular around the Building Bridges Initiative (BBI), risk erupting in acts of violence, as recently observed in some localities (such as Kisii and Murang'a counties). Yet, at the time of writing, neither political figures nor the bodies in charge of organising the elections, in particular the Independent Electoral and Boundaries Commission (IEBC), seem to have considered election-related SGBV as a security risk to be taken into account and addressed.

Secondly, the government's repeated attacks on the judiciary – aimed at discrediting judges or undermining their independence – as well as the obstacles to the work of the KNCHR, are sources of concern. Our organisations fear that, in the event of an outbreak of violence, in particular sexual

violence, these institutions will be hampered in their ability to investigate such violence and deliver justice to the victims. This report shows how entrenched impunity has created a favourable climate for the perpetration of election-related SGBV over the past years. It emphasises that police forces have so far failed in their responsibility to conduct effective and credible investigations into the sexual violence committed during the 2017 elections and previous elections, leaving the vast majority of survivors with no access to justice. It is therefore essential to preserve the capacity of institutions such as the KNCHR to conduct investigations on sexual violence, as well as to guarantee the independence of the judiciary and its capacity to try those responsible for acts of sexual violence.

Thirdly, studies have demonstrated the disproportionate impact of the COVID-19 pandemic on women, in particular women from economically poor backgrounds. The pandemic not only increased their economic vulnerability but also made it more complicated to access healthcare services, including sexual and reproductive healthcare. It has further increased difficulties in accessing legal aid. Our report shows that in 2017, as during previous elections, most victims of election-related SGBV were from economically poor backgrounds and this economic vulnerability impacted their ability to receive adequate medical care and to redress through legal proceedings. Yet, prompt and effective access to healthcare services and legal aid will be essential for those, both women and men, who may be subjected to election-related violence, including SGBV, during the next elections.

More generally, FIDH and KHRC consider that, as long as misogyny and patriarchy are not considered major risk factors for the perpetration of election-related SGBV, measures aimed at prevention, sanctions and reparation will not deliver long-lasting impacts. Election-related SGBV is not caused by the holding of elections. FIDH and KHRC demonstrate in this report that, in the Kenyan context, the preservation of hegemonic control by men over the political system seems to constitute the basis for the perpetration of election-related SGBV against both women and men, with a view to exercising political dominance and power over certain persons and communities. The report analyses the nexus between gender and the preservation of or access to power, resources and authority. It shows that in the 2007, 2013 and 2017 general elections, political violence and discrimination had a gender dimension, with women specifically and disproportionately targeted. FIDH and KHRC underline that any action intended to prevent, and combat election-related political violence must fully address the gender dimension of the violence in order to be effective.

Sexual violence can have multiple physical, psychological, economic and social consequences. It can also have political consequences, in particular affecting the participation of women in electoral processes and political life. In this report, we review some of these consequences and assess how they can call into question the credibility of electoral processes.

Since the adoption of the Kenyan Sexual Offences Act in 2006, action taken by the Kenyan authorities in the fight against SGBV has been contradictory. Signs of strong commitment (for instance the adoption of the Constitution in 2010, the National and Gender Equality Commission Act in 2011, the Sexual Offences (Medical treatment) Regulations in 2012, the National Policy on Prevention and Response to Gender-Based Violence in 2014, the Prevention of Torture Act in 2017, etc.) have been followed by serious setbacks. In particular, the authorities' unwillingness to effectively investigate the responsibility of security forces in the perpetration of SGBV, as established by the CIPEV, the Truth Justice and Reconciliation Commission (TJRC) and KNCHR, and as documented by the FIDH and KHRC fact-finding missions, has constituted a major obstacle to fulfilment of their legal commitments and obligations.

Ahead of the 2022 general elections, FIDH and KHRC call on the Kenyan government, the IEBC and political parties to anticipate the risk that political violence may take the form of SGBV and to take

urgent and appropriate measures to prevent such violence. These measures must be aimed at prevention, protection, investigation, prosecution and reparation.

Our organisations also call upon the international community, in particular the East African Community and the African Union, to publicly warn of the risks of election-related SGBV and to call upon Kenyan authorities to abide by their regional and international obligations. Such calls should include encouraging the authorities to implement the African Commission on Human and Peoples' Rights (ACHPR) Guidelines on Combating Sexual Violence and its Consequences in Africa.

ACRONYMS

ACHPR	African Commission on Human and Peoples' Rights
BBI	Building Bridges Initiative
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CIPEV	Commission of Inquiry into the Post-Election Violence
CSO	Civil Society Organisation
CUC	Court Users Committees
DPP	Director of Public Prosecutions
ERSV	Election-Related Sexual Violence
FGD	Focus Group Discussion
FIDH	International Federation for Human Rights
GBV	Gender-Based Violence
GoNU	Government of National Unity
GSU	General Service Unit
GVRC	Gender Violence Recovery Centre
IEBC	Independent Electoral and Boundaries Commission
IAU	Internal Affairs Unit
ICC	International Criminal Court
IPOA	Independent Policing Oversight Authority
KHRC	Kenya Human Rights Commission
KNCHR	Kenya National Human Rights Commission
LPR	Lone Perpetrator Rape
MPR	Multiple Perpetrator Rape
NCAJ	National Council on the Administration of Justice
NASA	National Super Alliance
NGAAF	National Government Affirmative Action Fund
NGEC	National Gender and Equality Commission
NGO	Non-Governmental Organisation
NPS	National Police Service
ODM	Orange Democratic Movement
OHCHR	Office of the United Nations High Commissioner for Human Rights
PEV	Post-Election Violence
SGBV	Sexual and Gender-Based Violence
TJRC	Truth Justice and Reconciliation Commission
UN	United Nations
VAWP	Violence Against Women in Politics

INTRODUCTION

The most recent general elections in Kenya, held in August and October 2017, were the scene of fierce political tensions, giving rise to serious violence, including numerous acts of sexual and gender-based violence (SGBV).

The results of the 2017 presidential election were announced on 11 August, with incumbent President Uhuru Kenyatta declared winner. Kenyatta was running under the banner of the Jubilee party against his main opponent, Raila Odinga, from the National Super Alliance (NASA) coalition. The result was contested by NASA on the grounds of alleged irregularities in the modes of transmission and on 1 September 2017, the Supreme Court nullified the results and called for the organisation of fresh polls. A repeat presidential election, held on 26 October 2017, which was boycotted by NASA, once again led to Kenyatta's declared victory.

These elections took place in a climate of tension and suspicion. NASA and its supporters questioned the independence of the Independent Election and Boundaries Commission (IEBC) and the overall credibility of the electoral process;¹ protests were organised in opposition strongholds, including in Nairobi, former Nyanza province and western Kenya. A massive security presence was deployed by the government in various parts of the country, including in protest areas. The Kenya National Commission on Human Rights (KNCHR) indicated that over 180,000 police officers were mobilised in preparation for the elections. The heavy-handed response to street protests left more than 100 people dead.² 201 cases of sexual violence were documented by KNCHR³ which found that 54.5% of these documented cases had been perpetrated by security agents and 45.5% by civilians.

Human rights monitoring reports recorded incidents of electoral violence, including sexual violence, in Nairobi, former Nyanza province and western Kenya. In December 2017, several Kenyan civil society organisations, including the Centre for Rights Education and Awareness (CREAW), Wangu Kanja and KHRC, which had deployed electoral observers, held a meeting with survivors of sexual violence in Nairobi, in cooperation with KNCHR. At the meeting widespread sexual violence was reported to have taken place in Nairobi, Kajiado, Kisumu, Migori, Vihiga, Bungoma and Busia counties.

In July and December 2018, FIDH and its member organisation in Kenya, KHRC, conducted fact-finding missions on election-related SGBV committed in Vihiga, Kisumu and Migori counties. FIDH and KHRC interviewed a total of 79 women, as well as members of some of their households. The findings revealed a pattern of sexual violence, including rape, gang rape, and sexual assault, in most cases allegedly committed by male members of security forces. The evidence gathered by FIDH and KHRC also demonstrated the serious and long-term consequences of election-related SGBV for

1. Incidents included the circumstances leading to the resignation and self-exile of Ms. Roselyn Akombe, IEBC commissioner, in October 2017 before the repeat elections; the brutal murder of the IEBC Head of Information, Communication Technology, Mr. Chris Msando in July 2017; and leaked communications between the IEBC commissioners and Chief Executive.

2. HRW (2018), Press Release, "Kenya, Fresh Evidence of Election Period Abuses. Police, Armed Gangs Killed Dozens", <https://www.hrw.org/news/2018/02/25/kenya-fresh-evidence-election-period-abuses>, accessed on 13 August 2021.

3. KNCHR (2018), *Silhouettes of Brutality. An Account of Sexual Violence During and After the 2017 General Election*, p. XV, http://knchr.org/Portals/0/KNCHR_Silhouettes_of_Brutality.pdf, accessed on 13 August 2021.

survivors and their families, as well as the inadequacy of measures taken by the State to prevent and respond to SGBV during the election period.

With the 2022 general elections approach, this report aims to raise awareness on election-related SGBV and its consequences in Kenya and to advocate for accountability and the adoption of the necessary measures of prevention, protection and guarantees of non-repetition.

Methodology

What? This report presents the results of FIDH and KHRC's fact-finding missions on election-related SGBV committed in 2017, analysing them in the context of SGBV committed during past general elections, in 2007-2008 and 2013. It draws attention to patterns of election-related SGBV in Kenya, highlighting its consequences and documenting the responsibility of security forces in its perpetration. The report then provides a risk assessment, in view of the upcoming 2022 general elections and presents a series of recommendations aimed at preventing any resurgence of election-related SGBV.

Where? The fact-finding missions were carried out in three counties in western Kenya: Kisumu, Migori and Vihiga. These counties were selected for various reasons. Firstly, credible stakeholders, including Wangu Kanja Foundation, KNCHR and KHRC had already documented cases of election-related SGBV in Nairobi's informal settlements. Secondly, a focus on rural areas revealed the difficulties faced by survivors in accessing health services for medical and psychological support, in comparison to the situation in Nairobi, where survivors could benefit from a large network of health facilities, both private and public. Thirdly, the three counties were perceived as opposition strongholds. Kisumu and Migori had been marred with violence during previous elections. In contrast, the outbreak of violence in Vihiga county was unprecedented and unexpected,⁴ thus survivors of sexual violence did not access much-needed support, and incidents were largely undocumented.

Who? The report is the result of joint collaboration between FIDH and KHRC, with the support of external independent experts including Tchérina Jerolon, Ann Sabania and Aurelia Munene. The following individuals contributed to the report: Diana Gichengo, former Identity and Inclusion Programme Manager, KHRC; Carol Werunga, former Electoral Governance Programme Advisor, KHRC; Mary Kimemia, former Associate, KHRC; Irene Soila, Inclusion and Political Justice Programme Advisor, KHRC; Martin Mavenjina, Inclusion and Political Justice Programme Advisor, KHRC; Davis Malombe, Executive Director, KHRC; Moses Gowi, Communications and Urgent Action Assistant, KHRC; Julia Doublait, International Human Rights Expert, FIDH Africa Desk; Daisy Schmitt, International Human Rights Expert on Women's Rights, FIDH; Andrew Songa, Delegate, Advocacy to the African Union, FIDH; Abigail Gérard, International Human Rights Expert, FIDH Africa Desk; Hassatou Ba-Minté, Head of Africa Desk, FIDH; Delphine Carlens, Head of International Justice Desk, FIDH; Dorine Llanta, Programme Officer, Delegation at the International Criminal Court, FIDH; and local civil society mobilisers from the three target counties.

How? FIDH and KHRC conducted two fact-finding missions in July and December 2018, collecting testimonies from a total of 79 women survivors in Kisumu County (7 survivors), Migori County (23 survivors) and Vihiga County (21 survivors) and members of some of their households. Local mobilisers from the three counties facilitated contact with the respondents. During the July mission 42 survivors were interviewed. During the December mission in-depth interviews were conducted with 51 survivors, of whom 14 had been interviewed during the July mission, as well as members of some

4. Vihiga county was not mapped out as a "hotspot" by the Government in advance of the 2017 elections, and was not known as an area which had experienced a high-level of violence in previous election periods. As explained below, a specific event involving accusations against a local businessman generated protests and triggered violence in Vihiga County.

of their households, including spouses, children, siblings and parents-in-law.⁵ Two male survivors of sexual violence were also contacted but they declined to participate.

In addition, a total of 13 stakeholders from the three counties were interviewed during the missions. Various national and local stakeholders, both State and non-State actors, were contacted to share and triangulate the preliminary findings and gather further information.⁶ They included health providers, administrative officers, senior police officers (County Police Commanders, Sub-County Police Commander), heads of non-governmental organisations and medical staff from public hospitals in the target counties.

In October 2018 and November 2019, other duty-bearers as well as civil society organisations (CSOs) were interviewed by FIDH and KHRC in Nairobi. Duty-bearers at the national level included the National Gender and Equality Commission (NGEC), the Kenya National Commission on Human Rights (KNCHR), the Independent Policing Oversight Authorities (IPOA) and National Police Service (NPS).⁷ Discussions were also organised with representatives from the United Nations Office of the High Commissioner for Human Rights (OHCHR), Physicians for Human Rights (PHR),⁸ Human Rights Watch (HRW),⁹ Wangu Kanja Foundation, Centre for Rights Education and Awareness (CREAW) and Grace Agenda.

This report also draws on in-depth desk research (all references are included).

The interviews with survivors took place in their homes and other preferred safe spaces. Individual interviews were conducted with women survivors and focus group discussions (FGDs), and members of their households, with the support of an interpreter (in Luo for Kisumu and Migori Counties, and Luhya for Vihiga County). The interviewers used questionnaires prepared in advance, in accordance with the internal FIDH mission handbook. All 79 survivors interviewed in preparation for this report consented to sharing their anonymised testimony for the purpose of the report. The interviewers followed the PEACE Model of investigative interviewing.¹⁰

A “Do No Harm approach” was adopted and specific sensitivities were taken into account. The interviewers were aware that undertaking research on sexual violence may have various short- to long-term risks of additional harm to the survivors and their families, including psychological, physical, social and/or legal. Ethical practices were informed by the World Health Organisation (WHO) Ethical and Safety Recommendations for Researching, Documenting and Monitoring Sexual Violence

5. In December, the mission delegation was unable to meet with 28 of the survivors who had been interviewed in July, mainly from Kisumu County. See explanation under *Challenges* below.

6. The Migori County Government adopted the preliminary findings of the study and, prior to the launch of this report, initiated and adopted an SGBV policy development process at the county level.

7. For more details on these bodies, see Annex 2 on the key national actors in the 2017 elections.

8. OHCHR, UN Women and PHR published a joint report on election-related sexual violence committed in 2017: OHCHR, UN Women, PHR (2019), *Breaking Cycles of Violence: Gaps in Prevention of and Response to Electoral Related Sexual Violence*, <https://www.ohchr.org/Documents/Countries/KE/OHCHRPHRUNWOMENKenyaGapAnalysisDec20191.pdf>, accessed on 13 August 2021.

9. HRW published a report on ERSV committed in 2017: HRW (2017), *They Were Men in Uniform. Sexual Violence Against Women and Girls in Kenya's 2017 Elections*, https://www.hrw.org/sites/default/files/report_pdf/kenya1217_web.pdf, accessed on 13 August 2021.

10. This methodology, considered as international best practice, provides a framework for conducting interviews using a conversational rather than confrontational approach and facilitates the provision of a detailed account while reducing risks of re-traumatising the interviewee or missing important pieces of information. The person in charge of conducting the interview is required to follow five steps: plan and prepare the interview, including the location, duration, security, methods of recording the testimony, etc.; provide explanations to the witness about the conduct of the interview, the objectives, obtain her/his consent; listen to the witness' account and ask simple and open questions, without guiding the account; close the interview by ensuring the accuracy and clarity of the testimony; evaluate the quality of her/his own performance and measure the achievement of the objectives set.

in Emergencies.¹¹ Therefore, a **survivor-centred approach** was employed, with principles such as informed written and verbal consent, safety, and respect for the respondent's views. Interviewees' needs and expectations were also taken into consideration. The survivors were made aware of why they were participating, how the information was to be used, who would have access to it, potential risks of participating in the research and ways to respond, so that they had the possibility of opting out of the interview at any time. **Confidentiality** was strictly upheld from the onset and all information gathered is ultimately the property of KHRC and FIDH. In this report, efforts have been undertaken to protect the identity of the survivors, including by using pseudonyms and non-divulgence of exact locations and unique experiences. No children participated in this study. The research was also carried out in consideration of the social, cultural, political and economic context of the research sites in cognisance and respect of the norms and values implicitly and explicitly expressed during interactions. With support from KHRC, the interviewers and mobilisers participated in a session on ethics surrounding sexual violence research. As part of the research team, a **professional counsellor** was present throughout the interviews. The interviewers participated in a daily debriefing session to mitigate the effects of secondary trauma. KHRC deployed a counsellor to conduct debriefing sessions for all survivors and/or their household members to address the traumatic effects triggered by recalling and retelling their experiences. The counsellors were available to the survivors and their households for one month during the research period for those who needed more support. Since completion of the interviews with the survivors, KHRC has continued to support families of survivors of electoral violence to overcome the ordeal and to reunite with their families. KHRC notes the successful reunion of three couples who had separated as a result of being survivors of sexual violence, following counselling, linkages with health institutions, including for psycho-social support, and dialogue with the couples and their families. One of the survivors and her husband passed away in 2019, as a consequence of the violence suffered.

Some statements from the survivors interviewed are included in this report to illustrate the findings and analysis. Survivors are identified by random letters as well as by county in order to preserve their anonymity.

The terms "survivor" and "victim" are both used in the report, although "victim" is preferred when referring to their rights in accordance with the terminology used in international law.

Challenges were encountered throughout the preparation of the report. First, other organisations and stakeholders had already contacted many of the survivors, some with a promise to intervene and ensure justice prevailed. These unmet promises coupled with interview fatigue resulting from multiple interviews contributed to some survivors recanting their past testimonies, while others refused to be interviewed again. This was mainly the case in Kisumu County where survivors particularly suffered from being contacted by multiple actors. This accounts for the disparity between the number of in-depth interviews conducted in Kisumu County in December 2018, compared to the number of survivors met in July 2018. Additionally, since data was collected one year after the events and elections, some survivors had changed their place of residence and could not be contacted. Finally, the research team encountered difficulties in accessing government officials, especially the Ministry for Interior and Coordination of National Government. Some failed to respond to requests, while others discounted the premise of the report, that women were subjected to rape and other forms of SGBV during the 2017 election period.

Finally, the **Covid-19 pandemic** that broke out in 2020, a few months after the last fact-finding mission took place, resulted in the postponement of the launch of this report.

11. WHO (2007), *Ethical and Safety Recommendations for Researching, Documenting and Monitoring Sexual Violence in Emergencies*.

I. SEXUAL AND GENDER-BASED VIOLENCE: A MAJOR COMPONENT OF POLITICAL VIOLENCE IN KENYA

A. Patterns of election-related sexual and gender-based violence

1. Political context of the 2007, 2013 and 2017 general elections

The acquisition or preservation of political power in Kenya has often materialised through the massive use of violence, particularly during elections. To satisfy their electoral ambitions, political figures have regularly instrumentalised historical grievances – over access to land, corruption, poverty, inequality, representativeness and other issues – including through the prism of ethnicity. Such tactics have formed fertile ground for election-related violence, in particular during the 1992, 1997, 2007 and 2017 general elections.¹²

The December 2007 general elections, the fourth time such elections were organised since the introduction of a multiparty system in 1991, marked a turning point in Kenya's political history. The contested results of the presidential race – which opposed Mwai Kibaki, from the Party of National Unity (PNU) and his erstwhile ally Raila Odinga, from the Orange Democratic Movement (ODM)¹³ – led to an unprecedented wave of violence. Within two months, at least 1,133 people lost their lives, and over 600,000 others were forcibly displaced.¹⁴ According to the Commission of Inquiry into the Post-Election Violence (CIPEV), at least 900 individuals were victims of sexual violence.¹⁵

These elections were critical in Kenya's political history, not only because of the level of violence they generated, but also for their political, institutional and judicial repercussions. At the political level, the mediation process supervised by the late Kofi Annan, former UN Secretary General, led opposing parties to sign a power sharing agreement (the National Accord) establishing a Government of National Unity (GoNU), with Kibaki assuming the presidency and Odinga becoming Prime Minister.

Beyond power-sharing, the National Accord mandated the GoNU to carry out an ambitious reform process aimed at responding to long-standing institutional deficiencies. The creation of CIPEV in May 2007, the setting up of the Truth, Justice and Reconciliation Commission (TJRC), in 2008, and the adoption of a new Constitution in August 2010, resulted from this process. CIPEV and TJRC recognised the prevalence of election-related SGBV and issued concrete recommendations to guarantee non-repetition and provide justice and reparations to survivors. The 2010 Constitution

12. On the political violence that occurred during the 1992 and 1997 general elections, see, for example, HRW (1993), *Divide and Rule: State Sponsored Ethnic Violence in Kenya*; FIDH and KHRC (2007), *Massive Internal Displacements Due to Politically Instigated Ethnic Clashes*; Sarah Jenkins (2020), "Violence as an Election Strategy", in *The Oxford Handbook of Kenyan Politics*, Nic Cheeseman, Karuti Kanyinga and Gabrielle Lynch (ed.), Oxford University Press.

