

# **KENYA**

## **BRIEFING TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN**

48<sup>th</sup> session January 2011

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INTERNATIONAL**



**Amnesty International Publications**

First published in 2010 by  
Amnesty International Publications  
International Secretariat  
Peter Beneson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

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Index: AFR 32/017/2010  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

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# Kenya

## Briefing to the UN Committee on the Elimination of Discrimination against Women

### INTRODUCTION

Amnesty International submits the following information for consideration by the UN Committee on the Elimination of Discrimination against Women (the CEDAW) in advance of its examination of Kenya's seventh periodic report under Article 18 of the Convention on the Elimination of All Forms of Discrimination against Women (the Convention).

This briefing is based on Amnesty International's field research in Kenya and focuses on issues relating to violence against women and how, for women living in Kenyan slums and informal settlements, such violence is exacerbated by the lack of adequate access to sanitation facilities for toilets and bathing. The information submitted is based on an Amnesty International report entitled *Insecurity and Indignity: Women's experiences in the slums of Nairobi, Kenya*.<sup>1</sup> This briefing does not cover all issues of concern to Amnesty International with regard to discrimination against women, but highlights in particular concerns in relation to the following issues:

- A high prevalence of different forms of discrimination and violence against women in the slums (Article 1, as interpreted by General Recommendation 19)
  
- Impact of the failure to address women's sanitation requirements and insufficient policing in the slums on women's vulnerability to gender-based and other forms of violence (Article 1, as interpreted by General Recommendation 19)
  
- Impact of the lack of adequate access to sanitation on women with regard to the cost of living and privacy (Articles 5, 12, 14)
  
- Failure to implement existing measures to prevent gender-based violence (Articles 1, 2, and 3, as interpreted by General Recommendation 19)

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<sup>1</sup>Amnesty International, *Insecurity and Indignity: Women's experiences in the slums of Nairobi, Kenya*, (Index: AFR 32/002/2010) available at <http://www.amnesty.org/en/library/info/AFR32/002/2010/en>.

## BACKGROUND INFORMATION

The majority of Nairobi's residents live in informal settlements and slums, in inadequate housing with little access to clean water, sanitation, health care, schools and other essential public services. For women living in slums and informal settlements, the lack of adequate access to sanitation facilities for toilets and bathing (a violation of the right to sanitation, as recognized by the General Assembly<sup>2</sup> and the Human Rights Council<sup>3</sup>) is leading to violations under Article 1 of the Convention (as interpreted by General Recommendation 19) and Article 12 of the Convention. This is in part related to the fact that women's need for privacy during bathing and toileting increases their risk of experiencing violence. Not only do women have different physical needs from men, (for example, related to menstruation) but they also have greater need for privacy when using toilets and when bathing. Inadequate and inaccessible toilets and bathrooms, as well as the general lack of effective policing and insecurity, make women even more vulnerable to rape and other forms of gender-based violence.

Kenya's urban areas, particularly the capital city Nairobi, are witnessing rapid rural-urban migration. The motivation for women, just like men, for migration into cities is the search of economic opportunity. Women in slums are often from rural areas, having migrated to the city in search of more opportunities for work, therefore provisions in article 14 of the Convention are relevant to many of the concerns raised in this briefing. However, most women's pursuit of economic opportunities in the city quickly turns into a daily struggle to survive and take care of their families.

### 1. GENERAL HIGH PREVALENCE OF DISCRIMINATION AND VIOLENCE AGAINST WOMEN IN SLUMS (ARTICLE 1, INTERPRETED BY GENERAL RECOMMENDATION 19, AND ARTICLE 5)

Women from all socio-economic backgrounds and in all areas of Nairobi are at risk of gender-based violence.<sup>4</sup> However violence against women in Nairobi's slums and informal settlements is particularly endemic.

The women Amnesty International spoke to in the course of research described experiencing different forms of physical, sexual and psychological violence, and the ever-present threat of each form of violence. They also stated that there were many different perpetrators including youth gangs, criminals, intimate partners, family members, employers and government

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<sup>2</sup> A/RES/64/292

<sup>3</sup> A/RES/HRC/15/9

<sup>4</sup>See for example, *Survivors speak: A snapshot survey on violence against women in Nairobi*, Ravestijn, S, UN-HABITAT & Intermediate Technology Development Group- East Africa, 2002.

security personnel.

