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# “I Just Sit and Wait to Die”

Reparations for Survivors of Kenya’s 2007-2008 Post-Election  
Sexual Violence



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Sexual Violence

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# “I Just Sit and Wait to Die”

## Reparations for Survivors of Kenya’s 2007-2008 Post-Election Sexual Violence

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# Map of Kenya






# SUMMARY AND RECOMMENDATIONS





Wairimu V., 65, was raped by a group of men at an IDP camp. Her husband blames her for the rape, and beats and verbally abuses her including in the presence of their children. She would like to leave her abusive husband but is worried that she will not be able to support herself. She has such severe pain in her leg, lower abdomen, and back that she has to take pain killers daily; she also has vaginal bleeding and hypertension. Many sexual violence survivors are still in urgent need of medical treatment and psychosocial support.





On January 25, 2008, during the explosion of post-election violence in Kenya, four men beat and brutally gang-raped Apiyo P., a 53-year-old mother of five. She told Human Rights Watch how the rape continues to affect her:

*I am not at peace, my body is not the same. If I am pressed, urine just comes out. I feel weak. Sometimes I have a dirty-smelly discharge coming from my vagina. I feel pain in my lower abdomen. I have serious back ache.... I don't have money to go to a big hospital. I have so much shame. I feel hopeless. I just sit and wait to die.*

*I have problems sleeping. Sometimes I can go to bed at 10 p.m., be up at 11:30 p.m., and not fall sleep again. I doze off a lot during the day. I think about the rape, my financial problems, and the death of my husband [in the violence]. I was running a clothes boutique business in Nakuru and I had good money. But now I have become a beggar. Sometimes I don't have food. I don't have any help from my family.*

*I came here to my father-in-law's home after the violence and he gave me a plot of land to build. My brothers-in-law didn't want me. The land was registered in my brother-in-law's name and he wants the land back. I need help with land and a house for my children. I am just here in the village and I don't know how to reach the government to ask for help.*

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More than eight years since violence engulfed Kenya in the aftermath of the December 2007 election, survivors of rape and other sexual violence continue to experience significant physical and psychological trauma and socio-economic hardship, worsened by the Kenyan government's failure to provide medical care, psychosocial support, monetary compensation, and other redress.

The longer the government takes to assist women and girls the worse their situation becomes. However, renewed momentum around developing a reparations process offers the Kenyan government an opportunity to rectify these failures and ensure justice and redress for post-election sexual violence.

The violence that erupted in Kenya between December 2007 and the end of February 2008 following a disputed presidential election included patterns of police use of excessive force against protestors as well as ethnic-based killings and reprisals by supporters aligned to both the ruling and opposition parties. It left at least 1,133 people dead and displaced more than 600,000 people. There was also widespread destruction and looting of homes and properties, expulsion of people from their homes, and maiming of individuals.

Widespread sexual violence against women and girls—and to a lesser extent, men and boys—was less visible than other abuses, but it was just as devastating. Based on testimonies, reports from human rights groups, and hospital data, an official commission of inquiry into the post-election violence estimated that at least 900 cases of sexual violence occurred, but this is likely an underestimate given the reluctance of survivors to report, the stigma attached to sexual violence in Kenya, and fears of retaliation. Perpetrators included militia groups, humanitarian workers, and members of Kenya's security forces, according to witnesses and survivors.

This report is based on interviews conducted between November 2014 and October 2015 in different parts of Nairobi, Rift Valley, Western, Nyanza, and Coast regions with 163 female and 9 male survivors and witnesses; and with civil society actors, health workers, lawyers, government officials, and donors.

This report documents the ongoing physical, mental, social, and economic impact of sexual violence together with other human rights abuses committed against women and girls and men and boys during the post-election violence in Kenya. It describes significant obstacles to support services, including health care, and to prosecutions and reparations for these crimes. It also outlines steps for a gender-sensitive approach the Kenyan government should take in light of plans to develop a reparations process.



Human Rights Watch interviews with female and male victims documented an array of disturbing and brutal violence, including rape, gang rape, and having genitals beaten or mutilated. Most survivors interviewed by Human Rights Watch were raped by more than one perpetrator and many of the cases we documented involved more than four perpetrators and, in a few instances, more than ten.



Kamene F. stands outside her house in a slum in Nairobi with her 7-year-old son born from rape. Kamene stopped attending school after the rape. The registration office refused to issue her son with a birth certificate and demanded that Kamene provide the name of the father, whom she does not know. Kamene is also raising her young sister whose rape was so violent it left her with a brain injury – she faints often and cannot use a toilet, feed herself, or go to school. Their family abandoned them when they learned of the rapes.





**Mwende T., 16 at the time, was raped in January 2008 by a neighbor who said he would help her to escape from marauding youths. When she went to the police after a few days to report the rape, a police officer said she was lying about being raped. Mwende had to move when the man who raped her threatened to kill her when he learned she had gone to the police. Survivors of sexual violence have experienced formidable challenges in getting help from authorities and accessing justice.**

Women and girls said they were penetrated with guns, sticks, bottles, and other objects; stripped naked; sexually fondled and humiliated. Some men and boys were forcibly circumcised or castrated. Many sexual attacks were accompanied by severe physical abuse, including stabbing, kicking, cutting with machetes, throwing women on hard surfaces, and beatings with heavy objects. Victims who tried to resist often incurred additional beatings.

Men raped women old enough to be their great-grandmothers, children as young as three, pregnant women, women who had just given birth, and breast-feeding mothers. Many women were raped in the presence of other family members including young children. Some were raped together with other female family members or in groups with other women from their communities by the same perpetrators. Sometimes family members were forced to rape their own relatives.



The Kenyan authorities have convicted only a handful of individuals for sex crimes related to the post-election violence. According to the report of a Multi-Agency Task Force established by the director of public prosecutions in February 2012 to undertake a comprehensive review of the status of investigation and prosecution of cases, there have been only 23 such convictions—although these figures are questionable as the data presented in the report is inconsistent and hard to follow. The small number of convictions for sexual violence offenses mirrors the broader context in which the Kenyan authorities have shown apathy and reluctance to initiate genuine, credible, and effective measures to investigate, prosecute, and punish perpetrators of the violence, especially those who organized and financed it and members of state security forces who committed serious abuses.

Victims see the prosecution of perpetrators as both a reparative and deterrent measure, but have experienced

**Fatma W. with her 7-year-old son born from rape. Fatma was 17 when she was gang raped at their home in Nairobi by three men who accused her family of hiding men from the “enemy” tribe. She stopped going to school after the rape. Fatma said her neighbors stigmatize her son because he was born from rape.**





**83-year-old Thomas N. was attacked by a group of youth in January 2008. They beat and gang raped his two daughters who have since died from health problems associated with the rape. Thomas is taking care of some of his grandchildren. The attackers also beat him badly, breaking almost all his teeth, and cracking his skull, to force him to rape his daughters. They then gang raped him. He has received money from the government that enabled him to buy land and build a house, but he has chronic health problems since the attack.**

formidable barriers in getting help from authorities and accessing justice. These include lack of confidence in the police, negative and negligent police attitudes towards victims of sexual violence, and ineffective protection of witnesses from reprisals by perpetrators. Furthermore, Kenya lacks a clear legal framework to punish conflict-related sexual violence.

Insecurity, trauma, fear of stigma, a lack of transport, and insufficient money for treatment prevented most victims from seeking medical attention in the immediate aftermath of the attacks. As a result, the absence of medical examinations limited the collection of forensic evidence for use in prosecutions and the lack of treatment immediately after the assault left survivors at risk of unwanted pregnancies and of contracting HIV and other sexually transmitted infections. Human Rights Watch spoke to some women who sought medical treatment for sexual violence but were ridiculed by health care workers or turned away



without treatment by doctors who appeared to refuse treatment on the basis of ethnicity. Others were told that health care workers were too busy treating other casualties to attend to rape victims.

Many sexual violence survivors are still in urgent need of medical treatment and psychosocial support. Many of the victims whom Human Rights Watch interviewed have serious, and at times debilitating, physical injuries as a consequence of sexual attacks, severely limiting their ability to perform everyday tasks and essential job functions, throwing them into deeper poverty. Women commonly complained of pains and aches, including those that limited their ability to walk or stand for long periods, vaginal bleeding, and smelly vaginal discharges. Some were infected with HIV and other sexually transmitted infections as a consequence of rape. Others developed traumatic fistula and other damage to their reproductive organs. Others said they suffered from long-term stress-

**Lucy G., 46, from Nairobi was married with a good job. But all that ended when she was gang raped in December 2007. Lucy had a stroke in 2012, which has limited her ability to use her hands properly, walk, and work. She lives alone in a one-roomed house in a slum in Nairobi, and has no family support. She is often hungry and has no money to seek proper treatment.**





**Regina W., 23, was raped in December 2007. She now works with Grace Agenda, a community-based organization that supports survivors of sexual violence.**

related illnesses such as hypertension and ulcers as a consequence of the sexual violence they experienced.

Women and girls told Human Rights Watch they regularly need medical attention for their health problems, including frequent infections, or they have to keep buying medication for pain relief when obtaining medical attention is not an option. None of the women we interviewed had medical insurance, placing a huge financial burden on poor families.

Many women and girls have been rejected by their husbands and families. Others experience physical violence and verbal abuse from their husbands. Some male sexual violence survivors, feeling emasculated as they are unable to provide for their families due to trauma and physical injuries from the assaults, expressed controlling behavior towards their wives, including trying to prevent them from working outside the home.



Children born from pregnancy following rape face stigma, rejection, and physical and verbal abuse from immediate family, extended family, and in the wider community. They may face discrimination in acquiring birth certificates that are necessary for access to services and benefits crucial to the enjoyment of their fundamental rights, such as education and citizenship.

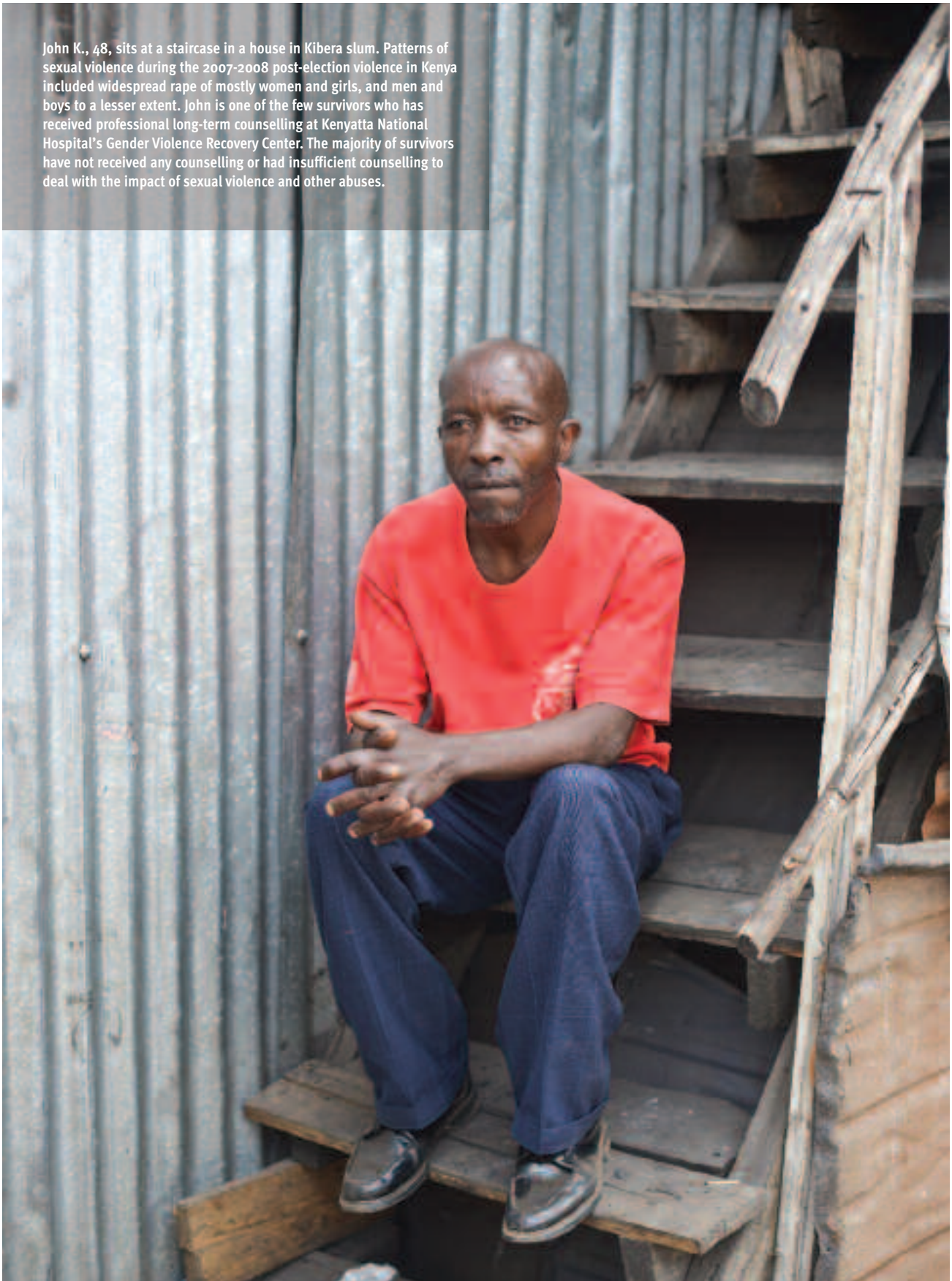
The Kenyan government has not implemented programs to provide proper psychosocial support services for survivors of sexual violence and their families in spite of the profound emotional and psychological suffering experienced by survivors as well as their families and communities.

Women described profound feelings of hopelessness, self-hatred, shame, anger, and sadness. Nearly all experienced chronic symptoms such as chest pains, backache, stomach aches, and insomnia. Other survivors said they had developed a fear of men, men in uniform, sex, dark or

**Jaqueline Mutere, 48, walks on a rail line in Kibera, the largest slum in Kenya, which was one of the hotspots of the post-election violence. She was raped in December 2007 by a man she knows. She is now raising her daughter born from the rape although she says she struggled to accept her. Jaqueline started Grace Agenda, a community-based organization, to support survivors of sexual violence particularly women struggling to raise children born from rape. Some children face stigma, rejection, and physical and verbal abuse by immediate family, extended family, and in the wider community; and discrimination in acquiring birth certificates.**



John K., 48, sits at a staircase in a house in Kibera slum. Patterns of sexual violence during the 2007-2008 post-election violence in Kenya included widespread rape of mostly women and girls, and men and boys to a lesser extent. John is one of the few survivors who has received professional long-term counselling at Kenyatta National Hospital's Gender Violence Recovery Center. The majority of survivors have not received any counselling or had insufficient counselling to deal with the impact of sexual violence and other abuses.





isolated places, and public spaces. Other survivors said they contemplated suicide. Some women said they are often overwhelmed with thoughts of the rape and other violence that they witnessed, such as killings of family members and destruction of their properties. They said they found it difficult to focus on their daily work or to fall asleep. The mental anguish that some sexual violence survivors experience is compounded by the fact that they often suffer in silence and alone, without the support of family members who stigmatize and reject them.

Women and girls told Human Rights Watch that sexual violence ended or interrupted their education, limiting their employment and earning potential. Some women and girls said they could not continue with their education because of the shame of rape, pregnancy and the need to care for the babies, or that they lacked family and financial support to return to school. In other cases, women and girls suffered physical injuries and developed mental health problems that hindered them from pursuing an education.

**Atieno O., 36, has twice been a victim of rape. In 1992 she watched as her mother was gang raped by a group of men during tribal clashes in Rift Valley. Since then she is easily frightened and experiences periodic blackouts. She was raped again in December 2007 during the post-election violence. She has never told her husband about the rape but says he is suspicious and still questions whether she was sexually assaulted during the violence. She is afraid that if he finds out the truth he will chase her away and she would not be able to support their three children on her own. Many sexual violence survivors suffer in silence and alone, without the support of family members who also stigmatize and reject them.**





**Wangechi N., 60, was raped by men she did not know in December 2007. She and her family were evicted from their home in Eldoret. She is pictured here in her vegetable garden in an area where some families expelled from their homes during the post-election violence bought land and rebuilt homes with the support of the government and Kenya's development partners. The Kenyan government's efforts to compensate victims of the violence have been limited, and have effectively excluded many victims of sexual violence.**

Survivors told Human Rights Watch they experienced hunger and financial difficulties in supporting themselves and their children as a result of their physical injuries and the mental health consequences of sexual violence. Some women said they lacked adequate and decent housing, and lived in structures that were too small for their families or failed to protect them against environmental hazards. Others are housed by their children, relatives, or friends.

Following the violence, the leaders of both the Party of National Unity and the opposition Orange Democratic Movement agreed to set up the Commission of Inquiry into the Post-Election Violence (CIPEV). They also established an Independent Review Commission to look at the flaws in the election and a Truth, Justice, and Reconciliation Commission (TJRC) to help heal historical grievances from before the 2007 elections.

The CIPEV recommended wide-ranging reforms of the police as well as the creation of a special tribunal, staffed by both



Kenyan and international judges and prosecutors, which was never established after members of parliament successfully defeated the initiative.

The Kenyan government has—to a limited extent—implemented measures to compensate the victims, especially internally displaced persons, in the form of resettlement, building of new homes, and providing money and land. However, the measures have effectively excluded many victims of sexual violence, who currently only qualify for compensation if they were also displaced from their homes or lost property during the violence. The sexual violence survivors we spoke with expressed a deep sense of injustice at being left out of these assistance programs.

The Kenyan government's failure to effectively close the impunity gap for sexual violence and compensate survivors is contrary to its international human rights obligations. It continues to undermine women's rights and their

**Cheptoo M., a blind woman, displays her walking cane. She was raped together with her younger sister by two General Service Unit officers at their home in a slum in Nairobi. Her husband became verbally abusive following the rape and eventually left her. Cheptoo is also living with HIV. She is raising her own child and four children of her sister who died in 2013, with no family support. Kenya's plan to develop a reparations process should include support tailored to meet the specific needs of women, including age and disability-specific needs, the economic and psychosocial impact of raising children born out of rape, and whether they are child or female-headed households.**





**Sinapei P., 62, stands at her husband’s grave at their home in Rift Valley region. When Sinapei’s husband found out that she had been raped, he refused to sleep with her, beat her, chased her away from home, brought other women home, and verbally abused her. He died in 2014 and she is very worried that her brothers-in-law will take away her land and home and she will have nowhere to live.**

enjoyment of fundamental freedoms, as well as causing them serious harm and suffering.

Civil society groups together with government agencies have begun discussions and consultations on strategies for an effective reparations process, including the formation of an inter-agency committee to lead this process. This follows President Uhuru Kenyatta’s announcement in March 2015 of a fund of 10 billion Kenyan Shillings (approximately US \$9,800,000) “over the next three years to be used for restorative justice” as recommended by the TJRC—even though the TJRC report has not been formally adopted by parliament nor an implementation plan created as is required by law.

President Kenyatta said he established this fund as a way of ensuring justice for victims of the post-election violence, after the director of public prosecutions informed him that most cases, including those of sexual violence, could not be prosecuted due to lack of evidence. However, Kenyatta’s





assertion has been criticized by civil society groups as an excuse and strategy to evade accountability for the post-election violence since the government has not demonstrated that it has taken all possible steps to thoroughly investigate and prosecute perpetrators.

It is also unclear whether the TJRC's recommendations on reparations will be implemented as long as the report has not been passed by parliament as required by law. Nonetheless, Kenyatta's declaration of the restorative fund has reignited the discussion on reparations in Kenya.

The Kenyan government should use this process to develop a reparations policy and program that is in accordance with international standards and good practice, and be guided by the UN Principles and Guidelines on the Right to a Remedy and Reparation for Victims and the Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence. It should also create a credible and transparent administrative system for the reparations program.

**Maua E., 53, at her relocated home in Rift Valley. Maua went to Moi Teaching and Referral Hospital for treatment two days after being gang raped but the health workers ridiculed her and delayed treatment. Some women who sought medical treatment for sexual violence were mocked by health care workers, turned away without treatment, or denied important medical records by doctors who appeared to refuse treatment on the basis of ethnicity or trivialized the experience of rape.**





**Wavinya M. at a water pump in her village. Two of Wavinya's daughters were gang raped by members of the criminal gang Mungiki and became pregnant. Her husband abused her emotionally and blamed her for the rape of their children. One of Wavinya's daughters wanted to return to school after giving birth but her husband refused. Few women and girls who had been in school were able to resume their studies following the rape due to the shame of rape, pregnancy and the need to care for the babies, or lack of family and financial support to return to school. Others suffered physical injuries and developed mental health conditions that hindered them from pursuing an education.**

Reparations for conflict-related sexual violence include restitution, compensation, rehabilitation, and guarantees of non-repetition. Reparations should also deal urgently with the immediate harm affecting victims of conflict-related sexual violence, by providing, for example, access to medical assistance. The reparation program should not be contingent on successful prosecutions and should provide compensation and other services to individuals who come forward with their experiences of sexual violence. The program should also be designed and implemented in consultation with victims, including victims of sexual assault, and should respect the rights and dignity of victims, and avoid further harming or traumatizing them.





Nafula K., 46, was gang raped together with three other women by four men in January 2008 while at an IDP camp. Her husband beats her, verbally abuses her, and refuses to sleep with her. Her family was also evicted from their home during the post-election violence. She says she wants to leave her abusive husband but wants the government to first build her a house so that she can have a place to go to. Many sexual violence survivors experience physical and verbal abuse in their homes.



# KEY RECOMMENDATIONS

## TO THE GOVERNMENT OF KENYA

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- Develop and implement, through a transparent and participatory process and in accordance with international standards, a reparations program for all victims of serious human rights violations committed during the post-election violence, including sexual violence.
- Provide free, quality, comprehensive, and survivor-centered rehabilitative health services for all victims of rape and other forms of sexual violence. As a matter of priority:
  - Identify survivors of the post-election violence who require urgent medical assistance, including treatment for sexually transmitted infections, HIV, and surgery for those with life-threatening or debilitating conditions resulting from sexual violence;
  - Develop programs to address the mental health needs of survivors, including mobile outreach, individual counseling, and support groups, based on the free and informed consent of the individual; and
  - Work with various government agencies to provide survivors with access to free and voluntary medical and psychosocial services in public hospitals.
- Address impunity for election-related violence by establishing credible, special mechanisms within the judiciary, police, and prosecutorial services that enhance capacity to investigate, prosecute, and adjudicate cases from the 2007-2008 election-related violence while also providing full cooperation to the investigations and prosecutions of the International Criminal Court (ICC). In consultation with international expert investigators and prosecutors on sexual violence, mandate, within these special mechanisms, the development and implementation of a comprehensive, survivor-centered policy and strategy to investigate, prosecute, and adjudicate sexual violence crimes committed during the post-election violence in accordance with international fair trial standards. Consider whether cases against lower-level perpetrators or for less serious crimes could be dealt with through the ordinary courts, in tandem with the establishment of special mechanisms.
- Finalize, adopt, and implement, through a transparent and participatory process, the draft National Action Plan on UN Security Council Resolution 1325 to ensure the full and meaningful participation of women in all peace processes and transitional justice mechanisms on women, peace, and security; ensure sufficient resources to carry this out.
- Implement the recommendations of the Commission of Inquiry into the Post-Election Violence (CIPEV) to address post-election sexual violence and sexual violence in Kenya more generally, including gender violence recovery centers in public hospitals, gender desks at police stations, training and accountability systems, and a rapporteur on sexual violence who reports to parliament annually.