13. Mwai Kibaki and Raila Odinga were allies under the National Rainbow Coalition that defeated Daniel Ara Moi in 2002.

14. KNCHR, *Silhouettes of Brutality*, p. 5.

15. CIPEV final report (2008), p. 248.

reshaped the political and legal structure of the country and enshrined the principle of full application of international human rights law at the national level. The Constitution specifically included provisions on the “right to equal treatment” for women and men, “including the right to equal opportunities in political, economic, cultural and social spheres”.¹⁶

On the basis of the scale and gravity of the crimes committed during the post-election violence (PEV) and the finding that, rather than being opportunistic, such crimes had been organised and financed by politicians, CIPEV urged Kenyan authorities to investigate the crimes and prosecute those responsible by setting up a Special Tribunal. Failure to do so would result in CIPEV transmitting the information collected during its investigation to the International Criminal Court (ICC). In light of the Kenyan authorities’ unwillingness to initiate judicial proceedings at the national level,¹⁷ in March 2010 the ICC decided to open an investigation into the crimes against humanity committed in the context of the PEV.¹⁸

Uhuru Kenyatta,¹⁹ who was Deputy Prime Minister and Minister of Finance within the GoNU and his former political adversary William Ruto,²⁰ the Minister of Agriculture, were both accused by ICC Prosecutor Luis Moreno Ocampo of being criminally responsible for crimes against humanity, including murder, forcible transfer of population, and in the case of Kenyatta, rape.²¹

The ICC Prosecutor alleged that Uhuru Kenyatta planned and coordinated attacks against perceived ODM supporters (predominantly of people of Kalenjin, Luo and Luhya ethnicity), in Nakuru and Naivasha. These attacks were allegedly perpetrated by members of the Mungiki group,²² without police intervention, and “resulted in a large number of killings, displacement of thousands of people, rape, severe physical injuries, mental suffering and destruction of property”.²³ In parallel, the ICC Prosecutor submitted that William Ruto developed a criminal plan to kill and displace members of the Kikuyu, Kisii and Kamba communities in the Rift Valley because of their alleged support for candidates of

16. Article 27(3) of the Constitution of Kenya (2010). For further details on the implementation of quotas, as provided for in the Constitution, see *infra* sections A2 and A3.

17. For information on Kenya’s failure to initiate judicial proceedings at the national level, see FIDH and KHRC (2009), *Kenya and the International Criminal Court: Questions and Answers*, https://www.fidh.org/IMG/pdf/Q_A_Kenya-ICC.pdf.

18. FIDH and KHRC, Press Release, “Prosecutor is given authorisation to open an investigation in Kenya”, April 2010, <https://www.fidh.org/en/region/Africa/kenya/prosecutor-is-given-authorisation-to-open-an-investigation-in-kenya>.

19. Uhuru Kenyatta is the son of Jomo Kenyatta, Kenya’s first post-independence President. In 2002, Uhuru Kenyatta was designated as the successor to former President Daniel Arap Moi and ran for the presidential election under the banner of the Kenya African National Union (KANU) against Mwai Kibaki, then leader of the National Rainbow Coalition (NARC). Kenyatta was defeated by Kibaki who won with an overwhelming majority (62% of the vote). During the 2007 general elections, Kenyatta rallied behind Kibaki who was running for re-election under the banner of the Party of National Unity (PNU). After the post-election violence and the conclusion of the National Accord, Kenyatta served as Deputy Prime Minister and Minister of Finance in the newly formed GoNU. Uhuru Kenyatta is from the Kikuyu ethnic group.

20. In 2005, William Ruto was designated Secretary General of the Kenya Africa National Union (KANU) party. In 2007, he sought election as the presidential candidate for the Orange Democratic Movement (ODM). Instead, the ODM party nominated Raila Odinga as its candidate. Ruto expressed his support for Odinga and resigned from his position at KANU. After the post-election violence and the conclusion of the National Accord, Ruto served as Minister of Agriculture of the newly formed GoNU. William Ruto is from the Kalenjin ethnic group.

21. Joshua Arap Sang, Francis Kirimi Muthaura and Mohamed Hussein Ali were also accused by the ICC Prosecutor of serious crimes committed during the PEV. For more information, see the ICC dedicated webpage on the situation in Kenya, <https://www.icc-cpi.int/kenya>.

22. The Mungiki group, mainly composed of individuals from the Kikuyu ethnic group, was allegedly created at the end of the 1980s, with disparate demands that included access to land and employment. The group is known for its criminal activities, including its involvement in the crimes committed during the 2007-2008 PEV. For an account on the Mungiki group, see for example Peter Mwangi Kagwanja (2003), “Facing Mount Kenya or Facing Mecca? The Mungiki, Ethnic Violence and the Politics of the Moi Succession in Kenya, 1987-2002”, *African Affairs*, 102, 25-49; Jacob Rassmussen (2020), “Gangs and Vigilantism”, in *The Oxford Handbook of Kenyan Politics*, Nic Cheeseman, Karuti Kanyinga and Gabrielle Lynch (ed.), Oxford University Press.

23. ICC, “Decision on the confirmation of charges”, ICC-01/09-02/11, 23 January 2012, para. 145, https://www.icc-cpi.int/CourtRecords/CR2012_01006.PDF.

the Party of National Unity (PNU).²⁴ The charges were confirmed against both men in January 2012, paving the way for the opening of their trials in the Hague-based Court.²⁵

These political, institutional and judicial consequences of the 2007-2008 PEV had a profound impact on the Kenyan political landscape and singularly shaped the 2013 and 2017 electoral processes.

In the run-up to the 2013 general elections, these developments influenced the formation of new political alliances. The presidential race opposed on one side Uhuru Kenyatta and William Ruto – the two former adversaries, now united by the charges brought against them by the ICC, under the banner of the Jubilee Alliance – and on the other Raila Odinga and Kalonzo Musyoka, among others, who formed the Coalition for Reforms and Democracy (CORD).

According to the academic James D. Long, the Jubilee Alliance was a “marriage of convenience that its leaders cast as a sign of reconciliation between the Kikuyu and Kalenjin, two groups at the centre of the 2008 crisis and that have long shaped political competition and violence in Kenya”.²⁶ He further asserts that “Kenyatta and Ruto used the ICC as an issue to rally support among their followers in Central and Rift Valley by portraying the court as a meddlesome colonial force trying to influence domestic politics and tacitly support CORD”.²⁷ Collins Odote observes that the “peace narrative” that dominated the electoral debate, “helped to minimise violence [but] obfuscated an objective assessment of the 2013 elections and post-election reforms, helped to ensure that peace was prioritised over justice, and set the context for a more hotly disputed and violent election in 2017”.²⁸

Kenyatta was declared winner of the 2013 presidential election, with 50.51% of the vote. Odinga contested the results and brought the case to the newly constituted Supreme Court which dismissed his petitions. According to Odote, “Odinga’s recourse to the Supreme Court and his acceptance of its ruling were widely seen as having prevented civil conflict of the kind that followed the similarly disputed presidential election of December 2007”.²⁹

Indeed, the 2013 elections did not witness the same level of violence as in 2007 and were described by commentators as relatively peaceful.³⁰ Yet, despite opportunistic use of the “peace narrative”, the electoral process was still marked by “pervasive low-intensity intimidation, harassment, and fear [...] Verbal abuse, insults, and hate speech continued to inflect everyday life, and street brawls, beatings, and skirmishes sometimes occurred between people supporting different parties”.³¹ As described in detail below, cases of gender-based violence, in particular against female politicians, were documented.³²

24. ICC, “Decision on the confirmation of charges”, ICC-01/09-01/11, 23 January 2012, https://www.icc-cpi.int/CourtRecords/CR2012_01004.PDF.

25. Charges were also confirmed against Joshua Arap Sang, Francis Kirimi Muthaura and Mohamed Hussein Ali.

26. James D. Long (2020), “Civil conflict, power-sharing, truth and reconciliation (2005-2013)”, in *The Oxford Handbook of Kenyan Politics*, Nic Cheeseman, Karuti Kanyinga and Gabrielle Lynch (ed.), Oxford University Press.

27. James D. Long (2020), “Civil conflict, power-sharing, truth and reconciliation”.

28. Collins Odote (2020), “The 2013 elections and the peace narrative (2013-2015)”, in *The Oxford Handbook of Kenyan Politics*, Nic Cheeseman, Karuti Kanyinga and Gabrielle Lynch (ed.), Oxford University Press 2020.

29. Collins Odote (2020), “The 2013 elections and the peace narrative”.

30. Mwangi S. Kimenyi (2013), “Kenya, a Country Redeemed After a Peaceful Election”, *Brookings*, <https://www.brookings.edu/blog/up-front/2013/04/02/kenya-a-country-redeemed-after-a-peaceful-election/>, accessed on 13 August 2021; Solomon Ayele Derso (2013), “How did Kenya Deliver Peaceful Elections on 4 March 2013, Defying Observers’ Warning of a Repeat of the 2007/08 Violence?”, *ISS Africa*, <https://issafrica.org/iss-today/how-kenya-delivered-its-peaceful-general-elections>, accessed on 13 August 2021.

31. Sarah Jenkins, (2020), “Violence as an Election Strategy”.

32. See below, section A2.

The 2017 general elections saw the same protagonists oppose each other. Uhuru Kenyatta ran for re-election, as part of the alliance with William Ruto. In the intervening period, the two men had benefited from charges being dropped by the ICC,³³ mainly due to Kenya's lack of cooperation with the Court, shuttle diplomacy against it, and witness tampering and intimidation.³⁴ This generated a new context in which the "peace narrative" became slightly less pressing. Uhuru Kenyatta once again opposed Raila Odinga, who ran under the banner of a larger coalition, the National Super Alliance (NASA).

The 2017 elections were marked by three key factors. Firstly, they were affected by the historic decision of the Supreme Court that nullified Kenyatta's re-election and called for the organisation of fresh polls.³⁵ This decision was taken after NASA contested the results, on the grounds of alleged irregularities in their modes of transmission. Secondly, they were marked by high levels of violence, in particular in opposition strongholds, where protests met with repression by the security forces. The heavy-handed response to street protests left more than 100 people dead.³⁶ Two hundred and one (201) cases of sexual violence were documented by KNCHR,³⁷ mainly perpetrated by security forces. Thirdly, after calling on his supporters to protest against the results, taking the decision to boycott the fresh elections and proclaiming himself "the People's President", Raila Odinga eventually "reconciled" with Uhuru Kenyatta. This reconciliation was symbolised by a "handshake" between the two men, a move which caused divisions within their respective camps and led to the initiation of the "Building Bridges Initiative" (BBI).³⁸

While the presidential election occupies a central position in the transformation of the political landscape in Kenya, and, by extension, in the eruption of political violence, there has also been significant violence in parliamentary and local elections. The 2010 Constitution introduced a devolution process which provides for the election of Governors to administrate the country's 47 counties, as well as for the election of County Assemblies (composed of ward-elected members). The political violence observed in the context of local elections has also manifested in acts of SGBV.

2. Election-related sexual and gender-based violence: *Modus operandi*, targets and perpetrators

This section analyses the circumstances in which SGBV was perpetrated in the 2007, 2013 and 2017 election periods. It shows that in each election there has been a gender dimension to political violence and discrimination, with women specifically and disproportionately targeted. Thus, in order to be effective, any action intended to prevent and combat election-related violence must fully address the gender dimension of the violence.

33. FIDH and KHRC (2014), Press Release, "Kenyatta case dropped, impunity prevails in Kenya", <https://www.fidh.org/en/region/Africa/kenya/kenyatta-case-dropped-impunity-prevails-in-kenya>; FIDH and KHRC (2016), Press Release, "Termination of Ruto and Sang case at the ICC: witness tampering means impunity prevails over justice again", <https://www.fidh.org/en/region/Africa/kenya/termination-of-ruto-and-sang-case-at-the-icc-witness-tampering-means>.

34. Kenyans for Peace with Truth and Justice (KPTJ), Note, "Kenya's 7-Step Formula for Impunity", <http://kptj.africog.org/kenyas-7-step-formula-for-impunity/>, accessed on 13 January 2021.

35. The general elections were held on 8 August 2017. Uhuru Kenyatta was declared winner of the presidential race but on 1 September 2017, the Supreme Court nullified these results and called for fresh elections to be held. The "second" presidential election took place on 26 October 2017. See *New York Times*, "Kenya Supreme Court Nullifies Presidential Election", 1 September 2017, <https://www.nytimes.com/2017/09/01/world/africa/kenya-election-kenyatta-odinga.html>, accessed on 13 August 2021.

36. HRW, "Kenya: Fresh Evidence of Election Period Abuses".

37. KNCHR, *Silhouettes of Brutality*.

38. See BBI website: <https://www.bbi.go.ke/>.

Nine hundred cases of election-related SGBV documented during the 2007-2008 PEV: “the tip of the iceberg”

Sexual violence was perpetrated on a massive scale during the 2007-2008 PEV. According to the CIPEV report, at least 900 people were victims of sexual violence, although the Commission emphasised that this number was just “the tip of the iceberg”, since many victims could not reach hospitals due to lack of security or means of transport.³⁹ In addition, this figure did not include victims who may have been raped and then killed.⁴⁰ Under-reporting could also be attributed to other factors, including fear of stigmatisation or reprisals, risks of family rejection or social exclusion, lack of faith in the judicial system, costs of the proceedings, etc.

Sexual violence committed in 2007-2008 included numerous cases of rape, gang rape, defilement, genital mutilation, forced male circumcision, and sexual exploitation. In the cases documented by HRW, survivors were raped by more than one perpetrator and, in some cases, by more than ten.⁴¹ HRW reported that survivors described how perpetrators “inserted guns, sticks, bottles, and other objects into women’s vaginas, or beat their genitals with objects”.⁴² The violence was mostly perpetrated in victims’ homes, often in the presence of one or more family members (e.g. children, spouses, parents, brothers, sisters). Sexual violence was accompanied by other forms of physical violence, including “stabbing, kicking, cutting with machetes [...] beatings”.⁴³ Sexual violence and sexual exploitation were also reported in Internally Displaced Person (IDP) camps, with allegations of women and girls being sexually exploited in exchange for food and other services.⁴⁴ In addition, there were reports of individuals being sexually assaulted when they were trying to flee the violence.⁴⁵ Victims of sexual violence also experienced other forms of violations, including forced displacement and destruction of property, as well as loss of family members.

According to information collected by CIPEV, victims of sexual violence were predominantly women, from economically poor backgrounds, who lived in the slums of Nairobi⁴⁶ or in rural areas throughout the country. Investigations by CIPEV and other organisations also revealed that some men, in particular men from the Luo ethnic group, were subjected to sexual violence, mainly in the form of forced circumcision or genital mutilation, “carried out in a crude manner with objects such as broken glass”.⁴⁷ The exact number of victims of forced male circumcision remains unknown as “many victims did not report their attacks to the authorities and many of the victims were later killed or died from the bleeding”.⁴⁸

Initial reactions analysed the sexual violence committed in 2007-2008 as predominantly opportunistic.⁴⁹

39. CIPEV final report, p. 248.

40. HRW (2016), *I Just Sit and Wait to Die. Reparation for Kenya's Survivors of 2007-2008 Post-Election Sexual Violence*, p. 30, https://www.hrw.org/sites/default/files/report_pdf/kenya0216-web.pdf, accessed on 13 August 2021.

41. HRW, *I Just Sit and Wait to Die*, p. 31.

42. HRW, *I Just Sit and Wait to Die*, p. 32.

43. HRW, *I Just Sit and Wait to Die*.

44. CIPEV final report, p. 247. For an account of the continuing instances of violence in IDP camps, in particular against women, see Roseanne Njeri Njiru (2014), “Political Battles on Women’s Bodies: Post-Election Conflicts and Violence Against Women in Internally Displaced Persons Camps in Kenya”, *Societies Without Borders*, 9(1), 48-68, <https://scholarlycommons.law.case.edu/swb/vol9/iss1/12/>, accessed on 13 August 2021.

45. TJRC report (2013), Volume II a, p. 739, para. 89-91.

46. In particular Mathare and Kibera.

47. Valerie Oosterveld (2011), “Atrocity Crimes Litigation Year-in-Review: A Gender Perspective”, cited in Beth Maina Ahlberg & Kezia Muthoni Njoroge (2013), “Not Men Enough to Rule! Politicization of Ethnicities and Forcible Circumcision of Luo Men During the Post-election Violence in Kenya”, *Ethnicity and Health*, 18:5, 454-468, p. 461.

48. Jessica Auchter (2017), “Forced Male Circumcision: Gender-Based Violence in Kenya”, *International Affairs*, 93:6, 1339-1356, p. 1347.

49. The OHCHR indicated in its 2008 fact-finding mission report that “information gathered during interviews with victims of

Gradually, and as documentation efforts increased, it became clear that there were also instances where sexual violence had been planned and organised. For instance, “the widespread practice of forced circumcision of Luo men in Rift Valley and Nairobi was interpreted by analysts as the confirmation that the Mungiki represented a well-organised and hierarchical gang able to execute common patterns of violence across different locations”.⁵⁰ It appeared that in some areas, sexual violence was perpetrated with the aim of forcing people to leave their homes or punishing them for voting or supporting the “wrong” candidate. There were also reports of acts of SGBV, including rape, specifically targeted against women politicians, “with the intention of instilling fear and intimidating them into dropping their political bids”.⁵¹

The testimonies and other information collected by CIPEV pointed to the responsibility of various actors in the perpetration of SGBV: security forces (police and General Service Unit personnel), members of the Mungiki group, Kalenjin warriors, and members of other gangs, neighbours, relatives, individuals working in Internally Displaced Person (IDP) camps and friends. According to the information collected by CIPEV in Nairobi, Nakuru and Eldoret, more than 80% of victims of sexual violence did not report the crimes to the police, in some cases because the police were the perpetrators, or because they did not trust the institution, or because they were unable to identify those responsible.

The 2013 “peace narrative” helped to minimise violence but obstructed justice efforts and did not prevent political violence against female candidates

Ahead of the 2013 general elections, several voices were raised calling on Kenyan authorities to take all appropriate measures to prevent the country from sinking into the chaos of 2007-2008. The Special Representative of the UN Secretary General on Sexual Violence in Conflict urged the authorities to prevent “the rise of politically-motivated rape” in the post-election period.⁵²

During these elections, the “peace narrative” indeed dominated the debates, and violence was not reported on a wide scale. Yet, an alarming number of cases of political violence against women politicians were observed.

The 2013 general elections were the first to be held since the adoption of the 2010 Constitution, which introduced a provision requiring that no more than two-thirds of the members of elective or appointive bodies shall be of the same gender. While this quota requirement contributed to increasing the number of women represented in Parliament and in the newly created County Assemblies, it

rape and sexual violence suggests that by and large, most of the reported cases of rape seem to have been ‘opportunistic’, perpetrated in the urban setting by groups of youth taking advantage of the chaotic and violent situation”. In relation to the cases of forced circumcision of Luo men, the report indicated that “the number of cases encountered suggests that these were sporadic rather than an overall trend in the violence”. See, *Report from OHCHR Fact-finding Mission to Kenya*, 6-28 February 2008, <https://www.ohchr.org/documents/press/ohchrkenyareport.pdf>, accessed on 13 August 2021.

50. Jana Krause (2020), “Restrained or Constrained? Elections, Communal Conflicts and Variation in Sexual Violence”, *Journal of Peace Research*, Vol. 57(1), 185-198. It is to be noted, however, that, in the Kenyatta case, the ICC Pre-Trial Chamber decided not to consider forced male circumcision and penile amputation as “other forms of sexual violence”. The Chamber considered that the “sexual nature” of forced male circumcision and penile amputation could not be established and that these acts were “motivated by ethnic prejudice and intended to demonstrate cultural superiority of one tribe over the other”. The Chamber decided to address them as “acts causing severe physical injuries”. This interpretation was criticised by human rights NGOs, including Women’s Initiatives for Gender Justice (WIGJ). See, “Forced Circumcision – a Form of Sexual Violence”, <https://4genderjustice.org/uncategorized/forced-circumcision-a-form-of-sexual-violence/>, 2 May 2011, accessed on 13 August 2021. See also, FIDH video (2018), “Unheard, Unaccounted”, in which it is stated that in the Kenyan case the characterisation adopted by the ICC Pre-Trial Chamber “didn’t accurately reflect the crime where Luo men were often castrated or circumcised with crude objects in order to emasculate them”, <https://www.youtube.com/watch?v=1Mo3liTZ9SY&t=3s>.

51. TJRC report, Volume II a, p. 736, para. 86.

52. Office of the Special Representative of the Secretary General on Sexual Violence in Conflict, “The Kenya Elections Must Be Free of Politically-Motivated Rape and Other Forms of Sexual Violence”, 1 March 2013, <https://www.un.org/sexualviolenceinconflict/statement/the-kenya-elections-must-be-free-of-politically-motivated-rape-and-other-forms-of-sexual-violence/>, accessed on 13 August 2021.

also led to what academics have described as a “patriarchal backlash against women, potentially undermining their gains by normalising new forms of oppression”.⁵³ Since the 2013 elections, “female politicians have faced unprecedented levels of violence, apparently designed to discourage them from vying for office or, once there, from defying the agendas of powerful male political elites”.⁵⁴ Researchers have documented cases of attempted rape and physical assault of female politicians by male colleagues (survivors were struck on the head or grabbed by the neck) with some forced to hide in fear for their security.⁵⁵

This violence against women who attempted to enter or remain on the political scene was concomitant with the denial of the rights of survivors of election-related SGBV to obtain justice.

In its 2013 final report, the Truth Justice and Reconciliation Commission (TJRC)⁵⁶ pointed out the “clear patterns of consistent and widespread sexual violence targeting women and men during electioneering periods as well as during ethnically and politically-instigated conflict that have over time characterised Kenya’s elections”.⁵⁷ The Commission recommended certain measures to respond to this recurring violence. It called upon the President of Kenya to acknowledge the violations and to “offer a public and unconditional apology for acts of sexual violence committed by State security agencies”. It further recommended the establishment of Gender Violence Recovery Centres (GVRC) in every county; the provision of reparations for victims and survivors; the setting up of an Office of Special Rapporteur on sexual violence, and a new code of conduct and ethics for the NPS.

