



HUMAN  
RIGHTS  
WATCH

## “I Had Nowhere to Go”

Violence Against Women and Girls During the Covid-19 Pandemic  
in Kenya

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## Violence Against Women and Girls During the Covid-19 Pandemic in Kenya

The Covid-19 pandemic has wreaked havoc globally. One major impact has been an increase in violence against women and girls during lockdowns put in place to curb the spread of the virus. Kenya is no exception. Yet, despite the country’s experience with surges in violence against women and girls during crises, Kenyan authorities did not adopt preventative measures to protect women and girls, even as they instituted a lockdown and nightly curfew.

*“I Had Nowhere to Go”: Violence Against Women and Girls During the Covid-19 Pandemic in Kenya* documents how hardship brought about by the Covid-19 pandemic, as well as the government’s failure to ensure access to health, economic, and social support services amid restrictions in place to stop the spread of the virus, contributed to an increase in incidences of sexual and other forms of violence against women and girls. Based on interviews with survivors of gender-based violence, guardians and relatives of child survivors of sexual violence, representatives of nongovernmental organizations, and government officials, the report exposes the challenges that survivors face in reporting abuse and seeking help from authorities and other service providers. It captures the Kenyan authorities’ failure to take measures to help prevent sexual and gender-based violence; to properly investigate and prosecute cases; and to ensure survivors have access to timely medical treatment, psychosocial care, protection services, and financial assistance.

Human Rights Watch calls on the Kenyan government to uphold its commitment to tackle gender-based violence and rectify its failure to protect women and girls from violence. It should set up an effective rights-based framework and social protection system to ensure that, even during a crisis, gender-based violence can be prevented, and that survivors are protected and can expeditiously access medical and mental health services, alternative accommodation, and justice.



*“Nadia,” 9 years old, was raped last year while schools were closed and restrictions to curb the spread of the coronavirus were in place. The police directed a community member to take over her care but very little else has been done for her.*

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# “I Had Nowhere to Go”

## Violence Against Women and Girls During the Covid-19 Pandemic in Kenya

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## Summary

Rose's husband was abusive prior to the Covid-19 pandemic. He had been physically violent on multiple occasions, had threatened to kill her by stabbing or strangling her, and verbally abused her. The abuse continued and escalated after Rose was locked down at home observing government restrictions implemented to stop the spread of the virus that causes Covid-19. She said she had no option but to stop her business selling secondhand clothes when the government shut down Kibuye market during the lockdown. While she waited for the market to reopen, her husband sold the stall she uses for her business without her consent. She had no income during the pandemic and was fully dependent on her husband who is a carpenter, self-employed, and continued to work during the lockdown. She said that she applied for financial assistance from the government, but never heard back. Rose said that in June 2020, her husband beat her so severely that she could no longer cry. She was not aware that she could report matters of domestic violence to the police or to other government or nongovernmental institutions, and she did not know where to go to seek help. Eventually a friend introduced her to a community-based organization operating in Kisumu County, which gave her information on how she could report the abuse to the authorities.

In March 2020, the Kenyan government adopted measures including lockdowns, restriction on movement, and closure of schools and some businesses to prevent the spread of the virus that causes Covid-19. These restrictions continue to varying degrees to date.

Globally, the pandemic has devastated families and communities, disrupted employment and livelihoods, increased economic hardship, and impacted women and girls in specific ways. Women, especially those who lost their jobs and earnings due to the pandemic and were made completely dependent on their husbands or partners, and girls who were stuck at home with no school, faced elevated levels of sexual and physical domestic violence while the restrictions on mobility limited their access to protection and treatment services, and justice for survivors. Kenya was no exception to this global trend. And even with a previous history of heightened incidences of violence against women and girls during crisis Kenyan authorities failed to institute preventative measures and effectively protect women and girls, even as they instituted a lockdown and nightly curfew.

Kenya has experienced increases in violence against women and girls, and men and boys to a lesser degree, during previous emergencies such as around elections and other periods of political upheaval, civil unrest, and other humanitarian situations. Human Rights Watch has documented widespread sexual violence against women and girls, as well as incidents of sexual violence against men and boys, following Kenya's 2007–2008 and the 2017 general elections, and the government's failure to prevent or protect against such abuse or to provide survivors with redress. Studies from other countries that have experienced health emergencies, including countries impacted by the Ebola crisis, show that cases of gender-based violence (GBV) increase during such periods. Kenyan authorities should have expected and planned for a similar uptick during the Covid-19 health emergency.

Human Rights Watch research on elections-related sexual and GBV and research by other nongovernmental groups and the United Nations has also showed that Kenya's current government structures and policies are inadequate to respond effectively to violence against women and girls during emergencies or other widespread unrest.

The Kenyan government has an obligation to prevent, tackle, and redress violence against women and girls at all times, including during crises and in humanitarian settings. Facing the ongoing Covid-19 pandemic the government has an opportunity to rectify these failures and build a solid rights-based framework to anticipate future emergency-related sexual and GBV, for example in advance of the planned general elections in 2022.

This report is based primarily on 26 interviews carried out between June 2020 and February 2021 with 13 survivors of gender-based violence; 6 representatives of nongovernmental organizations (NGOs), including service providers and community activists; 4 parents and a relative of girl survivors; a Kenyan expert on gender-based violence; and 2 government officials from POLICARE and the State Department for Gender Affairs.

The report documents how hardship brought about by the Covid-19 pandemic, as well as the government's failure to ensure access to health, economic, and social support services amid restrictions in place to stop the spread of the virus, facilitated an increase in incidences of sexual and other forms of violence against women and girls and the challenges that survivors face in reporting abuse and seeking help from authorities and other service providers. It captures the Kenyan authorities' failure to take measures to help



prevent emergency-related sexual and GBV; to ensure survivors have access to comprehensive, quality, and timely medical treatment, psychosocial care, and protection services, and needed financial assistance; and to properly investigate and prosecute cases.

High levels of violence against women and girls in Kenya is an ongoing problem that has further increased during the Covid-19 pandemic. While official data records may be incomplete, there is a clear trend of increased violence against women and girls.

According to data from the national gender-based violence hotline 1195 run by Healthcare Assistance Kenya—an NGO that works with survivors of GBV in Kenya—in partnership with the Ministry of Public Service and Gender, there was a staggering 301 percent increase in calls reporting violence against women and girls in the first two weeks of the lockdown between March and April 2020. Two government bodies reported increases in cases of violence against women and girls during lockdowns in the early part of the pandemic in 2020. The National Crime Research Centre (NCRC) reported that the total number of GBV cases increased by 87.7 percent during the 3-month-long (April–June 2020) Covid-19 related restrictions on assembly and mobility. It noted: “significant increases of at least 30% were recorded in forms of GBV such as physical abuse, sexual abuse, emotional abuse, child marriage ...” In April 2020, The National Council on Administration of Justice reported “a significant spike in sexual offences in many parts of the country in the past two weeks.” They noted that “in some cases, the perpetrators are close relatives, guardians and/or persons living with the victims.” The report pledged that “the courts will consider giving directions on early hearing dates in such cases.” In a July 2020 proclamation by President Uhuru Kenyatta and other government officials, they acknowledged a huge increase in violence against women and girls, including rape, across Kenya during the Covid-19 pandemic. In August 2020, a NTV Kenya investigation found that more than 200 cases of rape of children were reported in a single informal settlement in Nairobi.

Human Rights Watch documented various forms of violence against women and girls including sexual abuse, beatings, being thrown out of the home, being forced to marry, and forced to undergo female genital mutilation (FGM). Many of the abuses happened in the home and attackers were close family members including husbands, but other abuses happened in the communities perpetuated by neighbors.

Women and girls living in precarious economic conditions were particularly vulnerable to sexual harassment and abuse. Girls interviewed by Human Rights Watch told us that they experienced ongoing sexual harassment from men in their communities, some who, for example, lured them with gifts of food or sanitary pads that their parents could not buy for them. In one case, Juliet, a 16-year-old girl living in an informal settlement in Nairobi was held captive for four days by a man who sexually assaulted her. She was rescued by neighbors and cared for in a safe house in Nairobi.

Kenyan authorities failed to anticipate and properly plan for the risk of increased sexual and GBV during the Covid 19 pandemic, and therefore did not prioritize and include critical early warning, detection, data collection, and protection measures in national and county-level contingency plans and budgets for containing the Covid-19 pandemic. This lapse contributed to a delayed response to GBV and a later rush to implement response measures that were largely insufficient and ineffective.

In February 2020, the government set up a National Emergency Response Committee on Coronavirus or “National Covid-19 Response Committee” to coordinate and spearhead the government’s efforts to contain the spread of the virus. The Committee did not include a representative of the Ministry of Public Service and Gender, or people with broad expertise on women’s and girls’ rights issues, potentially contributing to the invisibility of GBV in the initial Covid-19 response plan. In April 2020, the Ministry of Health published a Community Engagement Health Strategy but did not have any focal point to work on GBV.

NGO representatives and GBV experts Human Rights Watch interviewed said that the Committee’s response to GBV has been fraught with challenges, inefficiencies, and pitfalls.

The majority of survivors Human Rights Watch interviewed did not report the abuse to the authorities, and those who did received inadequate health and legal services and faced many challenges to getting help, including access to financial support. Reasons the women provided for not being able to leave home included fear of contracting the virus, lack of transport during curfew hours, childcare challenges, fear of facing additional violence from the police, lack of money to seek help in a context where many Kenyans have lost their jobs and income, and lack of awareness of available complaints and protective mechanisms.

The government failed to ensure access to already scarce support services amid the Covid-19 pandemic, making it even more challenging for survivors of sexual and GBV to report violence and get help from authorities. For example, access to the severely limited numbers of shelters, or safe houses, for survivors of GBV in Kenya, was hampered during the lockdown. There are very few government-run shelters, with most shelters run by NGOs and concentrated in urban areas such as Nairobi. Both government and NGO-run shelters and safe houses that are available are under-resourced and understaffed. During the Covid-19 pandemic, many shelters had even fewer staff than usual and had to operate at a lower capacity in terms of how many survivors they could accommodate, due to public health measures such as restrictions on mobility and social distancing guidelines.

None of the survivors Human Rights Watch interviewed could access comprehensive healthcare, including emergency sexual and reproductive, and mental health services. In some cases, survivors, and guardians—in cases involving children, were forced to pay for services at government health facilities or were referred to private clinics where they had to pay for GBV-specialized services. This infraction is common in Kenya’s healthcare system, and its effect was made worse by the economic hardship related to the pandemic, and negatively impacted the ability of GBV survivors to get comprehensive health care. All survivors interviewed either received limited mental health support from government institutions, or none at all.

Government programs that provide Covid-19 support, including financial assistance, to people who qualify, such as an expanded cash transfer program targeting “Covid-19 vulnerable and affected persons” had little impact on survivors of GBV and reached only a small percentage of the population in need. An expanded cash transfer program was launched in March 2020 to support those who lost income during the pandemic and would otherwise be unable to cover basic needs, such as food and housing. However, Human Rights Watch documented that these programs only provided support to less than 5 percent of the vulnerable families in Nairobi, and an even smaller percentage across the nation and failed to reach millions in need of support. The Covid-19 cash assistance program failed to include GBV survivors as a category of vulnerable people to be supported. Most of the survivors and families Human Rights Watch interviewed were not receiving assistance through government programs. Two survivors in Kisumu were in the Kazi Mtaani Programme, a government-run economic recovery initiative, and a survivor was receiving support through the cash transfer program. GBV survivors Human Rights Watch

interviewed could not access the government legal aid program. Nevertheless, eight survivors had legal representation from private pro bono lawyers, including through legal aid programs run by NGOs.

Kenyan police and other state security agents have been key perpetrators of serious human rights violations against Kenyans and have been implicated in many cases of rape and other sexual violence against women and girls, and men and boys, particularly during times of crisis. Very few have faced justice. Our findings indicate that police officers regularly demand bribes to carry out basic functions of their job. Human Rights Watch also found that, despite creation of gender desks in police stations, officers have stigmatized GBV survivors, are negligent when dealing with GBV cases, and lack adequate training to deal with GBV, leaving an impression amongst survivors that the police cannot be trusted. As a result, many survivors of rape and other gender-based abuses are skeptical that the police, including those in charge of the gender desks, would assist them. In August 2020, the government announced the launch of POLICARE, a one-stop-shop to provide integrated services to GBV survivors, including children, in one location at the county level. This initiative is still being operationalized.

Kenyan authorities have used violence to enforce curfews and lockdowns. Human Rights Watch research in April 2020 showed that at least six people died from police violence during the first ten days of Kenya's dusk-to-dawn curfew. Police shot and beat people at markets or returning home from work, teargassed people, broke into homes and shops, extorted money from residents, or looted food in locations across the country. Kenyan authorities also forcibly quarantined thousands of people in facilities that compromised their safety and health. Fear of police brutality and authorities also kept survivors from seeking help. Organizations working with survivors reported that women preferred to stay home rather than seek help and face the heavy-handed police or other forces enforcing the curfew.

Women and other witnesses interviewed by Human Rights Watch said that police corruption, lack of economic resources, interference in and mishandling of cases severely impacted survivors' ability to seek justice. In some cases, the police placed an unfair burden on survivors requiring them to investigate and manage evidence related to their abuse. The police failed to effectively coordinate with and support GBV survivors through the process of reporting, recording, investigating, and prosecuting their cases, resulting in

survivors often abandoning the effort to hold their alleged abusers accountable in court. Further, in the very few cases which had proceeded to the prosecution stage, the prosecution failed to adequately inform and support survivors of GBV and their guardians so they could effectively participate in the judicial process, causing anxiety and frustration with virtual court sessions.

Over the last decade and a half, the Kenyan government has enacted laws including the 2015 Protection Against Domestic Violence Act, the 2011 Female Genital Mutilation Act, and the 2006 Sexual Offences Act, to counter various acts of GBV. It has also established guidelines on how incidences of GBV should be managed and survivors supported by the police, specialized medical staff, and judicial officials. Kenya has ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) and several international treaties that obligate it to protect women and girls from discrimination and GBV.

However, when this commitment to tackling GBV was tested by the Covid-19 pandemic, the government response came up short. It did not act effectively to protect women and girls from sexual violence and GBV during the initial stages of the pandemic; its institutions and agents have been ineffective in implementing safeguards to protect and support survivors; and it has done less than the bare minimum in providing services, including health care and psychosocial support, safe houses and shelters, legal and financial assistance. The Kenyan government is failing to fulfil its obligations under international law and failing to live up to its own national laws to protect women and girls from violence and enable them to access medical and mental health services, alternative accommodation, and justice.

# Recommendations

## To the President, Parliament, and Government of Kenya

- Ensure that Covid-19 and other emergency or crises response contingency measures include a strong focus on protection of women and girls against sexual and gender-based violence (GBV).
  - Ensure that survivors of GBV can safely report, and exit abusive situations, by providing accessible support, advice, and reporting mechanisms, including during lockdowns:
    - Allocate sufficient resources to county governments to establish shelters and safe spaces in each county across the country and work closely with nongovernmental organizations (NGOs) that have established safe houses for GBV survivors. Shelters and safe spaces should be accessible for people with different types of disabilities. This would ensure that also GBV survivors with few or no financial means can access emergency and short-term protection, as well as longer-term assistance.
    - Publicly commit to assisting all survivors of sexual and other GBV to receive medical treatment, including emergency sexual and reproductive services, psychosocial services, and access to justice.
    - Ensure all girls who are pregnant or who become adolescent mothers are supported to return and remain in school.
    - Ensure that GBV survivors who are income-constrained automatically qualify for financial assistance and receive cash as direct beneficiaries of the current Covid cash-transfer program. Take steps to mitigate any additional negative impacts of the Covid-19 crisis on women and girls.
- Overall, the government should extend and expand Covid-19 emergency economic relief measures and establish a stronger social protection system that outlasts the pandemic and is designed to secure everyone's right to an adequate standard of living. Any social protection system should include a strong focus on protecting women and girls against sexual and GBV to reduce the risk they are not financially pressured into staying in a situation of violence. The programs, and how they can be accessed, should be well communicated to the public.

- Guarantee survivors of GBV timely and nondiscriminatory access to medical, psychosocial, legal, material, and financial assistance.
- Unify and enhance capacity of toll-free helplines. Ensure that they are accessible, child-friendly, with adequately trained staff, to enable girls and people with disabilities to call.
- Accelerate the establishment and full functioning of POLICARE one-stop assistance centers across the country and train POLICARE personnel to provide comprehensive survivor-centered services.
- All services and investigative and judicial mechanisms should be accessible to people with disabilities on an equal basis with others.
- Provide sufficient resources to ensure that each police station has adequately trained professionals, a space that ensures privacy and preserves the dignity of survivors, adequate facilities to safely preserve evidence, and available transportation so that they can investigate cases of GBV in a timely and appropriate manner.
- Publicly acknowledge and condemn abuses committed by the police during Covid-19 curfews and other lockdown responses.
- Develop a comprehensive plan to respond to sexual and GBV in times of crisis. The plan should be developed through a transparent and participatory process, including with networks of survivors, experts and organizations working with women and children, including those with disabilities, and in accordance with international standards.
- Ahead of the general elections in 2022, develop and implement a strategy for civilian protection, and prioritize specific measures to protect women and girls, as well as men and boys, against sexual and GBV in contingency planning and preparedness, including specific arrangements for detailed risk analysis, prevention, mitigation, and response, particularly in health, and security planning by police and other state security. In particular:
  - Adopt a zero-tolerance policy against sexual violence committed by police and other officials and issue a public and clear warning that perpetrators will be prosecuted to the full extent of the law.
  - Strengthen expertise of police, other state investigators and prosecutors, and judicial staff to document, investigate, and prosecute sexual violence that happens in times of emergencies, including prosecutions on the basis of command responsibility where applicable, including through ongoing

and pre-deployment training to security officials on their roles and responsibilities to prevent and respond to situations of sexual and GBV according to government policies and guidelines, and through a survivor-centered approach.