## Methodology

Human Rights Watch conducted research between November 2014 and October 2015 on the impact of sexual violence and other human rights abuses committed against women and girls and men and boys during the 2007-2008 post-election violence in Kenya. Follow-up interviews were also conducted by phone with some survivors to verify facts.

Field research for this report spanned different parts of Nairobi, Rift Valley, Western, Nyanza, and the Coast. These regions were the most affected by the post-election violence. The research also focused on both urban and rural areas as women in these areas were affected differently both in terms of the patterns of violence and access to services.

Human Rights Watch interviewed 163 women and girls who were survivors of or witnesses to sexual violence. We also interviewed 9 male survivors and witnesses. All survivors and witnesses were interviewed individually.

We identified survivors and witnesses with the assistance of local nongovernmental organizations (NGOs) providing services to women, and networks of internally displaced persons (IDPs). Where possible, interviews were conducted in confidential settings. In the few instances where this was not possible, care was taken to protect the confidentiality of survivors and witnesses as far as possible. We informed all participants of the purpose of the interview, its voluntary nature, and the ways the information would be used. Each participant orally consented to be interviewed.

Interviews lasted between 30 minutes and 1 hour. The Human Rights Watch researcher who led the research conducted almost all the interviews and was assisted by an activist who is a survivor with counselling experience. The interviews were conducted mostly in Swahili, with occasional support from interpreters in Luhya and Dholuo when the interviewees had difficulty understanding Swahili. We took care to minimize the risk of retraumatization when conducting interviews. Where appropriate, Human Rights Watch provided contact information for organizations offering legal, social, or counseling services. Interviewees received no material compensation for participating, but were reimbursed for the cost of public transport to and from the interview.

We also interviewed 12 Kenyan and international civil society activists, health workers, lawyers, donors, and officials from the directorate of national cohesion and national values, National Commission on Human Rights, the National Gender and Equality Commission, the Independent Policing Oversight Authority, the Internal Affairs Unit of the police service, and the Witness Protection Agency. We collected and analyzed relevant laws, policies, official government strategies, and reports by academics, national and international organizations, and United Nations agencies.

The report uses pseudonyms to protect the privacy and security of survivors and witnesses interviewed. We have also modified the exact dates of interviews, the location of interviews, as well as additional identifying details, where appropriate, to ensure that interviewees cannot be identified.

## Terminology

This report uses the term conflict-related sexual violence to describe the sexual violence that was committed in Kenya during the 2007-2008 post-election violence. According to United Nations Action against Sexual Violence in Conflict:

Conflict-related sexual violence includes “rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence...against women, men, girls or boys. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g. political strife). They also have a direct or indirect nexus with the conflict or political strife itself, i.e. a temporal, geographical and/or causal link.”<sup>1</sup>

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<sup>1</sup> United Nations Action against Sexual Violence in Conflict, “Analytical and Conceptual Framing of Conflict-Related Sexual Violence,” 2011, <http://www.stoprapienow.org/uploads/advocacyresources/1321456915.pdf> (accessed July 15, 2015), p. 3. This report also notes that, “Situations of political unrest, including pre and post-electoral violence as witnessed in Kenya... where reports suggest that sexual violence was used to serve political ends and to target opponents, are relevant even when they do not reach the threshold of armed conflict. These can be considered ‘other situations of concern’ in the sense of the *UN Charter*.” Ibid., p. 2.

## I. Kenya's Post-Election Violence, including Sexual Violence

The violence that engulfed Kenya between December 2007 and the end of February 2008 following a disputed presidential election left 1,133 people dead and led to the displacement of an estimated 600,000 people.<sup>2</sup> There was also widespread destruction of homes and properties, looting, expulsion of people from their homes, and maiming of individuals. In addition to these abuses, women and girls, and to a lesser extent, men and boys, were also the victims of brutal sexual violence.

Human Rights Watch has reported extensively on Kenya's 2007-2008 post-election violence and the government's response, including wholly inadequate efforts to investigate and prosecute perpetrators of the violence; compensate victims; and implement crucial legal and institutional reforms necessary to address the root causes of recurrent political violence in Kenya, such as historical injustice, inequality, and government corruption.<sup>3</sup> This report builds upon this work.

### Key Information about the 2007-2008 Post-Election Violence

Human Rights Watch's 2008 report, *Ballots to Bullets*, describes the main patterns of violence that unfolded after Kenya's December 2007 general election, namely police use of excessive force against protestors as well as ethnic-based killings and reprisals by supporters aligned to both the ruling and opposition parties. It outlines the ways in which this violence was the outcome of decades of political manipulation of ethnic tensions, and

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<sup>2</sup> Commission of Inquiry into Post Election Violence (CIPEV), 2008, "The Commission of Inquiry into Post Election Violence Report," [http://www.kenyalaw.org/Downloads/Reports/Commission\\_of\\_Inquiry\\_into\\_Post\\_Election\\_Violence.pdf](http://www.kenyalaw.org/Downloads/Reports/Commission_of_Inquiry_into_Post_Election_Violence.pdf) (accessed September 15, 2014), p. 383; and Republic of Kenya, Office of the President, Ministry of State for Special Programmes, "Progress Report on IDP Resettlement as at 18th July, 2011," (Progress Report on IDP Resettlement) on file with Human Rights Watch.

<sup>3</sup> Human Rights Watch, *Ballots to Bullets: Organized political Violence and Kenya's Crisis of Governance*, 2008, <https://www.hrw.org/report/2008/03/16/ballots-bullets/organized-political-violence-and-kenyas-crisis-governance>; "Turning Pebbles": Evading Accountability for Post-Election Violence in Kenya, 2011, <https://www.hrw.org/report/2011/12/09/turning-pebbles/evading-accountability-post-election-violence-kenya>; Unfinished Business: Closing Gaps in the Selection of ICC Cases, 2011, <https://www.hrw.org/report/2011/09/15/unfinished-business/closing-gaps-selection-icc-cases>; and High Stakes: Political Violence and the 2013 Elections in Kenya, 2013, <https://www.hrw.org/report/2013/02/07/high-stakes/political-violence-and-2013-elections-kenya>. See <https://www.hrw.org/africa/kenya> for more Human Rights Watch reporting on post-election violence and other human rights abuses in Kenya.

of impunity intertwined with longstanding grievances over land, corruption, regional inequality, and inequitable distribution of resources among other issues.<sup>4</sup>

The general election in Kenya took place on December 27, 2007. Voting proceeded smoothly with record numbers of registered voters and a record turnout. The parliamentary results were announced on December 29, resulting in major losses for the ruling Party of National Unity (PNU). Protests erupted before the announcement of the presidential results on December 30, as delays and irregularities in the count sparked rumors of rigging. The government banned public gatherings and the police confronted street protests with excessive force, killing and wounding hundreds of peaceful demonstrators with live ammunition. Meanwhile, some people took advantage of the lack of law and order to loot, rape, and riot.<sup>5</sup>

The violence that broke out after the 2007 election had a very clear ethnic dimension.<sup>6</sup> Political parties and alliances are formed on the basis of ethno-regional basis and not ideology.<sup>7</sup> In Kenya, one's ethnicity is often interpreted as synonymous with support for a particular political party or candidate, and during elections, politicians regularly mobilize support from voters along ethnic lines.

During the 2007 election, the main rival parties were the PNU and the Orange Democratic movement (ODM). Mwai Kibaki, a Kikuyu, was the PNU presidential candidate seeking re-election for a second term. Raila Odinga, a Luo and leader of the opposition, was the ODM candidate. The ODM built political support based on the broad perception that the Kibaki administration had entrenched tribalism and governed in the interests of the Kikuyu community. The PNU attacked the traditions of the Luo community, claiming that an uncircumcised man could not rule Kenya.<sup>8</sup> Pre-election violence in parts of Rift Valley pointed to these ethnic dimensions, including the fact that violence there was not spontaneous, but planned.<sup>9</sup>

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<sup>4</sup> Human Rights Watch, *Ballots to Bullets*, pp. 11-17.

<sup>5</sup> *Ibid.*, pp. 21-23; *Turning Pebbles*, pp. 12-13.

<sup>6</sup> Human Rights Watch, *Ballots to Bullets*, p. 4.

<sup>7</sup> See Antony Otieno Ongayo, "Politics of Ethnic Alliances and Ethno-Regional Parties: Which Way for Kenya?" August 27, 2012, <http://www.kenya-today.com/politics/politics-of-ethnic-alliances-and-ethno-regional-parties-which-way-for-kenya> (accessed December 3, 2015).

<sup>8</sup> Human Rights Watch, *Ballots to Bullets*, p. 4.

<sup>9</sup> *Ibid.*

Rape and other sexual violence were, to a large extent, directed at women and girls not only because of their gender, but also their ethnicity. Women and girls were raped as part of a broad pattern of violations against communities, and sexual violence was used to punish a particular ethnic group, instill terror, retaliate against them, or cause them to flee from a location.<sup>10</sup> Because of the emphasis placed in every culture on women's sexual virtue, the humiliation, pain, and fear inflicted by the perpetrator was seen as not only punishing the individual woman, but also her entire ethnic community. Perpetrators regularly made verbal comments to women that indicated that they were being punished for belonging to a particular ethnic group, and the intention of the rape was to force them to leave certain locations. Some of the other women we interviewed were asked what tribe they belonged to before the rape.

Nyokabi B., 33, was living in Molo at the time of the 2007 elections. She was raped by two men she knew who told her, “We will teach you a lesson and you will return to Central [region]. We don’t care whether you will return sick or pregnant but you will return.”<sup>11</sup> Forty-two-year-old Muthoni M. described to Human Rights Watch how she was gang raped on January 16, 2008 and threatened with further sexual violence by the perpetrators if she did not leave her home:

They cut the iron sheet roof and got into the house. Three men raped me and took all my household items. As they were raping me they said, “We don’t want to see a Kikuyu living in this area. After we leave, you should move out because if you don’t, other people will come and rape you again.” After they left we moved out. I have never gone back there.<sup>12</sup>

Awino J. said she could not tell how many men raped her because they tied a cloth around her face. But she remembers what the aggressors told her: “They said, ‘Luos have to return to their villages. If you try to rig our elections we will take you to your homes dead. It is either we rule you or kill you.’”<sup>13</sup>

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<sup>10</sup> See CIPEV, pp. 252-253.

<sup>11</sup> Human Rights Watch interview with Nyokabi J., Molo, November 8, 2014. The central region of Kenya is inhabited by Kikuyus.

<sup>12</sup> Human Rights Watch interview with Muthoni M., Nairobi, November 14, 2014.

<sup>13</sup> Human Rights Watch interview with Awino J., Nairobi, November 4, 2014.



Following the violence, the leaders of both the PNU and the opposition ODM agreed to set up the Commission of Inquiry into the Post-Election Violence (CIPEV, also known as the Waki commission, after its chairman, Justice Philip Waki). They also established an Independent Review Commission to look at the flaws in the election (the Kriegler commission), and the TJRC to help heal historical grievances dating from well before the 2007 elections.<sup>14</sup>

The CIPEV recommended wide-ranging reforms of the police as well as the creation of a special tribunal, staffed by both Kenyan and international judges and staff, which was never established.<sup>15</sup> Few of the other recommendations, such as addressing historical injustices and resettling and assisting internally displaced persons, have been adequately implemented.<sup>16</sup>

The CIPEV also recommended that, if a special tribunal was not established, former UN Secretary-General Kofi Annan—the chair of the negotiations that led to the coalition government formed after the violence—hand over the names of suspects to the International Criminal Court (ICC), which he did in July 2009. The ICC opened investigations in 2010 and requested summons for six high profile political and opinion leaders in December 2010. A pre-trial chamber of the ICC confirmed charges against Deputy President William Samoei Ruto, journalist Joshua arap Sang, former Head of Public Service Francis Kirimi Muthaura, and President Uhuru Muigai Kenyatta in two separate cases in January 2012. The trial of Deputy President William Ruto began in September 2013, but the ICC prosecutor withdrew charges, including charges related to rape, against Muthaura in

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<sup>14</sup> The Commission of Inquiry into the Post-Election Violence (CIPEV) was mandated to investigate the facts and circumstances surrounding the violence and the conduct of state security agencies in handling the violence and to make appropriate recommendations regarding these matters. Its mandate did not explicitly include sexual and gender-based violence, but it took steps to investigate these crimes as well. The CIPEV was constituted under the Commissions of Inquiry Act (Cap 102) Laws of Kenya following negotiations under the Kenya National Dialogue and Reconciliation agreement. See, CIPEV, p. vii. The Kriegler Commission, officially The Independent Review Commission (IREC), was an international commission of inquiry established by the Government of Kenya in February 2008 to inquire into all aspects of the 2007 General elections with particular emphasis on the presidential elections. See IREC, “Report of the Independent Review Commission on the General Elections held in Kenya on 27 December 2007, 2008, <http://aceproject.org/regions-en/countries-and-territories/KE/reports/independent-review-commission-on-the-general> (accessed November 4, 2015), p. 3, for the commission’s mandate. See Chapter IV of this report for more information on the TJRC.

<sup>15</sup> See Human Rights Watch, *Turning Pebbles*, pp. 22-25 for a detailed discussion on failed attempts to establish a special tribunal.

<sup>16</sup> CIPEV, pp. 472-482.

March 2013 and President Kenyatta in December 2014 due to a lack of evidence.<sup>17</sup> The case against Deputy President Ruto and Sang does not include any charges related to sexual or gender-based crimes.<sup>18</sup>

A number of factors likely contributed to the ICC prosecutor's inability to proceed to trial in the case against Muthaura and Kenyatta.<sup>19</sup> Some of the factors relate to shortcomings in the ICC's approaches to investigations and witness protection, but ICC processes have also been hampered to a significant degree by a campaign of political obstruction and pervasive allegations of witness interference and intimidation.

There are outstanding ICC arrest warrants, issued against three Kenyans, on charges of witness tampering through bribery and attempted bribery in the case against Ruto and Sang.<sup>20</sup> Judges in the case have noted an "element of systematicity of the interference of several witnesses in this case which gives rise to the impression of an attempt to methodically target witnesses of this case in order to hamper the proceedings."<sup>21</sup> In the case against Kenyatta, the ICC prosecutor has noted that, while it did not have evidence of direct intimidation, three trial witnesses withdrew due to security concerns, as did several witnesses who had agreed during pretrial proceedings to be part of the case. The ICC prosecution has also asserted that unidentified people attempted to persuade another

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<sup>17</sup> *Prosecutor v. Francis Kirimi Muthaura and Uhuru Muigai Kenyatta*, ICC, Case No. 01/09-02/11, "Decision on the withdrawal of charges against Mr. Muthaura," March 18, 2013, <https://www.icc-cpi.int/iccdocs/doc/doc1568411.pdf> (accessed December 23, 2015); *Prosecutor v. Uhuru Muigai Kenyatta*, ICC, Case No. 01/09-02/11, "Notice of withdrawal of the charges against Uhuru Muigai Kenyatta," December 5, 2014, <https://www.icc-cpi.int/iccdocs/doc/doc1879204.pdf> (accessed December 23, 2015). The prosecution's withdrawal of charges does not preclude it from bringing fresh charges if it secures new evidence.

<sup>18</sup> Human Rights Watch, "Kenya: Q&A on the ICC Trial of Kenya's Deputy President," September 1, 2013, <https://www.hrw.org/news/2013/09/01/kenya-qa-icc-trial-kenyas-deputy-president>.

<sup>19</sup> See "ICC: Hopes for Justice Set Back," Human Rights Watch news release, December 5, 2014, <https://www.hrw.org/news/2014/12/05/icc-hopes-justice-set-back>; "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the withdrawal of charges against Mr. Uhuru Muigai Kenyatta," ICC press release, December 5, 2014, [https://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/otp-statement-05-12-2014-2.aspx](https://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-statement-05-12-2014-2.aspx); "Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the status of the Government of Kenya's cooperation with the Prosecution's investigations in the Kenyatta case," ICC press release, December 5, 2014, [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-04-12-2014.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/otp-stat-04-12-2014.aspx) (accessed September 15, 2015).

<sup>20</sup> *Prosecutor v. Walter Osapiri Barasa*, ICC, Case No. 01/09-01/13, "Warrant of arrest for Walter Osapiri Barasa," August 2, 2013, <https://www.icc-cpi.int/iccdocs/doc/doc1650592.pdf> (accessed December 23, 2015); *Prosecutor v. Paul Gicheru and Philip Kipkoech Bett*, ICC, Case No. 01/09-01/15, "Decision on the "Prosecution's Application under Article 58(1) of the Rome Statute," March 10, 2015, <https://www.icc-cpi.int/iccdocs/doc/doc2056890.pdf> (accessed December 23, 2015).

<sup>21</sup> *Prosecutor v. William Samoei Ruto and Joshua arap Sang*, ICC, Case No. 01/09-01/11, "Decision on Prosecution Request for Admission of Prior Recorded Testimony," August 19, 2015, <http://www.legal-tools.org/doc/d7bbo1/> (accessed November 4, 2015), para. 60.

three withdrawn witnesses in that case to recant or withdraw, including by offering bribes. The prosecution has alleged that members of the Mungiki, a criminal gang it accused Kenyatta of soliciting to carry out attacks during the post-election violence, have been killed or have disappeared.<sup>22</sup> An individual claimed by the Ruto ICC defense team as its witness was murdered in early 2015; investigations into his death have yet to yield public results.<sup>23</sup>

A decision regarding whether Kenya complied with its obligations as an ICC member country to assist the ICC's investigations is pending before the court's judges, but behind a thin veneer of cooperation with the court, since 2013, the Kenyatta administration has pursued an intense campaign to delegitimize the ICC. It has lobbied the African Union and other regional fora, the UN Security Council, and the ICC Assembly of States Parties to end or suspend the cases against President Kenyatta and Deputy President Ruto, or to secure favorable treatment for these defendants in the amendment of the court's Rules of Procedure and Evidence. Government officials tolerated, or at times encouraged, hostility toward human rights activists standing up for justice.<sup>24</sup>

The campaign against the ICC speaks to a deep climate of impunity within Kenya regarding the post-election violence which has also impaired national accountability efforts. Indeed, the failure to hold those responsible for the violence to account continues a cycle of impunity in Kenya. Those responsible for political violence in 1992 and 1997 also escaped justice.<sup>25</sup>

Countrywide, very few cases have been properly investigated and taken to court. The CIPEV identified 405 fatal police shootings, but no police officers have been convicted.<sup>26</sup> Many of

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<sup>22</sup> *Prosecutor v. Uhuru Muigai Kenyatta*, ICC, Case No. 01/09-02/11, "Prosecution opposition to the Defence request for the termination of the Kenyatta," January 31, 2014, <https://www.icc-cpi.int/iccdocs/doc/doc1720686.pdf> (accessed January 22, 2016), annex A, pp. 2-3.

<sup>23</sup> Elizabeth Evenson (Human Rights Watch), "Answers Needed in Eldoret," commentary, *International Justice Monitor*, May 27, 2015, <http://www.ijmonitor.org/2015/05/answers-needed-in-eldoret/>.

<sup>24</sup> See Human Rights Watch, "Human Rights Watch Memorandum for the Thirteenth Session of the International Criminal Court Assembly of States Parties," November 25, 2014, <https://www.hrw.org/news/2014/11/25/human-rights-watch-memorandum-thirteenth-session-international-criminal-court>, part III.

<sup>25</sup> See Human Rights Watch, *Turning Pebbles*, pp. 10-12.

<sup>26</sup> CIPEV, p. 311.

the 562 victims of police shootings who survived tried to file complaints with authorities, but were turned away.<sup>27</sup>

As of February 2013, Human Rights Watch was aware of only seven serious crimes related to the violence, which had resulted in convictions. This conclusion was based in part on extensive research conducted for a 2011 report on accountability for offenses related to the post-election violence, *Turning Pebbles*.<sup>28</sup> In one of these cases, the two accused had their convictions overturned on appeal.<sup>29</sup> In total, by that time, only 14 people appeared to have been convicted for serious election-related crimes.

A multi-agency taskforce established by Kenya's director of public prosecutions in February 2012 to undertake a comprehensive review of the status of investigation and prosecution of cases of post-election violence—one of a series of mechanisms purportedly set up to facilitate national prosecution of these cases—transmitted its final report to President Kenyatta in March 2015.<sup>30</sup> The taskforce found that of 6,081 cases reported for investigation, 366 cases were taken to court for prosecution. Of these, 10 were murder cases, but only 4 resulted in convictions. In 4,575 files returned from the taskforce to the police, the police reported that they were unable to proceed in the vast majority of cases on grounds that complainants could not be reached or were unable to identify suspects.<sup>31</sup>

The taskforce appeared to report separately on offenses of sexual violence, concluding that 69 of 215 opened cases (against a total of 368 cases reported) were taken to court. These resulted in 23 convictions, of which the vast majority were for the crime of defilement.<sup>32</sup> However, the reliability of the taskforce report is questionable. It is generally confusing to follow and its data is inconsistent. It, for instance, lists in the chart looking at all 6,081 reported cases of post-election violence that it reviewed only 4 rape cases and 3

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<sup>27</sup> Human Rights Watch, *Turning Pebbles*, pp. 61-64 and CIPEV p. 346.

<sup>28</sup> Human Rights Watch, *Turning Pebbles*; and "Kenya: Post—Election Violence Suspect Sentenced to Life in Prison," Citizen TV, June 12, 2012, <http://www.youtube.com/watch?v=bJobZeiBsfQ> (accessed February 4, 2013).

<sup>29</sup> Patrick Kibet, "Murder suspects acquitted for lack of evidence," *The Standard*, December 23, 2012, [http://www.standardmedia.co.ke/?articleID=2000073532&story\\_title=Murder-suspects-acquitted-over-lack-of-evidence](http://www.standardmedia.co.ke/?articleID=2000073532&story_title=Murder-suspects-acquitted-over-lack-of-evidence) (accessed February 4, 2013).

<sup>30</sup> Office of the Director of Public Prosecutions, "Report of the 2007/2008 Post-Election Violence Related Cases," undated document on file with Human Rights Watch.

<sup>31</sup> *Ibid.*, p. 20, Table A.

<sup>32</sup> *Ibid.*, pp. 22-23, and Table B.

of defilement. In a following table looking at only sexual and gender-based violence cases, the taskforce indicates that it reviewed 52 rape cases and 49 of defilement.<sup>33</sup>

Human Rights Watch has not taken steps to verify the information contained in the task force report; we found that a March 2011 report of the Department of Public Prosecutions to the Attorney General contained a number of inaccuracies regarding the outcome of investigations of cases of post-election violence.<sup>34</sup> Even taking the report at face value, however, it is clear that a vast majority of cases, including sexual offenses, have not been the subject of criminal proceedings.

## Prevalence and Patterns of Sexual Violence

Although the exact number of victims may never be known, several studies and inquiries have gathered evidence of widespread sexual violence targeted at women and girls, as well as men and boys to a lesser extent, during the 2007-2008 post-election violence. Based on the testimonies of 31 women and reports from numerous human rights organizations and hospital data, the CIPEV estimated that 900 cases of individual and gang rape, defilement, and other forms of sexual assault occurred. However, this number is likely to be a low estimate considering that many cases were unreported and did not include rape victims who may have been raped and then killed during the violence.<sup>35</sup>

The CIPEV concluded that “sexual violence was rampant during this period consisting mainly of rape and gang rape, defilement, genital mutilation, sodomy, forced circumcision, and sexual exploitation.”<sup>36</sup> It noted that individuals, gangs, humanitarian workers, and state security officials committed rape and other sexual violence crimes. It concluded that

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<sup>33</sup> Office of the Director of Public Prosecutions, “Report of the 2007/2008 Post-Election Violence Related Cases,” pp. 20-23.