There is little official action aimed at bringing perpetrators to justice and providing women victims and survivors with legal, medical, psycho-social and other forms of support.

### 1.1 DOMESTIC VIOLENCE

Various studies have documented the general high prevalence of domestic violence in Kenya. A recent country-wide study by the Federation of Women Lawyers in Kenya (FIDA-K) reveals that gender-based domestic violence and intimate partner violence is a common feature across Kenya and is overwhelmingly driven by factors “ranging from the low status society accords to women, to poor policy and legal frameworks that condone or ignore the prevalence and perpetuation of domestic violence.”<sup>5</sup> Just like their counterparts in other parts of the country, women in slums and informal settlements are victims of domestic violence – including rape, marital rape, physical assault and psychological violence within their homes and in the hands of spouses, partners and other family members. Domestic violence is the most prevalent form of violence that women face in the slums and informal settlements.

### 1.2 VIOLENCE WITHIN THE SETTLEMENTS

The majority of women interviewed by Amnesty International said that perpetrators of violence were mostly unemployed (mainly male) youth and men who are criminals individually or as part of groups or gangs. Muggings, physical attacks, theft and other violence by these individuals and groups are rampant. Though such criminals often target victims at night, women survivors of violence said that they are vulnerable to violence and crime throughout the day. In the past criminal groups have also taken advantage of public disorder, for instance during the post-election violence of 2007/8 when they subjected many women to physical, sexual and other violence. Many women survivors of violence were specifically targeted because of their gender, and some because of their ethnic identity. For most of these women living in the slums and informal settlements, there has been virtually no medical, legal or other remedies for the violence they suffered.

### 1.3 ABUSES BY GOVERNMENT SECURITY OFFICIALS

Slums and informal settlements are inadequately policed and residents have complained that they lack sufficient government security services. However in some instances when the police and other government security personnel have intervened or carried out security operations, they have reportedly committed human rights violations. These have included cases of sexual and other forms of gender-based violence committed by the police. The high incidence of sexual and other forms of violence suffered by women at the hands of security personnel, armed groups, criminal gangs, neighbours and relatives amongst other perpetrators throughout the country, including Nairobi's slums, during the post-election violence has been documented by the official Commission of Inquiry into Post-Election Violence<sup>6</sup> and by non-

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<sup>5</sup>*Gender-Based Domestic Violence in Kenya*, Federation of Women Lawyers in Kenya, 2008, p 6.

<sup>6</sup>The Commission was established as a result of the political mediation, the Kenya National Dialogue and Reconciliation, between the two main political parties following the disputed elections and led by the former UN Secretary General Kofi Annan. The Commission's mandate was to investigate the facts and

governmental organizations.<sup>7</sup> Amnesty International spoke to six women who were victims of sexual violence at the hands of the police during the post-election violence, and who testified before the Commission of Inquiry. Two years down the line they all expressed frustration at the lack of justice, including the lack of feedback on progress on any action taken against the perpetrators.

#### 1.4 VIOLENCE WITHIN THE WORK PLACE (ARTICLE 11)

Because of wider societal gender-based discrimination (including in relation to education and access to credit), women are disadvantaged when it comes to work opportunities. In interviews with Amnesty International, women living in slums expressed the view that they struggle to access gainful employment and most of them make do with low paying casual jobs. Many women told Amnesty International that they earned low wages either through small scale vending within the settlements, through casual work as domestic house helps or as casual workers in higher income areas near the settlements in which they live. While their work presented an opportunity to earn much needed income, they faced threats of violence and actual violence as a result of it.