At the time of writing, none of these recommendations have been genuinely implemented by the authorities. In March 2015, President Uhuru Kenyatta offered a public apology “for all past wrongs”, instead of specifically referring to election-related SGBV.⁵⁸ In the same address, the President indicated that prosecutions for the crimes committed during the 2007-2008 PEV would face challenges (due to lack of adequate evidence or inability to identify perpetrators) and recommended the use of restorative approaches. Rather than adhering to the elaborate reparation framework proposed by the TJRC, Kenyatta announced the creation of a fund of 10 billion Kenyan shillings (approximately USD 9.5 million) to accompany the restorative justice process over a 3-year period. To date, it remains unclear how, or indeed whether, these funds were used and who the beneficiaries may have been.⁵⁹

In 2017, political battles continued to be orchestrated on women’s bodies

The 2017 general elections were marked by extremely high levels of sexual violence. In its 2018 report, KNCHR found that at least 201 people, mostly women and girls, had experienced sexual violence, while acknowledging that this figure was probably a low estimate.⁶⁰ Sexual violence accounted

53. Marie E. Berry, Yolande Bouka, Marilyn Muthoni Kamuru (2020), “Implementing Inclusion: Gender Quotas, Inequality, and Backlash in Kenya”, *Politics & Gender*, Cambridge University Press, p. 15.

54. Marie Berry, Yolande Bouka, Marilyn Muthoni Kamuru, “Kenya Women Just Fought one of the most Violent Campaigns in History”, 7 August 2017, *Foreign Policy*, <https://foreignpolicy.com/2017/08/07/kenyas-female-politicians-just-fought-the-one-of-the-most-violent-campaign-in-history-election/>, accessed on 13 August 2021.

55. Marie E. Berry, Yolande Bouka, Marilyn Muthoni Kamuru (2020), *Implementing Inclusion*, pp. 17-19.

56. The TJRC was created in 2009, following the 2007-2008 Post-Election Violence. It was mandated to establish “an accurate, complete and historical record of violations and abuses of human rights and economic rights inflicted on persons by the State, public institutions and holders of public office, both serving and retired, between 12 December 1963 and 28 February 2008”, (TJR Act). The TJRC’s final report was submitted to the President of Kenya in May 2013. Yet, at the time of writing, the report still had not been adopted by the Kenyan Parliament.

57. TJRC report, Volume II a, p. 735.

58. Uhuru Kenyatta, State of the Nation Address, 26 March 2015, <https://www.president.go.ke/2015/03/26/speech-by-his-excellency-hon-uhuru-kenyatta-c-g-h-president-and-commander-in-chief-of-the-defence-forces-of-the-republic-of-kenya-during-the-state-of-the-nation-address-at-parliament-buildings-na/>, accessed on 30 June 2021.

59. *Justice info*, “7 Years on, Let’s Dust Off the Kenyan Truth Commission Final Report”, 28 May 2020, <https://www.justiceinfo.net/en/44425-7-years-on-let-s-dust-off-the-kenyan-truth-commission-final-report.html>, accessed on 29 June 2021.

60. KNCHR, *Silhouettes of Brutality*.

for 25.17% of all the human rights violations documented by KNCHR, making it the second most common form of electoral violence (after physical injuries). KNCHR documented cases throughout the electoral period (during political party primaries, campaigns, and polling days on 8 August and 26 October 2017), in 11 counties, including Vihiga, Migori and Kisumu, where FIDH and KHRC conducted their fact-finding missions.

KNCHR estimated that the vast majority of survivors were women (over 96%), aged up to 70, although cases of sexual violence against men, aged up to 68, were also documented (over 3%). Children as young as seven were targeted. As in 2007-08, several cases of rape, including gang rape (with up to six perpetrators) were documented. Violence also included cases of attempted rape and defilement. Once again, violence also took place in survivors' homes, in the presence of family members (including children). Half of the survivors lived in informal settlements within urban areas and more than 90% were from economically poor backgrounds (earning less than a dollar a day). KNCHR further found that perpetrators comprised 54.5% of police officers and 45.5% of civilians.

Gender-based violence, in particular against women politicians, was also reported. Researchers stressed that during the 2017 general elections, female politicians fought one of the "most violent campaigns in the history of Kenya's elections",⁶¹ with cases of women candidates facing beatings, being robbed with machetes and batons and threatened with public stripping.⁶² Cases of women politicians who experienced burning of their houses, killing of their bodyguards, or were held hostage in exchange for money, were also reported. In addition, there were many cases of women candidates facing rumours and allegations of sexual misconduct, fuelled by political rivals.⁶³

Key findings from (FIDH and KHRC's) documentation work on SGBV committed in the 2017 election period

KNCHR's findings are corroborated by the conclusions of the fact-finding missions carried out by FIDH and KHRC in Vihiga, Kisumu and Migori. In July and December 2018, a total of 79 women, with an average age of 45, were interviewed by our organisations. Their testimonies confirmed that election-related SGBV was perpetrated on a massive scale in these opposition strongholds, and that many of the perpetrators were police officers or men in police uniform. The violence was committed as part of a crackdown by security forces on protests denouncing the results of the two presidential polls, which had both ended in Uhuru Kenyatta's declared victory. Most of the survivors interviewed by FIDH and KHRC said that they had not filed a complaint due to the police's alleged involvement in the perpetration of sexual violence.

Most of the survivors interviewed by FIDH and KHRC in Vihiga and Migori Counties indicated that they had been raped during the period of the repeat presidential election, from 26-29 October 2017. Survivors in both counties reported chaos in their area, with young men, including *boda boda*⁶⁴ riders, barricading the roads and throwing stones at police officers who were heavily deployed and who

61. Marie Berry, Yolande Bouka, Marilyn Muthoni Kamuru, "Kenya Women Just Fought one of the Most Violent Campaigns in History".

62. Marie Berry, Yolande Bouka, Marilyn Muthoni Kamuru, "Kenya Women Just Fought one of the Most Violent Campaigns in History".

63. The National Democratic Institute (NDI) and the Federation of Women Lawyers (FIDA Kenya) (2018), "A Gender Analysis of the 2017 Kenya General Elections", https://www.ndi.org/sites/default/files/Gender%20Analysis%20of%202017%20GeneralElections%20FINAL%20High%20Res%20for%20Printer%20-%20NEW%20COVER_small.pdf, accessed on 13 August 2021, pp. 39-40.

64. Boda Boda are motorcycle and bicycle taxis found in East Africa.

retaliated with tear-gas. They reported gunshots, running battles, confrontations and cat and mouse chases between civilians and police. In Vihiga, survivors reported altercations between police and local men who were protesting the alleged involvement of a local businessman in electoral malpractices.⁶⁵ In Migori, survivors referred to an area marred with violence after the October repeat election. Survivors interviewed in Kisumu reported clashes between police and civilians that erupted around 11 August, in the aftermath of the announcement of the results of the first election.

Rape – in particular gang rape – was the most common form of sexual violence

The majority of survivors interviewed by FIDH and KHRC in Kisumu, Vihiga and Migori reported gang rape. This is in line with the data compiled by KNCHR (of all cases documented, 19.3% were raped by one perpetrator and 52.6% by multiple perpetrators)⁶⁶ and HRW (half of the rapes documented in Kisumu and Bungoma Counties were gang rapes).⁶⁷

In Vihiga, documented cases of sexual violence took place near or in Majengo town, while survivors were engaged in their daily work routines (e.g., at the market, near a river, on the road, on their way back home from the town). In Migori, most cases took place at survivors' workplaces in Namba town (e.g., shop, salon, hotel). In Kisumu, the violence took place at survivors' homes, mostly in Obunga-Kasarani and Nyalenda areas. Perpetrators entered survivors' places of work or residence, sometimes knocking at the door (cases reported in Kisumu), sometimes using force and shouting (cases reported in Migori). Survivors almost all reported having been raped without protection (condoms).

"Then the police came through the back door shouting "Where are those men?" They started caning us. We lay down in fear. One of them grabbed me, tore my panty and the other one prepared to rape me. He finished and the other one started raping me. They left immediately after finishing what they did." (Survivor A, Migori)

"We were then taken to a forest behind Majengo. There were six men and the women ordered out of the matatu were two. I was taken away by two men, one with dreadlocks and the other with short hair. They raped me in turns and later left me in the forest." (Survivor B, Vihiga)

"Young men had barricaded the road with stones. I was at my business premises when two policemen came in, then forced me into the hotel next door. They forced me to lie down and raped me. I begged them to spare me as I was pregnant. Tear gas was thrown into the hotel and I inhaled it." (Survivor C, Migori)

"After the announcement of the second election results, I had gone to the market to buy some business stock [...] Some protests began [...] The police came to respond [...] A man was shot and when I saw what was happening, I ran toward the river near Majengo. Then three men in police uniform were running after me. They held me and pushed me down. They removed my clothes. I tried to defend myself. They raped me. They took my money and my mobile phone." (Survivor D, Vihiga)

65. The businessman, "Kobole", living in Vihiga, a NASA stronghold, had political affiliations to Jubilee. He was accused of storing ballot boxes in his home.

66. KNCHR, *Silhouettes of Brutality*, p. 37.

67. HRW, *They Were Men In Uniform*, p. 2.

"On 11 August 2017, the night of the election, police officers were chasing rioters. At around 11pm, someone knocked on my door and said 'open' in Swahili. They said they were police officers. I opened. One held me and laid me on the table and covered my mouth." (Survivor E, Kisumu)

Rapes were accompanied by other forms of violence. Survivors reported being slapped, beaten, insulted, gagged, strangled, their mouths being sealed or clasped, and being hit with objects or weapons. In several cases in Vihiga and Migori, survivors indicated that they had been raped in front of their relatives (husbands, children and cousins). In Kisumu, survivors interviewed reported that their husbands were either not present or had been forcibly evicted from the house by the police. Some survivors also reported having been robbed by their assailants or having witnessed the destruction of their property. In four cases (documented in Kisumu), survivors reported having faced attempted rape. False pretences were also reportedly used by perpetrators (in Vihiga) to subdue the survivors, such as police officers pretending to rescue survivors, so that the women thought they were safe.

"On Friday 27 October, the youth in Migori were barricading roads. On this day, I was cooking in my house just at the doorstep. I heard noise and screams of people shouting 'Polisi wanakuja' [The Police are coming]. My husband had just arrived. I saw the police. I asked my husband to hide under the bed. They broke the door and two [of them] entered the house. They asked me 'Toa mwanaume' [Bring out the man]. He strangled me around the neck. I tried to defend myself. He said 'Kwani uko na nguvu?' [You think you have strength?]. He slapped me so hard that I fell on the sofa. I tried getting up but he beat me with a baton. He pushed me down and his colleagues started raping me." (Survivor F, Migori)

"Six or seven police officers came into the hotel. The first thing they did was to eat, then three came. They mishandled and raped me while the others looted whatever they could get, others manned the door near where two who were hiding." (Survivor G, Migori)

"He removed his belt and opened his trousers, then started raping me. Other men were busy eating food." (Survivor H, Migori)

Multiple perpetrator rape ("gang rape")

As described above, gang rapes were perpetrated on a massive scale in Kenya during the 2007-2008 and 2017 electoral violence.

The *Handbook on the Study of Multiple Perpetrator Rape*⁶⁸ indicates that "multiple perpetrator rapes occur in most countries across the globe" with a prevalence ranging from 2 to 27 per cent of all rapes. Some of the Handbook's chapters explore the correlation that exists between gender roles and the prevalence of multiple perpetrators rape (MPR) and broadly suggest that "the extent to which women are treated as sexual objects to be

68. Miranda A. H. Horvath and Jessica Woodhams (ed.) (2013), *Handbook on the Study of Multiple Perpetrator Rape. A Multidisciplinary Response to an International Problem*, Forensic Psychology, Routledge.

passed around, humiliated and denigrated in the pursuit of male bonding and achieving enhanced masculine status is far more apparent in MPR than in lone perpetrator rapes (LPR)".

In a chapter focusing on MPR occurring in wartime contexts, Elisabeth Jean Wood observes that "when sexual violence [occurs] during war, the pattern varies in targeting, form and purpose, as well as in frequency".⁶⁹ She provides an analysis of these variations from cases documented in Bosnia-Herzegovina, Rwanda, Guatemala, Sierra Leone, Democratic Republic of Congo and Vietnam.

In Bosnia-Herzegovina, where up to 20,000 women and girls suffered rape, she recalls that, "MPR against women and girls held in detention or collection centers was frequent. In Foča, girls and women [...] suffered MPR by as many as 29 perpetrators". In Rwanda, approximately 350,000 women were raped and "many of the rapes were carried out by multiple perpetrators". In Sierra Leone "MPR comprised 76 percent of rape cases. It often took the form of very young victims enduring rape, with rebel combatants lining up to take turns". "In the Eastern region of DRC, 73% of women (and 38% of men) who reported having been raped by members of armed groups were raped by multiple perpetrators".

Wood distinguishes between cases in which rape is part of a strategy (in other words "purposefully adopted by commanders in pursuit of group objectives"), opportunistic ("carried out for private reasons, not group objectives") and part of a practice ("not ordered but tolerated by commanders"). Based on this distinction, Wood asserts that "MPR is very likely to occur at a significant level on the part of an armed group only when wartime is itself a strategy or a practice". "When rape is a group strategy, MPR is very likely to occur as a way of enhancing the strategic terror inflicted on targeted individuals and communities. And when rape is a group practice, commanders' reasons for tolerating rape likely extend to tolerating MPR". "MPR on the part of an armed organisation may be quite prevalent not because it has been ordered as a strategy but because it has emerged as a practice". "When MPR occurs at a significant level as a practice, it is very likely the result of small group social dynamics".

Survivors were mostly women, from poor economic backgrounds

All the survivors interviewed by FIDH and KHRC were women. As indicated above, two male survivors of sexual violence were contacted but later declined to be interviewed. KNCHR estimated that the vast majority of survivors were women (over 96%), although cases of sexual violence against men were also documented (over 3%).⁷⁰ The women interviewed by FIDH and KHRC were aged between

69. Elisabeth Jean Wood (2013), "Multiple Perpetrator Rape during War", in *Handbook on the Study of Multiple Perpetrator Rape*, pp. 132-159.

70. Academic studies and documentation by human rights experts have demonstrated the prevalence of sexual violence perpetrated against men and boys in conflict situations. Conflict-related sexual violence against men and boys however remains under-documented, due to various factors including fear of stigmatisation, reprisals and exclusion. For further information, see, for example, Sivakumaran Sandeh (2007), "Sexual Violence Against Men in Armed Conflict", *The European Journal of International Law* 18 (2): 253–276; Dolan Chris (2017), "Victims Who Are Men", in *The Oxford Handbook of Gender and Conflict*, Ni Aolain, Haynes Cahn and Valji (ed.), Oxford: Oxford University; Philip Schulz (2018), "The 'ethical loneliness' of male sexual violence survivors in Northern Uganda: gendered reflections on silencing", *International Feminist Journal of Politics*, 20:4, 583-601; Wokorach Mogi (2020), "The Loud Silence: The plight of refugee male survivors of conflict-related sexual violence", *Refugee Law Project*, https://www.refugeelawproject.org/index.php?option=com_content&view=article&id=12:the-loud-silence-the-plight-of-refugee-male-survivors-of-conflict-related-sexual-violence&catid=10&Itemid=101, accessed on 13 August 2021.

20 and 64 at the time of the interviews in 2018.⁷¹

The vast majority of cases documented by FIDH and KHRC involved women who, at the time when the violence erupted, were working in small businesses (e.g., *Mpesa* stores,⁷² salons, retail shops and food kiosks). In Vihiga, all survivors were from the Luhya community, the dominant ethnic group in the county, while in Migori and Kisumu, the majority of the survivors were from the Luo ethnic group which is dominant in those counties. Both Luhya and Luo ethnic groups are usually assimilated to the political opposition (Raila Odinga being from the Luo ethnic group).

KNCHR indicated in its 2018 report that “half of the survivors lived in informal settlements within urban areas and more than 90% were coming from economically poor backgrounds (earning less than a dollar a day)”. Similarly, in relation to the events in 2007-2008, CIPEV observed that “of those testifying to the Commission [...] the majority were not well off, if not poor. Before the post-election violence many were engaged in small business activities. These included selling cereals, vegetables, and second-hand clothes, working in beauty shops and bars, engaging in subsistence farming, and working as casual labourers on farms or as house maids. In Nairobi, all those interviewed lived in the slums of Mathare and Kibera, while the victims in Nakuru, Naivasha, Eldoret, Kisumu, and Mombasa lived on the outskirts of the towns or in the rural areas”.⁷³

The lack of sufficient economic means can proportionately affect survivors’ ability to access adequate healthcare or to engage in legal proceedings to seek justice and reparations. In a 2016 report on the economic burden on survivors of gender-based violence in Kenya, the NGEC estimated that “the average cost of medical-related expenses per survivor and family amounted to KES 16,464 (approximately 150 USD); reporting the incident to a chief and community structures cost KES 3,111 (approximately 30 USD); reporting to police cost KES 3,756 (approximately 30 USD)”.⁷⁴ Such costs are clearly prohibitive for survivors who earn less than a dollar a day. In addition, in some cases documented by our organisations, survivors of sexual violence also endured the destruction or looting of their businesses and other properties, contributing to further aggravating their economic situation. In several cases, survivors of election-related SGBV faced rejection by their spouses or their families, a situation of social ostracism which reinforces economic fragility.

In addition to the real or perceived political affiliation and ethnic group of survivors, the economically disadvantaged background of the majority of survivors should be taken into account to determine those most at risk when adopting the necessary prevention, protection, justice and reparation measures.

“The police came in through the back door and threw a tear gas canister at us, forcing us to open the door. The men customers ran away, leaving me and my two assistants. They raped us; two men raped me and stole our alcohol, worth about KES 50,000, then left.” (Survivor I, Migori)

“Suddenly the officer grabbed my hand and the other went to search the house. He asked for money and I gave him 2,000 KES. He ordered me to remove my underwear and he raped me.” (Survivor J, Kisumu)

71. It should be underlined that, while our organisations only documented sexual violence against women, other reports refer to cases of sexual violence against men. See HRW, *They Were Men in Uniform*.

72. Mpesa (M for mobile, Pesa for money in Swahili) is a mobile banking service.

73. CIPEV final report, p. 251.

74. NGEC (2016), *Gender Based Violence in Kenya: the Economic Burden on Survivors*, <https://www.ngeckenya.org/Downloads/GBV%20Costing%20Study.pdf>, accessed on 13 August 2021.

Security forces were allegedly at the vanguard of the violence

All survivors interviewed by FIDH and KHRC referred to male perpetrators, and a significant number identified police officers as the perpetrators. In very few instances in Migori, survivors also referred to “security” or “government” officers.

Survivors described perpetrators as wearing police uniform, green jungle uniform, Administration Police Service (AP) or General Service Unit (GSU) uniforms. Survivors indicated perpetrators were armed with weapons, such as guns, *rungu*, *jembe*,⁷⁵ tear gas canisters, batons and/or knives. In the majority of cases, survivors indicated that perpetrators came in groups. Most of the survivors interviewed in Migori and Vihiga reported having seen police cars, trucks, green lorries or land cruisers, sometimes with Government of Kenya number plates, before the incident, while in Kisumu, survivors reported they came on foot.

According to KNCHR, over 180,000 police officers were deployed in preparation for the elections. Of the cases of sexual violence documented by KNCHR, 54.5% were perpetrated by security agents, and 45.5% by civilians. Similarly, HRW reported that half of the women interviewed said they were raped by policemen or men in uniform.⁷⁶

One survivor interviewed by FIDH and KHRC in Vihiga said she knew the perpetrator as he was a police officer at Vihiga police station, and one survivor in Kisumu said the perpetrator knew her. In Migori, some of the survivors said that perpetrators were not from the local or ordinary police, so they did not recognise them.

The massive deployment of security agents who were unknown to the local population contributed to limiting the possibility of survivors identifying perpetrators. In a 2018 report, FIDH and KHRC documented the government’s tendency to conduct joint security operations, involving several services, with the effect of creating confusion as to the chain of command. Our organisations noted that, “the approach by the police has been to deploy the specialised units to deal with an insecurity incident within their line of specialisation and if they are unable to contain the issue to call for reinforcement from the other units. This has sometimes led to instances where it becomes impossible to apportion responsibility to the units and therefore leading to unaccountability for violations that may result during the security operations.”⁷⁷

“Four police officers came and entered by force into the shop and started to claim that we were hiding rioters in there. I even pleaded that I am an NGO volunteer, who serves all those who have been injured, regardless of their identity. They quickly took my KRC emblem jacket, my camera and my phone. I remember one officer crushed my phone with his boots, claiming that it was the gadget we use to send evidence. I understood I was unsafe and I stopped resisting. One of the four officers walked out of the room from the rear door. The other three each raped one woman.” (Survivor K, Vihiga)

75. A *rungu* is a weapon that is often carried and used by the Kenya police to whip civilians. A *jembe* is a hoe that is used for farming.

76. HRW, *They Were Men in Uniform*.

77. FIDH and KHRC (2018), *Kenya’s Scorecard on Security and Justice: Broken Promises and Unfinished Business*, p. 30, <https://www.fidh.org/IMG/pdf/kenyaweb-2.pdf>.

"I was in my shop on 28 October after the repeat of the presidential election in Namba, Migori County. [...] At noon, the youth had barricaded the roads. They were burning tyres and started running towards my shop. I tried to close the door to block them. Then the police came through the back door shouting, "Where are those men?" One of them grabbed me, tore my panty and the other one raped me. He finished and the other one started raping me." (Survivor L, Migori)

"They were police wearing uniforms. They were armed plus they carried rungu." (Survivor M, Migori)

"They were GSU from 'Maasai Mara' with a red helmet." (Survivor I, Migori)

Despite concordant elements documented by multiple stakeholders, Kenyan authorities continue to fail to implement survivors' rights to justice and reparation

The rights of victims to obtain justice and reparation have been obstructed by multiple factors. First, in the context of the volatile and uncertain security situation, most survivors prioritised their safety over reporting to hospitals or police stations. Secondly, violence erupted against the backdrop of an ongoing national nurses strike, which caused confusion over the capacity of health facilities to carry out the medical examinations necessary to initiate legal proceedings.⁷⁸ In addition, the fact that alleged perpetrators were mostly identified as security agents prevented many survivors from attempting to report their case to the police for fear of reprisals or not being taken seriously. In cases where survivors attempted to file a report with the police, they were treated with contempt.