<sup>34</sup> Human Rights Watch, *Turning Pebbles*, pp. 25-27.

<sup>35</sup> For example the commission noted in its report, “Even ... with all of the efforts to sensitize members of the Commission and provide a safe environment in which victims could testify, it was still difficult for victims to steel themselves and come forth to meet with the Commission. This accounts for the relatively small number of victims, 31 in all, who testified before the Commission or submitted statements....” CIPEV, p. 242. No male survivor testified before the commission, which also only visited five towns to carry out investigations. See pp. 240-244 on challenges that the commission faced in investigating post-election sexual violence and the efforts it had taken to address them.

<sup>36</sup> CIPEV, p. 244. The CIPEV noted and regretted the small number of victims who came forward to testify during their hearings, due to fear of stigma and retaliation as well as prevailing impunity for sexual violence in Kenya. *Ibid.*, p. 242. Also see, Michael Anastario et al., “Time Series Analysis of Sexual Assault Case Characteristics and the 2007–2008 Period of Post-Election Violence in Kenya,” 2014, PLoS ONE 9(8): e106443, <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0106443> (accessed October 14, 2014). Defilement, under article 8 (1) of the Sexual Offences Act is an “act which causes penetration with a child.”

sexual violence was used to “pressure people to leave their homes, to retaliate against them for having voted for a particular candidate or party, and to dominate, humiliate and degrade them and their communities into a pit of powerlessness.”<sup>37</sup>

Research by the national human rights commission and other national and international nongovernmental organizations (NGOs) has also recognized the widespread incidence of sexual and gender-based violence during the post-election violence.<sup>38</sup> In one study, Physicians for Human Rights analyzed medical records of 1,615 patients identified to have experienced sexual assault between 2007 and 2011 at 3 health care facilities in the Rift Valley. The aim was to identify whether there were systematic changes in the characteristics of sexual assault cases in Kenya during the period of post-election violence.

The study concluded that widespread sexual violence was committed during the period; and that the patterns of sexual violence, particularly gang rape, perpetrated during the period are consistent with the patterns of mass rape documented in conflict settings elsewhere.<sup>39</sup>

Most survivors interviewed by Human Rights Watch were raped by more than one perpetrator and many of the cases we documented involved more than four perpetrators and, in a few instances, more than ten. Cheptoo M., 53, said she was raped by 2 men after they threatened her with death and accused her of “having been sleeping with the enemy for too long,” because her husband was from a different ethnic group.<sup>40</sup>

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<sup>37</sup> CIPEV, p. 252. Other cases of sexual violence were opportunistic where criminals also took advantage of the prevailing chaos and lawlessness to rape women. Ibid., p. 253. Also see, Kenya National Commission on Human Rights (KNCHR), “On the Brink of a Precipice: A Human Rights Account of Kenya’s Post-2007 Election Violence,” August 15, 2008, [http://www.knchr.org/Portals/o/Reports/KNCHR\\_REPORT\\_REPORT\\_ON\\_THE\\_BRINK\\_OF\\_THE\\_PRECIPE.pdf](http://www.knchr.org/Portals/o/Reports/KNCHR_REPORT_REPORT_ON_THE_BRINK_OF_THE_PRECIPE.pdf) (accessed October 8, 2014), p. 134.

<sup>38</sup> See KNCHR, “On the Brink of a Precipice,” p. 8; Roseanne Njeri Njiru, “Political Battles on Women’s Bodies: Post-Election Conflicts and Violence Against Women in Internally Displaced Persons Camps in Kenya,” *Societies Without Borders*, 2014, vol. 9, issue 1, <https://societieswithoutborders.files.wordpress.com/2014/04/njiru-final.pdf> (accessed September 8, 2015) pp. 48-68); Jody Myrum et al., “A Rapid Assessment of Gender-Based Violence during the Post-Election Violence in Kenya, January – February 2008,” undated, [http://web.lb.unfpa.org/emergencies/docs/gbv\\_assessment\\_kenya.pdf](http://web.lb.unfpa.org/emergencies/docs/gbv_assessment_kenya.pdf) (accessed September 14, 2015), pp. 4-5.

<sup>39</sup> Michael Anastario et al., “Time Series Analysis of Sexual Assault Case Characteristics and the 2007–2008 Period of Post-Election Violence in Kenya,” 2014, PLoS ONE 9(8): e106443, <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0106443> (accessed October 14, 2014).

<sup>40</sup> Human Rights Watch interview with Jepkosgei V., Eldoret, November 10, 2014.

Several survivors and witnesses described how perpetrators inserted guns, sticks, bottles, and other objects into women’s vaginas, or beat their genitals with objects. Wanjira E. from Mombasa described being raped by armed men who “inserted the head of the gun into my vagina.”<sup>41</sup> Gladys M., a mother of five whose husband was killed during the post-election period, said she and other women were hiding in a bush when a gang of men attacked them. They raped her and inserted sticks in her vagina. Her uterus was so damaged it was later removed.<sup>42</sup>

Many attacks were accompanied by severe physical abuse, including stabbing, kicking, cutting with machetes, throwing women on hard surfaces, and beating with heavy objects. Victims who tried to resist and prevent their rapes were subjected to additional beatings and other violations. Some women were pregnant when they were raped and others had just given birth, increasing their likelihood of injury from the rape.

The CIPEV made a number of recommendations to address post-election sexual violence and sexual violence in Kenya more generally. The recommendations to expand gender violence recovery centers to all public hospitals; create gender desks at all police stations to increase likelihood of survivors reporting cases and being attended to sensitively—coupled with training and accountability systems to ensure “a complete change of attitude” within the security forces towards gender-based violence survivors, have been inadequately implemented; while the recommendation to establish, under Kenyan law, of the office of rapporteur on sexual violence with the mandate to raise the profile of sexual violence crimes in Kenya, and to report to parliament on a yearly basis the government’s response to sexual violence offenses is outstanding.<sup>43</sup>

The United Nations Secretary-General on conflict-related sexual violence addressed Kenya’s post-election sexual violence in the 2012, 2013, and 2014 reports.<sup>44</sup> The 2012

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<sup>41</sup> Human Rights Watch interview with Wanjira E., Mombasa, February 10, 2015.

<sup>42</sup> Human Rights Watch interview with Gladys M., Naivasha, November 9, 2014 and October 6, 2015.

<sup>43</sup> CIPEV, pp. 268-269. See International Center for Transitional Justice, “In Kenya, Organizing Women Victims to Help Inform Future Reparations Policies,” September 6, 2015, <https://www.ictj.org/news/kenya-women-inform-reparations-policies> (accessed November 4, 2015), and *The Accountability Gap on Sexual Violence in Kenya: Reforms and Initiatives Since the Post-Election Crisis*, April 2014, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Kenya-SGBVAccountability-2014.pdf> (accessed May 2015), p. 6.

<sup>44</sup> UNSC, *Conflict-related Sexual Violence: Report of the Secretary-General, A/66/657\*-S/2012/33\**, January 13, 2012, <http://www.refworld.org/docid/4f27a19c2.html> (accessed December 3, 2015); UNSC, *Conflict-related Sexual Violence: Report of the Secretary-General, A/67/792-S/2013/149*, March 14, 2013,

report noted that, in the electoral violence in Kenya and in Guinea Conakry (in 2009), “a clear nexus existed between elections and commission of the violence in order to achieve political objectives.” This violence “... appeared to have been targeted to punish victims for their perceived political affiliation.”<sup>45</sup> The subsequent reports in 2013 and 2014 continued to raise the need for investigation and peacebuilding in the aftermath of the attacks, including “continued vigilance by the Security Council, and further monitoring, analysis and preventive action, as appropriate.”<sup>46</sup>

## Broader Context of Impunity for Violence against Women and Girls in Kenya

Long before the 2007-2008 election, women in Kenya faced widespread gender-based violence, which continues to the present. According to the 2014 Kenya Health and Demographic Survey, 38 percent of ever-married women between 15 and 49 have experienced physical violence and another 14 percent sexual violence.<sup>47</sup>

Survivors of gender-based violence in Kenya face many challenges in getting protection from the police and other authorities, accessing medical and psychological care, and justice from the courts. Challenges in preventing and responding to gender-based violence include high levels of gender inequality, gaps in laws, poor implementation of existing provisions and policies, negligent and often hostile police attitudes, police incompetence, lengthy and expensive court procedures, and discriminatory perceptions of power and cultural attitudes that condone violence against women.<sup>48</sup> The same attitudes, cultural

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[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2013/149](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2013/149) (accessed December 3, 2015); UNSC, Conflict-related Sexual Violence: Report of the Secretary-General, S/2014/181, March 13, 2014, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_181.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_181.pdf) (accessed December 3, 2015).

<sup>45</sup> UNSC, Conflict-related Sexual Violence: Report of the Secretary-General, A/66/657\*-S/2012/33\*, January 13, 2012, <http://www.refworld.org/docid/4f27a19c2.html> (accessed December 3, 2015); para 82.

<sup>46</sup> UNSC, Conflict-related Sexual Violence: Report of the Secretary-General, S/2014/181, March 13, 2014, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_181.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_181.pdf) (accessed December 3, 2015) para 5.

<sup>47</sup> Kenya National Bureau of Statics et al., “Kenya Demographic and Health Survey 2014, Key Indicators,” March 2015, <http://dhsprogram.com/pubs/pdf/PR55/PR55.pdf> (accessed June 8, 2015), p. 58. Another nationally representative study, by the National Crime Research Center revealed similar findings. In the study, 38 percent of women reported having ever experienced physical violence, while 15.2 percent reported sexual violence. National Crime Research Center, “Gender-Based Violence in Kenya,” 2014, <http://ncia.or.ke/ncrc/phocadownload/ncrc%202015%20-%20gender%20based%20violence%20in%20kenya.pdf> (accessed September 2, 2015), p. xi.

<sup>48</sup> Roseanne Njeri Njiru, “Political Battles on Women’s Bodies,” p. 53; and National Crime Research Center, “Gender-Based Violence in Kenya,” p. xii.



beliefs, and failures in the criminal justice system driving sexual violence against Kenyan women in times of peace are present in periods of political violence.

## II. Impact of Sexual Violence on Survivors and the Need for Reparations

### “I Just Sit and Wait to Die”: Profile of Apiyo P.

There was a lot of tension. Houses were being burnt and people killed. My husband had not come home and no one seemed to know where he was. I used to walk the whole night and day looking for him. I was going to look for him one Sunday and that is when I met the men who raped me.

I don't know the rapists. They wore dirty dreadlocks and had tied their hair with cloth looking like a Kenyan flag. They had sharp knives and machetes. They asked if I had money, a phone, or wallet. I said no. They said, “You belong to [Raila] Odinga's people.” They tore my clothes and four of them raped me. As they were raping me, some slapped me with the flat side of the machetes and others kicked me.

I was bleeding and my whole body was in pain. Later I found that urine was just coming out. I went to Nakuru Medical [clinic] after three days. Up to today, I don't feel at peace. My body is not the same. If I am pressed, the urine just comes out. I feel weak. Sometimes I have a dirty smelling discharge coming from my vagina. I feel pain in my lower abdomen. I have serious back ache. When I do hard work the back pain and the urine is too much. There is a time I can't even bend. My knees and ankles pain. My hips pain. I feel pain when I am urinating and sometimes I have sores there [in the vaginal area]. Sometimes pus comes out. I go to the dispensary for treatment but I am not seeing any improvement. They give me pain killers and tell me the urine will stop. I haven't gone to a big hospital because I don't have money. I have so much shame. I feel hopeless. I just sit and wait to die.

I have problems sleeping. Sometimes I can go to bed at 10 p.m., be up at 11:30 p.m. and not fall sleep again. I doze off a lot during the day. I think about the rape, my financial problems, and the death of my husband. Neighbors told me my husband was burned to death as he was screaming and pleading with the attackers to spare his life. I was running a clothes boutique business in Nakuru and I had good money. But now I have become a beggar. Sometimes I don't have food. I don't have any help from my family.

I came here to my father-in-law's home after the violence and he gave me a plot of land to build. My brothers-in-law didn't want me. The land was registered in my brother-in-law's name and he wants the land back. He says IDPs [internally displaced people] were paid by the government and given land; and that I should go to the land or return to Nakuru. But I can never return to that place. I fear he will evict my children if I die, and they will be homeless. I need help with land and a house for my children. I am just here in the village and I don't know how to reach the government to ask for help.

—Human Rights Watch interview with Apiyo P., Siaya, November 18, 2014

## Physical and Mental Health Impacts

Many sexual violence survivors experienced levels of violence and trauma that have left them with serious physical injuries and illnesses, as well as debilitating mental health conditions. These have severely limited their ability to perform everyday tasks and essential job functions. The suffering of survivors of sexual violence has been compounded by the Kenya government's failure to provide medical care, psychosocial support, monetary compensation, and other redress following the initial harm.

### **“I Cannot Do Hard Work”: Profile of Wamuyu G.**

Three men attacked me and raped me for about two hours in December 2007 while I had gone to fetch water. They had a pipe that they used first, and then they used their body, and then they used the pipe again. It was a big pipe the size of my hand. I had just had surgery delivering my last child. I couldn't walk; I was bleeding severely. My back was damaged, my legs were broken and I had to walk in crutches for almost three years.

I am not in good health. I have pain in my back and around the lower abdomen. Even now I use a stick for support when I walk. I cannot do hard work because of the back pain. They removed my uterus in May 2008 because it was badly damaged. I also developed ulcers and hypertension because of the stress. I am on medication, but many times I don't have money to buy the drugs.

They burned my house and all the things I had. My husband died in the violence; he had bad head injuries. Church people counselled me and helped me with food. I need help to start a business where I don't move a lot. I need a house, even if a grass thatched one. Right now I am staying at my son's home.

— Human Rights Watch interview with Wamuyu G., Busia, November 19, 2014

Women commonly complained of pains and aches, including those that limited their ability to walk or stand for long periods, vaginal bleeding, and smelly vaginal discharges. Naliaka K. said:

I don't know what they did to my left leg because it has never stopped paining from that day. I have problems walking for long distances or standing for some time. This has affected my ability to work. If I look for a washing job, I have to do it while seated and people are not very accommodating of such behavior because they think you are lazy. I cannot work.

Twenty-four-year-old Nyasiongo F. was raped together with her 12-year-old sister in December 2007. She told Human Rights Watch how the violent rape left her sister with a brain injury:

The man was so violent with my sister because she was screaming. He hit her on the head with his fists and she fainted. She was in a coma for six months. She is not okay mentally. She does not know how to use a toilet. She faints often. Sometimes she gets violent and breaks things in the house. I became pregnant following the rape and I live with her and my son. We have no relative to help us. It is very hard on me.<sup>49</sup>

Several survivors also witnessed the rape and killing of others. Kariuki P. told Human Rights Watch about the brutal gang rape of his sister with bottles in December 2007 in Molo that left her with a disability:

She was attacked at home. She was raped by four men, and then they used those old coke bottles. We found her bleeding and unconscious. I fainted when I saw her. Neighbors took her to Nakuru General Hospital. They removed her uterus. She got a disability and cannot walk properly.<sup>50</sup>

Joseph N., 82, said that on January 2, 2008 a group of about 50 Kalenjin youth attacked his home and raped him and his two daughters, and described their subsequent deaths:

They told me I am rich and I am taking away their wealth; living in their community. They beat me seriously with sticks and put me outside the house. They said they will teach me a lesson. They beat and raped both my daughters; so many of them. Then they told me to rape my children. I refused. They hit me with a metal bar and some teeth came off. They pulled out some of my other teeth one by one. They broke my chin. They said, “If you don’t want to do what we are telling you, you will be our wife.” Six boys took me aside and told me to undress. I refused. They beat me all over. My skull cracked a little. They did a very bad thing to me. They made me their wife; they made me a homosexual. They removed all my clothes and [left]

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<sup>49</sup> Human Rights Watch interview with Nyasiongo F., Nairobi, February 13, 2015 and October 2015.

<sup>50</sup> Human Rights Watch interview with Kariuki P., Nairobi, February 13, 2015.

with them. They tied my feet and put me in a ditch. One of my girls got HIV from the rape. She died in June 2014. She met one of her rapists, went into shock, and never recovered. The other one had been badly beaten and shot with a poisoned arrow. They amputated her leg but she kept ailing and died in May 2015.<sup>51</sup>

### *HIV and Other Sexually Transmitted Infections (STIs)*

Human Rights Watch interviewed 39 women who said they had contracted HIV from their rapists. UNAIDS estimates that in 2014 (the most recent statistics available) 5.3 percent of adults between 15 and 49 in Kenya were living with HIV, meaning that approximately 1.4 million people have HIV. Approximately 4.4 percent of men are living with HIV.<sup>52</sup>

HIV and STIs can lead to major problems for survivors' sexual and reproductive and maternal health, or even death when not properly treated. The risk of HIV infection increases when a woman is injured so badly in a rape incident that her genital tissues tear; the risk is even higher for younger girls.<sup>53</sup> The risk is also heightened in cases of gang rape.

Some of the survivors we interviewed could not reach health care facilities in time to receive post-rape care services including post-exposure prophylaxis (PEP), an anti-retroviral drug or combination of drugs which reduces the risk of HIV infection if administered within 72 hours of exposure. Many affected women could not access hospitals due to the general breakdown in security, lack of knowledge of PEP, and fear of stigma, among other factors. In some cases women who did get to health facilities within three days found that the facilities did not have PEP drugs. They said all they were given were pain killers; others did not know what kind of drugs they had been given.

Some women with HIV we interviewed are on antiretroviral treatment (ARV), but they continue to experience many devastating health problems because of poor adherence to HIV treatment, lack of adequate HIV counselling, as well as other untreated injuries.

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<sup>51</sup> Human Rights Watch interview with Joseph N., Naivasha, November 9, 2014 and October 6, 2015.

<sup>52</sup> UNAIDS, "Kenya: HIV and AIDS Estimates 2014," undated, <http://www.unaids.org/en/regionscountries/countries/kenya> (accessed January 5, 2016).

<sup>53</sup> Pieter Fourie and Martin Schönteich, "Africa's New Security Threat: HIV/AIDS and Human Security in Southern Africa," *African Security Review* Vol. 10 No 4, 2001, <http://www.iss.co.za/Pubs/ASR/10No4/Fourie.html>; Timothy Docking, "AIDS and Violent Conflict in Africa," United States Institute of Peace Special Report No. 75, October 15, 2001, <http://www.usip.org/pubs/specialreports/sr75.html>.

HIV treatment in Kenya is free and most women said they get free ARVs. However, many women could not afford the cost of transport to health facilities to get their medication. Others said they lacked food to be able to take with their medicines. Kemunto W. told Human Rights Watch, “The hospital that I go to is far. Sometimes I don’t have money for transport so I don’t go for the ARVs. I have been asking them to give me a two month’s or three month’s supply.”<sup>54</sup>

Nyamisa U. was raped together with her two daughters by the same perpetrators. She said they all contracted HIV and are on ARVs. She told Human Rights Watch, “I lost so many things during the violence. My husband left me and we are suffering. Sometimes we sleep hungry. I have these ARVs, but how do you take them when you have not eaten?”<sup>55</sup>

Human Rights Watch also interviewed some women who said they have not tested for HIV despite the risk of infection following rape, and the dangers of untreated HIV to their health. Some said they feared knowing their HIV status and therefore having to deal with the stigma of HIV. Cherono M. told us, “My friend was raped and got HIV. She died. She did not tell her family and she did not go for treatment. We Kalenjins are very secretive. You cannot say anything [about being raped], because after that you are not seen as a human being.”<sup>56</sup>

Others said they were embarrassed to speak about the rape to health workers, or they feared that if they did disclose the rape to health care workers, they would alert their husbands. Some were afraid that if they did take ARVs, this would also alert their husbands to the rape. Women who have not been tested live each day with the anxiety that they could be HIV positive. Some women also told Human Rights Watch that their husbands refused to go for HIV testing or to take ARVs even when they knew their wives had been raped and infected with HIV.

Human Rights Watch interviewed many women who described ailments typically associated with STIs such as emitting a smelly vaginal discharge, discomfort and pain during sex and when passing urine, lower abdomen and back pain, swelling and itchiness

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<sup>54</sup> Human Rights Watch interview with Kemunto W., Nakuru, November 7, 2014, and October 2015.

<sup>55</sup> Human Rights Watch interview with Nyamisa U., November 20, 2014.

<sup>56</sup> Human Rights Watch interview with Cherono M., Eldoret, November 11, 2014.

in the vaginal area, and infertility.<sup>57</sup> Some women have sought treatment, but they say the illnesses persist. Others have not gone for checkups because of fear of stigma, lack of awareness that they need treatment, and lack of money for transport and hospital fees.

### *Traumatic Fistula*

Human Rights Watch interviewed some women who were so violently raped that they developed traumatic fistula, a hole between a woman's vagina and bladder or rectum, or both, resulting in the leaking of urine and/or feces.<sup>58</sup> Traumatic fistula compounds the physical and psychological trauma, fear, and stigma that accompany rape. Without surgical repair, the physical consequences of fistula are severe, and can include a fetid odor, frequent pelvic or urinary infections, painful genital sores and burning of thighs from the constant wetness, infertility, nerve damage to the legs, and sometimes early mortality.<sup>59</sup> Past Human Rights Watch research in Kenya has shown how fistula survivors also experience profound mental anguish, expressing feelings of shame and hopelessness, especially because they are stigmatized and think their condition is untreatable.<sup>60</sup>

Mokeria V. told Human Rights Watch that she developed fistula after rape and that although she was treated, her husband and his family rejected her.<sup>61</sup> Three other women we interviewed are still living with incontinence. Njeri N. said:

I was raped by five men. They were beating me, pulling my legs apart. I got so hurt. I have a problem controlling urine. If I am pressed, the urine just comes out. I am so ashamed; sometimes I don't want to be with people. I usually go to Nakuru Hospital for treatment. Now I go monthly, before it was

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<sup>57</sup> See, World Health Organization (WHO), "Sexually transmitted infections (STIs)," December 2015, <http://www.who.int/mediacentre/factsheets/fs110/en/> (accessed January 20, 2016).

<sup>58</sup> Fistulas are classified into two categories: *obstetric fistulas* and *traumatic fistulas*. Obstetric fistulas are childbirth injuries caused by prolonged obstructed labor and account for the majority of fistula cases. Traumatic fistulas are caused by violent sex, rape, or vaginal/rectal torture.

<sup>59</sup> WHO, "10 Facts on Obstetric Fistula," undated, [http://www.who.int/features/factfiles/obstetric\\_fistula/facts/en/](http://www.who.int/features/factfiles/obstetric_fistula/facts/en/) (accessed January 20, 2016).

<sup>60</sup> Human Rights Watch, "*I am not Dead but I am not Living: Barriers to Fistula Prevention and Treatment in Kenya*, 2010, <https://www.hrw.org/sites/default/files/reports/kenyao71owebwcover.pdf>, p. 24.