- Strengthen links with and provide financial and other support to community-based organizations and networks to mitigate and respond to GBV.
- Revise the Prevention of Torture Act, 2017, to introduce command or superior responsibility as a mode of liability for acts of torture, in accordance with the recommendations of the United Nations Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Collect and publish comprehensive data on how many girls, both those enrolled in school and out of school, are affected by child marriage and other human rights abuses, including FGM, as well as accurate data on pregnancy rates among girls before and during the Covid-19 pandemic.

## **To the State Department for Gender Affairs, Ministry of Public Service and Gender**

- Take active measures to disseminate information, including in accessible formats, to the public and to survivors of sexual and GBV to let them know about assistance measures, including how to report abuse, access emergency medical care and shelters and housing that meet public health standards.
- Facilitate the collection of accurate data on sexual and other GBV, disaggregated by a range of intersecting categories such as age, location, disability, gender, and socio-economic status, to inform interventions at all levels.
  - The department should adopt and utilize creative interventions such as geo maps to identify and track GBV prevalence, for purposes of providing protection, support and assistance, and other interventions.
- Assess and evaluate the implementation of laws related to prevention and response to GBV and provide recommendations on strengthening accountability mechanisms.



- Raise awareness regarding the availability of a consolidated GBV toll-free help line and coordinate outreach with civil society organizations and community-based activists.
- Raise awareness on GBV-related laws and provide training on violence against women and girls to duty-bearers in relevant administrative agencies, including traditional institutions.
- Provide financing, training and support for community-based activists who act as micro/local shelters. Financing mechanisms should be transparent.

## To the Ministry of Health and County Departments of Health

- Ensure that all survivors of GBV have access to free, prompt, accessible, and adequate medical services, and psychosocial support.
- Issue a written and public notice to ensure that all health workers have and follow a clear protocol for health services and referrals that should be provided to survivors of sexual violence and that they and the police properly document and collect available evidence in all cases of sexual violence presented to them, and that the evidence is properly and confidentially stored. Ensure health workers are trained to safeguard children's protection and guarantee confidentiality in all cases.
- Ensure that all healthcare facilities have trained staff and medical forensic specialists, as well as sufficient supplies and equipment to provide confidential and specialized clinical services for GBV survivors. At a minimum, healthcare facilities should have deployable staff within sub-counties.
- Make sure that all survivors of GBV can access all medical related services and support free of charge, as required by law. This means that the Ministry of Health should:
  - Cover the costs of medical services provided when a survivor is referred to a private health facility.
  - Carry out a national assessment of the ability of all public and private health facilities to provide accessible, essential post-rape care to survivors, including forensic documentation of rape, including during emergencies; and ensure and support, especially for small private and community clinics, the availability and provision of free, essential emergency post-rape medical care at all public and private health facilities.

- Publicly support women’s and girls’ right to access voluntary, safe abortion to protect their health, and ensure that post-abortion care is available for all abortion-related complications.
- Publish the revised guidelines on provision of abortion services, and with other relevant government authorities, clarify when legal abortion can be provided based on the grounds set forth in the constitution.
- Initiate changes to Kenya’s penal code provisions on abortion to bring them in line with the constitution and Kenya’s international human rights obligations by making abortion legal in all cases of rape.
- Provide financial, material, and human resources to support local health facilities, including private and community-run clinics, that are closest and most easily accessible to communities in times of emergencies, to offer basic post-rape care, and referrals.
- Expand facility-based and community-based 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; this should include confidential programs for child survivors, for children who have witnessed sexual violence, children born from rape who are experiencing stigma, discrimination, and violence, and for male survivors.
- Develop and adopt child-specific protocols to provide guidance on safeguarding child’s protection and guarantee confidentiality.

## To the National Police

- Secure sufficient resources to ensure that police have the means to handle GBV cases appropriately, including in cases involving people with disabilities.
- Establish a specialized unit to investigate GBV cases with presence across all the counties with officers that are specifically trained to handle GBV cases:
  - The gender desk should be available and operational 24 hours a day and 7 days a week with staff trained in collecting information related to GBV incidences in line with best practices, and confidentially referring survivors to medical facilities for assistance and support.
  - Ensure adequate training on child-centered investigations and reporting on the online portal for the Child Protection Information Management System.

- Ensure officers exercise the highest amount of care in receiving reports of and investigating GBV cases.
- Ensure that GBV survivors can confidentially report incidents and have timely and nondiscriminatory access to services and support, including medical, psychosocial, legal, and material assistance, as well as safe houses. Reporting mechanisms and all support services should be accessible for people with disabilities.
- Ensure officer accountability for, and provide training on, proper collection and preservation of evidence.
- Strengthen and ensure accessibility of complaint mechanisms to ensure that people who believe they have been mistreated by police can seek effective recourse. Police officers and other staff who mishandle or interfere in investigations of GBV and/or officers who request a bribe from survivors to investigate GBV cases should be immediately investigated by the Internal Affairs Unit (IAU) and sanctioned.
- The National Police Service Commission (NPC) should carry out an assessment of police mishandling of GBV cases across the country and provide recommendations on accountability and training within the police, as well as remedies for survivors.

### **To the Office of the Director of Public Prosecution (ODPP)**

- Establish special ad hoc prosecutors or hire more prosecutors to increase capacity within the ODPP to handle the increase in GBV cases, or through effective mobile courts.
- Coordinate with the police and medical forensic specialists to ensure that all evidence is collected and preserved for presentation to court without unnecessary delay.
- Establish specialized gender-based prosecution units, and ensure prosecutors are comprehensively trained to adequately handle GBV cases.
- Ensure that prosecutors provide relevant information regarding the criminal case, including clear and accurate information on how to access court, including where relevant virtual court, to survivors and their families or guardians, especially when the survivor has no legal representation. Prosecutors should coordinate with the police to ensure that they provide GBV survivors and their families (where relevant)

with regular communication to ensure they understand the justice and accountability processes.

- Investigative procedures and communication with survivors and their families should be accessible to people with disabilities.

## **To the Judiciary and the Judicial Service Commission**

- Designate that the courts consider all GBV cases involving children as urgent matters and make the necessary duty shifts to give attention to cases that are pending in court.
- Ensure that measures taken in response to the Covid-19 crisis, such as virtual court sessions, do not negatively affect the protection of survivors and their right to fully participate in the court proceedings.
  - Create court spaces in communities such as in Huduma centers or other government facilities with computers and internet access, to allow survivors and their families, and witnesses to fully participate in virtual court sessions.
- Ensure that magistrates, judges, and judicial staff are comprehensively trained to adequately handle GBV cases.
- The judiciary should fully operationalize the 2016 Legal Aid Act and the National Legal Aid Service and make pro bono legal advice and representation accessible to GBV survivors, including those with disabilities, to enable them to effectively navigate protection mechanisms and the criminal justice system.
- The judiciary should undertake widescale and effective outreach to publicize the National Legal Aid Service toll-free number and enhance uptake of legal aid services by GBV survivors.

## **To the Kenya National Commission on Human Rights and the National Gender and Equality Commission**

- Thoroughly monitor government Covid-19 mitigation measures to ensure that they are not violating the rights of individuals.
- Ensure that Covid-19 and other emergency or crises response contingency measures, including for 2022 elections, include a strong focus on protection of women and girls, and men and boys, against sexual and GBV.

- Ensure that monitoring is done with the aim of enabling all survivors to access post-rape medical treatment and treatment for other GBV, and psychosocial support for themselves and their families where appropriate, and for effective investigations and accountability for these crimes. Monitoring should evaluate these services and mechanisms in terms of accessibility for people with different types of disabilities.

## Methodology

Human Rights Watch carried out research for this report between July 2020 and February 2021. The report is based on a total of 26 interviews including 13 with survivors of gender-based violence (GBV); 5 with guardians and relatives of child survivors of sexual violence; 6 representatives of NGOs, including service providers, community activists, and a Kenyan GBV expert; and 2 government officials. Most interviews were conducted by telephone or videoconferencing in order to ensure safe social distancing amid the ongoing Covid-19 pandemic. The interviews were conducted in English or Kiswahili.

All interviewees were informed of the purpose of the interview, the ways in which the information would be used, and offered anonymity in our reporting. All interviewees provided verbal or written informed consent to participate in the research. GBV survivors were not questioned in any detail about their experiences of abuse, to minimize re-traumatization, and questions were focused on their experience of accessing services and support. All GBV survivors and, where relevant, their parents or guardians were provided referrals to civil society organizations that provided counseling and psychosocial support, and financial and legal assistance. None of the interviewees received financial or other incentives for speaking to us. One interviewee received an internet data bundle so they could connect with Human Rights Watch via a teleconferencing software for the interview. The report uses pseudonyms for all survivors and withholds identifying information for most interviewees, especially survivors, to protect their privacy.

## Terminology

Gender-based violence refers to harmful acts directed at an individual based on their gender.<sup>1</sup> It includes 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 deprivation of liberty, whether occurring in public or in private life.”<sup>2</sup> We have abbreviated the term “gender-based violence” to GBV throughout this report.

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<sup>1</sup> “Gender-based Violence,” United Nations High Commissioner on Refugees, undated, <https://www.unhcr.org/en-us/gender-based-violence.html> (accessed May 19, 2021).

<sup>2</sup> Declaration on the Elimination of Violence against Women, adopted December 20, 1993, G.A. Res. 48/104, U.N. Doc. (A/RES/48/104) (1993), art. 1, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/ViolenceAgainstWomen.aspx> (accessed March 15, 2021).

The report uses the term rape, depending on the facts of the case, in place of “defilement,” the legal term used in the 2006 Sexual Offences Act, defined therein as “an act which causes penetration with a child.”

# I. Background

## Long-standing Failure to Prevent and Redress Emergency-Related Sexual and Gender-Based Violence

In 2020, countries worldwide experienced an unprecedented increase in violence against women and girls. Countries reported an especially sharp increase in reported cases of gender-based violence (GBV) against women shortly after instituting lockdown measures to curb the spread of the Covid-19 virus.<sup>3</sup> The UN Population Fund (UNFPA) estimated that “6 months of lockdowns could result in an additional 31 million cases of gender-based violence.”<sup>4</sup> Kenya experienced a similar spike in violence against women and girls.

Kenya has a long history of cycles of serious human rights violations during crisis.<sup>5</sup> Elections have been characterized by serious abuses, including killings, maiming, displacement, and destruction of property. Sexual and other forms of GBV, which already is endemic in ordinary times, has been a consistent, albeit largely invisible, part of this past. Men and boys have also been victims of gender-based crimes.<sup>6</sup> However, despite documented patterns of violence against women and girls in almost all crises and elections periods since the 1990s, the Kenyan government has failed to anticipate and

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<sup>3</sup> Lovejoy Mutongwiza, “Gender Based Violence is a Pandemic within a Pandemic,” London School of Economics, post to Africa at LSE, *London School of Economics*, April 23, 2020, <https://blogs.lse.ac.uk/africaatlse/2020/04/23/gender-based-violence-in-zimbabwe-a-pandemic-covid19-virus/> (accessed July 29, 2021); “The Shadow Pandemic: Violence against Women during Covid-19,” UN Women, undated, <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19> (accessed July 29, 2021).

<sup>4</sup> “Millions More Cases of Violence, Child Marriage, Female Genital Mutilation, Unintended Pregnancy Expected Due to the Covid-19 Pandemic,” UNFPA news release, April 28, 2020, <https://www.unfpa.org/news/millions-more-cases-violence-child-marriage-female-genital-mutilation-unintended-pregnancies> (accessed July 29, 2021).

<sup>5</sup> Truth, Justice and Reconciliation Commission (TJRC) of Kenya, *Report of the Truth, Justice and Reconciliation Commission, Volume IV*, (Nairobi: TJRC, 2013), [https://www.knchr.org/Portals/0/Transitional%20Justice/TJRC%20Downloads/TJRC\\_report\\_Volume\\_4.pdf?ver=2018-06-18-174714-950](https://www.knchr.org/Portals/0/Transitional%20Justice/TJRC%20Downloads/TJRC_report_Volume_4.pdf?ver=2018-06-18-174714-950) (accessed May 10, 2021).

<sup>6</sup> Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance*, March 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*, December 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*, September 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*, February 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.



properly plan for effective prevention of emergency-related sexual and gender-based crimes.<sup>7</sup>

The Kenyan government has failed to break cycles of elections-related sexual and GBV.<sup>8</sup> Previous Human Rights Watch reporting on Kenya highlighted increases in GBV in many parts of the country during crises such as the 2007-2008 and the 2017 elections violence. Thousands of women, men, and children were raped or suffered other horrific and debilitating forms of sexual violence.<sup>9</sup> Many of the perpetrators were state security officials. Human Rights Watch documented government failure during both periods to prevent election-related sexual violence, effectively investigate cases, hold perpetrators accountable, and ensure survivors have access to survivor-centered comprehensive, quality, and timely medical and psychosocial care.<sup>10</sup> To date, although the government has to some extent acknowledged the violence suffered by women and girls during the 2007-2008 elections violence, it has largely ignored the suffering of survivors. It has failed to develop and implement a legal and policy framework to provide reparations for survivors of sexual and GBV linked to historical crimes as mandated by the Truth Justice and Reconciliation Commission in 2013.<sup>11</sup>

In a landmark judgment and a win for survivors, on December 10, 2020, the High Court in Kenya ruled that the Kenyan government failed to effectively investigate and prosecute sexual crimes from the 2007-2008 post-election violence and issued monetary awards of four million Kenyan Shillings (KES, approximately USD\$37,110) to four survivors of the

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<sup>7</sup> Office of the High Commissioner on Human Rights, UN Women, Physicians for Human Rights, “Breaking Cycles of Violence: Gaps in Prevention of and Response to Electoral-Related Sexual Violence in Kenya,” December 2019, <https://www.ohchr.org/Documents/Countries/KE/OHCHRPHRUNWOMENKenyaGapAnalysisDec20191.pdf> (accessed May 10, 2021); Kenya National Commission on Human Rights (KNCHR), *Silhouettes of Brutality: An account of sexual violence during and after the 2017 general election, 2017 Election Series* (Nairobi: KNCHR, 2018), [https://www.knchr.org/Portals/0/KNCHR\\_Silhouettes\\_of\\_Brutality.pdf](https://www.knchr.org/Portals/0/KNCHR_Silhouettes_of_Brutality.pdf) (accessed May 10, 2021); Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance*, and *I Just Sit and Wait to Die”: Reparations for Kenya’s 2007-2008 Post Election Sexual Violence*, February 2016, <https://www.hrw.org/report/2016/02/15/i-just-sit-and-wait-die/reparations-survivors-kenyas-2007-2008-post-election#>.

<sup>8</sup> OHCHR, UN Women, Physicians for Human Rights, “Breaking Cycles of Violence: Gaps in Prevention of and Response to Electoral-Related Sexual Violence in Kenya”; and Human Rights Watch, *Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance*, and *I Just Sit and Wait to Die”: Reparations for Kenya’s 2007-2008 Post Election Sexual Violence*.

<sup>9</sup> Human Rights Watch, “*I Just Sit and Wait to Die”: Reparations for Kenya’s 2007-2008 Post Election Sexual Violence*.”

<sup>10</sup> Ibid., and Human Rights Watch, “*They were Men in Uniform”: Sexual Violence against Women and Girls in Kenya’s 2017 Elections*.”

<sup>11</sup> Truth, Justice and Reconciliation Commission (TJRC) of Kenya, *Report of the Truth, Justice and Reconciliation Commission, Volume IV*, pp. 102-108.

2007–2008 elections violence. This marked the first time that sexual violence survivors from that violence have been offered compensation for harm suffered. The decision was undermined by the fact that the court recognized government responsibility and issued monetary compensation only in cases where survivors had reported the assault to the police. The Kenyan government should fulfill the awards given in this case and take immediate steps to provide other survivors of post-election sexual violence with medical care, monetary compensation, and other remedies.

Human Rights Watch research and research by other nongovernmental organizations (NGOs) and the UN have found that despite an array of laws, policies, guidelines, and institutional bodies mandated to address violence against women and girls, current structures, laws, and policies are especially inadequate to respond to crisis-related violence. Many GBV cases are not reported to authorities and few survivors get justice or receive any medical treatment and psychosocial support. Planned general elections in 2022 provide the Kenyan government an opportunity to rectify these gaps. The findings in this report and other Human Rights Watch reports present the government with concrete recommendations to address not only violence related to the current Covid-19 pandemic, but to prevent recurrence of elections-related sexual and GBV during the upcoming elections in 2022, and to address the medical, psychosocial, and livelihood needs of survivors.

