

# Kenya case study:

## Building policy reforms on sexual offenses, female genital mutilation and domestic violence

Rene Loewenson, Marie Masoty, Training and Research Support Centre, Winfred Lichuma, Kenya<sup>1</sup>

October 2019

### 1. Introduction

This case study is implemented within the project 'Fostering policy support for child and family wellbeing - Learning from international experience'. Using a thematic and analytic framework for the project that draws on Kingdon's multi-streams theory,<sup>2</sup> we are gathering and sharing evidence and learning on what has led to increased policy recognition of and policy change in family and child health and wellbeing (FCHW). In specific countries that have demonstrated policy recognition and change in FCHW post 2000, we are exploring within their context how different policy actors have come together to raise policy attention, develop policy options and promote their political adoption as processes for policy change, taking advantage of windows of opportunity for that change. The case studies were implemented with a local focal person with direct knowledge or experience of the policy process and include evidence from published and grey literature and interview of key informants involved in the policy processes.

**This case study explores how policy recognition and legal reform took place in Kenya in the past decade around gender-based violence (GBV), particularly in relation to sexual offenses, female genital mutilation (FGM) and domestic violence.**

*Kenya's 2006 Sexual Offences Act, 2011 Prohibition of Female Genital Mutilation Act and 2015 Protection Against Domestic Violence Act* show the strategic role of law reform in changing norms and policy in Kenya on GBV.

The 1990s had witnessed a growth in and alliance across women's movements and civil society on gender equality and a rise in legal and judicial activism on cases of sexual offenses and GBV. Constitutional reform and the inclusion of civil society activists in government in 2003 opened windows of opportunity and formal spaces for policy change in these areas. Civil society awareness and advocacy activities in coalitions; testimonials by courageous female leaders and legal activism through court cases gave visibility and drew policy attention to GBV, sexual offenses and FGM.

International laws, domestic dialogue, experience from court cases, including by FIDA-Kenya, and studies of the cost implications for state and families informed the legal proposals. The National Gender and Equality Commission convened, consulted and engaged stake-holders and ensured accountability on law reform, using a rights-based approach. As each law was passed, state and civil society supported implementation and sensitised communities to build support for the next.

Political support from the legislature was vital. The Kenya Women Parliamentary caucus (KEWOPA) and gender champions enabled this by building relations with and providing persuasive evidence to male opponents to secure their support, including as fathers and spouses. Compromises were made, such as delaying law reform on domestic violence and FGM, to enable the earlier laws to pass and the changes in practice, perceptions and institutions that were needed for later laws to pass. The law reform and its implementation changed awareness, practices and social norms. A constitutional challenge on FGM showed, however, that unresolved social barriers can risk of reversal of gains made. Change takes time and consistent engagement, before, during and after the policy reform.

## 2. The context

Kenya is a middle-income country in East Africa. Its population has steadily risen to 49.7 million in 2017. The economy grew between 2000 and 2007, reflecting the new government's uptake of favourable global markets and international funding. A decline in 2008 reflected both domestic conditions and the global economic crisis (KEMRI et al., 2011). While poverty has fallen, Kenya's 'Vision 2030' recognises the need to address social inequality and to close social disparities, to ensure that all Kenyans benefit from growth (KEMRI et al., 2011).

One driver of these disparities is gender inequality. Gender injustices are pervasive and entrenched, manifesting as women's socio-political and economic marginalization and in deficits in child wellbeing. Children of poor mothers with less formal education are more likely to be disadvantaged and in poor health. In a patriarchal society,

Kenya has a socio-cultural bias towards men over women and girls that has frustrated and subordinated women. After marriage, women were seen as men's property. Female sexual and reproductive issues were seen as domestic concerns, subject to cultural norms and not for state 'interference'. This increased the risk of gender based violence (GBV) and of early marriage and pregnancy in adolescents (Govt of Kenya, et al., 2015).

Prior to the 2000s, sexual and gender-based violence and exploitation were poorly addressed in policy (ICPC, 2011). Traditionally, men had permission to chastise their wives, and domestic violence was treated as a private family matter, permitted by customary law as long as it was not socially perceived as excessive (Oyoo, 2012). According to the 2008/9 [Kenya Demographic and Health Survey](#) (DHS), 39% of married, divorced or separated women aged 15-49 years reported having ever been physically or sexually violated by their husbands or partners (ICPC, 2011).

Over three quarters of children in Kenya (76%) report having experienced sexual, physical or emotional violence. Nearly one in three girls and one in five boys report having been victims of at least one episode of sexual violence, in part due to commercial sex exploitation (Govt of Kenya, et al., 2015). Some Kenyan communities support female genital mutilation (FGM) as a rite of passage to adulthood, accompanied by gifts and celebration. There are myths that not doing it is 'irresponsible' and may harm the family (MoH, 1999:5). In the 1998 DHS, 38% of women reported that they had experienced FGM, rising from 26% of 15-19 year olds to 50% of women over 35 years old (MoH 1999). While practiced in more than 50% of Kenya's districts, FGM is more prevalent among Somali (98%), Kisii (96%) and Maasai (73%) communities (MoH, 1999; UNFPA, 2012; 28 Too Many, 2018).

By 2000, Kenya had made a number of international obligations and policy commitments on gender equality and child rights, including the 1979 [Convention on Elimination of all Forms of Discrimination Against Women](#); the 1980 [Copenhagen World Conference Programme of Action](#); the 1994 International Conference on Population and Development Programme of Action; the 1995 Beijing Declaration and Platform for Action and in 1999 it ratified the [UN Convention on the Rights of the Child](#) (CRC). Kenya is party to gender equality commitments in the East African Community Treaty and the Protocol to the African Charter on Human and Peoples's Rights on the Rights of Women in Africa (the Maputo protocol) (Mwatha n.d.).



Map of Kenya



Samburu women, The Advocacy project 2018

These international commitments were, however, still inadequately domesticated and put into practice. Although in 1983, the president decreed FGM to be prohibited and in 1999 the health ministry developed a National plan of Action on FGM, the measures had limited success (MoH, 1999). Many communities continued secretly practicing FGM in their homes, without the knowledge of the authorities (MoPHS and PRB, 2013). Ad hoc statements and the absence of wider policy or law relating to FGM constrained efforts to address it (MoH, 1999), and people did not perceive GBV, sexual offenses and FGM to be a government concern. Civil society advocacy was often discounted and public attitudes remained largely unchanged. [Hon Sophia Abdi Noor](#), who began talking about FGM from the late 1990s, noted *I was tagged as that mad woman* (Anti-FGM Board, 2018a:5).

In this context, the process towards and enactment of a new national Constitution in 2010, starting from a referendum in 2002 and a change of government in 2003, opened a window of opportunity to give momentum to social dialogue and advocacy for policy and law reform on gender equality issues.

The constitutional process drew on the growth in social organisation and advocacy from independent civil society in the 1990s (Domingo et al., 2016). The [League of Kenya Women Voters](#) formed in 1992 advocated for more substantive democratisation (Zezeza, 2014). A National Women's Convention in 1992 brought together over 2000 women, galvanising new activism on eliminating discrimination and claiming voice and leadership in governance and politics (Tripp et al., 2014; Kabira, 2012; Domingo et al., 2016).

In 1998, forty three women's organisations formed a coalition, the Kenya Women's Political Caucus, mobilising around gender equality and negotiating space for women's participation in constitutional reform (Kabira, 2012). Legal organisations, such as the [Federation of Women Lawyers \(FIDA-Kenya\)](#) carried out advocacy on gender rights, sexual offenses and FGM. This growth in civil society advocacy in the 1990's contributed significantly to the social and policy recognition of GBV, sexual offenses and FGM, discussed later.

### 3. Policy reforms on sexual offenses, FGM and domestic violence

Gender inequality and the various forms of GBV discussed in this case study are determinants of FCHW. They point to the family situation and the extent to which family norms and practices influence the wellbeing of family members, including children, as well as how far socio-political institutions and interventions support enabling conditions and holistic approaches to FCHW (Baraza, 2008).