<sup>61</sup> Human Rights Watch interview with Mokeria V., Nyamira, November 20, 2014.

weekly. I am improving although my right leg has a problem. I feel like there is a hole at the back. I get backache and I cannot do hard work.<sup>62</sup>

Wangechi A. was gang raped after she had just given birth. She said she has problems controlling urine, and described how this has affected her psychologically:

It was on January 28, 2008. I was in the house with my two daughters. They escaped but I could not leave because I had just had a baby and was recovering. They raped me. I cannot tell how many raped me because I was in shock. They harassed me saying, “This is our place and Kikuyus will go to Central [region].” I went to the hospital after about three days. Since that day urine just passes out when I get pressed. Sometimes I feel the urge to urinate and before I get to the toilet the urine has already come out. Sometimes I wet my bed. It is so shameful. I avoid going to public places because you can never tell when the urine will come out. Sometimes I use a rag to absorb the urine because ordinary sanitary pads don’t help. These people hurt me badly. They raped me, and now they gave me this problem. I have not gone back to hospital because I don’t feel pain and I didn’t think there is a cure for it.<sup>63</sup>

### *Pregnancy, Miscarriage, and Unsafe Abortion*

Human Rights Watch interviewed 37 women who said they had become pregnant as a result of rape. We also interviewed 6 women who were pregnant at the time of the attack and miscarried as a result of the sexual and physical violence.

Wanjiku Z. was raped in her house by two officers of the General Service Unit (GSU), the para-military wing of the Kenyan Police Force. She told us, “After the rape I stayed in the house for three days, just thinking and crying. I was so stressed I miscarried.”<sup>64</sup> Mwanaidi H., who was also raped by GSU officers, told us:

It was about 10 a.m. They came to my house and asked me about my husband. They said I show them where we had hidden the guns. They started touching me like they were searching me. They undressed me. One

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<sup>62</sup> Human Rights Watch interview with Njeri N., Nakuru, November 7, 2014.

<sup>63</sup> Human Rights Watch interview with Wangechi A., Nakuru, November 7, 2014.

<sup>64</sup> Human Rights Watch interview with Wanjiku Z., Nairobi, November 5, 2014.

told me to lie down. I was seven months pregnant. They beat me so badly and the baby died inside me.<sup>65</sup>

Due to the unavailability of transport during the violence, some rape survivors could not reach hospitals in time to receive emergency contraception for the prevention of pregnancy. Others did not know about the option of seeking emergency contraception. Many of the survivors who became pregnant gave birth to the babies—in part because abortion is not only illegal in Kenya but is also seen by many as immoral—and are struggling to find ways of living with the children.

Some women who became pregnant as a result of rape tried to terminate their pregnancies through so-called backstreet abortions, which often led to severe pain, bleeding, and damage to their reproductive organs. Some of the women who gave birth tried to abort their pregnancies at home without success. Some of those who had had abortions expressed feelings of shame and guilt, partly because of the stigma attached to abortion in Kenya.

Forty-three-year-old Wamai M. said she watched as her husband was cut to death during the 1997 ethnic clashes in Eldoret. The killers also raped her when she was eight months pregnant. She was raped again during the 2007-2008 post-election violence and became pregnant. Having lost her husband, her home and property, and with three children to look after, she did not want to carry the pregnancy to term. She said:

We were at the camp in Uganda. It was an open space and there was no security or lighting. Women started to complain of rape. Men attacked us one day as we were sleeping. Their accent was Ugandan. Four men raped me. Later I found out that I was pregnant. I thought of killing myself. It would have been better if only one man had raped me; that way I would say my child has a father somewhere. But they were four men. Am I a dog? I went and bought medication to abort. I took it, I got very sick, but I did not lose the pregnancy. I was in so much pain I feared I would die. I did not go to hospital because of shame. I tried to abort again but started bleeding a lot. I went to see a doctor who provides backstreet abortions. He checked

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<sup>65</sup> Human Rights Watch interview with Mwanaidi H., Mombasa, February 10, 2015.



me and said the medication I had taken had affected the baby and it was abnormal. He said he could help me to abort, but I didn't have the money he asked for. A cousin of mine who is a nurse in Nairobi helped me to abort. It was very painful and I bled a lot. I feel pain in my cervix. Other times I have a white discharge.<sup>66</sup>

Owuor P. told Human Rights Watch about the rape and pregnancy of his 16-year-old sister, and how he takes care of her baby after she tried to terminate the pregnancy unsuccessfully several times and eventually killed herself:

We are not sure how many raped her. She told us that she saw three men rape her and then she lost consciousness. She was just quiet most of the time after the rape. She became pregnant. She didn't want the baby. She tried to abort three times. I used to take her to the MSF [Medecins Sans Frontiers] clinic after the abortions. They would counsel her, but she was adamant she didn't want the baby. When she was about eight months pregnant, I was called by a neighbor saying my sister had fainted. She was taken to KNH [Kenyatta National Hospital], but she didn't make it. She had taken some medication to kill herself and the baby.<sup>67</sup>

Unsafe abortion remains a leading cause of maternal morbidity and mortality in Kenya. A 2013 study shows that there were an estimated 464,690 induced abortions in Kenya in 2012, and that about 37 percent of the women developed severe injuries as a result.<sup>68</sup> The study also noted a high mortality rate from unsafe abortions.<sup>69</sup>

### **Kenya's Restrictive Abortion Law**

Although the government recognizes that the treatment of complications from unsafe abortion consumes significant health system resources and contributes to an already high maternal mortality rate, and despite high levels of sexual violence, Kenya's abortion law

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<sup>66</sup> Human Rights Watch interview with Wamai M., Busia, November 19, 2014.

<sup>67</sup> Human Rights Watch interview with Owuor P., Nairobi, February 13, 2015 and October 5, 2015.

<sup>68</sup> Ministry of Health (MOH), "The Incidence and Complications of Unsafe Abortion in Kenya," 2013, <https://www.guttmacher.org/pubs/abortion-in-Kenya.pdf> (accessed December 5, 2014), p. 7.

<sup>69</sup> Ibid.

remains restrictive.<sup>70</sup> Under article 26 (4) of the 2010 Kenyan Constitution, abortion is only permitted where, in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger. Kenya's Penal Code criminalizes women who have undergone an abortion (an offence punishable by a seven-year prison term), as well as other persons who help them to procure abortion.<sup>71</sup>

Although the provision in the 2010 constitution is a step forward from the previous constitution where abortion was only permitted to protect a woman's life, it is not clear how widely this new provision is known or implemented. Health providers may also be reluctant to offer abortions for fear of prosecution.<sup>72</sup> Currently, there are no guidelines on how health professionals should implement the constitutional provision on abortion. In December 2013, the Director of Medical Services arbitrarily withdrew the 2012 "Guidelines for Reducing Morbidity and Mortality from Unsafe Abortion," and put a ban on training in safe abortion for all health care providers.<sup>73</sup>

Although a process is under way to develop new guidelines, advocates are doubtful that they will be finalized any time soon, and decry the Ministry of Health's blatant disregard for women's constitutionally guaranteed right to health.<sup>74</sup> The Federation of Women Lawyers in Kenya has gone to court to compel the Ministry of Health to reinstate the guidelines and training of health workers, as well as to clarify when legal abortion can be provided based on the grounds set forth in the constitution.<sup>75</sup> The case is pending in court. In October 2010, Kenya ratified the Maputo Protocol and entered a reservation to article 14 (2c), which calls on states to take all measures to: "[P]rotect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest, and where

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<sup>70</sup> MOH, "The Incidence and Complications of Unsafe Abortion in Kenya," 2013, <https://www.guttmacher.org/pubs/abortion-in-Kenya.pdf> (accessed December 5, 2014), p. 7

<sup>71</sup> Penal Code, Chapter 63 of the Laws of Kenya, Chapter 15, arts. 158-160.

<sup>72</sup> Guttmacher Institute, "Abortion and Unintended Pregnancy in Kenya," 2012, [http://www.consultancyafrica.com/index.php?option=com\\_content&view=article&id=390&Itemid=191](http://www.consultancyafrica.com/index.php?option=com_content&view=article&id=390&Itemid=191) (accessed April 17, 2015), p. 1.

<sup>73</sup> Ministry of Health, "Policy Standards and Guidelines and Training Curriculum for Safe Abortion," MOH/CIR/2/2/2, December 3, 2014, on file with Human Rights Watch.

<sup>74</sup> Human Rights Watch interview with Judy Okal, Center for Reproductive Rights, Nairobi, July 23, 2015.

<sup>75</sup> Olive Burrows, "FIDA Demands Safe Abortions for Sexual Violence Victims," June 29, 2015, <http://www.capitalfm.co.ke/news/2015/06/fida-demands-safe-abortions-for-sexual-violence-victims/> (accessed September 15, 2015).

the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the fetus.”<sup>76</sup>

Treaty body jurisprudence has elaborated that denying women access to abortion where there is a threat to the woman’s life or health, or where the pregnancy is the result of rape or incest violates the rights to health, privacy, and, in certain cases, to be free from cruel, inhumane and degrading treatment.<sup>77</sup> Criminalization of health services that only women require, including abortion, is a form of discrimination against women.<sup>78</sup>

### *Psychological Consequences*

Sexual violence has a huge psychological impact on survivors, sometimes leading to depression and suicide. Survivors’ families and communities also suffer. Almost all sexual violence survivors Human Rights Watch interviewed described deep feelings of hopelessness, self-hatred, shame, anger, guilt, lack of self-esteem and worthlessness, and sadness. Virtually all experienced psychosomatic pains such as chest pains, backache, stomachache, and insomnia. Other survivors said they had developed a fear of men, men in uniform, sex, dark or isolated places, and public spaces.

Almost all victims experience profound and sometimes uncontrollable distress if exposed to people or circumstances that remind them of their ordeal. Some survivors expressed so much anxiety and fear that they said they had to stay with their doors closed at all times; and that they easily got frightened. Some women said they are often overwhelmed with thoughts of the rape and other violence that they witnessed, such as killings of family

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<sup>76</sup> Nduta Waweru, “What you need to know about the Maputo Protocol,” April 27, 2015, <http://www.the-star.co.ke/news/what-you-need-know-about-maputo-protocol> (accessed November 10, 2015).

<sup>77</sup> Committee on the Elimination of Discrimination Against Women, *L.C. v. Peru*, CEDAW/C/50/D/22/2009, para. 8.15; Human Rights Committee, *K.L. v. Peru*, CCPR/C/85/D/1153/2003, para. 6.4; *V.D.A. v. Argentina*, CCPR/C/101/D/1608/2007, para. 9.3; and *L. v. Peru*, para. 6.3; *V.D.A. v. Argentina*, para. 9.2.

<sup>78</sup> The Committee on the Elimination of Discrimination against Women specifies that “it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women.”<sup>78</sup> It further establishes that “laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures” are a barrier to women’s access to health care. The committee has requested States to “remove punitive measures for women who undergo abortion.” The CEDAW Committee and the Committee against Torture have urged Kenya to review its restrictive abortion law.” General Recommendation 24 (1999) on women and health, paras. 11-14; Concluding Observations on Peru, CEDAW/C/PER/CO/7-8 (2014), para. 36; Statement on sexual and reproductive health and rights: Beyond 2014 ICPD Review (2014); and Concluding Observations of the Committee on the Elimination of Discrimination against Women, Kenya, CEDAW/C/KEN/CO/7, paras. 37 and 38. The Committee expressed concern about Kenya’s increasing maternal mortality rates and specifically pointed to illegal and unsafe abortion as a leading cause of maternal deaths. See also UN Committee Against Torture, Concluding observations on the second periodic report of Kenya, adopted by the Committee at its fiftieth session, (6 to 31 May 2013), CAT/C/KEN/CO/2, para. 28.

members and destruction of their properties. They said they found it difficult to focus to do their daily work or to fall asleep as a result. The mental anguish that some sexual violence survivors experience is compounded by the fact that they often suffer in silence and alone, without the support of family members who also stigmatize and reject them.

Amondi T., a mother of four, was raped in the presence of her child. Her husband was killed during the violence and one of her children disappeared. She said she got infected with HIV from the rape. She told Human Rights Watch that she has no peace at all:

I easily get frightened. I have high blood pressure. I get bad headaches and sometimes my chest pains. At the hospital they tell me not to stress too much. But I lost my child, my husband is gone, and I have no work. How can I not stress? Sometimes I can stay the whole night without falling asleep. I am not at peace at all. I am okay when I am in a group. But when I am alone I get an overwhelming sadness.<sup>79</sup>

Young girls who were raped experience nightmares, have difficulty in school, and express fearfulness. Nyakio S.'s daughter was raped in January 2008 at a camp for the internally displaced. She was only three years old. She said, "We tried to take her to school but she refused. She said she will meet the man in shorts who had hurt her. Sometimes she screams in her dreams saying, 'The man in shorts has come to take me.'"<sup>80</sup> Nasambu H. told Human Rights Watch about the rape of her niece when she was five:

I am not sure how many raped her but five men attacked our home. She was crying and bleeding when I found her. She stopped going to school for some time because she had problems walking. She has changed so much since the rape. She is not happy at all. She does not interact well with other children. Her teachers say that sometimes she just walks out of the classroom and starts to wander in the school compound. She is not doing well at school. I had to tell the teachers what happened so that they can help her. She says she is fearful. She is so afraid of boys.<sup>81</sup>

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<sup>79</sup> Human Rights Watch interview with Amondi T., Kisumu, November 17, 2014.

<sup>80</sup> Human Rights Watch interview with Nyakio S., Kiambaa, November 21, 2014.

<sup>81</sup> Human Rights Watch interview with Nasambu H., Busia, November 19, 2014.

### **“It is in me and it has refused to go away”: Profile of Achieng’ Y.**

It was January 5, 2008. Ten GSU [paramilitary police] officers came to our house. They asked for our names and each person gave their name. Without saying a word, they cut my dad on the neck with a machete and he fell down. They slapped us and I think I lost consciousness. When I came around, I found I had been raped.

I was 16 and in class eight and my sister was 18 years. We could not go to the police because there was a lot of fighting going on around the estate. We stayed in the house for three days before we managed to call for help, with my father’s dead body lying there. We left my dad’s body and all OUR belongings in the house. We have never gone back to that house. We have no place to live.

My sister became pregnant from the rape and has a child. We both stopped school because there was no one to pay for our education.

The rape has severely affected me. It is in me and it has refused to go away. Most times I don’t want to talk to anyone; I want to be left alone. Friends ask me what the problem is and I just give them a blank look. I don’t trust them. I fear they will tell about the rape. I usually get accommodated by friends. When a friend starts to ask me too many questions I leave them and go to live with another.

These GSU [paramilitary police officers] destroyed my life; our life. I feel pain because it was not my fault. I hate men. I don’t have a boyfriend now and I am not interested in having one. I am always thinking about how different my life could be if I hadn’t been raped and my dad killed. I take long to fall asleep because thoughts of the rape and watching my dad being killed flood my mind. I cry a lot. I have thoughts of killing myself. I feel worthless. I hate Kikuyus. They did this to me. I haven’t received any counselling and I am not in any support group. I would like counselling. This would be my priority for now.

—Human Rights watch interview with Achieng’ Y., Nairobi, November 14, 2014

Some survivors, such as Opiyo F.’s niece who was gang raped by five men when she was 12, are unable to go about their daily routines because of their mental health conditions:

It’s like she is confused. She can’t take up responsibilities at home.

Sometimes she just sleeps. She can sleep the whole night and day. She got infected with HIV and is on treatment, but someone has to give her the medication otherwise she won’t take it. She talks and sings to herself. She talks strange things. Sometimes if you talk to her she says, “Don’t talk to

me, I am waiting for my day to die.” She was counselled before but I feel she needs proper treatment.<sup>82</sup>

Family members who witnessed the rape of their mothers, sisters, wives or other relatives were also affected psychologically. Nyawira P. told us, “My daughter despises men. She knows about the rape. Sometimes she cries when she sees my suffering. She says the rapists destroyed our lives.”<sup>83</sup> Awino J. commented about her husband’s response to her rape: “My husband never wanted to talk about the rape. He asked me to go to church to pray. Whenever he tried to talk about it he would break down crying.”<sup>84</sup>

One woman who said she was gang raped by members of the Kenyan police’s General Services Unit said she has developed such a fear of men in uniform that she even misses out on work opportunities. “I fear men in uniform. I cannot even go to the area chief when there are opportunities for casual jobs. I don’t like mingling with people. When I go home I just stay at my mother’s compound.”<sup>85</sup>

HIV adds to the mental anguish experienced by rape survivors. HIV is highly stigmatized in Kenya, meaning rape survivors suffer double stigma.<sup>86</sup> Most survivors interviewed by Human Rights Watch said that their biggest worry following rape was that they had been infected with HIV. Many HIV positive rape survivors expressed deep anxiety, shame, and grief at being HIV positive. One witness told Human Rights Watch about the mental anguish that her sister went through as a result of rape and infection with HIV, and her death:

She was raped by more than seven men in Kapsabet. She came to stay with me after the rape. We went to Moi Referral [Hospital] and they counselled her. She stopped talking on the day she was told she was HIV positive. She was admitted at the hospital for about a month. They tried counseling her

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<sup>82</sup> Human Rights Watch interview with Opiyo F., Nairobi, February 13, 2015.

<sup>83</sup> Human Rights Watch interview with Nyawira P., Nakuru, November 7, 2014.

<sup>84</sup> Human Rights Watch interview with Awino J., Nairobi, November 4, 2014.

<sup>85</sup> Human Rights Watch interview with Awino D., Nairobi, November 4, 2014. Chief’s form part of the provincial administration in Kenya and wear uniform similar to the security forces.

<sup>86</sup> See National Empowerment Network of People Living with HIV and AIDS in Kenya, (NEPHAK), “The People Living with HIV Stigma Index, Kenya, 2011, <http://www.stigmaindex.org/sites/default/files/reports/Kenya%20People%20Living%20with%20HIV%20Stigma%20Index%20Report%202009.pdf> (accessed May 18, 2015).

to take her medication but she completely refused. She asked why the hospital was giving her drugs all the time and they were not taking away the HIV. She refused to go for checkups. She never used to sleep most of the times. She used to talk to herself at night saying, “Why did these people do these things to me? It’s better if they killed me instead of raping me.” At some point she refused to eat. She eventually died.<sup>87</sup>

A pregnancy following rape and the birth of a child from rape also exacerbates survivors’ psychological and emotional suffering. Women interviewed by Human Rights Watch expressed immense pain at having to raise children born from rape whom they said were a constant reminder of the sexual assault. Some women told Human Rights Watch that they were also struggling with how to explain to the children their birth circumstances. Rape survivors have often gone to significant lengths in order to keep information of the birth situation from the child, as in the case of Kwamboka G. who told us:

She is a constant reminder of what happened. But again she is not there to be blamed. It is more painful when she asks me where her father is. What do I tell her? Should I tell her the truth? I usually tell her that her real father died. I also told my boyfriend that the father of the girl died so he agreed to be her father. But I am worried about what will happen to me and my child when he finds out the truth.<sup>88</sup>

Several interviewees said they seriously considered killing themselves. Adek J., 51, said she was raped by 3 men and got infected with HIV. Her husband was beaten badly during the post-election violence and lost his desire for sex. They had a thriving retail business but the shop was burned down and they have not been compensated by the government. She said her financial situation is so bad that she could not raise 200 Kenyan Shillings (US\$2) in order to be given her child’s school report. She told us: “I wanted to kill myself on October 20 this year [2014]. My life has no meaning. No one can help me.”<sup>89</sup>

Awino J. and her four-year-old daughter were raped during the post-election violence. Her husband’s back was badly injured then and he now uses a wheelchair. Two of her children

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<sup>87</sup> Human Rights Watch interview with Nyambura B., Eldoret, November 11, 2014.

<sup>88</sup> Human Rights Watch interview with Kwamboka G., Salgaa, November 8, 2014.

<sup>89</sup> Human Rights Watch interview with Adek J., Busia, November 19, 2014.

died from injuries they sustained in the violence. She told us, “I had planned to kill myself and my daughter and leave my husband alone.”<sup>90</sup>

The majority of women interviewed said they had not received any counselling or had insufficient counselling to deal with the impact of sexual violence and other abuses. Mental health services in Kenya are provided as part of primary health care. There is some outpatient treatment conducted through hospitals, but specialist care hardly reaches into communities.<sup>91</sup> Hospitals mostly treat those with severe mental disorders and substance use disorders.<sup>92</sup> There is one referral psychiatrist hospital based in the capital Nairobi providing inpatient services for the whole country.<sup>93</sup> According to the international organization BasicNeeds, which implements mental health programs in four regions in Kenya, each district has only one or two psychiatric nurses working in public hospitals.<sup>94</sup> Experts note that Kenya has failed to invest in mental health care.<sup>95</sup>

Kenya’s public mental health system is not oriented toward survivors of sexual violence or in general toward those individuals with mental-health conditions related to trauma experienced during the armed conflict.<sup>96</sup> Kenya has established gender violence recovery centers providing free, comprehensive services to survivors of sexual assault, including psycho-social support, but these are not available in all hospitals and are largely limited to facilities in urban areas. Some NGOs and community based organizations also provide counselling services to survivors of rape and other sexual violence, but these are limited in reach.

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<sup>90</sup> Human Rights Watch with Awino J., Nairobi, November 4, 2014.

<sup>91</sup> Hannah Gibson, “Reforming Kenya’s ailing Mental Health System: In conversation with Victoria de Menil,” June 17, 2013, <http://www.africaresearchinstitute.org/blog/mental-health-in-kenya/> (accessed January 6, 2016); Kenya National Commission on Human Rights, “Silenced Minds: The Systemic Neglect of the Mental health System in Kenya,” November 2011, [http://www.knchr.org/Portals/o/EcosocReports/THE\\_%20MENTAL\\_HEALTH\\_REPORT.pdf](http://www.knchr.org/Portals/o/EcosocReports/THE_%20MENTAL_HEALTH_REPORT.pdf) (accessed January 6, 2016), p. vi.

<sup>92</sup> Ibid.

<sup>93</sup> See Elija Marangu et al., “Mental Health Care in Kenya” Exploring Optimal Conditions for Capacity Building,” October 2014, <http://www.phcfm.org/index.php/phcfm/article/viewFile/682/983> (accessed January 6, 2016), p. 1.

<sup>94</sup> BasicNeeds, “Kenya Factsheet 2015,” 2015, <http://www.basicneeds.org/wp-content/uploads/2012/12/Kenya-Factsheet-2015.pdf> (accessed January 6, 2016), p. 1.

<sup>95</sup> Ibid; and Hannah Gibson, “Reforming Kenya’s ailing Mental Health System.”

<sup>96</sup> See Kenya National Commission on Human Rights, “Silenced Minds: The Systemic Neglect of the Mental health System in Kenya,” pp. 40-41.



Many survivors expressed a need for psychosocial support, including counselling, facilitated sharing of experiences with other survivors through community support groups, and general support in overcoming the stigma and isolation connected to having been a victim of sexual violence. The Kenyan government has not implemented programs targeted towards survivors of post-election sexual violence to provide access to confidential and quality psychosocial support services.

Human Rights Watch interviewed a few women in Nairobi who said they had received long-term counselling—over two years—at Kenyatta National Hospital following referral by civil society and religious groups. They said they had found it useful in helping them move on with their lives. Some have become peer counselors for sexual violence survivors in their communities. Some women were in HIV support groups to cope with the impact of both rape and HIV. Awino J. commented: “I go to meetings on HIV. It helps me. It gives me hope.”<sup>97</sup> Others said they needed more counselling to effectively deal with the impact of rape. Chemutai C. said, “I am in a support group for survival. I have never been counselled properly. I would want to do professional counselling.”<sup>98</sup>

## Social Consequences

Rape is highly stigmatized in Kenya. Instead of expressing understanding and support, families often blame and ostracize victims of sexual violence, aggravating the physical and psychological suffering they experience. Following a sexual assault, rape victims have often been rejected by their families and abandoned by their husbands. Some women also experience physical violence and verbal abuse.<sup>99</sup>

### *Stigma and Abandonment*

Very few of the women interviewed by Human Rights Watch reported a supportive response by their husbands and families following rape. The level of stigma women face in their families and communities was captured by Chepkemboi T. who observed that, “A raped

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<sup>97</sup> Human Rights Watch interview with Awino J., Nairobi, November 4, 2014.

