



HUMAN
RIGHTS
WATCH


“I Just Sit and Wait to Die”

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

SUMMARY AND RECOMMENDATIONS



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



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

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

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

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

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

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

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

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

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

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



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



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



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

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

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



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

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

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



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

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

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



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

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

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



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

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

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

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



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

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

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

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

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





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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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

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

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



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

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





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

KEY RECOMMENDATIONS

TO THE GOVERNMENT OF KENYA

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

“I Just Sit and Wait to Die”

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

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

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

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

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

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