"I never sought medical attention because the area was very volatile and impassable. The medical officers were also on strike." (Survivor N, Migori)

"I saw no point in reporting to the police because I had been raped by the police." (Survivor P, Migori)

"I did not report. I could not face the same police officers who had abused me. They would not have helped me." (Survivor O, Vihiga)

"I feared going to the police. How do you report a policeman to a policeman? I didn't trust them." (Survivor P, Vihiga)

"We report cases to the chief, village elder and the police. Some people get assistance while others do not as they may be required to pay a bribe. The perpetrators also pay bribes to the security agents to counter the claims." (Survivor Q, Migori)

78. See infra.

Since the events of 2007-2008 in particular, activists have repeatedly drawn attention to the practical and legal impediments that prevent survivors of SGBV from seeking justice and reparation, in particular when such violence is committed in a context of diminished security.

Under Kenyan law, legal remedies for survivors of sexual violence are heavily reliant on a survivor coming forward and filing a formal report with the police and providing forensic evidence. This enables the Office of the Director of Public Prosecution (DPP) to be seized and introduces the survivor to the judicial system. KNCHR describes the procedure: "The current process calls for a victim to report the case to the police station and within 72 hours they must visit a health facility to secure the necessary physical evidence which is captured in the Post Rape Care (PRC) Form. This form is filled by a clinical officer which is then used to fill the police P3 form. The P3 form is filled by both a police officer and a doctor and both forms are the primary evidence that is to be adduced in court in addition to identification of the specific perpetrator(s)." KNCHR underlined that, "in the context of electoral violence and conflict, all the above are not practically applicable".⁷⁹

The evidential threshold represents a further barrier. "Kenya falling under the Common Law regime requires the person alleging a fact to prove it beyond reasonable doubt (in criminal cases) and on a balance of probabilities (in civil cases). This was and remains a major challenge for victims of sexual violence particularly in conflict and crisis setups".⁸⁰ KNCHR contested this strict legal requirement arguing that, "the international jurisprudence especially at the International Criminal Court has shifted this high evidential threshold and held that sexual violence perpetuated in the context of conflict has peculiar and unique circumstances that limits the victims hence the oral testimony of the victim, together with other corroborating factors is enough to activate conviction".⁸¹

This position is in line with the recommendation issued by the African Commission on Human and Peoples' Rights (ACHPR) in its *Guidelines on Combating Sexual Violence and its Consequences in Africa*.

Article 40.5.ii provides that, "for offences involving sexual violence, States must provide for a reversal of the burden of proof such that the victims are not obliged to provide any evidence other than their own statement. This means that, depending on the circumstances, the statement of the victim can be sufficient proof of an act of sexual violence in the absence of any other corroborating evidence (witness statements, documents, medical reports, photos, etc.)."

Under Article 45, "States must take into consideration the context of the conflict or crisis, especially the difficulties in gathering evidence that generally result from the destruction of infrastructure and public services, which commonly occurs in conflict and crisis zones. This means that the evidence collected should come from a variety of sources. Investigators must pay particular attention to any risk factor or contextual element that could reveal the perpetration of possible acts of sexual violence in times of conflict and crisis [...]."

79. KNCHR, *Silhouettes of Brutality*, p. 28.

80. Esther Waweru (2019), "The Impacts of Legal Proceedings in Kenya on Victims of Sexual Violence Committed During the Post-Election Unrest in 2007-2008", in FIDH, *The Impacts of Litigation on Combating Sexual Violence and its Consequences in Africa. Sharing Experience and Practical Advice*, p. 61, https://www.fidh.org/IMG/pdf/fidh-lhr_compendium_impact_of_litigation_on_combating_sgbv_in_africa_nov2019.pdf.

81. KNCHR, *Silhouettes of Brutality*, p. 28.

Article 46 provides that, “it is considered to be impossible for the victims of sexual violence to give their consent under the circumstances of generalised violence and mass atrocities in which international crimes are committed. For this reason, to avoid any risk of additional injury, the victim must not be questioned about consent [...]”

Finally, Article 66.1 states that “States must adopt and apply specific legislation that criminalises all forms of sexual violence and metes out appropriate punishment to the perpetrators [...] This legislation must [...] be regularly updated and must contain provisions that provide the following in particular: [...] rules of civil and criminal procedure that respect the rights and the needs of the victims of sexual violence. These norms must include but are not limited to the following: that the absence of evidence corroborating the victim’s testimony does not prevent judicial prosecution as well as the judgment of the perpetrator with respect to the right to a fair trial [...]”

In 2017, as in the case of the 2007-2008 PEV, police pointed to the lack of adequate evidence or the inability to identify perpetrators to justify the absence of investigation and prosecution for sexual violence cases.

“We had about six cases which were reported in this desk of women who had been raped. This was quite high compared to the normal times because it was such high reporting within a short time of the election. There are no arrests made since it was not easy to identify perpetrators.”
(Police Officer, Kisumu)

“When violence broke out, police officers, who were sent to quell the violence and keep security, were claimed to have been raping women. But, there was not a single reported incident at my office.” (Local chief from the administration of Migori)

In their joint report on the 2017 election-related sexual violence, OHCHR, UN Women and PHR denounced the unwillingness of the police to initiate investigations despite available information on the large-scale occurrence of sexual violence. According to the report, “this approach did not take into consideration that the NPS, IPOA and IAU⁸² can initiate investigations on their own motion”.⁸³

In Kisumu, survivors who attempted to report their case to the police said that they faced resistance from the security agents.

“I reported to the police, I went to Obunga police station. I was chased away and they told me they didn’t want to hear these allegations. I cried and screamed asking them why. I said, ‘I’m not going away until I get an OB number’.⁸⁴ I sat there. It took time but they finally recorded my statement. I didn’t get the details of what was written but I have an OB number. When they gave it to me, they told me ‘Where do you think you’re taking this OB number? We are police officers. You will not go to any court’. So far, I have no updates.” (Survivor R, Kisumu)

82. Internal Affairs Unit.

83. OHCHR, UN Women, PHR, *Breaking Cycles of Violence*, p. 18.

84. When a crime is reported to the police, it should be recorded in the Occurrence Book (OB) by a police officer. The survivor is then given an OB number.

Other survivors' accounts indicated that the police were unwilling or unable to provide them with the necessary support.

"When I was raped, I went to the police station because I have been working closely with them as a community volunteer and a human rights defender. I had hoped that I would be received well and get help. I was shocked when I was told that I cannot get an OB number because the reporting counter had been closed. I tried to call the Officer who managed the Gender Desk since we were familiar to each other due to our close working relationship. She turned me down and confirmed that the desk had been closed until normalcy returned. She promised to get me an OB number later when things are back to normal. Further, I tried to reach the senior police officer in that station who told me that he could not help because he had been physically assaulted and broke his hand during the riots." (Survivor K, Vihiga)

Representatives from the IPOA told FIDH and KHRC that their internal assessment indicated that most of the police stations had poor facilities. They said that most of the police stations had not received adequate administrative support from the NPS, even lacking stationery. According to IPOA representatives, this was the reason for the lack of Occurrence Books (OB) in Vihiga police station.

The State's responsibility for investigating and prosecuting cases of election-related sexual violence was challenged before the Kenya High Court by eight survivors (six women and two men) of post-election sexual violence committed in 2007-2008, together with four NGOs.⁸⁵ In a decision rendered on 10 December 2020, the High Court found that the Government of Kenya was responsible for failing to conduct independent and effective investigations and prosecutions of SGBV committed by State agents and awarded compensation to four of the plaintiffs.⁸⁶ It is to be hoped that this decision will lead to a more pro-active approach when it comes to investigating sexual violence and prosecuting its perpetrators, in particular when the latter are State agents.

Yet to date, to our knowledge, despite the corroborated information documented by KNCHR, HRW, OHCHR, UN Women, PHR, FIDH and KHRC, among others, no genuine investigations or prosecutions have been initiated on the cases of election-related SGBV committed in 2017.

3. Engendering political violence

Analysing the characteristics of political violence in Kenya, Sarah Jenkins underlines that "the extent to which violence has become normalised and embedded in everyday life and politics in Kenya plays a significant role in facilitating its use during electoral periods."⁸⁷ This analysis could apply to election-related SGBV as a very specific form of political violence. The "normalisation" of SGBV on the national political scene has indeed contributed to it taking a particular dimension during election periods. Civil society activists and academics have analysed the underlying causes of this "normalisation". Among several plausible causes, gender oppression, entrenched impunity and "patriarchal backlash"⁸⁸ have been put forward.

85. For the facts of the case, see *Coalition on Violence Against Women and Others v. the Attorney-General of Kenya and Others*, Facts, accessed 14 January 2021, <https://www.justiceinitiative.org/litigation/coalition-violence-against-women-and-others-v-attorney-general-kenya-and-others>.

86. PHR, "Court Delivers Justice for Several Survivors of Post-Election Sexual Violence in Kenya", 10 December 2020, <https://phr.org/news/court-delivers-justice-for-several-survivors-of-post-election-sexual-violence-in-kenya/>.

87. Sarah Jenkins, "Violence as an Election Strategy".

88. Terminology used by Berry, Bouka and Kamuru in "Implementing Inclusion".

Election-related SGBV as a manifestation of structural power relations

Gender is defined as a social construct based on the “roles, behaviours, activities, and attributes assigned to women and men, and to girls and boys”.⁸⁹ Gender can also be understood as being “a structural power relation which rests upon a central set of distinctions between different categories of people, valorises some over others, and organises access to resources, rights, responsibilities, authority, and life options along the lines demarcating those groups”.⁹⁰

Election-related SGBV is not caused by the holding of elections. It takes place in the context of the perpetuation of a patriarchal system “where hegemonic men exercise *power* and *dominate* women and other men through control of society’s governmental, social, economic, religious and cultural institutions”.⁹¹

In a 2016 study, the NGEV called on the authorities to declare gender-based violence (GBV) “a national disaster”.⁹² The Commission estimated that “about 39 percent of women and girls in Kenya aged 15 and above have experienced physical violence, with approximately one in four experiencing such violence each year”, thus making GBV the “most widespread and socially tolerated forms of human rights violations and a major source of inequality in Kenya”. Two years previously, the Kenya Demographic Health Survey (2014) estimated that 45% of women and 44% of men aged between 15 and 49 had experienced SGBV in both private and public spheres.⁹³

Acknowledging the nexus that exists between gender and the preservation of or access to power, resources and authority, makes it possible to grasp some of the mechanisms behind the perpetration of election-related SGBV. In the Kenyan context, the preservation of the hegemonic control of men over the political system seems to have constituted a motive in the perpetration of election-related SGBV against women, and men, with a view to exercising political dominance and power over certain persons and communities.⁹⁴

During the 2007-2008 post-election violence, men and boys, mostly from the Luo ethnic group, experienced forced male circumcision, principally at the hands of members of the Kikuyu Mungiki group. Circumcision is not a traditional practice in the Luo community, whereas it is a cultural rite of passage for most of the other ethnic groups in Kenya, representing a transition to manhood. The perception, within certain communities, that a man who is not circumcised is not a “real man” and that, therefore, is not fit to exercise power and lead the country, was one of the driving forces behind acts of forced circumcision.⁹⁵ In the eyes of many, Raila Odinga being Luo, and therefore “uncircumcised”, did not have the legitimacy nor the capacity to be a leader.

Academic Jessica Auchter recalls that “among the Kikuyu ethnic group, circumcision is seen as enabling entry into a group of higher social standing and the political economy more broadly by conferring the status of manhood. But performed as an act of sexual violence, in this case by force

89. International Criminal Court (ICC) (2014), Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, cited in FIDH, *Sexual and Gender-Based Violence, a Glossary from A to Z*, https://www.fidh.org/IMG/pdf/atoz_en_book_screen.pdf, p. 85.

90. Carol Cohn (2013), “Women and Wars: A Conceptual Framework”, in *Women and Wars*, Carol Cohn (ed.), Cambridge, Polity Press, p. 4.

91. Carol Cohn, “Women and Wars”. Emphasis added.

92. NGEV, *Gender-Based Violence in Kenya*, p. 11.

93. This survey was referred to in OHCHR, UN Women, PHR, *Breaking Cycles of Violence*, p. 2.

94. Tchérina Jerolon (2021), “Dismantling Election-Related Sexual and Gender-Based Violence in Kenyan Politics”, *LSE Women Peace and Security Centre*, <https://blogs.lse.ac.uk/wps/2021/04/26/dismantling-election-related-sexual-and-gender-based-violence-in-kenyan-politics/>, accessed on 13 August 2021.

95. See Jessica Auchter, “Forced Male Circumcision”, and Beth Maina Ahlberg and Kezia Muthoni Njoroge, “Not Men Enough to Rule”.

on Luo men by Kikuyu men, it becomes a degrading act, one which is designed to emphasise the lower standing of Luo men. That is, a practice that, when carried out as part of accepted communal ritual, is considered elevating and masculinising becomes, when perpetrated on victims, the very opposite: *degrading, feminising and castrative*.⁹⁶ Wanjiru Kamau-Ruttenberg observes that “the forced circumcisions were not just acts of violence; they must be understood as occurring in a context of Luo feminisation”,⁹⁷ feminisation meaning unable to lead and run the country or to exercise power generally. According to Brigid Inder, forced male circumcision was “intended as an expression of political and ethnic domination by one group over the other, and was intended to diminish the cultural identity of Luo men”.⁹⁸

Election-related SGBV induces a form of domination and control over individuals or communities, in particular over their bodies, in order to impose political, economic and social power on them.

Entrenched impunity perpetuating election-related SGBV

Several organisations have pointed to the total impunity that those responsible for election-related SGBV continue to enjoy, as one of the main factors contributing to its recurrence. KNCHR declared that “failure to punish perpetrators of the 2007-08 electoral violence can be attributed to [sic] the repeat of the sexual violence attacks on candidates and sections of voters in the 2017 electioneering period”.⁹⁹ The CEDAW Committee also linked the perpetration of election-related SGBV in 2017 to the absence of justice and reparation for survivors of past crimes and called upon the authorities to prosecute the perpetrators of election-related SGBV committed in 2007-2008 and 2017.¹⁰⁰ The UN Human Rights Committee, which examined Kenya in May 2021, stated that it was concerned that “continued impunity for the grave human rights violations that occurred in the context of the 2017 elections, including lethal use of force, assaults, torture and sexual violence by police officers, and the failure to provide remedies to victims, including guarantees of non-repetition, could undermine the electoral process in 2022”.¹⁰¹

To date, there has been no meaningful action taken by the authorities to genuinely investigate election-related SGBV committed during the 2007-2008 PEV and the 2017 general elections, despite the scale and gravity of the crimes and continuing consequences for survivors. While impunity cannot be seen as the sole cause of the recurring perpetration of election-related SGBV, it reflects Kenya’s renouncement of its national and international human rights commitments and obligations.¹⁰² It discredits political power when those who commit sexual violence – in particular when they are part of security forces – can escape justice, and contributes to further accentuating divisions in society, between those who exercise political power, and the others.

Patriarchal backlash to secure political gains

Cases of Kenyan female politicians experiencing significant forms of SGBV have been documented.¹⁰³ Since the adoption of the 2010 Constitution and the introduction of quotas for elective or nominated

96. Jessica Auchter, “Forced Male Circumcision”, p. 1346. Emphasis added.

97. Cited by Jessica Auchter, p. 1347.

98. Cited by Jessica Auchter, p. 1350.

99. KNCHR, *Silhouettes of Brutality*.

100. CEDAW Committee, *Concluding observations on the eighth periodic report of Kenya*, CEDAW/C/KEN/CO/8, 22 November 2017, p. 7.

101. Human Rights Committee, *Concluding observations on the fourth periodic report of Kenya*, CCPR/C/KEN/CO/4, 11 May 2021, p. 11.

102. See *infra*.

103. Marie E. Berry, Yolande Bouka, Marilyn Muthoni Karmuru, “Implementing Inclusion”.

positions, violence against women politicians has been even more rampant, in particular during elections, with reports of women being verbally and physically attacked, including by male colleagues.

In a 2018 study on violence against women in politics (VAWP), the UNDP and UN Women reported the testimony of a Kenyan woman member of parliament who stated that “the greatest expense for women running for parliament in Kenya is around-the-clock security, which is necessary because of the danger of rape, a common intimidation tactic”. According to a woman candidate, women “routinely carried concealed knives and wore two sets of tights under their dresses in order to buy more time to scream during attempted rape”.¹⁰⁴

Violence against women in politics (VAWP) has received increased attention over the past years, given the extent of this particular type of violence observed in a number of regions and countries. According to the United Nations, VAWP is “any act of, or threat of, gender-based violence, resulting in physical, sexual, psychological harm or suffering to women, that prevents them from exercising and realising their political rights, whether in public or private spaces, including the right to vote and hold public office, to vote in secret and to freely campaign, to associate and assemble, and to enjoy freedom of opinion and expression. Such violence can be perpetrated by a family member, community member and or by the State”.¹⁰⁵ The UN defines violence against women in elections (VAWE) as “a form of violence against women intended to impact the realisation of women’s political rights in an electoral context. This includes women’s participation as candidates, voters, activists, party supporters, observers, election workers, or public officials”.¹⁰⁶

With the introduction of the quotas provided for in the 2010 Constitution, a greater number of women – still far from approaching parity – have been able to enter the Kenyan political arena. Following the 2013 general elections, women represented 19.4% of National Assembly members (with 68 women elected and nominated, out of 350 members). They represented 27% of Senate members (with 18 women nominated). Women represented 34 of members of County Assemblies (with 762 women, mostly nominated, out of 1450 members). No woman was elected to the position of governor.¹⁰⁷ These figures improved slightly after the 2017 elections. 3 women were elected as governors and 3 as senators, and the number of women candidates increased by 29%. In total, women held 172 of the 1,883 elected seats, up from 145 following the 2013 elections.¹⁰⁸

These developments have been accompanied by significant cases of violence against women candidates and those elected and nominated. According to some academics, the implementation of quotas, in particular in political environments where sexism is rampant, can “trigger various forms of backlash and resistance to women’s political integration, ranging from explicit acts of violence and harassment to sexism in media coverage and social media platforms, directed at women as women with the purpose of leading them to withdraw from political life”.¹⁰⁹ In the Kenyan context, academics have observed that, “violence directed against women in politics is, in part, a reflection of a deeper effort to deny women access to political spaces that have traditionally been dominated by men” and

104. UNDP, UN Women (2017), *Preventing Violence Against Women in Elections. A Programming Guide*, p. 33, <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/preventing-vaw-in-elections-en.pdf?la=en&vs=3742>, accessed on 13 August 2021.

105. UNDP, UN Women, *Preventing Violence Against Women in Elections*, p. 20.

106. UNDP, UN Women, *Preventing Violence Against Women in Elections*, p. 23.

107. USAID, FIDA Kenya, NDI (2013), *Key Gains and Challenges. A Gender Audit of Kenya’s 2013 Election Process*, p. 47, <https://www.ndi.org/sites/default/files/Kenya-Gender-Audit-2013-Electoral-Process.pdf>, accessed on 13 August 2021.

108. NDI, FIDA Kenya, “Record number of women elected in Kenya’s 2017 general elections, but women’s representation remains low”, 28 February 2018, <https://www.ndi.org/our-stories/record-number-women-elected-kenya-s-2017-general-elections-women-s-representation>, accessed on 13 August 2021.

109. Mona Lena Krook and Juliana Restrepo Sanin (2016), “Gender and Political Violence in Latin America”, *Politica y Gobierno*, p. 126.

that this particular type of violence “is becoming increasingly normalised”. They further asserted that the violence symbolises “a reactivation of patriarchal efforts to police women’s bodies and rights through whatever means possible”.¹¹⁰

B. Consequences

As described above, the motivations behind the perpetration of election-related SGBV can be multiple. The impacts of sexual violence can also be multiple, including physical, psychological, economic and social. They can also be political, affecting the participation of women in electoral processes and political life.

1. Physical, psychological, social and economic consequences

Election-related SGBV has significant consequences for survivors, as well as for those around them. Among the impacts on survivors of the violence committed in 2007-2008, CIPEV listed “infection with HIV/Aids, physical injury and psychological trauma, desertion by their spouses, unwanted pregnancy, and loss of trust that they might have had previously in State security agencies”.¹¹¹

In relation to survivors of the 2017 violence, FIDH and KHRC documented physical, psychological, social and economic impacts. Not only were survivors’ lives affected, but also their families and social networks. Many survivors who experienced sexual violence also experienced other forms of violations, including loss of livelihoods. The table below captures and summarises some of these consequences on the basis of some survivors’ testimonies.

