

Kenya

SUBMISSION TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

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ALL SURVIVORS PROJECT

All Survivors Project (ASP) is an independent, impartial, international organisation that conducts research and advocacy and facilitates inter-disciplinary dialogue and learning to improve global responses for every victim/survivor of sexual violence including men and boys in situations of armed conflict and forced displacement. Through our work with governmental and non-governmental stakeholders and with male survivors of sexual violence, we seek to ensure that conflict-related sexual violence is prevented and that the rights of all victims/survivors, including men and boys, are fulfilled, and the dignity of all survivors is respected and protected.

ASP makes this submission to the United Nations (UN) Human Rights Committee in advance of its adoption of the list of issues on Kenya at the 128th Session. This submission is based on existing published reports and it focuses on sexual violence against men, boys and sexual and gender minority (SGM) people. It relates to Articles 2, 7, 9 and 26 of the International Covenant on Civil and Political Rights (the Covenant).

1. Sexual violence against men and boys in the context of election and post-election violence in Kenya

Sexual violence, including against men and boys, took place in the 2007 general election and its aftermath. Sexual violence was also reported in the 2017 Presidential election. The Kenya National Commission for Human Rights (KNCHR) argued that the failure to punish perpetrators of the 2007-2008 electoral violence was an important factor contributing to the repeat of the sexual violence attacks on candidates and voters in the 2017 election period.¹

In both circumstances, perpetrators included State Security Agents (administrative police, regular police and members of the General Service Unit (GSU)) as well as members of organised gangs and private individuals.

Women and girls were disproportionately affected. However, men and boys have also been targeted and suffered from stigma and misconceptions which prevented them from reporting their abuses and seeking help. As noted in the December 2019 report of the Office of the High Commissioner for Human Rights (OHCHR), Physicians for Human Rights and UN Women “misconceptions that men are incapable of being raped and stigma about being perceived as weak hindered male survivors from reporting violations. ‘Adult male survivors shy off from reporting electoral-related sexual violence (ERSV). They are ridiculed at different service points and by their peers. They only come forward when very severely injured, such as a case where a man had his testicles cut off and became suicidal,’ stated a hospital administrator in Nairobi. Post-Rape Care (PRC) records reviewed confirmed the effect of gender stereotypes, as the records indicated that 5% of the total reported cases involved male survivors”.²

¹ According to the statistics collected by the Kenya National Commission for Human Rights (KNCHR) and related to the 2017 elections, sexual and gender-based violations were perpetrated more by the police at 54.5% compared to civilians at 45.5%; 96.26% of the victims and survivors of sexual violence were female while 3.74% were male, and only 19.79% of the victims and survivors of sexual violence sought medical attention. KNCHR, *Silhouettes Brutality: An Account of sexual violence during and after the 2017 general election*, 2018, https://www.knchr.org/Portals/0/KNCHR_Silhouettes_of_Brutality.pdf

² Physicians for Human Rights, Office of the High Commissioner for Human Rights, UN Women, *Breaking cycles of violence:*

Impunity for perpetrators of the sexual violence during elections persists. According to the December 2019 report of the OHCHR, Physicians for Human Rights and UN Women, “there have been no completed prosecutions, adjudication & convictions for cases of ERSV arising from 2017 elections or from 2007/2008 post-elections violence”.³

Post-election sexual violence in 2007

The final report of the Commission of Inquiry into the Post-Election Violence (CIPEV) for 2007 describes “accounts of ethnically-driven sexual violence against men” who suffered sodomy, forced circumcision, genital mutilation and forced witnessing of sexual violence against their wives.⁴ Forced male circumcision was particularly prevalent and the majority of reported incidents were perpetrated by Kikuyu militias (especially Mungiki) against Luo men and boys.⁵

Forced male circumcision is not explicitly covered in the Sexual Offences Act of 2006 or in the Kenyan penal code.⁶

The effects of the sexual violence perpetrated are often long lasting and in some circumstances, and in some cases led to the death of the victim.

- A married Luo woman with two children, originally from Huruma estate in Nairobi but displaced to an IDP camp testified as follows to the CIPEV: “...I heard many people outside saying that “even here there are some Orange Democratic Movement (ODM) people we want to circumcise”.’they were many and were making a lot of noise. They pushed the door saying that ‘Kihii-kikuyu for uncircumcised man’ you are the ones troubling us.....I saw my husband lying... down. They opened his zip, lifted his penis and cut it with a panga.... I managed to slip away and one alerted them and they said it is okay I would go away and that it is my husband they wanted to teach a lesson and circumcise.” As a result of this attack her husband died due to the injuries sustained.⁷