## The Covid-19 Pandemic in Kenya

In March 2020, Kenya imposed a strict stay-at-home lockdown, with restrictions on public gatherings and mobility, nationwide school closures, and instituted forced quarantines in hotels and a nationwide night-time curfew in efforts to limit the spread of the virus.<sup>12</sup> Exceptions were made for essential workers and services and the initial exceptions list did not include shelter services and other support for survivors. Since March 2020, Kenya has recorded a total of about 241,000 Covid-19 reported cases and about 4,790 recorded

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<sup>12</sup> Amina Wako, “Coronavirus: Uhuru orders dusk to dawn curfew starting Friday – Video,” *Nairobi News*, March 25, 2020, <https://nairobineews.nation.co.ke/editors-picks/coronavirus-uhuru-orders-dusk-to-dawn-curfew-starting-friday> (accessed March 11, 2021); The Public Order (State Curfew) Order, 2020, Legal Notice No. 36. A 5 am to 7 pm curfew was instituted with penalty for failure to comply including a KES 10,000, imprisonment of up to three months, or both; and the Public Health (Covid-19 Restriction of Movement of Persons and Related Measures) Rules, 2020, Legal Notice No. 50, restricting movement into and out of Nairobi metropolitan area, Kilifi County, Mombasa County, and Kwale County.

deaths.<sup>13</sup> The lockdown and other containment measures, instituted from March 2020 and continued to date of publication in varying degrees, have resulted in job losses, economic hardship, interruptions in education, heightened isolation, and curtailed face to face interactions with support networks.<sup>14</sup>

Globally and in Kenya, the economic impacts of the Covid-19 pandemic have disproportionately affected women and girls.<sup>15</sup> Women are concentrated in the sectors that have been particularly hard-hit by the economic downturn. Many work in the informal sector, for example as a domestic worker, food vendor, or sex worker, which renders them ineligible for social protection programs.<sup>16</sup> Worldwide, including in Kenya, women are often taking on a disproportionate share of the caregiving for children unable to attend daycare, pre-school, or school due to Covid-19-related shutdowns; affording women even less time to engage in income generating activities.<sup>17</sup> Women were also at heightened risk of experiencing violence during Covid-19 lockdowns, due to increased social isolation, lack of information, breakdown of community structures and greater difficulties in accessing essential community-based services and support, and increased financial stress.<sup>18</sup>

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<sup>13</sup> These numbers are as of September 6, 2021. See “Cumulative number of confirmed coronavirus (COVID-19) cases in Kenya as of September 6, 2021,” Statista, accessed September 9, 2021, <https://www.statista.com/statistics/1136243/coronavirus-cases-in-kenya>; and “Number of novel coronavirus (COVID-19) deaths worldwide as of September 6, 2021, by country,” Statista, accessed September 9, 2021, <https://www.statista.com/statistics/1093256/novel-coronavirus-2019ncov-deaths-worldwide-by-country/>.

<sup>14</sup> UNHCR, “Articulating the Pathways of the Socio-Economic Impact of the Coronavirus (COVID-19) Pandemic on the Kenyan Economy,” UNHCR Policy Brief, April 2020, <https://data2.unhcr.org/en/documents/details/78194> (accessed on February 28, 2021).

<sup>15</sup> Ginette Azcona, Antra Bhatt, Jessamyn Encarnacion, Juncal Plazaola-Castaño, Papa Seck, Silke Staab, and Laura Turquet, , *From Insight to Action: Gender Equality in the Wake of Covid-19* (United States: UN Women, 2020), <https://www.unwomen.org/en/digital-library/publications/2020/09/gender-equality-in-the-wake-of-covid-19> (accessed June 17, 2020); UN Women, “COVID-19 Gender Assessment, Kenya,” December 2020, <https://data.unwomen.org/publications/covid-19-gender-assessment-kenya> (accessed May 7, 2021); Jessie Pinchoff, Karen Austrian, Nandita Rajshekhar, et. al, “Gendered Economic, Social and Health Effects of the COVID-19 Pandemic and Mitigation Policies in Kenya: evidence from a prospective cohort survey in Nairobi informal settlements,” *BMJ Open* 21, no. 3 (2021), <https://bmjopen.bmj.com/content/11/3/e042749> (accessed May 7, 2021).

<sup>16</sup> International Labour Organization (ILO), “The COVID-19 response: Getting gender equality right for a better future for women at work,” ILO Policy Brief, May 2020, [https://www.ilo.org/global/topics/coronavirus/WCMS\\_744685/lang-en/index.htm](https://www.ilo.org/global/topics/coronavirus/WCMS_744685/lang-en/index.htm) (accessed May 7, 2021).

<sup>17</sup> UN Women, “COVID-19 Gender Assessment, Kenya,” pp. 22-23; Performance Monitoring for Action (PMA), “Study reveals stark gendered social and economic impacts of COVID-19 for youth in Kenya,” January 6, 2021, <https://www.pmadata.org/news/study-reveals-stark-gendered-social-and-economic-impacts-covid-19-youth-kenya-o> (accessed May 7, 2021).

<sup>18</sup> UN Women, “COVID-19 Gender Assessment, Kenya.”

These hardships, within a societal context of high pre-existing levels of gender inequality and discrimination, drastically increased the risk of violence for women and girls across Kenya and decreased the ability of GBV survivors to seek help.<sup>19</sup>

Late in March 2020 when the lockdowns began, the national GBV Hotline 1195 began experiencing a large increase in calls—with call volume skyrocketing to a staggering 301 percent increase between March and April 2020.<sup>20</sup> The hotline received about 1,100 cases in June 2020 compared to 86 in February 2020.<sup>21</sup> Reported cases dropped since then to 810 cases in September 2020, but the total number of calls was still four times higher than during the same period in 2019.<sup>22</sup>

In April 2020, the National Council on Administration of Justice (NCAJ), a government body housed within the Judiciary, reported “a significant spike in sexual offences [reported to government authorities] in many parts of the country” over a two-week period at the start of the Covid-19 pandemic.<sup>23</sup> Sexual offenses such as rape, including rape of children, constituted more than 35 percent of all cases registered in courts.<sup>24</sup> For example, in August 2020, NTV Kenya, a national media station, reported that more than 200 cases of child rape were reported in Mukuru slum, an informal settlement in Nairobi.<sup>25</sup> And in October

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<sup>19</sup> PMA, “COVID-19 & PMA Gender: Spotlight on Youth and Young Adults in Nairobi, Kenya,”

<https://www.pmadata.org/technical-areas/gender#data-products-section-heading> (accessed May 7, 2021).

<sup>20</sup> International Development Law Organization, “The Shadow Pandemic: Addressing Gender-Based Violence During Covid-19,” December 3, 2020, <https://www.idlo.int/news/story/shadow-pandemic-addressing-gender-based-violence-during-covid-19> (accessed April 12, 2021)

<sup>21</sup> Nita Bhalla, “Kenya Orders Probe into Rise in Violence Against Women and Girls During Pandemic,” *Reuters*, July 6, 2020, <https://news.trust.org/item/20200706165923-pey3m/> (accessed April 5, 2021); “‘We want justice for these girls’: the Kenyan helpline for victims of gender violence,” UN news release, <https://news.un.org/en/story/2020/10/1075522> (accessed March 11, 2021).

<sup>22</sup> UN Office for the Coordination of Humanitarian Affairs (OCHA), “Kenya, Sector Status: Protection (Gender-based Violence),” digital situation report, last updated October 20, 2020, <https://reports.unocha.org/en/country/kenya/card/2rC8ktJetx/> (accessed March 11, 2021); “‘We want justice for these girls,’” UN news release. The reduction in number of calls might be because of a proliferation of GBV-related hotlines and survivors accessing other providers, or the lockdowns being lifted in some areas.

<sup>23</sup> Justice David K. Maraga, “Statement on justice sector operations in the wake of the Covid-19 pandemic.” National Council on the Administration of Justice, April 1, 2020, <http://ncaj.go.ke/statement-on-justice-sector-operations-in-the-wake-of-the-covid-19-pandemic/> (accessed March 11, 2021).

<sup>24</sup> *Ibid.*; Caroline Njung’o, “Kenya: Red Alert as Sexual Violence Cases Rise Amid Virus Curfew,” *The Daily Nation*, <https://allafrica.com/stories/202004130283.html> (accessed April 2, 2021). See also UN Women, “Covid-19: Ending Violence Against Women and Girls. Key Priorities and Interventions for Effective Response and Recovery,” *EVAW COVID-19 briefs*, 2020, <https://www.unwomen.org/en/digital-library/publications/2020/04/issue-brief-covid-19-and-ending-violence-against-women-and-girls> (accessed April 12, 2021).

<sup>25</sup> NTV Kenya, “Gender-based violence and defilement cases rise to alarming levels during the Covid-19 Pandemic,” Video report, August 24, 2020, <https://www.youtube.com/watch?v=56YAOKzh1HM> (accessed March 11, 2021).

2020, a media source described how about 2,800 girls in a community in southwestern Kenya had undergone female genital mutilation (FGM) and paraded in the region's urban centers, defying Kenyan law.<sup>26</sup>

During an October 2020 webinar hosted by the International Development Law Organisation (IDLO) and the National Council on the Administration of Justice (NCA), acting director of the Department of Conventional and Related Crimes within the Office of the Director of Public Prosecutions (ODPP), Jacinta Nyamosi, said that 2,646 sexual related offences had been registered in the courts during the Covid-19 pandemic period, an increase from previous comparable periods. Out of these 2,646 registered cases of sexual related offenses, 2,050 cases, or 77 percent, were perpetrated against children.<sup>27</sup> The National Crime Research Centre (NCRC) reported that the total number of GBV cases increased by 87.7 percent during the 3-month-long (April-June 2020) strictly enforced Covid-19 restrictions.<sup>28</sup> It reported "significant increases of at least 30% were recorded in forms of GBV such as physical abuse, sexual abuse, emotional abuse, child marriage and child abduction/kidnapping."<sup>29</sup> There were also reports suggesting elevated rates of FGM and pregnancy among girls.<sup>30</sup>

Girls living in precarious economic conditions and at home while schools were shutdown were particularly vulnerable to harassment and abuse. A shelter worker Human Rights Watch interviewed said that girls experienced ongoing sexual harassment from men in

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<sup>26</sup> Peter Muiruri, "Kenyan Efforts to End FGM Suffer Blow with Victims Paraded in 'Open Defiance,'" *The Guardian*, October 21, 2020. <https://www.theguardian.com/global-development/2020/oct/21/kenyan-efforts-to-end-fgm-suffer-blow-with-victims-paraded-in-open-defiance> (accessed July 29, 2021).

<sup>27</sup> Jacinta Nyamosi, Senior Assistant Director of Public Prosecutions, Office of the Director of Public Prosecutions (ODPP), "Presentation during 23<sup>rd</sup> Full Council Meeting of the National Council on the Administration of Justice," webinar hosted by International Development Law Organization (IDLO), October 30, 2020.

<sup>28</sup> National Crime Research Centre, *Protecting the Family in the Time of Covid-19 Pandemic: Addressing the Escalating Cases of Gender Based Violence, Girl Child Disempowerment and Violation of Children Rights in Kenya* (Nairobi: National Crime Research Centre, 2020), <http://www.crimeresearch.go.ke/wp-content/uploads/2020/12/Report-on-Protecting-the-Family-in-the-Time-of-Covid-19-Pandemic-6th-August-2020.pdf> (accessed April 5, 2021), p. 17.

<sup>29</sup> *Ibid.*, pp. 18.

<sup>30</sup> Michael Oduor, "Close to 4,000 School Girls Impregnated in Kenya during Covid-19 Lockdown." *AfricaNews*, June 17, 2020, <https://www.africanews.com/2020/06/17/close-to-4000-school-girls-impregnated-in-kenya-during-covid-19-lockdown/> (accessed April 12, 2021); Ayenat Mersie, "Teenage pregnancies rise in parts of Kenya as lockdown shuts schools," *Reuters*, November 16, 2020, <https://www.reuters.com/article/us-health-coronavirus-teenage-pregnancy/teenage-pregnancies-rise-in-parts-of-kenya-as-lockdown-shuts-schools-idUSKBN27W11H> (accessed April 21, 2021); "In Pictures: Schools shut and pregnancies rise in Covid-hit Kenya," *Aljazeera*, photo gallery, November 16, 2020, <https://www.aljazeera.com/gallery/2020/11/16/schools-close-and-student-pregnancies-rise-in-lockdown-kenya> (accessed April 21, 2021).

their communities, some who, for example, lured them with gifts of food or sanitary pads that their parents could not buy for them, especially with the economic hardship related to the pandemic. In one case, a 16-year-old girl from an informal settlement in Nairobi was held captive for four days by a man who raped her. She was rescued by neighbors and cared for in a safe house in Nairobi.<sup>31</sup>

Joy, a 17-year-old, said that after schools closed, she stayed at home helping her mother on the farm. She said that one day on her way to the farm: “I met this man. He started talking to me telling me that I am nice. Telling me I am a big girl because I am not in school. Next I knew he was forcing me down and he raped me.” Joy was able to get help from the police, but she did not get any post-rape care, including emergency contraception. She was pregnant at the time of the interview.<sup>32</sup>

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<sup>31</sup> Human Rights Watch interview with a shelter worker, Nairobi, April 2, 2020. The shelter is in an informal settlement.

<sup>32</sup> Human Rights Watch telephone interview with Joy, June 11, 2020.

## II. Lack of Services and Support for Survivors of Gender-Based Violence

### Failure to Address Violence against Women and Girls in Covid-19

#### Contingency Measures

The Kenyan government failed to design and establish timely and adequate emergency measures to help prevent GBV and assist and protect survivors during the Covid-19 pandemic in Kenya.<sup>33</sup> This reflects a more general trend of inadequate Covid-19 assistance for people who lost income during the pandemic and whose right to an adequate standard of living was threatened as a result. In the absence of adequate financial assistance, many people have gone hungry or lost their homes. Nongovernmental organizations (NGOs) and service providers Human Rights Watch interviewed said that the special emergency GBV prevention and response measures the government put in place during the pandemic were delayed, have been inadequate and ineffective.

In February 2020, the government set up a National Emergency Response Committee on Coronavirus or “National COVID-19 Response Committee” (NCRC) to coordinate and spearhead the government’s efforts to contain the spread of the virus that causes Covid-19.<sup>34</sup> The Committee did not include a representative of the Ministry of Public Services and Gender, and NGO representatives have speculated that this contributed to the invisibility of GBV in the initial Covid-19 response plan.<sup>35</sup> In April 2020, the Ministry of Health

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<sup>33</sup> Agnes Odhiambo, “Tackling Kenya’s Domestic Violence Amid COVID-19,” Human Rights Watch dispatch, April 8, 2020, <https://www.hrw.org/news/2020/04/08/tackling-kenyas-domestic-violence-amid-covid-19-crisis>.

<sup>34</sup> Executive Order No. 2 of 2020. National Emergency Response Committee on Coronavirus, issued at State House, Nairobi, February 28, 2020, [https://www.health.go.ke/wp-content/uploads/2020/06/Executive-Order-No-2-of-2020\\_National-Emergency-Response-Committee-on-Coronavirus-28.2.20.pdf](https://www.health.go.ke/wp-content/uploads/2020/06/Executive-Order-No-2-of-2020_National-Emergency-Response-Committee-on-Coronavirus-28.2.20.pdf) (accessed April 21, 2021).

<sup>35</sup> Human Rights Watch teleconference interviews with Wairimu Munyinyi-Wahome, executive director, Kwamboka Oseko, legal officer, and Fridah Wawira, programme officer, Coalition on Violence Against Women (COVAW), August 31, 2020; Wangechi Wachira Leah, executive director, Center for Rights Education and Awareness (CREAW), September 7 and 8, 2020. See Executive Office of the President, Executive Order No. 2 of 2020, National Emergency Response Committee on Coronavirus, February 28, 2020, [https://www.health.go.ke/wp-content/uploads/2020/06/Executive-Order-No-2-of-2020\\_National-Emergency-Response-Committee-on-Coronavirus-28.2.20.pdf](https://www.health.go.ke/wp-content/uploads/2020/06/Executive-Order-No-2-of-2020_National-Emergency-Response-Committee-on-Coronavirus-28.2.20.pdf) (accessed August 5, 2021).

published a Community Engagement Health Strategy, and failed to put in place adequate measures to respond to GBV during the lockdown.<sup>36</sup>

In July 2020, President Uhuru Kenyatta publicly acknowledged a reported increase in GBV and directed the National Crime Research Centre (NCRC) to conduct a rapid research on the escalation of GBV and teenage pregnancies during the pandemic in Kenya.<sup>37</sup> The president also directed the NCRC to prepare an advisory within 30 days of the presidential directive issued on July 6, 2020 on appropriate remedial actions to be taken by security agencies, including the police, to facilitate immediate prosecution of perpetrators of GBV.<sup>38</sup>

In the same month, the president directed traditional authorities to monitor and put in place effective measures to prevent and respond to teenage pregnancies in their localities.<sup>39</sup> He also directed local administrators to register all pregnant school-going girls and collect information on the men responsible for the pregnancies.<sup>40</sup> These directives have been followed and reporting mechanisms have been established at the community level, with local administrators working in collaboration with education institutions and healthcare institutions to monitor and report on teenage pregnancies, according to NGO representatives.<sup>41</sup> However, it is not clear whether the information being collected will be used to prosecute perpetrators of sexual violence in cases of teenage pregnancy that resulted from the sexual violence, or to seek to hold them accountable as parents.