CONSEQUENCES	SURVIVORS' TESTIMONIES
Physical consequences e.g., Injuries to reproductive organs (vagina, uterus, cervix); infection with HIV/AIDs, UTIs, STDs/STIs; eye injury due to tear gas; back and abdominal pains; hypertension, ulcers	<p><i>“I was really beaten, one of the places that pains me to date is my back.”</i> (Survivor F, Migori)</p> <p><i>“I have back pain and pain in my uterus.”</i> (Survivor S, Vihiga)</p> <p><i>“I sustained so many injuries on my legs, back, hands and stomach, which left me with a lot of pains.”</i> (Survivor T, Vihiga)</p> <p><i>“I have pains in my body, I have eye problems due to tear gas, I had to obtain spectacles. I suffered a stroke 3 days after the incident and I am on treatment.”</i> (Survivor U, Vihiga)</p> <p><i>“I got counselling at the VCT centre,¹¹² because I was found to be HIV positive.”</i> (Survivor V, Vihiga)</p> <p><i>“I got infected with HIV and this separated me from my husband and children. They misused my body.”</i> (Survivor W, Migori)</p> <p><i>“I went to a private hospital on 20 October 2017 at Rumo medical centre, and they referred me to a district hospital. I went there the same day. I didn’t tell them I was raped, just that I was breathless and that I had pains, because I was too ashamed to tell about the rape. The district hospital tested me for HIV and I was positive.”</i> (Survivor X, Migori)</p> <p><i>“Very long nights. I got ulcers which started after that incident. I have headaches.”</i> (Survivor K, Vihiga)</p>

110. Marie E. Berry, Yolande Bouka, Marilyn Muthoni Kamuru, “Implementing Inclusion”, p. 6.

111. CIPEV final report, p. 261.

112. Voluntary Counselling and Testing Centre.

CONSEQUENCES	SURVIVORS' TESTIMONIES
Psychological consequences e.g., Post-traumatic disorder, insomnia, anxiety disorder, phobia towards men in uniform, denial, fear of attack, stigma	<p><i>"I feel very low at times and wonder how God could allow this to happen to me yet I am the one who has been helping other women." (Survivor K, Vihiga)</i></p> <p><i>"I keep seeing flashbacks, [I have] sleepless nights and general phobia for police officers." (Survivor Y, Vihiga)</i></p> <p><i>"It has led to separation as far as sexual intimacy with my husband is concerned." (Survivor H, Migori)</i></p> <p><i>"My husband became very bitter with me. He keeps threatening me." (Survivor Z, Kisumu)</i></p> <p><i>"I still hold the pain. I hate any person I see in uniform. In the evening, I don't like to go to the road. I fear I will meet someone who will also rape me. I don't have faith in policemen, people in uniform. I fear they will attack me." (Survivor AA, Vihiga)</i></p>
Social consequences e.g., Impact on relations between the survivor and her family or community, desertion by spouse, social stigma and isolation	<p><i>"The name of my hotel was tarnished because it was referred to as "the hotel where people are raped." (Survivor N, Migori)</i></p> <p><i>"Socially, I am not able to relate well with people because I feel like they see what happened to me that day. I feel isolated. My grandchildren who live with me keep wondering what happened to me since I no longer play with them. I feel very low, my esteem has disappeared, and I feel very bad because I was raped by young people." (Survivor BB, Vihiga)</i></p>
Economic consequences e.g., Loss of livelihoods, business capital stolen, lost retirement investments, children dropping out of school, cost of treatment, spouse sanctions to avoid public exposure, perpetual discrimination in relation to economic opportunities in the community	<p><i>"I sold a lot of things including our cows to cater for her hospital bills because my wife's business had stopped." (Husband of Survivor CC, Migori)</i></p> <p><i>"I lost 78,000 in cash and potato stock, and I closed my Mpesa shop." (Survivor D, Vihiga)</i></p> <p><i>"I lost my stock and 15,000 cash which was part of my business capital." (Survivor Y, Vihiga)</i></p> <p><i>"Economically I couldn't work again due to the pain in my back and I lost my husband who could have supported me financially." (Survivor E, Kisumu)</i></p>

Fragilities in the health sector further jeopardised survivors' access to healthcare

According to the National Guidelines on Management of Sexual Violence of 2014, survivors should receive the following services at the health facility: history taking and physical examination, HIV test, vaginal, anal or oral swab, pregnancy test, Post Exposure Prophylaxis treatment (PEP), treatment for any physical injuries and sexually transmitted infections, painkillers, antibiotics and a tetanus injection. They should also be provided with emergency contraceptives, counselling for trauma, drug adherence, psychosocial support and collection and documentation of forensic evidence. Confidentiality should be ensured.¹¹³

113. Kenya Ministry of Health, "National Guidelines on Management of Sexual Violence in Kenya", 3rd Edition, 2014, available at https://www.law.berkeley.edu/wp-content/uploads/2015/10/Kenya_Natl-Guidelines-on-Mgmt-of-Sexual-Violence_3rd-Edition_2014.pdf, accessed on 13 August 2021.

FIDH and KHRC found that various counties had put in place only part of the required preparatory measures to respond to sexual violence during the elections and that these were not effectively implemented. For example, Migori County had trained six health professionals to attend to sexual violence survivors, had procured supplies and had identified confidential reception areas for survivors. However, when violence took place in October 2017 the health facility was inaccessible to survivors due to roadblocks. One of the NGOs in the area had trained staff, mapped the hotspots and coordinated stakeholders to plan how to respond to sexual violence. They had a hotline number and engaged community members known as “peace ambassadors”. However, it was not clear how mental health and psychosocial support services were organised or how survivors could access them.

The sexual violence response mechanism in Kenya is reliant on an effective integrated referral system. However, health services, sometimes mental health services, legal, safety and protection services are not located in the same physical space. This means that survivors have to access these services separately. This involves significant travel and can be costly. In the event of election-related violence, this system is often hampered by inaccessibility due to roadblocks and violence.

Experiences of survivors interviewed were varied. The majority did not receive post-rape care treatment within the recommended 72 hours.¹¹⁴ This was because of delayed reporting due to fear of reprisal and shame, trauma resulting from the violence, but also the inaccessibility of health care services as a result of roadblocks. Most of the survivors interviewed were unaware of alternative options to seek care when the familiar referral systems were inaccessible. These experiences led to some survivors contracting HIV and other sexually transmitted infections, prolonged psychological torment, loss of or tampering with evidence among other effects.

“I did not seek any medical attention due to fear and stigmatisation. There was also a heavy police presence in the area.” (Survivor DD, Vihiga)

“I did not visit a health facility after the rape. I went after 4 months for treatment for vaginal thrush/itching.” (Survivor EE, Migori)

“I did not seek counselling because I was afraid that it may come out and people may know.” (Survivor FF, Migori)

“The health facility I visited is very close to home so I knew the health workers there would spread the news that I had been raped if I reported.” (Survivor Y, Vihiga)

Those services that were available were inadequate as they did not help survivors to preserve forensic evidence of the rape. Most of the survivors who reported sexual violence to government health providers were not given a P3 form to record such evidence, which should be available in public hospitals.

Those who visited the facilities received post-exposure prophylaxis (PEP), painkillers, antibiotics and malaria treatment, but the majority of survivors interviewed were not issued with any medical records or photographs of their injuries.

¹¹⁴ This 72-hour timeline is justified on various grounds. FIDH and KHRC underline that medical consultation remains relevant even after this delay (for the treatment of physical injuries, pregnancy tests, HIV and other STD tests, psychological support, etc.).

In Migori County, for example, ambulances which had been available to ferry injured/sick people to health facilities were blocked by the youth barricading the roads in the surrounding chaos, due to a perception that they were transporting ballot boxes.

Vihiga County had planned to have a section of the health facility for the treatment of sexual violence survivors. However, communities seemed unaware of this plan and there was a perception by survivors that the health facilities would not provide the services due to the national nurses strike at that time.¹¹⁵

In addition to the effects of the strike, most of the public health facilities were closed due to the volatile situation or perception that there would be chaos. Thus, most of the survivors who were able to do so accessed private facilities or chemists. On the basis of survivors' testimonies, most of the private health care providers visited were helpful, attentive and caring to survivors, but they lacked the necessary post-rape care kits.

Most survivors interviewed did not receive mental health and psychosocial support, except voluntary testing and counselling for HIV.

Some of the survivors who visited the health facilities did not disclose they had been sexually violated. Among many other plausible reasons, this may suggest a lack of a safe and confidential environment. In a context where sexual violence had taken place during an electoral period, potentially on a massive scale, this may also raise questions about medical staff's proactiveness in finding out whether patients had faced any forms of sexual violence.

Economic impacts on women's productive activities

During election-related violence, in particular SGBV, women not only experience physical attack, but also, in some cases, the destruction of their businesses and property, which are often located in violence hotspots. In Kenya, the productive space is largely occupied by informal enterprises, especially in urban areas.¹¹⁶ Women run small micro businesses, often as sole owners, working as traders or service providers. Their businesses are part of the informal economy (mostly due to bureaucratic and expensive processes to obtain proper documentation).¹¹⁷ Their situation is further compounded by weak, unresponsive social protection initiatives which do not cushion them when they experience shocks. The destruction and theft of business stock and property that takes place during election-related violence and the lack of compensation mechanisms mean that women suffer immense economic losses. In addition, psychological trauma following election-related SGBV means that some survivors are not able to fully resume their previous economic activity, resulting in loss of earnings and livelihoods.

In its 2018 report, KNCHR found that 62.9% of the survivors of election-related SGBV "were the breadwinners of their households, with more than 80% engaging in the informal employment sector". The violence that erupted "resulted in destruction of property, with small-scale business-people bearing the brunt of the destruction".¹¹⁸

115. At the time of the events, nurses from public hospitals in Kenya had been on strike since June 2017. See, for example, <https://theconversation.com/nurses-strike-shows-poor-management-of-health-care-in-kenya-86473>.

116. Mary Njeri Kinyanjui (2014), *Women and the Informal Economy in Urban Africa: From the Margins to the Centre*, Zed Books.

117. Mary Njeri Kinyanjui (2014), *Women and the Informal Economy in Urban Africa*.

118. KNCHR, *Silhouettes of Brutality*, p. 32.

2. Obstacles to women's political participation

Most of the women interviewed by FIDH and KHRC reported that they no longer have any interest in participating in electoral processes. Some survivors indicated they would not vote again, for fear for their lives and those of their families. The fact that State agents are among those responsible for insecurity and the perpetration of SGBV, without being held to account, acts as a further deterrent for women's participation in political life. To some extent, this leads to jeopardising actions carried out over years by women in Kenya aimed at opening up spaces for women's participation in the political process. The statements below echo the majority of testimonies collected by FIDH and KHRC.

"I have no interest in the elections anymore. I have learnt that before and after an election, close your shops and stay at home. Security agents didn't help since they brought chaos instead. Security agents should be sensitised that they should observe peace. Why should they follow and attack unarmed people?" (Survivor Q, Migori)

"Sometimes I think why it is that, when voting time comes, women suffer. In 1997, I was young. When they voted, people fought. In 2007, 2013, 2017. Why should we keep on voting? There's no need to vote. Why [do] small people suffer, why not big people? They make people fight and then run away. Is it of value for people to vote? And if it is, why should people fight? They lose life for no reason just because someone wants a seat. I don't value voting in Kenya." (Survivor GG, Vihiga)

In the context of her research on the correlation between the democratisation process and the perpetration of election-related SGBV in Kenya, Lyn Ossome interviewed survivors of SGBV committed in 2007-2008.¹¹⁹ All politically active rape survivors she interviewed told her "that they would not participate in politics again, and a majority of the women interviewed (all of whom had voted) said they would not vote again in another election".¹²⁰ "Some of the women drew a connection between their rape and their political activities/participation, and all of the women [...] blamed their desperate economic situation on their political activism as part of the electorate, or participation as local level candidates."¹²¹ Ossome observed that, "these seemed like citizenship questions that these rape survivors were articulating, where it is possible and necessary to question whether the sexual dehumanisation of women during election periods is one of the ways in which women are being forcibly silenced and their citizenship claims submerged".¹²²

Other stakeholders have analysed violence against women during elections in Kenya as being not only opportunistic, but also as fundamentally aimed at excluding women from participating in the political process, as candidates, voters, elected or nominated political figures. In 2008, the "Kriegler Commission",¹²³ in charge of establishing the facts surrounding the general elections, denounced the use of "sexist tactics and violence to keep women out of the race". KNCHR observed that "the

119. Lyn Ossome (2018), "Gender, Ethnicity and Violence in Kenya's Transitions to Democracy", *States of Violence*, Lexington Books.

120. Lyn Ossome, "Gender, Ethnicity and Violence", p. 176.

121. Lyn Ossome, "Gender, Ethnicity and Violence", p. 188.

122. Lyn Ossome, "Gender, Ethnicity and Violence".

123. The Independent Review Commission on the General Elections held in Kenya on 27 December 2007, referred to as the "Kriegler Commission" (in reference to its Chairman, Johann Kriegler), was set up by the government of Kenya to establish the facts concerning all aspects of the general elections, in particular the presidential election. Its report is accessible here: <https://aceproject.org/regions-en/countries-and-territories/KE/reports/independent-review-commission-on-the-general>, accessed on 6 July 2021.

key drivers of sexual violence in the elections include planned and premeditated acts by both the contestants and the electorate to scare women in particular from participating in the electoral process".¹²⁴

Despite the risks of an eruption of election-related violence, the 2007, 2013 and 2017 general elections saw extremely high participation rates. Voter turnout ranged from 75% to 80% in 2007;¹²⁵ it reached 85% in 2013,¹²⁶ and 78% during the first 2017 presidential election.¹²⁷ In 2007, "despite facing sexism and, in at least one instance, lethal violence, more women made it through competitive political party nomination processes to stand for elective office than ever before".¹²⁸ In 2017, 47% of registered voters were women.¹²⁹

These figures require further analysis to better understand their implications, in particular what they say about the interest of women – and men – in political affairs. But at the very least, they imply that a large portion of women go to the polls to cast their ballots. Hence, and in light of survivors' testimonies, the continuing politicisation and use of SGBV during election periods, which contributes to "perniciously functioning against the emancipatory aspirations of women in Kenya",¹³⁰ increasingly questions the credibility and legitimacy of the whole political and electoral process.

C. Security forces and election-related sexual and gender-based violence

1. Political violence at the hands of security forces

The security sector in Kenya, in particular the police, has been abundantly criticised for its involvement in the perpetration of human rights violations, as well as for its partiality and tendency to behave as a major actor in political violence. The police have been regularly singled out for the use of extrajudicial killings, enforced disappearances, arbitrary arrests and detentions, acts of torture, rapes and other forms of sexual violence, including against the real or perceived political opponents of those in power.

The TJRC report provides a detailed account of the Kenyan police's historical record of human rights abuses, during British colonisation and since the country's independence in 1963.¹³¹ The Commission found that "the use of excessive and disproportionate force by the police has been a common theme running through Kenya's history" and that this excessive use of force "resulted in significantly high number of deaths".¹³² The Commission also highlighted that "the deliberate use of unlawful detention, torture and ill-treatment by security forces was encouraged and sanctioned by law in all three post-independence governments", including against "those who were considered critical of the government" and that "each of these successive political regimes failed to stop the practice and failed to prosecute and punish the torturers".¹³³ The TJRC also underlined that "of all the cases of sexual violence committed during conflict, the majority of them were committed by State security agents

124. KNCHR, *Silhouettes of Brutality*, pp. 5-6.

125. L. Muthoni Wanyeki (2008), "Lessons from Kenya: Women and the Post-Election Violence", *Feminist Africa* 10, 91-98, p. 93.

126. IFES Election Guide, <https://www.electionguide.org/elections/id/2268/>, accessed on 13 August 2021.

127. IEBC, *Data Report of 2017 Elections*, <https://www.iebc.or.ke/uploads/resources/siEABKREDq.pdf>, p. 3, accessed on 8 July 2021. The repeat 2017 election held on 26 October saw a low voter turnout of 38 per cent.

128. L. Muthoni Wanyeki, "Lessons from Kenya", p. 91.

129. IEBC, *Data Report of 2017 Elections*.

130. Lyn Ossome (2018), "Gender, Ethnicity and Violence in Kenya's Transitions to Democracy", *States of Violence*, Lexington Books.

131. TJRC report, Volume II a.

132. TJRC report, Volume IV, p. 28.

133. TJRC report, Volume IV, pp. 29-30.

and that security agents used sexual violence as a weapon to terrorise, suppress, intimidate and humiliate communities".¹³⁴

Regional and international human rights institutions have also regularly condemned Kenya for abuses by its police. The ACHPR has addressed the matter of police brutality in Kenya on a number of occasions, including recently.¹³⁵ The UN Committee Against Torture has expressed concerns over allegations of "extrajudicial killings, enforced disappearances and excessive use of force by police officers [...] as well as [...] the low rate of investigations and prosecutions of such acts".¹³⁶ In his 2011 report, the UN Special Rapporteur on extrajudicial executions documented "widespread extrajudicial killings by the police, the existence of death squads, and lack of internal and external police accountability mechanisms".¹³⁷

In relation to election-related SGBV, as mentioned above, CIPEV highlighted the responsibility of security forces in the cases documented during the 2007-2008 PEV; and in 2017, KNCHR found that 54.5% of its documented sexual violence cases were perpetrated by security agents, and 45.5% by civilians.

Such acts of violence committed by police officers are often politically driven. Mutuma Ruteere observes that "the Kenyan police are often used by the government in power to advance partisan political interest at the expense of citizen protection and service".¹³⁸ The lack of neutrality of security agents was also highlighted by CIPEV, which referred to testimonies on "security agents that were ethnically biased, if not hostile, to individuals not from their own ethnic groups".¹³⁹

It is crucial to determine to what extent the election-related SGBV committed by police officers in 2007 and 2017 resulted from a strategy (defined as "purposefully adopted by commanders in pursuit of group objectives"), and/or from a practice (defined as "not ordered but tolerated by commanders").¹⁴⁰ In both cases, this particular form of violence must be fully addressed within any reform process undertaken within this sector. This should be done alongside the adoption of genuine investigation and prosecution measures.

The role of "proxies" of security forces in the perpetration of election-related SGBV must also be explored. Several survivors indicated to FIDH and KHRC that they had been raped by men wearing dreadlocks. Yet, traditionally in Kenya, dreadlocks are associated with the illegal gang commonly known as "Mungiki", originally founded by the Kikuyu community and mainly composed of marginalised young men who subscribe to the worship of "Thaaism".¹⁴¹ It is not practice for security officers in Kenya to have dreadlocks. A KHRC book published in 1998, *Killing the Vote, The State-Sponsored Violence and*

134. TJRC report, Volume IV, p. 33.

135. Resolution on the Human Rights Situation in the Republic of Kenya, ACHPR/Res. 445 (LXVI) 2020, <https://www.achpr.org/sessions/resolutions?id=476>, accessed on 8 July 2021.

136. CAT Committee, *Concluding observations on the second periodic report of Kenya*, 2013, CAT/C/KEN/CO/2.

137. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Christof Heyns, 26 April 2011, A/HRC/17/28/Add.4.

138. Mutuma Ruteere (2011) "More than Political Tools. The Police and Post-Election Violence in Kenya", *African Security Review*, 20:4, 11-20, pp. 11-12.

139. CIPEV final report, p. 256.

140. Elizabeth Jean Wood (2013), "Multiple Perpetrator Rape during War", in *Handbook on the Study of Multiple Perpetrator Rape*.

141. See for example Immigration and Refugee Board of Canada, 15 November 2013, <https://www.justice.gov/sites/default/files/eoir/legacy/2014/03/21/KEN104594.E.pdf>; and Patrick Lynch, "The Mungiki" (2017), *History Collection*, <https://historycollection.com/shadows-streets-5-notorious-street-gangs/4/>. Mungiki is an outlawed ethnic religious group that was responsible for various crimes and human rights abuses during the 2007-2008 post electoral violence, including arson, forceful circumcision, rape, destruction of property and maiming. The Mungiki group was used by politicians to perpetrate the violence.

Flawed Elections in Kenya, exposed the political tactic employed by the government which consisted in recruiting illegal (informal) organised groups and equipping them with official police attire and apparatus to commit criminal acts.

As already documented by our organisations in a previous report, “[i]n December 2016, the government gazetted a total of 90 illegal criminal groups, some of whom were funded by politicians and colluded with police officers. Among those that were identified are groups like “Superpower” and “Gaza gangs” whose members have been extrajudicially executed by security agencies [...]. The Mungiki group that was implicated in the post-election violence in 2007 seems to have rebranded as Eminants of Mungiki and was also included in the list.”¹⁴²

The resultant effect of this tactic is to conceal evidence and delink the government from the events, thus making it harder to hold them accountable. By employing surrogate agents or proxies rather than relying on State security personnel to carry out violations, the government ensures there is no clear evidence linking it to the violence. The government can thereby deny responsibility, attributing it to unknown vigilantes or blaming the political opposition.

During the 2017 electoral violence, it is also possible that the perpetrators identified as civilians, including those wearing police uniforms with dreadlocks, were not police officers but wanted to be seen as such, in order to discredit the police and perhaps even the camp of the ruling party controlling the police.

According to survivor testimonies, the most common language heard by survivors from the perpetrator(s) was Kiswahili, sometimes with some accents (Kikuyu Luhya or Nairobi Sheng). Kiswahili is an official language and the main language in Kenya and is therefore the easily connecting language among tribes. Thus, if most of the perpetrators spoke Kiswahili, in Counties with a predominance of Luo and Luhya ethnicities, it can be assumed that they did not belong to the same tribe, or even that they originated from elsewhere. This is reinforced by the survivors’ testimonies that the police were not local and by the fact that, according to several sources, police officers were deployed from various services.¹⁴³

2. Reforms and their impacts on the reduction of election-related sexual and gender-based violence

The need to initiate a reform process within the Kenyan security sector, in particular within the police, has been highlighted on multiple occasions. During the first term of Mwai Kibaki (2002-2007), “the aim was to transform the police into an effective, efficient, human rights-respecting, people-oriented and accountable institution”,¹⁴⁴ but this ambition was never translated into concrete acts.

In the aftermath of the 2007-2008 post-election violence, the lack of police preparedness to respond to the eruption of violence, and the multiple allegations of police involvement in the perpetration of violations, reinvigorated the debate around the need to reform the sector. This was one of the major recommendations issued by CIPEV¹⁴⁵ and TJRC.¹⁴⁶ The principle of reform was also anchored

142. FIDH and KHRC, *Kenya's Scorecard on Security and Justice*.

143. KNCHR, *Silhouettes of brutality*.

144. Mutuma Ruteere, “More than Political Tools”, p. 13.

145. CIPEV recommended urgent and comprehensive reform of the Kenya police and the Administration Police to be undertaken by a panel of policing experts. CIPEV final report, pp. 478-481.