**This section describes the content of and key events in the policy and law reforms in Kenya post 2000 on GBV, sexual offenses and FGM. The next sections describe how they came about.**

In 2006, even while the debates were underway on constitutional change, the [Sexual Offences Act](#) was passed to *respond to the rampant sexual offences that were witnessed in the country during that period by introducing a comprehensive law reform with regard to rape and sexual assault* (Oyoo, 2012:21). Before this, the law on sexual violence was fragmented, with limited definitions of the offence of rape, poorly recognising new realities such as HIV and child sex tourism and with sentencing at the discretion of magistrates. This largely prejudiced women (Ndungu, 2007).

The new Act was viewed as ‘the first piece of women-friendly law’ and a move from sexual offences being seen as crimes against morality to addressing them as crimes of violence (Oyoo, 2012). It provided a comprehensive approach to the definition, legal and institutional treatment of sexual offenses. It created new offences including gang rape, deliberate infection with HIV, trafficking for sexual exploitation, child pornography and sexual harassment; introduced minimum sentences and provided for a DNA data bank and a paedophile register (Ndungu, 2007). As the first specific GBV- related law, it provided experience for and built relations between actors involved in subsequent laws and policies. It embodied compromises, such as the exclusion of marital rape, and weaknesses, such as not having a specific implementation mechanism that provided learning for later law reform. A multi-sectoral task force prepared guidelines for and gave impetus to its implementation. Putting it in practice generated learning for later changes, such as the 2012 repeal of a provision under which women could face punishment for initiating prosecutions against their abusers (UN CEDAW, 2016).

The enactment of the [2010 Constitution](#) set an important platform of values, principles, rights and norms. It provided that women and men have the right to equal treatment and to equal political, economic, cultural and social opportunity. Article 29(c) provides the right not to be ‘subjected to any form of violence’ from public or private sources or to be (f) ‘treated or punished in a cruel, inhuman or degrading manner’. Article 44(3) states that ‘a person shall not compel another person to perform, observe or undergo any cultural practice or rite’, while Article 53(d) protects every child from ‘abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment. (Rep of Kenya, 2010).

The state has the duty to *take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination* (Lichuma, 2017:2). These changes provided an impetus for the alignment of subsequent law to the gender equality rights in the Constitution (Rep of Kenya 2012, 2012b; UNFPA, 2012; UN CEDAW, 2016).

Subsequent to this, a [Prohibition of Female Genital Mutilation Act](#) passed in 2011 formalised a clear policy position on the practice of FGM, notwithstanding its deep cultural roots in some communities. The Act criminalizes FGM, unless it is for a sexual reassignment procedure or a medical procedure that has a genuine therapeutic purpose. The prohibition includes taking someone outside Kenya to implement it and sets a penalty of life imprisonment if FGM is carried out and causes death. Consent is explicitly excluded as a defense. It prohibits the use of abusive language against a woman for having not undergone FGM, or against a man for marrying or supporting that woman.

Building on learning from the 2006 Sexual Offenses Act, the *Prohibition of Female Genital Mutilation Act* provides measures to support implementation in the form of an Anti-FGM Board to coordinate public awareness programs and facilitate resources and actions for its implementation (28 Too Many, 2018). A 2016 amendment to the Children's Act further provided for a Children's Court to issue a protection order in case of breach or harm, such as in relation to sexual offenses and FGM (28 Too Many, 2018).

In 2015, the *Protection Against Domestic Violence Act* passed new legal measures on violence within the family set up. It includes state duties for and measures to protect victims and their dependents, including counseling services and compensation for victims. The Act seeks to protect those in a range of domestic relationships, whether married, previously married, engaged, living in the same household, relatives or children. It specifies FGM to be a form of domestic violence, with protection orders for potential victims where there is a threat of cultural or customary rites or practices that abuse the protected person (Rep of Kenya, 2015).

The law reforms led to and were further facilitated by institutional changes and programs. A [National Gender and Equality Commission](#) (NGEC) was established by law in 2011 as a publicly funded Constitutional Commission with a mandate to promote gender equality and prevent discrimination, to oversee the implementation of law and policy and to hold the government accountable through auditing compliance with policy norms (Lichuma, 2017; Rep of Kenya, 2012b). The [Anti-FGM Board](#) had a mandate to facilitate the awareness, resources and actions needed for implementing the FGM Act.

**The role these institutions played in policy change is discussed in later sections.**

**The key reforms related to this case study are outlined in the timeline overleaf. The next sections discuss the actors, actions, processes and relationships that contributed to these outcomes, including some of those listed in the timeline.**

The various legal reforms over the 2000s point to a shift in policy norms and provided a platform from which to engage on social norms and attitudes on FGM, sexual offenses and GBV, as discussed later. The law reforms catalysed or supported new approaches to implement legal duties to prevent and respond to GBV, sexual offenses and FGM, through guidance and capacity building, the provision of safe houses or shelters, improved budget allocations and provision of health and other services for those affected, with duties for county governments to deliver on this (IDLO, 2017).

There is some evidence that these social processes and strategies have had an impact on social attitudes on sexual offenses and FGM. Four in five Kenyan women (82%) now report perceptions that FGM should be stopped (UNFPA, 2012). By 2014, the prevalence of FGM had fallen from its 1998 level of 38% to 21%, albeit with concern that it may be being done at younger ages, as older girls become more aware and resist it (UNICEF, 2019).

An evaluation of interventions in 2012-13 found enhanced coordination among national and international actors, partnerships with religious and traditional groups and the use of data for evidence-based policy development (Govt of Kenya, et al., 2015). At the same time, as discussed further in this case study, changing deeply rooted social mindsets and practices is noted to take time.

## Timeline of policy and legal reforms on gender equality, GBV and FGM

Year	Policy/ law/ program/institution
Pre 2000 to 2005	Various gender movements and lobbies formed: Kenya Women's Political Caucus (1998), Women Lobby Team (1999); National Women's Convention (1992); Women's Political Alliance of Kenya (2000 and, Women's Consensus Group (2005). The 1999 National plan for elimination of FGM produced by the health ministry. The 2001 Children's Act passed. <a href="#">Kenyan Women Parliamentary Association</a> (KEWOPA) formed in 2002.
2006,	<i>The 2006 Sexual Offenses Act</i> is passed.
2007	Presidential Directive of 2006 on 30% women's' appointments to all positions of leadership employment and promotions. Sessional paper No 2 on Gender equality and development. Vision 2030 consultations held and plan produced on the long term development goals.
2008	National Plan of Action for the Elimination of FGM in Kenya 2008-2012
2009	National Framework on GBV informing investigation of and strengthening coordination of responses to GBV. The 2008/2009 Kenya DHS provides evidence on the level of GBV. The Women's Organisations Coordinating Committee for Protecting Women's Gains and the National Legal Aid and Awareness Programme set up.
2010	The 2010 Constitution of Kenya enacted. A Violence against Children Survey implemented. A National Policy for the Abandonment of FGM put in place
2011	<i>The Prohibition of Female Genital Mutilation Act 2011</i> passed. The <a href="#">National Gender and Equality Commission</a> (NGEC) established. The <i>National Gender and Equality Act 2011</i> passed. The Strengthening Child Protection in Kenya: Programme Strategy 2011-2014 lays out the plan to strengthen the child protection system and to improve the quality and access of services for children at risk of abuse, abandonment or separation, neglect or exploitation.
2012	Amendment to the <i>Sexual Offenses Act</i> to repeal clause 38 under which women face the risk of being victimized for initiating prosecutions against their abusers
2013	The Anti-FGM Board established and functional. A Government of Kenya Medium Term Plan 2013-2017 handbook includes reference to gender equality in social-economic opportunities. <a href="#">Matrimonial Property Act</a> and <a href="#">Victim Protection Act</a> enacted.
2014	<i>Marriage Act</i> enacted; Launch of the <a href="#">Keeping the promise to End GBV</a> campaign.
2015	<a href="#">Protection Against Domestic Violence</a> addresses violence within the family set up.
2016	<a href="#">East African Community Prohibition of FGM Act</a> passed; Revision of the 2001 Children's Act prohibits FGM or other practices likely to negatively affect the child's life, health, social welfare, dignity or physical or psychological development.
2017	Kenya's Draft National Gender Equality and Women's Empowerment Policy conceptualizes gender equality as giving women and men equal opportunities for realizing their full human rights and potential and ensuring that both sexes can contribute equally to, and benefit equally from, national political, economic, social, and cultural development.

