

KENYA

NGO assessment of the follow-up actions of the State party in implementing UN Human Rights Committee's recommendations

The UN Human Rights Committee (the Committee) reviewed Kenya's fourth periodic report on its compliance with the International Covenant on Civil and Political Rights (ICCPR) during its 131st session in March 2021. Subsequently, the Committee issued its Concluding Observations (CCPR/C/KE/CO/4), which included recommendations for the State party. Paragraph 53 of the Concluding Observations specifically requests the State party to provide information by March 26, 2023, on the implementation of recommendations related to violence against women, forced eviction, and participation in public affairs.

These recommendations, selected by the Committee for follow-up, are deemed implementable within two years and/or require immediate attention. The State party's response to these follow-up recommendations will be evaluated by the Committee, and grades will be assigned based on the action taken by the State party. This assessment form, developed by the Centre for Civil and Political Rights (CCPR), aims to facilitate civil society's assessment of the implementation of follow-up recommendations and enhance their contribution to the Committee's follow-up procedure.

The report was created through consultations with non-governmental organizations and government agencies, as well as desktop research, under the coordination of the Centre for Civil and Political Rights (CCPR Centre). Key partners involved in the development of the report include Equality Now, ICJ-Kenya, the Kenya National Commission on Human Rights, the Kenya Human Rights Commission, National Gender and Equality Commission, The Independent Medico-Legal Unit, Coalition of Violence against Women, Reproductive Health Network, Grace Agenda, Usalama Forum, Plan International, Brave Movement, Transparency International and the Centre for Rights Education and Awareness.

SUMMARY OF THE KEY ISSUES

1. **Improving Data Collection and Response Mechanisms for FGM:** While the government's integration of a Gender-Based Violence (GBV) module into the Kenya Demographic Health Survey (KDHS) signifies progress in scaling up FGM programs, there are notable gaps in national data collection and response mechanisms. Current data inadequately captures FGM prevalence at the county level, neglecting emerging trends in various regions, including the concerning medicalization of FGM observed in Kisii, Migori, and Narok. To address this, Kenya must establish a comprehensive national data collection mechanism for FGM, involving standardized methodologies, collaboration with grassroots Civil Society Organizations (CSOs), and prioritization of data disaggregation to effectively combat FGM and related practices like Intersex Genital Mutilation (IGM) while considering the cross-border nature of the issue.
2. **Ensuring Accountability for Post-Election Sexual Violence:** The landmark judgment by the High Court in Nairobi in favour of survivors of 2007 post-election sexual violence highlights the government's failure to adequately address such crimes. It is imperative for the government to acknowledge and act upon the court's findings, ensuring accountabilities for all survivors. Efforts should focus on recognizing and addressing the challenges faced by all survivors, not just the ones recognized in court. Additionally, steps must be taken to ensure that survivors receive the compensation and support they are entitled to, signalling a commitment to justice and redress for victims of sexual and gender-based violence.
3. **Addressing Marital Rape through Legal Reform:** The government must prioritize the review and amendment of the Sexual Offences Act to explicitly recognize marital rape as a crime. This essential change is necessary to provide survivors of marital rape with legal recourse and ensure that perpetrators are held accountable for their actions. By updating legislation to reflect the gravity of marital rape, the government demonstrates its commitment to protecting the rights and dignity of all individuals, regardless of their marital status.
4. **Improving Safe Houses for Survivors of Gender-Based Violence:** Kenya faces challenges with the limited number and resources of government-owned safe houses, exacerbating the vulnerability of survivors. While efforts are underway, particularly in Nairobi and Makueni counties, safe houses in Migori and Meru remain under-resourced. To address these issues, regulations governing safe houses must be developed, ensuring transparency, accountability, and effective management. Clear mandates for stakeholders should be established through legislation to enhance accountability and efficiency. County regulations should be strengthened to promote local ownership and accountability, while resource allocation must be enhanced to ensure all counties, including rural areas, have adequately resourced safe houses. These measures are crucial to ensuring safe houses effectively serve survivors of gender-based violence and provide them with the necessary support and protection.
5. **Addressing Forced Evictions and Resettlement:** Kenya has witnessed numerous cases of forced evictions, leading to humanitarian crises and violating human rights obligations. Despite court orders and obligations under housing and eviction-related treaties, the government has failed to offer compensation or alternative resettlement to affected individuals. To address these issues, the Evictions and Resettlement Bill 2012 should be enacted into law. This bill provides remedies for forced evictions, including declarations of rights, fair compensation for losses, and considerations for informal property such as slum dwellings. By enacting this bill, Kenya can ensure that forced evictions are conducted in a fair and just manner, with adequate provisions for compensation and resettlement for affected individuals and communities.
6. **Ensuring Reparation for Victims of 2017 Human Rights Violations:** The government's failure to develop a plan for reparation leaves victims and survivors' of 2017 human rights violations without essential support such as financial assistance, medical care, and counselling. To address this, the government must prioritize the development of a comprehensive plan for reparation, including proper budget allocation. This plan should aim to provide necessary assistance and support to victims and survivors, acknowledging and rectifying the injustices they have endured. By taking proactive measures, the government can uphold its commitment to human rights and provide meaningful redress to those affected by past violations.

Violence against women:

Para. 18. The Committee is concerned about: (a) Continuing female genital mutilation and a reported increase in cases during the COVID-19 pandemic; (b) Reports of other harmful traditional practices in the State party, including wife inheritance, ritual cleansing and child marriage; c) Sexual offenses, including gang rape, being perpetrated against women in the 2017 election, and a lack of access to protection and remedies among victims; (d) High levels of domestic violence, which have significantly increased during the COVID-19 pandemic, as well as weaknesses in the legal and institutional response, including weak implementation of the Protection against Domestic Violence Act of 2015, and a failure to criminalize marital rape; (e) Safe spaces for women who have been subjected to violence not being available to women in all of the State party’s territory; (f) The lack of information about minority women, including those with albinism, and their experiences of violence (arts. 2, 3, 6, 7, 24 and 26).

