

**SHADOW REPORT ON THE STATE OF  
KENYA'S SEVENTH PERIODIC REPORT**

**COMPOSED BY THE INTERNATIONAL HUMAN RIGHTS LAW  
INSTITUTE  
OF  
DEPAUL UNIVERSITY COLLEGE OF LAW**

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## **I. Introduction**

### **a. Composition of the Report**

This report is intended to supplement the *eighth* periodic report submitted by the government of Kenya. This report focuses on the issue of sexual violence and offers specific recommendations to the Government of Kenya in order to adequately comply with its human rights obligations under CEDAW.

### **b. Practicum Overview**

The International Human Rights Law Practicum (IHRLP) is a year-long practicum offered by the DePaul College of Law in Chicago, Illinois. DePaul IHRLP provides students with the unique opportunity to analyze and experience the myriad of complex legal issues associated with international human rights. Throughout the practicum, students conduct in-depth investigations of current human rights violations of a single country. The 2016-2017 DePaul IHRLP dedicated its study of gender-based human rights violations throughout the country of Kenya.

### **c. DePaul University/Kenyatta University Collaboration**

In the drafting of this report, DePaul IHRLP traveled to Nairobi, Kenya and partnered with students from Kenyatta University School of Law. While in Nairobi, DePaul IHRLP students met with victims of sexual assault, hospitals specializing in sexual assault recovery, members of Parliament, and law enforcement officials who explained the tedious, and oftentimes unsuccessful, attempts for victims to achieve justice.

## **II. Overview of GBV in Kenya**

### **a. Definition of GBV for the purpose of this report**

The text of CEDAW does not explicitly provide a definition of gender-based violence (GBV). However, there are a plethora of definitions of the term provided by international organizations which provide guidance for addressing the issue.

#### **i. CEDAW GR 19**

CEDAW General Recommendation 19 defines GBV as, “violence that is directed against a woman because she is a woman or that affects women disproportionately.”<sup>1</sup> GBV includes physical, mental, or sexual harm, and also includes threats to commit those harms.<sup>2</sup>

#### **ii. DEVAW**

Though not specifically expressed in terms of GBV, the Declaration on the Elimination of Violence Against Women (DEVAW) provides a definition for “violence against women” (VAW). Articles 1 and 2 define “violence against women” means any act of GBV that “results in, or is likely to result in, physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in either public or in private life.”<sup>3</sup> This includes but is not limited to, “[p]hysical, sexual, and psychological violence occurring in the family,” as well as in the general community.<sup>4</sup>

#### **iii. Maputo Protocol**

The African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (known as the Maputo Protocol) defines VAW as “all acts perpetrated against women which cause

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<sup>1</sup> UN Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 19*, U.N. Doc A/47/38 (1992), at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

<sup>2</sup> *Id.*

<sup>3</sup> Declaration on the Elimination of Violence Against Women, art. 1 & 8, U.N. Doc. A/48/49, at 217 (1994), at <http://hrlibrary.umn.edu/instreet/e4devw.htm>.

<sup>4</sup> *Id.*

or could cause them physical, sexual, psychological, and economic harm, including the threat to take such acts.”<sup>5</sup> Article 1(k) defines “women” as “persons of female gender, including girls.”<sup>6</sup>

#### iv. Umbrella term

This shadow report will use the term “gender-based violence” or GBV as an umbrella term which incorporates the various definitions of VAW and encompasses a broad range of human rights violations relating to GBV.<sup>7</sup>

#### b. Scope of the report, Prevalence, and Population Impacted

A 2010 national survey suggested that 32% of girls in Kenya experienced sexual violence before the age of 18.<sup>8</sup> In contrast, the Kenya Demographic and Health Survey for 2008/2009 found that one in five women and girls are victims of sexual violence.<sup>9</sup> When comparing these numbers, it is clear to see that not only is sexual violence a tremendous problem, but so is the issue of under reporting.<sup>10</sup>

