

REPARATIONS FOR SURVIVORS OF CONFLICT-RELATED SEXUAL VIOLENCE



COUNTRY BRIEFING: KENYA

Official Register of Survivors of conflict-related sexual violence (CRSV): None.

Official number of CRSV Survivors: [900](#) (number having received 72-hr emergency treatment in Nairobi Hospital during the 2007-8 Post Election Violence (PEV)).

Estimated Real Number of CRSV Survivors: Hundreds of thousands during the colonial era; >100,000 between 1963-2006; >10,000 for 2007-8 elections, <10,000 for 2017 elections. Estimates for Western Area alone are >3000 women and 1000-1500 men.

Domestic Legal Framework for Administrative Reparations Programme: A draft Public Finance Management (Reparations for Historical Injustices Fund) Regulation was submitted to the Department of Justice and Attorney General to operationalise the Fund (a.k.a the Restorative Justice Fund or 10 billion Justice Fund), but [has yet to be adopted](#) by the Government of Kenya.

Mechanism to implement Administrative Reparations Framework: None.

Domestic Avenues for Reparations through Courts: Yes, but a limited number of cases have been brought. Those that have been brought, have been stalled or delayed for years. The landmark case resulting in the 10 December 2020 ruling ([Petition 122 of 2013](#)) took over seven years and is on appeal. No cases have resulted in reparations being received.

Approximate Number of Survivors having received any formal Reparations for CRSV: 0

Survivor Perception regarding state of Implementation of Reparations: Despair and frustration after over 14 years of promises, neglect, obstruction, and denial.

Ongoing CRSV: There are real fears of a repeat pattern of CRSV in the upcoming 2022 general election.



Nature and Scope of CRSV

Colonial Period and Struggle for Independence

CRSV was prevalent during the colonial period, being used systematically as a method of discipline, humiliation and to instil fear in would-be dissidents. In the struggle for independence, hundreds of thousands of men and women were sent to detention camps where high numbers of rape, gang rape, sexual torture, castration, and other forms of sexual violence were reported.

Ethnic, Political and Election-Related Violence

CRSV has been used as a systematic tool to intimidate, degrade and control communities perceived to be on the 'wrong' side of the political divide. High-level officials and security forces have been accused of such violence.

CRSV has included rape, defilement, sodomy, gang rape, sexual mutilation (including forced circumcision and penile amputation). Incidents of being forced to watch or commit acts of sexual violence against family members have been reported. Survivors and witnesses have also described perpetrators inserting "guns, sticks, bottles and other objects into women's vaginas" or beating their genitals with objects. Many survivors reported gang rapes and multiple documented cases involved more than four perpetrators and at times more than ten. Such brutal acts have also been committed with impunity in other conflict contexts including forced evictions, security operations, internal displacement, and in counterterrorism operations by Kenyan Government officials. Women and girls bear the brunt of CRSV, but shocking numbers of men and boys were also victims of sexual mutilation.

FACTS AND FIGURES

GSF Study estimates:

- Hundreds of thousands of survivors of CRSV in the colonial era
- >100,000 survivors in conflicts between 1963-2006
- >10,000 in 2007-8 PEV
- <10,000 for 2017

"Being gang raped is one thing. Having a child from it is another. I didn't finish school, rejected by my family. I wanted to kill the child and myself.. But I've made it this far."



Harm caused to Survivors, Families and Communities

The impact of CRSV in Kenya has engulfed all aspects of survivors' lives. With little support available, the trauma for women, men and children born of rape has resulted in ongoing mental health challenges, medical conditions and aggravated disability. Survivors talk of being trapped, of not being able to escape their past and being blamed and shunned for what happened, often experiencing verbal and/or physical abuse. Many were abandoned by their own husbands after the rape ordeal and have been left with indelible shame and pain in their hearts. Children born of rape further compound the trauma and tragedy, adding to their shame. Husbands, family or community members use bitter words to bring them down with accusations: *"you must have known your perpetrators; it is your fault."*

The lack of legal recognition, impunity and repair compounds survivors' desperation as the **stigma and blame** radically alter their life trajectories, impacting their mental wellbeing, physical health, social and economic status. For children born of rape, the impact is one of untold abuse and exclusion by mothers, family members and society at large. Most suffer from emotional and psychological stress. Children who witnessed sexual violence against their parents are also traumatised by the knowledge that their parents are survivors and shunned by the community.

Every new life challenge is a sharp reminder of the past. Survivors expressed this in different ways:

"I was working and had a salary, my business is destroyed, household stuff destroyed, schooling for the children destroyed, marriage- broken."

