



**Australian Government**  
**Refugee Review Tribunal**

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# Country Advice

## Kenya

Kenya – KEN38226 – Luo – Kikuyu –  
Ethnic Violence – 2007 Elections –  
Mathare – Nairobi – Female Genital  
Mutilation – Mungiki – Single Women

1 March 2011

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### 1. Is there continuing ethnic tension in Kenya between the Kikuyu and Luo tribes?

Kenya is home to 40 separate ethnic groups, and has a long history of ethnic tension.<sup>1</sup> The Luo are Kenya's third largest ethnic minority, comprising 14 per cent of the population. No single group forms a majority, although the Kikuyu are the largest minority with 22 per cent of the population. The Luo reside predominantly in Nyanza Province in the south-west of the country, while the Kikuyu are concentrated in central Kenya.<sup>2</sup> Some areas, particularly in the slums of Nairobi, are segregated along ethnic lines, although inter-ethnic marriages are increasingly common in urban areas.<sup>3</sup> It has been argued by a Kenyan political analyst that "conflict in Kenya arises primarily when the Kikuyu and Luo are at odds".<sup>4</sup>

Competition for land and resources occurs between ethnic groups, and has been aggravated by rapid population growth in recent years.<sup>5</sup> The dominant Kikuyu's purchase of land outside of their traditional ethnic homelands occasionally sparked "fierce resentment from other ethnic groups". The US Department of State reports that ethnic tension in Kenya generally occurs as a result of "longstanding grievances over land tenure policies and competition for scarce agricultural land, the proliferation of guns, the commercialization of traditional cattle rustling, the growth of a modern warrior/bandit culture (distinct from traditional culture), ineffective local political leadership, diminished

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<sup>1</sup> Gettleman, J. 2010, 'Peaceful Passage of Constitution Buys Kenya, but Old Tribal Patterns Persist', *The New York Times*, 6 August – Attachment 1

<sup>2</sup> Lansner, T. R. 2010, 'Countries at the Crossroads 2010: Country Report – Kenya', Freedom House website, April  
<http://www.freedomhouse.org/modules/publications/cct/modPrintVersion.cfm?edition=9&ccrpage=43&ccrcountry=190> – Accessed 22 June 2010 – Attachment 2; Minorities at Risk Project (undated), 'Assessment for Luo in Kenya', Minorities at Risk Project website <http://www.cidcm.umd.edu/mar/assessment.asp?groupId=50104> – Accessed 21 June 2010 – Attachment 3

<sup>3</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 6 – Attachment 4

<sup>4</sup> Howden, D. 2010, 'Vote on constitution set to challenge Kenya's 'poisoned' tribal politics', *The Independent*, 2 August – Attachment 5

<sup>5</sup> Lansner, T. R. 2010, 'Countries at the Crossroads 2010: Country Report – Kenya', Freedom House website, April  
<http://www.freedomhouse.org/modules/publications/cct/modPrintVersion.cfm?edition=9&ccrpage=43&ccrcountry=190> – Accessed 22 June 2010 – Attachment 2

economic prospects for groups affected by a severe regional drought, political rivalries, and the inability of security forces to adequately quell violence”.<sup>6</sup>

Ethnicity in Kenya is a considerably divisive political issue. In August 2010, national census figures highlighting tribal affiliations were released, attracting criticism for “stoking ethnic divisions”. National Cohesion and Integration Commission (NCIC) chairman Mzalendo Kibunjia expressed concern over the danger that “some groups would use the results to obtain more resources”. On the other hand, the Census Director General defended the publication of the figures, stating that it is “better to have indisputable numbers on Kenya’s ethnic make-up, rather than politically motivated claims from the groups themselves”.<sup>7</sup>

Freedom House reported in April 2010 that since the disputed presidential elections of December 2007, and the widespread ethnic violence that occurred in their wake, Kenya’s political leaders had so far been unable to address the country’s ethnic divisions. It was stated that “[t]he country is experiencing a simmering crisis that threatens to again erupt into bloody conflict that could tear it apart along ethnic lines, as nearly happened after profoundly flawed elections”.<sup>8</sup>