Rape and defilement are two troublesome forms of sexual violence. Studies show that as many as 300 people report being raped in Kenya every day,<sup>11</sup> which equates to an estimate of 800,000 women being raped every year.<sup>12</sup> In addition, national police statistics from 2010 showed an average of over 200 cases of defilement, Kenya’s term for the rape of a minor, are reported every month in Kenya.<sup>13</sup>

Similarly, sexual assault is a form of sexual violence that affects many women in Kenya. In 2014, the Kenya Demographic and Health Survey reported that about 7% of women aged 15-19 and 18% of women 40-49 reported sexual assault.<sup>14</sup> The Kenya Police Service stated that 193 people reported sexual assault in 2015.<sup>15</sup> That number is down from the 270 reports in 2013, but up from the 183 reports in 2014.<sup>16</sup>

Women who live in rural regions as well as urban slums are at a particularly high risk of sexual assault and abuse.<sup>17</sup> However, the UN-Habitat’s report on abuse in Nairobi suggests that

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<sup>5</sup> ACHPR, *Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa*, art. 25 (2003), (hereinafter Maputo Protocol).

<sup>6</sup> *Id.* at art. 1(k).

<sup>7</sup> See link for full list: <http://www.endvawnow.org/en/articles/1474-terminology-and-definitions.html?next=1475>.

<sup>8</sup> United Nations Children’s Fund Kenya Country Office, Division of Violence Prevention, et. al., *Violence against Children in Kenya: Findings from a 2010 National Survey. Summary Report on the Prevalence of Sexual, Physical and Emotional Violence, Context of Sexual Violence, and Health and Behavioral Consequences of Violence Experienced in Childhood* (2012).

<sup>9</sup> Kenya National Bureau of Statistics and ICF Marco, *Kenya Demographic and Health Survey 2008-09* 250 (2010) <https://dhsprogram.com/pubs/pdf/fr229/fr229.pdf>.

<sup>10</sup> *Kenyan courts getting tough as sexual crimes reach alarming levels*, HUMAN RIGHTS HOUSE, <http://humanrightshouse.org/noop/page.php?p=Articles/7521.html&d=1>

<sup>11</sup> Antony Aisi, *Turning a Blind Eye: Rape Culture in Kenya*, DESTINATION MAGAZINE, <http://www.eadestination.com/investigative-journalism/376-rape-culture-in-kenya>.

<sup>12</sup> Organisation Against Torture, *Violence against women and children in Kenya* (2008).

<sup>13</sup> Kenya Police Service, *Annual Crime Report for the Year 2010* 19 (2010).

<sup>14</sup> Kenya National Bureau of Statistics, Ministry of Health/Kenya, et. al., *Kenya Demographic and Health Survey 2014* (2015).

<sup>15</sup> Kenya National Bureau of Statistics, *2016 Statistical Abstract 279* (2016), [http://www.knbs.or.ke/index.php?option=com\\_phocadownload&view=category&id=106:statistical-abstract&Itemid=1177](http://www.knbs.or.ke/index.php?option=com_phocadownload&view=category&id=106:statistical-abstract&Itemid=1177).

<sup>16</sup> *Id.*

<sup>17</sup> *Kenya*, WEZESHADA, <http://wezeshadada.com/wp-content/uploads/2014/12/Kenya-Gender-based-and->

women from all socioeconomic backgrounds and areas within the city are equally as likely to experience sexual assault.<sup>18</sup> Although risk of experiencing sexual violence is presumed to be correlated with poverty, studies show that the differences in reporting of sexual violence by wealth index are not strong.<sup>19</sup>

In this report, we will analyze the issue of sexual violence and discuss Kenya's successes and difficulties in upholding equality for women and preventing GBV. We will cover recommendations on how to streamline the reporting process for victims as well as ways in which the State can fund ongoing efforts to create medical and psychologically appropriate spaces for survivors of sexual violence to help to bring Kenya into compliance with its obligations under CEDAW.

### **III. GBV under CEDAW**

#### **a. Failure to explicitly address GBV**

CEDAW's attempt to encompass all forms of discrimination fell short through its failure to explicitly define GBV as a form of discrimination against women.