According to one woman participating in a focus group discussion with 15 women and girls, most of whom are working as domestic house helps in higher income areas around Mathare (one of four slums and informal settlements visited by Amnesty International during research):

*“Often to sustain your job you have to put up with sexual and other forms of harassment...”*

Two of the women in this group also narrated how they had repeatedly been raped by their employers and how one had become pregnant and infected with HIV/AIDS in the process. When asked if they reported the matter to the police or any other official authority one of them said that they: *“had not reported these incidents to the police because our employers would have been able to bribe them...”*

#### 1.5 WOMEN LIVING WITH AND AFFECTED BY HIV/AIDS (ARTICLES 11, 12 AND 14)

There is a high prevalence of HIV/AIDS in Kenya's slums and informal settlements. It is estimated that the HIV/AIDS prevalence rate in Kibera is 14 percent – almost double the national prevalence rate.<sup>8</sup> This high prevalence has been attributed to a host of factors, including lack of access to essential health and other services. There is also a high risk of HIV/AIDS infection in the slums and informal settlements as a result of gender-based

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circumstances surrounding the violence, the conduct of state security agencies in their handling of it, and to make recommendations concerning these and other matters.

<sup>7</sup>See, *Report of the Commission of Inquiry into Post Election Violence*, Commission of Inquiry into Post Election Violence, 2008, Chapter 6; *A rapid assessment of Gender Based Violence during the Post election violence in Kenya (January – February 2008)*, Centre for Rights Education and Awareness, 2008.

<sup>8</sup> *The Right to Water and Sanitation in Kibera, Nairobi, Kenya- an Action Research Report*, Umande Trust, COHRE & Hakijamii, 2007, p9.

violence.

Women living with HIV/AIDS in the slums suffer much more than men in terms of widespread stigma. Women living with HIV/AIDS and engaged in informal businesses to support their livelihoods are especially affected. They told Amnesty International of wide societal discrimination because of their health status, for example, being the subject of abuse for engaging in the sale of foodstuff which they consider more profitable, rather than say cloth-selling business.

A number of women living with HIV/AIDS told Amnesty International that their health status had motivated them to move into the slums and informal settlements from their rural homes. They considered that general discrimination against women in rural areas, including in relation to rights of inheritance, is rampant. This is especially the case for those living with HIV/AIDS and now living in slums and settlements.

### 1.6 VIOLENCE AND FORCED EVICTIONS<sup>9</sup>

Forced evictions in Kenya's slums and informal settlements are common. They often involve the mass removal of people – sometimes hundreds of families – without notice and other adequate procedural safeguards required under international legal standards. Such evictions have mainly arisen as a result of planned official projects, such as public railway and road construction or reclamation of public land such as road reserves and river banks. There is also the problem of forced evictions by landlords or structure owners, which is not as well documented.

Most women, in common with the rest of the population in Kenyan slums, do not own the houses in which they live but rather lease them and pay rent – which usually constitutes a significant portion of their incomes. A number of women told Amnesty International of violent experiences, including forced evictions, by landlords or structure owners often because of failure to pay rent or delayed payment of rent. Many told Amnesty International that they felt that they were easy targets for landlords because of their status as women and being viewed as powerless to stop the violent evictions.

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<sup>9</sup> The UN Committee on Economic, Social and Cultural Rights defines forced evictions as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection." UN Committee on Economic, Social and Cultural Rights, *General Comment No. 7, The Right to Adequate Housing*, para 3. The UN Commission on Human Rights has also recognized that forced evictions constitute gross violations of a range of human rights, in particular the right to adequate housing, *UN Commission on Human Rights Resolution 1993/77*, para 1.

## 2. GENERAL LACK OF ADEQUATE ACCESS TO SANITATION CONTRIBUTING TO PREVALENCE OF VIOLENCE AGAINST WOMEN (ARTICLE 1, INTERPRETED BY GENERAL RECOMMENDATION 19, AND ARTICLE 5)

Besides the high prevalence of sexual and other forms of gender-based violence that women and girls face in their homes and settlements, their vulnerability to violence is increased because of the scarcity of essential services. This vulnerability has been recognized by the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation.<sup>10</sup> This is particularly the case in relation to the absence of adequate sanitation in all the settlements. Women interviewed by Amnesty International described the ever-present risk of gender-based violence because of the long distances they have to travel to reach toilets. (The term 'toilets' in this briefing refers both to pit latrines – the most commonly used sanitation facility used in Nairobi's slums and informal settlements – as well as flush toilets which are sporadically present in the settlements). The most obvious impact of poor sanitary conditions is the high incidence of diseases and infections.