Recommendation of the HR Committee (para. 20)	Action taken by the State	(Further) measures required / other comments
<p>The State party should:</p> <p>a) Continue and expand its efforts to prevent and address female genital mutilation, including through prosecution and punishment, awareness raising, sensitization, cross-border cooperation and data collection.</p>	<p>The Kenya Anti-Female Genital Mutilation (FGM) Board, in collaboration with other stakeholders, has introduced a digital mobile application named Pasha to combat the practice of FGM in Samburu County. The application enables individuals to anonymously report and track cases of FGM¹. However, there is currently no available data regarding the number of cases reported through the application.</p> <p>The introduction of a Gender-Based Violence (GBV) module in the Kenya Demographic Health Survey (KDHS) by the government marks a significant advancement in scaling up FGM programs based on empirical evidence. Integration of this data into the KDHS survey has provided valuable insights, with the 2022 prevalence rate reported at 22%. This data serves as a crucial guide for informed action against FGM. Furthermore, it empowers the Anti-FGM board to develop evidence-based strategies and actions aimed at combatting FGM effectively.</p>	<p>a) Despite the introduction of the digital mobile application to help in the war against the FGM in Samburu County we have to be cognisant of the fact that having mobile and internet connectivity in this area might be a challenge and this may hinder people from reporting these cases. To deal with this challenge, there is a need to consider/use other alternative lines to report FGM cases like hotlines.</p> <p>b) More sensitization to the relevant stakeholders on the action plan to ending cross border FGM.</p> <p>c) Full Implementation of the standard operating procedures on FGM by the Office of the Director of Public Prosecution which includes allocating resources and building capacities of prosecutors on the SOPs.</p> <p>d) Transition government policies to schools especially those with direct effect on them like Anti-FGM policies.</p>

¹ <https://nation.africa/kenya/counties/samburu/anti-fgm-board-launches-new-app-in-fight-against-female-cut-in-samburu-4029190>

	<p>The available national data fails to accurately capture the prevalence of Female Genital Mutilation (FGM) at the county level in Kenya. Additionally, the data primarily focuses on "usual" counties, neglecting emerging trends of FGM in other regions. Of particular concern is the emergence of a new form of FGM that presents challenges to eradication efforts. The medicalization of FGM within health facilities, notably observed in the Kisii community², represents a significant shift in the practice. This trend not only complicates anti-FGM initiatives but also places healthcare workers under cultural pressure to comply with these practices. Others affected Counties are Migori and Narok. There is a lack of segregation of data for these cases.</p> <p>The Declaration to End Cross-Border FGM adopted at the inaugural regional inter-ministerial meeting in April 2019³ and its action plan launched in 2021, ensure all the five East African states are part of the anti-FGM plan. The action plan was developed by Kenya, Uganda, Tanzania, Ethiopia, and Somalia. It includes the development of a comprehensive plan on regional human rights issues. Implementation of the action plan will curb cross-border FGM. However, people are not aware of it and the government needs to sensitize the communities on its contents and strengthen surveillance systems. It also needs to train law enforcers and health workers in identifying possible FGM cases, and how to prevent and manage them.</p> <p>With support from the UNFPA, the Office of the Director of Public Prosecutions (ODPP) has developed and launched the Standard Operating Procedures (SOPs)⁴ which will aid in the prosecution of FGM cases in the country. The main</p>	<p>e) Adequate funding to fully operationalize sub county steering committees and ensure continuous support.</p> <p>f) Establishment of a National Data Collection Mechanism: Kenya should develop a comprehensive national data collection mechanism for FGM. This entails creating a standardized methodology for data collection, ensuring collaboration with Civil Society Organizations (CSOs), particularly those operating at the grassroots level and focusing on FGM programs. The methodology must prioritize the disaggregation of data, considering factors such as the intersectionality of FGM, the specific types performed, circumstances surrounding the practice, incidents of Intersex Genital Mutilation (IGM), and cross-border occurrences.</p> <p>g) Formation of a Stakeholder Platform: Kenya, leveraging its unique FGM board status, should establish a platform that convenes all relevant stakeholders. This platform will facilitate coordination, information sharing, and joint decision-making among state agencies, CSOs, international organizations, and community representatives involved in combating FGM.</p> <p>h) Conduct Small-Scale Local Surveys: Advocate for national surveys to be conducted at small-scale studies rather than large-scale representative surveys. This approach will allow for the inclusion of local statistics, providing more accurate insights into the prevalence and nuances of FGM within communities.</p>
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² <https://www.theguardian.com/society/2022/dec/15/every-chemist-has-a-backroom-how-medicalised-fgm-risks-gains-made-in-kenya>

³ <https://kenya.unfpa.org/sites/default/files/pub-pdf/Newsletter%20UNFPA-%20%20End%20Cross%20Border%20FGM%20%20Ministerial%20Meeting%20FINAL.pdf>

⁴ <https://www.odpp.go.ke/wp-content/uploads/2021/12/SOP-Manual-Rapid-Reference-Guide-on-Prosecution-of-FGM-Cases.pdf>