#### **b. Article 1**

Although the original text of CEDAW does not include GBV as a form of discrimination, that failure was remedied in 1992 when the CEDAW Committee adopted General Recommendation No. 19<sup>20</sup> which explained how the Article 1 "definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately."<sup>21</sup> In addition to GBV, the Committee also established VAW as a form of discrimination during the 1992 session. Moreover, the Committee explained how "gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence."<sup>22</sup> By clearly defining GBV and VAW as forms of discrimination, the CEDAW committee made clear its intention to hold state parties accountable for its elimination.<sup>23</sup>

#### **c. Article 2**

##### **i. Acts or Omissions of State Actors**

Under Article 2 of CEDAW, states have a responsibility to condemn discrimination against women in all forms.<sup>24</sup> Accordingly, states must use appropriate means and create policies that ensure women will not be targets of discrimination. This includes efforts to protect women against violence resulting from acts or omissions of the state itself and of its actors.

Even though laws are in place to protect women from violence, the State also has the responsibility to ensure that its legal mechanisms are accessible and effective for women.<sup>25</sup> In other

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sexual-violence.pdf (noting that "Because only 24% of people living in slums have access to clean water or sanitation facilities like restrooms, women often have to walk for 5-15 minutes to reach water or the nearest facility.").

<sup>18</sup> 2014 Kenya Demographic and Health Survey Key Findings, *National Bureau of Statistics-Kenya and ICF International, Domestic Violence*, at 15, (2015) (noting that "[h]alf of women in Nyanza report spousal violence (physical or sexual) compared to only 10% of women in North Eastern Kenya.").

<sup>19</sup> Betty Khasakhala-Mwenesi, Robert C.B. Buluma, et. al., *Gender Violence*, 15 at 243.

<sup>20</sup> *Supra* note 1.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Convention on the Elimination of All Forms of Discrimination Against Women, 1249 U.N.T.S., at art. 2.

<sup>25</sup> Mary Kimani, *Taking on Violence Against Women in Africa*, AFRICARENEWAL: SPECIAL EDITION ON

words, the state bears the ultimate duty to protect women from violence and discrimination.

**ii. Acts or Omissions of Non-State Actors**

In addition to Kenya having the responsibility for VAW resulting from acts or omissions of state actors, Kenya's responsibility extends further, to VAW resulting from non-state actors.<sup>26</sup> Kenya has implemented multiple legislations to work towards the elimination of VAW resulting from non-state actors, including the National Plan of Action for combating Human Trafficking and the Sexual Offences Act.<sup>27</sup> Kenya has taken positive steps in fulfilling its obligation under CEDAW to curb GBV that result from acts or omissions of non-state actors.

**iii. Article 2(f)**

Article 2 of CEDAW is generally known as the policy article as this section of the Convention charges states with the responsibility of taking legal measures to ensure equality for women and to deter discrimination.<sup>28</sup> Though Article 2 is generally geared towards adding or establishing laws and policies to further this goal, section (f) states that a state should "take all appropriate measures, including legislation, to modify or abolish existing law, regulation, customs and practices which constitute discrimination against women."<sup>29</sup> Article 2(f) is the one portion of CEDAW that explicitly demands that state parties not only enact new laws to combat discrimination, but also abolish old laws and policies that might be furthering inequality.<sup>30</sup>

**d. Article 5**

Article 5 of CEDAW ensures that state parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.<sup>31</sup>

Traditional ideologies, customs, and religion are often used to justify female subordination throughout Kenya, which only perpetuates discrimination against women throughout the country.<sup>32</sup> The United Nations Economic and Social Council reported that traditionalism and poverty continue to be two of the greatest obstacles in combating GBV, ensuring a cyclical pattern of discrimination against women in Kenya.<sup>33</sup> Because societal expectations of females are ingrained in Kenyan society – in both men and women – such expectations are likely to be one of the greatest hurdles in eradicating discrimination against women in Kenya.

**e. Other Relevant Articles**

In addition, the following articles of CEDAW may be triggered under certain circumstances in

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WOMEN 2010, <http://www.un.org/africarenewal/magazine/special-edition-women-2012/taking-violence-against-women-africa>.