The report also describes the failure of State security forces to respond to violence. For instance, in Naivasha and Nakuru, there was “no intervention of security agents leading to a resulting free-for-all of uncontrolled violence”.⁸ In addition, there was a deliberate omission by some security officers who refused to record cases having to do with sexual violence. With regards to medical responses, although government hospitals had established Gender Violence Recovery Centers (GVRCs) which provide free medical services to victims of sexual violence, the Commission found that most survivors did not know these services existed and emphasised the need for awareness campaigns.⁹

Gaps in Prevention of and Response to Electoral Related Sexual Violence, December 2019, <https://phr.org/our-work/resources/breaking-cycles-of-violence-gaps-in-prevention-of-and-response-to-electoral-related-sexual-violence-in-kenya/>

³ Physicians for Human Rights, Office of the High Commissioner for Human Rights, UN Women, “*Breaking cycles of violence: Gaps in Prevention of and Response to Electoral Related Sexual Violence*”, December 2019, <https://phr.org/our-work/resources/breaking-cycles-of-violence-gaps-in-prevention-of-and-response-to-electoral-related-sexual-violence-in-kenya/>

⁴ Commission of Inquiry into the Post Election Violence (CIPEV), Final Report, Chapter Six, October 2008.

⁵ In her paper on this form of violence in the context of the 2007/08 post-election violence, Auchter argues that this violence is symptomatic of ethnic divisions in Kenya and that it constitutes “a tool of war for the Kikuyu, designed to be degrading for communities who do not practice circumcision”, J. Auchter, “Forced male circumcision: gender-based violence in Kenya,” 2017, *International Affairs*, 93, 6.

⁶ See the Sexual Offences Act, No. 3 of 2006, Rev. 2009, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_127528.pdf; and Penal Code, Chapter 63, Rev 2012 [2010], <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/28595/115477/F-857725769/KEN28595.pdf> respectively.

⁷ CIPEV, Final Report, Chapter Six, October 2008, p.258.

⁸ CIPEV, Final Report, Chapter Six, October 2008, p.266.

⁹ CIPEV, Final Report, Chapter Six, October 2008, p.266.

Sexual violence during and after the 2017 Presidential election

In its report following the political violence in 2017, the KNCHR noted that the majority of the survivors specifically pointed out security agents as perpetrators of the sexual violence.¹⁰ The KNCHR report describes sexual violence as a “weapon of electoral conflict” and recognised that “In many instances, survivors of sexual violence during conflict are mainly girls and women but this too seems to be changing as men and boys have become vulnerable to sexual violence”.¹¹

Among the incidents of sexual violence against males, the report identified cases of genital beatings and rape with objects.

- One of the male survivors was thoroughly beaten on his private parts by policemen as they shouted at him “Mtu wenu alishindwa na munasema aliibiwa” [Translation: “Your person was defeated but you are insisting that the vote was stolen”]. The man’s grandchild was equally beaten. He went to the hospital for treatment and was admitted for 2 days. Later he went to the police station to request for a P3 forms, which he was denied.¹²
- In one of the cases involving the rape of men recorded in the KNCHR report, a man was hiding with his brother in a kiosk in Embakasi North Constituency, Nairobi County on 11 August 2017. The police broke into the kiosk and found them and beat them up. The officers appeared to have been collaborating with the Luo speaking demonstrators as they allowed them to enter and they just stood and watched them undress and sodomise him.¹³

2. Sexual violence against sexual and gender minority (SGM) people

Article 27 of the Constitution of Kenya (2010) prohibits discrimination on any grounds, including sexual orientation. However, the Kenyan penal code contains provisions criminalising same sex sexual intercourse. Section 162 of the penal code punishes ‘carnal knowledge against the order of nature’. Section 165 punishes ‘gross indecency’, including in private places (“any male person who, whether in public or *private*, commits any act of gross indecency with another male person”, *italics* added.) In May 2019, the High Court of Kenya upheld the country’s law criminalising consensual same-sex sexual activity.¹⁴

Criminalisation of same sex relationship, in addition to being discriminatory, can tacitly encourage violence and can deter survivors of sexual violence from seeking justice or medical and other support for fear of being arrested and prosecuted. This is particularly so for SGM victims/survivors but also applies to male victims/survivors who may fear being labelled as homosexuals and being prosecuted as such.

The KNHRC noted that the criminalisation of same sex relationships leads to a range of abuses of human rights, making SGM more vulnerable to abuses and sexual violence as well as acting as a powerful disincentive to seek

¹⁰ According to the statistics, sexual and gender-based violations were perpetrated more by the police at 54.5% compared to civilians at 45.5%, KNCHR, “*Silhouettes Brutality*,” 2018, p.2. 96.26% of the victims and survivors of sexual violence were female while 3.74% were male, and only 19.79% of the victims and survivors of sexual violence sought medical attention, KNCHR, “*Silhouettes Brutality*,” 2018, p.9.