According to a Minorities at Risk report, the post-election ethnic conflict highlights the potential risk of further ethnic tension, particularly between the Luo and Kikuyu groups. It is reported that despite the restoration of relative peace since the formation of the coalition government, “the underlying causes of the conflict – and the armed groups that perpetuated much of the violence – remain in place”.<sup>9</sup>

In a seemingly positive move, however, both the Kikuyu and Luo people overwhelmingly supported the adoption of a new constitution in Kenya in August 2010. Although votes were generally cast along ethnic lines and with adherence to tribal loyalty,<sup>10</sup> the “remarkably peaceful way in which the referendum was conducted” instilled confidence “that Kenya can run a clean election without a violent aftermath”, unlike the December 2007 elections.<sup>11</sup>

### ***December 2007 Elections***

The presidential elections of December 2007 were marred by credible, widespread allegations of fraud. Incumbent President Mwai Kibaki, an ethnic Kikuyu, was declared the winner over opposition Orange Democratic Movement (ODM) leader Raila Odinga, a Luo, despite major parliamentary gains for the ODM. The results sparked extensive violence between the Luo and the Kikuyu, as well as other ethnic groups, causing more than 1,500 deaths and the displacement of 300,000 people. A compromise agreement was reached in February 2008 and a coalition cabinet was formed, in which Kibaki retained

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<sup>6</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 6 – Attachment 4

<sup>7</sup> ‘Kenya defends tribal census figures’ 2010, *BBC News*, 31 August – Attachment 6

<sup>8</sup> Lansner, T. R. 2010, ‘Countries at the Crossroads 2010: Country Report – Kenya’, Freedom House website, April

<http://www.freedomhouse.org/modules/publications/ccr/modPrintVersion.cfm?edition=9&ccrpage=43&ccrcountry=190> – Accessed 22 June 2010 – Attachment 2

<sup>9</sup> Minorities at Risk Project (undated), ‘Assessment for Luo in Kenya’, Minorities at Risk Project website <http://www.cidcm.umd.edu/mar/assessment.asp?groupId=50104> – Accessed 21 June 2010 – Attachment 3

<sup>10</sup> ‘Tribal loyalty still wins the day’ 2010, *The Economist*, 12 August – Attachment 7

<sup>11</sup> Gettleman, J. 2010, ‘Peaceful Passage of Constitution Buys Kenya, but Old Tribal Patterns Persist’, *The New York Times*, 6 August – Attachment 1

the presidency and Odinga became Prime Minister.<sup>12</sup> Nevertheless, in 2009 it was reported that ethnic tensions “are still festering”.<sup>13</sup>

At the core of the tensions were deep economic and land divisions resulting from the long-standing practice of political leaders favouring their own ethnic groups. Under President Kibaki, the Luo people believed that they had been disadvantaged.<sup>14</sup> Many Luo also believe that Odinga’s father, Kenya’s first vice-president, had been cheated by the ruling Kikuyus following Kenya’s independence in 1963.<sup>15</sup> Following the election, ethnic groups that support Kibaki, particularly the Kikuyu, were targeted and attacked. Kikuyu reprisals against Odinga supporters, primarily the Luo and Kalenjin people, were widespread. Significant violence between Kikuyu and Luo groups occurred in major cities such as Nairobi and Kisumu, including the Nairobi slums of Kibera and Mathare. The Mungiki sect was reportedly sent to fight Luo people in these slums.<sup>16</sup>

The post-election violence resulted in unprecedented segregation along ethnic lines in many areas.<sup>17</sup> Long-standing coexistence among ethnic groups was brought to an end, “transforming the ethnic makeup [of] villages, cities and towns”.<sup>18</sup> *The New York Times* reported in 2008 that since the election, Kenya has been “ethnically segregating itself”, with thousands of people “resettling in ethnically homogenous zones... Luos have gone back to Luo land, Kikuyus to Kikuyu land, Kambas to Kamba land and Kisiis to Kisii land. Even some of the packed slums in the capital, Nairobi, have split along ethnic lines”. According to the report, the segregation was, at least at first, assisted by the government. Police officers were “escorting people back to their ancestral homes, as the government calls them, which seems to be thinly veiled language for ethnic separation”.<sup>19</sup>

## **2. To what extent do members of the Luo tribe suffer discrimination or harm from members of the Mungiki or from Kikuyu people generally?**

Aside from the ethnic violence in the post-election period outlined in the response to question one, there are no recent reports of harm suffered by the Luo people at the hands of the Kikuyu.

