

Breaking Cycles of Violence: Gaps in Prevention of and Response to Electoral-Related Sexual Violence in Kenya

Methodology of the Study

The study was originated on the backdrop of credible evidence of hundreds of cases of sexual violence committed during the 2017 General Election. Moreover, the experiences of survivors of 2017 ERSV mirrored the dire conditions encountered by survivors of 2007-08 ERSV, due to their inability to access timely and comprehensive health care, psychosocial support, justice and reparations.

Thus, the study set out to conduct a thorough human rights-based assessment to identify the factors motivating the gap between recurrent ERSV and ineffective responses to victims and survivors, and the government of Kenya's human rights obligations to prevent and respond to ERSV. The assessment was conducted against indicators drawn from the human rights normative framework included in the 2010 Constitution and international and regional treaties ratified by the government of Kenya. Specifically, the indicators include a set of human rights obligations and corresponding measures and standards for implementation, which require state duty bearers to act with due diligence to: prevent ERSV; protect victims from the consequences of ERSV; ensure investigations and prosecution of perpetrators of ERSV; and provide reparation to victims and survivors of ERSV.

The primary objectives of the study were, therefore, to:

- a. Assess the effectiveness of and critical gaps in measures established by state duty bearers to,
 - Prevent ERSV during the 2017 elections, including early warning mechanisms and contingency planning in the context of election security arrangements;
 - Protect victims and survivors' of ERSV, including emergency responses and assistance to ensure access to timely and comprehensive health care and forensic services, psychosocial support and safety;
 - Investigate and prosecute perpetrators of ERSV, including ensuring preparedness and capacity of the justice system to support legal accountability for ERSV; and
 - Provide timely and appropriate reparation to address the harm suffered by victims and survivors of ERSV.
- b. Identify and formulate concrete survivor-centred, short to mid-term measures that ought to be prioritized by state duty bearers to strengthen prevention of and responses to ERSV in the upcoming 2022 and future elections.

The study was conducted between December 2018 and October 2019. It utilized mixed methods involving collection, analysis and integration of qualitative and quantitative data to gain a comprehensive understanding and corroboration of the existing gaps in implementation of the Kenyan state's human rights obligations related to ERSV. The study was carried out by a multi-disciplinary team of six researchers including gender specialists, a social scientist, and legal and human rights practitioners with expertise on sexual and gender-based violence, access to justice and reparation. The Office of the High Commissioner for Human Rights (OHCHR), Physicians for Human Rights (PHR) and UN Women provided technical and administrative support to the research team.

The study was conducted in Nairobi, Kisumu, Bungoma and Vihiga Counties, which were selected based on findings by the Kenya National Commission on Human Rights' (KNCHR) that these areas had experienced high frequencies of ERSV. KNCHR established that 170 (85%) of the 201 ERSV cases it recorded in 11 counties¹ were concentrated in the four study counties.²

A total of 200 participants from the community, public service, law enforcement, health, forensics, justice, development and civil society sectors were involved in various phases of the study discussed below. Participants included representatives from survivors of sexual violence networks, national and county government institutions, constitutional commissions, non-governmental and community-based organizations, and UN agencies.

The study was governed by the UN-OHCHR Manual on Human Rights Monitoring³ and put in place stringent measures to: ensure meaningful consultations with and participation of right holders, affected individuals and relevant duty bearers; prevent and mitigate any potential harm to survivors of ERSV and all participants involved in the study; uphold strict standards of confidentiality and security of sensitive information obtained through the study; ensure informed consent of all participants; and maintain impartiality, objectivity and transparency throughout the study. Specific measures initiated in every phase of the study are discussed in greater detail below.

Literature review and preliminary consultations

This entailed a desktop collection and review of hundreds of official documents including legislation, policies, guidelines, regulations, government internal evaluations, reports from civil society, oversight bodies and United Nations agencies, and interpretive guidance from treaty bodies. The review provided the research team with a clearer understanding of patterns of 2017 and past ERSV in Kenya, including survivors' experiences, and emerging gaps in the state's implementation of its human rights obligations related to prevention of and response to ERSV. The review also informed the mapping of key stakeholders and duty bearers that were likely to provide relevant information on the nature of and implementation of measures initiated by the state to prevent and respond to ERSV during the 2017 elections.