NGO representatives and GBV experts Human Rights Watch interviewed said that the National COVID-19 Response Committee, though a laudable initiative, its operation and

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<sup>36</sup> Ministry of Health, “Utilizing the Community Health Strategy to Respond to Covid 2019,” 2019, [https://www.health.go.ke/wp-content/uploads/2020/04/Community-Response-to-COVID-2019\\_1.docx.pdf](https://www.health.go.ke/wp-content/uploads/2020/04/Community-Response-to-COVID-2019_1.docx.pdf) (accessed April 21, 2021).

<sup>37</sup> President Uhuru Kenyatta, the ninth presidential address on the coronavirus pandemic in Nairobi, July 6, 2020, <https://www.president.go.ke/2020/07/06/the-ninth-9th-presidential-address-on-the-coronavirus-pandemic-harambee-house-nairobi-monday-july-6th-2020/> (accessed 6 November 2020).

<sup>38</sup> KTN News TV Clip, GBV & Teen Pregnancies: President Uhuru wants action taken on cases, KTN News (YouTube Online), 6 July 2020, available at: [https://www.youtube.com/watch?v=ban\\_P5F716c](https://www.youtube.com/watch?v=ban_P5F716c) (accessed on 27 October 2020).

<sup>39</sup> Mwangi Muiruri, “Uhuru orders registration of all pregnant teens for natal care,” *Daily Nation*, July 9, 2020, <https://nation.africa/kenya/news/uhuru-orders-registration-of-all-pregnant-teens-for-natal-care-1447798> (accessed October 27, 2020); “President Kenyatta warns chiefs to act on the teenage pregnancy crisis,” video clip, YouTube, <https://www.youtube.com/watch?v=qoWMYMkM8U8> (accessed October 27, 2020).

<sup>40</sup> Ibid.

<sup>41</sup> Human Rights Watch teleconference interviews with Wairimu Munyinyi-Wahome, executive director, Kwamboka Oseko, legal officer, and Fridah Wawira, programme officer, COVAW, August 31, 2020; Wangechi Wachira Leah, executive director, CREAW, September 7 and 8, 2020.



response to GBV has been fraught with challenges, inefficiencies, and pitfalls.<sup>42</sup> The Committee has not met since September 2020.

Overall, NGO representatives and an expert interviewed by Human Rights Watch said that the government failed to anticipate the risk of increased GBV during the Covid-19 pandemic and so did not plan accordingly.<sup>43</sup> This failure meant that the government did not prioritize GBV responses and did not include critical early warning, detection, and protection response measures in its national and county-level contingency plans and budgets for containing the Covid-19 pandemic.<sup>44</sup> This lapse contributed to a delayed response to GBV and a later rush to implement protective measures that were largely insufficient and ineffective.

## Increased Initiatives but Ineffective Services: The Case of Gender-Based Violence Hotlines

One example of the way that initiatives grew but not necessarily effectively was the proliferation of GBV hotlines, and the government's initial failure to include hotline staff in the list of essential service providers exempt from curfew restrictions. Prior to the pandemic, the Kenyan government's State Department of Gender Affairs, within the Ministry of Public Service and Gender, in partnership with Healthcare Assistance Kenya (HAK), operated the 1195 toll-free GBV Hotline,<sup>45</sup> responsible for receiving reports and providing rapid assistance and referrals to GBV survivors. There is also a specific 116 toll-free GBV Hotline for children.

Normally the 1195 Hotline is operational 24 hours a day and 7 days a week. However, during the early phases of the pandemic it was closed during the latter part of the day and through the night. This was a direct result of a lack of clarity as to whether non-medical

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<sup>42</sup> Human Rights Watch teleconference interviews with Wairimu Munyinyi-Wahome, executive director, Kwamboka Oseko, legal officer, and Fridah Wawira, programme officer, COVAW, August 31, 2020; Wangechi Wachira Leah, executive director, CREAW, September 7 and 8, 2020; Christine (Tina) Alai, GBV prevention and response expert, August 28 and 29, 2020; and Christine Sadia, Gender and Public Health Advisor for Kenya's State Department for Gender Affairs, and chair of the Kenyan Medical Women's Association, September 14, 2020.

<sup>43</sup> Human Rights Watch teleconference interviews with Wairimu Munyinyi-Wahome, executive director, Kwamboka Oseko, legal officer, and Fridah Wawira, programme officer, COVAW, August 31, 2020; Wangechi Wachira Leah, executive director, CREAW, September 7 and 8, 2020; and Tina Alai, August 28 and 29, 2020.

<sup>44</sup> Ibid.

<sup>45</sup> Please see "Gender Based Violence 1195 Hotline," Ministry of Public Service and Gender, accessed October 27, 2020, <https://gender.go.ke/healthcare-assistance-kenya-hak-1195/>.

teleoperators and telecounselors working for 1195 were essential service providers and therefore exempt from the Presidential directive on a nightly curfew.<sup>46</sup> In May 2020, the essential status of hotline operators and counselors was rectified.<sup>47</sup>

The national hotline also struggled to cope with the increase in GBV-related calls, and under-staffing was compounded by a lack of available services to which it could refer callers.<sup>48</sup> It eventually doubled the number of call operators, enhanced counselor training and strengthened referrals for survivors with additional resources from international donors.<sup>49</sup> However, there was no immediate increase on actual government services to which survivors could be referred.

In June 2020, the National Police Service, through its Directorate of Community Policing, Gender and Child Protection, established its own toll-free GBV reporting line.<sup>50</sup> The Office of the Director of Public Prosecutions (ODPP) also established another new hotline through which GBV survivors can report cases and get referrals to support services during the Covid-19 pandemic.<sup>51</sup> In order to plug the inability of the government to initially handle the rising number of GBV cases across Kenya, and to complement the government's efforts to respond to GBV, several non-State actors established GBV hotlines.<sup>52</sup> This collection of different hotlines created potential confusion among survivors about how they should seek

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<sup>46</sup> Public Order Act, Legal Notice No. 36 of 2020, [http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN36\\_2020.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2020/LN36_2020.pdf) (accessed May 10, 2021).

<sup>47</sup> Ministry of Health, "Interim Guidance on Continuity of Essential Health Services During the COVID-19 Pandemic," May 2020, <https://www.health.go.ke/wp-content/uploads/2020/05/KENYAN-GUIDANCE-ON-CONTINUITY-OF-ESSENTIAL-HEALTH-SERVICES-DURING-THE-COVID-OUTBREAK-20MAY-2020-complete.docx.pdf> (accessed May 8, 2021), pp. 11.

<sup>48</sup> NGO-run shelters and safe houses were closed, and services restricted by the lockdown, nightly curfew, and limited space to quarantine new arrivals.

<sup>49</sup> UN Country Team (Kenya), "Emergency Appeal: Kenya, April – September 2020," 2020, [https://reliefweb.int/sites/reliefweb.int/files/resources/Kenya\\_2020\\_Emergency\\_Appeal.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Kenya_2020_Emergency_Appeal.pdf) (accessed April 21, 2021); "Covid-19: UN Women Supports Kenya's National Helpline for Survivors of Sexual and Gender-Based Violence," UN Women news release, June 22, 2020, <https://africa.unwomen.org/en/news-and-events/stories/2020/06/on-the-frontline-with-kenyas-national-helpline> (accessed April 21, 2021); "Gender Based Violence 1195 Hotline," Ministry of Public Service and Gender, accessed April 21, 2021, <https://gender.go.ke/healthcare-assistance-kenya-hak-1195/>.

<sup>50</sup> Human Rights Watch teleconference interview with Mr. Daniel Wathome, chair, technical working group for development, POLICARE, September 24, 2020. Also see, National Gender and Equality Commission (NGEC), "NGEC welcomes new police hotline for reporting SGBV cases," June 12, 2020, [https://www.ngeckkenya.org/news/8240/ngec-welcomes-new-police-hotline-for-reporting-sgbv-cases#:~:text=The%20Commission%20has%20welcomed%20the,gender%20based%20violence%20\(SGBV\)](https://www.ngeckkenya.org/news/8240/ngec-welcomes-new-police-hotline-for-reporting-sgbv-cases#:~:text=The%20Commission%20has%20welcomed%20the,gender%20based%20violence%20(SGBV)) (accessed 27 October 2020).

<sup>51</sup> Jacinta Nyamosi, "Presentation during 23<sup>rd</sup> Full Council Meeting of the National Council on the Administration of Justice," webinar by the IDLO, October 30, 2020, p. 5, on file with Human Rights Watch.

<sup>52</sup> These hotlines include UWIANO SMS Platform 10; Kimbilio GBV helpline 1193; LVCT one 2 one youth helpline 1190; CREAW 0800-720-186 hotline; and FIDA SMS platform 21661.

help, and did not solve the problem of inadequate survivor-centered case management, individualized, ongoing psychosocial support from trained case workers who help them connect to multiple services based on their needs and choices, referrals and access to shelters or safe houses, and comprehensive medical services discussed below.

There was also insufficient information outreach about the multiple state-run hotlines. Fourteen survivors of GBV Human Rights Watch interviewed had no awareness of the 1195 hotline or how they could report abuse and seek help. A few survivors told Human Rights Watch that they had received information from non-government sources and relatives on where to access support and assistance. None of the parents of survivors were aware of the child-specific helpline 116.

Rose's husband was abusive prior to the pandemic. He had been physically violent on multiple occasions, had threatened to kill her by stabbing or strangling her, verbally abused her, and sold her business without her consent.<sup>53</sup> Rose said that in June 2020 her husband beat her so severely that she could no longer cry. She was not aware that she could report matters of domestic violence to the police or to other government or nongovernmental institutions, and she did not know where to go to seek help. Eventually a friend introduced her to Women Concerns, a community-based organization operating in Kisumu County, which gave her information on how she could report the abuse and seek help.<sup>54</sup>

## Lack of Shelters and Safe Houses

I was forced to stay in my home when I was facing violence because I had nowhere to go.

—Amelia A., domestic violence survivor

There is a critical lack of shelters, safe houses, support centers, including infrastructure that provides survivor-centered case management and individualized, ongoing psychosocial support services for survivors of GBV in Kenya.<sup>55</sup> There are very few

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<sup>53</sup> Human Rights Watch telephone interview with Rose A., Kisumu County, October 7, 2020.

<sup>54</sup> Ibid.

<sup>55</sup> For example, the Gender Violence Recovery Centers (GVRC), according to data from its website, has a presence in 27 out of 47 counties across the country, and primarily in urban areas. GVRCs are a one-stop-shop that provides free comprehensive

government-run shelters, and most are run by NGOs or privately owned, and concentrated in urban areas.<sup>56</sup> Shelters and safe houses that are available, are severely under-resourced including under-staffed, and can lack food, have limited beds available, and insufficient space to quarantine new arrivals.<sup>57</sup> The 2015 Protection Against Domestic Violence Act does not require the national government to provide temporary emergency shelters for domestic violence survivors. Instead, government policy is to place responsibility on county authorities for establishing, strengthening, and ensuring the sustainability of safe spaces.<sup>58</sup>

Makueni County government in eastern Kenya was the first to establish a shelter and safe house for survivors of GBV and sexual violence in June 2020. However, the shelter has only 14 beds to serve the county's women and girl population of about half a million.<sup>59</sup> Survivors are permitted to stay at the shelter for only an initial two-week period, and must first prove that they and, if relevant, their children, do not have alternative accommodation. This is a potential obstacle as the definition of what qualifies as alternative accommodation is unclear and at the discretion of shelter operators. Several counties are in the process of setting up shelters and safe houses or are putting in place policies to support the establishment of shelters. For example, Christine Sadia, gender and

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medical services and psychosocial support, as well as primary prevention through awareness raising and trainings. For more information, please visit: <http://gvrc.or.ke/>.

<sup>56</sup> Nita Bhalla, "Calls for Women's Shelters as Kenya Reports Covid-19 Surge in Violence." *Thomson Reuters Foundation News*, April 23, 2021, <https://news.trust.org/item/20210423132124-7265z> (accessed September 7, 2021). The Ministry of Public Service and Gender said it had established shelters in 5 counties and that there were 36 shelters run by nonprofit organization across the country. There is not clear estimate of the number of shelters in country.

<sup>57</sup> Neetu John, Charlotte Roy, Mary Mwangi, Neha Raval, and Terry McGovern, "COVID-19 and gender-based violence (GBV): hard-to-reach women and girls, services, and programmes in Kenya," *Gender & Development* 29, no. 1 (2021): pp. 55-71, doi:10.1080/13552074.2021.1885219, p. 66.

<sup>58</sup> UN Women Kenya, "Strengthening Safe and Protective Spaces for Women, Girls, and Children in Kenya: Safe Spaces Models and Applicability Manual," 2019, <https://gender.go.ke/wp-content/uploads/2019/12/Safe-Spaces-Applicability-Manual.pdf> (accessed April 2, 2021).

<sup>59</sup> Population based on 2019 estimates, see "County Statistical Abstract: Makueni County 2020," Government of Makueni County, <https://www.knbs.or.ke/?wpdmpro=makueni-county-statistical-abstract> (accessed July 20, 2021), p. 6, table 3.1; Human Rights Watch teleconference interviews with Wairimu Munyinyi-Wahome, executive director, Kwamboka Oseko, legal officer, and Fridah Wawira, programme officer, Coalition on Violence Against Women (COVAW), August 31, 2020; Wangechi Wachira Leah, executive director, Center for Rights Education and Awareness (CREAW), September 7 and 8, 2020; and Wanjiru Kamanda, deputy executive director and head of programmes, FIDA-Kenya, September 14, 2020; See Moraa Obiria, "Makueni launches safe house for GBV survivors," *Nation*, June 24, 2020, <https://nation.africa/kenya/gender/makueni-launches-safe-house-for-gbv-survivors-766614#:~:text=Makueni%20County%20has%20launched%20a,of%20female%20and%20male%20wings> (accessed October 27, 2020); Maarifa Center, "Makueni County Has Established A Fully Furnished GBV Safe House for GBV Survivors," July 15, 2020, <https://maarifa.cog.go.ke/185/makueni-county-has-established-fully-furnished-gbv-safe-house-for-survivors/> (accessed October 27, 2020).

public health expert and chair of the Kenya Medical Women’s Association, said that Kisumu and Machakos Counties are in the process of setting up safe houses that would provide comprehensive services, including rehabilitative counseling, and shelter.<sup>60</sup> She added that Busia County is currently developing a policy to address GBV and includes the establishment of a safe house and shelter for GBV survivors.<sup>61</sup>

Social and economic support services, including shelters are particularly important for women in difficult financial situations and those living in poverty. Women who are income-constrained have no or little savings and cannot easily cope with quickly renting a room to escape abuse.

In May 2020, the African Union (AU) issued guidelines for states regarding gender-responsive interventions in response to Covid-19. The guidelines urge states to prioritize establishing or strengthening existing emergency shelters, safe houses and one-stop centers for survivors of GBV.<sup>62</sup> The AU recommends that member states “... designate domestic violence shelters as essential services and increasing resources to all providers ... Expand the capacity of shelters for victims of violence by re-purposing other spaces, such as empty hotels, or education institutions, to accommodate quarantine needs, and integrating considerations of accessibility for all.”<sup>63</sup> In a welcome move one year after the onset of the Covid-19 pandemic, the Kenyan government has now included safe houses, shelters, and other GBV service providers in the list of essential services and service providers exempted from the March 2021 lockdown and curfew restrictions.<sup>64</sup>

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<sup>60</sup> Human Rights Watch teleconference interview with Christine Sadia, Gender and Public Health Advisor for Kenya’s State Department for Gender Affairs, and chair of the Kenyan Medical Women’s Association, September 14, 2020.

<sup>61</sup> Ibid.

<sup>62</sup> AU, “Framework Document on the Impact of Covid-19 on Gender Equality and Women’s Empowerment: African Union Guidelines on Gender Responsive Responses to Covid-19”, May 2020, [https://au.int/sites/default/files/documents/38617-doc-gewe\\_and\\_covid\\_19\\_eng.pdf](https://au.int/sites/default/files/documents/38617-doc-gewe_and_covid_19_eng.pdf) (accessed March 11, 2021); OHCHR and AU WGDD jointly developed a guidance on the possible actions African States could take, in accordance with their human rights obligations, to avoid discrimination against women and girls in their responses to COVID-19. The guidance contextualizes the issue to the lived experiences of African women, focusing on the specificities and groups of women in Africa. OHCHR and AU, “7 Possible Actions and Women’s Rights and Covid-19,” 2020, <https://www.ohchr.org/Documents/Issues/Women/7ActionsFinal.pdf> (accessed March 11, 2021). United Nations Entity for Gender Equality and the Empowerment of Women

<sup>63</sup> African Union Commission - Women, Gender and Development Directorate (AUC-WGDD) et al., “Gender-Based Violence in Africa During the Covid-19 Pandemic; Policy Paper,” December 2020, [https://au.int/sites/default/files/documents/39878-doc-final-final-policy\\_paper-\\_gbv\\_in\\_africa\\_during\\_covid-19\\_pandemic.pdf](https://au.int/sites/default/files/documents/39878-doc-final-final-policy_paper-_gbv_in_africa_during_covid-19_pandemic.pdf) (accessed March 11, 2021).