Sources: MoH, 1999; Rep of Kenya 2012a, 2012b; Rep Kenya et al., 2015; UNFPA, 2012; MoPHS and PRB, 2013; Domingo et al., 2016; Mwatha n.d., Lichuma, 2017; Rep of Kenya, 2017; 28 Too Many, 2018; Mahomed 2018

## 4. The story of the change

### 4.1 Social and legal activism raising hidden GBV issues on the policy agenda

Civil society advocacy on GBV and sexual offenses began in the late 1980's and intensified in the 2000s, bringing potentially emotive issues that were deliberately buried into open social dialogue.

**This section describes the processes and factors that helped this activism to have impact on the policy agenda and to profile GBV, sexual offenses and FGM.**

As noted earlier, issues such as gender violence and sexual offenses were difficult to tackle in the 1990s, with even the President at the time asking, 'why are these women raising this?' FIDA-Kenya, as a non-state federation of women lawyers in Kenya thus implemented awareness-raising activities in communities on legal rights and work with police on collecting and preserving evidence to enhance the success of cases. They took up cases to stimulate attention on sexual offenses in the community, in civil society and in the courts. Kenyan women activists and lawyers attended UN world conferences on women from 1975, including the conference held in Nairobi in 1985, bringing ideas and international links to support their advocacy on gender equality. This was not a one way flow and Kenyan champions like FIDA-Kenya played a role in bringing their knowledge and experience to international processes, such as the UN CEDAW.

Women activists in Kenya were keenly aware of the strategic and political value of legal reform. It was seen to be a potential way of catalyzing debate on social norms and policy, to move perceptions on GBV towards seeing it as a criminal, rather than a moral issue.

Legal reform was thus viewed as a deeply political exercise and a potential means to change access to power and resources, with litigation a means to lever support and make policy breakthroughs in situations where other avenues were blocked. For example, one key informant noted that having a supportive Attorney General launching the first workshop on GBV in 1995 gave an impetus to civil society advocacy. As a result early gender equality claims were dominated by female lawyers, who articulated their arguments in formal legal language, preparing motions and negotiating with male politicians in a style recognised and respected by a patriarchal system (Domingo et al., 2016).

Between GBV, FGM and sexual offenses, the latter was seen to be the easier issue to tackle, given the number of court cases on it and the social perception (possibly incorrect) that the perpetrators were generally outside the family, so that it did not touch on domestic matters. In contrast, domestic violence raised issues taking place within the family and more deeply challenged existing social norms.

The constitutional reform process provided an important space for building social organization on gender issues. Instead of one organisation leading the movement, women and organisations participated in coalitions, committees or networks that worked together to present the 'women's position' to government and the general public. These coalitions included over the years: the Women Lobby Team (1999/00), the Women's Political Alliance of Kenya (2000), the Women's Consensus Group (2005) and the Women's Organisations Coordinating Committee for Protecting Women's Gains (2009/10) (Domingo et al., 2016).

The multi-pronged organisational strategy shared the talents across the network, facilitating outreach and influence. It meant that as one issue or process faced barriers, another could provide openings for progress. The coalitions built awareness and leadership through civic education to members and deployed individual activist participation together with collective engagement within different forums and with different audiences. This included interaction with key gatekeepers, such as religious and community leaders, local judges and dispute resolution arbiters (Domingo et al., 2016). The coalitions used mass media to communicate with women not directly involved in these processes (Domingo et al., 2016).

The relationships, experiences and strategies built in the constitutional processes provided a useful foundation for civil society work on GBV, sexual offenses and FGM. The 2010 Constitution removed the limitation on who had legal capacity to take an issue to court, enabling activists to take up matters on behalf of specific communities. FIDA represented women in court cases on sexual offenses, building data from the cases to raise attention to the prevalence of sexual offenses. They encouraged champions on the issue from within the community and drew attention to the challenges that women faced. FIDA engaged with the police, health and judicial systems to point to and where possible address the barriers that the systems imposed on vulnerable women and children. This included the charges women had to pay for medical forms and doctors' appearances in court, or the need for safe houses and rescue centres to protect complainants.

FIDA encouraged committed, passionate women lawyers to become members, who then took up gender violation cases pro-bono. Their support to vulnerable people enhanced their credibility in society and in policy dialogue. They presented issues relating to sexual offenses in community workshops and with parliamentarians and in one to one meetings with male leaders. They did this in a way that these audiences could relate to, posing it as an issue that affected *their* mothers and daughters and not as a women's issue. [Hon. Njoki Ndungu](#), then a parliamentarian, played a key role in profiling sexual offenses as an issue in parliament, including as a private member's bill, discussed later (Ndungu, 2007).

The awareness, social mobilisation and engagement deepened in the social processes on FGM. FIDA Kenya networked with trained members from the target groups and like-minded institutions to create awareness on violence against women and girls. These cadres then informed the wider public on the effects of sexual GBV. Religious leaders participated in or led community dialogue sessions on FGM and on alternative practices (UNFPA and UNICEF, 2013). Leaders for women's rights, like Agnes Pareyio and Hon Sophia Abdi Noor gave visibility to FGM as courageous advocates, telling stories of their own experiences of FGM. As Sophia Abdi Noor raised in parliament in 2011: *People talk of diseases that come naturally and cause complications and kill, but this one is a bigger disease by our own making, and people just don't talk about it... So many girls have died out of this, there is no documentation because this is done in secret, but this is killing and that is why I am talking about it* (UNFPA, 2012:16).

The many community-based organisations that began to form on FGM also brought the reality of those affected into public domain (Anti FGM Board, 2018), including [in videos](#). Parliamentarians who had been active in civil society, like [Hon Linah Jebii Kilimo](#), also raised the visibility of FGM in decision-making processes and linked social movements with state and political processes, as discussed later (UNFPA, 2012; Direct Donor Action, 2019).

Civil society produced sustained media content for journalists on GBV and FGM and on the success of grassroots activities and alternatives to address them, supported by a global [UN media campaign against FGM](#) (GGMC 2015, UNFPA 2014).



Rally against violence to women in 2014, Nairobi, Source: [IPS News, 2016](#)



A '[Girl Generation](#)' initiative provided a platform for local champions and ambassadors, including from youth, to speak out on GBV and FGM and to amplify stories of grassroots success in national and regional policy forums (The Girl Generation, 2019). Anonymous quotes from girls in secondary schools on their experiences and views on GBV, FGM, child marriage, rape and incest were put on billboards around Nairobi to stimulate public discussion (Equity Now, 2019; Mahomed 2018). Media used key events to raise public awareness on GBV, such as in the '16 Days of Activism Against Violence Against Women', with a concerted campaign of daily articles and editorial content in all national newspapers (UN CEDAW, 2006).

Given that these harmful practices were generally under-reported, especially in young girls, social and legal advocacy used evidence from diverse sources, including household surveys and court cases. Over time more systematic data began to be collected, including by government. DHS data gathered every five years provided evidence of gender inequalities and the disadvantage this generated for children. The 1999 and 2008/2009 Kenya DHS surveys provided evidence on the levels of GBV and FGM, with further evidence from specific surveys on GBV, sexual offenses or FGM. A 2002 FIDA Kenya survey provided evidence and case study stories of patterns of GBV, while a later 2009 survey reported on deficits in service responses to FGM (FIDA, 2002; 2009).