The official water and sanitation regulator and provider (the Nairobi Water and Sewerage Company and the Athi Water Services Board) estimates that only 24 per cent of residents in Nairobi's slums and informal settlements have access to toilet facilities at a household level.<sup>11</sup> Most women interviewed by Amnesty International felt that access to private washing facilities was even more limited than access to toilets. Women in Mathare thought that the general lack of private washing facilities was mainly because of "the general perception by landlords, house owners or even private developers that what are absolutely necessary are latrines or toilets."<sup>12</sup>

The shortage of toilets and private washing facilities in the slums exacerbates women's insecurity and heightens the risk of gender-based violence. The lack of toilets and private washing facilities in the immediate household vicinity puts women at great risk particularly of sexual and other forms of gender-based violence. All women interviewed by Amnesty International referred to the ever present danger of sexual and other forms of gender-based violence particularly at night and sometimes well before dark. For the significant majority of women interviewed, the lack of adequate access to toilets and private washing facilities meant that they would not dare use the limited available facilities because they were far away, which compounded the risk that they would experience sexual and other forms of

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<sup>10</sup> The Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, Catarina de Albuquerque in her report to the General Assembly in 2010, made clear that women and girls can be at an increased risk of physical and sexual assault in situations where access to water and sanitation are limited. See A/65/254, para. 38.

<sup>11</sup> *Strategic Guidelines for Improving Water and Sanitation Services in Nairobi's Informal Settlements*, Nairobi Water and Sewerage Company & Athi Water Services Board, 2009, p13.

<sup>12</sup> Amnesty International focus group discussion in Mathare, 18 February 2010.

gender-based and other violence on the way.

Amnesty International interviewed women and girls who have been victims of violence, including attempted rape, as a direct result of having to walk to toilets which can be situated up to 10 minutes walk away from their houses.

On occasion there are small, usually single, private washing facilities adjacent to the few available shared pit latrines. These are shared by tens of households and are rarely in hygienic and clean condition. As a result, the prevailing situation is such that most women and their families have to use their houses for washing. For women their need for privacy is compromised, as discussed further below.

Since 2008, there have been up to 40 ablution blocks [comprising of toilet and shower facilities] set up with the support of public authorities (the water and sanitation service provider – the Nairobi City Sewerage and Water Company, and the regulator – the Athi Water Services Board) including in the slums and informal settlements visited by Amnesty International. The community sanitation facilities, though positive, still fall short of meeting the significant sanitation needs of settlement residents – they are inadequate in number and are often not accessible. Their usage requires the payment of user fees that are unaffordable for most women interviewed by Amnesty International. The facilities are closed at certain times (for example between 10 pm and 6 am) and even when they are open at night, they are insecure.

### 3. CONSTRAINTS TO THE RIGHT TO HEALTH AND IMPACT OF POOR SANITARY CONDITIONS (ARTICLES 5, 12)

Women interviewed by Amnesty International raised health care costs and the lack of privacy as two major effects of the lack of access to sanitation.

#### 3.1 CONCERNS RELATING TO HEALTH AND COSTS

There is a high incidence of diseases caused in part by lack of sanitation such as cholera, diarrhea and dysentery which affects households in the slums, particularly children. Women interviewed by Amnesty International said that the poor sanitary conditions they live in – which include widespread disposal of human excreta in the open because of lack of adequate access to toilets – directly contribute to the high incidence of poor health in their environments. Several studies by non-governmental research organizations have shown that most health indicators in the Nairobi slums and settlements are worse than other parts of Kenya including rural areas, in part because of inadequate sanitation.<sup>13</sup> A survey by the African Population and Health Research Centre (APHRC) revealed that infant, child and under-5 mortality rates were 20, 65 and 35 per cent higher respectively, in informal

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<sup>13</sup>See generally, *Population and Health Dynamics in Nairobi's Informal Settlements*, African Population and Health Research Center (APHRC), 2002.

settlements in Nairobi compared to rural areas.<sup>14</sup>

### 3.2 LACK OF PRIVACY

Most women interviewed by Amnesty International stated that they are forced to bathe in their houses because of the lack of private washing facilities in the slums and informal settlements. However many women complained that using one's house for washing posed further problems relating to lack of privacy. Most of them told Amnesty International of feelings of shame and indignity when using their [mostly one-roomed] houses as every time they had to take a bath they would need to tell the children or adults to leave the house and when this is not possible they are forced to contend with the reality that they would have to shower in the presence of children and adults. They stated that this was not culturally appropriate.