"I have been reduced to a beggar with no respect"

"Before violence erupted, we were living a good life. We had our businesses, we had jobs and our children were going to school. We could save money even in banks, we used to feed and dress well. Our children knew their fathers. There was love, peace and respect in our families and communities. Decision-making was easier because we had money. Now all these situations have completely changed to the contrary."

"I was a plant manager in Nakuru and had my own vehicle, but the violence has reduced me to scratch."

Kenya is a patriarchal society where religious and socio-cultural norms create gender imbalance and inequality. The failure to properly investigate and prosecute grave crimes has led to a culture of impunity. Perpetrators have been emboldened by the lack of accountability, as exemplified by further widespread sexual violence reported in the 2017 election, for which there has been no redress. There are significant fears for the upcoming 2022 elections.



Survivors' Perspectives

Needs and Expectations

Survivors demand reparations related to **“our very existence, our survival and that of our children”**. Survivors believe reparation is their right, both inherently and because the Government committed to support them. Most survivors use the words compensation and reparations interchangeably, implying an expectation of Government financial support. 14 years after the 2007-8 post-election violence, conversations around reparations remain a disenfranchising process. For those whose rights were violated, reparation is considered necessary to start again and to make them whole: reparations is closure.

Initiatives to support economic independence are needed to address poverty and increased vulnerability of survivors resulting from what happened.

Betty Okero from CSO Network explains: *“Some of them live at the markets because they have nowhere to turn to. Their children are being sent home due to lack of school fees, even relatives who are well off cannot help. Survivors are psychologically traumatised, as are their children who suffer mental health issues too. Some of the children are growing up to be very bitter and violent people. They witnessed it. They need psychosocial support.”*



Geographical distribution of cases of electoral-related sexual violence documented during Kenya's 2017 elections. Source: [Kenya National Commission for Human Rights \(KNCHR\)](#)



Survivors' Initiatives

Strategic Litigation: In 2013, eight CRSV survivors of the 2007-8 PEV filed a Petition (No. 122 of 2013) at the High Court. In a landmark ruling on [10 December 2020](#), the Constitutional and Human Rights Division of the High Court, recognised the 2007-8 sexual violence for the first time as well as the Government's failure to investigate and prosecute violations committed. The Court awarded four survivors 4m KES each (approx. 35,000 USD). However, the ruling did not recognise the State's obligation and failure to protect citizens from CRSV even when cases are not reported to the police. The ruling has been appealed by the Government, and compensation remains unpaid. Other local cases have been filed but are characterised by delays and obstacles. The Reparations for Historical Injustices Fund was supposed to cater for payment of awards, but without clear regulations to manage the fund, CRSV survivors have not benefitted.

Parliamentary Petitions: In 2015, civil society actors including survivors campaigned and petitioned the National Assembly to discuss the TJRC Report issued in 2013. The Report was only partially published (sections on Sexual Violence and other Human Rights Violations were omitted) and was never debated by the National Assembly in 2015.

Development of a Framework for a “Reparations for Historical Injustices Fund”: In 2015, the Kenya National Commission on Human Rights (KNCHR) led a multisectoral consultation to operationalise the “Reparation for Historical Injustices Fund” announced by President Kenyatta in 2015. Civil society partners included members of the Kenya Transitional Justice Network, National Victims and Survivors Network (NVSN), the Kenya Law Reform Commission (KLRC) as well as the Office of the UN High Commissioner for Human Rights. In 2017, two documents were submitted to the Department of Justice and Attorney General's Office:

- the Public Finance Management (Reparations for Historical Injustices Fund) Regulations 2017, which are attached to the Public Finance Management Act; and
- the Reparations for Historical Injustices Fund Policy.

Petition to the Senate: In 2019, NVSN tabled a petition in the Senate, seeking among other prayers, that the Senate consider and adopt the TJRC Report that the National Assembly failed to consider. Thereafter, Jacqueline Mutere, Grace Agenda and Wachira Waheire, NVSN were invited to make presentations to the Standing Committee on Justice, Legal Affairs and Human Rights. In 2020, the Committee recommended the issues be tabled for debate in Senate, but they were never debated.

Survivors Speak Event: In June 2021, for the International Day for the Elimination of Sexual Violence in Conflict, civil society actors Jaqueline Mutare, Founder of Grace Agenda and Betty Abade-Okero, Director of CSO Network (Kisumu), along with the Kenya Transitional Justice Network and NVSN, and support from Global Survivors Fund, organised the high-level event “Survivors Speak” to engage Government leaders. The event was live streamed and triggered online participation in a campaign that reached over 2.8million people through the hashtags #SurvivorsSpeakKE and #ActForReparations.



