

Kenyan Women Submission for The Universal Periodic Review

Joint Submission by The Federation of Women
Lawyers in Kenya (FIDA-K), Isiolo Gender Watch,
and Shining Hope for Communities (SHOFCO)



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The State's Achievements, Best Practices, Challenges, Constraints and Recommendations

The Rise of Femicide Cases in the Country

1. The number of women and girls killed, in account of their gender, in the country is on the rise¹. In 2019 alone, during the period between January 1, 2019, and 13th April 2019, according to data from *Counting Dead Women Kenya*, about 40 women were killed². More worrying trends show that homicide cases have taken a sharp spike after increasing by 5% from 2648 in the year 2015 to 2774 in 2018; most victims of these cases being women³. The Bill of Rights protects human life and no reason whatsoever justifies the wanton killings targeting women witnessed across the counties of Kenya⁴.
2. The rising cases of femicide in the country are a violation of Article 10 (2) (b) of the Constitution of Kenya 2010 which 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. More so, it violates Article 19 (2) of the Constitution of Kenya 2010, which recognizes the purpose of promoting and protecting human rights and fundamental freedoms as in an effort to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings. Furthermore, the protection of women is enshrined within Article 21 (4) of the Constitution of Kenya 2010, which imposes on the State the obligation to enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.
3. There are several causes that can be attributed to the rise of femicide cases in Kenya. First and foremost, there has been a reported trend of the normalization of violence of women, this being propagated on social media and other public spaces. This normalization creates a space for the dehumanization of the victims. The dehumanization of violence against

¹ Wako, A. (2019, March) "Shocking data on women who've lost their lives through gender-based violence." *The Nairobi News*. Retrieved from <https://nairobi.news.nation.co.ke/life/shocking-data-on-women-whove-lost-their-lives-through-gender-based-violence>

² Akili Dada "Femicide". <http://www.akilidada.org/femicide-cases-on-the-rise-in-kenya>

³ Akili Dada "Femicide".

⁴ CREAW Kenya "Statement on the Increasing Cases of Femicide in Kenya." Retrieved from <http://creawkenya.org/ke/statement-on-the-increasing-cases-of-femicide-in-kenya/>

women subsequently, creates an insensitive atmosphere when efforts are taken to ensure the remembrance and honor of the legacy of the victims and the trauma faced by those affected; this being the victims families, friends and by extension, the women of Kenya⁵. Additionally, the creation in the culture of victim shaming and blaming has been a contributory factor in the rise of violence against women. Cases have borne proof to the fact that women who come forward to complain about incidents of GBV are often shamed and blamed for their predicaments. Thirdly, the lack of awareness on mental health issues has been a contributory factor to the rise in cases of femicide in the country. The World Health Organization reports that depression is a major cause of murders, and in Africa, Kenya is ranked second after Tanzania in the reported list of most-depressed countries.⁶

⁷Unfortunately, in the Kenyan context mental illnesses such as depression, inferiority complex, and others are not well understood and therefore, very little efforts have been harnessed to tackle the issue, in light of its connection vis a vis the victim and the perpetrators, given the rise in femicide cases in the country.

- 4. Recommendations: We call on The President of Kenya to declare femicide and other forms of Gender Based Violence a national catastrophe and commit to addressing it. Additionally, we urge the Director of Criminal Investigations (in Kenya) to speed up investigations in all ongoing femicide cases and ensure that all perpetrators are brought to book. More so, these cases should be resolved within the shortest time possible. Secondly, the Government must ensure and set resources aside for mental health awareness, mental wellness, training and capacity building, and support NGOs, with the aim of sensitizing the public on Gender-Based violence, and in particular, how they should relate to cases of femicide. Lastly, the Government should launch GBV recovery centres and safe shelters for survivors of GBV. The launch of a Gender-Based**

⁵CREAW Kenya” Statement on the Increasing Cases of Femicide in Kenya.” Retrieved from <http://creawkenya.org/ke/statement-on-the-increasing-cases-of-femicide-in-kenya/>

⁶World Health Organization. « Depression and Other Mental Disorders » Retrived from <https://apps.who.int/iris/bitstream/handle/10665/254610/WHO-MSD-MER-2017.2-eng.pdf>

⁷Wako. A. « Nairobi is becoming a dangerous for women as femicide continues to rise » Retrieved from <https://nairobinews.nation.co.ke/life/nairobi-dangerous-place-for-women>

Violence Recovery Centre on 1st July 2016 in Kilifi can be used as a model and replicated throughout other counties⁸.