<sup>64</sup> Moraa Obiria, “Kenya: State Now Lists SGBV Shelters as Essential Services,” *The Nation*, April 20, 2021, <https://nation.africa/kenya/gender/state-now-lists-sgbv-shelters-as-essential-service-3369056> (accessed September 9, 2021).

NGOs operate most of the current limited number of safe houses and shelters in the country.<sup>65</sup> NGO representatives interviewed by Human Rights Watch, including the Centre for Rights Education and Awareness (CREAW) and the Federation of Women Lawyers Kenya (FIDA-Kenya), have been referring survivors of GBV to existing private shelters and safe houses. These private spaces, including churches and individuals' homes, have been providing crucial protection, support, and assistance to GBV survivors during the pandemic with minimal financial support, if any, from the government. However, these crucial services are far from comprehensive, and staff and volunteers who run them might lack the necessary training and resources to adequately assist survivors.

Gladys, a community activist in Narok County, told Human Rights Watch that she has been providing shelter in her own home, supporting three girls in crisis: an 8-year-old girl who had been raped by her father; a 16-year-old girl who fled her home because she was about to be forced to undergo FGM; and another 16-year-old girl who fled her home because she was about to be forced to marry.<sup>66</sup> She said she could not accommodate a 17-year-old girl, who fled her home after her father violently beat her for refusing to marry, because the girl was HIV positive and Gladys feared the girl could accidentally transmit the virus to her own children. She referred the girl to another community activist who agreed to take her in. She told Human Rights Watch that in the case of the 8-year-old rape survivor, Nadia, it was the police who directed her to take her in. Significantly the police did not make any provisions for financial or material support for her care, despite the difficulties it imposed on her and her family. Gladys said that she relies on contributions from other NGOs and churches to enable her to care for the girls that seek refuge with her.<sup>67</sup> The only assistance she has received from government sources were two voluntary ad hoc donations. In one case the local Member of the County Assembly donated KES 1,000 (approximately \$10) to buy clothes for Nadia, and the local ward administrator donated a kilogram of sugar, which she greatly appreciated.<sup>68</sup>

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<sup>65</sup> Nita Bhalla, "Calls for Women's Shelters as Kenya Reports Covid-19 Surge in Violence." April 23, 2021. <https://news.trust.org/item/20210423132124-726sz>. The Ministry of Public Service and Gender said it had established shelters in 5 counties and that there were 36 shelters run by nonprofit organization across the country. There is not clear estimate of the number of shelters in country.

<sup>66</sup> Human Rights Watch telephone interview with Gladys, community activist, Narok County, September 26, 2020.

<sup>67</sup> Ibid.

<sup>68</sup> Ibid.

It is deeply concerning that authorities, including law enforcement, rely on the willingness and ability of private individuals to provide shelter, outside of any apparent formal framework. It also raises serious issues relating to child protection including what measures are in place for medium to long-term support for the girls if the individual can no longer take care of them.

Magdalene, a 22-year-old domestic violence survivor, told Human Rights Watch that her husband evicted her and their 3-year-old daughter, who has physical and psychosocial disabilities, from their home during the Covid-19 pandemic.<sup>69</sup> She said a neighbor took them in, then they went to live with her cousin, and later for about three months they lived in a room at her church where musical instruments were stored.

Other survivors were able to access assistance through NGOs. Fatima, a survivor, told Human Rights Watch that the NGO CREAW immediately sent a car to pick her and her children up when she told them they were in danger from her husband who had beaten her and one child and had threatened to kill her in front of the children.<sup>70</sup> CREAW took them to a privately-run shelter in Karen, Nairobi where they stayed there for about two months. They later returned home after a local imam intervened and Fatima's husband promised never to beat her again.<sup>71</sup>

For some survivors, lack of access to free shelter and long-term support forces them to return to or continue living with the perpetrator, risking more abuse. All of the domestic violence survivors Human Rights Watch interviewed said they needed to be in a safe place first before they could report the abuse to police or seek prosecution of their abuser because they feared worsening the abuse.<sup>72</sup> One survivor, Charlotte, said she feared reporting her husband to the police while she continued to live with him because she thought he would retaliate with even more violence.<sup>73</sup> Fatima, who had been helped by CREAW, told Human Rights Watch: "Women cannot pursue justice if there are no safe houses. Without a safe place your [abuser] can follow you and even kill you."<sup>74</sup>

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<sup>69</sup> Human Rights Watch telephone interview with Magdalene A., Nairobi County, October 5, 2020.

<sup>70</sup> Human Rights Watch telephone interview with Fatima A., Nairobi County, October 7, 2020.

<sup>71</sup> Ibid.

<sup>72</sup> Human Rights Watch telephone interviews with Charlotte, Nairobi County, October 3, 2020; and Fatima A., Nairobi County, October 7, 2020.

<sup>73</sup> Human Rights Watch telephone interviews with Charlotte, Nairobi County, October 3, 2020.

<sup>74</sup> Human Rights Watch telephone interview with Fatima A., Nairobi County, October 7, 2020.

In the absence of adequate numbers of accessible, quality government shelter beds, it is all the more important the government increases support to NGOs and community members who are caring for survivors of GBV, including covering the financial costs they incur.

Kenya is a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the committee that monitors compliance with CEDAW (CEDAW Committee), has advised governments that their obligations include not only adopting laws on domestic violence, but also the training of officials, such as judicial and law enforcement personnel, to properly enforce them and the provision of services to protect and support survivors.<sup>75</sup> The committee has explicitly noted governments' responsibility to establish and support services for survivors in rural or isolated areas.<sup>76</sup>

## Access to Health Services, including Psychosocial Care

The government should ensure that people like me who have survived domestic violence receive counseling. We should have people to speak to.

—Emma A., domestic violence survivor

Survivors of any type of GBV, including children, should have access to free physical and mental health services, and survivors of rape may require specific health-related interventions and mental health support. The Kenyan government failed to ensure survivors of GBV across Kenya had access to appropriate health care during the Covid-19 pandemic.

Kenya's Ministry of Health has issued National Guidelines on Management of Sexual Violence in Kenya that define comprehensive post-rape care as management of physical injuries, provision of emergency medication to reduce chances of contracting sexually transmitted infections including HIV, and provision of emergency contraception.<sup>77</sup> The guidelines also require provision of psychosocial support and legal assistance to

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<sup>75</sup> CEDAW Committee, General Recommendations No. 19, Violence Against Women (1992), para. 24(b); and No. 35, on gender-based violence against women, updating general recommendation No. 19, U.N. Doc CEDAW/C/GC/35 (2017).

<sup>76</sup> CEDAW Committee, General Recommendations No. 19, Violence Against Women (1992), paras. 24(k), 24(o).

<sup>77</sup> Ministry of Health, "National Guidelines on Management of Sexual Violence in Kenya," 2014, [https://www.law.berkeley.edu/wp-content/uploads/2015/10/Kenya\\_Natl-Guidelines-on-Mgmt-of-Sexual-Violence\\_3rd-Edition\\_2014.pdf](https://www.law.berkeley.edu/wp-content/uploads/2015/10/Kenya_Natl-Guidelines-on-Mgmt-of-Sexual-Violence_3rd-Edition_2014.pdf) (accessed April 2, 2021), p. vii.



survivors, and specify that survivors of rape should receive post-rape care services, including: a full-forensic medical examination and collection of medical forensic evidence; provision of medication, including post-exposure prophylaxis (PEP), sexually transmitted infections prophylaxis (STI prophylaxis), and emergency contraception; emergency and follow-up counseling and psychosocial support services; and filling out and stamping a Post Rape Care Form (PRC Form) and a Police P3 Medical Examination Form (P3 Form).<sup>78</sup>

Government guidelines also stipulate that the response to sexual violence, including in times of crisis, should include referral to “social services, psychiatrists and other medical specialists, legal services, the criminal justice system and shelters.”<sup>79</sup> According to the guidelines, “Police should encourage and assist anyone presenting at the police station following rape/sexual violence, to attend the nearest health facility as soon as possible.”<sup>80</sup>

### *Health Service Fees*

Some survivors Human Rights Watch interviewed said that they were charged for medical services provided to them at government health facilities, at locations across the country.<sup>81</sup> Public hospitals charge a nominal fee for health services, however, government guidelines require that services are provided free of charge for survivors.<sup>82</sup> The parents and temporary carer of three girls ages 8, 13, and 14, who are survivors of sexual violence told Human Rights Watch that they were not charged fees to access most of these services from government facilities located in Kiambu and Narok Counties.<sup>83</sup> However, four other survivors, including two survivors of sexual violence, reported that they were charged a fee when they received treatment at a government hospital. This is a breach of the Kenyan guidelines discussed above.

Gladys, the temporary carer of Nadia, an 8-year-old girl who was raped by her father, told Human Rights Watch that on several occasions she had no choice but to use her own

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<sup>78</sup> Ibid., p. 50.

<sup>79</sup> Ministry Of Health, National Guidelines on Management of Sexual Violence in Kenya, p. 27.

<sup>80</sup> Ibid., p. 17.

<sup>81</sup> Human Rights Watch has also documented gaps in the provision of these services in earlier research. See Human Rights Watch, *“They Were Men in Uniform”: Sexual Violence against Women and Girls in Kenya’s 2017 Elections*.

<sup>82</sup> Ministry of Health, National Guidelines on Management of Sexual Violence in Kenya, p. vii.

<sup>83</sup> Human Rights Watch telephone interviews with Theodore, Narok County, October 4, and November 3, 2020; Jane and Saul, Kiambu County, various dates in August, September, and October 2020; and Gladys, community activist, Narok County, September 26, 2020.

money to purchase medication for Nadia during follow-up visits to a government hospital in Narok County.<sup>84</sup>

The parents of Laura, a 15-year-old girl who was raped by a neighbor, told Human Rights Watch that they were not charged for most of the services, but had to pay out of pocket to print the post rape-care form because the government hospital in Kiambu County ran out of post rape care booklets and forms.<sup>85</sup> They told Human Rights Watch that they paid KES 500 (approximately \$5) to print out the three required copies of the post-rape care form, at a cybercafé located a long walk from the government hospital. It also raised serious concerns about confidentiality.<sup>86</sup> They were also asked to pay KES 2,000 (\$20) for a Police P3 Medical Examination Form to be filled out and stamped by a hospital official. This is contrary to government guidelines that no fees should be charged by government institutions for survivors of sexual violence to access post-rape care services, including the completion and stamping of the P3 and post-rape care forms.<sup>87</sup> In this case a worker at the government hospital who knew the survivor’s sister intervened and waived the fee, however the demand for a fee was improper in the first place.<sup>88</sup>

Leticia, a domestic violence survivor, said she was charged for services when she sought medical attention at Kisumu General District Hospital after her husband attacked her with a *panga* (machete).<sup>89</sup>

Amelia, a domestic violence survivor said that Jaramogi Oginga Odinga and Referral Hospital, a government teaching and referral hospital in Kisumu County, referred her to a private healthcare facility for follow-up gynecological care because the government facility did not have a gynecologist available. She did not go to the private gynecologist because she could not afford to pay the consultation fees.<sup>90</sup>

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<sup>84</sup> Ibid.

<sup>85</sup> Human Rights Watch telephone interview with Jane and Saul, Kiambu County, various dates in August, September, and October 2020.

<sup>86</sup> Good practice requires respecting confidentiality in all procedures involving children.

<sup>87</sup> Ministry Of Health, National Guidelines on Management of Sexual Violence in Kenya, pp. xii and 63, see “Annex 8: P3 Form,” which states “This P3 Form is free of charge.”

<sup>88</sup> This case also raises confidentiality concerns.

<sup>89</sup> Human Rights Watch telephone interview with Leticia K., Kisumu County, October 9, 2020.

<sup>90</sup> Human Rights Watch telephone interview with Amelia A., Kisumu County, October 8, 2020.

Charlotte told Human Rights Watch that after her husband attacked her with a metal rod and broke her leg, she received treatment from Mbagathi sub-county Hospital, a government facility in Nairobi and was charged. She said her mother paid her medical bills.<sup>91</sup>

### *Facilities Understaffed, Under-Resourced, or Closed*

Some government hospitals and healthcare facilities are understaffed and lack resources. This was exacerbated during the pandemic when staffing shortages became more severe, undermining the capacity of government hospitals to provide comprehensive medical services to survivors.<sup>92</sup> Others suspended services after some of their health-care providers tested positive for Covid-19, interrupting service provision, including to GBV survivors.<sup>93</sup> For example, a GBV advocate, said that when she accompanied a domestic violence survivor to a hospital to seek medical assistance, they were turned away because the hospital was temporarily closed because several health care workers had tested positive for Covid-19 at the facility.<sup>94</sup>

Although comprehensive services for rape survivors and other survivors of gender-based violence are nominally free, Kenyan health facilities—especially outside urban areas, are underfunded and overstretched.<sup>95</sup> NGOs working with survivors of GBV told Human Rights Watch that government facilities were not adequately resourced to cater to the increase in reported GBV incidences across the country.<sup>96</sup>

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<sup>91</sup> Human Rights Watch telephone interview with Charlotte, Nairobi County, October 3, 2020.

<sup>92</sup> Abdi Latif Dahir, “Kenya’s Health Workers, Unprotected and Falling Ill, Walk Off Job,” *New York Times*, August 21, 2020, <https://www.nytimes.com/2020/08/21/world/africa/kenya-doctors-strike-coronavirus.html> (accessed March 15, 2021).

<sup>93</sup> Magdaline Saya, “COVID-19 Forces Closure of Four City Health Centres as 210 Workers Infected,” *The Star*, <https://www.the-star.co.ke/news/2020-08-07-covid-19-forces-closure-of-four-city-health-centres-as-210-workers-infected/> (accessed June 7, 2021).

<sup>94</sup> Human Rights Watch teleconference interview with Jackie Mutere, executive director, Grace Agenda, August 31, 2020.

<sup>95</sup> Health Policy Plus, *Is Kenya Allocating Enough Funds for Healthcare? Findings and Recommendations from National and County Budget Analyses*. Policy Brief. February 2021. [http://www.healthpolicyplus.com/ns/pubs/18441-18879\\_KenyaNCBAbrief.pdf](http://www.healthpolicyplus.com/ns/pubs/18441-18879_KenyaNCBAbrief.pdf) (accessed July 23, 2021); Sella Oneko, *Health Budgets: Will the Pandemic Change Kenya’s Priorities?* Deutsche Welle, June 11, 2020. <https://www.dw.com/en/health-budgets-will-the-pandemic-change-kenyas-priorities/a-53779046> (accessed July 23, 2021).

<sup>96</sup> Human Rights Watch teleconference interviews with Wairimu Munyinyi-Wahome, executive director, Kwanboka Oseko, legal officer, and Fridah Wawira, programme officer, COVAW, August 31, 2020; Wangechi Wachira Leah, executive director, CREAM, September 7 and 8, 2020; and Wanjiru Kamanda, deputy executive director and head of programmes, FIDA-Kenya, September 14, 2020; and Tina Alai, August 28 and 29, 2020.

In recent years, the government has established “One Stop Centers” (OSCs) to provide integrated, multi-disciplinary services in a single physical location, usually a health facility, to address sexual and GBV in Kenya.<sup>97</sup> However, the existing OSCs are inadequate and most do not offer the full range of medico-legal and psychosocial services to address the needs of sexual and gender-based violence survivors holistically.<sup>98</sup> Most OSCs housed in hospitals have poor links to the legal and justice system, while the reverse is true for centers in non-health facilities.<sup>99</sup> The OSCs with greater comprehensive health and counseling services for GBV are mainly in urban centers meaning survivors in rural and remote areas have less and often little access to such services. Most survivors are referred to Nairobi Women’s Hospital or one of its Gender Violence Recovery Centers (GVRCs) across the country.<sup>100</sup> However if a government health facility in a region does not have a OSC or GVRC, GBV survivors must access health care services through emergency outpatient clinics with health personnel who are not specifically trained to handle survivors of sexual and GBV. Christine Sadia, Gender and Public Health Advisor for Kenya’s State Department for Gender Affairs, and chair of the Kenyan Medical Women’s Association, said that these outpatient clinics in government hospitals are not conducive for GBV survivors to access comprehensive services because they typically consist of open-plan spaces offering little privacy and confidentiality.<sup>101</sup> In addition, media reports and academic research indicated that during the Covid-19 lockdown, government health facilities had run out of reproductive health supplies, including emergency contraception, which should be provided to survivors of sexual violence.<sup>102</sup>

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<sup>97</sup> The services provided, though quality and extent of services offered may vary widely, include medical treatment, psychosocial support, police, and justice sector responses.