<sup>98</sup> Human Rights Watch interview with Chemutai C., Salgaa, November 8, 2014.

<sup>99</sup> Anthony Aisi, “Rape Culture in Kenya,” undated, <http://www.eadestination.com/investigative-journalism/376-rape-culture-in-kenya> (accessed January 20, 2016); and Saida Ali, “Kenya Rape Case must bring an End to Impunity for Violence against Women,” December 2013, <http://www.theguardian.com/global-development/poverty-matters/2013/dec/04/justice-for-liz-kenya-rape-case-impunity> (accessed January 20, 2016).

woman is a dead woman in the Kalenjin community. You become invisible to your family and the whole community.”<sup>100</sup>

### **“You are Useless”: Profile of Nyawira P.**

It was on Friday, January 25, 2008 at around 11:30 p.m. Someone called my husband and said a neighbor had been shot, and that Kalenjin youths were burning homes belonging to Kikuyus. I took my daughter who had just given birth and her newborn to a small hut in the farm and hid them there. I returned to the house to pack a few things. As I was entering the house, some men grabbed me. They pushed me against the wall and tore my clothes. I remember the first four men raping me. They were talking in low voices in Kalenjin. I passed out and do not know how many others raped me. When I woke up I felt blood coming from my vagina. The pain was so sharp like someone had inserted sharp objects inside of me.

I continue to feel a lot of pain in my back and lower abdomen. My hips ache. I cannot lift a load, bend or carry something heavy on the back, or work on the farm for long periods. Sometimes my whole leg loses feeling. I was told by the doctor I have a cervical infection. Sometimes when I think of the experience I cry. For three years I never wanted to see a Kalenjin man. When I am walking and I see young men I avoid them and have to look away.

After the rape my husband changed and refused to sleep in the same bedroom with me. He used to beat me, telling me to go to my Kalenjin husbands. He would ridicule me: “You are useless; you better die. I cannot even touch you.” Many times he would chase me out of the house. He used to pick girls at the shopping center and bring them home. My husband told his family about the rape and now they despise me.

My husband died this year [2014] and his brothers want to take my land. I helped my father-in-law to identify and buy this land. I borrowed 2,000 shillings [US\$20] from my sister and built a house on this land. And despite all the years I have lived here, I am very anxious it can all be taken away and I could lose my home. If that happened I would have nowhere to go.

—Human Rights Watch interview with Nyawira P., Nakuru, November 17, 2014

Rape is more stigmatized when it is linked to other taboo conditions such as HIV. For example, Mongina W. commented: “I told my husband about the rape the following day even before I tested for HIV. He said, ‘I cannot live with you because I don’t know whether you don’t have HIV.’ He left.”<sup>101</sup> Akeyo C. said she was gang raped and infected with HIV.

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<sup>100</sup> Human Rights Watch interview with Chepkemboi T., Nakuru, November 7, 2014 and October 6, 2015.

<sup>101</sup> Human Rights Watch interview with Mongina W., Kericho, November 10, 2014.

She told us that her husband was verbally abusive and abandoned her. She said he told one of his friends, “It is difficult to live with a prostitute who sleeps with policemen and everybody knows they have AIDS. She will bring me HIV.”<sup>102</sup>

The trauma and stigma of rape, compounded by the lack of psychosocial support for survivors, can lead to a loss of social belonging and association. Some women said they avoided public places, confining themselves to their homes. Some said they did not go to church, the market, or other social places. Joyce V. told us, “I don’t socialize a lot because you may be talking to someone and they say something that reminds you of the rape. I would rather watch TV.”<sup>103</sup> Akeyo C. said: “I am affected socially. They say a person’s life is about being with others. But if you are with someone and they want to dig into your affairs, it is better to keep to yourself. I fear people will despise me if I open up about the rape. So I have few friends.”<sup>104</sup>

Some women, such as Awino J., said they had to move residences due to the stigma that they faced in their communities.

My family and my husband’s family do not respect me. One time my daughter-in-law said I am useless, a broom that can take more than 10 men. There are places I cannot go to. Here people don’t know what happened to me. I cannot return where I used to live because I was so humiliated there. That is why I moved. They used to ask me, ‘Are you really a woman, with no uterus?’<sup>105</sup>

Because of the stigma of rape and pregnancy from rape, women, particularly unmarried women and adolescent girls, may see marriage as a protective option.<sup>106</sup> Human Rights Watch interviewed one woman who said she was gang raped by officers of the General Services Unit (GSU) during the post-election violence. At the time she was 17 years old.

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<sup>102</sup> Human Rights Watch interview with Akeyo C., November 14, 2014.

<sup>103</sup> Human Rights Watch interview with Joyce V., Nairobi, November 14, 2014.

<sup>104</sup> Human Rights Watch interview with Akeyo C., November 14, 2014.

<sup>105</sup> Human Rights Watch with Awino J., Nairobi, November 4, 2014.

<sup>106</sup> Adolescent pregnancy is generally stigmatized in Kenya. Girls who become pregnant outside of marriage have often been rejected by their families or are pressured by family members to marry. See Joyce Mumah et al., “Coping with Unintended Pregnancies: Narratives from Adolescents in Nairobi’s Slums,” 2014, [http://www.popcouncil.org/uploads/pdfs/2014STEPUP\\_APHRC-ResearchReport.pdf](http://www.popcouncil.org/uploads/pdfs/2014STEPUP_APHRC-ResearchReport.pdf) (accessed August 5, 2015), p.11;

She said she married because, “I saw it as the only way to hide my shame.”<sup>107</sup> Her parents also tried to make sure that her husband did not know about the rape and resulting pregnancy, although he eventually found out and chased her away:

He married me when I was pregnant. I did not tell him what had happened. I told him I just got pregnant while at home. I did not want to see or breastfeed the baby after giving birth. I felt no emotion towards him even when he cried. My parents took me to my uncle’s home when I left hospital because they feared that my husband may become suspicious about my lack of interest in the baby. Later I returned to my husband. I don’t know how he heard about the rape. He came home one day and started shouting at me. He said I lied to him; that I had infected him with HIV because I was raped by GSU [officers] who are generally known to be positive. He slapped me and said I should look for the rapists to help the child. He remarried.<sup>108</sup>

Many women said they felt pain during sex, and this led to fighting in their marriages. Some said they had to endure painful sex because they feared that if they went to hospital or refused sex, their husbands could find out about the rape and abandon them.

### *Physical Violence and Verbal Abuse*

In addition to stigma and rejection by families, 81 sexual violence survivors interviewed by Human Rights Watch said they also experience physical and verbal abuse in their homes. Some of the women Human Rights Watch interviewed said their husbands blamed them for being “unfaithful” and for infecting them with diseases if they contracted HIV and other sexually transmitted infections. Others said their husbands constantly accused them of having affairs with their rapists. Some women said they could not leave their abusive husbands because they depended on them for financial support.

Some male sexual violence survivors expressed controlling behaviors towards their wives, including preventing them from seeking work outside the home. For example, Ndolo M. described to Human Rights Watch his pain and frustration following the sexual assault. He said that he often expresses anger towards his wife and tries to control her movements:

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<sup>107</sup> Human Rights Watch interview with Awino D., Nairobi, November 4, 2014.

<sup>108</sup> Human Rights Watch interview with Awino D., Nairobi, November 4, 2014.

I cannot provide for my family because I was badly injured. They did bad things to me; they killed my manhood. My wife has to work. She goes to people's houses to wash clothes. I find it problematic because I don't know whether she is going to wash for a man or woman, whether she is going to do other things. You can even decide to kill the woman because you feel she is demeaning you by going out to look for work. You feel emasculated. Some of us men cannot [have children] because we were castrated.<sup>109</sup>

Several women told Human Rights Watch that their husbands and other family members called them derogatory names. Wanjiru Y. said:

“My husband became verbally abusive when I told him I was raped. He said I had sold my body and I should not say that I was raped. He said I am a loose woman who sleeps around. He would beat me when I asked for money telling me to look for help from the men who raped me. I left him in 2009.”<sup>110</sup>

Abuya B. said she was gang raped by GSU officers. She said her husband refused to have sex with her and physically and verbally abused her:

He never touched me. If I went out he would say I had gone to see my police lover. We stayed without peace, fighting all the time. He used to beat me and threaten to kill me. One time he beat me seriously. My whole face was swollen. I was taken to Kenyatta National Hospital where I was admitted for three days.... My husband said he cannot stay with a “police wife” so we separated.<sup>111</sup>

Kerubo V., who was raped by a group of men at a camp for internally displaced persons (IDPs), said her husband blames her for the rape, and beats and verbally abuses her even in the presence of their children:

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<sup>109</sup> Human Rights Watch interview with Ndolo M., Mombasa, February 9, 2015.

<sup>110</sup> Human Rights Watch interview with Wanjiru Y., Salgaa, November 8, 2014.

<sup>111</sup> Human Rights Watch interview with Akeyo C., November 14, 2014.



He says I wanted to be raped otherwise I would have escaped from the attackers. We have never had sex since the rape and sleep in separate rooms. He doesn't talk to me. He despises me. He calls me a prostitute. He tells me to leave so that he can marry another woman. Sometimes he threatens to kill me even in the presence of the children.<sup>112</sup>

## Educational and Economic Consequences

Many sexual violence survivors are in dire need of livelihood support. Some survivors said they experienced significant hunger and difficulties in supporting themselves, educating their children, or seeking medical treatment for the injuries and ailments they developed. None of the women Human Rights Watch interviewed had medical insurance; many were struggling to even feed their children, let alone to be able to buy medicine.

Some women said they lacked adequate and decent housing, and lived in structures that were too small for their families or failed to protect them against environmental hazards. Others are accommodated by their children, relatives, or friends, while some are still living in camps for internally displaced persons.<sup>113</sup>

Sexual violence survivors, like other victims of the post-election violence, suffered huge economic losses. They lost their homes, land, businesses, livestock, and other valuables. Nyambugi E. told us, "I used to work for myself. I never expected anything from anyone. I never lacked food, but now I do. I feel embarrassed asking for food from my children and neighbors."<sup>114</sup> The death of their husbands in the violence has had major psychological and economic consequences on women's ability to sustain their families. Their poverty is also worsened by the impact of sexual violence on their physical and mental health. Sexual violence also limits women's and girls' employment and earning potential when they are unable to continue with education.

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<sup>112</sup> Human Rights Watch interview with Kerubo V., Nakuru, November 7, 2014 and October 6, 2015.

<sup>113</sup> A significant number of women who were raped during the post-election violence lived in rural areas and Nairobi's informal settlements.

<sup>114</sup> Human Rights Watch interview with Nyambugi E., Naivasha, November 9 2014 and October 6, 2015.

### **“I don’t know what I will Cook for Dinner Today”: Profile of Wangui L.**

My husband became hostile towards me when I told him that I was raped. He said I wanted the rape. He took all what we had been given at the [IDP] camp and left me. IOM [International Office for Migration] built him a house in Eldoret in our plot. He lives there, while I live in this camp. He doesn’t support the children at all. Life is hard for us. I rent land to grow maize and beans to feed us. But the rains have been poor and we don’t get good harvests. I am sick. I have terrible pain in my lower abdomen and back. I cannot work as I used to. We are getting poorer and poorer. I never lacked food before, but it is a regular thing these days. I don’t even know what I will cook for dinner today. The government should pay us. We have been suffering for seven years.

— Human Rights Watch interview with Wangui L., Naivasha, November 9, 2014

Only a few of the women and girls interviewed by Human Rights Watch who had been in school at the time of the post-election violence said they were able to resume their studies following the rape. Some said it was because of the shame of rape, pregnancy and the need to care for the babies, or that they lacked family and financial support to return to school. In other cases, women and girls suffered physical injuries and developed mental health conditions that hindered them from pursuing an education.

Bosibori C. was 14 when five men raped her in late December 2007. She had just finished her final primary school exams and was waiting for admission to secondary school. She told us: “I passed very well. I wanted to go to secondary school but I did not have financial help or someone to look after my child.”<sup>115</sup>

Some women who experienced serious physical injuries said they are unable to return to the heavy physical labor required to cultivate fields—a main source of livelihood particularly for rural families—or to other business activities that require physical exertion. Other women said they are working at reduced capacity, thus reducing their income and limiting the ability to support their families.

Thirty-five-year-old Patricia V., a mother of three who was gang raped by four men, remarked: “My back still aches. I cannot work for long hours as I used to before the rape. I am a mother and I have to work hard for my children. How do I feed these children? Has the

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<sup>115</sup> Human Rights Watch interview with Bosibori C., Kericho, November 10, 2014.

government forgotten women completely?”<sup>116</sup> Nyokabi J. also told us, “Since [the rape] I get pain in my upper back when I bend or do hard work. In this area you have to farm to feed your family but I am not able to do that.”<sup>117</sup>

Fifty-year-old Kemunto R. was raped and abandoned by her husband. She told Human Rights Watch, “I can’t work because I am sickly. I started getting sick in 2008 at the camp in Narok. I have pressure [hypertension], diabetes, and impaired vision. I need help doing a business that does not require me to move a lot.”<sup>118</sup> She also said she had stopped taking her hypertension and diabetes medication because, “I was struggling to get money to buy the drugs.”

Other women, such as Adek J., have mental health conditions that have made it difficult for them to engage in gainful work. Adek told us, “I have several times borrowed money from my self-help group to do business. But it never takes off. I am deeply troubled. I need my mind to be at peace first. I need my health first.”<sup>119</sup>

Chapter 40 of Kenya’s Constitution protects women’s rights to property. However most women we interviewed are unaware of their legal rights to inherit property. All the women and girls we interviewed who had left or been chased away by their husbands told us they had no share of the family property. Kwamboka G. told us:

He had bought the house. He lives there. Now I pay rent. I left with nothing but the children. He even went to my salon business and took away the equipment that he had bought for me. I haven’t settled financially. He does not support us. Which government can hold him responsible?<sup>120</sup>

Many survivors told Human Rights Watch that they needed immediate financial assistance, and capital, to start a business so that they can sustain themselves in the long term; help educating their children and accessing medical treatment; decent housing and land; as

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<sup>116</sup> Human Rights Watch interview with Patricia V., Salgaa, November 8, 2014.

<sup>117</sup> Human Rights Watch interview with Nyokabi J., Salgaa, November 8, 2014.

<sup>118</sup> Human Rights Watch interview with Kemunto R., Naivasha, November 9, 2014.

<sup>119</sup> Human Rights Watch interview with Adek J., Busia, November 19, 2014.

<sup>120</sup> Human Rights Watch interview with Kwamboka G., Salgaa, November 8, 2005.

well as legal assistance to compel their husbands to support them and the children and to protect their rights to property.

### III. Invisible Victims: Children Born From Rape

#### **“This Child is a Bush Baby”: Profile of Akinyi L.**

I was raped in late December 2007 on my way to Kisumu. Six men took me and six other women to a nearby bush and raped us.

My husband loathed me after the rape. There was always tension between us. He used to look at me as if I was just a thing. Things became worse after I gave birth. He would say, “This child is a bush baby. You should have aborted her.” He was not nice to the child. If he found her drinking or eating something he would just grab it. If she sat on the chair he would say, “Did your father buy that chair?” And remove her from the seat. Sometimes he referred to her as just “it.”

He also became abusive towards me. He would tell me, “Take your bush child and take it where you collected it from. You are rotten and you should not sleep in my house.” He would tell me to go buy steel wire and wash my vagina because it had been eaten by thieves and produced a bush baby. One day he came home with another woman and told me to sleep on the floor. I left him that day in 2009.

—Human Rights Watch interview with Akinyi L., Nairobi, November 6, 2014

The discourse around assistance to victims of violence that followed the 2007 election has largely ignored the particular vulnerabilities and needs of children born from rape. Human Rights Watch’s research shows that some children born as a result of rape face stigma and rejection, and physical and verbal abuse by immediate and extended families, as well as in the wider communities. Consequently, they are also at risk of significant human rights violations, including their rights to health, education, family, identity, and physical security.

#### **Stigma and Rejection**

Some survivors of sexual violence told Human Rights Watch that they did not want to see, hold, or breastfeed their babies after birth. Often forced to carry these children to term due to a restrictive abortion law, facing stigma in their families and communities, and with no counselling or psychosocial support to deal with the trauma of rape and pregnancy, some abandoned their children.

Adek J. told us, “My daughter was raped. She got a child from the rape. She doesn’t want anything to do with the child. I don’t know where she is. She never communicates. She



said she cannot be with this child.”<sup>121</sup> Nyakiriaro A., who is also raising her daughter’s child, told us:

My daughter is now 18 years. She was raped in Ainamoi. She did not want anything to do with the child. She left the child and went to Mombasa in 2009. She has never returned. When she calls home and I mention the child she disconnects the call. She called me recently crying badly. She asked, “Mum where will I take this child?” She hung up on me as I was trying to encourage her. I don’t think her heart will ever like this baby. If anyone asks her about her baby she starts to cry. She says she is struggling in Mombasa, but she does not want to come home to this child. I am struggling to raise her child.<sup>122</sup>

Some families, relatives, and communities mocked children born from rape, stigmatized them as illegitimate, outcasts, or belonging to the “enemy,” or rejected them along with their mothers. Survivors said their husbands and other family members called them derogatory names, sometimes referring to the children as “it,” as if they were not human, or calling them “bush babies,” “children of thugs,” or “police babies,” in the case of women who were raped by members of the security forces. Others said their children were often referred to as “fatherless,” or referred to them as a “problem child.”

Atieno W. told Human Rights Watch that, “My neighbors talk ill about my daughter. They say her father is not known because I was raped by ‘the whole country.’”<sup>123</sup> Some mothers also said they themselves teased their rape children, referring to them as “Mkimbizi,” meaning internally displaced.

Although some parents may assume that young children understand these terms to be harmless, this kind of name-calling can have serious and lasting negative psychological effects as the child grows older.<sup>124</sup>

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<sup>121</sup> Human Rights Watch interview with Adek J., Busia, November 19, 2014.

<sup>122</sup> Human Rights Watch interview with Nyakiriaro A., Kericho, November 10, 2014.

<sup>123</sup> Human Rights Watch interview with Atieno W., Nairobi, November 14, 2014.

<sup>124</sup> See R. Charli Carpenter, “War’s Impact on Children Born of Rape and Sexual Exploitation: Physical, Economic and Psychosocial Dimensions,” undated, <http://people.umass.edu/charli/childrenbornofwar/Carpenter-WP.pdf> (accessed June 4, 2015); and Stuart Jones, “‘Like a Tree without Branches’: Children Born of Genocide Rape,” 2013, <http://survivors-fund.org.uk/wp-content/uploads/2013/09/Like-a-Tree-without-Branches.pdf> (accessed June 4, 2015).

In Kenya, certain physical features, such as complexion, are identified with certain ethnic communities. Children who are born with or develop physical characteristics of the rapist may be associated with the enemy and be particularly vulnerable to mistreatment.

Waitherero E. who comes from a more fair skinned community told Human Rights Watch, “I really didn’t want this child. I tried to abort. I like her now although she reminds me of the rape. And she is so black. It would have been better if she was light skinned.”<sup>125</sup>

Most Kenyan ethnic groups attribute paternal identity to the child and children are seen as belonging to the father and his family. The position of a child born of rape to a married woman can be ambiguous. Children born from gang rape may be further stigmatized because it is difficult to say for sure who the father is.

Awino D. told Human Rights Watch what happened after her husband learned that she had been gang raped, become pregnant, and borne the child: “He said he did not know whether the baby was Luo, Kikuyu, a thief, or a murderer. He slapped me and left; and said that I should stay with my rape child, or go and look for the rapist to help the child.”<sup>126</sup>

Nyasiongo F., who was raped together with her sister by men they both did not know, said her family rejected them and did not want anything to do with her child: “They said I had a pregnancy whose owner was not known. My dad’s sister and brother told me not to dare take my child to them because they don’t know what tribe he belongs to.”<sup>127</sup>

## Psychological and Physical Abuse

Children born of rape may be at risk of physical and psychological abuse by their mothers who may be physically and psychologically unable to care adequately for them because of their own trauma. Even if the mother accepts the baby, her extended family may mistreat the child. Although many women told Human Rights Watch that they did not physically abuse their children, they still admitted to sometimes feeling anger towards them—there is clearly a risk these children could be facing abuse in their families.<sup>128</sup>

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<sup>125</sup> Human Rights Watch interview with Waitherero E., Eldoret, November 11, 2014.

<sup>126</sup> Human Rights Watch interview with Joyce V., Nairobi, November 14, 2014.

<sup>127</sup> Human Rights Watch interview with Nyasiongo F., Nairobi, February 13, 2015 and October 2015.

<sup>128</sup> Research shows that trauma can be transmitted within and across generations. Research also suggests a correlation between parent’s negative perceptions of a child, and future attachment insecurities leading to damaging effects on

### **“The Harm I did to my Daughter”: Profile of Adhiambo E.**

I was raped on December 31, 2007 in Nairobi. I was 17. I was returning to my cousin’s home after visiting a friend when I met a group of men. They greeted me in Kikuyu. I could have returned the greetings but the words didn’t come out. I was so scared. I felt something hard hit the back of my head. I lost consciousness. I came to the next day about 6 a.m. I had no clothes. I was bleeding and my body was aching.

After some time I started getting sick and found out that I was pregnant. My life came to a standstill after I had the baby. I couldn’t return to school and I had no family support. The elderly woman whom I was living with and was helping me went to live upcountry and I was left alone with the baby. I was struggling. I became a bartender and ended up in prostitution. I suffered lots of abuse then.

I abused Brooklyn [the name she gave her daughter] and even attempted suicide. One time I had planned to go to Gikomba [market] and leave her there. I have abused Brooklyn so much that now she is very poor in class and a child who is very afraid. She fears me. I used to beat her badly. When I missed food or something I used to beat her. I used to tell her, “I would be very happy if you died. Why can’t you just die and leave me alone?” She has a mark on her left wrist and right thigh where I cut her with a razor. I wanted to punish her so that she doesn’t hurt me by asking me for food. I started beating her when she was very young, not even one year. But I didn’t care.

After some time I met someone who started to counsel me and to help me to love Brooklyn. I have been doing my best and I can see some progress. Brooklyn would never ask me for anything. But now she comes and asks me for money to buy a mandazi [a type of doughnut]. I am not where I would want to be with her, but I am working hard. I need to undo the harm that I did to my daughter. I have a long way to go.

—Human Rights Watch interview with Adhiambo E., Nairobi, October 5, 2015

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behavioral development. See Judy Atkinson et al., “Trauma, Transgenerational Transfer and Effects on Community Wellbeing,” 2010, <http://aboriginal.telethonkids.org.au/media/54889/chapter10.pdf> (accessed August 3, 2015); and United Nations Children’s Fund (UNICEF), “Intersections of Links between Violence against Women and Violence against Children in the South Pacific,” 2015, [http://www.unicef.org/pacificislands/Harmful\\_Connections\(1\).pdf](http://www.unicef.org/pacificislands/Harmful_Connections(1).pdf) (accessed July 20, 2015). Evidence also shows that post-traumatic stress disorder, often experienced by rape survivors, negatively impacts parental functioning, and can increase punitive and aggressive treatment towards the child. See Sandra L. Bloom, “Understanding the Impact of Sexual Assault: The Nature of Traumatic Experience,” 2003, <http://sanctuaryweb.com/Portals/0/Bloom%20Pubs/2003%20Bloom%20Understanding%20impact%20sexual%20assault.pdf> (accessed September 5, 2015), pp. 2-3; Lisa R. Cohen et al., “The Impact of Cumulative Maternal Trauma and Diagnosis on Parenting Behavior,” 2008, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3691673/>. Research also suggests a correlation between parent’s negative perceptions of a child, and future attachment insecurities leading to damaging effects on behavioral development.

