

POLICY BRIEF

Gender-Based Violence and Human Rights:
Adolescent Girls and Young Women

ICWKENYA



AFRICAN WOMEN'S
DEVELOPMENT FUND

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GENDER-BASED VIOLENCE & HUMAN RIGHTS: ADOLESCENT GIRLS & YOUNG WOMEN



SUMMARY

Gender-Based Violence (GBV) is arguably one of the most prevalent human rights violations in the world. Gender-based violence is recognized as a transgression on an international level in violating rights outlined in the Universal Declaration of Human Rights ("UDHR"). Violence against women is a violation of Article 3 of the UDHR which provides the right to life, liberty and personal safety. United Nations General Assembly defines violence against women as any act of violence that causes or is likely to cause, physical injury or suffering to women, including coercion or arbitrary deprivations of liberty, whether they take place in public or private life. Historically, unequal power relations between men and women have resulted in men dominating and discriminating against women and prevented women from fully advancing (United Nations, 1993).

GBV affects women, girls, men and boys; however, women and adolescent girls are disproportionately affected by GBV.

At a Glance

Disproportionately affects women and adolescent girls.

GBV

Exacerbates the risk of HIV transmission.

Sexual Violence

Impairs people's capacity to defend themselves against HIV infection.

Violence

With specific regard to HIV, gender inequality contributes to the spread of HIV. It can increase infection rates, and reduce the ability of women and girls to cope with the epidemic. AGYW, have less access to information about HIV and fewer resources to take preventive measures. They face barriers to the negotiation of safer sex, because of unequal power dynamics with men. Sexual violence, a widespread violation of women's rights, exacerbates the risk of HIV transmission.

Violence manifests itself in various forms. These include sexual, physical, mental, and financial harm. Additionally, threats of violence, coercion, manipulation, violence against intimate partners, sexual assault, child marriage, female genital mutilation, and so-called "honor crimes" are a few examples of how violence manifests.

Violence and the prospect of violence impair people's capacity to defend themselves against infection. Women are at significant risk for contracting HIV when intercourse is aggressive or forced.

Female genital mutilation and other harmful customs like bidding may increase the risk of HIV transmission for those women and girls.

Following the COVID-19 pandemic, GBV is currently an emerging pandemic that results in life-threatening consequences on women and girls, negatively affecting their life opportunities. This human rights violation is firmly rooted in gender inequality experienced by women globally. Women and girls are disproportionately affected by GBV. **Violence against women and girls is a major public health problem and a violation of women's human rights.** The World Health Organization estimates that 1 in 3 (30%) of women worldwide are subjected to either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime.[1]

Kenyan Context

Kenya has a robust legal framework prohibiting various forms of GBV. This includes The Constitution of Kenya 2010; Sexual Offences Act (2006); Penal Code and its various amendments; Prohibition of Female Genital Mutilation Act (2011); Children's Act (2001); Counter Trafficking in Persons Act (2010) and the HIV Prevention and Control Act (2006). Additionally, there exists a National Policy for Prevention and Response to Gender Based Violence (2014).

Despite the existing policies and legislative framework, that provide a basis for prosecution of perpetrators and protection of victims of GBV, there exist

At a Glance

GBV is currently an emerging pandemic post COVID-19.

Women are often socialized to accept, tolerate and even rationalize it.

Of women aged 15-49 had experienced physical violence.

45%

1 in 3 of women worldwide are subjected to either physical and/ sexual intimate partner violence or non-partner sexual violence in their lifetime (WHO).

30%

numerous challenges in the implementation of these policies and laws. Some of these challenges include; inadequate shelters and safe houses, limited coordination of stakeholders, limited capacity of the service providers (health, security and justice sectors), inadequate enforcement, myths and misconceptions around GBV and the legal dilemma of sex between minors. A weak chain of custody of forensic evidence resulting in acquittals and limited understanding of human rights among women especially girls continues to undermine the progress towards ending all forms of gender-based violence.

The prevention and response to GBV require strong and efficient systems and structures to operationalize existing laws, and policies and enhance coordination among different stakeholders.