The State's Law of Succession Act is yet to be amended in accordance to the 2010 Constitutional Requirements.

5. The Law of succession Act is yet to be amended to ensure its compliance with the provisions of the 2010 Constitution. Certain provisions of the Act perpetuate inequality and discrimination contrary to Article 27 of the Constitution. For instance, the Law of Intestacy⁹ provided under part V of the Act does not apply in West Pokot, Turkana, Marsbit, Samburu, Isiolo, Mandera, Wajir, Garissa, Tana River, Lamu, Kajiado, Narok¹⁰. This makes it hard for women in such counties to inherit property (especially in the event of their husband's or father's demise).
6. The aspirations of the Law of Succession remains a far-fetched dream for most of the populace due to the lack of knowledge on the existence of laws that safeguard their right to own and inherit property. In most communities, the customary passage of inheritance from fathers to sons leaves women denied of the rights to inheritance¹¹.
7. Even though The Office of the Attorney General has been working to repeal and amend different legislations to ensure compliance with the Constitution, the law of succession is yet to be repealed.
8. Still, on the Law of Succession, there are numerous challenges that have been identified with this piece of legislation. Firstly, it was enacted in 1972 when patriarchy was rife hence its prevailing patriarchal connotations. The effect that this has had is that women especially those in the rural areas of Kenya, have a limited understanding of this piece of law. In instances where they are aware, their actions are limited by information gaps regarding the relevant processes to be taken at the courts and government offices¹². The lack of resources to pursue cases through the formal justice system leaves women with no alternative but to concede in the fight for their human rights. The Law of Succession Act to date continues to perpetuate

⁸ International Centre for Reproductive Health- Kenya. "Gender Based Violence Recovery Centre (GBVRC)" Retrieved from <https://www.icrhk.org/gender-based-violence-recovery-centre-gbvrc/>

⁹ « Kenya Legal Resources » Retrieved from http://www.kenyalawresourcecenter.org/2011/07/intestate-succession_23.html

¹⁰ These are counties in the rural areas of Kenya. Retrieved from <https://informationcradle.com/kenya/counties-in-kenya/>

¹¹ « Bridging yawning gaps in laws on inheritance » (February, 2019) Retrieved from <https://www.businessdailyafrica.com/analysis/ideas/Bridging-gaps-in-laws-on-inheritance/4259414-5004184-4kjniw6z/index.html>

¹² « Bridging yawning gaps in laws on inheritance » (February, 2019).

discrimination by excluding certain counties from the jurisdiction and applicability of the Act¹³.

9. **Recommendation: The Attorney General and by extension the Government of Kenya should expedite the repealing of the Law of Succession Act to ensure its accordance with the provisions of the Constitution.**

There are limited rescue centres/safe houses for survivors of domestic violence within the country.

10. The lack of safe houses has led to the throwing out of cases in domestic violence against women and has led to a situation whereby other such reported cases have been compromised.
11. The State has made several efforts to intervene in the provision of safe houses. In 2016, the government pledged to establish rescue centres in key hospitals in Mombasa, Nairobi, Kisumu, Nakuru, Eldoret and Kisumu¹⁴. In 2018, the Government made a commitment to build safe houses for victims of gender-based violence in all the 47 counties.¹⁵ Worth lauding is that the National Gender and Equality Commission developed a model legislative framework on SGBV for county governments in 2017¹⁶. This model provides guidance to the county governments on critical elements and considerations to be tailored for laws on Sexual and Gender-Based Violence.
12. However, with limited budgetary allocation for the national and county governments, safe houses are in limited numbers and only present in a few towns of the country. More so, policy makers' limited understanding on the need and design of safehouses has resulted in the hosting of safehouses within hospitals, a situation that has been detrimental to the wellbeing of survivors of domestic violence.
13. The lack of safehouses is a violation of the Protection Against Domestic Violence Act 2015 and the Victim Protection Act 2014, which state that survivors of violence are entitled to protection, compensation and