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<sup>12</sup> Freedom House 2010, *Freedom in the World – Kenya*, June <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7851> – Accessed 10 September 2010 – Attachment 8

<sup>13</sup> ‘1 Year After Slaughter, Wounds, Ethnic Tensions Still Fester in Kenya’ 2008, *Associated Press*, 30 December – Attachment 9

<sup>14</sup> Gettleman, J. 2008, ‘Signs in Kenya of a Land Redrawn by Ethnicity’, *The New York Times*, 15 February [http://www.nytimes.com/2008/02/15/world/africa/15kenya.html?\\_r=1](http://www.nytimes.com/2008/02/15/world/africa/15kenya.html?_r=1) – Accessed 22 February 2011 – Attachment 10; ‘1 Year After Slaughter, Wounds, Ethnic Tensions Still Fester in Kenya’ 2008, *Associated Press*, 30 December – Attachment 9

<sup>15</sup> ‘Ethnic cleansing in Luoland’ 2008, *The Economist*, 7 February <http://www.economist.com/node/10653938> – Accessed 24 December 2010 – Attachment 11

<sup>16</sup> Rice, X. and Tran, M. 2008, ‘Q&A: the Kenya crisis’, *The Guardian*, 29 January <http://www.guardian.co.uk/world/2008/jan/04/kenya.qanda?INTCMP=SRCH> – Accessed 22 February 2011 – Attachment 12; Rice, X. 2008, ‘Revenge attacks spread death across Kenya’, *The Guardian*, 29 January <http://www.guardian.co.uk/world/2008/jan/29/kenya.international?INTCMP=SRCH> – Accessed 22 February 2011 – Attachment 13

<sup>17</sup> Van Praag, N. 2010, ‘Let them drink milk’, Conflict and Development blog, World Bank blogs website, 12 March <http://blogs.worldbank.org/conflict/let-them-drink-milk> – Accessed 24 February 2011 – Attachment 14

<sup>18</sup> ‘1 Year After Slaughter, Wounds, Ethnic Tensions Still Fester in Kenya’ 2008, *Associated Press*, 30 December – Attachment 9

<sup>19</sup> Gettleman, J. 2008, ‘Signs in Kenya of a Land Redrawn by Ethnicity’, *The New York Times*, 15 February [http://www.nytimes.com/2008/02/15/world/africa/15kenya.html?\\_r=1](http://www.nytimes.com/2008/02/15/world/africa/15kenya.html?_r=1) – Accessed 22 February 2011 – Attachment 10

## ***Mungiki***

The Mungiki sect is a Kikuyu criminal organisation banned by the Kenyan government in 2002 for its protection rackets, harassment and intimidation of citizens.<sup>20</sup> The Mungiki reportedly “re-emerged amid the violence that erupted along ethnic lines after the disputed re-election of President Mwai Kibaki”, as “protectors of the Kikuyu population against opposition forces drawn from other ethnic groups”.<sup>21</sup>

In early 2008, the Mungiki launched attacks on Luo and Kalenjin ethnic groups in the Kikuyu-dominated towns of Nakuru and Naivasha in the Rift Valley Province. Women and children were among those killed, and many Luo men were forcibly circumcised. In addition, “as many as 38 Luo men died in Kariobangi area after forced circumcisions” by the Mungiki in 2008.<sup>22</sup>