In 2002 - 2003, the National Council of Women of Kenya, an umbrella of women's rights NGOs, collaborated with 'Population Communication Africa' to survey of the age-specific incidence and nature of violence against women and girls in Kenya (UN CEDAW, 2006). In 2009, Kenya mapped children's vulnerability and the coverage of child protection services, including for areas such as violence and abuse. A 2011 assessment in seven districts reported on what communities' perceived and did in relation child protection to motivate and inform communication with communities (Govt of Kenya, et al., 2015). A 2010 [Violence against Children Survey](#) by government and partners provided evidence on the prevalence of sexual, physical and emotional violence experienced by children in Kenya, with the intention to raise both the profile and urgency of the issue (UNICEF et al., 2012). These survey findings were used to point to policy and service deficits to motivate dialogue on responses, such as the [2011-2014 Child Protection Strategy](#) (Govt of Kenya, et al., 2015). Civil society also used international platforms to profile evidence and concerns, including through shadow reports to the state reports to the UN CEDAW (UN CEDAW, 2006; KESWA, 2017).

Costing studies were implemented to contribute to a deeper understanding among policymakers, political leaders, civil society, communities, and families of the magnitude of costs of GBV in Kenya for families and services and what this meant for policy and service responses. Two such studies commissioned by the NGEK were published in 2016 to show the costs of GBV to survivors and to health services, estimated in 2017 at 46 billion Kenya Shilling (US\$45 million) annually (NGEK 2016a,b; Lichuma, 2017). This evidence promoted dialogue on options to address them, discussed in the next section.

The many forms of social advocacy and evidence on GBV, sexual offenses and FGM described in this section gave impetus to advocacy coalitions and community dialogue raising these issues on the policy agenda. It was timely that many civil society activists from these processes entered the new government led by President Kibaki in 2003. This put 'the right people in the right place at the right time'. Together with persistent advocacy from civil society and some community champions, they brought issues and perspectives into formal government processes and facilitated opportunities for mutually respectful dialogue between civil society and state, described in the next sections.

## 4.2 Developing the policy / legal content and learning from experience

This subsection outlines how various actors and processes provided the content for the legal reforms, while the next discusses the factors and processes that led to their adoption.

As noted earlier, there was a perception that conditions were more conducive for first addressing the legal reform on sexual offenses. To inform the content of a proposed Sexual Offences Bill, Hon Ndungu, a parliamentarian, and partner civil society organisations, including FIDA-Kenya, compared the legal provisions on sexual violence in South Africa, Tanzania, Ghana, Australia, the United Kingdom and the United States of America.

Civil society provided a secretariat for the women parliamentarians to draft the law as a private members bill. In a published interview, Hon Ndungu noted: *...in the end we borrowed heavily from the Sexual Offences Act, 2003 of the UK, for the reason that having been a British colony, the framework of our legal system and laws is very similar to that of England* (Ndungu, 2017:149). Controversial issues such as FGM and marital rape were not included in this bill, as a necessary compromise to enable it to pass.

Potential barriers in the Evidence Act also had to be addressed, such as requiring the evidence of a child to be corroborated. These too were left for later engagement to avoid overburdening the legal process (Oyoo, 2012). However, FIDA's experience of taking up court cases did point to deficits that would affect implementation of the Act and these were addressed. For example, police capacities for collection and preservation of evidence were reviewed with the National Police Service and FIDA provided technical support through training gender desks in police stations to address this.

As in the case of the *Sexual Offences Act*, the content of the law on FGM drew on a range of domestic, regional and international sources. A UNFPA-UNICEF partnership brought international policy options and norms to the dialogue on the law. Kenyan organisations also drew on African commitments. For example, the Rights of Women in Africa adopted by the African Union in 2005, known as the Maputo Protocol, included a prohibition on FGM (UNFPA and UNICEF, 2013; 28 Too Many 2018). '28 Too Many', a UK-based charity working in African countries brought expertise from over 120 international lawyers with reports of best practice, lessons and recommendations for the law on FGM (Halpin, 2018). In 2004, an international conference was held with support from the European Union parliament to bring African and international voices and support to the issue.

Hon Dr Linah Jebii Kilimo, based after 2003 in the office of the Vice President with responsibility for children's issues, convened a process for drafting Kenya's *Prohibition of Female Genital Mutilation Act 2011*, drawing on these various sources. The bill sought to change FGM from being managed reactively as a medical issue to addressing it through multiple institutions, co-ordinated by the office of the President. This meant that it would be implemented through the administrative structures of the state (village headmen, chiefs, district offices and commissioners) rather than political structures. Learning from gaps in the 2006 Sexual Offences Act, the draft law included an Anti-FGM Board with a mandate to ensure, facilitate and report on implementation.



Hon Jebii Kilimo, Chair of anti-FGM Board, Kenya, speaking at the Girl Summit 2014  
Source: [DFID, 2014 under creative commons](#)

The drafting of the later law on domestic violence learned from and addressed prior drafting and implementation issues. The Kenya Law Review Commission had earlier, alongside the constitutional reform process, drafted a law on domestic violence to reflect the constitutional changes, but this draft had not yet advanced. The establishment of the National Gender and Equality Commission (NGEC) in 2010 helped to take it forward. It was established as a public, independent Commission to implementation of law and policy reform; offer advise on gender equality to the Presidency, ministries and judiciary; publicly report on studies, audits, indicators and treaty compliance and co-ordinate training, media campaigns and public interest litigation on gender equality related matters. The NGEC convened public inquiries, opinion leaders and traditional councils of elders; set up partnerships with state, technical, parliamentary and civil society agencies and a national gender working group to consult on inputs and campaigns for law reform (Lichuma, 2017).

This positioned the NGEC as a key agency for convening the evidence, processes and accountability on laws related to GBV (Lichuma, 2017). The NGEC blended evidence, international norms and a link to practice to develop a draft model law and policy for the [Protection Against Domestic Violence Act 2015](#), together with guidance for its implementation at county level (Lichuma 2017; UNFPA and UNICEF, 2013).



Samburu, Kenya moran (warrior) involved in the end FGM campaign in his community, Source: [J Lea, DFID, 2016 under creative commons](#)

Kenya's membership of the International Development Law Organization (IDLO) from 2009 enabled it to draw on international capacities, experience and support for this legal reform (IDLO, 2017). Complementary to this, the Ministry of Gender, Children and Social Development convened state and non-state agencies on policy implementation. Both played a role: The NGEC brought the legitimacy and power of an independent constitutional body to the engagement of state, private and social actors. The ministry brought the authority of a state institution and work with other sectors, devolved counties and private actors (Mwatha, n.d.).

Learning from prior reforms and their implementation, the drafting and review of this law gave even greater attention to the guidance, support for and accountability on its implementation. County governments, established in 2010 as units of devolved government, have the primary duty to implement the law on GBV. The NGEC secured commitment from the county governors to invest in county level technical gender working groups and to provide laboratory facilities, shelter homes, rescue centres and training at county level. This pilot work was launched in 20 of the 47 counties. The NGEC, working with partners, developed country guidance on how to set up these working groups. In 2017, with from IDLO, the NGEC published model law and [model policy on sexual and gender-based violence](#) to guide county governments on their own local 'bylaws' and how to apply them (IDLO, 2017). NGEC set up an online GBV platform for rapid response to, and investigation of GBV incidents and used this data for dialogue on law and policy (Lichuma, 2017).

An NGEC and civil society campaign "[Keeping the Promise End Gender Based Violence Campaign](#)" launched in 2014 stimulated awareness of GBV and the proposed law, making a link between law and practice. With support for law reform calling for a shift in public perceptions, the campaign aimed to provoke and sustain a shift in perceptions of GBV from a culture of tolerance and normalization towards prevention, response, remedy and accountability. The campaign combined strategies to strengthen capacities and to hold state duty bearers in the courts and services to account in their prevention of and response to GBV. It provided guidance materials; support to survivors of GBV; engaged men on the issue and built sustained policy attention on GBV in politics in anticipation of the 2017 general elections (NGEC, 2017).

