

# Justice on the Edge: Anchoring Kenya's Sgbv Courts Amid a Rising Tide of Femicide

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## ABSTRACT

In light of Kenya's rising cases of femicide and sexual and gender-based violence (SGBV), this article examines the critical need to strengthen the country's judicial response through the statutory entrenchment of SGBV Courts. It explores the legal, institutional, and societal challenges that survivors face when navigating justice through ordinary courts, ranging from re-traumatization, procedural fragmentation, and systemic bias to delays and under-resourcing. Drawing from Kenya's administrative SGBV court model and South Africa's failed attempt at similar specialization, the paper underscores the urgent need for legal reforms to ensure the sustainability and effectiveness of these courts. It critiques the current reliance on administrative circulars and donor funding, arguing that without legislative anchoring, the gains made remain fragile. The article further discusses the limitations of Kenya's legal framework, highlights the judiciary's existing administrative innovations, and advocates for constitutional and statutory recognition of SGBV courts. It concludes with actionable recommendations for the Kenyan Parliament and Judiciary emphasizing uniform court models, resource allocation, public awareness, and survivor-centered procedures to institutionalize and expand SGBV courts nationwide. Ultimately, the article affirms that the establishment of these courts is not duplicative but a timely specialization necessary to protect lives, uphold human rights, and rebuild trust in the justice system.

## Abbreviations

- SGBV** - Sexual and Gender-Based Violence
- GBV** - Gender-Based Violence
- UDHR** - The Universal Declaration of Human Rights
- CEDAW** - The Convention on the Elimination of All Forms of Discrimination Against Women
- DEVAW** - The Declaration on the Elimination of Violence against Women
- BPFA** - Beijing Declaration and Platform for Action

## Introduction

Over the last two years, The Africa Data Hub has meticulously examined news reports and court data and compiled over 930 cases of female murders from January 2016 to December 2024 within Kenya [2]. The Nairobi Women's Hospital's Gender Violence Recovery Center reported receiving approximately 4,000 gender-based violence cases monthly [3]. Through this comprehensive collection of killings, it becomes evident that these tragedies are far more than have been identified. And that

the cases are not isolated; instead, they reveal recurring patterns, indicating a deeper and more systemic issue.

Just between January and March 2025, 129 cases have already been reported [4]. These are not just statistics; they are lives brutally taken and dreams violently halted. Tragically, the justice system in Kenya has often been perceived as slow, indifferent, or even structurally hostile to survivors of femicide and SGBV. Convictions take inordinately long, and the judicial process itself can feel adversarial, retraumatizing survivors instead of supporting them. As a result, many victims or their families withdraw from proceedings or never initiate them at all.

This public frustration reached a boiling point during the Anti-Femicide Protests of January 2024 [5]. These protests erupted across Kenya's major cities, Nairobi, Mombasa, Nakuru, Nyeri, and Lodwar against the surge in Sexual and Gender-Based Violence (SGBV), especially femicide. Demonstrators, holding placards with victims' names, chanted "Sisi ni watu sio wanyama" ("We are human beings, not animals"). Families of

the victims, devastated by the senseless loss, voiced their pain, demanding justice [6].

In the first and second quarters of 2025, a notable shift has emerged in how Kenyans are confronting the femicide crisis. Citizens are no longer just voicing frustration through protests; they are now demanding tangible legal reform. Nationwide, online petitions are actively collecting signatures to push for femicide to be codified as a distinct offence in law, rather than being subsumed under general homicide provisions. These grassroots driven push signals a critical evolution in public engagement: from mourning and protest to direct action and legal advocacy. The urgency and determination seen this year underscore a growing realization that structural change must accompany public outrage. Against this backdrop, there has never been a more opportune moment for Kenya to strengthen and expand its Sexual and Gender-Based Violence (SGBV) Courts [7]. Properly resourced and empowered, these courts hold the potential to deliver the justice, deterrence, and systemic accountability that the current SGBV crisis so desperately demands [8].

In speaking of these atrocities, we are not blind to the far we have come as a country. We acknowledge that great strides have been made. However, this is a call to do better, to implement policies and enforcement mechanisms that already in place. Clearly, much more must be done, collectively and urgently to end these injustices once and for all [9].

**Kenya's Stance on Sexual and Gender Based Violence (Sgbv)**  
Many survivors of sexual and gender-based violence in Kenya will live to remember 2023. The year saw the launch of at least 5 SGBV courts across the country to specifically deal with such cases. The courts were opened in Siaya, Kisumu, Kibera and Makadara Law Courts, the latter two being on Nairobi. At Winam Law Courts in Kisumu, SGBV cases are now determined within the shortest time possible [10]

This was a significant stride in addressing one of our society's main daunting challenges, sexual and gender-based violence. A clear demonstration of our unwavering commitment to eradicate such atrocities from our society [11]. The judiciary also designated SGBV registries in Meru, Nakuru, Kiambu, Machakos, Kisii and Kitale. Chief Justice Martha Koome, while speaking during the opening of the SGBV court in Siaya [12] referred to these courts as beacons of hope to survivors, symbols of justice and a testament to an unwavering commitment to bring the justice system closer to the people.

The courts have a unique way of handling cases, and have helped survivors get justice at the shortest time possible [13]. As of 2025, there are twelve (12) specialized GBV courts to enhance the efficiency and the efficacy of GBV matters and to do so in a manner that protects the rights of the vulnerable survivors [14]. The courts are designed to ensure simplicity of procedure, speedy resolution of cases, accessibility and services offered at low cost [15].