146. TJRC report, Volume II a.

in the 2010 Constitution which provides for the establishment of new institutions¹⁴⁷ in charge of guaranteeing “national security that shall be pursued in compliance with the law and with the utmost respect for the rule of law, democracy, human rights and fundamental freedoms”.¹⁴⁸

Among these institutions, the Constitution provides for the creation of the NPS – comprising the Kenya Police Service, the Administration Police Service (AP) and the Directorate of Criminal investigations (DCI) – and the National Police Service Commission (NPSC), mandated to recruit, appoint, transfer and discipline police officers or remove them from office. The IPOA was further created to oversee the conduct and actions of the police, monitor and investigate policing operations.

Researchers and activists welcomed this long-awaited reform process, while regretting its “overly legalistic approach”.¹⁴⁹ This approach has indeed not enabled the police to fully comply with the aspirations put forward in the Constitution. On the contrary, and as noted above, the police remain the main perpetrator of human rights abuses in the country.

In relation to the fight against election-related SGBV, several shortcomings persist, which contribute to the normalisation of this particular form of violence and impunity of perpetrators. Measures are insufficient in terms of support provided to survivors, investigations and prosecutions and internal investigative and disciplinary measures in cases where the responsibility of police officers is alleged.

FIDH and KHRC met with IPOA officials who admitted that women faced sexual violence during the 2017 general elections, but who disputed the high prevalence of cases and claimed that fewer than 10 cases of sexual violence were reported. In addition, IPOA officials stated that, while the cases were reported during the election period, they could not establish any link with the electoral violence. FIDH and KHRC also met with police officers who denied the existence of election-related SGBV during the 2017 elections.

“I disagree with the [preliminary findings on prevalence of sexual violence in the election]. No such thing ever happened in this area and no such reports were ever received. Go and talk to the County Commander, maybe she has any such report.” (Deputy County Commissioner, Vihiga)

“I am not aware of sexual violence during the election period. I heard it for the first time during the 16 days of gender activism when women shared their experiences. There is usually poor reporting due to stigma and shame.” (Chief, Central Maragoli)

“There was no sexual violence reported during the election period.” (Senior Sergeant, Vihiga Police Station)

147. For a more detailed account of the police reform process in Kenya, see, for example, Japheth Biegon and Andrew Songa (2018), “Kenya: The Impact of Counter-Terrorism Measures on Police Reform” in *Policing Reform in Africa: Moving Towards a Rights-Based Approach in a Climate of Terrorism, Insurgency and Serious Violent Crime*, African Policing Civilian Oversight Forum, pp. 197-220; FIDH and KHRC, *Kenya’s Scorecard on Security and Justice*.

148. Article 238 of the Constitution of Kenya.

149. Japheth Biegon and Andrew Songa, “Kenya: The Impact of Counter-Terrorism Measures on Police Reform”, p. 198.



Kenyan anti-riot police officers secure a street blocked by a burning barricade set up by supporters National Super Alliance (NASA) presidential candidate Raila Odinga during a protest in Majengo, about 20 km north of Kisumu, Kenya, on October 28, 2017. © Yasuyoshi Chiba/AFP

In their joint report, OHCHR, UN Women and PHR pointed out specific deficiencies that illustrate Kenya's failure to investigate, prosecute and ensure accountability for ERDV.¹⁵⁰ Most of these findings concur with FIDH and KHRC's observations, including: the absence of "contingency measures [...] to facilitate the reporting of ERSV to police during the 2017 electoral period";¹⁵¹ the absence of specialised and continuous training for police officers "on the distinct forms, types and manifestations of ERSV";¹⁵² the police's "heavy reliance on reporting by survivors in order to initiate investigations";¹⁵³ the lack of understanding "that investigations should proceed even if the perpetrators' identity is unknown";¹⁵⁴ the requirement for survivors to provide corroborating evidence, including forensic medical evidence;¹⁵⁵ the "lack of gender desks or specialised units to handle cases of sexual violence at all police stations".¹⁵⁶

150. OHCHR, UN Women, PHR, *Breaking Cycles of Violence*.

151. OHCHR, UN Women, PHR, *Breaking Cycles of Violence*, p. 17.

152. OHCHR, UN Women, PHR, *Breaking Cycles of Violence*, p. 18.

153. OHCHR, UN Women, PHR, *Breaking Cycles of Violence*, p. 18.

154. OHCHR, UN Women, PHR, *Breaking Cycles of Violence*, p. 19.

155. OHCHR, UN Women, PHR, *Breaking Cycles of Violence*, p. 19.

156. OHCHR, UN Women, PHR, *Breaking Cycles of Violence*, p. 20.

II. CAN A REPEAT OF ELECTION-RELATED SGBV BE AVOIDED IN 2022?

A. Risk analysis

In the run-up to the forthcoming general elections scheduled for 9 August 2022, activists, researchers and institutions have warned of the potential risks of an outbreak of violence. Several risk factors have been singled out, including the exploitation of socio-economic grievances, widespread misinformation, and the general expectation of violence.¹⁵⁷

In this section, we focus on three risk factors that may contribute to an outbreak of violence. We highlight the implications of the new political alliances; the ongoing attacks against the judiciary and the Kenya National Human Rights Commission (KNCHR) and the impacts of the COVID-19 pandemic. We then analyse some of the gender dimensions of these risks, in particular concerning the prevention of election-related SGBV.

1. Risk factors

Risk factor 1: The 2013 “peace narrative” rendered obsolete by the formation of new alliances

Uhuru Kenyatta is completing his second and final presidential term. In accordance with the Constitution, he will not be able to stand for re-election in 2022. In 2013 and 2017, he ran on a joint ticket with William Ruto, as part of the Jubilee Alliance, and it had been expected that he would support the Ruto’s presidential candidature in 2022.

With political figures mostly relying on ethnic statistics to form their electoral coalitions, the Kenyatta-Ruto Jubilee Alliance was meant to secure votes from Kikuyu (17% of the population), Kalenjin (13% of the population), and other ethnic groups. The alliance was part of the “peace narrative” put forward by Kenyatta and Ruto following the 2007-2008 post-election violence (see above section A. 1). But strong dissension arose within the Jubilee Alliance and it is now expected that Kenyatta will no longer support Ruto in 2022.

Divisions arose after the March 2018 “handshake” between Uhuru Kenyatta and Raila Odinga and the subsequent creation of the BBI. The BBI provides for institutional reforms, in particular within the executive branch, with a view to “fix some of the country’s deep-rooted challenges such as the cyclic post-election violence”.¹⁵⁸ Among the proposed reforms, the BBI seeks to re-create the position

157. See, for example, The Sentinel Project, “The 2022 Kenyan General Election: An Analysis of New and Enduring Violence Risk Factors”, 29 March 2021, <https://thesentinelproject.org/2021/03/29/the-2022-kenyan-general-election-an-analysis-of-new-and-enduring-violence-risk-factors/>, accessed on 10 July 2021.

158. Uhuru Kenyatta, “BBI Will Help Address Some of Kenya’s Recurrent Challenges”, 25 November 2020, <https://www.president.go.ke/2020/11/25/bbi-will-help-address-some-of-kenyas-recurrent-challenges-president-kenyatta-says/>, accessed on 13 August 2021.

of Prime Minister, two deputy prime ministers, a leader of the official opposition and 70 additional parliamentary seats.

Kenyatta and Odinga sought validation of these major changes through the holding, ahead of the next general elections, of a referendum on their proposed amendments to the Constitution. William Ruto, and some of his supporters within the party, publicly opposed the BBI. Some of those who openly criticised the process were ousted from their leadership positions in the Senate and National Assembly.¹⁵⁹ Allegations of politicians resorting to ethnic mobilisation and divisive narratives to gain support for the BBI were also reported.¹⁶⁰ Disagreements over the process even led to violent clashes between its supporters and opponents, as experienced in Nairobi's Githurai area, in January 2021.¹⁶¹

Other cases of violent clashes between the two factions of Jubilee have been reported over the past year. On 10 September 2020, clashes erupted in Kisii County ahead of William Ruto's rally. On 4 October 2020, Ruto's supporters and opponents also resorted to violence during his visit to Murang'a County, leading to two deaths. Ruto's supporters have reportedly denounced the police's political partisanship in disrupting their meetings, while demonstrating permissiveness with Kenyatta/Odinga meetings. Violence was also reported at recent by-elections.¹⁶²

In a landmark decision rendered on 13 May 2021, the High Court of Kenya overturned Kenyatta and Odinga's BBI project, arguing that the President's action "to initiate, support and lead the BBI process amounted to abuse of office and a violation [of the Constitution]."¹⁶³ Kenyatta's primary role in the process was interpreted by the judges as a failure to abide by the leadership and integrity provisions provided for in the Constitution, who held that he could be sued for this breach while in office.¹⁶⁴ The decision was openly welcomed by William Ruto and his supporters.

The Attorney General has appealed the High Court's decision, and at the time of writing, a final Court decision is pending. However, it is clear that the BBI process has considerably fuelled political tensions and heightened divisions, raising serious concerns for the conduct of a peaceful electoral process.

Other sources of concern include the persisting fragility of the Independent Electoral and Boundaries Commission (IEBC), which continues to experience structural challenges. At the time of writing, the IEBC was still waiting for the appointment, by the government, of all its members, a situation that may impact its actions. In a context where the results of the 2007, 2013 and 2017 general elections were contested – leading to major violence in 2007-2008 and 2017 – the capacity and credibility of the IEBC remains, once again, a major issue for the viability of the electoral process.

159. Brian Kimari (2021), "Spotlight on security and Kenya's electoral environment: September 2021 to March 2021", Centre for Human Rights and Policy Studies (CHRIPS), <https://www.chrips.or.ke/wp-content/uploads/2021/05/Spotlight-on-security-and-Kenyas-electoral-environment-Sep-2020-to-Mar-2021.pdf>, accessed on 13 August 2021.

160. Kimari (2021), "Spotlight on security and Kenya's electoral environment".

161. Citizen Digital, "Chaos disrupts Raila's BBI rally in Githurai", 27 January 2021, <https://citizentv.co.ke/news/chaos-disrupt-railas-bbi-rally-in-githurai-nairobi-5052752/>, accessed on 13 August 2021.

162. *The Star*, "Chaos, arrests and bribery claims mar by-elections", 5 March 2021, <https://www.the-star.co.ke/news/2021-03-04-chaos-arrests-and-bribery-claims-mar-by-elections/>, accessed on 10 July 2021.

163. KHRC et al., "Joint civil society statement on the landmark Building Bridges Initiative judgement and unwarranted attacks on the judiciary", 20 May 2021, <https://www.khrc.or.ke/2015-03-04-10-37-01/press-releases/746-joint-civil-society-statement-on-the-landmark-building-bridges-initiative-judgement-and-unwarranted-attacks-on-the-judiciary.html>, accessed on 13 August 2021.

164. *The Guardian*, "Kenya's High Court Overturns President's Bid to Amend Constitution", 27 May 2021, <https://www.theguardian.com/global-development/2021/may/27/kenyas-high-court-overturns-president-uhuru-kenyatta-bbi-bid-to-amend-constitution>, accessed on 13 August 2021; BBC, "Kenya's BBI blocked in scathing court verdict for President Kenyatta", 14 May 2021, <https://www.bbc.com/news/world-africa-57094387>, accessed on 13 August 2021.

Risk factor 2: Ongoing attacks against the Judiciary and KNCHR

The government of Kenya maintains a particularly tense relationship with the Judiciary, in particular since the Supreme Court's decision to nullify Uhuru Kenyatta's re-election in 2017 (see above section A. 1). Following this decision, "the entire judiciary was subjected to targeted attacks by the political class who not only called them '*wakora*','¹⁶⁵ but also promised to revisit".¹⁶⁶ According to Kenya Human Rights Commission and other civil society organisations, "this threat has since been realised and is evident from the Executive's persistent disobedience of court orders, the refusal to appoint 40 judges who were recommended by the Judicial Service commission and massive budget cuts that have all been aimed at weakening the Judiciary".¹⁶⁷ CSOs have further expressed concerns over "derogatory public statements" or "targeted attacks against specific judges through social media platforms, smear campaigns and unsuccessful prosecutions".¹⁶⁸

Following the recent BBI judgement, Uhuru Kenyatta delivered a speech on 1 June 2021, in which he attacked, criticised and insidiously threatened the Judiciary. In his address to the Nation, the President declared that "from the nullification of a presidential election in 2017 to an attempt to stop the will of the people as expressed through BBI, the Judiciary has tested our constitutional limits".¹⁶⁹

Uhuru Kenyatta specifically pointed to the Judiciary's responsibility in two major areas: the Government's inability to fund some development programmes and the Government's inability to create "inclusive politics" and end "ethnic majoritarianism". Kenyatta stated that the Supreme Court's 2017 decision had cost "1 billion shillings every working hour for the 123 days [Kenya] held the 2017 election" and that "development programmes meant to make a difference to [the lives of the people] had to be shelved, courtesy of the decision by the Judiciary". Kenyatta further stated that while the BBI "was meant to build bridges, create inclusive politics, and to end ethnic majoritarianism", the Court's decision will necessarily lead to the "losing of 30% of [the] national budget every five years due to toxic politics that BBI seeks to resolve".

These affirmations are problematic and dangerous. They are likely to arouse resentment and mistrust, among the population, towards the Judiciary and may thus presage strong or violent contestation in response to any court decision relating to the upcoming elections. More insidiously, when the President insinuates that the Judiciary should be expected to "shoulder the burden of its choices", he implies that the Judiciary will be expected to assume full responsibility in the event of an outbreak of political violence during the next general elections.

165. Meaning "crooks" in Swahili.

166. KHRC et al., "BBI judgement and unwarranted attacks on the judiciary".

167. KHRC et al., "BBI judgement and unwarranted attacks on the judiciary". On the specific issue of budget cuts and their consequences on access to justice, see <https://icj-kenya.org/news/mr-president-respect-and-support-judicial-independence/>. In June 2021, after the BBI judgement, President Uhuru Kenyatta appointed 34 out of 40 judges. Most notably, two of the High Court judges who delivered the BBI judgement were left out of this round of appointments even though they had been listed for promotion to the Court of Appeal. See, "Uhuru appoints 34 judges, leaves out George Odunga, Joel Ngugi", *Business Day*, 4 June 2021, <https://www.businessdailyafrica.com/bd/economy/uhuru-appoints-34-judges-leaves-out-george-odunga-joel-ngugi-3425134>, accessed on 13 August 2021. Additionally, tensions have escalated further with the questionable arrest of judges in July 2021, in the guise of a corruption investigation. See, "I didn't order arrest of Judges Muchelule and Chitembwe – DPP", *The Star*, 23 July 2021, <https://www.the-star.co.ke/news/2021-07-23-i-didnt-order-arrest-of-judges-muchelule-and-chitembwe-dpp/>, accessed on 13 August 2021.

168. KHRC, BBI judgement and unwarranted attacks on the judiciary.

169. State address by H.E. Uhuru Kenyatta, CGH, President of the Republic of Kenya and Commander-in-Chief of the Kenya Defence Forces during the 58th anniversary of the Madaraka day, 1 June 2021, at Jomo Kenyatta Stadium Kisumu City, <https://www.president.go.ke/2021/06/01/state-address-by-h-e-uhuru-kenyatta-cgh-president-of-the-republic-of-kenya-and-commander-in-chief-of-the-kenya-defence-forces-during-the-58th-anniversary-of-madaraka-day-on-tuesday-1st-june-2021-a/>, accessed on 10 July 2021.

In addition to targeting the Judiciary, budget cuts have also affected the Kenya National Human Rights Constitution (KNCHR).¹⁷⁰ In addition, as stressed by the UN Human Rights Committee, the fact that KNCHR's "commissioner positions have been vacant for (more than) a year, despite provisions [...] mandating the president to convene a selection panel within 14 days of such roles becoming vacant"¹⁷¹ is also a source of serious concerns. These constraints risk hampering KNCHR's ability to fully discharge its mandate.

Risk factor 3: Impacts of the COVID-19 pandemic

There is a risk that the impact of the pandemic on the country's overall economy and the increase in poverty among the population will have repercussions on the conduct of the forthcoming general elections. According to some analysts, "the economic and social disruptions induced by the pandemic have eroded progress in poverty reduction in Kenya, forcing an estimated two million more Kenyans into poverty. The economic fallout will almost certainly morph into an election issue as more Kenyans continue to be faced with the widening socio-economic gaps in their society".¹⁷²

As elsewhere in the world, the pandemic has also further stretched the Kenyan health sector and exposed its existing fragilities. Doctors have highlighted that in Kenya, the "mismatch between needs and available care manifests [...] geographically and economically". They observe that, "geographically, there's a huge divide between what's available in rural areas and urban areas" (with about 70% of the population living in rural areas), and "economically, those who are poorer or uninsured are less able to access what is available".¹⁷³

Regarding the political impacts of the pandemic, tensions have emerged between opposing parties concerning the possibility for the authorities to postpone the holding of the elections in order for the IEBC to adequately organise the electoral process. Deputy President William Ruto has opposed any postponement of the elections asserting that this is "just an excuse by ineffective administrations to hang on to power".¹⁷⁴

2. Implications for the prevention of election-related sexual and gender-based violence

Political tensions are likely to increase in the run-up to the 2022 general elections. As we have seen, in 2007 and 2017, and to a lesser extent in 2013, such tensions resulted in serious acts of violence, including SGBV. Despite this, the role of SGBV, as one of the major forms of political violence, occupies only a marginal place within the political debate. It is not clear to what extent the BBI identified election-related SGBV as a major challenge requiring a specific and effective response. Only vague references to sexual violence were included into the BBI report, with no mention of accountability or reparation.¹⁷⁵

170. Brian Kimari, "Spotlight on security and Kenya's electoral environment".

171. Human Rights Committee, *Concluding observations on the fourth periodic report of Kenya*, 11 May 2021, CCPR/C/KEN/CO/4, p. 2.

172. Sentinel Project, "The 2022 Kenyan General Election".

173. Abdu Mohiddin and Marleen Temmerman, "Covid-19 exposes weaknesses in Kenya's healthcare system. And what can be done", *The Conversation*, 27 July 2020, <https://theconversation.com/covid-19-exposes-weaknesses-in-kenyas-healthcare-system-and-what-can-be-done-143356>, accessed on 10 July 2021.

174. "East Africa: Court Gives Nod to Postpone Elections, DP Ruto Protests", *All Africa*, 24 July 2021, <https://allafrica.com/stories/202107240153.html>, accessed on 17 August 2021. It should be noted that on 16 July 2021 the African Court on Human and Peoples' Rights rendered an advisory opinion on the holding of elections in the context of the COVID-19 pandemic. The advisory opinion is available here: <https://www.african-court.org/cpmt/storage/app/uploads/public/60f3e0/63a/60f3e063aa417653422319.pdf>, accessed on 17 August 2021.

175. BBI report, https://e4abc214-6079-4128-bc62-d6e0d196f772.filesusr.com/ugd/00daf8_bedbb584077f4a9586a25c60e4ebd68a.pdf, accessed on 13 August 2021.

Similarly, the IEBC's strategic plan 2020-2024 makes no reference to election-related SGBV as a risk factor that could affect the electoral process, if perpetrated on a massive scale. Women are referred to in the IEBC document, as women candidates. The particular targeting of women voters or party supporters, when electoral violence erupts, is not considered as a priority.¹⁷⁶

The current attempts to weaken the Judiciary and KNCHR are likely to severely impact the promotion and protection of fundamental rights in the context of the next elections. In such an environment of mistrust of the government towards these key institutions, the fight against election-related SGBV could prove more complex, in particular in relation to the adoption of prevention measures, the documentation of cases which may arise and survivors' access to justice.

Following the 2017 election violence, the OHCHR highlighted the impacts of gaps in ensuring access to health care services for survivors of sexual violence. Failures in the provision of sexual and reproductive health care, psychological care and medical forensic services were identified, and recommendations, including increased budgetary allocation to post rape care services, were made.¹⁷⁷ The COVID-19 pandemic has severely impacted the entire population, but several studies have shown its specific effects on the protection of women's rights.¹⁷⁸ Access to health services, in particular to sexual and reproductive healthcare and clinical management of sexual violence have been disrupted. Women from economically poor backgrounds, who were rapidly and disproportionately impacted by the reduction or loss of their livelihood, were further affected by such disruptions. Concerns have also been raised over the risk that survivors of SGBV may face a lack of legal and economic aid, "as resources would be diverted to COVID-19 cases".¹⁷⁹ Yet, prompt and effective access to healthcare services will be essential, for both women and men that may experience cases of election-related violence, including SGBV, during the next elections.

B. Civil society mobilisation

1. At the forefront of mobilisation since 2007

Civil society organisations, including human rights and women's rights organisations, have mobilised significantly to provide support to survivors of election-related SGBV. Such support has included medical and psychological assistance, legal aid, advocacy against the impunity of perpetrators and in favour of reparation measures for survivors, as well as legislative and institutional reforms.

Long-established NGOs, such as KHRC, the International Commission of Jurists (ICJ-Kenya), the Independent Medico-Legal Unit (IMLU), the Coalition on Violence Against Women (COVAW), FIDA-Kenya, Physicians for Human Rights (PHR), among others, have been particularly involved. In parallel, new structures have been created by survivors, including the National Victims and Survivors Network and the Wangu Kanja Foundation. Coalitions amongst these organisations and others were created

176. *Citizen Digital*, "ODM Sec-Gen Edwin Sifuna apologises for insulting MP Aisha Jumwa", 21 December 2020, <https://citizentv.co.ke/news/odm-secretary-general-sifuna-apologises-for-insulting-mp-aisha-jumwa-2685606/>; *Business Daily*, "Nairobi County Speaker Beatrice Elachi resigns", 11 August 2020, <https://www.businessdailyafrica.com/bd/news/counties/nairobi-county-speaker-beatrice-elachi-resigns-2298204>.