Across all three stages of law reform, on sexual offenses, FGM and domestic violence, the policy content thus drew on national resources and international experience. In all cases, policy development was complemented by measures to demonstrate how the provisions could be implemented, with support provided through institutional arrangements, guidance, training and service interventions (UNFPA, 2012; Population Council, 2018; UN CEDAW, 2006).

The costing studies commissioned by the NGECC cited earlier and the costing of a 'Response Plan to Violence against Children' also helped to inform and build stakeholder consensus on priorities for strengthening services at community and national level and to clarify the roles of the range of stakeholders involved in implementing these laws (Govt of Kenya et al., 2018).

At all three stages of legal reform, the legal drafting was accompanied by complementary interventions, including: guidance and capacity support for the judicial system, a 'mobile courts' initiative to take the legal process closer to the community and in 2011-2012 the training of nearly 2,000 police and probation officers, over 1,700 community leaders and more than 23,000 community members on GBV and FGM (UNFPA, 2012; UNFPA and UNICEF, 2013; 28 Too Many 2018). Recognising the influence of social norms, initiatives and campaigns were designed to sensitise communities, with training of community advocates and use of existing positive values to frame new practice. For example, 'alternative rites of passage' and community ceremonies for transition to adulthood were proposed in place of FGM, with alternative roles for FGM practitioners and female education, rather than early marriage (UNFPA and UNICEF, 2013; MoPHS and PRB, 2013). Attention was given to protection of complainants, with rescue centres and safe homes for victims of sexual offences and GBV and encouragement of parents to welcome back daughters who refused FGM (MoPHS and PRB, 2013). Despite these interventions, barriers to implementation persisted, including in female awareness of their rights, traditional cultural and male leadership resistance.

The evidence in this section suggests how over two decades of policy change and law reform on GBV, sexual offenses and FGM, each stage built partnerships, experience, practice and learning that informed the further development of law and policy. The next section shows how this similarly helped in the passing of the laws, with strategic learning at each stage being used for the next.

### 4.3 Engaging opposition and building political and legislative support

The prior sections pointed to the role of Kenyan women's activism in raising issues of sexual offences, FGM and GBV. Activists from civil society entered government and parliament in the early 2000s after the change of government in 2003. Individual champions in communities and in the women's movements who assumed political office became important voices on the issues and proposals for change in decision-making, often in a system that still largely favored male dominance and perspectives. **This section outlines the political processes and drivers that led to enactment of the law.**

The legislature was a key institution given that the failure of earlier efforts to change policy and enact laws in these areas was attributed in part to *the male dominated parliaments Kenya has had since independence*, seeing such law as a denial of tradition (Oyoo, 2012:5).

In relation to the 2006 *Sexual Offences Act*, in her published interview, Hon Ndungu described how when she first introduced her private members bill in parliament, there was hostility from various members. Provisions on inclusion of chemical castration as a punishment and a false rumour that it included provisions on abortion raised controversy (See adjacent cartoon). The bill was debated at a time when high profile political leaders in Uganda and South Africa were being prosecuted for rape and several Kenyan MPs perceived that the bill would open them to political persecution.



Some MPs express opposition to the bill, East African Standard Online, 28 April 2006

Source: Ndungu, 2007:151, used with permission

She withdrew the bill and held workshops with parliamentarians and one on one meetings with religious leaders, before tabling it again. Further meetings were also held with media and with women's organisations and faith-based groups.

They in turn engaged their members of parliament (MPs) on passing the law. The debate on the Bill also sensitized the police and judiciary. After amendment of a few clauses that were generating wide opposition, the bill was tabled again. Wide advocacy and the removal of the most contentious clauses meant that over time the MPs opposing the Bill were outnumbered and the law was passed (Ndungu, 2007). While some clauses were lost, enactment of this law opened space for later reforms and helped to change public, police, judicial and parliamentary attitudes.

Individual champions, women's movements and legal reformers found and cultivated consistent political support for the further law reforms from the cross-party Kenyan Women Parliamentary Association (KEWOPA) (Domingo et al., 2016). Female participation in political and public decision-making was noted to be low in 2008, leading to poor responsiveness to gender issues (Baraza, 2008). After the 2010 Constitution was passed, more women were elected and nominated to the national and county assemblies and appointed to the judiciary and executive (Domingo et al., 2016). Formed in 2002, KEWOPA mobilized the growing number of female parliamentarians on gender equality laws and policies, including implementation of gender quotas proposed in the Constitutional Amendment Bill 2015 (Nzomo, 2011b; Domingo, 2016).

By 2018, KEWOPA included 97 parliamentarians and 10 KEWOPA Chapters across the country (Ondieki, 2018). It developed gender responsive budgeting guidelines for Parliament and trained over 300 women members of county assemblies and community leaders on these guidelines. KEWOPA provided mentorship and capacity building in 16 regions counties/constituencies across the country on women participation in politics and peer to peer mentorship for more experienced members to mentor first time members of parliament. The organisation motivated a revision of Standing Orders of the National Assembly to address the needs and participation of females. It successfully facilitated tax waivers for sanitary pads (2007), an increase in maternity leave under the Employment Act of 2007 and other gender-sensitive law, including on FGM and domestic violence (UNFPA 2012; Republic of Kenya, 2012a).

As for the *Sexual Offences Act*, individual political champions were courageous advocates in the legislative process on FGM. Hon Sophia Abdi Noor, an MP who was barely eight years old when she experienced FGM told her fellow parliamentarians in 2011 about the personal ordeal that made her a campaigner against FGM (UNFPA, 2012). Agnes Pareyio, a further advocate took her proposals on FGM directly to political level as Deputy Mayor of Narok County Council (Direct Donor Action, 2019).

Both women linked their political campaigns on FGM with non-state platforms. Hon Abdi Noor founded Womankind Kenya to spearhead her campaign and started a center for orphaned girls and those vulnerable to FGM (UNFPA, 2012). Agnes Pareyio founded the Tasaru Ntomonoko

Initiative providing a safe haven for girls seeking to avoid FGM and early marriage. She also became the chairperson of the Anti-FGM Board. She was awarded the United Nations in Kenya Person of the Year Award in 2005 in recognition of her work to end FGM (Direct Donor Action, 2019). Hon Kilimo as chair of KEWOPA was similarly a lifelong advocate on FGM and played a key role in the passing of the *Prohibition of FGM Act 2011*.

After the *Sexual Offences Act* was passed in 2006, supportive parliamentarians waited for the right conditions to raise the law on FGM. The education, social dialogue and institutional practices described earlier contributed to the changing environment. However the hostility of male MPs to a law on FGM was still an issue. According to key informants, KEWOPA parliamentarians used various approaches to reverse the hostility. They engaged in issues championed by male MPs, including in their constituencies and built relations across parliament. They worked with UN agencies, civil society and government to support their arguments with evidence and to show the viable alternatives raised earlier.



Hon Sophia Abdi Noor , speaking at the interparliamentary union  
Source: [IPU, 2010 under creative commons](#)

Male MPs were persuaded by evidence of the low rate of transition of circumcised girls to secondary school. A pivotal turning point came, however, when the KEWOPA chair invited a medical practitioner, Dr Chaldesa, to parliament to give a talk on FGM. He showed MPs visual evidence of the serious difficulties circumcised women face in childbirth. Many male MPs changed position after this and some, such as Hon Kaponde, became champions for the law. When the vote on the Act took place, MPs from constituencies with deep cultural convictions on FGM who felt they could not be seen to support it were persuaded to abstain, rather than vote against the bill. The *Prohibition of FGM Act* was passed in 2011 (UNFPA 2012; Republic of Kenya, 2012a).

As for the prior two laws, the journey toward achieving the *Protection Against Domestic Violence Act 2015* involved cooperation between MPs and civil society, drawing learning from the prior legal reforms and the prior unsuccessful attempts to pass a law on domestic violence. The process faced challenges. It was a result of a long and protracted journey, during which national elections in 2013 brought new MPs and ministerial appointments to the process (Govt of Kenya, et al., 2015). *The law was perceived as challenging patriarchal power in society and as such some male MPs were against it* (Heinrich Boll Stiftung, 2015:1). Political, ethnic, family, kinship and class divisions that affected views on domestic violence in the country also existed and had to be addressed in parliament (Domingo et al., 2016). The law on domestic violence was perceived as challenging patriarchal power, with issues such as spousal rape especially contentious for male MPs.