Reparations

IN THEORY

Political Commitments

- In October 2008, the Waki Commission (Commission of Inquiry on Post-Election Violence) officially recognised the post election sexual violence committed in 2007-8, attributing significant police responsibility.
- In 2015, a [Public Apology](#) was made by President Uhuru Kenyatta "past wrongs" and 10 billion KES pledged for "Restorative Justice".
- In 2020, at the UN Human Rights Council, the government [committed](#) to:
 - acknowledge the violations against CRSV survivors;
 - implement reparations for CRSV survivors;
 - intensify efforts to secure redress for 2007 and 2017 PEV.

Judicial Remedies

- In December 2008, President Kibaki and Prime Minister Odinga agreed to establish a Special Tribunal and implement the Waki Commission recommendations in full.
- In 2012, the International Criminal Court (ICC) [initiated cases](#) against High-Level perpetrators of 2007-8 PEV.
- On 10 December 2020, the Kenyan High Court historically recognised CRSV survivors from 2007-8, awarding reparations to four CRSV survivors.

Administrative Remedies

- In 2013, the Government published (gazetted) the TJRC Report, which recommended reparations.
- In 2017, draft Public Finance Management (Reparations for Historical Injustices Fund) Regulations were drafted to operationalise the Fund.
- In [March 2021](#), the Government reported to the UN Human Rights Committee that the Victim Protection Board had been fully operationalised.

IN PRACTICE

Political Commitments

- The Kenyan government has never recognised or acknowledged CRSV victims from the 2007-8 or 2017 PEV, or police involvement in the violence.
- The 2015 Public Apology recognised other post-election violence but not sexual violence committed.
- Perpetrators have become emboldened by the culture of impunity, evidenced in further widespread CRSV during the 2017 elections.
- The Police was commended by the President for its policing during the 2017 election as "[a job well done.](#)" 54.6% of victims in KNCHR study identified the Police as perpetrators.

Judicial Remedies

- The Kenyan parliament voted down a Bill to establish Special Tribunal to try those implicated, triggering the International Criminal Court (ICC) Prosecutor to open [investigations proprio motu in 2010](#).
- In 2013, the High-Level individuals indicted by the ICC were elected as President and Deputy President of Kenya. By 2016, the ICC cases collapsed due to [witness intimidation and non-cooperation](#).
- The landmark 2020 High Court ruling was appealed by the government. Damages were limited to four out of the eight survivor-petitioners.

Administrative Remedies

- The 2013 TJRC gazetted Report [omitted Volumes IIA and IIC, that provided details on sexual and other violence committed](#).
- The [Restorative Justice Fund](#) received its first tranche of KES 3.4 billion (approx. 30.9 million USD) in financial year 2016-2017, but the funds have not been accounted for due to lack of regulations.
- The 2017 draft legal framework to operationalise the Reparations for Historical Injustices Fund has never been adopted.
- The [Victim Protection Board](#) services (reparation, rehabilitation, compensation and special protection) do not cover victims of historical injustices (i.e. 2007-8 PEV). Compensation is only to be provided by the Board upon receipt of a court order



Opportunities

While there is [hopelessness amongst survivors](#) and fatigue amongst activists, there are opportunities to build on. A Fund for Historical Injustices had been announced, and at a technical level the steps needed to operationalise it are few. There are precedents of reparations, including compensation for persons displaced (IDPs) in 2007-8, even if not transparent or consistent across regions. The 2020 landmark High Court ruling, while on appeal, acknowledges the harm caused to survivors and affirms survivors' right to reparation and government failings. It provides opportunities for further advocacy, as do the Kenyan government's commitments made at the 2020 UN Human Rights Council (see In Theory above).

In response to the Survivors Speak event in June 2021, there have been positive commitments from at least three new Government allies, including Member of Parliament Hon. Esther M Passaris; Leah Nyambeki, Vice-Chairperson of the Victim's Protection Board and Hon. Dr. Linah Jebii Kilimo, Chief Administrative Secretary, Ministry of Public Service and Gender.

A strong survivor movement, backed by commitment from civil society organisations and other allies, including international partners, is key to success. These networks and collaborations are already in place, and together have significant capacity. That said, initiatives, campaigns and targeted advocacy will need to be sustained over time. Many activists have lost hope and moved on to other work. Opportunities to keep the issues alive and make progress requires in particular:

- Sustaining the momentum and sense of empowerment gained by survivors through the GSF Global Reparations Study, enabling survivors to engage the general public, build a community of support and speak out to their leaders;
- Following up commitments made by officials and political leaders during the Survivors Speak Event on 22 June 2021;
- Building on these commitments during the upcoming 16 Days of Activism ending 16 December 2021;
- Sustaining momentum around the Constitutional Petition 122 of 2013 currently on appeal (the first anniversary of the judgment will be on 10 December 2021), and pursuing further strategic litigation;
- Supporting and giving visibility to the Memorialisation Project being put forward by the National Victims and Survivors Network, ensuring that it reflects the scale and impact of CRSV; and
- Creating momentum and empowerment of survivors to appeal to their area leaders, particularly with County level leaders for instance in Kisumu where connections between civil society advocates and leaders are already established.