	<p>objective of the procedures is to standardize and bring consistency and efficiency in investigation and prosecution of FGM cases. The procedures will be used as a basis for addressing disparities in the investigation and prosecution of FGM cases.⁵ In its annual report 2020-2021 the ODPP has filed 495 cases against FGM perpetrators.⁶</p> <p>The FGM Board, through support from the UNFPA, was able to operationalize some sub county steering committees in hotspot counties. Capacities of 42 officers were built.⁷ More funding is required to continuous support these committees.</p> <p>In the FY 2021/22 the allocation increased to KES 124 million up from the KES 97.5 million allocated in FY 2020/2021 to cater for activities to end FGM as per the presidential directive.⁸ In 2023 the allocation was increased to 200 million⁹.</p> <p>Incorporating harmful cultural practices into the education curriculum, specifically the Competency Based Curriculum (CBC) initiated in 2017, is a significant step by the government. However, there is a notable gap regarding information on Female Genital Mutilation (FGM) within the curriculum. Essential components such as a clear definition of FGM, comprehensive explanations of its drivers, and a thorough exploration of its immediate and long-term negative impacts are lacking. Furthermore, the curriculum's coverage of FGM is limited to only one grade level, with subsequent lessons at other stages of learning being overlooked. It is imperative to address these</p>	<p>i) Enhance Cross-Border Collaboration: Urge state authorities to facilitate dialogue aimed at promoting coordinated legislation, policies, and initiatives to address cross-border FGM. Collaborate with agencies such as the Transnational Crime Unit and Directorate of Criminal Investigations (DCI) to address cross-border issues effectively.</p> <p>j) Engage the National Crime Research Centre (NCRC): Encourage the NCRC to conduct research on the causes of FGM, prevention strategies, and disseminate findings to relevant government agencies, stakeholders, and the public. This will provide valuable data to support anti-FGM efforts and inform policy decisions.</p> <p>k) Strengthen Sensitization Programs: Implement targeted sensitization programs to raise awareness about the criminalization of FGM and its harmful effects. Ensure these programs reach the appropriate audience and are tailored to address cultural and societal norms perpetuating the practice.</p> <p>l) Multi-Sectorial Interventions: Enhance multi-sectoral interventions to address FGM comprehensively. This includes collaborating with health, education, and social welfare sectors to provide support services, education, and alternative rites of passage.</p>
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⁵ <https://allafrica.com/stories/202106220253.html>

⁶ <http://www.parliament.go.ke/sites/default/files/2022-05/Annual%20Report%20of%20the%2021st%20Century%20Prosecution%20Service-%20Office%20of%20the%20Director%20of%20Public%20Prosecutions%20Kenya%20for%20the%20year%202020-2021%281%29.pdf>

⁷ ibid

⁸ ibid

⁹ <https://www.standardmedia.co.ke/article/2001486428/state-allocates-sh240-million-for-war-on-fgm>

	<p>shortcomings by revising the curriculum to include comprehensive and age-appropriate content on FGM, ensuring that students receive accurate information and education about this harmful practice throughout their academic journey.</p> <p>In 2019, the case of Dr. Tatu Kamau v the Attorney General¹⁰ and 2 Others was brought before the Constitutional Division of the High Court of Kenya. The case challenged the constitutionality of the Anti-Female Genital Mutilation (FGM) Act, alleging that it infringed upon women's rights to practice their culture, particularly their right to choose to undergo FGM. Additionally, the petitioner argued that the Anti-FGM Act was discriminatory.</p> <p>In March 2021, the Court delivered a favorable judgment, ruling that FGM violates various rights of women, including the right to dignity, the highest attainable health, life, security of the person, and freedom from discrimination. Consequently, the Court determined that because the right to culture is not an absolute right, the government was within its authority to restrict it.</p>	<p>m) Sensitize Criminal Justice Actors: Provide training and sensitization to criminal justice actors on existing manuals and standard operating procedures (SOPs) related to FGM prosecution and enforcement. Develop monitoring and evaluation mechanisms to assess the effectiveness of these SOPs.</p> <p>n) Ensure Transparent Budget Allocation: Advocate for transparency in budget allocation to the Anti-FGM Board and assess the allocation of resources. Allocate more resources towards scaling up interventions aimed at preventing FGM and addressing its health complications effectively.</p> <p>o) Amend the Anti-FGM Act (2011) in line with the judgement of the Constitutional Court to ensure that all forms of FGM are prohibited and to fill the gaps that have been observed through its implementation.</p>
<p>b) Take concrete steps to eradicate other harmful traditional practices, including wife inheritance, ritual cleansing and child marriage.</p>	<p>We still don't have a Comprehensive strategy to eliminate harmful cultural practices.</p> <p>Kenya enacted a Children's Act 2022 which prohibits child Marriage.</p> <p>The National Plan of Action for Children in Kenya (2015-2022)¹¹ acknowledges that child marriage results in physical, sexual, and emotional abuse of children. It emphasizes the</p>	<p>a) Formulate a comprehensive strategy aimed at eliminating harmful cultural practices through an inclusive and consultative process involving all relevant stakeholders. This strategy should encompass targeted interventions, awareness campaigns, and community engagement initiatives to address the root causes and societal norms perpetuating these harmful practices.</p> <p>b) Establish a National Action Plan for Children in Kenya and a National Plan against Sexual Exploitation for the period</p>

¹⁰ <http://kenyalaw.org/caselaw/cases/view/209223/>

¹¹ <https://bettercarenetwork.org/sites/default/files/2020-10/National-Plan-of-Action-for-Children-in-Kenya-2015-2022.pdf>