The women interviewed by Human Rights Watch described complex relationships with their children, and often presented conflicting emotions of love and hate towards them. Veronica J. said, “I have accepted the child but I am struggling to raise her. When I don’t have money for her school fees I feel like I could buy rat poison and give it to her. I don’t have love towards her because when I see her I wonder who the father is.”<sup>129</sup>

Waitherero E. was seventeen years old when she became pregnant from rape in late December 2007. She said about her child: “I now like her although I wanted to abort. I asked God for forgiveness. The child reminds me of the rape. She is a joyful child. You pity yourself, you pity her.”<sup>130</sup>

Kadesa O. was gang raped and infected with HIV. She commented about her daughter:

I tried to abort unsuccessfully several times in the house. I used to drink strong tea and other bitter concoctions. I would feel pain and even bleed a little but not abort. I feel bad about having this child but I love her. She reminds me of the rape but she is my child. Sometimes I feel anger towards her. I shout at her. I want to hit her with an object and hurt her and she dies. But I try to control myself. It is not easy. What should I do with this rape child?<sup>131</sup>

Kwamboke G. described similar emotions towards her daughter and said that sometimes she has thoughts of killing her:

I did not want to see my daughter when she was born. Every day when I see her is a constant reminder of what happened. But again she is not there to be blamed. At times it pops up. You tell her to do something and she refuses. You wonder whom she takes after. I feel like telling her that she is bad because she is a child of rape. Sometimes I want to hit her and kill her.<sup>132</sup>

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<sup>129</sup> Human Rights Watch interview with Veronica J., Busia, November 19, 2014.

<sup>130</sup> Human Rights Watch interview with Waithereo E., Eldoret, November 11, 2014.

<sup>131</sup> Human Rights Watch interview with Kadesa O., Salgaa, November 8, 2014.

<sup>132</sup> Human Rights Watch interview with Kwamboka G., Salgaa, November 8, 2014.

## Birth Registration

Birth registration is an important measure for ensuring children’s access to various services and benefits crucial to the enjoyment of their fundamental human rights.<sup>133</sup> Birth registration in Kenya is compulsory according to the Birth and Deaths Registration Act of 1971. Birth registration is also guaranteed in article 7(1) of the Convention on the Rights of the Child (CRC) and article 24(2) of the International Covenant on Civil and Political Rights. Children have the right to be registered immediately after birth and registration should not be denied or delayed if the father is not known. States are required to adopt flexible and innovative approaches where parents are unable to meet formal requirements.<sup>134</sup>

According to the Births and Deaths Registration Rules, birth certificates are issued through one of two processes: current registration (in the first six months of child’s birth) and late registration (after six months). When a mother gives birth in a health facility she is issued with a ‘birth notification.’ The birth notification would include the parents’ names. When a child is born outside of a hospital, an official letter from a designated individual—a chief, assistant chief, community elder—must be issued verifying the details of birth and parentage. This letter will serve the role of a notification. Parents must then present this notification to the Principal Civil Register who will issue an official birth certificate.<sup>135</sup>

Some women who bore children after rape said they had not registered the births of their children because registration officers demanded the name of the father that they did not know, or a birth notification that they did not have. Some, like Kwamboka G., abandoned the process altogether because they said these unrealistic demands reminded them of the rape. She told us:

I went to the office for the registration of births in Nakuru. They asked for the birth notification. I told them I could not get the birth notification because I did not know the name of the father. They said they couldn’t help me. I said I was raped. They asked me for the police report indicating I was

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<sup>133</sup> United Nations Fund for Children (UNICEF), “Birth Registration,” 2014, [http://www.unicef.org/protection/57929\\_58010.html](http://www.unicef.org/protection/57929_58010.html) (accessed August 5, 2015).

<sup>134</sup> Committee on the Rights of the Child, “Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Mexico,” June 2006, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMEX%2FCO%2F3&Lang=](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FMEX%2FCO%2F3&Lang=) (accessed January 6, 2016), para 32.

<sup>135</sup> Births and Deaths Registration Act, Births and Deaths Registration Rules, part II and III.



raped. I saw this whole process was going to hurt me so I stopped following up.<sup>136</sup>

Nyasiongo F. said that although she had a letter from her area chief confirming the birth of her child, the registration office refused to issue her with a birth certificate, demanding that she provide the name of the father. When she insisted that she did not know the father, the registration officer told her, “Just give the name of any male to hold the brief for the father.”<sup>137</sup>

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<sup>136</sup> Human Rights Watch interview with Kwamboka G., Salgaa, November 8, 2014.

<sup>137</sup> Human Rights Watch interview with Nyasiongo F., Nairobi, February 13, 2015 and October 2015.

## IV. Failure to Investigate and Prosecute Sexual Violence

Is there no justice for rape? If police who should be helping us can just rape women and nothing is done to them, what will prevent men from continuing to rape us? I want the police officers who raped me to be prosecuted and punished. The government should help us to get justice, and compensate us.

—Jane S., Nairobi, November 15, 2014

The Kenyan authorities say they have convicted a few perpetrators of sex crimes related to the 2007-2008 post-election violence, but on the whole, they have displayed lack of will to thoroughly investigate and prosecute such crimes. The authorities have also made little progress in developing a comprehensive policy and strategy to secure justice for survivors of sexual violence and have excluded survivors of sexual violence from ongoing initiatives to compensate other victims of the post-election violence.

In its 2011 report *Turning Pebbles: Evading Accountability for Post-Election Violence in Kenya*, Human Rights Watch discussed in detail the gaps in the investigation and prosecution of offenses, including those involving sexual violence, committed during the post-election period. These gaps include poor police investigations, inaccurate or incomplete charges, overburdened state counsel, interference by politicians, judges' errors in evaluating evidence, the lack of a viable witness protection system, and the absence of adequate legal frameworks and expertise to prosecute at least some of the post-election violence as "international" crimes (such as crimes against humanity).<sup>138</sup>

The report criticized the government's "half-hearted" efforts towards accountability for post-election crimes and concluded that "it was difficult to ascertain whether there had been any convictions" for post-election sexual violence.<sup>139</sup>

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<sup>138</sup> Human Rights Watch, *Turning Pebbles*, p. 46.

<sup>139</sup> Human Rights Watch, *Turning Pebbles*, pp.25-26. And neither has the government taken meaningful steps to hold accountable those responsible for serious violations of international human rights, including those who organized and financed the violence.

Over four years on, very little has changed when it comes to accountability for crimes committed during the post-election violence. If anything, the government's determined campaign to undermine the International Criminal Court's (ICC) cases (see Chapter I) has further entrenched impunity. The failure to investigate and prosecute post-election sexual violence is linked with both the overall lack of accountability for the post-election violence as well as pre-existing and ongoing gaps in training and response to gender-based violence generally. The government's overall failure to effectively investigate and prosecute the range of crimes committed in the aftermath of the 2007 election remains a pressing concern, as does its continued efforts to discredit the ICC process, which, for the time being, remains the only effort to establish individual criminal responsibility for orchestrating at least certain aspects of the post-election violence. The remainder of this report deals with the specific challenges in the investigation and prosecution of sexual crimes committed during the post-election violence.

## **Impact of Stigma and Lack of Information on Reporting**

In addition to government inaction and the lack of political will to investigate cases of post-election violence and prosecute perpetrators, survivors of sexual violence faced formidable social and economic obstacles to reporting sexual abuse and pursuing cases which contributed to gaps in investigation and critical medical-legal evidence collection.

Insecurity, fear of stigma, lack of transport, and lack of money for treatment and transport prevented victims from seeking medical attention in the immediate aftermath of the attacks. Many rape survivors therefore did not have a medical examination or access to treatment immediately after their assault, which limited the forensic evidence that could have been collected and increased their risk of contracting HIV and other sexually transmitted infections and pregnancy.

Some women also said they did not know the importance of seeking medical help within 72 hours of assault, they were too traumatized to muster the energy to seek treatment, or were concerned about perceived prejudice from health care workers against people who were not from their ethnic groups.

Women expressed profound feelings of shame about what happened to them and fear that seeking medical help or reporting their cases to the police would expose the rape and lead

to rejection by their husbands and families. Cheron M. also said, “I have never told anyone in the family about the rape or gone to the police. It’s so shameful. People will ask why you did not scream or run away. This is the first time that I am talking about the rape. I had said I will go to the grave with my secret.”<sup>140</sup>

In some cases, women sought care at health facilities following the rape or reported violence to the police, but did not disclose the actual rape because of shame and the fear of stigma. As Wangari T. told us, “I went to the police at Langas and reported that I had been hurt. I did not report the rape because I feared my husband will know and abandon me.”<sup>141</sup> Wanja M. said:

I did not tell my husband I was raped because I was ashamed. I went to hospital the next day but I did not explain the rape to them. I just told them I wanted to test for HIV. I did not go to the police either. I didn’t want it to be known that I was raped. It is my deepest secret. I will die with it.<sup>142</sup>

## **Discriminatory Response by Health Care Workers**

Some women who did seek medical treatment for sexual violence were ridiculed by health care workers or turned away without treatment by doctors who appeared to refuse treatment on the basis of ethnicity. Some women were told that health care workers were too busy treating other casualties to attend to rape victims. Gakuhi L. said she was gang raped in January 2008 by four men who broke into her house armed with machetes and clubs. She went to Kericho District Hospital a week later but was turned away:

I was chased away. We could hear them talking to themselves saying “We want to treat our people first.” They said, “If you are not Kalenjin you leave.” I was in so much pain, after two weeks I went to a chemist and I told them I was raped. They gave me some medication. But I still have pains in my lower abdomen.<sup>143</sup>

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<sup>140</sup> Human Rights Watch interview with Cheron M., Eldoret, November 11, 2014.

<sup>141</sup> Human Rights Watch interview with Wangari T., Naivasha, November 9, 2014.

<sup>142</sup> Human Rights Watch interview with Wanja M., Busia, November 19, 2014.

<sup>143</sup> Human Rights Watch interview with Gakuhi L., Kericho, November 10, 2014.

Neighbors took Nafula F. to Eldoret District Hospital after men armed with arrows and hammers raped her in front of her child on December 31, 2007. They said they wanted her husband's head because he was Kikuyu. "I told her [the doctor] what had happened. She said, 'Don't say you were raped by Kalenjins. You are just looking for a scapegoat.' She refused to treat me. A male doctor told us to go to the referral hospital where I was treated well and given medicine."<sup>144</sup>

Gesare B. said she was gang raped on the evening of December 29, 2007 in Kericho by four men who threatened to kill her and her children if she resisted. Her husband took her to the district hospital the following morning but the doctor refused to treat her:

He asked my problem. I said I was raped. He said, "Why didn't you come in the evening if you were hurt?" I said because of the insecurity. He said, "Just stay outside, it appears you have no work to do." I returned to the house. After leaving hospital without treatment my husband said he will not live with me anymore because he feared I had HIV. He chased me away.<sup>145</sup>

Other women said some government hospitals refused to issue them with post-rape care (PRC) forms, an important document completed by health providers that forms part of medical-legal evidence.<sup>146</sup>

Nyambugi E. said she went to Moi Teaching and Referral Hospital two days after being gang raped but, "They did not treat us well. The attitude was bad. They kept us waiting. They would ask us, "So you were raped? Who raped you?" They were laughing when attending to us. We asked for the PRC form but they refused."<sup>147</sup>

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<sup>144</sup> Human Rights Watch interview with Nafula F., Eldoret, November 11, 2014.

<sup>145</sup> Human Rights Watch interview with Gesare B., Kericho, November 10, 2014.

<sup>146</sup> The PRC form was introduced by the Ministry of Health in 2013 to improve the clinical management of sexual violence as well as access to justice for survivors. It is an examination documentation form for survivors of rape and sexual assault. It is used by health workers to make clinical notes that they use to fill in a P3 form. The Kenya Police Medical Examination form, popularly known as a P3 form, is a legal document which is produced in court as evidence in cases which involve bodily harm (e.g. rape or assault). It is obtained from a police station, filled in by a police officer, and later a registered government doctor or clinical officer. There are challenges where some courts have refused to accept evidence documented through the PRC form. See Faith Muiruri, "Dilemma as Post-rape Care Form is Rejected," May 1, 2015, <http://awcfs.org/kw/article/dilemma-as-post-rape-care-form-is-rejected/> (accessed September 17, 2015). Also see Redress at al., "Submission to the United Nations Committee against Torture regarding the Periodic Review of Kenya," June 29, 2015, para.19. Also see [http://forms.co.ke/biz\\_forms.php?cat\\_id=44](http://forms.co.ke/biz_forms.php?cat_id=44) for a description of the P3 form.

<sup>147</sup> Human Rights Watch interview with Nyambugi E., Naivasha, November 9, 2014 and October 6, 2015.



Other women said they were also denied this form at Mbagathi District Hospital. Nyawira L. told us, “At Mbagathi they said they couldn’t write the rape report because they would be making a case with the government, yet they are a government hospital. We were taken to KNH [Kenyatta National Hospital] where they gave me a report and I received good counselling.”<sup>148</sup>

According to the Sexual Offences (Medical Treatment) Regulations, 2012, victims of sexual violence have a right to free medical treatment at any medical facility whether or not they have reported the crime to the police.<sup>149</sup>

Kenya has a standard protocol for the treatment and medico-legal examination of rape survivors, to provide psychosocial care for them and their families, and secure any medical evidence in a standard manner. There is a training curriculum for health care providers on the management of sexual violence and Health Sector Standard Operating Procedures. The government, with the support of NGOs, has improved training for health workers and the police. Despite these efforts, there are many gaps, including lack of knowledge and skills in evidence collection and proper documentation, shortage of equipment, and inadequate storage facilities for collected evidence.<sup>150</sup>

## Protection Failures by the Police

Investigations by Human Rights Watch and other organizations, including the DPP and CIPEV, show that the police were negligent in their duty to investigate sexual violence, often dismissing and displaying negative attitudes towards victims, and that some members of the police had raped and tortured women and girls instead of protecting them.<sup>151</sup>

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<sup>148</sup> Human Rights Watch interview with Nyawira L., November 15, 2014.

<sup>149</sup> Sexual Offences (Medical Treatment) Regulations, 2012, arts. 1-3. According to the regulations, a victim includes witness to sexual violence. *Ibid.*, art. 6 (3).

<sup>150</sup> See Ajema C. et al., “Improving the Collection, Documentation and Utilisation of Medico-legal Evidence in Kenya,” 2012, <http://www.svri.org/ImprovingCollection.pdf> (accessed September 17, 2015), for a detailed study on these challenges. Also see Open Society Foundations, “Coalition on Violence Against Women and Others v. the Attorney-General of Kenya and Others,” February 20, 2013, <https://www.opensocietyfoundations.org/litigation/coalition-violence-against-women-and-others-v-attorney-general-kenya-and-others> (accessed November 7, 2015). This article notes that 600 cases of rape were treated at Nairobi Hospital within 72 hours of the attack. That is a huge missed opportunity in terms of evidence collection and referrals.

<sup>151</sup> Article 95 of the 2012 National Police Service Act prohibits torture or any cruel, inhuman or degrading treatment or punishment.

The CIPEV leveled harsh criticism at the Kenyan police for its failure to investigate rape and other sexual offenses committed during the post-election violence.<sup>152</sup> It noted that it was “... concerned over the apparent lack of interest of the police in sexual violence in general and particularly in not taking action against their own officers who perpetrated the crimes.”<sup>153</sup>

Our research, and that of CIPEV, shows that sexual violence survivors who overcame stigma, insecurity, and other risks to seek redress reported that police failed to take statements from women and sent them back to their homes; they failed to follow up on complaints; and to investigate complaints, often asking women to produce witnesses. Some survivors and witnesses also claimed that police colluded with perpetrators who had paid them to drop cases against them.

Aoko T., 16 at the time, was raped in January 2008 by a neighbor who said he would help her to escape from marauding youths. She was unable to get assistance:

My uncle, aunt, and I went to the police after a week. After my aunt told the policeman about the rape, he looked directly at me and said, “You, you are a big girl, how can you say you were raped? You should tell the truth.” We realized we would not get help. They said we should give them money if we wanted their help or that I should stop lying.<sup>154</sup>

Nyamboga D. said that following rape by three men: “We were near the police station. I ran there after the rape. The officer told me, ‘Just stay there, we are going to save others.’ They did not take my statement. They said just stay here until we take you to your motherland.”<sup>155</sup> Nyakio S. told Human Rights Watch that when she went to the police to report the rape of her niece, “They said we should go back and investigate who the person is, and then go back to them.”<sup>156</sup> Kadesa O.’s rapists were arrested and then set free: “I went to the police and recorded a statement. The youth were arrested by the police but that was all. Police have no interest in rape victims. They don’t help.”<sup>157</sup>

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<sup>152</sup> CIPEV, pp. 399-404.

<sup>153</sup> Ibid., p. 249.

<sup>154</sup> Human Rights Watch interview with Aoko T., Nairobi, November 14, 2014 and October 5, 2015.

<sup>155</sup> Human Rights Watch interview with Nyamboga D., Nyamira, November 20, 2014.

<sup>156</sup> Human Rights Watch interview with Nyakio S., Kiambaa, November 21, 2014.

<sup>157</sup> Human Rights Watch interview with Kadesa O., Salgaa, November 8, 2014.

The unprofessional police response to survivors of sexual violence during the post-election violence negatively impacted survivors' ability to seek help not only from the police, but also from health facilities. This exacerbated the limited collection of important evidence to pursue investigations and prosecute offenders.

Kenya's due diligence obligation to prevent, investigate, prosecute, and punish sexual violence requires the government to take measures such as training and the allocation of sufficient resources to ensure that state actors, such as the police and the justice system, take all reasonable steps to provide everyone within its territory with effective protection against such violence by private parties and State actors. It also obligates the government to address the barriers that deter women and girls from reporting abuse and accessing protection and justice. This obligation includes that the Kenya government effectively investigate sexual violence in a manner capable of leading to the identification, prosecution, and punishment of those responsible.<sup>158</sup>

## **Police as Perpetrators and Ineffective Witness Protection**

Some of the women interviewed by Human Rights Watch said they had not reported sexual violence because they had no confidence in the police or they feared reprisals by perpetrators. Others simply laughed when asked by Human Rights Watch if they reported the crimes to the police, incredulous because the police themselves had been perpetrators of sexual violence during the post-election violence.<sup>159</sup>

Awino D. was seventeen years old and in form two when she was gang raped by officers of the paramilitary General Services Unit (GSU). She commented, "I couldn't go to the police because I didn't want to hear anything about the police. These people are the same. Even today I can never go to the police for anything. I feel they cannot help. They just rape

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<sup>158</sup> Special Rapporteur on Violence Against Women, *The Due Diligence Standard as a Tool for the Elimination of Violence Against Women*, 34-35, U.N. Doc. E/CN.4/2006/61 (2006). See generally, the European Court of Human Rights, *Kaya v. Turkey*, judgment of February 19, 1998, Reports of Judgments and Decisions 1998-I, p. 324; *Jordan v. the United Kingdom*, No. 24746/94, judgment of May 4, 2001; *Finucane v. the United Kingdom*, No. 29178/95, judgment of July 1 2003; *Isayeva v. Russia*, 57950/00, judgment of July 27, 2004; *Adali v. Turkey*, 38187/97, judgment March 31, 2005.

<sup>159</sup> The Waki Report leveled harsh criticism at the Kenyan police for its failure to investigate rape and other sexual offenses committed during the post-election violence. CIPEV, pp. 399-404.

women.”<sup>160</sup> Adhiambo M., who was also raped by GSU officers said, “The police and the GSU are the same people. They can kill me and my family.”<sup>161</sup>

Arogo H. was raped by men she knew. She did not report the case to the police because of lack of support from her husband, fear of retaliation by the perpetrators, and because she did not trust the police:

I knew almost 10 of the about 30 youth who attacked us.... Three men raped me. I knew them by face. After they left they said, “Take your things and leave or we will return here the whole Mungiki and rape you again and kill you.” I went to the chief for help. At the chief’s I found two of the youths who had broken into my house. I got afraid and started to walk back. I went to the police. There I heard a policeman telling a woman who had gone to report the killing of her father, “Look for means to go to your rural home because people are looking after their tribesmen.” I lost the heart to report the case. I see the youth who came to my house when I go to visit my husband in town. My husband didn’t want me to report the rape because he lives with these people and fears they can kill him.<sup>162</sup>

Aoko T., who described being turned away by the police after being raped by her neighbor said, “He heard we had gone to the police and started threatening me saying I should keep quiet or he would kill me. I left the area and I came to stay here with my grandmother.”<sup>163</sup>

The absence of a functioning witness protection system has undermined investigations and prosecutions of perpetrators of post-election violence. As indicated in Chapter I, pervasive allegations of witness interference have dogged inquiries into the violence. The

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<sup>160</sup> Human Rights Watch interview with Awino D., Nairobi, November 14, 2014.

<sup>161</sup> Human Rights Watch interview with Adhiambo M., Nairobi, November 4, 2014.

<sup>162</sup> Human Rights Watch interview with Arogo H., Siaya, November 18, 2014 and October 5, 2015. Mungiki are a brutal criminal gang that promotes a violent brand of Kikuyu chauvinism. The Mungiki has evolved since the early 1980s, when it was started as a religious and cultural movement in Laikipia, Rift Valley, by sons and daughters of former Mau Mau fighters. The Mungiki’s initial mission was to revive the land agenda that drove the Mau Mau war of independence and to restore adherence to Kikuyu culture. The gang has since shifted from that agenda and now has political connections, plus repeated allegations of links to violent criminal groups who control public transport in Nairobi, central Kenya, and parts of the Rift Valley. See Prof. Peter Mwangi Kagwanja, “Facing Mt Kenya or Facing Mecca? The Mungiki, Ethnic Violence and the Politics of Moi Succession in Kenya, 1987-2002,” *African Affairs*, Vol. 102, Issue 406, 2003, <http://afraf.oxfordjournals.org/content/102/406/25.short> (accessed November 7, 2015).

<sup>163</sup> Human Rights Watch interview with Aoko T., Nairobi, November 14, 2014 and October 5, 2015.

Witness Protection (Amendment) Act of 2010 created the Witness Protection Agency to provide protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their cooperation with the prosecution and other law enforcement agencies.<sup>164</sup>

An official at the Witness Protection Agency told Human Rights Watch that they have taken up protection of gender-based violence survivors and outreach to communities to raise awareness about their mandate.<sup>165</sup> However, it is not clear how effective they have been. Many women we interviewed did not know about its existence. Also, many Kenyans question the agency's ability to effectively protect witnesses as it is underfunded and is not seen as independent of the government.<sup>166</sup>

## Unclear Legal Framework to Sanction Conflict-Related Sexual Violence

Individual acts of rape and other forms of sexual assault can be prosecuted as criminal acts under Kenya's national laws. Many of the sexual and gender-based violence crimes committed during the post-election violence are prohibited under the Sexual Offences Act, 2006. However, the act requires the identification of individual perpetrators involved in the direct commission of sexual offenses. Many rape survivors do not know their attackers, and critical evidence relevant to identification was not collected immediately after the rape.