Key Challenges

- **Lack of Preparedness for 2022 elections:** Despite warnings and predictions, and the adoption of the 2014 National Policy on Prevention and Response to Gender-Based Violence, the culture of impunity has made repeat widespread conflict related sexual violence likely at the 2022 elections.
- **Lack of political will:** After 14 years of shifting goal posts, CRSV survivors are still waiting for reparations. The Government has consistently only acknowledged victims as those killed and displaced by the violence, not recognising CRSV survivors or other victims. Attempts to stop CRSV survivors claiming compensation through shaming, threats and intimidation have also been reported.
- **Survivor fatigue and hopelessness:** Based on survivor testimonies, their experiences with sexual violence have been devastating, and in spite of 14 years of efforts, reparation is still elusive. Maintaining momentum and ensuring progress is fundamental in this climate of fatigue and hopelessness.
- **Lack of provision for children born of rape, now 14 years old:** the untold devastating psychological, social and economic impact on 100s of children born of rape continues under the radar, while the children from 2007-8 are now adolescents with lost opportunities and deep scars.
- **Lack of comprehensive figures:** The numbers generally quoted are a small fraction of those being counted by experts on the ground. When experts have made assessments in some regions, figures have been far greater than reported, especially for male survivors. *"If we had a study focused on the numbers, we should all be shocked by the outcome"*, says Betty Abade-Okero, Director, CSO Network operating in Western Areas.
- **Current culture of impunity, political intransigence and 'state capture':** The personalisation of the Presidency and deliberate weakening of public institutions, which has grown under each President [since independence](#) is a real challenge. It underlies a "widespread belief that the presidency brings advantages for the President's ethnic group", which, in part, explains communities' motivations to commit violence to obtain or keep power with no regard for consequences of their actions or regard for fellow citizens.



Preliminary Recommendations

- The Office of the Attorney General and Department of Justice should address impunity for CRSV ahead of the 2022 elections, including investigation and prosecution of CRSV committed in 2007-8 and 2017. In particular, the Independent Oversight Policing Authority should address the impunity of police and security forces and the Government should ensure systemic reform of all relevant enforcement agencies.
- The President should officially and specifically recognise the status of survivors of CRSV and the specific harm they have suffered (e.g. on 10 December during the 16 Days of Activism).
- The Government should take immediate action to publish the full TJRC report, including Volumes IIA and IIC, followed by a parliamentary debate that includes discussion of sexual and other violence.
- The Office of the Attorney General and Department of Justice should adopt the draft Public Finance Management (Reparations for Historical Injustices Fund) Regulations 2017 and Policy, to operationalise the Restorative Justice Fund, ensuring, amongst others:
 - Official public acknowledgement of State responsibility in the sexual violence and harm caused;
 - Safely registering CRSV survivors, identifying the impact of the violence and their reparation needs;
 - Awarding financial compensation, or other measures as suggested by survivors, including rehabilitation measures, livelihood empowerment, medical and psychosocial support;
 - Putting in place symbolic measures such as memorialisation, educational and cultural interventions, and/or legal and institutional reforms to guarantee non-recurrence.
- To ensure satisfaction and non-repetition, the Government should adequately resource and operationalise the 2014 National Policy on Prevention and Response to GBV, providing security, psychosocial support, socio-economic assistance, legal aid and referral services for victims and survivors of sexual violence.

“I want compensation so that my life can be like it was before.”



Next Steps

Urgent action by the international community, Kenyan civil society organisations, and State authorities is needed to assist, support and sustain survivors' efforts to obtain the implementation of the above recommendations and achieve recognition and effective reparation. These include:

- Support to survivor-led or centred initiatives to empower survivors, including through trauma healing activities, and support for economic independence. Women-led initiatives have shown to create safe spaces for men to also become empowered and speak out.
- Support to survivor-led or centred initiatives to sustain, coordinate and amplify advocacy campaigns targeting duty bearers at county and national levels.
- Support to allow county and national survivor organisations and networks to engage in knowledge sharing, solidarity, and assistance between countries.
- Engagement with national allies and champions who can act as ambassadors to gather a critical mass of spokespersons advocating for implementation of reparative measures.
- State-level engagement on the lack of progress by other bodies including the African Union and United Nations, friendly States and the Global Survivors Fund, inquiring about reasons for lack of progress and potential technical or other support to facilitate implementation.