It was thus important to counter a perception that the *Protection Against Domestic Violence Bill* was a 'women's law' and to show the protection it provided for men, women and children. As for the other two areas of law reform covered in the case study, efforts were made to have male champions for the law. This was done by showing evidence of the scale of the problem and by appealing in ways that they could relate to, noting how such violence affects daughters, sisters and mothers. Costing studies commissioned by the NGECC cited earlier led to spokespersons such as Ambassador Boaz Mbaya from the Centre for Policy Analysis raising the economic harms of GBV (Muiruri 2015). As a bottom line, however, the provisions of the 2010 Constitution made policy review in this area a necessity for parliament. The combination of these strategies and the exclusion of the most contentious clauses, such as on spousal rape, meant that the law was passed.

Women activists, parliamentarians and institutional leaders were aware that passing the law was not the final step and that they needed to sustain the engagement to ensure implementation of any gains achieved, including by embedding oversight and accountability mechanisms in the law (Domingo et al., 2016; UN CEDAW, 2006; 2017). Judicial and professional personnel, themselves conflicted around implementing the new laws, received professional training. New codes of practice were developed for teachers. Various initiatives promoted social dialogue on the norms and relations that lead to GBV (28 Too Many, 2018; CREAM, 2019).

**The various community level interventions described earlier engaged chiefs, local leaders and communities. At the same time the law itself and its increasing level of enforcement through trusted local leaders like the chiefs and state officials and the district commissioners also changed social and gender norms. As one key informant stated: the law and education are like the two wings of a bird... both are needed to advance.**

Concerns persist about implementation gaps in the judiciary and police; weaknesses in witness protection and continued imbalances in social power (Oyoo, 2012). Implementation of all three laws has raised new issues and debates, such as how to provide age-appropriate sexuality education for youth, or the legal treatment of consensual sexual relations between minors. A 2018 conference of key stakeholders hosted by the Anti-FGM Board identified the need for a range of initiatives to sustain and implement the policies on FGM, with roles for youth change agents, political actors, men, journalists and other stakeholders to build a *critical mass* of people as change agents involved in effective and collective actions (Anti-FGM Board, 2018:3).

## 5. Summary of and learning on key drivers of the policy change

### 5.1 Summary of drivers and processes fostering policy change

The three law reforms related to GBV in Kenya post 2000 that are the focus of this case study reflect a number of important policy changes: The 2006 *Sexual Offences Act* reflected a shift from a view of sexual offences as crimes against morality to treating them as crimes of violence. The 2011 *Prohibition of Female Genital Mutilation Act* formally prohibited FGM, except on limited medical grounds, notwithstanding its deep cultural roots in some communities.

The 2015 *Protection Against Domestic Violence Act* addressed for the first time violence within the family as a crime, shifting from it being seen as a purely domestic concern to one in which the state has a duty to protect victims and their dependents. These reforms were important for FCHW, given the role women's economic, social, political marginalization has played in social inequality and in family and child wellbeing.

The 1990s had witnessed a growth in and alliance across women's movements and civil society on gender equality and a rise in legal activism on cases of sexual offences and GBV. The launch in the early 2000s of a process towards the new national Constitution and its later enactment in 2010 provided a window of opportunity that gave formal space and momentum to this earlier activism.

Women's organisations formed coalitions and networks that built awareness and shared talents, capacities and links, so that as one faced barriers, another could provide openings for progress. In both individual and collective forms of engagement and dialogue forums they interacted with key political, social, religious and system gatekeepers of change and with the mass media. Courageous female leaders gave visibility to GBV, sexual offenses and FGM, telling stories of their own experiences of FGM. With civil society they brought the reality of those affected into public domain.



Market, Kaisipul, Kenya, S Juma, 2009

Court cases on sexual offenses, particularly those led by FIDA-Kenya, helped to stimulate attention from the community, civil society, the courts and the police. Together with evidence from court processes and household surveys legal actions and awareness activities raised and kept public, policy and media attention on the challenges posed sexual offenses, FGM and domestic violence.

Kenyan women activists and lawyers built connections with international and UN forums to support their advocacy. Legal reform was thus used not only to raise debate and change perceptions on social norms and policy, but through litigation, to change access to power and resources and to lever support and make policy breakthroughs in a patriarchal society where other avenues were blocked. It also led to judicial activism, such as in the High Court of Meru in Kenya finding in 2012, for the first time in Kenya, that the government was culpable for systemic violations, for failure to ensure proper and effective investigation and prosecution of sexual offences and for creating a climate of impunity on the defilements defined in the 2006 *Sexual Offences Act* (High Court of Meru, 2012).

The inclusion of many civil society activists in the new Kibaki government in 2003 was an important further opportunity for raising GBV on the policy and legal agenda. It brought many strategic actors and their perspectives and experience into formal government processes. Over the 2000s, therefore, the various forms of activism by civil society and individual champions linked in alliances with formal state institutions and engaged in formal processes with new state and parliamentary institutions, such as those of the NGEK and KEWOPA. As each of the three laws was passed, these relationships deepened and the experience used to provide useful learning for the next.

The content of the individual law reforms was informed by review of international laws, domestic inputs and consultations, applying experience from court cases and by studies of the cost implications for state and families. Combined these were used to provide persuasive evidence for the reform proposals. In each of the three laws, compromises were made in the content to enable each to be passed. This was done with a perception of law reform as a process and not an event.

These compromises in law also enabled changes in practice and institutions to begin, to contribute learning for further reforms in later amendments and laws. Hence controversial issues such as FGM and marital rape were not included in the 2006 *Sexual Offences Act*.

FGM and the deficit in that 2006 law on the implementation mechanism were addressed in the 2011 *Prohibition of Female Genital Mutilation Act*. In a consultative process led by the NGEK, the 2015 *Protection Against Domestic Violence Act* learned from implementation of prior laws and wider governance reforms to embed primary duties for implementation in the counties as units of devolved government. The establishment of the NGEK in 2010 provided a sustained institutional mechanism for convening and consulting relevant actors and for engaging on and ensuring accountability on law reform.

As each law was passed, state and civil society supported its implementation, to capacitate and to build public and professional support and to demonstrate the feasibility of implementation. This included investment in police capacities for collection and preservation of evidence; training professionals; securing formal commitment from county governors to invest in implementation; developing local 'bylaws'; clarifying roles and strengthening county and judicial capacities and processes. Recognising the influence of social norms in both implementation and future law reform, each law was also accompanied by initiatives and campaigns to sensitise communities, with training of community advocates and support for new practice.

The fact that the legal and policy reforms on GBV were confronting deeply rooted social norms made political support vital for the reforms, especially that of the legislature. This was built in a number of ways. Civil society advocacy raised political attention through their legal actions and awareness activities, and through the organization of evidence and institutional and international alliances. However, support from the legislature and political actors was decisive for the law reforms. This was significantly levered by strong female political champions at parliament and county levels, using their own personal stories and by a vibrant and strategic women's caucus in KEWOPA and the links it made with male parliamentarians and with technical and civil society actors.



A range of strategic measures were used by these political actors. They included: removal of the most contentious clauses so that enactment could open space for later reforms and waiting for the right conditions to raise subsequent law. Given male opposition, they engaged in issues championed by male parliamentarians and built male champions and relations across parliament. They provided an option to abstain for those who felt they could not publicly back a law reform. The persuasive evidence provided was partly technical, such showing the costs to families and state or the low rate of transition of circumcised girls to secondary school. It also targeted parliamentarians as family members, however, such as by giving visual evidence of the serious difficulties circumcised wives and daughters face in childbirth, together with proof of viable alternatives.

