



**PERMANENT MISSION OF  
THE REPUBLIC OF KENYA**

TO THE UNITED NATIONS  
AND OTHER INTERNATIONAL ORGANISATIONS  
GENEVA – SWITZERLAND

REF. N° KMG/PROT/11/VOL.XIV (112)

The Permanent Mission of the Republic of Kenya to the United Nations Office in Geneva and other International Organizations in Switzerland presents its compliments to Mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Office of the High Commissioner for Human Rights in Geneva and has the honour convey Kenya's submission to the Questionnaire on the thematic area of **“Violence and its impact on the right to health”**.

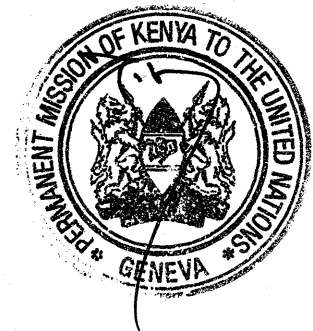
The Permanent Mission of the Republic of Kenya to the United Nations Office in Geneva and other International Organizations in Switzerland avails itself of this opportunity to renew to the Mandate of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Office of the High Commissioner for Human Rights in Geneva, the assurances of its highest consideration.

GENEVA, 17<sup>th</sup> February 2022

**Mandate of the Special Rapporteur on the right of everyone  
to the enjoyment of the highest attainable  
standard of physical and mental health  
Office of the High Commissioner for Human Rights  
Palais des Nations  
CH-1211 GENEVA**

Email: [ohchr-srhealth@un.org](mailto:ohchr-srhealth@un.org)

Encl.



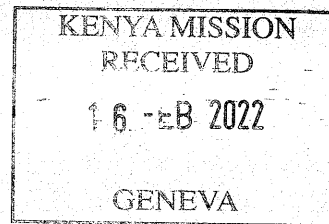
OHCHR REGISTRY

- 7 MARS 2022

Recipients : SPB .....

Enclosure .....

REPUBLIC OF KENYA



**OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE**

**CALL FOR INPUT FROM SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH**

---

For purposes of this response we shall focus on the second question which requests us to: **Please describe whether the legal framework prohibits and sanctions these forms of violence and the definitions and forms of violence included in the legal system. Please explain redress options for survivors of violence, (the pathways they go through if they decide to file a complaint), levels of impunity and if access to comprehensive physical and mental care for GBV survivors is recognized as a form of reparation.**

For ease of reference the forms of violence referred to above include:

1. Gender based violence against women
2. Gender based violence and other forms of violence against children
3. Gender based violence
4. Against LGBTI or other persons based on real or imputed sexual orientation, sex characteristics, and gender identity
5. Violence against persons with disabilities, including GBV
6. Gender based violence against men
7. Conflict gender based violence, including sexual violence.

## THE CONSTITUTION 2010.

Kenya ratified the **Convention on the Elimination of all forms of Discrimination against Women (CEDAW)** on 9th March 1984. It therefore forms part of the laws of Kenya and this is captured by the Constitution under **Article 2(5) & (6)** that provides; ... **(6)** Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.

The Kenyan legal framework further provides various mechanisms for addressing sexual and gender based violence which we shall elucidate hereunder.

**Article 10 (2) (b)** of the Constitution sets out the national values and principles of governance to include, among others, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized. Further, the Constitution enforces a positive duty on the State to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

**Article 29 (c)** provides that every person has the right to freedom and security of the person, which includes the right not to be subjected to any form of violence from either public or private sources. **Article 45** recognizes and protects the family institution recognizing it as the natural and fundamental unit of society and the necessary basis of social order.

## LEGISLATION

Many laws have been enacted in Kenya to protect people from gender based violence. These include:

- a) The **Penal Code Cap 63** prohibits all acts of violence indiscriminately. There are no specific offences covering such forms of SGBV as marital rape, wife or husband battery, domestic violence. However, such cases would have to be handled derivatively via the charge of assault under **sections 250 and 251**.
- b) The **Protection against Domestic Violence Act 2015** is meant to provide for the protection and relief of victims of domestic violence; to provide for the protection of a spouse and any children or other dependent persons.
- c) The **Sexual Offences Act No. 3 of 2006** is the law governing sexual offences in Kenya. According to Dr. Ruth Aura 'its primary purpose was to ensure complainants of sexual offences get justice commensurate to the harm caused to them. It makes provisions for the sexual offences, their definition, prevention and protection of all persons from harm arising from unlawful sexual acts. It provides for minimum sentence as opposed to the Penal Code which gave magistrates too much discretion on sentencing a signal of government's commitment to eradicate sexual violence. It prohibits all manner of sexual offences from defilement to attempted defilement, rape to attempted rape, sexual harassment and sexual exploitation. This is the first legislation in Kenya's legal history, to recognize sexual harassment as a crime. It has

also prohibited child trafficking, prostitution and sex tourism. It recognizes also sexual offences of mentally impaired. (Kenya Law)' (Aura, R. 2014 p. 16)

- d) **The Children's Act No. 8 of 2001** makes provisions for the safeguards of the rights and welfare for the children. The Act stipulates that all activities done on behalf of children should be in the best interest of the child. Violence meted against children therefore does not constitute best interest of the child. Section 13 guarantees children (both girls and boys) the right to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction. Under section 14 children are protected from female circumcision, early marriage or other cultural rites, customs, or traditional practices which are harmful to the child's development. The Act also explicitly prohibits sexual exploitation of children as well as actions that expose children to torture or cruel or inhuman treatment such as circumcision or child marriages. (Aura, R. 2014 p. 17)
- e) Noting the specific vulnerability of asylum seekers and refugees, the **Refugee Act 2021** further obligates the Cabinet Secretary responsible to make rules for the control of designated areas which may contain rules pertaining to ... (e) the provision of special service to women, girls and persons with disabilities, including legal and psychosocial services to victims of SGBV, reproductive services and other specialized services.
- f) **The Marriage Act 2014** governs all marriages contracted in Kenya. It provides for the minimum age in marriage and guarantees parties to a marriage, equal rights at the time of the marriage, during the marriage and at the dissolution of the marriage.

## **REDRESS OPTIONS**

At present several toll free reporting lines are available locally. They include:

1. The National GBV helpline 1195,
2. 1517 – UNHCR toll-free number (refugees, IDPS and asylum seekers).
3. Police helpline 999/112,
4. Childline Kenya helpline 116,
5. UWIANO SMS Platform 10,
6. Kimbilio GBV helpline 1193,
7. LVCT one 2 one youth helpline 1190 and.
8. FIDA SMS platform 21661.

A victim of SGBV has access to various remedies. They are provided jointly by government in partnership with various non-governmental organizations. These remedies include protection orders in respect of domestic violence, criminal sanctions, access to shelter, medical and psychosocial assistance and compensation in respect of injuries sustained, damage to property or financial losses incurred.

Reporting will be further streamlined with the launch of the first ever policy for the National Police Service (NPS) integrated response to gender based violence. The Policy is intended to steer NPS in the establishment, management and operations of one-stop centers dubbed 'Policare' and is intended to provide comprehensive support services including legal, psychosocial support, police and health to survivors of gender based violence (GBV) at no cost.

#### **REFERENCES**

Aura, K. 2014 Situational Analysis and the Legal Framework on Sexual and Gender-Based Violence in Kenya: Challenges and Opportunities available at <http://kenyalaw.org/kl/index.php?id=4512> accessed on 19<sup>th</sup> January 2022.