¹³ Kameri-Mbote (n.d). The Law of Succession in Kenya. Retrieved from www.ielrc.org/content/b9501.pdf

¹⁴ Chemwemo (2016, August). Victims of domestic abuse in Kenya to be treated at rescue centres <https://www.standardmedia.co.ke/article/2000211104/victims-of-domestic-abuse-in-kenya-to-be-treated-at-rescue-centres>

¹⁵ Government to build safe-houses for gender based violence victims <https://ntv.nation.co.ke/news/2720124-4782248-yj9pqq/index.html>

¹⁶ National Gender and Equality Commission (2017) Model Legislative Framework on SGBV for County Governments. Retrieved from <https://www.ngeckenya.org/Downloads/NGEC%20Model%20Legislative%20Framework%20on%20GBV%20for%20County%20Govts.pdf>

restitution during criminal trial proceedings and also calls for civil proceedings to be effected against offenders.

14. **Recommendations:** The lack of shelter homes continues to expose victims to continuous abuse. While victims can seek legal protections under the Protection Against Domestic Violence Act 2015, they encounter challenges in getting transitional places to stay as the matter is handled by the court, even in cases where a restraint order has been given. Thus, we continue to press for the State to establish rescue centres and safe houses for victims and survivors of domestic violence. Counties need to domesticate this model law and offer budgetary allocation for the provision of safehouses.

Increase in maternal mortality and morbidity as a result of unsafe abortions in Kenya:

15. Research by Ziraba et al. (2015) showed that 48 in 1000 women in Kenya within the reproductive age seek safe abortion services, but due to restrictive anti-abortion laws and limited access to quality healthcare most of these abortions are induced.¹⁷ In September 2012, the Ministry of Health published “Standards and Guidelines for Reducing Morbidity and Mortality from Unsafe Abortion in Kenya”.¹⁸ However, In December 2013, the Director of Medical Services withdrew the standards and guidelines in unclear circumstances, causing confusion on instances when health providers can offer safe abortion services within the ambit of the law.
16. Clearly, the withdrawal of the standards and guidelines by Kenya’s Ministry of Health violated women’s constitutional rights and contributed to the rise in cases of maternal death by denying countless women, including rape survivors, access to safe, legal abortion—even under circumstances permitted by the Kenyan constitution. More so, without the Standards and Guidelines, doctors were barred from undergoing training and performing safe abortions in Kenya, and as a result, many women seek the services of quacks and backstreets facilities.
17. Evidently, Kenya’s Section 6 of the Health Act 2017, National Guidelines on the Management of Sexual Violence; referred to as the Ministry of Health’s

¹⁷Ziraba, A. K., Izugbara, C., Levandowski, B. A., Gebreselassie, H., Mutua, M., Mohamed, S. F., & Kimani-Murage, E. W. (2015). Unsafe abortion in Kenya: a cross-sectional study of abortion complication severity and associated factors. *BMC pregnancy and childbirth*, 15(1), 34.

¹⁸Ministry of Medical Services (2012, September). Standards and Guidelines for the Reduction of Morbidity and Mortality from Unsafe Abortions. Retrieved from <https://www.safeabortionwomensright.org/wp-content/uploads/2018/02/Standards-Guidelines-for-the-Reduction-of-Morbidity-and-Mortality-from-Unsafe-Abortion.pdf>

National Guidelines offers guidelines for quality obstetrics and perinatal care¹⁹. More so this act offers guidelines for the various professional codes of conduct for doctors, nurses and clinical officers, which all recognize the fundamental duty that health care providers have in saving lives and preserving health.