Following the desk review, the research team held consultations with identified key stakeholders and state duty bearers to secure their collaboration in designing appropriate methodologies and tools, and identification of relevant participants for the study. This included consultations with representatives of survivors of sexual violence, the Kenya National Commission on Human Rights and Human Rights Watch that had documented cases and patterns of 2017 ERSV, and key state institutions, including the State Department of Gender in the Ministry of Public Service, Youth and Gender Affairs, respective County Executive Committee members in charge of health, Nairobi County Health Operational Technical Working Team, administrators of selected health facilities, the National Police Service, and County Commissioners.

¹ Nairobi, Kisumu, Vihiga, Kakamega, Migori, Siaya, Busia, HomaBay, Bungoma, Machakos, and Uasin Gishu.

² Kenya National Commission on Human Rights 2018, *Silhouettes of Brutality: An Account of Sexual Violence During and After the 2017 General Election*, KNCHR, Kenya.

³ Office of the High Commissioner for Human Rights, Manual on Monitoring Human Rights, Chapter 2: Basic Principles on Monitoring Human Rights, 2011. Available at <https://searchlibrary.ohchr.org/record/4835?ln=en>.

Qualitative data: KIIs and FGDs

Qualitative data was collected through Key Informants Interviews (KII) and Focus Group Discussions (FGD) over a period of three months between February and April 2019. The research team used purposive and snowball sampling methods to select participants with specific mandates to implement ERSV-related obligations, and relevant knowledge, expertise and experience in or with programmes related to prevention of and response to ERSV. The team developed semi-structured guides for the KIIs and FGDs, which generated in depth information and insights: (a) on the types, effectiveness and gaps in implementation of measures initiated by the state for prevention, protection, investigations, prosecutions, and reparations for ERSV during the 2017 and 2007 elections; (b) to gauge survivors and stakeholders perceptions, attitudes and experiences on ERSV in Kenya and the state's responses; and (c) to identify and examine proposals for potential interventions to enhance prevention of and response to ERSV in future elections.

The research team conducted extensive interviews with 95 government officials from a wide range of institutions, notably, the State Department of Gender, National Ministry of Health, Government Chemist, Ministry of Interior, County governments and commissioners, County-based health facilities, the National Police Service including the Internal Affairs Unit, the Judiciary, the Office of the Attorney General, the Office of the Director of Public Prosecutor (ODPP), and Constitutional Commissions including the Independent Electoral and Boundaries Commission (IEBC), KNCHR, the National Gender and Equality Commission (NGEC), the Independent Policing Oversight Authority (IPOA) and National Cohesion and Integration Commission (NCIC).

KIIs were also conducted with survivors' representatives, UN agencies and civil society organizations and survivors' groups, notably, Grace Agenda, Wangu Kanja Foundation, UNDP, UNICEF, UNFPA, UN Women, OHCHR, Kenya Human Rights Commission (KHRC), Federation of Women Lawyers (FIDA), and Centre for Rights Education and Awareness (CREAW).

In addition, the team conducted 10 FGDs to gain a deeper understanding of the challenges, barriers and gaps experienced by survivors and police officers in seeking to obtain protection and justice, and implementation of measures for prevention and investigation of ERSV, respectively. The team is particularly grateful to the 53 survivors of 2017 and 2007 ERSV and 41 police officers who openly participated in the FGDs and expressed support for this study in the hope that it can bring change.

KIIs and FGDs were conducted following signed written informed consent of all the participants. The research team informed participants of the objectives of the study, how the information obtained would be utilised, and the right to withdraw from the research at any point, before commencing interviews. The team worked closely with peer leaders and institutions providing ongoing support to survivors of ERSV to identify participants and secure locations and included skilled counsellors in the FGDs so as to minimize the potential for retraumatization of survivors. Moreover, the team worked with interpreters to communicate with survivors in languages they could understand and did not require them to recount their ordeals but deliberately focused the FGDs on challenges experienced in seeking protection, justice and reparation after ERSV. Survivors' personal identifiers and attributes have been excluded from the report so that they remain anonymous.