	<p>importance of public awareness campaigns targeting community meetings (barazas), families, and children to address this issue. Similarly, the National Plan against Sexual Exploitation of Children in Kenya (2018-2022)¹² recognizes child marriage as a harmful practice contributing to child sexual abuse and exploitation. The plan envisions initiatives to engage men as community champions in efforts to reduce child marriage and combat its detrimental effects on children.</p>	<p>2023-2030 through a participatory and consultative approach. Engage stakeholders from government agencies, civil society organizations, communities, and international partners to develop evidence-based strategies and programs aimed at promoting the well-being and protection of children, as well as combating sexual exploitation.</p> <p>c) Ensure the full implementation of the Children's Act of 2022, which provides a comprehensive legal framework for the protection and welfare of children in Kenya. This entails enforcing the provisions of the Act, including measures to prevent child abuse, ensure access to education and healthcare, and safeguard the rights of vulnerable children. Collaborate with relevant authorities, civil society organizations, and communities to ensure effective implementation and enforcement of the Children's Act across the country.</p>
<p>c) Take all necessary measures to provide effective remedies, to women who were victims of violence, including sexual violence, in the period surrounding the 2017 elections and to punish such acts of violence</p>	<p>The government's implementation of the Standard Operating Procedures (SOP) on the Investigation and Prosecution of serious offences committed by Police Officers¹³ is progressing at a slow pace, particularly concerning sexual violence cases. Urgent action is required to expedite the implementation process and ensure that SOPs are effectively enforced in cases of sexual violence. This includes providing adequate training and resources to law enforcement agencies, strengthening coordination mechanisms between relevant authorities, and fostering a culture of accountability and transparency within the criminal justice system. Additionally, continuous monitoring and evaluation of the implementation process are essential to</p>	<p>a) Expedite Implementation of SOPs on SGBV Cases: Urgent action is needed to expedite the implementation process of the Standard Operating Procedures (SOPs) on the Investigation and Prosecution of serious offences committed by Police Officers, particularly concerning sexual violence cases. This includes providing adequate training and resources to law enforcement agencies, strengthening coordination mechanisms between relevant authorities, and fostering a culture of accountability and transparency within the criminal justice system. Continuous monitoring and evaluation of the implementation process are essential to identify and address any challenges or bottlenecks hindering progress.</p>

¹² <http://www.anppcan.org/wp-content/uploads/2014/11/NPA-against-SEC-Kenya-2018-2022.pdf>

¹³ <https://www.odpp.go.ke/wp-content/uploads/2023/05/ODPP-SOPS-on-Investigation-Prosecution-of-Serious-Human-Rights-Violations-Committed-by-Police-Officers.pdf>

	<p>identify and address any challenges or bottlenecks hindering progress.</p> <p>In a significant ruling, the High Court in Nairobi issued a landmark judgement in 2020 favoring four survivors of post-election sexual violence in Kenya. In Constitutional Petition No. 122 of 2013¹⁴, The High Court of Kenya held the Government of Kenya responsible for its failure to adequately investigate and prosecute sexual and gender-based violence (SGBV) crimes during the post-election violence period. As a result, each of the four survivor-petitioners was granted compensation of KES 4 million (approximately USD 35,000) for the violation of their constitutional rights. The court recognized a breach of the state's duty to investigate and prosecute violations of various rights, including the rights to life, prevention of torture, prevention of inhuman and degrading treatment, and security of the person. This landmark judgment marks a significant acknowledgment of post-election sexual violence in Kenya, with survivors being compensated for the harm they suffered. However, it's worth noting that the court only recognized the grievances of four out of eight survivor-petitioners, suggesting the need for further progress in recognizing and addressing the challenges faced by all survivors. Additionally, the four survivors awarded compensation by the court are yet to receive it.</p> <p>The Truth, Justice and Reconciliation Commission (TJRC) concluded its work in 2013, presenting its final report to President Kenyatta. However, the report was never formally debated in the National Assembly. Among its recommendations was the establishment of a reparations framework, which served as the basis for drafting a Policy</p>	<p>b) Ensure Comprehensive Reparations Framework: The government should prioritize the development and implementation of a comprehensive plan to provide reparation for victims and survivors of the 2017 human rights violations. This should include financial assistance, medical care, and counseling services. Adequate funding and resources should be allocated to the Victim Protection (Trust Fund) Regulations to enable their full implementation.</p> <p>c) Establish Reparations Program for SGBV Victims during Elections: Kenya should develop a program to offer reparations for victims of Sexual and Gender-Based Violence (SGBV) during elections. This program should provide financial assistance, medical care, and counseling services to support and empower survivors of SGBV.</p> <p>d) Strengthen SGBV Courts: The rollout process of Sexual and Gender-Based Violence (SGBV) Courts should be improved by establishing a proper framework and providing adequate training to judicial officers. Additionally, clarity should be provided on the classification of SGBV cases to ensure they are directed to the appropriate courts. The 'no adjournment policy' should be rigorously implemented to expedite trial proceedings and ensure timely justice for survivors.</p> <p>e) Ensure Accountability for Post-Election Sexual Violence: The government should acknowledge and address the findings of the High Court in Nairobi regarding the failure to investigate and prosecute violations of sexual and gender-based violence-related crimes during the post-election violence. Efforts should be made to recognize and</p>
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¹⁴ <http://kenyalaw.org/caselaw/cases/view/206218/>