## 4. FAILURE TO IMPLEMENT EXISTING MEASURES TO PREVENT GENDER-BASED VIOLENCE IN SLUMS (ARTICLES 1, 2, AND 3, AS INTERPRETED BY GENERAL RECOMMENDATION 19)

The ever-present threat of rape and other violence that women face in the settlements is exacerbated by the lack of adequate security services – including policing and other services such as adequate public street lighting.

Women survivors of violence in the settlements face formidable challenges in their attempts to access justice, just like their counterparts in non-settlement areas. However in addition to these challenges women survivors of violence in all of the informal settlements visited by Amnesty International cited the lack of effective police presence as a major constraint to women's access to justice mechanisms. The fact that there are no police stations in the slums and informal settlements means that women would spend more time and money (for transport) even to file a report of gender-based violence. These barriers often lead to impunity in cases of sexual and other forms of gender-based violence.

The general lack of toilets and washing facilities in the slums and informal settlements, outlined above, is due to official failure to enforce existing laws on sanitation standards. Under Kenyan law the primary responsibility to ensure adequate access to sanitation at a household level rests with the private individuals and companies that own the houses and structures inhabited by most people living in the settlements.<sup>15</sup> The Public Health Act and

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<sup>14</sup> *Ibid*, p xiv.

<sup>15</sup>The Local Government (Adoptive by-laws) (Building) Order 1968, revised 2009 ('Building Code') (applicable countrywide and made under the Local Government Act, Chapter 265, Laws of Kenya) provides in section 3 (1) that the by-laws apply with respect to "any person who erects a building or develops land or changes the use of a building". The applicable standards include provisions on "drainage", "sanitary conveniences" and "sewers" which are considered mandatory in the construction of "any building" and under which standards on issues such as latrine, bath and lavatory accommodation

relevant provisions of the applicable Building Code<sup>16</sup> make provisions regarding minimum standards which include sanitary requirements. The local authorities and public health officials supervise the compliance of these standards by individual private developers.<sup>17</sup> However, Amnesty International found that these laws and regulations were not enforced in any of the settlements visited. This was partly because the settlements fall outside areas covered by urban plans and as a result proper sanitation infrastructures, including settlement connection to public sewer lines, were not ensured.<sup>18</sup> Non-enforcement of existing laws has directly resulted in the lack of adequate toilet and washing facilities in settlements.

Despite an official government policy now recognizing the existence of settlements<sup>19</sup> and the formal adoption of a government slum upgrading programme<sup>20</sup> there has been little change in the practice of government officials and the local authority, the Nairobi City Council. They still consider slums as irregular. The Nairobi City Council's city planning department told Amnesty International that slums and informal settlements are yet to be included in the city's urban plans.<sup>21</sup>

As a result of decades of government failure to recognize Kenyan slums and settlements for city planning and budgeting purposes, millions of residents have been and continue to be denied a range of essential services provided by the government to other residents of the city.<sup>22</sup> By the government's own admission slums and settlements "lack adequate physical

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and sewage and waste water disposal are provided for (Part II of the Code, sections 167-208). Sections 118 and 119 of the Public Health Act, Chapter 242, Laws of Kenya, make provision on what constitutes "nuisance" under this law – including poor sanitary conditions in a building/premise and empowers public health officials to take action to ensure such nuisance is redressed. Section 126A of the Act provides for the power of "every municipal council and every urban and area council" to make and enforce by-laws in relation to buildings and sanitation.

<sup>16</sup>The Local Government (Adoptive by-laws) (Building) Order 1968, revised 2009 ('Building Code').

<sup>17</sup>The Local Government (Adoptive by-laws) (Building) Order 1968, revised 2009 ('Building Code'). Since the enactment in 1999 of the Environment Management and Coordination Act (EMCA), with the aim of better environmental protection, the enforcement of building and sanitation standards is also linked to the enforcement of the EMCA which falls under the mandate of the National Environmental Management Authority established under this Act.