<sup>98</sup> Jill Keesbury, W. Onyango-Ouma, Chi-Chi Undie, Catherine Maternowska, Frederick Mugisha, Emmy Kageha, and Ian Askew, *A Review and Evaluation of Multi-Sectoral Response Services (“One-Stop Centers”) for Gender-Based Violence in Kenya and Zambia* (Nairobi: Population Council, 2012), [https://www.endvawnow.org/uploads/browser/files/popcouncil\\_one\\_stops.pdf](https://www.endvawnow.org/uploads/browser/files/popcouncil_one_stops.pdf) (accessed July 23, 2021).

<sup>99</sup> *Ibid.*, p. viii.

<sup>100</sup> According to the Gender Violence Recovery Center (GVRC) website it has a presence in 27 out of 47 counties and identified 8 GVRC, 2 in Nairobi, 2 in Nakuru, 1 in Mombasa, Kitengela, Ongata Rongai, and Naivasha.

<sup>101</sup> Human Rights Watch teleconference interview with Christine Sadia, Gender and Public Health Advisor for Kenya’s State Department for Gender Affairs, and chair of the Kenyan Medical Women’s Association, September 14, 2020.

<sup>102</sup> Neha Wadekar, “The Coronavirus is Cutting Off Africa’s Abortion Access,” *Foreign Policy*, May 4, 2020, <https://foreignpolicy.com/2020/05/04/coronavirus-africa-abortion-access/> (accessed March 15, 2020); Performance Monitoring for Action (PMA), “Gender and Covid-19: Access to Health and Contraception,” November 2020, [https://www.pmadata.org/sites/default/files/data\\_product\\_results/PMA%20Gender%20COVID%20Access%20Health%20Contraception%202020\\_o.pdf](https://www.pmadata.org/sites/default/files/data_product_results/PMA%20Gender%20COVID%20Access%20Health%20Contraception%202020_o.pdf) (accessed March 17, 2021), pp. 2-3; Susan Gichuna et al., “Access to Healthcare in a time of COVID-19: Sex Workers in Crisis in Nairobi, Kenya,” *Global Public Health* 15 (2020): p. 10, doi:10.1080/17441692.2020.1810298.

Only a minority of survivors that Human Rights Watch interviewed said they were able to access counseling from a government agency. Most survivors Human Rights Watch interviewed who were able to receive counseling and psychosocial support during the Covid-19 pandemic period did so through NGOs that did not receive support from the government. While the government did acknowledge an increase in reported cases of GBV it did not take measures to increase survivors' access to medical and mental health support.

### *Lack of Mental Health Services*

The parents of Laura, a 15-year-old rape survivor, told Human Rights Watch that Laura was able to access counseling through a government hospital in Kiambu County, but received only three counseling sessions, the maximum number of sessions usually provided to survivors of sexual violence by government health institutions.<sup>103</sup> Emma, a domestic violence survivor, told Human Rights Watch that she did not seek medical or mental health services because she was not aware that these services were available and instead was receiving counseling support from a friend who is a community health volunteer employed by the government.<sup>104</sup> However, this volunteer is not adequately trained to provide GBV counseling and is only doing this in her capacity as a friend. Theodore, the parent of 13-year-old Lulu, a survivor of rape, told Human Rights Watch that his daughter did not receive any counseling from either of the two government health facilities where she received treatment and other post-rape services, including emergency contraception and HIV prophylaxis in Narok County.<sup>105</sup>

### **Limited Access to Legal Assistance**

Survivors of GBV often need legal assistance to help them get law enforcement to take their case seriously, to seek orders of protection, or to seek compensation, alimony, child support or other relief from a perpetrator, and overall, to navigate the justice system—criminal and civil. Some of the survivors interviewed for this report received legal assistance from NGOs, one had to travel to another town and the headquarters of NGOs to

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<sup>103</sup> Human Rights Watch telephone interview with Jane and Saul, Kiambu County, various dates in August, September, and October 2020.

<sup>104</sup> Human Rights Watch telephone interview with Emma A., Kisumu County, October 8 and 9, 2020.

<sup>105</sup> Human Rights Watch telephone interview with Theodore, Narok County, October 4 and November 3, 2020

access pro bono lawyers, and one was able to access pro bono lawyers but later lost access to these services.

The government did not recognize and categorize legal services for victims of crime including GBV as essential during the initial pandemic lockdown, and between March 27 and April 22, 2020, lawyers were bound by the national nightly curfew and county lockdowns, affecting business hours and impeding the provision of legal services and assistance to survivors of GBV across the country. The Law Society of Kenya successfully filed a court case to have legal services categorized as essential.<sup>106</sup> Although as a result of the lawsuit lawyers were allowed to operate during usual business hours, some survivors or guardians still said they encountered difficulties accessing virtual court hearings in their case, and most did not have legal representation.

Although Kenya adopted a Legal Aid Act in 2016 the government has yet to fully operationalize it or its constituent National Legal Aid Service. This means survivors of GBV who are indigent and cannot afford to pay for legal services, cannot access legal aid and assistance.<sup>107</sup>

## Poverty and Lack of Financial Assistance as Barriers to Seeking Help

Poverty and a lack of economic resources present one of the largest barriers for people to leave abusive situations and seek help. Human Rights Watch research found that government assistance during the pandemic has been insufficient and has not reached most people in need of support.<sup>108</sup>

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<sup>106</sup> Please see *Law Society of Kenya v. Hillary Mutyambai, Inspector General National Police Service & 4 Others*, High Court of Kenya, Petition No. 120 of 2020 (COVID 025), Judgement, April 16, 2020, <http://kenyalaw.org/caselaw/cases/view/193192/> (accessed February 18, 2021). Also see Carmel Rickard, “Judge Orders Curfew Exemption for Kenya’s Lawyers,” *African Lii*, April 21, 2020, <https://africanlii.org/article/20200421/judge-orders-curfew-exemption-kenya%E2%80%99s-lawyers> (accessed February 18, 2021).

<sup>107</sup> Human Rights Watch teleconference interviews with Wairimu Munyinyi-Wahome, executive director, Kwanboka Oseko, legal officer, and Fridah Wawira, programme officer, COVAW, August 31, 2020; and Wangechi Wachira Leah, executive director, CREA, September 7 and 8, 2020. Without legal representation at least one survivor said the police forced them into negotiating with alleged abusers to settle out of court, and survivors whose case went to court had difficulties navigating the e-filing procedures and accessing virtual court sessions.

<sup>108</sup> Human Rights Watch, *“We are All Vulnerable Here”: Kenya’s Pandemic Cash Transfer Program Riddled with Irregularities*, July 2021, <https://www.hrw.org/report/2021/07/20/we-are-all-vulnerable-here/kenyas-pandemic-cash-transfer-program-riddled>.

During the pandemic, the government did initiate and expand programs to provide economic support, including employment and financial assistance, to adults who qualify.<sup>109</sup> However, these programs did not necessarily reach or include survivors of GBV.<sup>110</sup> During the Covid-19 pandemic, the government expanded its limited cash transfer program to include cash transfers to “COVID-19 vulnerable and affected persons.”<sup>111</sup> Though the government became aware of and acknowledged the increased GBV during the lockdowns, it did not make financial assistance to survivors part of the response, and the eligibility criteria of the cash transfer program did not include GBV survivors. Human Rights Watch research found that in general government support was largely inadequate both in terms of the total number of people it targeted, the duration of support and amounts provided.<sup>112</sup>

Three survivors in Kisumu received financial support through the Kazi Mtaani Programme, a national government-run economic recovery initiative, or through the national cash transfer program. But most of the survivors and families Human Rights Watch interviewed were not receiving assistance through any Covid-19 related government assistance programs. Some survivors cited restrictions on the number of household members who could be recipients of some assistance programs, lack of adequate and transparently communicated information on completing applications for assistance, and a lack of awareness on how to apply for assistance, as reasons they had not received assistance.

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<sup>109</sup> Plounne Oyunge and Milka Chebii, “Kenya enhances its cash transfer programmes in response to the COVID-19 pandemic,” *fsd Kenya* August 24, 2020, <https://www.fsdkenya.org/blog/kenya-enhances-its-cash-transfer-programmes-in-response-to-the-covid-19-pandemic/> (accessed February 21, 2021); United Nations World Food Programme, “WFP supplements Government support to poor families in Kenya hit by COVID-19,” July 2, 2020, <https://www.wfp.org/news/wfp-supplements-government-support-poor-families-kenya-hit-covid-19> (accessed February 22, 2021); Sara Jerving, “Cash transfers lead the social assistance response to COVID-19,” *Devex*, April 14, 2020, <https://www.devex.com/news/cash-transfers-lead-the-social-assistance-response-to-covid-19-96949> (accessed February 22, 2021); Victor Rateng, “Improving Kenyans’ Access to Cash Transfers for Covid-19 Response,” *MITGOV/LAB*, August 2020, <https://mitgovlab.org/updates/improving-kenyans-access-to-cash-transfers-for-covid-19-response/> (accessed February 18, 2021).

<sup>110</sup> The National Safety Net Programme builds on existing but limited cash transfer programs which had been put in place by the government of Kenya from 2004. The current NSNP framework pre-Covid-19 was established to provide a common operating framework for the government’s cash transfer programs which target certain vulnerable populations and groups, including persons with severe disabilities, older persons, orphans, and vulnerable children (OVC) and persons facing hunger. The government introduced the ‘COVID-19 cash transfer programme’ to benefit vulnerable households which had been especially affected by the economic downturn experienced during the pandemic period, the adverse economic effects of Covid-19 containment measures.

<sup>111</sup> According to government sources, approximately 669,000 vulnerable households across the country would receive cash transfers of KES 4,000 per month (approximately \$40 per month), with KES 1,000 (approximately \$10) being transferred to the households every week during the earlier months of the Covid-19 pandemic.

<sup>112</sup> Human Rights Watch, “*We are All Vulnerable Here*”: *Kenya’s Pandemic Cash Transfer Program Riddled with Irregularities*.

Magdalene A. told Human Rights Watch what happened when she applied for government assistance:

During Covid-19, I wrote my name down in my area, but did not get any assistance. It was a man who came around my area asking for people's names, ID numbers, and telephone numbers. He was directing us to get assistance. I have not heard back since registering myself...I don't remember the name of the man. On the day I registered I found people were lining up at No. 10 in Mathare area and I joined the line. I was in a hurry; my child was sick. I did not bother looking at any badge or identification for any of the "government" officials. My friend told me that if I register, I will get assistance including food from the government. I never received any of this assistance.<sup>113</sup>

Leticia, another domestic violence survivor said that both she and her husband started working with Kazi Mtaani, a national economic recovery initiative, in April or May 2020. However, when the government later changed the system of employing people from the same household, her husband told her to stop working for Kazi Mtaani so he could maintain his employment.<sup>114</sup>

The majority of survivors Human Rights Watch interviewed said that they did not receive any support from the government, and what support they had received had come from relatives, neighbors, well-wishers, churches, and some NGOs.

For women, girls, and their families, surviving GBV is only the beginning. They must deal with the psychological effects of trauma, legal issues, and the financial challenges of caring for themselves and their dependents while pursuing justice in court. Lack of access to financial assistance is a barrier to justice for women living in or near poverty who are survivors of GBV. Fatima, a domestic violence survivor and mother of four 1–13-year-old aged children, two of whom have disabilities, told Human Rights Watch that she is in crisis as she tries to provide care, housing, and food for her children.<sup>115</sup> She has no job or source

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<sup>113</sup> Human Rights Watch telephone interview with Magdalene A., Nairobi County, October 5, 2020.

<sup>114</sup> Human Rights Watch telephone interview with Leticia K., Kisumu County, October 9, 2020.

<sup>115</sup> Human Rights Watch telephone interview with Fatima A., Nairobi County, October 7, 2020.



of income because she has to care for the children. She said she is forced to rely heavily on her abusive husband to provide financial support and can therefore not afford to anger him by going to court to seek justice for or protection from his abuse.

Seeking justice is costly and demands resources that many survivors do not have. The justice process requires sustained follow-up such as frequent telephone calls, and transportation to government offices. Some survivors and their families said they have to cover the transportation costs involved in ensuring the survivor and witnesses attend and participate in justice processes during the economic downturn resulting from the Covid-19 pandemic.<sup>116</sup> For example, Theodore, the parent of a child survivor, told Human Rights Watch that he struggles to pay for all the expenses tied to reporting the rape and seeking justice for his daughter on his limited income as a primary school teacher in Narok County. Theodore said he had to pay for transportation fees for his daughter, the survivor, and himself to travel about 15 kilometers to fill in a P3 Form at the local district hospital.<sup>117</sup> He said he also needs to cover transportation expenses for him, the survivor, and other witnesses to attend ongoing and upcoming court hearings.

In August 2020, the African Commission on Human and Peoples' Rights (ACHPR) called on states to “prioritize women in the development and distribution of financial and other socio-economic relief measures for mitigating the economic impact of Covid-19 ...”<sup>118</sup> Kenyan authorities should provide greater financial support to all people in need, and ensure free and unfettered access to medical forms, health care, and legal aid services to all survivors of GBV.

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<sup>116</sup> Human Rights Watch telephone interviews with Grace M., Machakos County, September 18, 2020; and Theodore, Narok County, October 4, and November 3, 2020.

<sup>117</sup> Human Rights Watch telephone interview with Theodore, Narok County, October 4, and November 3, 2020

<sup>118</sup> ACHPR, “449 Resolution on Human and Peoples' Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts,” ACHPR/Res. 449 (LXVI), 2020, <https://www.achpr.org/sessions/resolutions?id=480> (accessed September 9, 2021), art. 9(g).

### III. Ineffective Law Enforcement Response

#### Police

The police response to survivors of GBV is inadequate, characterized by a lack of resources, inadequate training, corruption, mishandling of and interference in cases, lack of coordination, and a failure to support survivors.<sup>119</sup> These failings continue in spite of a recent effort to reform the system.

More generally, law enforcement during the pandemic was highly inadequate. Human Rights Watch research found that six people died from police violence during law enforcement operations to enforce Kenya's dusk-to-dawn curfew between March 27 and April 22, 2020.<sup>120</sup>

In August 2020, the government, through the National Police Service, announced plans for POLICARE, a one-stop model which incorporates all critical actors, including the police, healthcare providers, prosecution, and the judiciary, to provide integrated services to GBV survivors, including children, in one location at the county level. As a result of the increase in reported GBV cases during the pandemic, the government accelerated the launch of POLICARE and efforts to operationalize the model.

A co-chair of the POLICARE Technical Working Group, Daniel Wathome, told Human Rights Watch that “[We are] now developing three framework documents to support POLICARE centers; a POLICARE policy; POLICARE strategy; and POLICARE standard operating procedures.”<sup>121</sup> As of publication, there are two POLICARE centers in Kenya, located in

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<sup>119</sup> Protection Against Domestic Violence Act, 2015, art. 6(1 a-b). The Protection Against Domestic Violence Act, 2015 states that police are required to tell survivors about relief measures, including available shelters run by private organizations. Even with limited shelters the police do not routinely refer survivors; In the Ministry of Health's “National Guidelines on Management of Sexual Violence in Kenya,” the guideline stipulates that, “Police should encourage and assist anyone presenting at the police station following rape/sexual violence, to attend the nearest health facility as soon as possible.” See Ministry of Health, “National Guidelines on Management of Sexual Violence in Kenya,” p. 17.

<sup>120</sup> “Kenya: Police Brutality During Curfew,” Human Rights Watch news release, April 22, 2020, <https://www.hrw.org/news/2020/04/22/kenya-police-brutality-during-curfew>.

<sup>121</sup> Human Rights Watch telephone interview with Daniel Wathome, chair, technical working group for development, POLICARE, September 24, 2020.

Nairobi and Makueni counties, with a plan to establish more across the country.<sup>122</sup> At writing, none of the GBV survivors Human Rights Watch interviewed have been able to benefit from the POLICARE initiative.

### *Police Corruption*

The police just take bribes. Even when people are dead, they want a bribe to carry dead bodies. The police and thieves, there is no difference. There are some good ones, but I have not met with a good person.

—Michelle A., survivor of domestic violence

Survivors of GBV seeking help from the police face both demands for bribes and constraints related to lack of resources and infrastructure available to the police. Several survivors Human Rights Watch interviewed said police officers asked them for “monetary facilitation” in exchange for initiating or conducting an investigation into their complaints.