BACKGROUND

Violence against women and girls is widespread in Kenya. GBV occurs in diverse forms across all socio-economic and cultural backgrounds and women are often socialized to accept, tolerate and even rationalize it. The main perpetrators of physical violence against women were husbands. Patriarchy is considered a contributor to SGBV against adolescent women and young girls.

Kenya continues to face a triple threat of Gender Based Violence, teenage pregnancies and HIV/AIDS. According to Kenya Demographic Health Survey (2014), 45 per cent of women, aged 15-49 had experienced physical violence and 20 per cent had experienced physical violence within the 12 months before the survey.

[1] <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>

Subsequently, the State Department of Gender surveyed their 1195 toll-free hotline. **Based on actual reporting, data from 1195 reveals that there was a large volume of Violence against Women and Girls (VAWG) reporting between June and September 2020.** The highest reporting occurred in June when 718 instances of VAWG were recorded, 477 cases in August and 593 cases in September.

The Kenya Health Information System (2021) summary of MOH 711 reported 16,476 cases of sexual and gender-based violence among adolescents aged 10-17. This represents 42.4% of total SGBV cases reported in 2021. 1,665 of these adolescents reported being pregnant four weeks after exposure to SGBV. **Additionally, the National Aids Control Council 2021 HIV Estimates reports that every week, 98 new infections among adolescents 10-19 occurred. This accounted for 5,294 new infections in 2021.** Furthermore, 1 out of 4 women gives birth by age 18 and nearly half by age 20. One in every five adolescents aged 15-19 is already a mother or pregnant with their first child (KDHS, 2014). **In 2021, the country recorded 316,187 adolescent pregnancies. Of these, 294,364 pregnancies were among girls aged 15-19 while those aged 10-14 contributed to 21,823 (7%) of the total adolescent pregnancies.**

Aside from the effects of GBV, it also presents economic costs as 1 - 2% of Kenya's annual GDP (98.84 billion USD) [2] is consumed in response to GBV. The National Gender and Equality Commission estimates that Kenya loses close to 29 billion shillings annually because of costs accruing due to GBV. These are direct costs incurred by survivors, their families as well as perpetrators when seeking services as they face significant economic losses due to lost output, decreased productivity and lower earnings, as well as social depreciation due to stigma post-violence.[3]

The main types of GBV reported in Kenya include:

TYPES OF GBV REPORTED IN KENYA			
PHYSICAL	SEXUAL	ECONOMIC	EMOTIONAL
<ul style="list-style-type: none"> • Beating • Injuries with weapons • Throwing of objects • Threats with weapons • FGM/C 	<ul style="list-style-type: none"> • Marital rape • Forced sex in relationships • Rape • Defilement • Sodomy • Sexual harassment • Sexual assault • Forced/early marriage 	<ul style="list-style-type: none"> • Withdrawal of financial support • Selling partner's or shared property • without consent • Refusal of food 	<ul style="list-style-type: none"> • Verbal abuse • Yelling • Insults/humiliation • Control by partner

At a Glance

Adolescent pregnancies in 2021. 294,364 among girls aged 15-19 & 21,823 among 10-14 olds.

316,187

Of Violence against Women and Girls reported in June 2020 through 1195 hotline.

718 Cases

Annual direct costs incurred by survivors, their families and perpetrators due to GBV.

Ksh. 29 Billion

[2] <https://datacommons.org/place/country/KEN> (2020)

[3] <https://www.genderinkenya.org/wp-content/uploads/2017/12/GBV-Policy-Brief-duty-bearers-and-policy-makers-edited-3.pdf>

POLICY ENVIRONMENT



Various Constitutional Articles safeguard against SGBV. Kenya has also ratified several regional and international human rights agreements that address the responsibility of the State regarding sexual violence.

According to Articles 2(5) and (6) of Kenya's 2010 Constitution, the general rules of international law are incorporated into Kenyan law. **Any treaty or convention that Kenya ratifies will therefore become a part of the country's laws.**

Additionally, the State is required by Article 21(4) to pass and carry out legislation to uphold its regional and international duties to respect, promote, and preserve human rights and fundamental freedoms.