	<p>and Regulations to manage and implement a Historical Injustices Fund in 2017. Regrettably, these initiatives were never put into effect.¹⁵</p> <p>In 2021, during the Generation Equality Forum, President Uhuru Kenyatta unveiled Kenya's roadmap¹⁶ for advancing gender equality and ending all forms of gender-based violence (GBV) and female genital mutilation (FGM) by 2026. The initiative aimed to accelerate national efforts to combat GBV and FGM. The Kenyatta administration pledged commitments across 12 areas, which the current government, under President William Ruto, has also committed to implementing. These commitments include increasing funding for GBV prevention and response, with an initial allocation of US\$23 million by 2022, aiming to raise it to US\$50 million by 2026. The roadmap also focuses on enhancing research and innovation for evidence-based policy formulation and programming on GBV and FGM, with plans to incorporate a GBV module into the 2022 Kenya Demographic Health Survey. Services for GBV survivors will be improved and expanded by integrating medical, legal, and psychological support services into the universal health coverage package by 2022. Additionally, GBV recovery centers and shelters will be established in all 47 counties by 2026 to offer comprehensive support to survivors. President Kenyatta also pledged to ratify and implement the International Labour Organization (ILO) Convention 190 on eliminating GBV and harassment in the workplace by 2026. As part of the Social Transformation¹⁷ through Access to Justice Vision, the Chief Justice (CJ) established Sexual and Gender-Based Violence (SGBV) Courts¹⁸ in 2023</p>	<p>address the plight of all survivors and ensure they receive adequate compensation and support.</p> <p>f) Commitment to Gender Equality and Ending GBV: Kenya's roadmap for advancing gender equality and ending gender-based violence (GBV), as unveiled during the Generation Equality Forum, should be fully implemented. This includes increasing funding for GBV prevention and response, strengthening research and innovation for evidence-based policy formulation, and ratifying and implementing international conventions such as the International Labour Organisation (ILO) Convention 190 on eliminating GBV and harassment in the workplace.</p> <p>g) The Government should take immediate action to publish the full TJRC report, including Volumes IIA and IIC, followed by a parliamentary debate that includes discussion of sexual and other violence and implement its recommendations for reparation to victims of Conflict Related Sexual Violence.</p>
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¹⁵ https://www.globalsurvivorsfund.org/fileadmin/uploads/gsf/Documents/Resources/Global_Reparation_Studies/GSF_Report_KENYA_EN_May2023_WEB.pdf

¹⁶ https://gender.go.ke/wp-content/uploads/2022/06/Generation-Equality-Forum_Kenya-Roadmap_Policy-Brief-COMMITMENTS.pdf

¹⁷ <https://www.judiciary.go.ke/wp-content/uploads/2023/07/SOCIAL-TRANSFORMATION-THROUGH-ACCESS-TO-JUSTICE.pdf>

¹⁸ <https://judiciary.go.ke/sexual-and-gender-based-violence-sgbv-courts/>

with the aim of providing specialized justice for victims of SGBV. However, concerns have been raised regarding the rollout process, as the designation of courts as SGBV courts lacked a proper framework. Furthermore, judicial officers have not received adequate training to handle SGBV cases with sensitivity, particularly in providing trauma support and counseling to victims.

There is also confusion surrounding the classification of SGBV cases, leading to uncertainty about whether files should be directed to SGBV courts or treated as criminal cases. Despite these challenges, as of 2024 May, **13 specialized courts have been established:** Shanzu, Kibera, Makadara, Meru, Nakuru, Kiambu, Machakos, Kisii, Kitale, Kakamega, Kisumu, and Siaya. **Since their inception, 255 cases have been filed with 69 resolved.**¹⁹

When it comes to SGBV cases, the Chief Justice directed the courts to implement the 'no adjournment policy'. “I am disturbed by the fact that our data suggests that 56% of adjournment was occasioned by external parties, reason being that witnesses or parties were not present,” CJ Martha Koome²⁰. She further urged courts to expedite cases in trial and should not take more than three years and one year for those cases on appeal.²¹

As of now, the government **has not** formulated a **comprehensive plan to provide reparation for victims and survivors of the 2017 human rights violations**, including financial assistance, medical care, or counseling.

Although the **Victim Protection (Trust Fund) Regulations** have been **finalized and launched**, they have **not received adequate financial resources**, which hinders their full

¹⁹ <https://judiciary.go.ke/sojar-2022-2023-2/>

²⁰ <https://twitter.com/CJMarthaKoome/status/1501955950319710217?lang=en>

²¹ <https://www.judiciary.go.ke/be-defenders-of-the-no-adjournment-policy-cj-koome/>

	<p>implementation. Additionally, Kenya has not yet developed a program to offer reparations for victims of Sexual and Gender-Based Violence (SGBV) during elections. Addressing these gaps is essential to ensure the protection and support of individuals affected by human rights violations and SGBV in Kenya.</p>	
<p>d) Strengthen its institutional and legal frameworks to address domestic violence, including the criminalisation of marital rape, targeted measures to protect women from violence during the COVID-19 pandemic and the full and effective implementation of the Protection against Domestic Violence Act of 2015.</p>	<p>The government is yet to review the Sexual Offense Act to recognise marital rape as a crime.</p> <p>The Protection Against Domestic Violence Act is not being fully and effectively implemented. There are gaps in accessing essential services such as quality and timely medical treatment, limited access to shelter or safe houses, protection and financial assistance, mental health and psychosocial support, limited access to justice and inadequate funding from both the national and county governments for GBV prevention, response, and monitoring all which hinder its implementation.</p> <p>The P3 forms are still be paid for, denying survivors of justice. CJ Martha Koome has condemned the levying of the P3 that aids in justice delivery.²²</p> <p>The government, through the National Council on Administration of Justice (NCAJ), has a committee tasked with reviewing laws on sexual and gender-based violence (SGBV). Plans are currently underway in 2024 within the NCAJ to conduct a comprehensive review of the Sexual Offences Act. However, it has been noted that the associated costs are significant, given that the NCAJ operates under a block budget which must be allocated to various sub-committees. A priority within this review process is the</p>	<p>a) The P3 form was revised and there is need for the government to ensure its full implementation.</p> <p>b) Continuous sensitization of both justice actors and the public that the P3 form is free and should not be charged.</p> <p>c) Comprehensive Review of Protection Against Domestic Violence Act: The Sub-committee established to review the Protection Against Domestic Violence Act should conduct a thorough assessment to identify and address gaps in the Act's implementation. Emphasis should be placed on advocating for the implementation of effective reporting and response mechanisms, as well as enforcement mechanisms to strengthen protections for survivors of domestic violence.</p> <p>d) Strengthen Review Mechanisms through NCAJ: The National Council on Administration of Justice (NCAJ) committee tasked with reviewing laws on sexual and gender-based violence should expedite its efforts to review the Sexual Offences Act and other relevant legislation. Despite budgetary constraints, efforts should be made to allocate resources effectively to support the committee's work. Priority should be given to amendments addressing</p>