<sup>18</sup>This conclusion is reached based on Amnesty International's interviews with the Nairobi City Council, City Planning Department, 23 February 2010 and the Ministry of Public Health and Sanitation, 22 February 2010.

<sup>19</sup>*Sessional Paper No. 3 on National Housing Policy for Kenya*, Government of Kenya, 2004, para 30.

<sup>20</sup>*Slum upgrading Programme Volume 1: Implementation Strategy 2005-2020*, Government of Kenya, 2005. The challenges regarding the implementation of the government slum upgrading programme are discussed in Amnesty International report, *Kenya - the Unseen Majority: Nairobi's Two Million Slum-Dwellers*, Amnesty International, 2009 (AI Index: AFR 32/005/2009) pp 22-29.

<sup>21</sup> Amnesty International interviews with Nairobi City Council, City Planning Department, 23 February 2010.

<sup>22</sup>See *the Unseen Majority* (n 20 above) p7.

infrastructure [including] sewer systems, drainage, water and sanitation facilities...Where such facilities exist they are in a poor state or are results of illegal connections.”<sup>23</sup>

The government has developed policies recognizing their rights to water and sanitation and the need to extend such services to slums and informal settlements. These include policies which explicitly refer to the international Millennium Development Goal target on sanitation to reduce by half, between 1990 and 2015, the proportion of people without sustainable access to basic sanitation. The new Constitution states that every person has the right to reasonable standards of sanitation (Art 43(1) (b)). The right to access to water and sanitation is recognized in Kenya’s National Water Services Strategy (NWSS) for 2007 – 2015 developed by the Ministry of Water/Irrigation. The 2007 National Environmental Sanitation and Hygiene Policy (NESHP) developed by the Health Ministry states that: “As a basic human right, all Kenyans should enjoy a quality of life with dignity in a hygienic and sanitary environment and be free from suffering any ill health caused by poor sanitation.”

Implementation of these policies is likely to increase access to water and sanitation for people in informal settlements. However, the policies do not address the need for relevant government bodies (including the Ministry of Local Government through the local authorities) to require structure owners to ensure access to sanitation for the majority of the residents in informal settlements. The Ministry of Public Health’s National Environmental Sanitation and Hygiene Policy, the National Water Services Strategy and the Pro-Poor Implementation Plan for Water Supply and Sanitation (PPIP - WSS) prepared by the Ministry of Water and Irrigation, all do not acknowledge women’s vulnerability to violence due to lack of sanitation at the household level. These policies fail to effectively take into account the requirements of women living in slums and informal settlements. Kenya’s sanitation policies focus on establishing public toilets in informal settlements which – as shown above – are particularly inadequate for women.

## **SUMMARY OF RECOMMENDATIONS AMNESTY INTERNATIONAL HAS MADE TO THE KENYAN AUTHORITIES AIMED AT ADDRESSING WIDESPREAD GENDER-BASED VIOLENCE IN THE SLUMS WHICH IS EXACERBATED BY INADEQUATE ACCESS TO SANITATION**

In order to address the issue of gender-based and other forms of violence in Nairobi’s slums and settlements the government must take steps to urgently ensure improved access to essential public services such as water, sanitation and public street lighting. It must also eliminate disparities in access to such services between informal settlements and other localities.

In particular, the Kenyan government should take the following, among other, measures:

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<sup>23</sup> *Slum Upgrading Programme Volume 1: Implementation Strategy 2005-2020*, Government of Kenya, 2005, pp 17-18.

- Ensure equal protection under the law to all the people living in slums and informal settlements, including by applying and enforcing legislation requiring landlords to construct toilets and private washing facilities in the immediate vicinity of each household.
- Where appropriate provide assistance to households to construct toilets and private washing facilities.
- Facilitate provision of sanitation by ensuring availability of dumping sites and improved roads.
- Increase the levels of policing in the slums and informal settlements by establishing police posts and ensuring other effective forms of policing in consultation with residents of the slums and settlements.
- Institute other measures to improve security including by increasing the level of street lighting in the informal settlements.
- Take immediate measures to improve confidence in the justice system and policing, including by improving channels of communication with police so that it is easier for women to report crimes against them.

The Kenyan Government should also:

- Invite the UN Special Rapporteur on violence against women, its causes and consequences to visit Kenya.

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