<sup>26</sup> *Supra* note 24.

<sup>27</sup> Alphonse Shiundu, *With Five New Laws to Protect Women, Why is Gender Violence Still Prevalent?*, STANDARD MEDIA, <https://www.standardmedia.co.ke/article/2000153691/with-five-new-laws-to-protect-women-why-is-gender-violence-still-prevalent>.

<sup>28</sup> *Supra* note 24.

<sup>29</sup> *Id.*, at Article 2(f).

<sup>30</sup> *Id.*

<sup>31</sup> *Supra* note 24, at art. 5.

<sup>32</sup> Patricia Kameri-Mbote, *Violence Against Women in Kenya: An Analysis of Law, Policy and Institutions*, Int'l Envtl. L. Research Centre, IELRC Working Paper (2000-1).

<sup>33</sup> C.H.R. res. 1998/22, U.N. Doc. E/CN.4/1998/22 (1998), at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/bfa62ac661a270f0802566660038a283?Opendocument>.

the context of GBV: the elimination of prostitution and trafficking<sup>34</sup>, and the elimination of discrimination in the workplace<sup>35</sup>, in health care<sup>36</sup>, in rural areas<sup>37</sup>, in marriage and family matters<sup>38</sup>, and in social and cultural patterns and the roles of women in family education<sup>39</sup>.

#### **IV. Kenyan Law and Policy**

##### **a. Ratification of Relevant Treaties**

The problem of GBV in Kenya has to be understood from both a historical and cultural perspective. Traditionally, Kenya has been a patriarchal society and as such the man is culturally seen as the head of the family.<sup>40</sup> Through colonial rule, Kenya was introduced to the British legal system that cast women as subordinate to men.<sup>41</sup> Since then, Kenya has made various efforts to address VAW.

The most extensive treaty dealing with the rights of women is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Kenya ratified and signed CEDAW on March 9, 1984, but has not ratified the Optional Protocol to the Convention.<sup>42</sup> The constitution of Kenya provides that all international laws, treaties, and conventions form part of Kenya's laws.<sup>43</sup> Kenya has therefore adopted an "incorporationism regime" where all international obligations are binding, including CEDAW.<sup>44</sup>

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol, is a progressive legal framework that comprehensively addresses the political, social and economic rights of women and girls. Kenya ratified the Protocol in 2010, with two reservations<sup>45</sup> including Article 14 (2) (c) which refers to the medical termination of pregnancy specific to cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.<sup>46</sup>

While the government has taken systematic steps towards addressing gender discrimination and inequality through the enactment of pro-women's rights legislation, significant challenges and gaps are still a barrier to full implementation of the Protocol.<sup>47</sup>

##### **b. National Policy on Prevention and Response to GBV**

To more effectively enforce crimes involving VAW, a variety of steps have been taken throughout Kenya to strengthen laws relating GBV. The national policy framework (Framework) was designed by various state and non-state actors as a means of implementing national institutions to provide a comprehensive and effective means for victims of GBV to receive physical and

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<sup>34</sup> *Supra* note 24, at art. 6.

<sup>35</sup> *Id.*, at Art. 11.

<sup>36</sup> *Id.*, at Art. 12.

<sup>37</sup> *Id.*, at Art. 14.

<sup>38</sup> *Id.*, at Art. 16.

<sup>39</sup> *Id.*, at Art. 5.

<sup>40</sup> *Supra* note 32.

<sup>41</sup> *Id.*

<sup>42</sup> United Nations Treaties, <https://treaties.un.org>.