The next section looks at the relevant legal instruments and Kenyan legislation relating to Sexual and Gender-Based Violence:

At a Glance

Adolescents aged 15-19 is already a mother or pregnant with their first child.

1 in 5

The number of Kenyan legislations relating to SGBV.

7

Conventions and treaties ratified by Kenya on SGBV.

6

Legal instruments that form part of Kenyan legislation on SGBV

1

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

It requires countries to eliminate discrimination against women and girls in all areas and promotes women's and girls' equal rights.

3

Guidelines on Combating Sexual Violence and its Consequences in Africa- Niamey Guidelines by the African Union

Guides African Union member states in effectively implementing their commitments and obligations to combat sexual violence and its consequences. States are further obligated to put in place prevention mechanisms to eliminate the root causes of violence and protection mechanisms to ensure all victims receive the required support including medical, access to justice and reparations.

2

The United Nations Declaration on the Elimination of Violence against Women (1993)

Uniformly defines GBV as “any act that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life.

4

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa of 2003 (Maputo Protocol)

Article 4 states that all forms of exploitation that are cruel, inhumane, or degrading are prohibited. The prohibition of all types of violence against women, including unwanted or forced sex, as well as the prevention, punishment, and eradication of all forms of violence against women, include provisions for punishment and treatment that include sexual abuse. Kenya has adopted the Maputo Protocol but has expressed concern about Article 14 2 (c), which permits abortion in circumstances of sexual assault.

Legal instruments that form part of Kenyan legislation on SGBV

5

The Convention Against Torture (CAT) of 1984

Kenya is required to take strong governmental, administrative, judicial, and other actions to stop acts of torture in any region under its control.

6

Rome Statute of 1998

Under the heading of crimes against humanity, Article 7 specifies "rape, sexual enslavement, forced prostitution, forced pregnancy, forced sterilization, or any other form of sexual violence of equivalent gravity."

7

Constitution of Kenya (2010)

The Constitution acknowledges several significant general concepts that are crucial for gender equality and that generally have an impact on gender-based violence in the nation. The national ideals and principles of governance are outlined in Article 10 (2) (b), which includes, among other things, human dignity, equity, social justice, inclusion, equality, human rights, non-discrimination, and the protection of the underprivileged. Additionally, Article 19 (2) assumes the significance of acknowledging and defending human rights and freedoms to uphold people's dignity as persons and members of communities, advance social justice, and realize everyone's potential.

Kenyan Legislation on SGBV

1

Sexual Offences Act, 2006

Criminalizes various forms of sexual violence offences including attempted rape, sexual assault, indecent acts, defilement, incest; gang rapes, sexual harassment, child pornography, child prostitution, child sex tourism, exploitation of prostitution, incest, and cultural and religious offences.

3

HIV Prevention and Control Act, 2006

Provides for the protection of persons living with HIV, prohibits intrusion and compulsory testing, and prohibits discrimination in health care.

5

The Counter Trafficking in Persons Act 2010

Protect girls, women and children against trafficking this act aims at preventing, suppressing and punishing trafficking in person, especially women and children.

7

Bail and Bond Policy Guidelines

Guide the Judge on how to assess bail applications for defilement cases. Policy interrogates chances of interference with victims and witnesses.

2

Prohibition against Female Genital Mutilation Act, 2011

Aiding and abetting female genital mutilation; procuring a person to perform female genital mutilation in another country; Using of premises to perform female genital mutilation, being in Possession of tools or equipment for such purposes and Failing to report while being aware that there is a commission of such an offence are all considered offences according to this Act.

4

Marriage Act, 2014

Sets a mandatory minimum marriage age of 18 years for both parties to all types of marriages. Any marriage contracted with a person below the minimum age is considered void.

6

Victims Protection Act 2014

Protection of victims and ensuring they have an active role in the criminal process according to sections 9&10 of the Act

CHALLENGES & GAPS



The Kenyan government has laid down laws that uphold the rights of women against violence. However, some challenges hinder the reduction or total end of GBV cases in Kenya.