Some told Human Rights Watch that the money they gave the police was either a requested bribe, unofficial payment for services or to cover costs such as fuel for police cars. For example, Grace, a rape survivor, was asked by the female police officer who recorded her police statement to give her “*Chai*” (tea), which is a colloquial term for a bribe in Kenya, as compensation for the assistance she and other police officers who wrote the statement had provided her. Grace said the police said to her, “We have prepared your statement, now buy us ‘chai.’”<sup>123</sup>

Charlotte, a domestic violence survivor, explained: “The police will obviously ask you for money for them to help you. Even though they want to help. They do that. This is not the first time they have asked.”<sup>124</sup> She said police officers at a Nairobi police station requested a monetary bribe when she reported that her husband who abused her, including breaking her leg, had abducted her children. She explained that to the best of her knowledge the police assistance is faster if you provide a bribe, and the speed depends on the size of the

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<sup>122</sup> Kamau Maichuhie, “Kenya: ‘Policare’ Centers, a Beacon of Hope for SGBV Survivors,” *Daily Nation*, December 8, 2020, <https://allafrica.com/stories/202012080514.html> (accessed March 18, 2021); Muturi Mwangi, “Sh9 Million GBV Policare Established in Nanyuki,” *Kenya News Agency*, September 10, 2021, <https://www.kenyanews.go.ke/sh9-million-gbv-policare-established-in-nanyuki/> (accessed September 10, 2021)

<sup>123</sup> Human Rights Watch telephone interview with Grace M., Machakos County, September 18, 2020.

<sup>124</sup> Human Rights Watch telephone interview with Charlotte, Nairobi County, October 3, 2020.

bribe. “When you offer a good amount, you are helped fast. When you remove little money, you are helped slowly.”<sup>125</sup> After two weeks during which officers at one police station took no action, Charlotte reported the abuse at another police station, where she spoke directly with the officer-in-charge of the police station who assigned officers to investigate. The case is ongoing.

Some survivors said police told them they could only arrest a perpetrator if the survivor provided money to fuel the police car.<sup>126</sup> It is not clear in particular instances whether the police sometimes do not actually have the financial resources to fuel the police cars or if individual police officers were seeking bribes from survivors under the guise of needing resources. For example, Charlotte said she had to walk, with a broken leg in a cast, with the police officers investigating her domestic violence complaint to the last location where her husband, her abuser, had been seen because the officers did not have access to a car, and she did not have money to pay for a taxi to transport her and the police officers.<sup>127</sup>

Police corruption impedes investigations and bars access to justice for people in economically precarious situations, including survivors of GBV.

### *Poor Police Resources and Infrastructure Harms Survivors*

As Charlotte’s experience reveals, the under-resourcing of police is a factor that seriously impedes survivors’ access to justice. Similarly, two other survivors interviewed by Human Rights Watch said police officers asked them and their families to purchase paper for them so they could prepare witness statements for the police file.<sup>128</sup>

Police stations also lack adequate physical infrastructure to facilitate dignified treatment of survivors of GBV, exacerbating the harm they have already faced. Most police stations do not have private spaces to conduct interviews with survivors,<sup>129</sup> and this, combined

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<sup>125</sup> Ibid.

<sup>126</sup> Human Rights Watch telephone interview with Amelia A., Kisumu County, October 8, 2020.

<sup>127</sup> Human Rights Watch telephone interview with Charlotte, Nairobi County, October 3, 2020.

<sup>128</sup> Human Rights Watch telephone interviews with Grace, and Olivia, Kajiado County, September 26, 2020.

<sup>129</sup> “Safeguarding Dignity of Sexual Violence Survivors in Kenya,” Trócaire, January 14, 2020, <https://www.trocaire.org/news/safeguarding-dignity-of-sexual-violence-survivors-in-kenya/> (accessed April 21, 2021); World Bank, “Kenya Gender-Based Violence Service Gap Analysis at the County Level,” 2020, <http://documents1.worldbank.org/curated/en/486011588224486592/pdf/Kenya-Gender-Based-Violence-Service-Gap-Analysis-at-the-County-Level.pdf> (accessed April 21, 2021), pp. 30-31.

with disrespectful and unprofessional conduct by the police, can drive survivors away from reporting crimes and put them at further risk.

Grace, a survivor of rape, said while she was reporting the crime to a police officer, other officers listened in and interrupted, interjecting, and providing their opinion about the rape. On another occasion, she was interviewed by police officers in a room where another female rape survivor and that survivor's lawyer were also present.<sup>130</sup> Grace said a police officer read aloud her written statement within the hearing of the other survivor and her lawyer without seeking her consent. While the officer read out Grace's statement, the other survivor's lawyer made unsolicited comments, giving advice to Grace and the police officer. These incidents violated Grace's privacy, undermined her confidence in the police, and aggravated her trauma.<sup>131</sup>

Some police stations have gender desks, a dedicated unit with private offices within police stations where survivors, including child survivors, can report abuse. But these offices are not operational 24 hours a day, 7 days a week, and this can create delays and barriers for survivors. Olivia went to a police station after being badly beaten by her husband.<sup>132</sup> It was a Sunday, and the reporting officer on duty asked her to return to the police station the next day, a Monday, when the gender office would be open.<sup>133</sup>

Most police stations do not have a designated child protection unit.<sup>134</sup> In stations where at least one officer had been designated to handle cases involving children, majority had not received training on handling violence that affect children including early and forced marriage, female genital mutilation, incest, physical, verbal, and sexual abuse. In February 2021, the Judiciary launched various documents on children protection including "standard operating procedures on child protection units" and "policy on a mandatory continuous development program for child protection officers."<sup>135</sup>

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<sup>130</sup> Human Rights Watch telephone interview with Grace M., Machakos County, September 18, 2020.

<sup>131</sup> See section on Police Interference and Mishandling of Cases.

<sup>132</sup> Human Rights Watch telephone interview with Olivia, Kajiado County, September 26, 2020.

<sup>133</sup> Ibid.

<sup>134</sup> US Department of State, *2020 Country Reports on Human Rights Practices, Kenya*, March 30, 2021, <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/kenya/> (accessed July 24, 2021).

<sup>135</sup> "NCAJ Children's Taskforce Launches Various Documents on Children Protection," Judiciary of Kenya news release, February 18, 2021, <https://www.judiciary.go.ke/ncaj-childrens-taskforce-launches-various-documents-on-children-protection/> (accessed July 24, 2021).

### *Police Interference in and Mishandling of Cases*

Police officers sometimes seem to actively interfere with cases. Grace, a rape survivor, told Human Rights Watch that a police officer refused to let her make copies of the P3 medical examination form and other medical documentation that she had provided to the police.<sup>136</sup> She said the police refused to give her copies of these documents because they were forcing her to negotiate a monetary settlement with her abuser (a former police officer), facilitated by the police. Grace told Human Rights Watch that the police discouraged her from pursuing a criminal case by telling her that the case could go either way and that she could lose in court. The police told her that normal criminal cases take up to five years in the court system and her case could take longer owing to the closures and delays which were affecting government services during the ongoing Covid-19 pandemic. This discouraged her from pursuing the criminal case, especially since she lacked the financial means to make multiple trips to the court premises which was far away.<sup>137</sup>

The case of Laura also highlights possible police interference and negligence. Laura was 14 when she was raped allegedly by her neighbor, the husband of a police officer. Laura's guardians requested copies of the P3 form, post-rape care form, other medical examination reports, and evidence provided to the police, but they were refused copies of these documents. Laura's parents took the matter to the investigating officer who intervened and permitted the family to make copies of the documents.<sup>138</sup> Laura's older sister said she faced intimidation and harassment by a police officer, at a police station where the alleged rapist's wife works, and believes that this was because the police were trying to protect the alleged perpetrator.<sup>139</sup> Furthermore, the police informed the family that crucial medical forensic evidence collected from Laura was lost or destroyed. The police showed little interest in investigating how the evidence was lost or to try to find it. After pro bono lawyers affiliated to the Federation of Women Lawyers Kenya (FIDA-Kenya) intervened, investigations are now being conducted into the loss of forensic evidence. Laura's case is before the court but is still ongoing—even though the ODPP announced that GBV cases involving children would be expedited.

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<sup>136</sup> Human Rights Watch telephone interview with Grace M., Machakos County, September 18, 2020.

<sup>137</sup> Ibid.

<sup>138</sup> Human Rights Watch physical and telephone interviews with Jane and Saul, Kiambu County, various dates in August, September, and October 2020.

<sup>139</sup> Human Rights Watch telephone interview with Anita, Kiambu County, various dates in August, September, and October 2020.

Police often fail to diligently collect and manage physical, medical, and forensic evidence. This impacts the effectiveness of judicial procedures and can adversely affect the outcome of cases. Grace said that when she went to the police to report that she had been raped she brought the clothes she had been wearing during the rape, which likely contained critical forensic evidence.<sup>140</sup> The police officers refused to accept, record, and store the clothing as evidence. She said the police officers asked her to return with the clothes the following week and did not provide any instructions on how to preserve or store them. The police finally accepted the clothing as evidence 11 days after the rape had occurred and 10 days after Grace reported the crime. This delay could have resulted in forensic evidence becoming compromised or destroyed or gaps in the chain of custody making any evidence from the clothing more susceptible to being excluded or discredited in court.<sup>141</sup>

Generally, aside from normal delays in sample collection by the police and in the transfer of samples to the national government laboratory pre-Covid pandemic, delays have stretched over longer periods as the police force has been enforcing Covid-19 response measures.<sup>142</sup>

Some survivors faced discriminatory attitudes from police and pressure to drop cases or go away without reporting them. Five survivors told Human Rights Watch that police officers discouraged them from following up on prosecution of their alleged abusers citing traditional beliefs and custom as justifications. Several survivors and guardians of survivors told Human Rights Watch that police officers encouraged them to participate in out-of-court negotiations and facilitated extra-judicial settlement arrangements in criminal GBV cases which should have otherwise been handled within the formal justice system.

Olivia, a domestic violence survivor, said when she reported her husband's physical violence to the police, several police officers discouraged her from writing a statement and following up on the matter, in spite of the fact that she arrived at the police station with facial injuries and a nosebleed.<sup>143</sup> When a male officer finally recorded her statement, he

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<sup>140</sup> Human Rights Watch telephone interview with Grace M., Machakos County, September 18, 2020.

<sup>141</sup> Ibid.

<sup>142</sup> Katy Johnson, Lindsey Green, Muriel Volpellier, Suzanne Kidenda, Thomas McHale, Karen Naimer, and Ranit Mishori, "The Impact of Covid-19 on Services for People Affected by Sexual and Gender-based Violence," *International Journal of Gynecology and Obstetrics* 150, no. 3 (2020): pp. 285-287.

<sup>143</sup> Human Rights Watch telephone interview with Olivia, Kajiado County, September 26, 2020.

asked why she wanted to take her husband to court, saying this went against their Luo tradition. The police officers also on their own initiative started negotiations with her husband, asking him to relinquish custody of their children and pay a settlement in return for her agreeing not to take the case forward.<sup>144</sup>

Leticia was attacked by her husband with a panga (machete) and reported him at Simba police post.<sup>145</sup> She said a male officer at the police station told her that even if the matter went to court, the court would simply encourage the couple to reconcile. The police officer added that “these things” (acts of domestic violence) had been happening during the Covid-19 pandemic period and the courts knew that and were handling such cases through reconciliation. Leticia was discouraged from pursuing the matter in court after the officer’s comments. She said:

Seeking justice is very difficult for the vulnerable. If I had been encouraged and supported by the government in the case, I would have taken up the case [in court]. However, I went to government offices seeking help and I was only told about reconciliation. That made me go back. I did not follow up on the case.<sup>146</sup>

### *Unfair Burden on Survivors to Look for their Attackers*

Some survivors told Human Rights Watch that the police expected them to take on investigative responsibilities for their own cases, including asking them to track, monitor, and inform the police of their alleged perpetrators’ whereabouts so the police could carry out arrests.<sup>147</sup>

Charlotte, a domestic violence survivor, told Human Rights Watch that, “Police are there to record GBV cases. After that, they do not follow up. They wait for you to come back and

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<sup>144</sup> Ibid.

<sup>145</sup> Human Rights Watch telephone interview with Leticia K., Kisumu County, October 9, 2020.

<sup>146</sup> Ibid.

<sup>147</sup> Human Rights Watch telephone interview with Charlotte, Nairobi County, October 3, 2020. Charlotte said she had to walk, with a broken leg in a cast, with the police officers investigating her domestic violence complaint to the last location where her husband and abuser had been seen so the police could arrest him.



give them more information. You keep going back to get more help. They expect you to do everything.”<sup>148</sup>

In one case, instead of a police officer, officer of the court, or other state agent, the survivor was forced to serve official documents on her alleged abuser, which could have placed her in danger. She told Human Rights Watch that the Ngong Children’s Office, a unit of the Department of Children Services in the Ministry of Labour and Social Protection, instructed her to serve a letter of summons on her husband, who had beaten her two days before.<sup>149</sup>

### *Failure to Coordinate with and Support Survivors*

Police often fail to share information with survivors about their rights and the justice process. For example, Grace, and Laura’s parents said they did not know that they could request copies of medical documentation provided by hospitals and given to the police.<sup>150</sup> These survivors said that when they sought to obtain copies of the medico-legal documentation and police reports, the police turned them away, only providing the documents after persistent demands by their family members or legal representatives.<sup>151</sup>

Some survivors told Human Rights Watch that they did not access protection orders because they were unaware that this option existed, or because they lacked the necessary assistance to secure the protection orders. The 2015 Protection against Domestic Violence Act provides that survivors of domestic violence “may apply to the Court for a protection order.”<sup>152</sup> The police are also obligated to assist survivors of domestic violence to access such protection orders.<sup>153</sup> However, domestic violence survivors who indicated that they wanted a protection order were unable to access one.

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<sup>148</sup> Human Rights Watch telephone interview with Charlotte, Nairobi County, October 3, 2020.

<sup>149</sup> Human Rights Watch telephone interview with Olivia, Kajiado County, September 26, 2020.

<sup>150</sup> Human Rights Watch telephone interviews with Jane, Anita, and Saul, Kiambu County, various dates in August, September, and October 2020; and Grace M., Machakos County, September 18, 2020.

<sup>151</sup> *Ibid.*

<sup>152</sup> Protection Against Domestic Violence Act, 2015, [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProtectionAgainstDomesticViolenceAct\\_2015.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/ProtectionAgainstDomesticViolenceAct_2015.pdf) (accessed March 15, 2021), art. 8(1).

<sup>153</sup> *Ibid.*, art. 6(1): “(a) advise the complainant of all relief measures available to the complainant, including access to shelter, medical assistance or they shall assist the complainant in any other suitable way; and (b) advise the complainant of the complainant’s right to apply for relief under this Act and how the complainant may lodge a criminal complaint.”

Olivia, a domestic violence survivor, told Human Rights Watch that she asked the police for assistance in filing for a no-contact and stay-away protection order against her abusive husband, who had threatened to come and find her at her job.<sup>154</sup> She said the police were reluctant to help. They initially refused to record her statement and asked her to negotiate with her husband. When Olivia refused to do so, the police reluctantly recorded her statement but did not provide further information on what was happening with the case, and she has not received a protection order.<sup>155</sup>

Other survivors also struggled to obtain information about the status of their cases. Theodore, the parent of Lulu, a child survivor of rape, said he had been constantly seeking updates from the police on the progress of the case but had been unable to even obtain the name of the police officer who took their statements.<sup>156</sup>

Parents of another child who was raped shared similar concerns.<sup>157</sup> They told Human Rights Watch that they had been forced to chase after the police for information about their daughter's case. About one month after they reported the crime and a day before a court appearance, they still had not received any updates from the investigating officer. They said they traveled to the police station to physically meet with the investigating officer. During this meeting, the investigating officer told them that crucial medical evidence had gone missing almost a month earlier. The parents said that they would not have been informed of this development if they had not tracked down the officer by going to the station.<sup>158</sup>

## Prosecutors and the Courts

During the initial lockdown to contain the spread of the virus that causes Covid-19, the judicial system did not provide essential court services. When the lockdown ended, courts functioned with reduced capacity with majority of services online. As a result, there have been delays in hearing court cases, including GBV cases. In an October 2020 webinar hosted by the International Development Law Organization (IDLO), senior assistant

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<sup>154</sup> Human Rights Watch telephone interview with Olivia, Kajiado County, September 26, 2020.

<sup>155</sup> Ibid.

<sup>156</sup> Human Rights Watch telephone interview with Theodore, Narok County, October 4, and November 3, 2020

<sup>157</sup> Human Rights Watch telephone interview with Jane and Saul, Kiambu County, various dates in August, September, and October 2020.

<sup>158</sup> Ibid.

director at the Office of the Director of Public Prosecutions (ODPP), Jacinta Nyamosi made a presentation and stated that there was “limited physical court engagement” due to restrictions on movement at the onset of the Covid-19 pandemic.<sup>159</sup> Case hearing dates were disrupted.<sup>160</sup> However, there have always been delays in hearing GBV cases caused by a plethora of issues including: huge caseloads coupled with understaffing in the ODPP and judiciary; inadequate court facilities, including in rural areas; slow police investigations; and slow processing of forensic evidence by the government’s Chemist Department, the central testing, including forensic and analytical, laboratory.<sup>161</sup>

Although the number of reported cases of GBV rose during the initial months of the pandemic, the ODPP and the judiciary do not appear to have put in place effective contingency measures to expedite or create additional capacity for handling these cases. Jacinta Nyamosi stated that the ODPP “has been dealing with SGBV [sexual and gender-based violence] cases as priority cases and pushing for early hearing dates from the courts.”<sup>162</sup> However, it is not clear whether this has resulted in practice to expedited processing of survivor’s cases.