²² <https://www.the-star.co.ke/news/2022-05-11-cj-koome-condemns-levying-of-p3-forms/>

	<p>consideration of amendments related to marital rape legislation.</p> <p>The Protection Against Domestic Violence Act lacks robustness and requires review, primarily due to its inadequate reporting and response mechanisms. As part of its mandate, the Sub-committee will undertake a comprehensive review of the Act with a focus on advocating for the implementation of effective enforcement mechanisms. This initiative aims to strengthen the legal framework for addressing domestic violence and enhancing protection measures for survivors.</p>	<p>marital rape legislation to enhance legal protections for survivors.</p> <p>e) Review and Amend Sexual Offences Act: The government should prioritize the review of the Sexual Offences Act to explicitly recognize marital rape as a crime. This amendment is crucial to ensure that survivors of marital rape have legal recourse and that perpetrators are held accountable for their actions.</p>
<p>e) Ensure that safe spaces are available to women who have been victims of violence in all parts of the State party's territory, including rural areas.</p>	<p>Kenya currently has a limited number of government-owned safe houses, with only three in existence. The Nairobi County government has initiated plans to construct a new safe house at a cost of Sh88 million to provide shelter for survivors of Sexual and Gender-Based Violence (SGBV)²³. Additionally, Makueni County has established separate safe houses to accommodate both male and female survivors of SGBV²⁴.</p> <p>However, despite efforts to establish safe houses, those in Migori and Meru are heavily under-resourced, lacking adequate human and financial resources. In the fiscal years 2019/20 and 2020/21, only Migori and Nairobi counties received support, while Makueni County's target was not achieved due to late disbursement of funds. Furthermore, in the fiscal year 2021/22, the target for supporting safe houses was not set due to inadequate funds.²⁵ It is worth noting that</p>	<p>a) Develop Regulations for Safe Houses: There is a pressing need for regulations governing safe houses to address issues such as traumatization, segregation, adequate equipment, and transition plans. While some counties have established policies for safe houses, these policies lack transparency and accountability. Therefore, it is imperative to establish a clear legal framework to support the establishment, management, and exit plans of safe houses.</p> <p>b) Establish Clear Mandates for Stakeholders: Introduce legislation delineating the functions and mandates of various stakeholders involved in managing safe houses. This legal framework will provide clarity and accountability in the operations of safe houses, ensuring efficient and effective support for survivors of gender-based violence.</p>

²³ <https://www.the-star.co.ke/counties/nairobi/2022-03-09-nairobi-to-put-up-sh88m-safe-house-for-gender-violence-survivors/>

²⁴ <https://nation.africa/kenya/news/gender/makueni-launches-safe-house-for-gbv-survivors-766614>

²⁵ <https://www.treasury.go.ke/wp-content/uploads/2023/01/Social-Protection-Culture-and-Recreation-Sector-Report.pdf>

	<p>Migori and Meru have buildings designated as safe houses, established by Women Representatives. Conversely, the safe house in Makueni County has limited capacity, able to accommodate only six individuals. Additionally, reports indicate that the safe houses in Nairobi are not entirely safe, with instances of abuse being reported.</p> <p>A significant challenge in the operation of these safe houses is the politicization of their management, with competition arising between Women Representatives, county governments, and other stakeholders for control and resources. For instance, Women Representatives have access to funding for safe houses, but utilization of these funds has not been optimal. Addressing these gaps and challenges is essential to ensure that safe houses effectively serve survivors of SGBV and provide them with the necessary support and protection.</p> <p>The State Department for Gender is currently in the process of developing standards and guidelines to operationalize the gender protection centers. These standards and guidelines will provide a framework for the functioning of the centers, ensuring consistency and effectiveness in their operations.</p>	<p>c) Strengthen County Regulations: The Council of Governors should expedite the development of regulations to streamline county functions related to safe houses. This will help shift the responsibility from the national to the county government, promoting local ownership and accountability in the management of safe houses.</p> <p>d) Enhance Resource Allocation: Ensure that safe houses in all counties, including rural areas, are adequately resourced both financially and in terms of human resources. This will enable safe houses to effectively support survivors of violence and provide them with the necessary assistance and protection.</p> <p>e) Utilize Existing Facilities for Gender Recovery Centers: Utilize existing medical facilities, such as those at level 3, 4, and 5, to establish gender recovery centers. Additionally, create partnerships with private safe houses and well-wishers to expand resources and support for survivors. Develop a centralized database of all safe houses in the counties to facilitate resource allocation and enable victims to choose their preferred location for assistance. Finally, address the shortage of government-owned safe houses by scaling up resources and capacity to meet the increasing demand for safe shelter.</p>
<p>f) Collect data on minority women subjected to violence in order to effectively target measures to ensure their protection.</p>	<p>In June 2021, Kenya adopted a gender-based violence indicator in the government’s performance monitoring framework. This will ensure that the enforcement and implementation of gender-based violence laws and policies are tracked. With this commitment, the government has also</p>	<p>a) Periodic reports on violence against women on minority women produced with data from all counties with the gaps and clear recommendations to ensure effective implementation measures. Recommendation it to move from periodic reports to continuously/ongoing process.</p>

	allocated additional resources to prevention and response. ²⁶ However, data on minority women subjected to violence is yet be collected and published to enable the government to effectively target measures to ensure their protection.	
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²⁶ https://gender.go.ke/wp-content/uploads/2022/06/Generation-Equality-Forum_Kenya-Roadmap_Policy-Brief-COMMITMENTS.pdf