## ***Ethnic discrimination***

Ethnic discrimination is particularly evident in the informal system of favouritism embedded in Kenyan politics that disadvantages smaller ethnic groups. Favouritism in land allocation towards the Kikuyu people has caused long-standing grievances among other ethnic communities, and was a key motivating factor in the post-election conflict, particularly in the Rift Valley.<sup>23</sup> The US Department of State similarly reports that members of all ethnic groups in both private enterprise and the public service “commonly discriminated in favor of other members of the same group”.<sup>24</sup>

A recent report by Minorities at Risk indicates that the Luo in Kenya feel discriminated against politically, betrayed, and marginalised by the ruling Kibaki government. Despite efforts to improve the economic situation of the Luo, predominantly Luo areas remain the poorest in the country. Recent Luo protests against the government have displayed anti-Kikuyu sentiments. It is reported that although there have been no incidents of government repression against the Luo in recent years, Luos in Nyanza Province claim that they are specifically targeted by police, who use excessive force to disperse Luo protests.<sup>25</sup>

A 2008 article in *The Economist* also highlights the Luo claims of political and economic mistreatment since Kenya’s independence in 1963. In Luo areas poverty is increasing, the provision of electricity and roads is worse than in Kikuyu-dominated areas, and

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<sup>20</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 2b – Attachment 4

<sup>21</sup> Immigration and Refugee Board of Canada 2009, *KEN103225.E – Kenya: Activities of the Mungiki sect and response by government authorities (2008 – October 2009)*, 16 November – Attachment 15

<sup>22</sup> Immigration and Refugee Board of Canada 2009, *KEN103225.E – Kenya: Activities of the Mungiki sect and response by government authorities (2008 – October 2009)*, 16 November – Attachment 15; Landinfo Country of Origin Information Centre 2010, ‘Kenya: Mungiki – Abusers or abused?’, 29 January, p.11 – Attachment 16

<sup>23</sup> Lansner, T. R. 2010, ‘Countries at the Crossroads 2010: Country Report – Kenya’, Freedom House website, April

<http://www.freedomhouse.org/modules/publications/ccr/modPrintVersion.cfm?edition=9&ccrpage=43&ccrcountry=190> – Accessed 22 June 2010 – Attachment 2

<sup>24</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 6 – Attachment 4

<sup>25</sup> Minorities at Risk Project (undated), ‘Assessment for Luo in Kenya’, Minorities at Risk Project website <http://www.cidcm.umd.edu/mar/assessment.asp?groupId=50104> – Accessed 21 June 2010 – Attachment 3

government projects for development have failed. Some Luos claim that a Luo name can be an impediment to gaining employment in business.<sup>26</sup>

### 3. What is the situation in this regard in the Mathare area of Nairobi?

No recent reports of ethnic violence or discrimination against the Luo people in the Mathare slum of Nairobi have been located.

However, in 2009, *The New York Times* reported that the Mungiki sect “seems to thrive in rural areas and overcrowded slums where the Kenya government does not quite reach”.<sup>27</sup> According to a 2007 *BBC News* article, “Mungiki followers reign supreme within city slums, notably Mathare in the east of the capital. Here they provide illegal water and electricity connections to hundreds of makeshift shacks... Residents of the slums also have to pay a levy to the sect to be able to access communal toilets and for security during the night in the crime infested slums”.<sup>28</sup>

In the post-election ethnic violence of early 2008, the Mungiki attacked Luos in the Nairobi slum of Mathare, killing at least three people and wounding more than a dozen.<sup>29</sup> A journalist with the *Associated Press* reported seeing “the body of a Luo man who had been beaten to death after riding his bicycle through a group of Kikuyus in Mathare”, while Mathare residents reported machete attacks on Luo people, which it is claimed were most likely committed by a gang. Residents also reported being warned to evacuate the area before nightfall or risk being attacked.<sup>30</sup>

### 4. Are there other areas of Nairobi or Kenya where people of the Luo tribe might be safe from tribal violence?

As mentioned in the response to question one, many Kenyans have resettled in ethnically homogenous areas since the 2007 election, most returning to their ethnic homelands.<sup>31</sup> In 2008 *The Economist* provided a map of ethnic ‘heartlands’ in Kenya, indicating that the Luos reside predominantly in Nyanza Province.<sup>32</sup>