## 5.2 Learning and insights on changing mindsets and norms

The summary in *Section 5.1* described the social, technical and political levers of the policy, legal and program change that led to the law reform in Kenya. The evidence and reflections from those involved in the changes suggest some further insights and learning from the experience.

**In raising and keeping the issue on the policy and political agenda**, key informants noted that law and policy change and social education go hand in hand, and that there is a two way relationship between law and social perceptions: *A change in social mindsets can influence legal and policy reform, but is itself also influenced by legal and service reforms*. In terms of the actors that play a role in raising the issue, the direct experience and evidence of community and civil society advocates was noted to have led to a 'well-grounded' and powerful campaign.

The alliance across movements and links made between GBV and wider social concerns, such as in the constitutional movement, avoided GBV issues being segmented as 'womens' issues and won wider respect and support. Beyond these collective processes, passionate individuals played a key role as champions in the right place, who know where to act, at the right time. Producing normative change was perceived to require focus and a mix of ingredients, to know which of the many issues matter most, to select these and to set the tactics for how to achieve a change in these issues. This was seen to require multiple processes.

On the one hand you need systematic processes, like the collection and analysis of disaggregated data and dissemination of analysis in clear and accessible forms. On the other hand, you need to be ready to act quickly when an opportunity opens, to know how, with what arguments and evidence and in what approaches to 'catch the country by the collar'.

**For the development and adoption of policy options**, research and documentation was identified as a key element of the policy change process, to raise the profile of issues and practices that may be hidden as areas for policy reform and to monitor implementation of policy changes. This calls for consistent mechanisms to collect, analyse, use and disseminate evidence and clarity in what will be persuasive for reforms for different audiences. Framing the policy / legal content was not perceived as simply a technical process. It can open social and institutional dialogue and awareness in those responsible for implementation and needs to go along with processes that build their understanding, support and capacities. Policy and law reform thus needs to include in the content the mechanism for how the reforms will be implemented.

**Building political and public support and sustaining policy implementation**, was seen to depend on processes that foster understanding and relationships across political actors. It may also mean working with those who oppose, sometimes on their concerns, to build relationships and to find the arguments that will persuade them. This takes time and a passion for the issue to sustain it. A mechanism or network, like KEWOPA or the civil society coalitions, can also help to sustain processes and keep the focus across electoral changes. Policy implementation is important as it builds the changes in services and practices in the community that can change social norms. It calls for active monitoring and new approaches and capacities, such as gender responsive budgeting and investment in appropriate judicial and police capacities.

It also calls for protection of those in the affected community that adopt change, such as witness protection for child victims of sexual violence and FGM. This is seen to be extremely important to build an environment for the change and for people to gain confidence to act and to sustain changes in practice. A strong civil society having a watching brief on behalf of affected communities can help in this.

The three legal reforms implemented over the 2000s that are covered in this case study point to a shift in the policy norms in Kenya on GBV. Each provided a platform from which to engage further. There is evidence of their impact on social and institutional norms and practices. They have also fed into wider policy change. After Kenya's 2011 law on FGM, the East Africa Community (Kenya, South Sudan, Tanzania and Uganda) enacted the 2016 *East African Community Prohibition of Female Genital Mutilation Act* to harmonise law and policy on FGM in the region (28 Too Many, 2018).

There is, however, always the possibility of policy reversal in such socio-political reforms. This was noted in the 2016 report to the UN CEDAW in relation to the law on FGM: *...in some parts of the country, communities have protested against the implementation of this Act. These communities have argued that the provisions of the Act infringes against their Constitutional right to culture* (UN CEDAW, 2016:18). In July 2017 a petition was filed by a Dr Tatu Kamau, taken up in the High Court of Machakos in January 2018 and currently proceeding through the courts. Ironically, the petition is using the 2010 Constitution as the basis for contesting the 2011 *Prohibition of FGM Act* as denying women their constitutional right to choose whether to be cut or not, and, if they do so choose, to subsequently have access to 'the best medical care' available (28 Too Many, 2018:9). As noted by civil society: *If successful, the petition could undo years of progress on FGM, potentially putting hundreds of thousands of women and girls at risk* (Equality Now, 2017:10). The potential for policy reversal is seen to be greater where communities have had more limited involvement in discussing and understanding laws, especially where complex policy documents are not provided in accessible forms, and where community change agents are not involved (28 Too Many, 2018; KESWA, 2017).

Key informants thus see the policy reforms on sexual offenses, FGM, domestic violence and other forms of GBV not as an event, but as an ongoing process, demanding persistent attention to implement, monitor, further develop and improve policy and practice and to prevent reversals. While law reform can itself change practice and social norms, changing deeply rooted social mindsets and practices takes time and sustained engagement, before, during and after the policy change.



Kenyan girl, pxfuel, undated

## References

1. 28 Too Many (2018) 'Kenya: The Law and FGM,' Thomas Reuters Foundation. Available at: [www.28toomany.org/static/media/uploads/Law%20Reports/kenya\\_law\\_report\\_v1\\_\(may\\_2018\).pdf](http://www.28toomany.org/static/media/uploads/Law%20Reports/kenya_law_report_v1_(may_2018).pdf)
2. Anti-FGM Board (2018a) 'First national conference on ending Female Genital Mutilation in Kenya. Kenya Institute of Curriculum Development (KICD): Nairobi. Available at: <https://tinyurl.com/y5a8dgp4>
3. Anti-FGM Board (2018b) 'Guideline for Conducting an Alternative Rite of Passage,' Ministry of Public Service Youth and Gender Affairs and Anti-FGM Board: Nairobi.
4. Baraza N (2008) Lost Between Rhetoric and Reality: What Role for the Law and Human Rights in Redressing Gender Inequality?, Kenya Law Review, Vol II; 1-9
5. Centre for Rights Education and Awareness (CREAW) (2019) , Website, available at [www.creawkenya.org/ke/mision-vision-values/](http://www.creawkenya.org/ke/mision-vision-values/)
6. Direct Donor Action (2019) 'Tasaru Ntomonok Initiative (TNI)', Donor Direct Action: New York.
7. Domingo P, McCullough A, Simbiri F, and Wanjala B (2016) 'Women and power: Shaping the development of Kenya's 2010 Constitution', ODI: London. Available at: <https://tinyurl.com/y5b7vltt>
8. Equality Now (2017) 'Equality Now impact report 2017', Equality Now, USA and Kenya:
9. FIDA-Kenya (2002) Gender based domestic violence in Kenya, FIDA-Kenya, Nairobi
10. FIDA-Kenya (2009) Protection Against Female Genital Mutilation: A Review of the Implementation of the Children's Act, FIDA-Kenya, Nairobi
11. Government of Kenya, UNICEF and Global Affairs Canada (2015). 'Taking child protection to the next level in Kenya', Global Affairs Canada: online. Available at: <https://tinyurl.com/y6m9zqtn>
12. Halpin M (2018a) 'Using the law to end FGM', Thomson Reuters Foundation: England and Wales.
13. Halpin M (2018b) 'Trust Law, 28 Too Many and Latham & Watkins launch the Law and FGM Report', Thomson Reuters Foundation: England and Wales. Available at <https://tinyurl.com/yyp3y37t>
14. Heinrich Boll Stiftung (2015) 'The Protection Against Domestic Violence Act (PADV) 2015', online, available at <https://ke.boell.org/2015/08/27/protection-against-domestic-violence-act-padv-2015>
15. High Court of Meru (2012) Petition 8 of 2012, High Court in Meru- C.K (Achild) and 11 Others V. Commissioner of Police/Inspector General of National Service and 2 others (2012) eKLR.
16. Hodal K (2018) 'She clearly has no idea': Kenyan doctor condemned over bid to legalise FGM', *The Guardian*.
17. International Center for Policy and Conflict (ICPC) (2011) 'Gender and transitional justice in Kenya; Guidelines for engendering the process.' Royal Embassy of the Kingdom of Norway. Available at: <https://tinyurl.com/y27yxrln>
18. International Development Law Organization (IDLO) (2017) 'An overview of IDLO's work in Kenya'. IDLO: Rome.
19. Kabira, W. (2012) Time for Harvest: Women and Constitution Making in Kenya. University of Nairobi Press, Nairobi
20. Kamau W (2018) 'Case seeking to legalize FGM in Kenya to be heard by a 3 judge bench', Talk Africa: Kenya. Available at: <https://tinyurl.com/y32sdz7a>
21. KEMRI Wellcome Trust, Mustang Management Consultants, Ministry of Public Health and Sanitation, Ministry of Medical Services, and TARSC, (2011) Equity Watch: Assessing Progress towards Equity in Health in Kenya, EQUINET, Nairobi and Harare
22. Kenya National Commission on Human Rights (KNCHR) (2017) 'A Report on gender audit of the situation of women & other vulnerable human rights defenders in Kenya', Kenya national Commission on Human Rights: Nairobi. Available at: <https://tinyurl.com/yxzcg2n>
23. Kenya Women Parliamentary Association (KEWOPA) (2014) 'Strategic plan 2014-2018', KEWOPA: Nairobi. Available at: <https://tinyurl.com/yy92qyjn>
24. Kenya Women Parliamentary Association (KEWOPA) (2018) 'KEWOPA Achievements' [website]. Kenya Women Parliamentary Association: Kenya. Available at: [http://www.kewopa.org/?page\\_id=700](http://www.kewopa.org/?page_id=700)
25. Kenya Sex Worker Alliance (KESWA) and Bar Hostess Empowerment and Support Program (BHESP) (2017) Aren't We Also Women?"Kenya Sex Workers' Shadow Report Submission to the United Nations Committee on the Elimination Of Discrimination Against Women 68th Session, Geneva
26. Lichuma W (2017) 'Gender equality Challenges in Kenya and Africa: Key note address', online. Available at: <https://tinyurl.com/y3zogu5h>
27. Loewenson R, Masotya M (2018) An analytic framework for gathering evidence on the drivers of policy priority and change in FCHW, TARSC
28. Ministry of Health Kenya (MoH) (1999) National Plan of Action for the Elimination of Female Genital Mutilation in Kenya 1999-2019, MoH, Nairobi, Available at <https://tinyurl.com/y6mqwbd3>
29. Ministry of Public Health and Sanitation and Population Reference Bureau (MoPHS and PRB) (2013) Ending Female Genital Mutilation: Laws Are Just the First Step, Policy brief, MoPHS and PRB, Nairobi available at <https://tinyurl.com/y2wms7mw>
30. Mohamed FJ (2018) '#ourtimenow: In Kenya, we are listening to girls and women to end violence against them', online. Available at: <https://tinyurl.com/y6thmpfv>