The International Crimes Act (ICA), 2008, explicitly integrates into Kenyan law provisions of the Rome Statute of the International Criminal Court (Rome Statute) and provides another avenue for pursuing accountability for post-election sexual violence.<sup>167</sup> It adopts the modes of liability recognized in the Rome Statute, which include liability for organizing, financing, facilitating or in any way contributing to the commission of rape and other forms

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<sup>164</sup> The Witness Protection (Amendment) Act, No. 16 of 2006, 2010, art. 5. Under article 6 the agency is empowered by law to protect witnesses through strategies including physical and armed protection; relocation; change of identity; and any other measure necessary to ensure the safety of the protected person. The Sexual Offences Act also gives guidelines for the protection of vulnerable witnesses during court procedures. Sexual Offences Act, 2006, arts. 31-33.

<sup>165</sup> Human Rights Watch interview with Barnabus Ochieng', Liaison Officer, Witness Protection Agency, Nairobi, August 13, 2015.

<sup>166</sup> Wanja Gathu, "Big Questions About Witness Protection in Kenya," May 27, 2014, <https://iwpr.net/global-voices/big-questions-about-witness-protection-kenya> (accessed September 15, 2015); Emmanuel Igunza, "Witness Protection Fears in Kenya," August 3, 2012, <http://reliefweb.int/report/kenya/witness-protection-fears-kenya> (accessed September 17, 2015); Human Rights Watch, *Turning Pebbles*, pp. 52-53.

<sup>167</sup> Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002, art. 7 (1) (g). International Crimes Act, 2008, arts. 4 and 5.

of sexual violence in the context of systematic or widespread attacks against a civilian population.<sup>168</sup> Furthermore, superior officers may also be liable for crimes committed by their subordinates on the basis of command responsibility, a principle by which those in a position of authority who knew or should have known of crimes committed by those under their command, and who failed to prevent these crimes or ensure their prosecution, are themselves criminally liable.<sup>169</sup>

The International Crimes Act was enacted in December 2008 and came into force on January 1, 2009, a year after the post-election violence occurred, and there are conflicting interpretations as to whether it can be retroactively applied to investigate and prosecute crimes related to the violence which followed the 2007 election without violating the fundamental criminal law *nullum crimen* principle.<sup>170</sup>

## Current Status of Justice Efforts

As discussed above, there has been very limited progress in pursuing criminal justice in cases related to the post-election violence. Efforts to establish mechanisms that might have overcome some of the challenges faced by Kenya's investigative and prosecutorial authorities, like the establishment of an effective International Crimes Division within the judiciary to address such cases, have stalled.<sup>171</sup> The police have failed to conduct further investigations into reported cases of post-election violence, including cases of sexual

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<sup>168</sup> Ibid.

<sup>169</sup> Rome Statute, art. 28. The Committee against Torture (CAT) has stated that it "considers it essential that the responsibility of any superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, be fully investigated through competent, independent and impartial prosecutorial and judicial authorities." CAT, General Comment No. 2, para. 26.

<sup>170</sup> Human Rights Watch, *Turning Pebbles*, pp. 58-59. Human Rights Watch argued that "It is unclear whether this [principle] would have prohibited use of the International Crimes Act, however, given that ICC crimes were clearly crimes under international law, if not under national law, during the post-election violence period.... This would appear to clear the way for use of the International Crimes Act now to prosecute crimes against humanity or other ICC crimes dating to the post-election violence period." Ibid; International Center for Transitional Justice, "Prosecuting International and Other Serious Crimes in Kenya," April 2013, <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Kenya-Prosecutions-2013.pdf> (accessed September 4, 2015), pp. 1-6; Kenyans for Truth Peace and Justice, "A Real Option for Justice? The International Crimes Division of the High Court of Kenya," July 2014, [http://kptj.africog.org/wp-content/uploads/2014/08/A\\_Real\\_Option\\_for\\_Justice\\_The\\_International\\_Crimes\\_Division.pdf](http://kptj.africog.org/wp-content/uploads/2014/08/A_Real_Option_for_Justice_The_International_Crimes_Division.pdf) (accessed March 12, 2015). Also see Christine Alai, "Making Shattered Women Whole Again: Kenyan State's Obligation to Prevent, Investigate, Prosecute and Redress Sexual Violence Perpetrated during the 2007 Post-Election Conflict," undated, unpublished paper, on file with Human Rights Watch, pp. 27-29.

<sup>171</sup> For further discussion on the need for such special mechanisms, see Human Rights Watch, *Turning Pebbles*, pp. 74-77; Kenyans for Peace with Truth and Justice, "A Real Option for Justice? The International Crimes Division of the High Court of Kenya," July 2014, <http://www.trustafrica.org/en/publications-trust/research-reports?download=389:the-international-crimes-division-of-the-high-court-of-kenya> (accessed December 23, 2015).



violence as required by the DPP. Instead, the government now appears focused on “restorative approaches,” as underscored by President Kenyatta in his state of the nation address in March 2015. Kenyatta appeared to see the final report of a multi-agency taskforce set up to review the status of cases related to the post-election violence as recommending such restorative approaches:

Yesterday, I received the Report on the 2007/2008 Post Election Violence Related Cases from the Office of the Director of Public Prosecutions.... In all, there were 6,000 reported cases and 4,575 files opened. It is the opinion of the Director of Public Prosecutions that there are challenges to obtaining successful prosecutions. These challenges range from inadequate evidence, inability to identify perpetrators, witnesses fear of reprisals, and the general lack of technical and forensic capacity at the time. Nonetheless, the Office of the Director of Public Prosecutions recognizes there were victims and recommends that these cases be dealt with using restorative approaches.<sup>172</sup>

As discussed below, the establishment of effective reparations mechanisms for cases related to the post-election violence is an important and necessary step forward. The delivery of reparations, however, cannot meet Kenya’s obligations to prosecute and punish serious crimes committed during the violence. Kenyatta’s reference to “restorative approaches” comes on the back of years of ineffective investigations.

On October 17, 2008, the police announced that it was forming a taskforce to investigate sexual and gender-based offences related to the election violence. This came two days after the Commission of Inquiry into Post-Election Violence (CIPEV) released its report implicating the police in the rape of women and girls, and criticizing them for failing to investigate rape and other sexual crimes during the violence.<sup>173</sup> The taskforce was to include senior female police officers, as well as lawyers and counselors from the Kenyan

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<sup>172</sup> See, “Full State of the Nation address by President Uhuru Kenyatta, March 26, 2015, <http://www.news24.co.ke/MyNews24/Full-State-of-the-Nation-address-by-president-Uhuru-Kenyatta-20150326> (accessed July 18, 2015), para. 80.

<sup>173</sup> Human Rights Watch, *Turning Pebbles*, pp.20; and, Daily Nation Report, “Police Boss Sets up Team to Probe Rape Cases,” October 17, 2008, <http://www.nation.co.ke/news/-/1056/481246/-/view/printVersion/-/d6otd6z/-/index.html> (accessed November 7, 2015).

chapter of the Federation of Women Lawyers (FIDA). FIDA later withdrew from the taskforce after they were excluded from its planning.<sup>174</sup>

The police taskforce submitted a list of 66 complaints, mostly alleging rape by security officers, to the director of public prosecutions (DPP) in 2009. They recommended closure in almost all the cases citing lack of evidence.<sup>175</sup> The DPP disagreed with the conclusions of the taskforce and sent back the files to the police for further investigations. To date, it is unclear whether the taskforce's investigations resulted in any subsequent prosecutions as a final report has not been published.

The multi-agency taskforce established by the DPP in February 2012 to undertake a comprehensive review of the status of investigation and prosecution of cases of post-election violence reported that the bulk of the sexual violence cases cannot be prosecuted because victims were unable to identify their assailants and did not have any medical or other physical evidence to substantiate the allegations of sexual violence. Further still, in some cases, files lacked investigator's reports, investigation diaries, or statements from victims and were significantly weakened by the police's failure to record corroborating evidence from the victims.<sup>176</sup>

The taskforce suggested that the government should explore alternative approaches to proving sexual offenses committed during the post-election violence, including pursuing responsibility for such offenses as constituting international crimes under the International Crimes Act.<sup>177</sup> As indicated above, a proposed International Crimes Division within the high court to prosecute crimes committed during the post-election violence,

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<sup>174</sup> Human Rights Watch, *Turning Pebbles*, p. 20; and Zoe Alsop, "Kenya's Rape Probe Falter after Lawyers Drop out," December 14, 2008, <http://womensnews.org/story/rape/o81214/kenyas-rape-probe-falters-after-lawyers-drop-out> (accessed November 7, 2015).

<sup>175</sup> Human Rights Watch, *Turning Pebbles*, p. 21.

<sup>176</sup> Christine Alai, "Making Shattered Women Whole again," p. 19; The Kenya Gazette, Vol. CXIV -No. 32, p.1352, April 20, 2012, [http://kenyalaw.org/kenya\\_gazette/gazette/notice/11182](http://kenyalaw.org/kenya_gazette/gazette/notice/11182) (accessed September 3, 2015); Bernard Koech, "Fresh Doubts about Mandate of Kenya's Special Court," February 21, 2014, <https://iwpr.net/global-voices/fresh-doubts-about-mandate-kenyas-special-court> (accessed September 7, 2015); Judie Kaberia, "DPP Assures Poll Victims of Justice Despite Probe Snag," August 17, 2012, <http://www.capitalfm.co.ke/news/2012/08/dpp-assures-poll-victims-of-justice-despite-probe-snog/> (accessed September 2, 2015); Government of Kenya, "Universal Periodic Review of The United Nations Human Rights Council: National Mid Term Report," September, 2012, <http://www.upr-info.org/followup/assessments/session21/kenya/Kenya-State.pdf> (accessed September 3, 2015), p.17.

<sup>177</sup> Christine Alai, "Making Shattered Women Whole again," pp 19-20; and Judie Kaberia, "DPP Assures Poll Victims of Justice despite Probe Snag."

among other cases, has stalled, and the DPP has also questioned the significance of the International Crimes Division considering that he alleges most cases of post-election violence lack evidence to continue to trial.<sup>178</sup> Again, this failure speaks more to government unwillingness to ensure accountability for post-election violence than to the lack of evidence to pursue criminal cases since, as noted above, the government has yet to conduct exhaustive investigations or develop a comprehensive strategy to this end.

But eight years since the post-election violence, many victims continue to demand justice. Victims told Human Rights Watch they perceive the prosecution of perpetrators as both a reparative and preventive measure, which would give them the satisfaction that sexual crimes have been acknowledged by the government and provide assurance against the repetition of sexual violence. Wambui F. told Human Rights Watch, “I want to see justice. People were hurt so much. Those who planned the violence should be prosecuted and us victims be compensated so that it’s a lesson to others.”<sup>179</sup>

The government’s response to sexual offences committed during the post-election violence has been challenged in a constitutional petition by four civil society organizations and eight sexual violence survivors. The petitioners argue that Kenyan authorities failed to protect civilians during the post-election violence, and that authorities have subsequently not fulfilled their obligation to investigate and prosecute sexual and gender-based crimes and to provide reparations to the victims. The petitioners argue that government failure to prevent sexual violence, punish offenders, and provide reparations to the victims violate numerous provisions of Kenyan and international law.<sup>180</sup>

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<sup>178</sup> See Bernard Koech, “Fresh Doubts about Mandate of Kenya’s Special Court;” Betty Waitherero, “Can the International Crimes Division Prosecute Kenya’s PEV Cases?” February 8, 2014, <http://mobile.nation.co.ke/blogs/International-Crimes-Division-bring-accountability/-/1949942/2197978/-/format/xhtml/item/1/-/hw68aaz/-/index.html> (accessed September 18, 2015); International Commission of Jurists, “The International Crimes Division Unit will not take over the Hague Cases, affirms CJ Mutunga,” April 30, 2013, <http://www.icj-kenya.org/index.php/media-centre/news/508-the-international-crimes-division-unit-will-not-take-over-the-hague-cases-affirms-cj-mutunga> (accessed September 18, 2015).

<sup>179</sup> Human Rights Watch interview with Wambui F., November 15, 2014.

<sup>180</sup> Open Society Foundations, “Coalition on Violence Against Women and Others v. the Attorney-General of Kenya and Others,” February 20, 2013, <https://www.opensocietyfoundations.org/litigation/coalition-violence-against-women-and-others-v-attorney-general-kenya-and-others> (accessed August 20, 2015); See COVAW Press release, “Court Case for Sexual Gender-Based Violence During Post-election Violence Continues,” April 22, 2014, <http://covaw.or.ke/sgbv-pil-petition-1222013/court-case-for-sexual-gender-based-violence-during-post-election-violence-continues-on-wednesday-23-25th-april-before-justice-isaak-lenaola-at-the-high-court-of-kenya-milimani-at-9am/> (accessed September 20, 2014).

### *National Action Plan on UNSCR 1325*

Through various United Nations Security Council Resolutions, which frame the women, peace and security agenda, the UN has made clear the need for states to ensure national accountability for sexual violence crimes and to provide assistance to victims of sexual violence, and has stressed the important role of women in all efforts to maintain peace and security.<sup>181</sup> The UN Security Council's eight resolutions on women, peace and security have been reflected in national level legislation through "National Action Plans."<sup>182</sup>

Kenya has drafted its national action plan on UNSCR 1325, but it is unclear when it will be finalized and launched. The national action plan takes into account the existing international principles on women, peace and security, which includes conflict prevention, women's participation in all decision-making regarding security, threats and protection concerns for women including from sexual violence, funding, and women's full participation in post-conflict reconstruction and rebuilding. If implemented, Kenya's national action plan presents an additional opportunity for the engagement of women in peace and security issues in the country, including accountability for past and ongoing sexual violence, even as the country continues to grapple with various security challenges.<sup>183</sup> Effective national action plans tend to include robust financing mechanisms, and are the responsibility of politically strong ministries.

In the Kenya case specifically, questions remain as to whether the 2008 electoral violence will be addressed in the national action plan. The plan could drive forward the reparations process, further security sector reform with a clear gender component, and could strengthen availability for medical and psychosocial services for survivors.

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<sup>181</sup> The UN has also initiated a campaign, which seeks to harmonize the work of 13 UN agencies working to support local efforts, coordination and accountability, and advocacy towards curbing sexual violence in conflict situations. See, Stop Rape Now: UN Action against Sexual Violence in Conflict, <http://www.stoprapenow.org/about/>.

<sup>182</sup> UNSC Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013) and 2242 (2015). There are currently 56 countries with national action plans, see Inclusive Security National Action Plan Resource Center, <https://actionplans.inclusivesecurity.org/>.

<sup>183</sup> Human Rights Watch interview with Winfred Lichuma, Executive Director, National Gender and Equality Commission, August 15, 2015. Also see Vicky Karimi, Kenya's National Action Plan: "To Involve Women is to Sustain Peace," August 27, 2015, <http://blog.giwps.georgetown.edu/kenyas-national-action-plan-to-involve-women-is-to-sustain-peace/> (accessed September 2, 2015). The Kenya NAP takes into account the existing and robust women, peace and security architecture that includes UNSC Resolutions 1820, 1888, 1889, 1960, 2106, and 2122.

## V. The Case for Reparations

I want to ask, when will the government remember us? Have we been completely forgotten? We were raped and infected with HIV. Our bodies were destroyed. We are unable to work because we are sick. Some women have children of the thugs. Others have diseases and they smell; they cannot go near people. Are we not victims? I hear people who lost things in Rift Valley and Central have been paid. We have lost many things including our husbands and dignity. So I want to ask, what about us?

—Nyanchama P., Nyamira, November 20, 2014

The Truth, Justice and Reconciliation Commission (TJRC) proposes various forms of reparations for victims of post-election violence, including survivors of sexual violence who are eligible for pensions, medical and psychosocial support, and collective reparations such as commemorations. Under the proposed reparations framework, survivors of sexual violence with urgent health needs qualify to have their reparations claims expedited.<sup>184</sup>

The TJRC also made a number of key recommendations to address sexual and gender-based violence more generally, some mirroring those of the Commission of Inquiry into the Post-Election Violence (CIPEV).<sup>185</sup> They include, but are not limited to: a presidential apology for sexual violence committed by state security agents; creating Gender Violence

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<sup>184</sup> TJRC Report, Vol. IV, 2013, pp. 102-108. The TJRC was tasked with investigating the root causes of the 2007 post-election violence; past gross human rights violations by the state, public institutions, and holders of public office, both serving and retired from independence in 1963 up until 2008; economic crimes; ethnic violence; the irregular and illegal acquisition of public land; and the economic marginalization of communities. Its mandate also included making recommendations for prosecution, reparations for victims, and administrative mechanism and framework for the implementation of its recommendations. The Truth Justice and Reconciliation Commission Act, 2008 (revised 2012), arts. 6, 7 and 48. The Commission submitted its final report to President Kenyatta in May 2013 after several delays and allegations of inappropriate alterations. It is now more than two years since the TJRC report was finalized and parliament has not formally adopted it to make it operative. Craig Mracek, “The Truth About Justice and Reconciliation: Time Heals All Wounds,” May 27, 2014, <http://www.icj-kenya.org/index.php/media-centre/commentary/602-craig-mracek> (accessed November 4, 2015); Bernard Momanyi, “Kenyan Authorities Urged to Implement TJRC Report, August 16, 2013, <http://reportingkenya.net/reports/kenyan-authorities-urged-to-implement-tjrc-report/> (accessed November 4, 2015); and Sekou Owino, “The Bitter Truth of the TJRC Report,” June 21, 2013, <http://www.nation.co.ke/news/The-bitter-truth-of-the-TJRC-report/-/1056/1890536/-/view/printVersion/-/41uh7b/-/index.html> (accessed November 4, 2015).

<sup>185</sup> TJRC Report, Vol. IV, 2013, p. 36.

Recovery Centers; and setting up of the Office of the Special Rapporteur on Sexual Violence. It also made recommendations to address and prevent human rights violations against women.<sup>186</sup>

Some of these recommendations include a presidential public and unconditional apology for the state's sanction of discrimination against women during the TJRC mandate period, awareness raising by the Gender Commission on harmful traditional practices against women; passage of the Matrimonial Property Bill, 2007, Family Protection Bill, 2007, and Equal Opportunities Bill, 2007; ensuring the composition of land dispute tribunals meets the constitutional gender ratio requirement; and a national plan to improve maternal health care.

Although the TJRC report has not been formally adopted by parliament, in March 2015, President Kenyatta announced that he had instructed the Treasury to establish a fund of 10 billion Kenyan Shillings (approximately US \$9,803,921) “over the next three years to be used for restorative justice.”<sup>187</sup> He said this followed the report by the director of public prosecutions that most post-election violence cases cannot be prosecuted due to lack of evidence.

This fund is intended to provide reparations to victims of past injustices from 1963, including victims of post-election violence, as recommended by the TJRC.<sup>188</sup> Kenyatta also

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<sup>186</sup> *Ibid.*, p. 41. The TJRC did not include recommendations to address structural issues that perpetuate women's subordination, discrimination, and inequality.

<sup>187</sup> State of the Nation address by President Uhuru Kenyatta, March 26, 2015, <http://m.news24.com/kenya/MyNews24/Full-State-of-the-Nation-address-by-president-Uhuru-Kenyatta-20150326> (accessed July 15, 2015). The TJRC report proposed a draft bill establishing a committee for the Implementation of its report, whose powers would include the Report of the Truth Justice & Reconciliation Committee.

<sup>188</sup> The TJRC was tasked with investigating the root causes of the 2007 post-election violence; past gross human rights violations by the state, public institutions and holders of public office, both serving and retired from independence in 1963 up until 2008; economic crimes; ethnic violence; the irregular and illegal acquisition of public land; and the economic marginalization of communities. Its mandate also included making recommendations for prosecution, reparations for victims, and administrative mechanism and framework for the implementation of its recommendations. The Truth Justice and Reconciliation Commission Act, 2008 (revised 2012), arts. 6, 7 and 48. The Commission submitted its final report to President Kenyatta in May 2013 after several delays and allegations of inappropriate alterations. It is now more than two years since the TJRC report was finalized and parliament has not formally adopted it to make it operative. Craig Mracek, “The Truth About Justice and Reconciliation: Time Heals All Wounds,” May 27, 2014, <http://www.icj-kenya.org/index.php/media-centre/commentary/602-craig-mracek> (accessed November 4, 2015); Bernard Momanyi, “Kenyan Authorities Urged to Implement TJRC Report, August 16, 2013, <http://reportingkenya.net/reports/kenyan-authorities-urged-to-implement-tjrc-report/> (accessed November 4, 2015); and Sekou Owino, “The Bitter Truth of the TJRC Report,” June 21, 2013, <http://www.nation.co.ke/news/The-bitter-truth-of-the-TJRC-report/-/1056/1890536/-/view/printVersion/-/41uh7b/-/index.html> (accessed November 4, 2015).



called on parliament “to process the Truth, Justice and Reconciliation Commission (TJRC) report.”<sup>189</sup> In April 2015, President Kenyatta, and Willy Mutunga, the chief justice, also made public apologies to victims of historical human rights violations in line with the TJRC recommendations.<sup>190</sup>

It is unclear whether the TJRC’s recommendations on reparations will be implemented as long as the report has not been adopted by parliament.<sup>191</sup> However, the president’s declaration of a restorative fund and his public apology, as well as that of the chief justice, have reignited the discussion on reparations in Kenya. Civil society groups together with government agencies have begun discussions and consultations on strategies for an effective reparations process to implement the restorative fund, including the formation of an inter-agency committee to lead this process.<sup>192</sup>

It is critical to include survivors of sexual violence in the design of this process and to ensure they receive compensation for the harms they have suffered.

## Exclusion of Sexual Violence Survivors from Previous Compensation Schemes

Kenya’s government previously implemented measures to compensate some victims of post-election violence, especially internally displaced persons (IDPs), in the form of

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<sup>189</sup> Ibid.

<sup>190</sup> Tom Maliti, “Kenyan President and Chief Justice Apologize for Past Injustices,” April 9, 2015, <http://www.ijmonitor.org/2015/04/kenyan-president-and-chief-justice-apologize-for-past-injustices/> (accessed November 6, 2015).

<sup>191</sup> The Commission submitted its final report to President Kenyatta in May 2013 after several delays and allegations of inappropriate alterations. It is now more than two years since the TJRC report was finalized and parliament has not formally adopted it to make it operative. Craig Mracek, “The Truth About Justice and Reconciliation: Time Heals All Wounds,” May 27, 2014, <http://www.icj-kenya.org/index.php/media-centre/commentary/602-craig-mracek> (accessed November 4, 2015); Bernard Momanyi, “Kenyan Authorities Urged to Implement TJRC Report, August 16, 2013, <http://reportingkenya.net/reports/kenyan-authorities-urged-to-implement-tjrc-report/> (accessed November 4, 2015); and Sekou Owino, “The Bitter Truth of the TJRC Report,” June 21, 2013, <http://www.nation.co.ke/news/The-bitter-truth-of-the-TJRC-report/-/1056/1890536/-/view/printVersion/-/41uh7b/-/index.html> (accessed November 4, 2015). Also note that the TJRC recommendations are not binding and it is possible that some parts and recommendations may be struck out when it is debated by parliament.