<sup>43</sup> Davis Malombe, Martin Mavengina & Sylvia Mbataru, *Kenya's Regional and International Human Rights Obligations*, KENYA HUMAN RIGHTS COMMISSION, <http://www.khrc.or.ke/publications/126-kenya-s-regional-and-international-human-rights-obligations/file.html>.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

psychological treatment, a legal platform for which victims may seek justice, and to generally condemn GBV throughout the country of Kenya.<sup>48</sup> The Framework was implemented as a means of improving the once chaotic and uncoordinated responses available to victims of GBV.<sup>49</sup> In the recent years, Kenya has made great strides in combatting GBV against women, and providing a Constitutional basis to protect women against crimes of GBV.<sup>50</sup>

**c. 2010 Constitution of Kenya**

The Kenyan Constitution, ratified on August 4, 2010, reflects the government's initial efforts to combat GBV by empowering women to legally defend themselves from GBV and to ensure a wide-range of rights and fundamental freedoms, including gender equality, equity, and protection of marginalized individuals under the Bill of Rights of the 2010 Constitution of Kenya.<sup>51</sup>

Articles 2, 10, 19, and 21 of the 2010 Kenyan Constitution explicitly describe the government's intent to hold Kenya accountable under international law with respect of human rights and fundamental freedoms.<sup>52</sup> The new Constitution guarantees that the State will "observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights".<sup>53</sup> Particularly, Article 21(1) guarantees the right to gender equality in the "political, economic, cultural, and social sphere" of Kenyan society.<sup>54</sup> Furthermore, women are protected from discrimination, not only by the government, but by any person.<sup>55</sup> Finally, the 2010 Constitution marks significant improvement in the empowerment of Kenyan women, as it states, "in order to give full effect to the right to full equality before the law, it may be necessary to take measures to redress past patterns of discrimination, such as those that relate to gender relations."<sup>56</sup> The 2010 Constitution of Kenya marks great strides in the government's willingness to combat GBV against Kenyan women.

**d. Sexual Offenses Act**

The Sexual Offenses Act (Act) was passed in July 2006 and criminalizes 14 different offenses,<sup>57</sup> including rape, sexual assault,<sup>58</sup> gang rape, defilement, trafficking and incest.<sup>59</sup> First and foremost, the Act moves away from victim's dependence on the Penal Code, where acts of violence against women were previously defined under "offences against morality."<sup>60</sup> In addition, the Act provides minimum mandatory sentencing instead of the Penal Code's loosely interpreted maximum sentencing.<sup>61</sup>

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<sup>48</sup> Republic of Kenya, *National Monitoring and Evaluation Framework towards the Prevention of and Response to Sexual and Gender Based Violence in Kenya*, <http://www.lvcthehealth.org/online-library?format=raw&task=download&fid=37>.

<sup>49</sup> Ruth Aura, *Situational Analysis and the Legal Framework on Sexual and Gender-Based Violence in Kenya: Challenges and Opportunities*, KENYA LAW, [www.kenyalaw.org](http://www.kenyalaw.org).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> CONSTITUTION art. 2(5) & (6) (2010) (Kenya).

<sup>53</sup> *Supra* note 49.

<sup>54</sup> CONSTITUTION art. 27(3) (2010) (Kenya).

<sup>55</sup> *Id.* at art. 27(5) (2010) (Kenya).

<sup>56</sup> *Id.*

<sup>57</sup> *See generally*, The Sexual Offenses Act (2006) (Kenya).

<sup>58</sup> *Id.* at Cap (3) & (5).

<sup>59</sup> *Id.* at Cap (8), (10), (18), (20), & (21).

<sup>60</sup> Dr. Winifred Kamau, *Legal Treatment of Consent in Sexual Offences in Kenya*, THE EQUALITY EFFECT, <http://theequalityeffect.org/pdfs/ConsentPaperKenya.pdf>.

<sup>61</sup> *Id.*



**e. Modification or Abolishment of Discriminatory Legislation**

The appeal of Section 38 of the Sexual Offenses Act is just one of the hallmark achievements for Kenya is decreasing GBV. Prior to June of 2012, Section 38 allowed for criminal sanctions against women who falsely reported sexual violence.<sup>62</sup> Though the ability to prosecute those who make false claims of sexual violence could be seen as the correct theoretical step, this had disastrous effects for Kenyan women.<sup>63</sup> The authorities traditionally do not believe women who come forward with accusations of sexual violence.<sup>64</sup> The disbelief in the women's stories not only has the mental implications of re-victimizing the woman, but due to Section 38, it also opened the woman up to criminal liability.<sup>65</sup> Since the repeal of Section 38, women now need not fear that going to the police will result in criminal sanctions on top of the sexual violence they already endured.

