

# PETITION FROM WOMEN'S RIGHTS ORGANIZATIONS AND SURVIVORS OF GENDER-BASED VIOLENCE TO THE CHIEF JUSTICE OF THE REPUBLIC OF KENYA

PRESENTED ON  
9TH DECEMBER 2022 AT 11 AM

## 16 DEMANDS TO END GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS IN KENYA

Abridged Version



**PETITION FROM WOMEN'S RIGHTS ORGANIZATIONS AND SURVIVORS OF  
GENDER-BASED VIOLENCE TO THE CHIEF JUSTICE OF THE REPUBLIC OF  
KENYA PRESENTED ON 9<sup>TH</sup> DECEMBER 2022 AT 11 AM**

**16 Demands to End Gender-Based Violence against Women and Girls in Kenya**

**Background**

A 6-year old girl was defiled, murdered and buried in a shallow grave in Kakamega. A mother of 3 who sells bananas to fend for her children was waylaid on her way back home and gang-raped by the men who live in her neighbourhood. A 12-year old girl cannot report the fact that her father defiles her every day for fear of repercussions and breaking the family. A young woman was raped by a boda boda rider who was ferrying her home. This is not even a tip of the iceberg on the massive bog that is sexual offences. Every day, there are news reports on sexual offences of one nature or another. In 2021, 9,484 children were defiled in Kenya. This translates to about 25 children being defiled every day.

Despite the veracity and inhumaneness of these acts, the Machakos High Court, the Mombasa High Court and the Court of Appeal in Nyeri recently declared that mandatory minimum sentences for sexual offences are unconstitutional. These judgments not only failed to take a survivor-centered approach but also grant judicial officers unfettered discretion to issue sentences for sexual offences. This has resulted in numerous applications for resentencing by convicts in courts countrywide. It rolls back on the gains made by women rights movements over the years to ensure that gender-based violence is treated with the urgency and seriousness it deserves. It will also embolden perpetrators who will no longer be deterred by the law.

Under Article 29 (c) of the Constitution of Kenya, 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. The Judiciary has a due diligence obligation to protect survivors, punish perpetrators of sexual violence and ensure that survivors obtain their right to remedy that is effective and commensurate with the gravity of the sexual offence committed.

CREAW has partnered with UN Women, Forum CIV, Wangu Kanja, Kenya Legal & Ethical Issues Network on HIV and AIDS (KELIN), Initiative for Strategic Litigation in Africa (ISLA), International Commission of Jurists (ICJ), Physicians for Human Rights (PHR), ActionAid, the

Collaborative Centre for Gender & Development (CCGD), Better for Kenya, Groots Kenya, Teenseed, Youth Alive, Women Human Rights Defenders Hub and Western Kenya LBQT Feminist Forum to present this petition to the Chief Justice of the Republic of Kenya demanding that the Judiciary fulfils its due diligence obligations to survivors of sexual and gender-based violence.

## **16 Demands to End Gender-Based Violence Against Women and Girls**

### **Preventive measures**

1. Conduct gender-sensitive training of judicial officers on handling of sexual and gender-based violence (SGBV) cases.
2. Provide appropriate and accessible protective mechanisms to prevent further violence against victims with ongoing court cases.
3. Eliminate gender myths, stereotypes, prejudices and practices.
4. Eliminate secondary victimization of women and girls.
5. Provide adequate budgetary resources for the implementation and monitoring of activities within the Judiciary aimed at preventing and eradicating sexual and gender-based violence against women and girls.
6. Reform existing discriminatory laws and practices in order to promote and protect the rights of women and girls.

### **Protection measures**

7. Recognize that sexual and gender-based violence is a form of discrimination that disproportionately affects women and girls.
8. Take into account the disproportionate effects of sexual and gender-based violence on women and girls in hearing and determining matters on sexual and gender-based violence.
9. Integrate a gender-sensitive and survivor-centered approach in hearing and determining matters on sexual and gender-based violence.
10. Ensure that laws against sexual and gender-based violence give adequate protection to all women, and respect their integrity and dignity.
11. Take all legal measures necessary including criminal sanctions to provide effective protection of women against gender-based violence.
12. Protect the privacy and safety of victims of gender-based violence.

### **Prosecution, Penal and Remedial Measures**

13. Provide effective complaints procedures and ensure effective access to courts for victims.

14. Punish the perpetrators of gender-based violence and ensure that such punishment is commensurate with the offence committed.
15. Provide just and effective remedies to victims of gender-based violence.
16. Ensure that reparations to victims of sexual and gender-based violence are adequate, promptly attributed, holistic and proportionate to the gravity of the harm suffered.