The slowness of court processes and numerous adjournments added to other challenges of life during the Covid-19 pandemic imposed a burden on survivors and discouraged some from seeking justice. Olivia, a domestic violence survivor, told Human Rights Watch that: “waiting for the case to continue and the inconvenience of constantly asking for leave to attend court made me tired.”<sup>163</sup>

The ODPP moved court proceedings online to ensure continuity during the pandemic, but in a country where web traffic is mostly via smartphones and used for M-Pesa—a mobile wallet and secure payment system—transactions<sup>164</sup> and most people do not have access to

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<sup>159</sup> Jacinta Nyamosi, “Presentation during 23<sup>rd</sup> Full Council Meeting of the National Council on the Administration of Justice,” webinar by the IDLO, October 30, 2020, p. 1, on file with Human Rights Watch.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid., p. 4. Cases were expedited “according to the facts of the case, like whether the perpetrator is a close family member or in close proximity to the victim.”

<sup>163</sup> Human Rights Watch telephone interview with Olivia, Kajiado County, September 26, 2020.

<sup>164</sup> Paula Gilbert, “Kenya Internet Usage Lags Mobil Penetration,” *Connecting Africa*, April 14, 2021, [http://www.connectingafrica.com/author.asp?section\\_id=761&doc\\_id=768744](http://www.connectingafrica.com/author.asp?section_id=761&doc_id=768744) (accessed July 24, 2021); Gilbert Juma, “Embracing Electronic Court Case Management Systems: Lessons from the Kenyan Experience During Covid-19,” DLA PIPER

the technology used by courts,<sup>165</sup> this led to other challenges such as litigants not being able to access virtual sessions, vital information relevant to their cases, and difficulties associated with production of evidence, examination, attendance by expert witnesses, and cross-examination of witnesses.<sup>166</sup> The online system posed distinct challenges for self-litigants as it required litigants to register a case using a law firm or lawyer.<sup>167</sup>

When proceedings moved online, prosecutors should have ensured that survivors, their families and their lawyers if they had them, fully understood the process and had the support they needed as they go through the process.<sup>168</sup> Theodore, the parent of Lulu, a child survivor of rape whose case was being heard virtually, told Human Rights Watch that he is growing anxious about the criminal process and worries that he and his daughter may miss a court date and, for that reason, the perpetrator will be released.<sup>169</sup> The 2020 report of the World Wide Web Foundation indicates that, beyond basic access, a lack of information communication technology (ICT) skills, minimum thresholds for regular access, an appropriate device, sufficient data and a fast connection, are barriers to considered as operations move online.<sup>170</sup>

In April 2020, the Judiciary declared that courts were ready to promptly hear cases of sexual and GBV and that cases involving children would be expedited.<sup>171</sup> In October 2020, Justice William Ouko, then President of the Court of Appeal and Chairperson of the NCAJ Technical Committee to Monitor Administrative and Contingency Management Plan to Mitigate COVID-19 in Kenya's Justice Sector, said that "the judiciary would fast track sexual

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Kenya, November 4, 2020, <https://www.dlapiper.com/en/us/insights/publications/2020/11/africa-connected-issue-5/embracing-electronic-court-case-management-systems/> (accessed July 24, 2021).

<sup>165</sup> Mercy Muendo, "Kenya is Struggling to Deliver Justice Online: What needs to be done," *The Conversation*, August 9, 2020. <https://theconversation.com/kenya-is-struggling-to-deliver-justice-online-what-needs-to-be-done-139675> (accessed July 24, 2021).

<sup>166</sup> Jacinta Nyamosi, "Presentation during 23<sup>rd</sup> Full Council Meeting of the National Council on the Administration of Justice," webinar by the IDLO, October 30, 2020, p. 1, on file with Human Rights Watch.

<sup>167</sup> Mercy Muendo, "Kenya is Struggling to Deliver Justice Online: What needs to be done."

<sup>168</sup> ODPP, National Prosecution Policy, 2007, 3.1 (vii) "As far as it is practicable and necessary, consulting with victims and witnesses before trial begins. A prosecutor should assist them by giving them appropriate and useful information on the trial process and reasons for postponements and findings of the court, where necessary;"; The Victim Protection Act, 2014, Sections 4, 9, and 19, <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2017%20of%202014> (accessed March 17, 2021). See the case of Laura and her parents in the Courts sub-section.

<sup>169</sup> Human Rights Watch telephone interview with Theodore, Narok County, October 4, and November 3, 2020

<sup>170</sup> World Wide Web Foundation, "Women's Rights Online: Closing the Digital Gap for a More Equal World," October 2020, <http://webfoundation.org/docs/2020/10/Womens-Rights-Online-Report-1.pdf> (accessed July 24, 2021).

<sup>171</sup> Jacinta Nyamosi, "Presentation during 23<sup>rd</sup> Full Council Meeting of the National Council on the Administration of Justice," webinar by the IDLO, October 30, 2020.

offences cases, especially when a child was involved.”<sup>172</sup> The Judiciary had already instituted service weeks in a bid to clear off cases involving children and no indication was given on what more would be done to fast track these cases.<sup>173</sup> Justice Ouko added that “the courts are dependent on the efficiency of investigators and prosecutors, and if these arms of the criminal law system are ready to proceed, the judiciary is ready to hear GBV cases promptly since these are serious offences.”<sup>174</sup>

The Judiciary introduced virtual proceedings in some courts, a move which enabled some criminal matters to proceed. But the virtual courts were not accessible to survivors who frequently lacked access to the internet or legal representatives who could assist them in using these platforms.

Olivia told Human Rights Watch that the first mention in her domestic violence case against her husband did not proceed in September 2020 because courts were not operational.<sup>175</sup> The case was postponed before the next mention. When Human Rights Watch interviewed her in September 2020, she said that the officer-in-charge who is following up on her case told her the hearing was likely to be delayed until January 2021.

The parents and sister of Laura, a 15-year-old rape survivor, told Human Rights Watch that they were unable to participate in virtual court sessions held during the initial stages of the prosecution of Laura’s alleged attacker.<sup>176</sup> They told Human Rights Watch that they were directed by the police investigating officer to appear at a physical court on August 3, 2020. Once they arrived at the court, no one provided them with any information on how the court process would take place. After waiting for a few hours, the guardians approached the court’s clerk who informed them that the proceedings were online and

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<sup>172</sup> Ibid.

<sup>173</sup> “Nakuru Court to Clear over 300 Children Cases,” Judiciary of Kenya news release, December 2, 2019, <https://www.judiciary.go.ke/nakuru-court-to-clear-over-300-children-cases/> (accessed July 24, 2021); “Nakuru Law Courts Service Week – Clearance of Children Cases,” Judiciary of Kenya news release, July 20, 2021, <https://www.judiciary.go.ke/nakuru-law-courts-service-week-clearance-of-children-cases/> (accessed July 24, 2021); “Lady Justice Teresia Matheka at the NCAJ Special Taskforce on Children Matters Workshop,” Judiciary of Kenya news release, July 8, 2021, <https://www.judiciary.go.ke/lady-justice-teresia-matheka-at-the-ncaj-special-taskforce-on-children-matters-workshop/> (accessed July 24, 2021).

<sup>174</sup> Ibid.

<sup>175</sup> Human Rights Watch telephone interview with Olivia, Kajiado County, September 26, 2020.

<sup>176</sup> Human Rights Watch telephone interview with Jane, Saul, and Anita, Kiambu County, various dates in August, September, and October 2020.

virtual court sessions were already ongoing. They had no information on how to join the sessions virtually and were not provided access. The court’s clerk directed them to get the link from the police investigating officer, who in turn said she did not have the link. They left the court with no further information and no means of attending the virtual court session.

Ahead of the second mention on August 11, 2020, Laura’s guardians followed up with the police investigating officer to get a virtual link to attend. The officer told them that she did not have the link and they were again unable to attend.<sup>177</sup> They were also unable to gain access to a third court mention held on August 25, 2020. They had very little information about the proceedings of the case and were shut out of being present for important events such as the alleged perpetrator being granted bail.<sup>178</sup> They did not have legal representation at the time.

Police and prosecutors are both obliged to provide survivors and witnesses with information on when to attend court and how to attend court sessions under the 2019 National Police Service Standard Operating Procedures on Prevention and Response to Gender Based Violence in Kenya, and the 2007 ODPP National Prosecution Policy, respectively—obligations that were largely ignored in Laura’s case.<sup>179</sup>

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<sup>177</sup> On that day, the alleged perpetrator was released on bond without their knowledge. They only learnt of his release when they saw him back at his house—a house which is about three houses away from where they live.

<sup>178</sup> Human Rights Watch telephone interview with Jane and Saul, Kiambu County, various dates in August, September, and October 2020.

<sup>179</sup> National Police Service, “National Police Service Standard Operating Procedures on Prevention and Response to Gender Based Violence in Kenya,” 2019, <https://www.nationalpolice.go.ke/2015-09-08-17-56-33/news/271-nps-unveils-standard-operating-procedures-for-prevention-and-response-to-gender-based-violence.html> (accessed March 17, 2021); and ODPP, “National Prosecution Policy,” 2007.

## IV. Human Rights Obligations

Since the early 1990s, international human rights standards have made clear that gender-based violence (GBV) against women is a violation of human rights and states have a responsibility to eradicate it. The 1993 Declaration on the Elimination of Violence Against Women and the General Recommendation No. 19 on violence against women from 1992 by the Committee on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) both set out how violence against women violates their rights and the obligations on states to take action.<sup>180</sup>

In 2003 the African Union (AU) adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, otherwise known as the Maputo Protocol.<sup>181</sup> In articles 3 and 4 it sets out that states are obliged to adopt and implement appropriate measures to ensure the protection of women from all forms of violence, including measures that prohibit, prevent and eradicate such violence and establish and adequately fund mechanisms and accessible services for effective information, rehabilitation and reparation for survivors of violence against women. Kenya ratified the Maputo Protocol in 2004.

Kenya is also a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). In 2017 the CEDAW Committee adopted General Recommendation No. 35 on GBV, updating and elaborating on the guidance it had provided in General Recommendation No. 19.<sup>182</sup>

In both recommendations, the Committee has called on states to establish comprehensive legal frameworks addressing gender-based discrimination, including GBV, train state officials in their implementation, and establish and adequately resource services for

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<sup>180</sup> Declaration on the Elimination of Violence against Women, adopted December 20, 1993, G.A. Res. 48/104, U.N. Doc. (A/RES/48/104) (1993).

<sup>181</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 25, 2005, ratified by Kenya on October 13, 2010. See art. 3(4), art. 4-5, art. 22(b), and art. 23(b).

<sup>182</sup> CEDAW Committee, General Recommendations No. 19, Violence Against Women (1992), para. 24(b); and No. 35, on gender-based violence against women, updating general recommendation No. 19, U.N. Doc CEDAW/C/GC/35 (2017).

survivors, including shelters, counseling, and rehabilitative services.<sup>183</sup> It also underlined state obligations to remove all barriers impeding women’s and girls’ access to justice, including by addressing harmful, negative, and discriminatory attitudes and practices within the justice system.<sup>184</sup>

The Committee has previously called on the Kenyan government to ensure that survivors of violence, including GBV, “have access to effective remedies and victim support, such as legal, social, medical, and psychological assistance, and shelters.”<sup>185</sup>

In June 2020 the African Commission on Human and Peoples’ Rights (ACHPR) issued guidance to states on implementation of their human rights obligations during the Covid pandemic. In it they called on states to “prioritize the protection of women and girls in the conception, planning, development and implementation of national response measure to the novel Covid-19 virus”<sup>186</sup> and to “expand gender-based and domestic violence monitoring and response tools and infrastructure, including hotlines, social workers and alternative accommodation.”<sup>187</sup>

The AU’s Agenda 2063 notes that GBV is a major threat to human security, peace, and development.<sup>188</sup> In the Solemn Declaration of Gender Equality in Africa, states committed to reinforcing legal mechanisms to protect women from violence and ending impunity for crimes committed against women.<sup>189</sup>

Provisions in other international law instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and

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<sup>183</sup> CEDAW Committee, General Recommendation No. 19, arts. 24(b), 24(f).

<sup>184</sup> CEDAW Committee, General Recommendation No. 33 on women’s access to justice, U.N. Doc. CEDAW/C/GC/33 (2015), paras 17, and 24; and General Recommendation No. 34 on the rights of rural women, U.N. Doc. CEDAW/C/GC/34 (2016), paras 9, 25.

<sup>185</sup> CEDAW Committee, “Concluding Observations on the Eighth Periodic Report of Kenya,” November 22, 2017, U.N. Doc. CEDAW/C/KEN/CO/8, <https://undocs.org/CEDAW/C/KEN/CO/8> (accessed September 7, 2021).

<sup>186</sup> ACHPR, “449 Resolution on Human and Peoples’ Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts,” art. 9(g).

<sup>187</sup> *Ibid.*, art. 9(c).

<sup>188</sup> AU, *Agenda 2063* (African Union Commission, 2015), [https://au.int/sites/default/files/documents/36204-doc-agenda2063\\_popular\\_version\\_en.pdf](https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf) (accessed March 18, 2021), aspiration 4(37) and aspiration 6(51).

<sup>189</sup> AU, “Solemn Declaration of Gender Equality in Africa,” Assembly/AU/Decl.12(III) Rev. 1, 2004, <https://au.int/en/documents/20200708/solemn-declaration-gender-equality-africa> (accessed March 18, 2021), p. 3, para. 4.



Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD), also impose obligations on states to take action against domestic violence and violence in the family, including to protect rights to life, health and physical integrity, prohibit discrimination and cruel, inhuman, or degrading treatment or punishment.<sup>190</sup>

For example, the UN committee responsible for monitoring implementation of the ICESCR has similarly stated that the ICESCR's provision on gender equality "requires States parties...to provide victims of domestic violence, who are primarily female, with access to safe housing, remedies and redress for physical, mental and emotional damage."<sup>191</sup> Among the rights that states party to the ICESCR have obligations to protect and fulfil are the rights to social security (article 9), to an adequate standard of living (article 11), and to health (article 12).

These rights are reinforced in AU Agenda 2063, the AU Solemn Declaration of Gender Equality in Africa and in Sustainable Development Goal 5.<sup>192</sup>

The CRPD, ratified by Kenya in 2008, provides guarantees for people with disabilities to be free from violence and to access justice on an equal basis with others.<sup>193</sup> In its 2015 concluding observations on Kenya, the Committee on the Rights of Persons with Disabilities called on the government to ensure that shelters are accessible for women with disabilities, develop a strategy on the protection of women and girls from violence,

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<sup>190</sup> Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (no. 49) at 167, UN Doc. A/44/49 (1989), entered into force September 2, 1990; Convention on the Rights of Persons with Disabilities, adopted December 13, 2006, G.A. Res. 61/106, entered into force May 3, 2008; International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976; International Covenant on Economic, Social, and Cultural Rights, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966) 993 U.N.T.S. 3, entered into force January 3, 1976; Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (no. 41) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

<sup>191</sup> UN Committee on Economic, Social and Cultural Rights, "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights," General Comment No. 16: The equal right of men and women to the enjoyment of all economic, social, and cultural rights (art. 3 of the International Covenant on Economic, Social, and Cultural Rights), U.N. Doc E/C.12/2005/4 (2005), <https://www.refworld.org/docid/43f3067ae.html> (accessed September 9, 2021), para. 27.

<sup>192</sup> AU *Agenda 2063*, aspiration 4(37) and aspiration 6(51). AU, "Solemn Declaration of Gender Equality in Africa," p. 3, para. 4; "Sustainable Development Goals, Goal 5: Achieve Gender Equality and Empower All Women and Girls," UN, <https://www.un.org/sustainabledevelopment/gender-equality/> (accessed March 18, 2021).

<sup>193</sup> CRPD, arts. 13, 15, and 16.

and to adopt measures to ensure all persons with disabilities have access to justice, including through the provision of procedural accommodations, or adaptations in processes to ensure the effective participation of people with disabilities.<sup>194</sup>

The Kenyan government has ratified most regional and international human rights standards relating to GBV and has adopted implementing legislation to transpose its obligations into domestic law. However, the government has failed to effectively enforce and monitor these provisions, sanction non-compliance, and educate state and non-state officials on GBV-related laws and standards. Both the absence of and need for such training, monitoring, and enforcement has become particularly apparent during the crisis prompted by the Covid-19 pandemic.<sup>195</sup> The government should urgently establish, fully resource, and operationalize institutional mechanisms to effectively oversee government actions in this field; provide full access for survivors to services and justice; and lead a fundamental change in attitude, policy, and practice with regard to violence against women and girls.

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<sup>194</sup> UN Committee on the Rights of Persons with Disabilities, “Concluding observations on the initial report of Kenya,” U.N. Doc. CRPD/C/KEN/CO/1, September 30, 2015, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fKEN%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fKEN%2fCO%2f1&Lang=en) (accessed September 9, 2021).

<sup>195</sup> “States must combat domestic violence in the context of Covid-19 lockdowns – UN rights expert.” OHCHR news release, March 27, 2020. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25749&LangID=E> (accessed March 19, 2021).

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