

COMMUNIQUE ON INTERROGATING THE PROSECUTION OF SEXUAL AND GENDER BASED VIOLENCE IN KENYA

HELD ON TUESDAY 30 JUNE 2020

1. The Kenyan Section of the International Commission of Jurists (ICJ Kenya) held the 13th in a series of its justice and rule of law webinars. The webinar was held on 30 June 2020 and it sought to interrogate the prosecution of sexual and gender-based violence (hereinafter SGBV) in Kenya;
2. ICJ Kenya deeply appreciated the participation of the distinguished panellists and participants that were drawn from diverse fields of expertise representing all sectors including the government, civil society, the legal fraternity, the judiciary and the private sector. The participants and the general public joined the webinar on our social media platforms and online streaming services including YouTube, Twitter, Facebook and WhatsApp;
3. The objectives of the webinar were informed by the increasing concern that statistical evidence continues to show that women and girls are disproportionately affected by SGBV, with an estimated 45% of women and girls facing some form of gender-based violence annually. This is according to the Kenya Demographic and Health Survey data;
4. Further, ICJ Kenya is deeply concerned that the Covid-19 pandemic has caused a sharp increase in SGBV cases not only globally but also in Kenya with the National Council for Administrative Justice (NCAJ) expressing concerns that SGBV cases constituted over 35% of the cases reported between 16 March and 1 April 2020. This was shortly after the pandemic began. Recent media reports have also noted on the sharp increase in teenage pregnancies;
5. ICJ Kenya is concerned that the increase in SGBV cases reported during the pandemic has not automatically resulted in an increased attention by the justice sector actors on the SGBV cases, despite the prevailing circumstances including restrictions in movement and curfews. Thus, creating new challenges for the victims of SGBV in accessing assistance and seeking justice;
6. We note that the Kenyan legal and policy frameworks provide mechanism for addressing SGBV but the operation and implementation have been inevitably plagued by challenges that are further exacerbated by the Covid-19 pandemic;
7. ICJ Kenya further notes concerns regarding the length of time it has taken to prosecute SGBV cases committed during the 2007-08 post-election violence. Despite the filing of a petition seeking reparations for the victims by eight survivors of the 2007-08 PEV and civil society organizations namely: the Kenyan Section of the International Commission of Jurists (ICJ Kenya), the Coalition on Violence Against Women (COVAW); the Independent Medico-Legal Unit (IMLU); and Physicians for Human Rights (PHR) in 2013 seeking redress for the survivors, a decision is yet to be rendered seven years after the petition was lodged;

9. In the discussion, the panellists and participants acknowledged that:

- a. SGBV is rooted in a failure of the State to uphold the rights to equality and non-discrimination of women and girls, and is rooted in the societal beliefs on gender and gender roles;
- b. SGBV violates the rights to dignity, bodily integrity and threatens the right to the highest attainable standard of health care for the victims;
- c. SGBV has long term effects on victims including life-long emotional distress, mental health challenges and poor reproductive health;
- d. The Constitution of Kenya, the legislative and policy frameworks coupled with provisions contained in international human rights instruments impose the respect, protect, fulfil obligations on the State which include ensuring that perpetrators of SGBV are held accountable and the victims' access appropriate remedies;
- e. Despite these existing legal and policy frameworks, measures undertaken by key stakeholders such as the ODPP and the Judiciary to facilitate the investigation and prosecution of SGBV cases, there are still numerous challenges such as poor investigations, inadequate care in the protection and handling of evidence, protection of witnesses in the cases and the undue delays in the hearing and determination of the cases that have hindered justice for the victims;
- f. SGBV cases are often sidelined amidst national emergency situations such as in the current Covid-19 pandemic, with key justice sector actors such as the investigative institutions deeming SGBV as a non-priority even though time and again, it has been proven that it is during times of national emergencies when most of these offences are perpetuated;
- g. There is inadequate support to victims of SGBV especially in provision of appropriate assistance at the critical initial stages immediately the violence has occurred; key aspects and opportunities in collection and preservation of evidence is lost;
- h. There are inadequate facilities to provide safety for victims of SGBV; the few safe houses that exist are non-governmental; the County of Makueni is the first and only government (both national and county) to establish a safe house for victims of SGBV;
- i. Victims of SGBV often face stigma from the persons supposed to provide assistance at initial and critical stages of seeking remedial action such as police officers and health care providers. This often discourages victims from reporting these cases and seeking help;
- j. Justice for victims of SGBV must be looked at holistically because the effects and impact are traumatic requiring extensive interventions beyond convictions to psychosocial support;
- k. Success in holding perpetrators of SGBV accountable requires commitment and coordinated efforts by all the players in the justice chain;
- l. Alternative Justice Systems including Traditional Dispute Resolution Mechanisms are not appropriate in the settlement of SGBV cases, to the extent that they are laced with gender and cultural biases that do not adequately consider the victim's perspective;
- m. At the core of addressing SGBV, is a change of attitude and breaking of negative perceptions and judgments against victims, required of all of us as a society;



Therefore, and in view of the foregoing, ICJ Kenya calls upon:

A. The Executive to:

- i. Recognize SGBV as a national emergency, with dire negative consequences to our society and therefore requiring urgent attention and deliberate intentional investment necessary to effectively deal and respond;
- ii. Emphasize on bridging the gap between law and practice through strengthening the accountability mechanisms, follow up and evaluate the implementation of laws addressing prevention and response to SGBV;
- iii. Ensure that SGBV response services, including justice services, are designated as essential and remain open and accessible at all times, including through online and digital platforms;
- iv. Ensure that individuals can safely report, break free of abusive situations by providing accessible support, advice and reporting mechanisms; including provision of shelters, toll free lines and one stop assistance centers where victims can access investigators and healthcare experts without unnecessary hinderances;
- v. Guarantee that SGBV survivors can confidentially report incidents and have timely and non-discriminatory access to services and support, including medical, psychosocial, legal and material assistance, as well as safe spaces where needed.
- vi. Provide sufficient resources to investigation, collection and preservation of evidence relating to SGBV;
- vii. Implement recommendations of the various commissions of inquiry on matters SGBV such as the Waki Commission on the establishment of the Office of the Special Rapporteur on SGBV that would be responsible for creating the necessary linkages amongst all the key players in the justice chain;
- viii. Take proactive measures to investigate and prosecute politically instigated SGBV;
- ix. Facilitate the establishment of specialized forensic labs to handle SGBV related evidence;
- x. Raise awareness on SGBV around the country, to facilitate the shift in attitudes towards SGBV victims amongst the general public;
- xi. Facilitate the collection of proper and accurate integrated data on SGBV in Kenya to further inform interventions at various levels.

B. The Inspector General of Police to:

- i. Establish a specialized Unit to investigate SGBV cases with presence across all the counties with officers that are specifically trained to handle SGBV cases;
- ii. Ensure officers exercise due care in receiving reports of, and investigation of SGBV cases as one of the core players in the justice chain, critical to the collection and handling of evidence;
- iii. Ensure that SGBV survivors can confidentially report incidents and have timely and non-discriminatory access to services and support, including medical, psychosocial, legal and material assistance, as well as safe houses where necessary;
- iv. Hold accountable police officers who perpetuate SGBV, by ensuring they can be identified, investigated and face consequences for their actions.



For more inquiries, kindly contact our communications office through Moses Okinyi
on +254726989713 or communications@icj-kenya.org

C. The Ministry of Health:

- i. Ensure that all survivors of SGBV have access to services for clinical management;
- ii. Ensure that all health care facilities have trained staff, as well as sufficient supplies and equipment for the clinical management of SGBV victims;
- iii. Elaborate the Standard Operating procedures on clinical management of victims of SGBV.

D. The Office of the Director of Public Prosecutions to:

- i. Decentralize and devolve the SGBV division to the lowest administration level possible across the country;
- ii. Coordinate with the investigative actors to ensure that all evidence is collected and preserved for presentation to court; and that the cases are devoid unnecessary delay;
- iii. Take measures to curtail the use of alternative justice systems to resolve SGBV cases to the detriment of the victims;
- iv. Collaborate with civil society organizations, including local women's organizations, as they can help disseminate information to the SGBV victims.

E. The Judiciary to:

- i. Take measures to fast track all SGBV cases that are pending in court;
- ii. Ensure that measures taken in response to the COVID-19 crisis do not negatively affect the expeditious disposal of SGBV cases as well as the protection of victims and their right to fully participate in the court proceedings;
- iii. Establish specialized courts to deal with SGBV cases and ensure the judicial officers in those courts are specifically trained to deal with the cases effectively;
- iv. Have measures in place to ensure continuity of the SGBV cases when judges are transferred, to avoid an eventuality such as that in constitutional petition of 122 of 2013;
- v. To ensure that SGBV survivors are able to seek judicial remedies and are accorded sufficient opportunity in court to fully participate in the proceedings.
- vi. Ensure full implementation of the Witness Protection Act in relation to SGBV cases.

F. To the Civil Society actors:

- i. Continue advocating for the implementation of the State obligations to respect, protect, fulfil and avail appropriate remedies to victims of SGBV;
- ii. Monitor SGBV cases and assist victims to navigate the criminal justice sector and access appropriate remedies through provision of legal aid and any other support possible;
- iii. Help in creating awareness on existing legal and policy frameworks on the protection of SGBV victims and encouraging victims of SGBV or persons aware of continued violations to report, prosecute and seek help for the victims;
- iv. Provide feedback to all key players in the justice chain on interventions necessary to enhance access to justice for SGBV victims amidst and beyond this pandemic;
- v. Review national laws and policies on SGBV protection, the rights of victims, and their rationale to ensure they are in line with constitution, international and regional instruments;

To the General Public:

- i. Take appropriate steps towards an attitude shift on SGBV, and recognize that it is not acceptable in any society,
- ii. Recognize that SGBV has far reaching effects on the victims and everyone has a role to play in ensuring justice for the victims and that “Haki ni Jukumu la kila mtu”;
- iii. Shun any attempts to protect perpetrators of SGBV and instead be at the forefront of reporting the incidences and ensuring that perpetrators are held accountable for their actions;
- iv. Cooperate with the government and all stakeholders to ensure the safety and security of victims of SGBV.

ICJ KENYA COMMITS AND UNDERTAKES TO:

- i. Continue with the quest for justice for SGBV victims;
- ii. Persist in our engagements to highlight the plight of victims, seek justice and engage the duty bears in the criminal justice chain such as the police, the prosecution and courts;
- iii. Engage in advocacy efforts to ensure that the recommendations above are implemented.

Signed

Kelvin Mogeni
Chairman
Icj Kenya