31. Muiruri F (2015) Economic cost of GBV overwhelming, in Kenyan Woman, December 1 2015, Available at <https://kw.awcfs.org/article/economic-cost-of-gbv-overwhelming/>
32. Muteshi J (2006) 'Mapping best practices: Promoting gender equality and the advancement of Kenyan women', Heinrich Boll Stiftung: Nairobi. Available at: <https://tinyurl.com/y3wd7g37>
33. Mwatha R (n.d.) 'National Commission on Gender and Development; Tackling gender issues; A policy perspective from different country settings', online. Available at: <https://tinyurl.com/y57wsmsb>
34. National Gender and Equity Commission (NGEC) (2016a) Gender-Based Violence in Kenya: The cost of providing services: A Projection, NGEC with HECTA Consulting Limited, Nairobi
35. NGEC (2016b) Gender-Based Violence in Kenya: The economic burden on survivors, NGEC with Centre for Policy Analysis, Nairobi
36. NGEC (2017) 'Strategic plan 2019-2024', NGEC: Nairobi. Available at: <https://tinyurl.com/y6cweyzz>
37. NGEC (2017) Keeping The Promise End GBV Campaign - Duty Bearers' Handbook, NGEC, Nairobi
38. Ndungu N (2007) Legislating against sexual violence in Kenya: an Interview with the Hon. Njoki Ndungu Reprod Health Matters. 2007 May;15(29):149-54, Available at <https://tinyurl.com/y6qf5myq>
39. Ondieki E(2018) 'Kenya MPs set to rule on bill to raise women representation', *Daily Nation*: Nairobi. Available at: <https://tinyurl.com/ybqw7aq>
40. Oyoo OW (2012) Assessing the adequacy of the laws dealing with domestic violence in Kenya: The need to enact the Protection Against Domestic Violence Bill, 2012, Mimeo, Nairobi
41. Population Council (2018) 'A research agenda to end Female Genital Mutilation/Cutting (FGM/C) in a generation', Population Council: New York. Available at: <https://tinyurl.com/y27pb7sy>
42. Republic of Kenya (2010) The Constitution of Kenya, Republic of Kenya, Nairobi
43. Republic of Kenya (2012a) 'Prohibition of Female Genital Mutilation Act', no. 32 of 2011, revised edition 2012', National Council for Law: Nairobi. Available at: <https://tinyurl.com/y2d78wsn>
44. Republic of Kenya (2012b) 'National Gender And Equality Commission Act, no. 15 of 2011, revised edition 2012', National Council for Law: Nairobi. Available at: <https://tinyurl.com/yvvhthoe>
45. Republic of Kenya (2015) 'Protection against Domestic violence act no. 2 of 2015', National Council for Law: Nairobi. Available at: <https://tinyurl.com/y2uazysc>
46. The Resource Center for Women and Girls (RCWG) (2019). 'Resources center for women and girls' [website]. Available at: <https://resourcecenter.or.ke/>
47. The Girl Generation (2016) 'Together to end FGM: FGM in Kenya Country Briefing', The Girl Generation: online. Available at: <https://tinyurl.com/y3x63vx6>
48. The Girl Generation (2019) 'Kenya', The Girl Generation. Available at: <https://www.thegirlgeneration.org/regions/kenya>
49. Tripp AM (2016) 'Women's movements and constitution making after civil unrest and conflict in Africa: The cases of Kenya and Somalia,' *Politics & Gender*, 12, 1, 78-106. Available at: <https://tinyurl.com/y43duop2>
50. United Nations Committee on the Elimination of Discrimination against Women (UN CEDAW) (2006) Fifth and sixth periodic report of States parties: Kenya, Mimeo, UN CEDAW, New York
51. UN CEDAW (2016) Eighth periodic report of States parties due in 2015: Kenya, Mimeo, UN CEDAW, New York
52. UN CEDAW (2017) Concluding observations on the eighth periodic report of Kenya, Mimeo, UN CEDAW, New York
53. UNFPA (2012) 'Driving forces in outlawing the practice of female genital mutilation/cutting in Kenya, Uganda, and Guinea-Bissau', UNFPA: New York. Available at: <https://tinyurl.com/yyenjm2w>
54. UNFPA (2014) 'New global campaign against female genital mutilation. UNFPA: online. Available at: <https://esaro.unfpa.org/en/news/new-global-campaign-against-female-genital-mutilation>
55. UNFPA and UNICEF (2013) 'UNFPA-UNICEF joint programme on female genital mutilation/cutting: accelerating change', UNFPA and UNICEF: New York. Available at: <https://tinyurl.com/yggrx54s>
56. UNICEF (2019) UNICEF database: Kenya, available at <https://data.unicef.org/country/ken/>
57. UNICEF, U.S. Centers for Disease Control and Prevention (CDC), Kenya National Bureau of Statistics (NBS) (2012) 'Violence against Children in Kenya: Findings from a 2010 National Survey. UNICEF Kenya Country Office, U.S.CDC, and Kenya NBS: Nairobi. Available at: <https://tinyurl.com/y2tza9qj>

## Endnotes

- 1 Acknowledgements: Thanks to Hon Dr Linah Jebii Kilimo; Michelle Oyuga, FIDA Kenya and Dr Nancy Baraza, Nairobi University for sharing information and insights that have been integrated into the case study. All graphics under creative commons/open license or used with permission.
- 2 See Loewenson and Masotyia (2018) for information on the conceptual and analytic framework used.