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<sup>26</sup> ‘Ethnic cleansing in Luoland’ 2008, *The Economist*, 7 February <http://www.economist.com/node/10653938> – Accessed 24 December 2010 – Attachment 11

<sup>27</sup> Immigration and Refugee Board of Canada 2009, *KEN103225.E – Kenya: Activities of the Mungiki sect and response by government authorities (2008 – October 2009)*, 16 November – Attachment 15

<sup>28</sup> UK Home Office 2008, *Country of Origin Information Key Documents – Kenya*, 30 April, p.12 – Attachment 17

<sup>29</sup> Immigration and Refugee Board of Canada 2009, *KEN103225.E – Kenya: Activities of the Mungiki sect and response by government authorities (2008 – October 2009)*, 16 November – Attachment 15

<sup>30</sup> Maliti, T., Muhumed, M. M., Odula, T. and Faul, M. 2008, ‘Ethnic fighting again breaks out in Kenya following election protests’, *Qaran News*, source: *Associated Press*, 20 January [http://www.qarannews.com/index.php?option=com\\_content&task=view&id=591&Itemid=1](http://www.qarannews.com/index.php?option=com_content&task=view&id=591&Itemid=1) – Accessed 24 February 2011 – Attachment 18

<sup>31</sup> Gettleman, J. 2008, ‘Signs in Kenya of a Land Redrawn by Ethnicity’, *The New York Times*, 15 February [http://www.nytimes.com/2008/02/15/world/africa/15kenya.html?\\_r=1](http://www.nytimes.com/2008/02/15/world/africa/15kenya.html?_r=1) – Accessed 22 February 2011 – Attachment 10

<sup>32</sup> ‘Ethnic cleansing in Luoland’ 2008, *The Economist*, 7 February <http://www.economist.com/node/10653938> – Accessed 24 December 2010 – Attachment 11





Kenya's third largest city of Kisumu, in Nyanza Province, has been described as a 'Luo heartland' and the 'capital of the Luos'. During the post-election ethnic violence of early 2008, Kisumu was 'ethnically cleansed' of Kikuyu. The 20,000 Kikuyu residents of the city were driven out by Luo, who looted and burned Kikuyu businesses and homes.<sup>33</sup>

The Kikuyu are dominant in Nairobi and the Central Province, where the Mungiki are thought to be active. *The New York Times* reports that the Mungiki sect is particularly strong in overcrowded slums, such as Mathare in Nairobi, "where the Kenya government does not quite reach".<sup>34</sup>

## 5. Do the Mungiki or the Kikuyu tribe practice female circumcision?

Female circumcision, or female genital mutilation (FGM), is practiced by the Kikuyu tribe. The Luo do not traditionally practice female circumcision.<sup>35</sup> According to the Ministry of Gender and Children Affairs, 34 per cent of girls in Kikuyu communities had undergone female circumcision in 2008.<sup>36</sup> The Mungiki are notorious for forcing Kikuyu women and girls, particularly female family members, to undergo FGM.<sup>37</sup>

<sup>33</sup> Jones, G. 2008, 'Kenya: E-notes: Understanding Kenya', Foreign Policy Research Institute, January – Attachment 19; 'Ethnic cleansing in Luoland' 2008, *The Economist*, 7 February  
<http://www.economist.com/node/10653938> – Accessed 24 December 2010 – Attachment 11

<sup>34</sup> Immigration and Refugee Board of Canada 2009, *KEN103225.E – Kenya: Activities of the Mungiki sect and response by government authorities (2008 – October 2009)*, 16 November – Attachment 15