177. OHCHR, UN Women, PHR, *Breaking Cycles of Violence*, pp. 13-14.

178. UN Women Kenya et al. (2020), *Covid-19, Gender Assessment: Kenya 2020*, https://reliefweb.int/sites/reliefweb.int/files/resources/covid-19_gender_assessment_kenya_1.pdf, accessed on 11 July 2021; UN Women (2020), *A gender analysis of COVID-19 impacts and mitigation strategies in Kenya*, <https://www.genderinkenya.org/wp-content/uploads/2020/03/Gender-Impact-of-Covid-19.pdf>, accessed on 11 July 2021; OHCHR, *Keeping women and girls in Kenya safe during COVID-19*, <https://www.ohchr.org/EN/NewsEvents/Pages/karore.aspx>, accessed on 11 July 2021; BMJ Open (2020), *Gendered, economic, social and health effects of the COVID-19 pandemic and mitigation policies in Kenya: evidence from a prospective cohort survey in Nairobi informal settlements*, <https://bmjopen.bmj.com/content/bmjopen/11/3/e042749.full.pdf>, accessed on 11 July 2021.

179. UN Women, *A gender analysis of COVID-19 impacts and mitigation strategies in Kenya*.

in order to increase coordination and influence. During their interviews with survivors of the 2017 election-related sexual violence, FIDH and KHRC noted the extent to which the support provided by local organisation had been essential to them.

In the perspective of the forthcoming 2022 general elections, CSOs have already alerted Kenyan authorities to the risks of an outbreak of violence. Several initiatives have been taken aimed at preventing such violence. On 23-24 June 2021, KHRC and other stakeholders held a National Dialogue on Electoral Justice in Kenya which brought together civil society, political leaders as well as the IEBC and other mandate holders to reflect on the measures necessary to ensure that the 2022 elections are free, fair, credible, transparent and peaceful. In addition, under the banner of the Civil Society Reference Group (CSRG), KHRC and Article 19 released two reports on civic space which highlight key concerns for civil society that will amplify as Kenya heads towards the next elections.¹⁸⁰ Finally, the #LindaKatiba (Protect the Constitution) initiative¹⁸¹ was launched by civil society organisations to contest the BBI initiative and has become a platform that seeks to ensure the 2022 elections are credible and fair.

2. Systemic and deliberate pattern of crackdowns on civil society groups

This critical involvement of human rights NGOs, has been met with certain forms of opposition, including from the authorities. NGOs have faced acts of intimidation and threats, and other forms of hindrance to their work. This has been particularly the case for those advocating for justice and reparation. Kenyan authorities have used several tactics to weaken the work of NGOs, including through direct threats to their legal status or sources of funding.

NGOs and human rights defenders who have called for justice and reparation following the crimes committed during the 2007-2008 PEV, including before the International Criminal Court (ICC), have faced serious threats from part of the government or its supporters. As documented by the Observatory for the protection of human rights defenders,¹⁸² during the ICC investigations and prosecutions, “the Kenyatta administration conducted a smear campaign blaming NGOs and human rights defenders for instigating crimes-against-humanity charges against him and others, and many hate blogs mushroomed, which had the goal to publicly identify the various ICC witnesses to expose them, putting their lives in great danger. Many human rights defenders and other witnesses, whose names were mentioned in the media, were similarly intimidated, threatened, attacked and in some cases killed”.¹⁸³

Ahead of the 2017 general elections, United Nations human rights experts raised concerns over “the systematic and deliberate pattern to crack down on civil society groups which challenge governmental policies, educate voters, investigate human rights abuses and uncover corruption”, and called on the Government to cease this systematic crackdown. The experts specifically denounced the threats against KHRC.¹⁸⁴

180. See KHRC, *Launch of Civic Space Publications*, <https://www.pscp.tv/thekhrc/1mnGeaRypdrGX?t=2m56s>, accessed on 17 August 2021. See also KHRC (2021), *Compendium on Laws on the Civic Space in Kenya*, <https://www.khrc.or.ke/publications/227-compedium-of-laws-on-the-civic-space-in-kenya/file.html>, accessed on 17 August 2021.

181. See the #LindaKatiba website, <https://lindakatiba.org/>, accessed on 17 August 2021. See also “What #LindaKatiba Is, and Why It Matters”, *The Elephant*, 12 March 2021, <https://www.theelephant.info/op-eds/2021/03/12/what-lindakatiba-is-and-why-it-matters/>, accessed on 17 August 2021.

182. The Observatory is a joint programme between FIDH and the World Organisation Against Torture (OMCT).

183. Observatory for the Protection of Human Rights Defenders (2017), *Kenya: 2017 Elections, Broken Promises Put Human Rights defenders at risk*, <https://www.fidh.org/en/issues/human-rights-defenders/kenya-2017-elections-broken-promises-put-human-rights-defenders-at-risk>. See also, CIVICUS (2015), *Attacks on Civil Society Undermining Democracy and Development in Kenya*, <https://www.civicus.org/images/Kenya%20Policy%20Action%20Brief.pdf>, accessed on 11 July 2021. See also, Freedom House, “When Civil Society is Attacked, Kenya’s Democracy is Imperilled”, 8 January 2016, <https://freedomhouse.org/article/when-civil-society-attacked-kenyas-democracy-imperilled>, accessed on 11 July 2021.

184. OHCHR, “UN experts urge Kenya to end crackdown on rights groups to ensure fair elections”, February 2017, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21172&LangID=E>, accessed on 11 July 2021.

In addition to these systemic difficulties, which can impact the existence and functioning of NGOs, there are also internal challenges that are specific to addressing SGBV. Providing support to survivors of SGBV can be particularly complex. For instance, in the absence of any meaningful investigation carried out by the authorities, NGOs conduct documentation work. Such documentation is not intended to replace police investigations but to highlight particular situations of violations and encourage authorities to address the issue. This involvement leads to significant challenges for NGOs particularly in terms of data security, and, in some cases, security of survivors. Besides, NGOs that provide legal aid to survivors may also encounter various forms of challenges. In the context of long and complex legal proceedings, with *de facto* uncertain outcomes, NGOs have been confronted with survivors' re-traumatisation, fatigue and discouragement.

C. Progress and setbacks in the State's fulfilment of its obligations

1. Actions taken by the State and remaining challenges

Kenyan authorities have adopted several legal, procedural and institutional measures that could contribute to effectively addressing election-related SGBV. The adoption of the Sexual Offences Act in 2006 marked a significant step in this direction, despite strong opposition encountered in Parliament when the bill was being debated.¹⁸⁵ However, the outbreak a year later of the 2007-2008 post-election violence, with sexual violence committed on a massive scale, constituted a serious setback. Over the past 15 years, actions to prevent sexual violence, protect survivors, and provide them with justice and reparations have been contradictory, calling into question the State's overall commitment to put an end to SGBV, in particular during elections.

During the 2013 general elections, the rights of women politicians to security and political participation were not fully protected, despite the guarantees provided by the 2010 Constitution. Despite the fact that the TJRC was set up by the authorities, its 2013 recommendations, in particular those related to sexual violence are yet to be implemented. In 2015, Uhuru Kenyatta offered a public apology "for all past wrongs", without specifically referring to any form of violence. In the same address, he confirmed the impossibility of carrying out prosecutions for the crimes committed during the 2007-2008 PEV and announced the launch of a reparation fund, as part of a restorative justice process. From 2014, a number of institutional and legal measures were adopted, including the Victim Protection Act, the National Policy on Prevention and Response to Gender-Based Violence, the NGEC County Policy on SGBV, and the Prevention of Torture Act. Yet the 2017 general elections were the scene of significant cases of sexual violence. This was followed by a lack of meaningful action to investigate the crimes and prosecute the perpetrators, despite Kenya's legislative provisions.

Kenya also made several international commitments, including when it recently accepted the Universal Periodic Review (UPR) recommendations that urged the authorities to "intensify efforts to secure redress for survivors of sexual violence following the 2007 and 2017 presidential elections, and establish mechanisms to ensure such crimes are never repeated", and to "acknowledge the violations of the rights of survivors of electoral-related sexual violence and start a process of consultations with survivors and civil society to inform the design and implementation of reparation measures and programmes".¹⁸⁶ In its 2020-2024 National Action Plan on Women, Peace and Security, the State also recognised that "the increase in elective and public office positions has resulted in more

185. Association for Women's Rights in Development (AWID) (2007), "Legislating against sexual violence in Kenya: An Interview with the Hon. Njoki Ndungu".

186. Human Rights Council, *Report of the Working Group on the Universal Periodic Review, Kenya*, 20 March 2020, A/HRC/44/9, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/070/40/PDF/G2007040.pdf?OpenElement>, accessed on 29 June 2021.

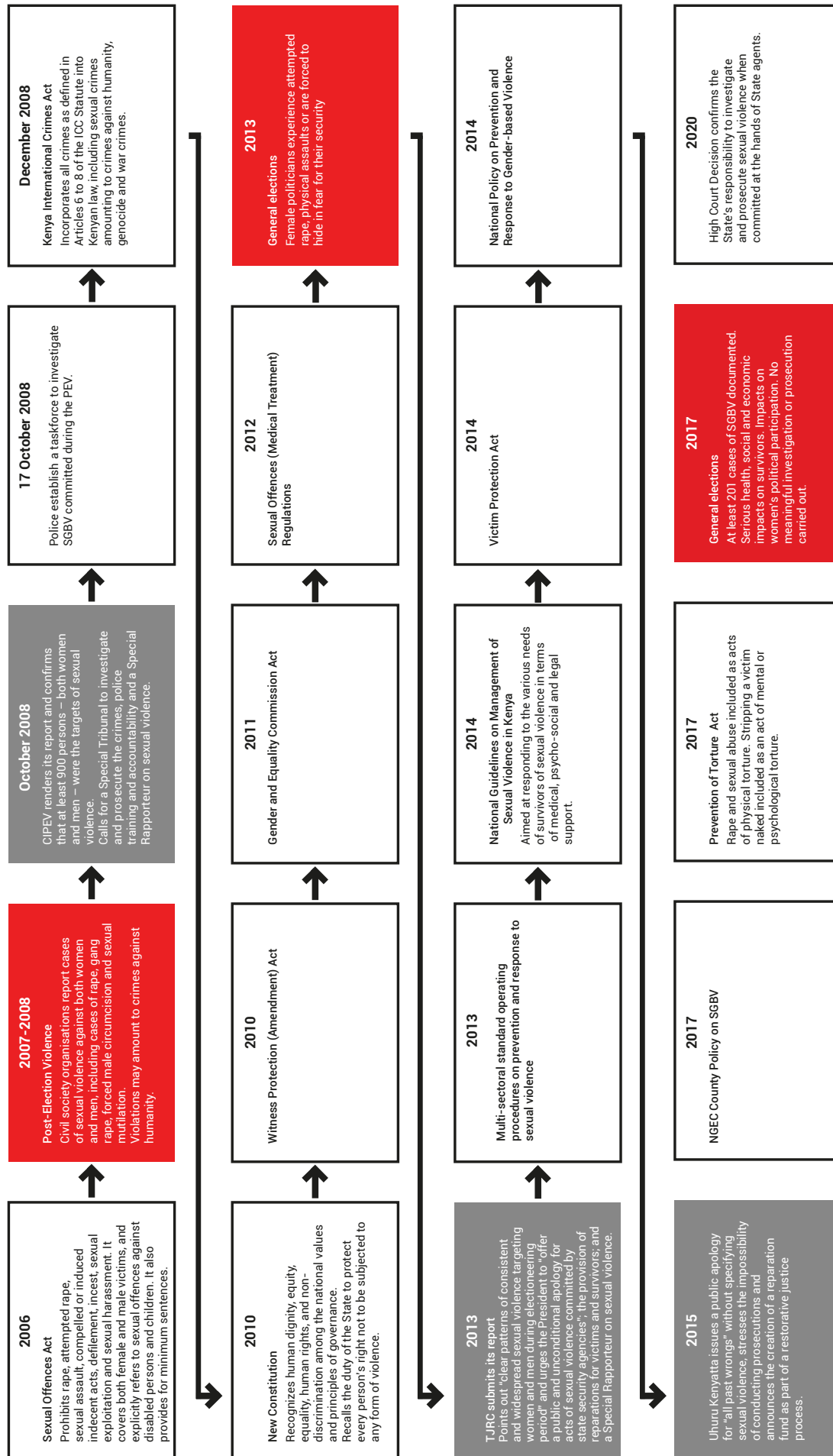
aggressive electoral processes that are not conducive to the effective participation of women”.¹⁸⁷ Actions to translate these findings and commitments into concrete responses are yet to be taken. The chronology below illustrates – in a non-exhaustive way – some examples of the progress and setbacks observed over the past 15 years in the fight against SGBV at State level.

At the county level, it is to be noted that, as a result of the advocacy work carried out by our organisations, the Migori County Government adopted a policy to combat SGBV at the end of 2019. Launched on 8 March 2021, this policy provides a framework for the implementation of concrete measures for the prevention of and response to SGBV. It makes it possible, for instance, to apply a specific legislative framework to combat such violence, promote the establishment of a mechanism to coordinate the authorities’ response and improve survivors’ access to care services.¹⁸⁸ In this regard, the policy provides for the operationalisation of relevant policies and regulations on SGBV; the establishment of infrastructures and facilities to enable the delivery of quality and comprehensive SGBV services across sectors, including commodity management, recovery centres, forensic labs, safe shelters and spaces, gender and child protection units; the development of the capacity of duty bearers (health, police, social sectors, legal aid) on SGBV prevention and response; and the implementation of public education, public awareness programmes and public participation. The policy acknowledges elections as key contributor to acts of sexual violence in the County and provides that its provisions should be implemented within a 5-year period.

187. *Kenya National Action Plan for the Advancement of United Nations Security Council Resolution 1325 on Women, Peace and Security 2020-2024*, <http://1325naps.peacewomen.org/wp-content/uploads/2020/12/Kenya-2nd-1325-National-Action-Plan-KNAPII-2020-2024-English.pdf>, accessed on 17 August 2021.

188. See FIDH, Impact, “Kenya: a county government adopts a policy to combat sexual and gender-based violence”, 11 June 2020, <https://www.fidh.org/en/impacts/kenya-a-County-government-adopts-a-policy-to-combat-sexual-and-gender>.

2. Fifteen years of progress and setbacks in the fight against sexual and gender-based violence: a chronology



III. CONCLUSION AND RECOMMENDATIONS

"What will they do to make sure the 2022 elections are different? They have seen this issue is recurrent, it happened in 2007, 2013 and 2017. What are the measures the government will put [in place]? It's the women who vote mostly, and it's the women who suffer. I want justice and compensation." (Survivor HH, Kisumu)

"The authorities are not even concerned with what happened. There isn't any action. I can only appeal to getting whatever support I can get. I'm a single mother. I have lost everything. My parents rely on me. I need psycho-social, emotional, financial support. When I ran away, they took everything, everything was snatched or looted. I feel that most women and girls are suffering, because of ignorance or poverty. There's no action from the government." (Survivor II, Vihiga)

SGBV has become one of the main components of election-related political violence in Kenya. In the perspective of the 2022 general elections, there are serious concerns about the potential outbreak of violence. The Kenyan authorities must take urgent, robust and concrete measures to combat election-related SGBV.

These measures must address the root causes of the violence – including the prevalence of misogyny and patriarchy within the political sphere – its various manifestations and consequences. They must take account of the specific needs of those who are targeted by election-related SGBV, in particular in particular women voters, protesters, but also economically disadvantaged women who are assimilated with a particular ethnicity or political group. Specific measures are also required to address violence perpetrated against female politicians. In line with international law and standards, including the recommendations formulated by the ACHPR in its Guidelines on Combating Sexual Violence and its Consequences in Africa, these measures must be aimed at prevention, protection, investigation, prosecution and reparation, including guarantees of non-repetition.

The landmark judgement delivered by the Kenya High Court in December 2020 in favour of four women survivors of SGBV perpetrated during the 2007-2008 PEV is an important step towards reaffirming the State's primary responsibility to combat election-related SGBV. While the entire political sphere must be involved in this fight, including at the local level, State authorities bear the responsibility to guide such a dynamic at the national level. .

FIDH and KHRC make the following recommendations:

Prevention

- The Kenyan government should make amendments to the Sexual Offences Act to acknowledge and address the unique circumstances of sexual violence committed during crisis or conflict situations,¹⁸⁹ in particular to alter the evidentiary threshold for the prosecution of such offences.
- The Kenyan government should ensure greater coordination between the national and county levels of government in the elimination of SGBV to guarantee that interventions are localised and have a direct positive impact on survivors of sexual violence. In this regard, FIDH and KHRC welcome the initiative taken by Migori County to develop its county level policy on SGBV in 2019 and encourage other counties to follow suit.
- The Kenyan government should take all necessary and appropriate measures to address the root causes of election-related SGBV, including by focusing on the prevalence of misogyny and patriarchy within the political sphere.
- County governments should enhance prevention mechanisms by activating and coordinating key departments in readiness to prevent and respond to cases of election-related SGBV.
- The National Council on the Administration of Justice (NCAJ) should take up sexual violence as a thematic issue and establish a multi-agency taskforce to address sexual offences that occur in the context of conflict and crisis situations, as seen during the 2017 and previous general elections. This response mechanism should devolve to the county level through the NCAJ's Court User Committees (CUCs) and issue periodic reports to evaluate the extent to which the needs of survivors of sexual violence are being met.
- KNCHR, IPOA and NGEAC, in collaboration with civil society, should raise public awareness on election-related SGBV with a view to establishing local-level systems for early-warning as well as monitoring and documentation of incidents when they occur.
- KNCHR, in collaboration with civil society, should disseminate and advocate for the implementation of the ACHPR Guidelines on Combatting Sexual Violence and its Consequences in Africa.

Protection

- The Kenyan government should guarantee the working capacities of KNCHR, NGEAC, IPOA, the IAU of the NPS and the ODPP, and ensure they have adequate resources, as critical institutions in providing effective remedies to survivors of SGBV. Furthermore, in collaboration with civil society organisations, these institutions should establish an Independent Multi-Stakeholders Monitoring and Reporting Mechanism on election-related SGBV with a view to coordinating effective responses that ensure survivors receive immediate assistance and holistic redress, including psychosocial support, legal aid and reparations.

189. These include the systemic nature in which the violations take place; the alleged responsibility of State security officers and, where sexual violence is weaponised, the issue of command responsibility; an overall situation of breakdown of law-and-order institutions which hinders prompt reporting by survivors of sexual violence; and a lack of prompt access to medical institutions which would ordinarily assist in obtaining vital evidence of sexual violence crimes.

- The Kenyan government should ensure a human rights-based approach to law enforcement during elections and issue guidelines on the protection of women and girls during elections, including in educational institutions (in accordance with the 2017 CEDAW Committee recommendations). Furthermore, we encourage the NPS to align the relevant provisions of its standing orders and procedures with the ACHPR Guidelines on Combatting Sexual Violence and its Consequences in Africa.
- The Kenyan government should guarantee its national, regional and international obligations to protect and promote women's political rights, including by implementing recommendations issued by the CEDAW Committee, relevant decisions of the ACHPR and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol). The Kenyan government should also ratify the Optional Protocol to CEDAW.
- The Kenyan government should share the deployment plan/operational order of security and defence forces and services (including the chain of command) with KNCHR and other relevant actors in advance in order to ensure transparency and accountability.
- The Kenyan government should sustain a periodic vetting process of law enforcement agents and other security forces and services with a view to ensuring that those found culpable of sexual violence and other human rights violations are prosecuted and removed from service.
- The Kenyan government should develop a national database on sex offenders (including within the security and defence forces) to ensure that they are not deployed in emergency response situations.
- The Kenyan government should provide support to police officers deployed on the ground during election times (psychosocial, but also adequate allowance and rations).

Investigation and Prosecution

- The Kenyan government should enhance resourcing and upgrading of gender violence recovery centres (GVRs) at the national and county levels as well as properly instituting gender desks at all police stations in the country.
- In accordance with the ACHPR Guidelines on Combatting Sexual Violence and its Consequences in Africa, the Kenyan government should repeal rules and abolish practices providing for mandatory medical examinations in cases of sexual violence committed during conflict and crisis situations, such that the victims are not obliged to provide any evidence other than their own statement; and promote other alternative investigative acts, paying particular attention to any risk factor or contextual element.
- The Kenyan government should, without further delay, ensure that investigations are carried out into the 2017 sexual violence cases, in order to bring the alleged perpetrators to justice and guarantee victims' right to reparation.
- The Kenyan government should conduct an independent inquiry into the issue of election-related SGBV in order to:
 - Revisit the CIPEV findings and ascertain the level of progress, or lack thereof, in relation to the recommendations aimed at addressing election-related SGBV;
 - Consolidate existing reports and invite submissions on incidents of SGBV in the 2017 election period;

- Generate a report as an official record of the events in the 2017 election-period and make recommendations with respect to investigations, prosecutions and reparation.
- The Kenyan government should strengthen the capacity of the police to investigate and follow-up cases of SGBV, including related to elections.

Remedy and Reparation

Restitution and Compensation of the survivors and victims of sexual violence during elections

- The Kenyan government should prioritise and fully implement the decision in COVAW and others v. A.G. and others, HC Petition 122 of 2013, without further delay and commit to a broader reparations programme for victims of sexual violence in the context of elections. Such a programme should take its guidance from the recommendations of the 2013 TJRC report.
- The National Government Affirmative Action Fund (NGAAF) and CSOs working with survivors of sexual violence should design programs and initiatives for immediate livelihood reconstruction interventions in the short-term, including through support groups and income-generating activities.
- The Kenyan government should design a comprehensive rehabilitation programme for the survivors of election-related SGBV and their households, through the provision of medical, psychosocial, legal and social services, and should allocate a budget to support survivors at county and national levels.
- The Kenyan government should implement their obligations in terms of guarantees of non-repetition and satisfaction, including through public apology and acknowledgment of the facts and acceptance of responsibilities for SGBV.

FIDH and KHRC further call upon the international community, in particular the African Union, to publicly warn of the risks of election-related SGBV during the 2022 general elections and to urge the Kenyan authorities to abide by their regional and international obligations. Such calls should include encouraging the authorities to implement the ACHPR Guidelines on Combating Sexual Violence and its Consequences in Africa.