**V. Legal Analysis of Kenya's Compliance with CEDAW**

**a. National Policy on Prevention and Response to GBV**

In the seventh periodic report, the Kenyan government stated they had made a number of efforts to combat sexual and GBV including the development of *A National Framework on Gender-Based Violence*.<sup>66</sup> The Framework set out to include, among other things, the establishment of community structures that were responsive to sexual and GBV, increasing awareness of GBV, including the involvement of the male participation, training and equipment of law enforcement to deal with cases of GBV.<sup>67</sup>

Aside from legal provisions set in place for gender equality and diminishment of GBV, the State has yet to establish meaningful community structures and increasing awareness of GBV. Although resources for GBV victims have been established, the State provides little funding to maintain these structures.<sup>68</sup> Community resources rely on private funding and donations in order to keep these structures available to the country. Kenya's government has passed a myriad of legislation and policies to combat and increase awareness of GBV, but its lack of implementation keeps Kenya in non-compliance with CEDAW.

**b. 2010 Kenyan Constitution**

It is important to note Kenya's Constitution as having a strong focus on equality, an improved right to non-discrimination.<sup>69</sup> As stated in the 2011 Concluding Observations, Kenya's

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<sup>62</sup> Centre for Rights Education and Awareness (CREAW) et al., *A Simplified Version of the Sexual Offenses Act 2006*, [https://www.law.berkeley.edu/wp-content/uploads/2015/10/Kenya\\_Sexual-Offences-Act\\_2006-Simplified-Version.pdf](https://www.law.berkeley.edu/wp-content/uploads/2015/10/Kenya_Sexual-Offences-Act_2006-Simplified-Version.pdf).

<sup>63</sup> Kiarie Waweru Kiarie, *The Sexual Offences Act: Omissions and Ambiguities*, KENYA LAW, <http://kenyalaw.org/kl/index.php?id=1894>.

<sup>64</sup> Wangu Kanja, as told to Naomi Larsson, *Sexual violence in Kenya: 'To the police, rape wasn't a crime'*, THE GUARDIAN, <https://www.theguardian.com/global-development-professionals-network/2015/oct/01/sexual-violence-in-kenya-to-the-police-wasnt-a>.

<sup>65</sup> The Prohibition of Female Genital Mutilation Act (2011) (Kenya).

<sup>66</sup> U.N. Committee on the Elimination of Discrimination Against Women (CEDAW), *Concluding Observations of the Committee on the Elimination of Discrimination against Women, Seventh Periodic Report of Kenya*, U.N. Doc. CEDAW/C/KEN/CO/7 (2011), at <http://evaw-global-database.unwomen.org/media/files/un%20women/vaw/country%20report/africa/kenya/kenya%20cedaw%20co.pdf>

<sup>67</sup> *Id.*

<sup>68</sup> Republic of Kenya Ministry of Gender, Children, and Social Development, *National Gender and Development Policy* (2000).

<sup>69</sup> *Supra* note 1 (noting that the Kenya's new Constitution provides for non-discrimination and equality

Constitution has been “lauded as one of the most progressive in the world for its inclusive and comprehensive Bill of Rights, decentralization of power, reserved legislative seats for youth and persons with disabilities, and several of its independent commissions.”<sup>70</sup>

However, there is a significant difference between the legislation, implementation, and the realistic results created by such policies. Although the Government has audited various laws and amended its discriminatory, subsequent legislations have remained gender neutral in their language, thus making it difficult to deal with discrimination in situations where the law fails to categorize discrimination as an offense.<sup>71</sup>

The discrepancies between the anticipated legislative intent of such measures calls into question the willpower of legislators, politicians, and government officials in ensuring the enforcement and full implementation of these responsive measures. The Committee has stressed that the Convention is binding on all branches of Kenya’s government and states that the State should encourage its National Assembly to take the necessary steps to bring Kenya’s implementation of measures, policies, and legislative acts in line with its obligations under the Convention.<sup>72</sup> Equally important, and in addition to a lack of political will, no further evidence suggests training and empowering judicial officers is occurring in Kenya.<sup>73</sup>