<sup>35</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 6 – Attachment 4

<sup>36</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 6 – Attachment 4

<sup>37</sup> Immigration and Refugee Board of Canada 2009, *KEN103225.E – Kenya: Activities of the Mungiki sect and response by government authorities (2008 – October 2009)*, 16 November – Attachment 15; Lansner, T. R. 2010, 'Countries at the Crossroads 2010: Country Report – Kenya', Freedom House website, April  
<http://www.freedomhouse.org/modules/publications/ccr/modPrintVersion.cfm?edition=9&ccrpage=43&ccrcount=190> – Accessed 22 June 2010 – Attachment 2; UK Home Office 2008, *Operational Guidance Note: Kenya*, 15 September – Attachment 20; Asylum and Immigration Tribunal 2008, 'VM (FGM-risks-Mungiki-Kikuyu/Gikuyu) Kenya CG [2008] UKAIT 00049', UNHCR Refworld website, 14 May  
<http://www.unhcr.org/refworld/pdfid/484d4a222.pdf> – Accessed 26 July 2010 – Attachment 21; Clarfield, G. 2008, 'From Mau Mau to Kungiki: 50 years later, Kenya is still a bloody mess', *National Post*, 5 February –

**6. Are there any reports of Luo women being circumcised or threatened with circumcision by members of the Mungiki or the Kikuyu tribe?**

The Mungiki reportedly forced genital mutilation on both men and women from the Luo tribe during the post-election violence of 2007-2008. The circumcisions were ordered as revenge for Luo attacks on Kikuyus in the ethnic conflict.<sup>38</sup> *Pambazuka News* reported in January 2009 that during the conflict, some women and girls “had their genitals mutilated by machetes, and/or by violent penetration with bottles and other foreign objects”. The ethnicity of these women is not stated.<sup>39</sup>

The US Department of State similarly reports that “Kikuyu gangs forcibly circumcised Luo males in Nairobi” during the violence that followed the disputed December 2007 election.<sup>40</sup> In addition, as previously mentioned, “38 Luo men died in Kariobangi area after forced circumcisions” by the Mungiki in 2008.<sup>41</sup> A woman in the Nairobi slum of Kibera allegedly witnessed the forced circumcision of five men, two of whom having their penises cut off completely and thrown onto a fire. Another Luo man reportedly bled to death after being forcibly circumcised in a Nairobi slum. Nevertheless, the incidents were not widespread and the number of cases was relatively small in comparison to the extensive violence across Kenya as a whole.<sup>42</sup>

In addition, a 2008 decision by the UK Asylum and Immigration Tribunal (UKAIT) found that although the Mungiki may forcibly circumcise women of Luo origin for political reasons, ethnic groups such as the Kikuyu “who practice FGM are not, in general, reasonably likely (particularly in urban areas), to seek to inflict FGM upon women from ethnic groups or sub-groups which do not practice FGM...In general, a woman and/or her child will only be at real risk of FGM if she comes from, or becomes connected by marriage, partnership or other family ties, to an ethnic group (or subgroup) where FGM is practiced”.<sup>43</sup>

**7. Please provide information on the treatment of single women and their children by the state and by Kenyan society generally.**

An August 2008 news report highlights the growing number of single mothers in Kenya, and the hardships they face. Unmarried girls who become pregnant at a young age experience societal disapproval, and are treated as outcasts by their families. As a result, they often migrate to urban areas where they face unemployment. Angelina Nandwa, founder of the Single Mothers’ Association of Kenya (Smak), states that these women face significant livelihood issues, as “[s]chools in the formal system prefer not to readmit

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Attachment 22; Landinfo Country of Origin Information Centre 2010, ‘Kenya: Mungiki – Abusers or abused?’, 29 January, p.11 – Attachment 16

<sup>38</sup> Kennedy, E. A. and Heilprin, J. 2008, ‘He was killed, circumcised to death’, *South African Press Association (SAPA news agency)*, 16 January – Attachment 23

<sup>39</sup> Njogu, A. 2009, ‘The war on Kenyan women’, *Pambazuka News*, 30 January – Attachment 24

<sup>40</sup> US Department of State 2008, *Country Reports on Human Rights Practices for 2007 – Kenya*, 11 March, Section 5 – Attachment 25

<sup>41</sup> Immigration and Refugee Board of Canada 2009, *KEN103225.E – Kenya: Activities of the Mungiki sect and response by government authorities (2008 – October 2009)*, 16 November – Attachment 15