18. However, on 12th June 2019, the High Court of Kenya outlawed sections of the Penal Code that made it criminal to offer abortion, stating that it offered “blanket” limitation to women’s rights to health. According to the judges, Section 26(4) of the Constitution, which prohibits abortion, gives exceptions in which a medical practitioner can offer an abortion. They elaborated that a woman or a girl who is raped and whose life and health, which includes mental, physical and social well being, is in danger can abort.
19. **Recommendations: We applaud the judiciary for ensuring the promotion and protection of the Sexual Health and Reproductive Rights of Kenya’s women and girls, taking into account instances in which the law rightfully promotes the practise of abortion. We however, advocate for more efforts to ensure the population is sensitized and made more aware of the rights women and girls have in making choices that concern their bodies and by extension their sexual health and reproductive rights.**

Continued practices of female genital mutilation despite government and private sector advocacy on the issue.

20. FGM in Kenya continues to be carried out predominantly by traditional circumcisers, for 74.9% of girls aged 0-14 and 83.3% of women aged 15-49.²⁰ There have been concerns over the increased medicalisation of FGM in Kenya in recent years, with claims that it has risen up to as much as 41% in some areas, and that medical professionals are performing FGM in homes, hospitals or temporary ‘clinics’ during school holidays²¹. Although the most recent Kenyan Demographic and Health Survey (2014) is based on a small sample of women and girls, it does suggest that 14.8% of women aged 15-49 and 19.7% girls aged 0-14 have been cut by medical²²professionals. Of these, most are carried out by a nurse or midwife. A study in 2016 suggested that Kenya is ranked third in the world for the reported cases of medicalised FGM. Secondly, there is increased reporting of cross-border movements for

¹⁹Ministry of Medical Services (2012, September).

²⁰28tooMany.org. The Kenya Law and FGM
[https://www.28toomany.org/static/media/uploads/Law%20Reports/kenya_law_report_v1_\(may_2018\).pdf](https://www.28toomany.org/static/media/uploads/Law%20Reports/kenya_law_report_v1_(may_2018).pdf)

²¹28tooMany.org. The Kenya Law and FGM
[https://www.28toomany.org/static/media/uploads/Law%20Reports/kenya_law_report_v1_\(may_2018\).pdf](https://www.28toomany.org/static/media/uploads/Law%20Reports/kenya_law_report_v1_(may_2018).pdf)

²²28tooMany.org. The Kenya Law and FGM

individuals seeking FGM, whereby these individuals travel from Kenya to neighbouring countries where FGM is still practiced, in an effort to conduct the practise on teenage and adolescent girls²³.

21. Although the State has made strides to end FGM in Kenya, with efforts such as the enforcement of the Anti FGM Act No. 32 in 2017, the adoption and implementation of Guidelines on the Prohibition of FGM, the development of the Anti-FGM board²⁴, the review to the State's FGM policy, and the development of National Policy on the abandonment of FGM 2016-2020²⁵, FGM is still a major problem, that needs lasting and sustainable efforts that will ensure the abolition of the practise.

22. **Recommendations: We urge the government to set resources aside for the coordination of efforts between government agencies and NGOs on girls and women education to improve their understanding of rights and legal frameworks on issues relating to FGM. Additionally, we call on the government to increase the Anti- FGM Board's capacity by ensuring its presence in all the counties across the country. Lastly, the proposed National Policy on the eradication of FGM needs to be realized and brought to fruition as recommended was recommended in the second cycle of the Universal Periodic Review.**

²³ 28tooMany.org. The Kenya Law and FGM

²⁴ The Anti-FGM board is a Semi-Autonomous Government Agency that was established in December 2013 following the enactment of the Prohibition of Female Genital Mutilation Act, 2011. The Board's mission is: 'To uphold the dignity and empowerment of girls and women in Kenya through the coordination of initiatives, awareness creation and advocacy against FGM

²⁵ Unicef. UNFPA-UNICEF JOINT PROGRAMME ON FGM IN KENYA Retrieved from https://www.unicef.org/kenya/Champions_of_Change_-_Community_voices_driving_campaign_against_FGM.pdf