Although Kenya has made significant improvements in the area of women’s rights, there must be consistent enforcement, monitoring, public awareness, and a national sense of accountability to effectuate results.<sup>74</sup>

### **c. Sexual Offenses Act**

The Sexual Offenses Act, enacted on July 21, 2006, has been lauded as an evolutionarily piece of legislation that provides for the prevention and protection of all persons from harmful and unlawful sexual acts.<sup>75</sup> The Sexual Offenses Act brought forth issues that had not been addressed in the past. Despite the introduction of several new features and ways to combat GBV, the implementation of the Act has been a challenge for Kenya.

Some of the challenges include cultural attitudes and practices that condone sexual violence, lack of coordinated multi-sectoral collaboration among the various actors, and incomplete or lack of knowledge both by members of the public and by state and non-state actors on the provisions of the Act.<sup>76</sup> In order to combat these challenges, the Kenyan government created the Task Force on the Implementation of the Act,<sup>77</sup> but this task force has not been sufficient for this Act to be fully enforced. The enactment of the Act has not been matched with adequate

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for both men and women, setting forth that discrimination on the basis of sex is explicitly prohibited under article 27 (3) and (4).

<sup>70</sup> *Id.* at ¶3, at 6.

<sup>71</sup> *Supra* note 66.

<sup>72</sup> *Id.*

<sup>73</sup> Federation of Women Lawyers (FIDA) & the Centre on Housing Rights and Evictions (COHRE), *Joint Submission Shadow Report to the U.N. Committee on the Elimination of Discrimination against Women*, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KEN/INT\\_CEDAW\\_NGO\\_KEN\\_48\\_9393\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KEN/INT_CEDAW_NGO_KEN_48_9393_E.pdf).

<sup>74</sup> *This may include additional or accompanying public awareness campaigning, as appropriate.*

<sup>75</sup> Anne Kithaka, *Enforcement of the Sexual Offences Act in Kenya*, PAMBAZUKA NEWS, <https://www.pambazuka.org/governance/enforcement-sexual-offences-act-kenya>.

<sup>76</sup> Republic of Kenya, *Sexual Offences Act, Implementation Workshop Summary Report*, [https://www.law.berkeley.edu/wp-content/uploads/2015/04/Sexual-Offences-Act\\_-Summary-Report-May-2011.pdf](https://www.law.berkeley.edu/wp-content/uploads/2015/04/Sexual-Offences-Act_-Summary-Report-May-2011.pdf).

<sup>77</sup> *Id.*

training and dissemination of the Act to law-enforcement officers and relevant justice system agents.<sup>78</sup> Additionally, the government has failed to provide with adequate awareness of the Act. Furthermore, poor investigation of cases has resulted in lack of conviction of offenders, therefore denying justice to survivors of violence.<sup>79</sup> Kenya has the structure needed but the government is failing to put the Act into practice.

## **VI. Recommendations**

Upon close examination of Kenya's compliance with its obligations under CEDAW regarding sexual violence, this report proposes certain recommendations to the State party:

- The State should adequately train all law enforcement officers and officials of the judicial system on the Sexual Offenses Act and the obligations it imposes.
- The State should collaborate with civil society organization in the development and administration of training of law enforcement officials on the reporting process under the Sexual Offenses Act.
- The State should provide thorough training and materials to law enforcement officers and medical personnel on how to properly collect, handle, transport, store, analyze, and testify about evidence of sexual violence.
- The State should promote public awareness about sexual violence at the local level, with specific focus on prevention efforts, encouraging women to report, highlighting available resources, and destigmatizing the victims of sexual assault.

## **VII. Conclusion**

While Kenya has made great strides in eliminating GBV, there is still more work the state can do to be in full compliance with CEDAW. IHRLP accordingly asks that the CEDAW Committee take the data and recommendations presented in this report into account when formulating its concluding observations.

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<sup>78</sup> *Supra* note 49.

<sup>79</sup> *Id.*