<sup>42</sup> Kennedy, E. A. and Heilprin, J. 2008, ‘He was killed, circumcised to death’, *South African Press Association (SAPA news agency)*, 16 January – Attachment 23

<sup>43</sup> Asylum and Immigration Tribunal 2008, ‘VM (FGM-risks-Mungiki-Kikuyu/Gikuyu) Kenya CG [2008] UKAIT 00049’, UNHCR Refworld website, 14 May <http://www.unhcr.org/refworld/pdfid/484d4a222.pdf> – Accessed 26 July 2010 – Attachment 21

those who get pregnant while studying...Above all, young mothers become adults directly after childhood without the intervening phase of adolescence.”<sup>44</sup>

Women in Kenya generally are discriminated against in terms of property ownership, inheritance rights, employment and access to credit. Domestic violence and sexual harassment are widespread, and are generally condoned by society and the authorities. As a result, such incidents often go unreported.<sup>45</sup> Fear of stigmatisation also prevents many women from reporting cases of sexual violence.<sup>46</sup> During the post-election violence of 2007-2008, many women were raped and sexually violated by members of rival ethnic groups, police, and security forces. Attacks also occurred in displacement camps, where “[s]ingle women and mothers, unable to provide basic needs for themselves and their children were forced to engage in transactional sex in exchange for food, blankets and other basic amenities”.<sup>47</sup>

Amnesty International reported in 2010 that physical, sexual, and psychological violence against women is particularly rampant in the informal settlements and slums of Nairobi. The perpetrators of such violence include gangs (such as the Mungiki), criminals, family members, and government forces. The vulnerability of women in these slums is exacerbated by the lack of adequate sanitation, forcing women to travel long distances to reach facilities including toilets. Undertaking such travel, especially at night, puts many women at risk of sexual assault and violence. Single women are at particular risk as the option of having male relatives to accompany them is limited.<sup>48</sup>

## **8. What protection is available to single women who might fear harm (including circumcision) or discrimination?**

Freedom House reported in April 2010 that a range of legislation designed to protect women, such as the Anti-trafficking in Persons Bill, the Domestic Violence (Family Protection) Bill, the Equal Opportunities Bill, and the Matrimonial Property Bill, had not progressed past the discussion stage in the Kenyan Parliament.<sup>49</sup>

Although rape and sexual harassment are criminalised under Kenyan law, implementation of the law is limited. It is estimated that up to 95 per cent of sexual offences in 2009 went unreported. Non-governmental organisations (NGOs) complained that the lack of reporting was partially due to a provision in the law that criminalises false sexual assault

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<sup>44</sup> ‘Supporting single mothers in Kenya’ 2008, *AllAfrica Global Media*, source: *Wafa News Palestinian National Authority*, 21 August – Attachment 26

<sup>45</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 6 – Attachment 4; Freedom House 2010, *Freedom in the World – Kenya*, June <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7851> – Accessed 10 September 2010 – Attachment 8

<sup>46</sup> Amnesty International 2010, *Insecurity and Indignity: Women’s experiences in the slums of Nairobi, Kenya*, 7 July, Refworld website, pp.10-14, 17, 21-22 <http://www.unhcr.org/refworld/pdfid/4c357f582.pdf> – Accessed 25 February 2011 – Attachment 27

<sup>47</sup> Njogu, A. 2009, ‘The war on Kenyan women’, *Pambazuka News*, 30 January – Attachment 24

<sup>48</sup> Amnesty International 2010, *Insecurity and Indignity: Women’s experiences in the slums of Nairobi, Kenya*, 7 July, Refworld website, pp.10-14, 17, 21-22 <http://www.unhcr.org/refworld/pdfid/4c357f582.pdf> – Accessed 25 February 2011 – Attachment 27

<sup>49</sup> Lansner, T. R. 2010, ‘Countries at the Crossroads 2010: Country Report – Kenya’, Freedom House website, April <http://www.freedomhouse.org/modules/publications/cct/modPrintVersion.cfm?edition=9&ccrpage=43&ccrcountry=190> – Accessed 22 June 2010 – Attachment 2



claims. Rape cases that were prosecuted generally attracted a sentence no longer than the minimum 10 years imprisonment, rather than the maximum of life imprisonment.<sup>50</sup>