Forced Eviction:

Para. 40. The Committee was concerned about continued reports of forced, and sometimes violent, evictions, including amongst indigenous populations in forest areas, such as the Embobut and Mau forests. The Committee is concerned that such evictions have been undertaken without full regard for due process requirements, such as adequate notice and prior and meaningful consultation with those affected in direct contravention of section 152 (G) of the Land Law (Amendment Act) No. 26 2016, the moratorium declared during the COVID-19 pandemic and judicial decisions. It is also concerned by insufficient access to justice and remedies, including the provision of compensation and resettlement amongst all those affected following failure to enact the Evictions and Resettlement Bill 2012. The Committee also notes, with concern, the lack of information on investigations, prosecutions, convictions and punishments of those who violate legal standards during evictions, including in cases where such violence has led to the death of affected individuals (arts. 6, 7, 12, 17, 26 and 27).

Recommendation of the HR Committee (para. 38)	Action taken by the State	(Further) measures required / other comments
<p>The State party should:</p> <p>(a) Putting in place a sustainable system of equitable land tenure to prevent forced evictions.</p> <p>(b) When there is no alternative to force evictions, taking all necessary measures to effectively implement the Land Law Amendment Act No. 26 of 2016 and consistently</p>	<p>The government launched the National Lands Information Management System (NLIMS) and rolled out the digitization of land records, to ease property registration and introduce transparency in land administration and management.²⁷</p> <p>The government is also in the process of amending the National Land Commission Act to enable The Commission process claims on historical land injustices²⁸. The Commission received a total of 693 claims on historical land injustices and resolved 126 claims. Since the Commission no longer has mandate to process these claims, this means that there will be no redress for outstanding claims that are yet to be investigated and processed.²⁹</p> <p>In November 2021, 40,000 people were forcefully evicted, their dwellings had been demolished to make way for a link road</p>	<p>a) Fast track the rolling out of the National Land information System and digitization of the land records to all counties.</p> <p>b) Approve the bill seeking to amend the National Land commission.</p> <p>c) Enacting the Evictions and Resettlement Bill 2012 into law. as the Bill envisage remedies for forced evictions a) declaration of rights, compensation, injunction or any other relief the court may deem; b) where an eviction is unavoidable and necessary for the promotion of the general welfare and the public interest, the Government must provide or ensure fair and just compensation for any losses of personal, real or other property or goods, including rights or interest in property and transport to the relocation site; c) where private or community land has been</p>

²⁷ <https://www.businessdailyafrica.com/bd/data-hub/lands-ministry-digitisation-set-to-end-in-june-3739174>

²⁸ <http://www.parliament.go.ke/sites/default/files/2023-08/2023-08/THE%20NATIONAL%20LAND%20COMMISSION%20%28AMENDMENT%29%20BILL%20%2C2023.pdf>

²⁹ <https://kn.co.ke/the-national-land-commission-amendment-bill-2022/>

<p>ensure the implementation of the safeguards contained in section 152(G), including the need for adequate notice and prior and meaningful consultation with and the provision of adequate compensation and/or resettlement of those affected;</p> <p>(c) Strictly upholding the moratorium declared during the COVID-19 pandemic and all judicial decisions on evictions.</p> <p>(d) Improving compensation and resettlement amongst those affected by evictions, including through enacting the Evictions and Resettlement Bill 2012 into law without delay;</p> <p>(e) Ensuring the investigation, prosecution, conviction and punishment of all individuals who breach the law during evictions.</p>	<p>connecting the city’s industrial zone to a contentious new expressway, plunging them into a humanitarian crisis. Despite the state’s human rights treaty obligations relating to housing and eviction, the government has not offered compensation or alternative location for resettlement. The resides were also not given adequate notice.³⁰</p> <p>On 15th October 2022 more than 600 residents of Shauri Moyo, Nairobi County were issued with eviction notices to vacate a state-owned five-acre piece of land in the area. They were given three days to vacate the premises. This is despite a court order that directed the eviction notice be put on hold.</p> <p>In 2024, over 800 families living in Uasin Gishu County have been forcibly evicted from their homes to make room for an affordable housing project initiated under President William Ruto's Kenya Kwanza pre-election pledge³¹.</p> <p>There hasn’t been a single case brought in court on individuals who breach the law during evictions.</p> <p>The government has initiated a task force to address the registration of unregistered community land in 4 counties, namely Baringo, Garissa, and Samburu. As part of its efforts, 23 counties have already received inventories of community land, and the number of registered communities is steadily increasing. The selected pilot counties will serve as a crucial testing ground for the task force's registration initiatives.</p> <p>The National Land Commission (NLC) has allocated a total of 75 billion to communities, with specific attention to Lokichar, where the government has acquired land from 15 different</p>	<p>taken, the evicted persons should be compensated promptly, fairly and fully; d) consideration of the circumstances of each case shall allow provision of compensation for losses related to informal property such as slum dwellings; among others.</p> <p>d) Taking all necessary measures to effectively implement the Land Law Amendment Act No. 26 of 2016 and consistently ensure the implementation of the safeguards contained in section 152(G), including the need for adequate notice and prior and meaningful consultation with and the provision of adequate compensation and/or resettlement of those affected.</p> <p>e) Strictly upholding all judicial decisions on evictions.</p> <p>f) Ensuring the investigation, prosecution, conviction and punishment of all individuals who breach the law during evictions. To provide data of the investigations and prosecutions. Most of these cases are done through ADR like the Waitiki.</p> <p>g) Design and implement targeted awareness campaigns that focus on educating communities with unregistered land about the importance of land registration. Utilize various communication channels, including radio broadcasts, community meetings, and informational pamphlets in local languages, to reach a broader audience effectively.</p>
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³⁰ <https://hoa.boell.org/en/2022/03/16/under-fire-forced-evictions-and-arson-displace-nairobis-poor>