<sup>192</sup> Human Rights Watch interview with Christopher Gitari, Executive Director, International Center for Transitional Justice (ICTJ), August 8, 2015. In April, ICTJ organized consultative forums with women victims and civil society to provide information on the TJRC and possible reparations in Kenya, as well as seek their views on their needs for reparations. See ICTJ, “In Kenya, Organizing Women Victims to Help Inform Future Reparations Policies,” September 6, 2015, <https://www.ictj.org/news/kenya-women-inform-reparations-policies> (accessed November 4, 2015).

resettlement, building new homes, and providing money and land.<sup>193</sup> However, it did not address compensation for victims of sexual violence, who currently only qualify for compensation if they were displaced from their homes and/or lost property during the violence.<sup>194</sup>

The assistance programs included Operation Rudi Nyumbani (Operation Return Home) in May 2008, aimed at encouraging individuals living in camps for internally displaced persons to return to their homes, with the government offering transport costs, building and farming materials and 10,000 Kenyan Shillings (\$100). Some were also offered 25,000 Kenyan shillings (\$250) for the reconstruction of houses, to compensate those who could demonstrate their homes had been burnt down or otherwise destroyed. The government also built thousands of houses in affected areas through assistance from the private sector, the UN and bilateral development assistance and humanitarian agencies.

A handful of women interviewed by Human Rights Watch said they had received money as part of the current reparations scheme but none had received land or housing. A significant number of those who did not receive compensation said they had registered with relevant provincial authorities and offices. Nyamboga D. told us:

I registered with the village man about my property but till now we have not received any compensation from the government. When I went to register I asked about women who were raped. They said they just wanted people who lost property. I asked, “If you lost property and you were raped don’t they go together? Aren’t we all victims? They said other people will come to deal with that. I have never heard about anyone asking about women who were raped.<sup>195</sup>

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<sup>193</sup> Following criticism from civil society groups, the government in June 2015 announced another 3.3 billion Kenyan shillings (\$32,352,941) for the resettlement of IDPs. See the Kenya National Dialogue and Reconciliation (KNDR), “Agenda 2: Dealing with the humanitarian crisis arising out of post-election violence.” March 4, 2008, [http://www.dialoguekenya.org/Agreements/4%20March%202008-Long-Term%20Issues%20and%20Solutions\\_Constitutional%20Review.pdf](http://www.dialoguekenya.org/Agreements/4%20March%202008-Long-Term%20Issues%20and%20Solutions_Constitutional%20Review.pdf) (accessed November 3, 2015).

<sup>194</sup> The Kenyan government has also not initiated programs to assist other victims of the post-election violence, including victims whose relatives were killed or injured in the violence. The TJRC found that, “...the state’s response to the plight and needs of internally displaced women generated by the 2007/2008 Post-Election Violence was less than satisfactory. The resettlement programme, Operation Rudi Nyumbani, did not cater for the particular needs or interests of women. A considerable number of women received neither the start-up capital nor the payment in lieu of housing. In certain cases, women were discriminated against in the registration process.”

<sup>195</sup> Human Rights Watch interview with Nyamboga D., Nyamira, November 20, 2014.

Nyambuga W. commented:

I registered at the chief's office about the rape and the lost property. They did not say how rape victims will be compensated. I asked him how we would be helped because we were suffering a lot. He said the priority was people who lost property and other issues would be addressed later. Since then no one has come to ask about our problems.<sup>196</sup>

The government has been widely criticized by civil society groups for how it has handled the resettlement of internally displaced persons and the compensation of victims of post-election violence. It has been accused of favoring victims from the Kikuyu community in the allocation of resources while neglecting other needy victims, and for failing to holistically address the needs of victims of post-election violence including medical treatment and psychosocial care. The compensation was also seen as barely adequate to meet the financial needs of victims.<sup>197</sup>

## Principles for a Credible Reparations Process

There is currently no comprehensive reparations policy for victims of human rights violations in Kenya to guide credible profiling of victims and their needs, and to establish comprehensive and durable reparations programs.

Kenya's reparation process should be guided by the UN Principles and Guidelines on the Right to a Remedy and Reparation for Victims and the Guidance Note of the Secretary-General: Reparations for Conflict-Related Sexual Violence.<sup>198</sup> According to these principles, "a person shall be considered a victim regardless of whether the perpetrator of the

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<sup>196</sup> Human Rights Watch interview with Nyambuga W., Nyamira, November 20, 2014.

<sup>197</sup> See Human Rights Watch, *Turning Pebbles*, p. 79, and *High Stakes*, pp. 31-34; International Federation for Human Rights (FIDH) and Kenya Human Rights Commission (KHRC), "One Year in Office for Uhuru Kenyatta and William Ruto," February 2014, <https://www.fidh.org/IMG/pdf/kenya631a2014bassdef.pdf> (accessed September 15, 2015), pp. 15-16.

<sup>198</sup> United Nations, Guidance Note of the Secretary General, "Reparations for the Conflict-Related Sexual Violence," June 2014, <http://www.ohchr.org/Documents/Press/GuidanceNoteReparationsJune-2014.pdf> (accessed September 15, 2015), and General Assembly, "Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," Resolution 60/147 (2006), A/RES/60/147 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx> (accessed August 17, 2015).

violation is identified, apprehended, prosecuted, or convicted.”<sup>199</sup> A victim of conflict-related sexual violence is defined:

[T]o include persons who, individually or collectively, suffered such violence but also family members, such as children or partners, and children born as a result of pregnancy from rape. Persons who depend on the victim of sexual violence and others may also be victims as a consequence of the harm inflicted through the violation. Victims may also include persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.<sup>200</sup>

The Guidance Note states that reparation for conflict-related sexual violence can take different forms and may include restitution, compensation, rehabilitation, and guarantees of non-repetition.<sup>201</sup> It emphasizes the need to provide urgent, interim reparations that “respond to the immediate and urgent harm affecting victims of conflict-related sexual violence.”<sup>202</sup> As a matter of priority, the inter-agency body should identify victims who require urgent medical assistance and work with the government to adopt a policy to provide them with access to free medical and psychosocial services in public hospitals.

The Guidance Note recognizes the “devastating and psychological impact of sexual violence, compounded by the stigma attached to it” prevents many survivors from seeking redress.<sup>203</sup> Kenyan authorities should also recognize the serious impediments to accessing reparations for particularly marginalized groups, including women and victims of sexual violence—particularly those living in rural areas or those living with disabilities—and children born from rape, and ensure that systems are in place to reach these victims and provide reparation to them. Mechanisms for reaching out to male sexual violence survivors should also be adopted.

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<sup>199</sup> Ibid., paras 8 and 9.

<sup>200</sup> United Nations, Guidance Note of the Secretary General, “Reparations for the Conflict-Related Sexual Violence,” p. 3.

<sup>201</sup> Ibid. See also: Committee Against Torture, “General Comment No. 3: Implementation of Article 14 by States Parties,” UN Doc. CAT/C/GC/3 (2012), para. 6. The Guidance Note notes that such a combination of reparations when dealing with victims of sexual violence, “... should be guided by their potential to be transformative.” United Nations, Guidance Note of the Secretary General, “Reparations for the Conflict-Related Sexual Violence,” p. 9.

<sup>202</sup> Ibid., pp. 12-14.

<sup>203</sup> United Nations, Guidance Note of the Secretary General, “Reparations for the Conflict-Related Sexual Violence,” p. 5.

In addition, any reparation program should be designed and implemented in consultation with victims, including victims of sexual assault.<sup>204</sup> Furthermore, the Kenyan authorities' approach to reparations for victims of sexual violence should respect the rights and dignity of victims, and avoid further harming or traumatizing them.<sup>205</sup>

The Guidance Note recognizes the difficulties in proving sexual violence.<sup>206</sup> It recommends the adoption of procedural rules specific to sexual violence that will protect the rights of both victims and alleged perpetrators.<sup>207</sup> The Kenyan reparations policy should not be restrictive or so bureaucratic as to discourage victims from coming forward and should include special support for child victims and provide for the use of expert witnesses such as psychologists and sociologists.

Kenya's human rights obligations require it to provide reparations to victims of sexual violence.<sup>208</sup> Reparations could help address the massive gaps in access to short and long-term support services for survivors and their children, including those addressing health, legal services, housing, education, and livelihood support.

## The ICC and Reparations

The ICC's treaty provides for the possibility of reparations. Reparations, however, can only be ordered following a conviction before the court. In addition, the only ICC appeal decision on reparations to date links eligibility for reparations with the charges on which a conviction is based.<sup>209</sup> Given that the remaining case pending before the ICC arising out of the Kenya situation does not include charges related to sexual violence, even if there is a conviction in the case, court-ordered reparations may not address post-election sexual violence.

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<sup>204</sup> United Nations, Guidance Note of the Secretary General, "Reparations for the Conflict-Related Sexual Violence," pp. 10-12.

<sup>205</sup> The Guidance Note notes that, "Decisions on and the delivery of reparations should ...not reinforce "pre-existing patterns of gender-based discrimination, but rather strive to transform them." *Ibid.*, p. 5.

<sup>206</sup> United Nations, Guidance Note of the Secretary General, "Reparations for the Conflict-Related Sexual Violence," p. 13.

<sup>207</sup> *Ibid.*, pp. 13-15.

<sup>208</sup> UN Human Rights Committee, General Comment 31, para. 16.

<sup>209</sup> Prosecutor v. Thomas Lubanga Dyilo, ICC, Case No. ICC-1/04-01/06, "Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012," March 3, 2015, <http://www.icc-cpi.int/iccdocs/doc/doc1919024.pdf> (accessed June 8, 2015), paras. 211-214, 222.

The ICC’s Trust Fund for Victims (TFV) is responsible for implementing court-ordered reparations. But the TFV also has a second mandate: it can also provide interim assistance—known as its “assistance mandate”—to victims in ICC situation countries, in parallel to court proceedings. These assistance projects provide victims with physical or psychological rehabilitation, or material support. The TFV currently has assistance projects in two of eight ICC situation countries (Uganda and Democratic Republic of Congo).<sup>210</sup>

The TFV has yet to begin work in Kenya, and its absence has been criticized by civil society organizations.<sup>211</sup>

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<sup>210</sup> See ICC Trust Fund for Victims, “Assistance & Reparations: Achievements, Lessons Learned, and Transitioning, Programme Progress Report, 2015,” [http://www.trustfundforvictims.org/sites/default/files/media\\_library/documents/pdf/FinalTFVPPR2015\\_2.pdf](http://www.trustfundforvictims.org/sites/default/files/media_library/documents/pdf/FinalTFVPPR2015_2.pdf) (accessed December 23, 2015).

<sup>211</sup> See “Statement By The Kenyans For Peace With Truth And Justice (KPTJ) Made At The 13th Session Of The Assembly Of State Parties To The Rome Statute During The General Debate,” December 15, 2014, <http://kptj.africog.org/statement-by-the-kenyans-for-peace-with-truth-and-justice-kptj-made-at-the-13th-session-of-the-assembly-of-state-parties-to-the-rome-statute-during-the-general-debate/> (accessed December 23, 2015).



## VI. Recommendations

### To the Government of Kenya

- Develop and implement, through a transparent and participatory process, a reparations program that is in accordance with international standards for all victims of serious human rights violations committed during the post-election violence. The reparations program should:
  - Guarantee the centrality of victims, including victims of sexual violence, in the design, implementation, and monitoring of the reparations program;
  - Adopt a clear and broad definition of a victim of conflict-related sexual violence as defined in the Guidance Note of the Secretary-General on Reparations for Conflict-Related Sexual Violence;
  - Ensure respect for the rights and dignity of victims in the design and implementation of all reparations measures to avoid further harming or traumatizing them;
  - Provide reparations to victims without discrimination based on, among other criteria, ethnicity, age, residence, marital status, level of education, or disability; and set up a mechanism where those who complain of discrimination in reparations can have their complaints fairly determined;
  - Recognize the serious impediments to accessing reparations for particularly marginalized groups, which include women and victims of sexual violence—particularly those living in rural areas or living with a disability—and children born from rape; ensure that systems are in place to reach these victims and provide reparations to them;
  - Provide special support for child victims, for example, by allowing the use of expert witnesses such as psychologists and sociologists;
  - Provide special support for victims with disabilities, for example, by engaging counselors, interpreters, or other trusted individuals who could facilitate communication or provide support or assistance;
  - Eliminate bureaucratic procedures that discourage victims from coming forward and use evidentiary criteria adapted to the specificities of sexual violence. The government should adopt a phased approach over a period of

- time for registration of sexual violence survivors and take measures to mitigate the high level of stigma that may prevent reporting;
- Recognize the multifaceted and often long-lasting impact of sexual violence on victims and institute comprehensive reparative measures, including monetary and non-monetary ones, to address victim's various needs and to ensure reparative measures are transformative and encompass physical, psychological, social, and economic damages;
  - Ensure outreach to and involvement at all levels of design, implementation, and monitoring by a wide range of civil society groups, including those working with victims;
  - Be delivered through a credible and transparent administrative system, anchored in law;
  - Ensure sustainable funding through a dedicated budget line.
- Provide free, quality, comprehensive, and survivor-centered rehabilitative health services for victims of rape and other forms of sexual violence:
    - As a matter of priority, identify survivors who require urgent medical assistance, including treatment for sexually transmitted infections, HIV, and surgery for those with life-threatening or debilitating conditions resulting from sexual violence; work with various government agencies to adopt a policy to provide these survivors with access to free and voluntary medical and psychosocial services in public hospitals based on the free and informed consent of the individual. In the interim, the government should also coordinate and support NGOs and other groups to expand existing psychosocial support that they are providing to survivors;
    - Rehabilitative services should be both individual and collective, and should take all appropriate measures to promote the physical, mental, and psychological healing and social reintegration of survivors of sexual violence and their families, in an environment that fosters the dignity, well-being, and autonomy of the survivor;
    - Rehabilitative services should include livelihood and other support tailored to meet the specific needs of women, including age and disability-specific needs, the economic and psychosocial impact of raising children born out of rape, and whether they are child or female-headed households;

- Community-based rehabilitative services for victims of sexual violence should, at the minimum, address long-term health needs and include voluntary mental health services;
- Individual and collective rehabilitative services should include measures to prevent and assist women survivors who experience domestic violence as a consequence of rape, as well as the long-term needs of children born from pregnancy following rape who face abuses in their families, and who face discrimination in acquiring birth certificates and other government documents key to the protection of their rights.
- Publicly condemn discrimination against children born from rape in acquiring birth certificates, and investigate and discipline responsible birth registration officials.
- Mobilize the necessary political goodwill in the national assembly to ensure adoption of the TJRC report by members of parliament.
- Take the necessary policy and legislative measures to enable the implementation of the recommendations of the TJRC report, including those related to the redress of sexual and gender-based violence.
- Finalize, adopt, and implement, through a transparent and participatory process, the draft National Action Plan (NAP) on UN Security Council Resolution 1325 to ensure the full and meaningful participation of women in all peace and security discussions, including in all peace processes and transitional justice mechanisms on women, peace, and security. The NAP should have a time-bound implementation plan, and sufficient funds should be allocated to ensure full implementation.
- Launch a national public awareness campaign and develop simple guidelines (in the form of a leaflet or similar communication tools) about the reparations program including information on: victims' rights and entitlements, procedures and timelines for registration and compensation, available remedies, complaints and appeals procedures, and other relevant information. Ensure that such information reaches poor, rural and illiterate women, and victims with disabilities, in appropriate languages and accessible formats, such as easy-to-read information.
- Implement legislative, policy, and programmatic changes as part of a larger reparative framework to correct underlying legal, policy, and programmatic barriers and gaps that contributed to and prevented survivors of post-election sexual violence from seeking justice. These changes should be developed in consultation with local women's rights organizations:

- Train police, prosecutors, judicial, and medical staff on the rights and needs of all sexual violence survivors to ensure that discriminatory attitudes about female victims of sexual abuse do not prevent serious investigation of sexual abuse or undermine its effective prosecution; train personnel in gathering and analyzing evidence, including forensic evidence, in cases of sexual violence; ensure personnel have adequate resources to carry out their duties effectively; ensure accountability for negligence;
- Strengthen expertise of police, other state investigators and prosecutors, and judicial staff to investigate and prosecute conflict-related sexual violence, including on the basis of command responsibility;
- Establish a department devoted to sexual and gender-based violence within the police service to create a pool of experts and facilitate integration in multidisciplinary investigations;
- Expand gender desks at all police stations to increase the likelihood of survivors reporting cases and being attended to sensitively; and provide funds and trained personnel to manage them;
- Expand gender violence recovery centers to all public hospitals to provide comprehensive and timely services to all survivors;
- Provide non-discriminatory free legal aid to all survivors;
- Create, under Kenyan law, an office of rapporteur on sexual violence as recommended by the CIPEV and the TJRC;
- Provide adequate funds and full support to the Witness Protection Agency so it can provide professional and independent services to witnesses of serious crimes in need of protection;
- Carry out a nationwide awareness-raising campaign to inform the public about sexual and domestic violence against women to highlight the extent of the problem, consequences for survivors, importance of seeking post-rape care services in cases of rape, including emergency contraception and post-exposure prophylaxis within 72 hours, and judicial consequences for perpetrators of rape; to change prevailing negative societal attitudes; and to educate the general population on women's human rights, including in accessible formats.
- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

- Lift the reservation entered on article 24 (2c) of the Maputo Protocol.

### **To the Ministry of Health**

- Publicly support women and girls’ right to unhindered access to voluntary safe abortion where allowed by law, and ensure that post-abortion care is available for all abortion-related complications.
- Initiate changes to Kenya’s penal code provisions on abortion that make them consistent with the Constitution and Kenya’s international human rights obligations by making abortion legal in all cases of rape and removing provisions that criminalize abortion, especially those that punish women who have had an induced abortion.
- Expedite the completion of the “Guidelines for Reducing Morbidity and Mortality from Unsafe Abortion,” and train health workers on their use.
- Issue a circular removing the ban on safe abortion care training for all health care providers.
- Integrate information on the link between sexual violence and traumatic fistula into the campaign to end obstetric fistula in Kenya, programs and campaigns on maternal and reproductive health, as well as in the work of community health workers.
- Investigate allegations of health workers’ denial of post rape care and medical certificates to women during the post-election violence, and discipline or dismiss workers who denied such care; investigate not only the conduct of individual or frontline health workers, but also of failings in oversight and management by health facility administrators and managers.
- Develop community-based voluntary mental health care programs and create awareness about them.

### **To the Inspector General of Police, Director of Public Prosecutions, and the Chief Justice**

- Publicly release the results of the taskforce set up to investigate alleged police misconduct during the post-election violence, and hold accountable police officers found culpable, including for sexual violence.

- The Inspector General of Police should publicly acknowledge and condemn the sexual abuses committed by police officers, alongside other violations of international human rights, during the post-election violence.
- The Inspector General of Police should issue an apology on behalf of the National Police Service in line with the recommendations of the TJRC report, following findings that police officers have committed sexual violence during various epochs since independence including during the 2007-2008 post-election violence.
- Establish special mechanisms within the Kenyan judicial system to investigate and prosecute the most serious crimes related to the post-election violence, either as international crimes or as serious ordinary crimes. Cases against lower-level perpetrators or for less serious crimes could be dealt with through either a special mechanism or the ordinary courts.
- Develop and implement a comprehensive, survivor-centered policy and strategy to investigate, prosecute, and adjudicate sexual violence crimes committed during the post-election violence in accordance with international fair trial standards:
  - Ensure that procedural safeguards guaranteed in the Sexual Offences Act, the Witness Protection Act, and any other relevant legislation are fully implemented, and provide adequate resources to carry it out;
  - Investigate all allegations of rape and other sexual assault by members of Kenya's security forces, regardless of rank, during the post-election violence. Prosecute those responsible for these crimes, including persons with command or other superior responsibility, in proceedings that meet international fair trial standards. Publicize the outcome of such prosecutions, including by providing information on the punishments meted out, and the redress and compensation provided to victims.

## **To the National Police Service Commission**

- Ensure police vetting procedures explicitly address the police culture that trivializes sexual violence, and dismiss from service officers who have committed rape and other sexual crimes.
- Develop transparent and accessible procedures to enable public participation, including of women and sexual and gender-based violence survivors, in police vetting processes, and ensure that their complaints are taken into consideration in decisions on hiring and firing.



## **To the Independent Policing Oversight Authority**

- Develop transparent and accessible procedures to enable the public, including survivors of sexual and gender-based violence, to lodge complaints about police misconduct, and ensure that their complaints are investigated and that officers proved to have engaged in misconduct are disciplined.

## **To the Office of the Prosecutor of the International Criminal Court**

- Review lessons learned from the Kenya situation to identify, in the ongoing implementation of the office's prosecutorial strategy and its policy paper on sexual and gender-based crimes, where changed approaches or additional resources or other support from ICC member countries are needed for effective investigations and prosecutions.

## **To Kenya's International Donors**

- Support the Kenyan government's efforts to design and implement reparations measures by providing financial and technical assistance, and ensuring compliance with international human rights norms and standards, as well as good practices.
- Support victims of post-election violence, including sexual violence survivors and Kenyan human rights organizations, to participate in the design, implementation, and monitoring of the reparations program.
- Support efforts by the Kenyan government and NGOs to provide medical and psychosocial assistance to victims of crimes of sexual violence, including to those coping with HIV, sexually transmitted infections, and other gynecological problems, domestic violence and mental health conditions; and to children born of pregnancies that resulted from rape.
- Integrate women's rights and needs across programs being funded in Kenya, especially in the areas of criminal justice, transitional justice, health care, housing, credit, education, vocational training, and trauma counseling. To the extent possible, integrate support for rape survivors into these broader programs.
- Urge the Kenyan government to ensure prompt investigations and prosecutions of crimes committed during the post-election violence, including sexual violence. Consider offering support, including training, human resources support, and

financing, on the condition that the judicial process is credible, independent, and capable of protecting witnesses.

### **To the ICC Trust Fund for Victims**

- Ensure that any future activities in Kenya include the perspectives and assistance needs of survivors of sexual and gender based violence.

### **To the United Nations Secretary-General**

- Ensure that Kenya is included in the Secretary-General's annual reporting on conflict related sexual violence, including updates on investigations, service provision, and reconciliation processes. Previous reports have noted the long-term negative impact of conflict related sexual violence, and the Secretary-General and his Special Representative on Sexual Violence in Conflict should ensure they continue to monitor the situation in Kenya and, as necessary, raise concerns to the UN Security Council.

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# “I Just Sit and Wait to Die”

## Reparations for Survivors of Kenya’s 2007-2008 Post-Election Sexual Violence

More than eight years after the post-election violence that engulfed Kenya following a disputed presidential election, survivors of rape and other sexual violence continue to suffer significant physical and psychological trauma and socioeconomic hardship, which is exacerbated by the Kenyan government’s failure to provide medical care, psychosocial support, justice, and monetary compensation.

*“I Just Sit and Wait to Die”*: *Reparations for Survivors of Kenya’s 2007-2008 Post-Election Sexual Violence* is based on in-depth interviews with 163 female and 9 male survivors and witnesses of post-election sexual violence from across Kenya. The report documents rape, gang rape, genital beatings, and mutilation, which was also accompanied by severe physical abuse, including stabbing, kicking, cutting with machetes, throwing women on hard surfaces, and beatings with heavy objects. Most survivors interviewed were raped by more than one perpetrator, numerous cases involved more than four perpetrators and, in a few instances, more than ten. Many were raped in the presence of other family members including young children.

Many survivors are in urgent need of medical treatment and psychosocial support. The report describes the devastating physical, mental, social, and economic impact of the sexual violence as well as the significant obstacles to accessing support services, including health care.

The Kenyan government has shown apathy and reluctance to initiate genuine measures to investigate, prosecute, and punish perpetrators, and claims it has only convicted a handful of individuals of sex crimes related to the post-election violence. Human Rights Watch calls on the government to develop a reparations policy that is in accordance with international standards; provide free, survivor-centered rehabilitative health services for victims; and develop a comprehensive strategy to prosecute sexual violence crimes committed during the post-election violence in accordance with international fair trial standards.

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