Police handling of sexual assault cases has been criticised by NGOs as creating significant obstacles to prosecution. The requirement that victims are examined by a police physician is particularly inhibiting, as there is only one police physician in Nairobi and generally none in rural areas. Police are also reluctant to investigate cases of domestic violence, as it is considered to be a family matter.<sup>51</sup>

Amnesty International's 2010 report on violence against women in the slums of Nairobi found that many female victims were reluctant to report abuse due to fear of reprisals from the perpetrators, the limited police presence in the settlements, a barely functioning justice system, and the perceived attitude of police that such violence was not a crime. It is reported that the government has not taken effective measures "to prevent, investigate or punish gender-based violence...in the informal settlement areas...[or] taken measures to provide protection measures and shelter to victims of gender-based violence".<sup>52</sup> Furthermore, the widespread sexual violence that occurred during the post-election conflict of 2007-2008 has not been investigated by the government.<sup>53</sup>

Female genital mutilation is illegal under the Children's Act 2001. However, the legislation only protects women under the age of 18, and forced female circumcision is not criminalised under the Sexual Offences Act 2006. It has also been argued that the 2005 Maputo Protocol prohibiting FGM "has sometimes driven FGM underground instead of reducing it".<sup>54</sup> Despite legal bans, FGM continues to be performed in Kenya, with community elders often interfering with attempts to eliminate the practice.<sup>55</sup>

Nevertheless, the authorities have taken measures to prevent FGM and prosecute perpetrators, and some examples of arrests for FGM have been recorded.<sup>56</sup> The UK Home Office argues that as such, "those in fear of undergoing, or being forced to perform FGM may, in general, seek the protection of the state authorities". In addition, recent efforts to

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<sup>50</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 6 – Attachment 4

<sup>51</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 6 – Attachment 4; Amnesty International 2010, *Insecurity and Indignity: Women's experiences in the slums of Nairobi, Kenya*, 7 July, Refworld website, p.38 <http://www.unhcr.org/refworld/pdfid/4c357f582.pdf> – Accessed 25 February 2011 – Attachment 27

<sup>52</sup> Amnesty International 2010, *Insecurity and Indignity: Women's experiences in the slums of Nairobi, Kenya*, 7 July, Refworld website, pp10, 43 <http://www.unhcr.org/refworld/pdfid/4c357f582.pdf> – Accessed 25 February 2011 – Attachment 27

<sup>53</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 6 – Attachment 4

<sup>54</sup> 'Committee against torture begins examination of report of Kenya' 2008, *States News Service*, 13 November – Attachment 28; Immigration and Refugee Board of Canada 2007, *KEN102625.E – Kenya: 'The practice of female genital mutilation (FGM); the prevalence of FGM among specific ethnic groups; state protection available to victims (2005 – October 2007)*, 25 October – Attachment 29

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<sup>56</sup> US Department of State 2010, *Country Reports on Human Rights Practices for 2009 – Kenya*, 11 March, Section 6 – Attachment 4; Immigration and Refugee Board of Canada 2007, *KEN102625.E – Kenya: 'The practice of female genital mutilation (FGM); the prevalence of FGM among specific ethnic groups; state protection available to victims (2005 – October 2007)*, 25 October – Attachment 29

combat Mungiki criminal activity highlight “the willingness of the authorities to provide protection against the [sect]”, including in cases of forced female circumcision.<sup>57</sup>

Limited services for abused women provided by community groups and non-governmental organisations include one domestic violence shelter run by the Women’s Rights Awareness Programme,<sup>58</sup> and community centres for women who escape forced FGM in the southern areas of the Rift Valley.<sup>59</sup> In addition, the Single Mothers’ Association of Kenya (Smak), established in 1991, provides informal schooling and vocational training to single mothers who have dropped out or been expelled from school due to pregnancy.<sup>60</sup>

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