Despite the significant progress, Kenya has made in prevention and response to Gender Based Violence, there exist gaps in the enforcement and implementation of laws and policies. **The implementation of both the legal and policy framework has not achieved desired goals due to inadequate human and financial resources at the duty bearer level.**

There have also been limited skills among service providers, institutional barriers, limited coordination among stakeholders, societal attitudinal barriers, cultural and religious beliefs, and poor implementation and enforcement of GBV responsive law.

These coupled with low knowledge of the collection of evidence; low levels of awareness of national laws and policies against GBV; poorly coordinated referral system and unavailability and inaccessibility of essential GBV services continue to hinder effective provision and access of GBV prevention and response services.

Additionally, data collection is a key challenge as various stakeholders each collect GBV data on their own. As a result, **the country needs a unified and centralized data management system to inform policy and gender programming.** Gender statistics continue to be difficult since they must be gathered often on GBV.

Poverty, unemployment, illiteracy, alcoholism, and drug misuse, are among drivers of GBV thus making women and girls more susceptible to experiencing gender-based violence.

At a Glance

Faces gaps in enforcement and implementation of laws and policies.

Ending GBV

Include poverty, unemployment, illiteracy, alcoholism, and drug misuse.

Drivers of GBV

Key in informing policy and gender programming.

Centralized Data Management System

CONCLUSION



The Kenyan government bravely decided in June 2021 to eradicate gender-based violence (GBV), including sexual assault, by the year 2026. When making the statement, the government pledged to further its effort to stop these violations by making commitments that would eliminate the structural obstacles that support GBV.

Even though these commitments are appreciated, if they are not carried out, justice will continue to elude many women and girls in Kenya. **To achieve gender equality for women and girls within the next five years, Kenya must prioritize the fulfilment of these pledges. Gender-based violence must be stopped.**

Violence violates women's freedom and dignity. **Preventing and addressing gender-based violence against women requires legislative, administrative and institutional reforms.**

At a Glance

Timeline the government committed to eradicating GBV on June 2021.

2021 - 2026

Will be addressed through legislative, administrative and institutional reforms.

GBV

The time to take action to stop GBV and safeguard women and girls in Kenya.

Now

Recommendations

1

Socio-economic empowerment for young women

This will help in combating poverty and unemployment, which are among the key drivers of Violence against women. Empowering these women will reduce the chances of them staying in abusive relationships because they cannot provide for their children. It will bring a sense of independence and will build their self-confidence.

3

Addressing Socio-Cultural and Socio-Economic Barriers

There is a need to raise awareness of GBV, available services and referral networks in all communities. That provides information on the range of existing service providers and locations. Additionally, strengthening the organization of existing referral networks and supporting better coordination among service providers across all sectors will ensure smoother service delivery to survivors of violence.

2

Legal Aid Clinics

The provision of legal aid services at the community level will ensure that information on policy and laws governing women against GBV is delivered to the community. They will be informed about poor cultural practices and proper referral systems when they encounter GBV. These Legal Aid clinics enable them to learn proper evidence collection and documentation.

4

Increasing women's awareness about their right to a life free of violence

Conducting community awareness through knowing your rights campaigns and advocacy forums at the community level will enable communities to understand their rights, especially adolescent girls and young women. Advocacy campaigns provide a platform to discuss myths and misconceptions surrounding GBV and find community solutions to addressing GBV.

Recommendations

5

Addressing Institutional Barriers to Help-Seeking

There is a need to ensure institutions are well funded and systems are in place to ensure smooth service delivery. Furthermore, training needs to be provided and all police stations provided with gender desks and expansion of the PoliCare model to the rest of the country to support survivors' access to healthcare and legal services.

6

Supporting GBV Prevention Efforts at the Community Level

Support livelihoods and economic empowerment initiatives which promote women's financial independence and their ability to leave abusive relationships if they so wish, either within communities or at shelters where women are looking to start over.

Acknowledgements

This Policy Brief has been published by the International Community of Women Living with HIV Kenya Chapter (ICWK) with support from The African Women's Development Fund (AWDF).



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