Interviews were recorded through transcription. The interview scripts were subsequently de-identified, manually coded and analyzed to identify emerging patterns and observations. The analysis of the obtained data was conducted against the framework of the four themes and indicators drawn from the state's human rights obligations related to ERSV: prevention, protection, investigations and prosecutions, and reparation.

Quantitative data collection: retrospective review of PRC and P3 forms

Quantitative data was obtained through a retrospective review of records of Post-Rape Care (PRC) forms and registers at five health facilities within the study Counties - Jaramogi Oginga Odinga Referral and Teaching Hospital [JOORTH], Makadara Health Centre [MHC], Mama Lucy Kibaki Hospital [MLKH] and Vihiga County Referral Hospital [VCRH] - within a three-week period in February 2019. The research team purposively selected the hospitals based on reports indicating that survivors had sought PRC services from the facilities and their proximity to the areas which experienced high incidences of ERSV. The retrospective records review was conducted to qualify information obtained through the literature review, KIIs and FGDs, indicating significant barriers, challenges and gaps in survivors' access to and health facilities provision of timely and comprehensive health care and medical forensic services.

The team developed extraction tools that were used to consistently capture data from the PRC. The tools only extracted statistical data and did not include any personal or identifying data to preserve the survivors' confidentiality. Medical personnel in the five facilities approved the tools and supervised the data collection exercise, where the team worked in close collaboration with assigned focal points. Data from the questionnaires was recorded using CSPro software and exported to SPSS for cleaning and analysis, to track the number of sexual violence cases reported at the selected health facilities during the 2017 election period and assess the nature of post-rape care services provided to survivors.

The PRC records review covered a six-month period from July to December 2017, which was informed by the intention to analyse trends in reporting and responses during the:

- (i) immediate pre-election period [1 July – 6 August 2017],
- (ii) election period [7 August – 31 October 2017], and
- (iii) post-election period [1 November to 31 December 2017].

Given the limited time allocated to the research, the team adopted a combination of census and systematic random sampling⁴, which resulted in the review of 619 PRC records out of a total of 1,635 cases of sexual violence reported at the five health facilities during the entire review period. The 619 cases were spread as follows: JOORTH [121], MLKH [227], MHC [141], MSF-F [121] and VCRH [9].

The research team also obtained data from 70 P3 forms (these are the police medical reports filled at the time of lodging a sexual offence complaint), which were included in the PRC records at JOORTH (Kisumu). The review of P3 forms was useful to assess the nature of linkages between the health and law enforcement sectors, particularly in the cases reported at JOOTRH in Kisumu.

⁴ The census sampling involves selecting all the cases identified in the health facility while the systematic random sampling involved the selection of a method of randomly picking two cases a day. For four health facilities [JOORTH, MLKH, MHC and VCRH] a census was conducted due to the manageable size of the population, while for MSF-F, systematic random sampling technique was employed.

Validation

Over 50 individuals involved in the study, including survivors, state institutions, civil society organizations and constitutional commissions participated in two workshops in April and June 2019 to validate the authenticity of the information and findings provided in the study report.

Limitations of the study

The record review was based on data from PRC forms that were captured for purposes independent of the study. Hence, the study team had no control over the extent to which all relevant details, including the context and perpetrators of the violations, were properly captured in the PRC forms. Nonetheless, the study's analysis of the obtained data identified an upsurge in cases of sexual violence reported to the selected health facilities during the election period. The study team was also not granted access to PRC forms from pre-selected health facilities in Bungoma County. The record review was, therefore, only limited to three out of the initially targeted four Counties. Further, only a few of the PRC records at VCRH were readily available during the records review. Consequently, the number of cases recorded are fewer than the actual cases reported at VCRH.