³¹ <https://www.pd.co.ke/news/eldoret-eviction-paves-way-for-affordable-housing-units-216157/>

	<p>communities. The main focus of this allocation is to ensure fair and just compensation to these communities for the land they have lost due to the government's acquisition. In the current fiscal year, a sum of 23 billion has been allocated for the resettlement of squatters.</p> <p>.</p>	
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Public Affairs

Para. 48. The Committee [is concerned that continued impunity for the grave human rights violations that occurred around 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]. It is [also] concerned that the root causes of violence in 2017, including inter alia multiple violations of electoral regulations, voting irregularities, failure to effectively de-centralize the electoral process and challenges faced by the Independent Electoral and Boundaries Commission in effectively and independently implementing their mandate, have not been adequately addressed. The Committee welcomes the Building Bridges Initiative but notes, with concern, a lack of information about the status of its recommendations on the need for legal reform to build trust in the electoral process (arts. 7, 14, 25 and 26).

Recommendation of the HR Committee (para. 40)	Action taken by the State	(Further) measures required / other comments
<p>The State party should intensify efforts to provide remedies to all victims of violence in the context of the 2017 elections, including guarantees of non-repetition. The State party should also take all necessary steps, ahead of the 2022 elections, to prevent violence and ensure the effective and independent functioning of the Independent Electoral and Boundaries Commission. It should also adopt all measures necessary to ensure transparency in voting and in vote counting procedures.</p>	<p>In a landmark decision took in 2023, 12 Kenyan police officers will face charges of crimes against humanity over a deadly crackdown on post-election protests in 2017. The charges include rape, murder and torture and <u>the case of a six-month-old girl whose death became a symbol of police brutality</u> during the election aftermath. The Office of the Director of Public Prosecution DDP has pronounced the issue of Command responsibility in the Baby Pendo case.³²</p> <p>To date, the government has not developed a plan to ensure reparation for victims and survivors’ of 2017 human rights violations. They have not received financial assistance, medical care, or counselling.</p> <p>On 9th August 2022, 65 percent of the 22.12 million registered voters turned up to cast their ballots. The drop in numbers was blamed on lack of voter education, low interest by the youth, reduced trust and confidence in the</p>	<ul style="list-style-type: none"> a) The government should develop a plan to ensure reparation for victims and survivors’ of 2017 human rights violations to ensure they have received financial assistance, medical care, and counselling. This will include proper budget allocation. b) The fast tracking of the case of the 12 officers charged with crimes against humanity for the 2017 elections. c) Effective Prosecution and Investigation of all cases of violence in the 2022 general elections.

³² <https://www.citizen.digital/news/police-officers-linked-to-death-of-baby-pendo-to-be-charged-with-murder-rape-and-torture-n308304>

	<p>political system, poverty and youth unemployment. The Independent Electoral and Boundaries Commission (IEBC) quickly <u>posted</u> scanned copies of the results forms from polling stations and constituencies on its public website. This allowed political candidates, the media, analysts and interested citizens to see the data for themselves, and, if they so wished, to conduct their own tabulations. While some misinformation surfaced, this was quickly rebutted by access to the primary data.</p> <p>This year saw more effort by the National Police Service to ensure effective preparedness of the election by launching the Election Security Management Manual for Police Commander, training of Policing agencies on elections preparedness and deployment of Police Recruits in Electoral Security.</p> <p>According to the Kenya National Commission on Human Rights (KNCHR), during the 2022 elections, there were three (3) fatalities recorded during campaign periods, while an additional four (4) deaths occurred during the polling process. These incidents took place across six (6) counties, namely Kisii, West Pokot, Trans Nzoia, Kisumu, Bungoma, and Nairobi. The Commission further noted that out of the documented seven (7) cases, two (2) were allegedly perpetrated by civilians, three (3) resulted from road accidents during political campaigns and post-poll activities, and two (2) were carried out by unidentified assailants.³³</p> <p>The Independent Electoral and Boundaries Commission released an evaluation report on the 2022 elections.³⁴ Key among the issues raised was the late enactment of</p>	
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³³ <https://www.knchr.org/Portals/0/CivilAndPoliticalReports/HR-Account-2022%20-Elections%20Monitoring%20Report.pdf?ver=2022-09-26-160305-977>

³⁴ <https://www.iebc.or.ke/uploads/resources/BUCvyyPvca.pdf>

	<p>some laws making it hard to effectively implement them and the late disbursement of funding.</p> <p>There was also late recruitment of the IEBC commissioners which resulted to division among the commissioners leading to disorganization and inconsistent decision making and communications.</p>	
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Centre for Civil and Political Rights (CCPR)
t: [+41 \(0\)22 332 25 53](tel:+41223322553) - e: info@ccprcentre.org
a: 1, rue de Varembé - CP 183 - CH-1202 Geneva
www.ccprcentre.org