ANNEXES

Annex 1

Legal Framework

In the context of widespread SGBV in Kenya, including in the context of post-election violence, over the past decades the State has developed and put in place an important set of legal instruments defining offences and setting out the obligations of Kenyan authorities in terms of prevention, protection, investigation and prosecution, and reparation. In addition to domestic legislative and policy frameworks on SGBV, Kenya has ratified many regional and international instruments addressing SGBV, now forming part of the laws of Kenya. These texts provide comprehensive definitions of sexual offences, and a strong legal framework for preventing and responding to SGBV, however they continue to lack appropriate and effective implementation.

Sexual and gender-based violence

- **“Sexual violence** is to be understood as a broad category of acts of a sexual nature. As such it is often defined by reference to a non-exhaustive list of examples of acts that can constitute sexual violence, such as rape, sexual slavery, forced prostitution, forced marriage, forced nudity and any other acts that are sexual in nature, committed without genuine consent and/or by using force or under coercive circumstances. Any act of sexual violence is a violation of an individual’s physical and psychological integrity and personal autonomy, and a form of gender-based violence [...]. These acts can be committed by and against any person, at any time (peace or conflict) and in any environment (public or private) and do not necessarily involve physical contact or sexual gratification.”
- **“Gender-based violence**, including discrimination, is violence perpetrated against a person because of their gender, real or perceived by the perpetrator, or which affects a gender group disproportionately. It is an umbrella term comprising a broad range of acts varying in nature, including sexual, physical, psychological, emotional, administrative, economic and structural. Although women and girls are the primary victims of such violence, all genders are affected. It is therefore important not to use “gender-based violence” and “violence against women” interchangeably.”

Source: FIDH Glossary from A to Z on sexual and gender-based violence, November 2020¹⁹⁰

190. Available at <https://www.fidh.org/en/issues/international-justice/when-it-comes-to-sexual-and-gender-based-violence-words-matter>.

1) Domestic legal instruments

a) The Constitution of 2010

The Constitution of Kenya adopted in 2010,¹⁹¹ recognises human dignity, equity, equality, human rights, and non-discrimination among the national values and principles of governance (Article 10(2), Chapter 2). Chapter 4 is dedicated to a Bill of Rights that expressly states: “The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings” (Article 19(2)).

Further, the Constitution states: “It is a fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights” (Article 21(1)). Articles 22(1) and 27(1) refer to Kenya’s obligations to ensure that all victims have access to protection and to an effective remedy. Article 22(1) provides that, “Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened” and Article 27(1) states that, “Every person is equal before the law and has the right to equal protection and equal benefit of the law”.

Article 27 of the Constitution also prohibits discrimination on any ground, including sex, while Article 29 states 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; (d) subjected to torture in any manner, whether physical or psychological; (e) subjected to corporal punishment; or (f) treated or punished in a cruel, inhuman or degrading manner”.

Although there are no provisions in the Constitution and its Bill of Rights which expressly refer to sexual violence, it is clear on the duty of the Kenyan State to protect every person’s right not to be subjected to any form of violence.

b) The Sexual Offences Act of 2006

The Sexual Offences Act,¹⁹² was adopted in July 2006 to more effectively address sexual violence in the country and to overcome the shortcomings of the Kenyan Penal Code,¹⁹³ which mainly dealt with sexual offences under Chapter XV on “offences against morality”). The Sexual Offences Act defines in a comprehensive manner the different sexual offences that can be investigated and prosecuted, and the sentences incurred, but also describes the obligations of Kenyan authorities. These include the obligations to prevent and provide protection against sexual violence and its consequences, to guarantee access to justice and investigate and prosecute perpetrators of sexual violence, and to provide effective remedy and reparation for victims of sexual violence.

The Sexual Offences Act of 2006 expressly prohibits many forms of sexual violence, including rape, attempted rape, gang rape, sexual assault, compelled or induced indecent acts, defilement, incest, sexual exploitation, or sexual harassment. It expressly refers to both female and male victims, as well as cases of sexual offences against disabled persons and children. It also provides for minimum sentences and only permits the Attorney General to intervene to stop cases of sexual offences, thereby excluding the possibility of a settlement between both parties.

191. Available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>.

192. Available at <http://kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Amendment%20Acts/No.%203%20of%202006.pdf>.

193. Available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2063>.

Rape and sexual assault under the Sexual Offences Act 2006

Under the Sexual Offences Act, a person commits **rape** if “he or she intentionally and unlawfully commits an act which causes penetration [into the genital organs of another person] with his or her genital organs”, without the other person consenting to the penetration, or if the consent is obtained under threats, by force or intimidation. Under this Act, genital organs include the anus. A person guilty of rape can be sentenced to between ten years and life imprisonment.

Attempted rape is punishable by five years to life imprisonment.

Gang rape involves a least two perpetrators, who commit the offence of rape or defilement against a person, and may be sentenced to terms between 15 years and life imprisonment.

Sexual assault under the Sexual Offences Act also involves the unlawful penetration of the genital organs, but by “any part of the body of another or that person, or an object”, or the unlawful manipulation of “any part of his or her body or the body of another person so as to cause penetration of the genital organ”. This offence is punishable with ten years to life imprisonment.

c) Other domestic laws and policy frameworks

Other Kenyan laws address sexual violence. In December 2008, having ratified the Statute of the ICC in March 2005, Kenya passed the International Crimes Act.¹⁹⁴ In addition to provisions on cooperation with the ICC, the Act incorporates into Kenyan law all crimes defined in Articles 6 to 8 of the ICC Statute, including **sexual crimes** amounting to crimes against humanity, genocide and war crimes.

The **Prevention of Torture Act** adopted in April 2017¹⁹⁵ includes as an act of physical torture, “**rape and sexual abuse**, including the insertion of foreign bodies into the sexual organs or rectum or electrical torture of the genitals”, and as an act of mental or psychological torture, “**shame infliction** such as stripping a victim naked, parading a victim in a public place, shaving a victim’s head or putting a mark on the victim’s body against the victim’s will”.

Definition of torture under the Prevention of Torture Act 2017

Under Section 4 of the Kenya Prevention of Torture Act of 2017, “**torture** means any act by which **severe pain or suffering**, whether physical or mental, is intentionally inflicted on a person

(a) for the purposes of

- (i) obtaining information or a confession from him or her or any other person;
- (ii) punishing him or her for an act he or she or any other person has committed, is suspected of having committed or is planning to commit; or
- (iii) intimidating or coercing him or her or any other person to do, or to refrain from doing, anything; or

(b) for any reason based on discrimination of any kind,

when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public officer or a person acting on behalf of a public officer, but does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

194. Available at <http://kenyalaw.org/8181/exist/kenyalex/actview.xql?actid=No.%2016%20of%202008>.

195. Available at <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/PreventionofTortureAct2017.pdf>.

The **Victim Protection Act 2014**¹⁹⁶ defines the following key concepts:

Part 1. 2. 1):

"Victim" means any natural person who suffers injury, loss or damage as a consequence of an offence.

"Rehabilitation" includes psychosocial interventions, medical treatment, legal aid and social services designed to assist victims recover from loss, injury or damage suffered as a consequence of the offence.

"Restitution" means the act of restoring the victim, to the extent possible, to the status prior to the offence resulting in loss or injury.

"Restorative justice" includes:

- (a) the promotion of reconciliation, restitution and responsibility through the involvement of the offender, the victim, their parents, if the victim and offender are children, and their communities; or
- (b) a systematic legal response to victims or immediate community that emphasises healing the injuries resulting from the offence.

Part 1. 2. 2):

A person is a **victim** regardless of:

- (a) whether the crime perpetrated against the person has been reported to the police;
- (b) whether the perpetrator of the crime has been identified, apprehended, prosecuted or convicted; and
- (c) the familial relationships between the perpetrator of the crime and the victim.

In addition to legal frameworks, several **national policies and guidelines** were adopted by the Kenyan authorities with the apparent intention of clarifying processes of domestic response and prevention of sexual violence. In addition to the National Guidelines on the Management of Sexual Violence, developed and last updated in 2014, aimed at ensuring an adequate response to the various needs of survivors of sexual violence in terms of medical, psycho-social, legal support, Kenya adopted the Multi-Sectoral Standard Operating Procedures on Prevention and Response to Sexual Violence of 2013, which is yet to be properly operationalised. Moreover, as observed by UN-Women, PHR and OHCHR in their 2019 report, the "Government has not developed operational frameworks to ensure effective implementation of and resource allocation for protection measures outlined in the 2014 National Policy on Prevention and Response to Gender-Based Violence. These measures include safety and security, psychosocial support, socio-economic assistance, legal aid and referral services for victims and survivors of sexual violence".¹⁹⁷

2) Regional and international instruments

According to the Kenyan Constitution and its Article 2(5) and (6), international and regional human rights treaties and conventions ratified by Kenya form **part of Kenyan law**. These two provisions mean that international law becomes directly applicable by Kenyan courts. Article 21(4) of the Constitution also states that, "the State shall enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms".

196. Available at <http://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/VictimProtectionAct17of2014.pdf>.

197. OHCHR, UN Women, PHR, *Breaking Cycles of Violence*, p. 11.

Under international human rights law, Kenya is required to adopt and implement the necessary legislative, regulatory, institutional and all other appropriate measures to prevent SGBV, committed by State and non-State actors, and protect victims, including in election periods; to conduct effective and timely investigations and prosecutions; and to provide adequate remedies and reparations to victims.

Kenya has been a State Party to the **African Charter on Human and Peoples' Rights (ACHPR)** since January 1992 and to the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)**¹⁹⁸ since October 2010. The Charter and especially the Protocol aim at prohibiting, punishing and preventing “all acts perpetrated against women which cause or could cause them physical, **sexual**, psychological and economic harm”, and all forms of violence against women, including sexual and verbal violence. It calls for a range of State measures to address violence against women which takes place “in private or public”, notably the prosecution of perpetrators, the provision of services for survivors and the identification of causes of violence against women (Article 4). With the support of FIDH, the African Commission for Human and Peoples' Rights developed **Guidelines on combating sexual violence and its consequences in Africa (Niamey Guidelines)**, adopted in May 2017.¹⁹⁹ These guidelines are aimed at guiding and supporting African Union Member States to effectively implement their obligations in the prevention, protection, investigation and prosecution of sexual violence and ensuring reparation to survivors.

Kenya has also ratified various international conventions and treaties that prohibit all types of violence and in particular violations of the right to physical integrity of the person. These include the UN **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**,²⁰⁰ ratified in 1984, which, according to CEDAW General Recommendation 19, encompasses sexual violence within the context of “discrimination”; the UN **International Covenant on Civil and Political Rights (ICCPR)**, ratified in 1972, which obligates Kenya to ensure that “any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity” (Article 3);²⁰¹ and the UN **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)**, ratified in 1997, which defines sexual violence as a form of torture or cruel or inhumane treatment.

The bodies monitoring implementation of these international instruments have also developed guidelines for States Parties to implement their obligations, in particular the CEDAW Committee in the form of General Recommendations.²⁰²

Under these regional and international instruments, and pursuant to the implementation guidelines, Kenya has the obligation:

- to undertake steps to **prevent** sexual violence, including through data collection, analysis and publication of this type of violence, awareness-raising programmes, and capacity-building and training for law enforcement officers to effectively address this violence;
- to **protect** survivors or individuals at risk from acts and consequences of sexual violence, including through an adequate legislative, policy and regulatory framework, with adequate resources, safety and security measures (i.e. crisis support, shelters, reporting mechanisms), emergency measures, comprehensive health-care, legal and socio-economic assistance;

198. Entered into force in November 2005. Available at https://au.int/sites/default/files/treaties/37077-treaty-charter_on_rights_of_women_in_africa.pdf.

199. Available at https://www.fidh.org/IMG/pdf/achpr_guidelines_on_combating_sexual_violence.pdf.

200. Available at <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>.

201. Available at <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

202. See in particular CEDAW General Recommendations Nos. 19, 28, 33 and 34.

- to **investigate and prosecute** perpetrators of sexual violence, as part of the obligation to provide access to effective remedies, through effective laws and institutions and the elimination of barriers to access to justice for survivors;
- to **provide remedy and reparations** to victims of sexual violence, especially when committed by State actors, including through omission or failure to prevent and protect.²⁰³

Kenya is also a State Party to the Rome Statute establishing the **International Criminal Court**.

203. For further details and analysis, see OHCHR, UN Women, PHR, *Breaking Cycles of Violence*.

Annex 2

Key Institutions in the Security, Judicial and Human Rights Sectors in Kenya

National Security Council (NSC)

Article 40 of the 2010 Constitution establishes the National Security Council (NSC) as the topmost security organ which exercises supervisory control over national security organs. The Council makes annual reports to Parliament on Kenya's security. It is chaired by President Kenyatta and attended by the Deputy President, Interior Secretary, Foreign Secretary, Defence Secretary, Chief of Kenya Defence Force, Director General of National Intelligence Service (NIS), Inspector General of Police and the Attorney General.²⁰⁴

National Police Service (NPS)

Article 243(3) of the Constitution stipulates that the NPS is a national service and shall function throughout the country. Parliament is further mandated to enact legislation to give full effect to Article 243. The NPS consists of the Kenya Police Service (KPS), the Administrative Police Service (AP) and the Directorate of Criminal Investigations (DCI). The KPS is mandated to maintain law and order, prevent and detect crime, apprehend offenders, and enforce all laws and regulations.²⁰⁵ The functions of the AP Service include maintenance of law and order, preservation of peace, protection of life and property, provision of specialised stock theft prevention services.²⁰⁶ The DCI's responsibilities include conducting criminal investigations, collecting and providing criminal intelligence, detecting and preventing crimes and maintaining criminal records.²⁰⁷ Within the NPS, there are special units or formations: General Service Unit, Anti-Stock Theft Unit, Anti-Motor Vehicle Theft Unit, Tourism Police Unit, Anti-Corruption Police Unit, Presidential Escort Unit, and Anti-Terrorism Police.

County Policing Authority

Section 44 of the National Police Service Act (NPS Act) establishes the County Policing Authority, chaired by the County Governor, which includes representatives of the National Intelligence Service, NPS, DCI, County Assembly Members, the Chairperson of the County Security Committees and other members appointed by the Governor representing various interests. The functions of the County Policing Authority include the development of proposals for police performance; monitoring crime trends and patterns in the County; providing feedback on the performance of the police service at the County level; ensuring policing accountability to the public; and ensuring compliance with national policing standards. However, it is important to note that the NPS Act does not confer any policing mandate on the County Policing Authority.²⁰⁸

National Police Service Commission (NPSC)

Article 246 of the Constitution establishes the NPSC whose mandate is to recruit, appoint and determine transfers and promote service officers within the NPS. The NPSC also has the mandate of disciplining and removing from office officers within the NPS. Informally, the NPSC performs

204. Article 240(3) of the Constitution of Kenya (2010).

205. Available at <http://www.kenyapolice.go.ke/pages/links.html>.

206. Available at <https://www.nationalpolice.go.ke/2015-09-21-17-23-32/aps.html>.

207. Available at <http://www.cid.go.ke/index.php/aboutus/our-functions.html>.

208. Section 41 (13) of the National Police Service Act.

the human resource management functions for the NPS. The NPSC's Internal Affairs Unit (IAU) is charged with receiving, investigating and recording complaints lodged against police officers and promoting uniform standards of discipline and good order. In so doing the IAU takes or recommends administrative disciplinary action or other legal measures to hold the officers to account. The Inspector-General has the mandate to establish and devolve the services of the IAU to conduct investigations into police misconduct.

Independent Policing Oversight Authority (IPOA)

The IPOA established under the Independent Policing Oversight Act 2011 is mandated to oversee the conduct and actions of the police; to monitor and investigate policing operations; and to review internal disciplinary processes.

Kenya Defence Forces (KDF)

The KDF is governed by the Kenya Defence Forces Act²⁰⁹ and includes the Kenya Navy, the Kenya Air Force and the Kenya Army. As one of the three national security organs, it is mandated with the primary role of defending the country from external aggression and threats to security of the country and its people. The KDF may be deployed to deal with internal security threats upon approval by the National Assembly.

National Intelligence service (NIS)

The NIS is responsible for security intelligence and counter intelligence to enhance national security.

Office of Director of Public Prosecution (ODPP)

The Director is nominated and approved by the National Assembly and appointed by the President with the following key functions:

- Instituting and undertaking criminal proceedings against any person before any court of law except the court martial;
- Taking over and continuing with any criminal proceedings commenced in any court by any person or authority with the permission of the person or authority;
- Discontinuing at any stage before judgment is delivered of any criminal proceedings with the permission of the court;
- Directing the Inspector General of the National Police Service to investigate any information or allegation of criminal conduct.

Directorate of Criminal Investigation (DCI)

Functions of the Directorate as provided under the NPS Act include:

- Collect and provide criminal intelligence;
- Undertake investigations on serious crimes including homicide, narcotics crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organised crimes, and cybercrime among others;
- Maintain law and order;
- Detect and prevent crimes;
- Apprehend offenders;

209. Available at www.kenyalaw.org.

- Maintain criminal records;
- Conduct forensic analysis;
- Execute the directions given to the Inspector General by the Director of Public Prosecutions pursuant to Article 157(4) of the Constitution;
- Coordinate Country Interpol Affairs;
- Investigate any matter that may be referred to it by the IPOA;
- Perform any other function conferred on it by other written Law.

Independent Elections and Boundaries Commission (IEBC)

The IEBC is responsible for conducting or supervising referenda and elections to any elective body or office established by the 2010 Constitution and any other elections as prescribed by an Act of Parliament and in particular for regular registration of citizens as voters, revision of the voters roll and delimitation of constituencies and wards.

National Gender and Equality Commission (NGEC)

The NGEC is one of the three independent commissions established by the National Gender and Equality Commission Act 2011, pursuant to Article 59(4) of the Constitution of Kenya. The NGEC focuses on Special Interest Groups, which include women, youth, persons with disabilities, children, older members of society, minorities and marginalised groups.

Kenya National Commission on Human Rights (KNCHR)

KNCHR is an independent commission established by the Constitution of Kenya 2010 under Article 59(4) and subsequently operationalised through the Kenya National Commission on Human Rights Act No. 14 2011 (revised in 2012).

KNCHR is mandated to work with various stakeholders, both private and public entities, to respond to various issues of common concern in the country. These concerns may be economic, social, cultural or political.

National Council on the Administration of Justice (NCAJ)

The NCAJ is a high-level policymaking, implementation and oversight coordinating mechanism that comprises State and non-State actors from the justice sector. NCAJ has a mandate to ensure a coordinated, efficient, effective and consultative approach to the administration of justice and reform of the justice system.



This publication has been produced with the generous support from the Agence française de Développement (AFD). The contents of this publication are the sole responsibility of FIDH and KHRC and can in no way be taken to reflect the views of the Agence française de Développement (AFD).



The **Kenya Human Rights Commission (KHRC)** is a premier and flagship Non-Governmental Organization (NGO) in Africa with a mandate of enhancing human rights centred governance at all levels; a vision of a society of free people and a mission to root human dignity, freedoms and social justice in Kenya and beyond. It was established and incorporated on the 9th of April 1992 by Kenyans exiled in the United States of America (USA) and later registered in Kenya on the 20th of January 1994.

Its founders are among the foremost leaders and activists in struggles for human rights and democratic reforms in Kenya and beyond. **KHRC** has its head office in Nairobi, where its secretariat is based. **KHRC** works with more than thirty Human Rights Networks (HURINETs) and other grassroots community organizations based in more than thirty counties in Kenya; partners with more than thirty national level State- and non-State actors and coalitions; and more than fifty sub-regional, regional and international human rights organizations and networks.

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Gowl

Establishing the facts - Investigative and trial observation missions

Supporting civil society - Training and exchange

Mobilizing the international community - Advocacy before intergovernmental bodies

Informing and reporting - Mobilizing public opinion

For FIDH, transforming societies relies on the work of local actors.

The Worldwide Movement for Human Rights acts at national, regional and international levels in support of its member and partner organisations to address human rights abuses and consolidate democratic processes. Its work is directed at States and those in power, such as armed opposition groups and multinational corporations.

Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

fidh

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The next general elections in Kenya are scheduled to take place on 9 August 2022. Existing political tensions raise serious concerns over a possible escalation of violence in the run-up to and during the polls. In this joint report, the International Federation for Human Rights (FIDH) and Kenya Human Rights Commission (KHRC) warn of the risk that, in the absence of urgent State action, the sexual and gender-based violence (SGBV) that has characterised past election related violence will be repeated.

The Kenyan political scene is marked by recurring election-related violence, including killings, severe physical injuries, destruction of property, intimidation, harassment and threats. A comparative analysis of the violence perpetrated during the general elections held in 2007, 2013 (to a much lesser extent) and 2017 suggests that SGBV constitutes one of the major components of election-related violence in Kenya.

In relation to the 2007-2008 election period, the Commission of Inquiry into the Post-Election Violence (CIPEV) documented 900 cases of sexual violence perpetrated, noting that the actual figure was likely to be much higher. Such violence included rape – in particular gang rape –, genital mutilation and forced male circumcision. In 2013, while electoral violence did not reach the magnitude and gravity of that experienced in 2007-2008, verbal and physical violence, threats, and intimidation against several female politicians were reported. In the context of the 2017 election period, the Kenya National Commission on Human Rights (KNCHR) documented at least 201 cases of sexual violence, in particular gang rapes, concluding that sexual violence represented the second most important form of election-related violence, after physical injuries. Following the 2017 election violence, FIDH and KHRC conducted a series of fact-finding missions to document cases of sexual violence in the counties of Kisumu, Migori and Vihiga. This report highlights the findings of these missions, including testimonies from survivors, analyses them in the context of SGBV committed during previous elections, and makes recommendations ahead of the 2022 elections.

The logo for the International Federation for Human Rights (FIDH) consists of the lowercase letters 'fidh' in a bold, black, sans-serif font.