¹¹ KNCHR, “*Silhouettes Brutality*,” 2018, p.4.

¹² KNCHR, “*Silhouettes Brutality*,” 2018, p.38.

¹³ KNCHR, “*Silhouettes Brutality*,” 2018, p.156.

¹⁴ See Human Rights Watch (HRW), “*Kenya: Court Upholds Archaic Anti-Homosexuality Laws*,” 24 May 2019, <https://www.hrw.org/news/2019/05/24/kenya-court-upholds-archaic-anti-homosexuality-laws-0> ; and International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), “*State-sponsored homophobia – global legislation overview update*,” December 2019, https://ilga.org/downloads/ILGA_World_State_Sponsored_Homophobia_report_global_legislation_overview_update_December_2019.pdf

justice.¹⁵ The 2011 KNHRC report describes at least six cases of sexual violence against gay men by the police, and the attempted rape of a lesbian woman by the Mungiki gang. Further, according to the report of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), forced anal examinations have been carried out to find “proof” of proscribed consensual same-sex sexual acts, although in March 2018, the Kenya Court of Appeals at Mombasa ruled the practice unlawful.¹⁶

SGM refugees

Kenya is one of the few countries in Africa in which refugees are able to claim asylum based on sexual orientation and gender identity. However, SGM refugees are victims of sexual violence and sexual exploitation, including by the Kenyan security forces.

On 21 September 2018, a number of UN Special Procedures raised concerns about the reported cases of sexual violence, harassment and discrimination against SGM refugees in the Kakuma camp.¹⁷ The allegations included the following incidents:

- On 9 May 2017, the police reportedly rounded up and incarcerated 18 LGBT refugees who were attempting to consult UNHCR about their case and discuss protection issues. At Kakuma police station, after three days of ill-treatment, it is reported that they were then ordered – at gunpoint- to sign papers and provide fingerprints and that the police officers advised them to plead guilty to be released but the refugees refused. Later, it is reported they were brought to Kakuma Court and sentenced to a 12,000 Kenyan shilling fee while the complaints about the ill-treatment and enquiries about the charges brought against them remained unanswered. Only one of them was able to pay the fee. The rest were sent to Lodwar prison and incarcerated for 30 days with violent and serious offenders. While in prison, the wardens- out of curiosity- forced them to have sexual relations with each other and watched them.
- On 29 March 2018, seven transgender refugees who were camping in front of the UNHCR Kakuma Camp seeking protection from the UN agency when they were beaten reportedly by the crowd and by police officers who were hurling homophobic insults. Some of them were violently stripped naked to expose their genitals and summoned to say whether they were women or men.

The Kenyan government has yet to respond to these allegations.

Research from the Women’s Refugee Commission (WRC) found that SGM refugees in Kenya are routinely targeted for violence, including for sexual violence. The report notes that: “In Nairobi and Mombasa, all refugee research participants with diverse SOGIESC also spontaneously disclosed suffering sexual violence after arrival in Kenya, frequently on multiple occasions. In Mombasa, sexual exploitation of adolescent refugee boys and young men appears to be prevalent. Trans women, trans men, adolescents with diverse SOGIESC, unaccompanied boys and young men, refugees selling sex, and detainees appear particularly vulnerable to sexual violence, exploitation, and abuse. Livelihood barriers contribute to increased vulnerability to sexual exploitation among refugee youth and refugees with diverse SOGIESC”.¹⁸

¹⁵ Kenya Human Rights Commission (KHRC), “*The Outlawed Amongst Us*,” 2011, <https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/70-the-outlawed-amongst-us/file.html>

¹⁶ See ILGA, “*State-sponsored homophobia*,” 2019.

¹⁷ See AL KEN 9/2018, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24091>

¹⁸ Women’s Refugee Commission (WRC), “*We Have a Broken Heart: Sexual Violence against Refugees in Nairobi and Mombasa, Kenya*,” 2019, p.2, <https://www.womensrefugeecommission.org/gbv/resources/1843-we-have-a-broken-heart-sexual-violence-against-refugees-in-nairobi-and-mombasa-kenya>

3. Conclusions

In light of the above, ASP urges the Human Rights Committee to include the following issues in the List of Issues for Kenya:

- Provide figures and information on investigations, prosecutions and convictions for sexual violence in the context of the 2007 and 2017 elections, disaggregated by gender and age;
- Confirm whether Kenya plans to review its penal code to bring it in line with its obligation under the Covenant, including by decriminalising consensual same sex relationships;
- Provide information on steps taken by the government to respect and protect the rights of SGM refugees against sexual violence.