Additionally, in response to growing public outrage over rising cases of femicide and gender-based violence, the Government

of Kenya established a 42-member task force through Gazette Notice Vol. CXXVII No. 3, dated 10th January 2025, reaffirming its obligations under the Constitution, the Maputo Protocol, and CEDAW [16]. This step, while significant, highlights the urgent need for sustained, collective efforts to eliminate all forms of violence against women and girls in Kenya.

### **Legal Framework Addressing Sgbv in Kenya** **International Instruments**

The UN Declaration on the Elimination of Violence against Women offered the first official definition of gender-based violence. Article 2 of the Declaration states that the definition should encompass, but not be limited to, acts of physical, sexual, and psychological violence in the family, community, or perpetrated or condoned by the State, wherever it occurs.

CEDAW establishes international standards for guaranteeing equality between women and men within the family as well as between the family and the state [17]. The essence of this convention, as of the UDHR, is respect for human dignity and respect for the human capacity to make responsible choices [18]. The 1993 World Conference on Human Rights in Vienna brought together women's non-governmental activists with UN and human rights leaders. Together they agreed to further insist that state and local biases in the implementation of CEDAW, due to so-called religious and cultural interpretations or reservations, be eliminated.

Additionally, DEVAW includes explicit directions to countries to 'not invoke any custom, tradition or religious consideration to avoid their obligations with respect to its elimination [19]. DEVAW in conjunction with BPFA helped to further crystallize the doctrine that women's rights are human rights [20]. In particular, these accords reinforce CEDAW principles which establish that states be held responsible for failing to demonstrate 'due diligence' in averting or punishing violence against women that occurs either in the public or the private sphere.

As a result, these Conventions and Agreements have created space in which practices that were once considered as private issues like domestic violence, which is a form of SGBV, can now be understood as human rights violations of public concern. The growing use and widespread application of human rights discourse itself has begun to dissolve the public-private divide, and has further provided a moral momentum for direct response by national governments and non-governmental sectors.

The Kenyan Constitutional Framework on the Protection of Women against SGBV Article 10 (2) (b) [21] sets out the national values and principles of governance to include, among others, human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized. Article 19 (2) [22] states the purpose of recognizing and protecting human rights and fundamental freedoms as being to preserve the dignity of individuals and communities and to promote social justice and the realization of the potential of all human beings. This general proposition is important and relevant to women's struggle for gender equality and gender equity. Further, the Constitution imposes a positive duty on the State and all State organs to observe, respect, protect,

promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

Also significant is Article 2 (5) and (6) [23] which provides that the general rules of international law as well as any, treaty or convention ratified by Kenya form part of the law of Kenya. These two provisions may be interpreted to mean that international law becomes directly applicable by Kenyan courts, regardless of whether parliament has enacted specific implementing legislation to incorporate the international laws in question. Notable is Article 21 (4) [24] which imposes on the State the obligation to enact and implement legislation to fulfil its international obligations in respect of human rights and fundamental freedoms.

The Constitution further provides for the security of the person and protection against all forms of violence. The relevant Article provides that every person has right to freedom and security of their person which includes the right not to be subject to any form of violence from either public or private sources, any form of torture whether physical or psychological or cruel, inhuman or degrading treatment. The right to security means that the Constitution safeguards women's right against SGBV and any other related form of gender-based violence. However, SGBV is premised on power imbalance which is supported and sanctioned by culture. The Constitution does not provide for how the embedded culture can be dealt with to free women from violence, neither has it provided for mechanisms for educating people to shun culture that perpetuate violence.

### **The Legislative Framework**

#### **Sexual Offences Act**

The primary purpose for the enactment of the Sexual Offences Act was to ensure complainants of sexual offences get justice commensurate to the harm caused to them. It makes provisions for the sexual offences, their definition, prevention and protection of all persons from harm arising from unlawful sexual acts. It provides for minimum sentence as opposed to the Penal Code which gave magistrates too much discretion on sentencing, a signal of government's commitment to eradicate sexual violence [25]. It prohibits all manner of sexual offences from defilement to attempted defilement, rape to attempted rape, sexual harassment and sexual exploitation. This is the first legislation in Kenya's legal history, to recognize sexual harassment as a crime. It has also prohibited child trafficking, prostitution and sex tourism. It also recognizes sexual offences of mentally impaired persons, bridging a gap that has existed in law for far too long [26].

#### **The Penal Code**

The Penal Code prohibits all acts of violence in its provisions. It however does not sufficiently address SGBV which is prevalent within the Kenyan society [27]. SGBV, for instance, is only inferred by virtue of interpreting the vice as an assault as provided for under section 250 and 251 [28]. There is no specific offence such as wife battery/husband battery. The inadequacies for addressing SGBV present challenges to the fight against the vices.

#### **The Children's Act**

The Children's Act makes provisions for the safeguards of the rights and welfare for the children. The Act stipulates that all

activities done on behalf of children should be in the best interest of the child. Violence meted against children therefore does not constitute best interest of the child. Section 13 [29], guarantees children (both girls and boys) the right to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction. Under section 14 [30], children are protected from female circumcision, early marriage or other cultural rites, customs, or traditional practices which are harmful to the child's development. The Act also explicitly prohibits sexual exploitation of children as well as actions that expose children to torture or cruel or inhuman treatment such as circumcision or child marriages.

Other Legislations include the Counter-Trafficking in Persons Act [31], Protection Against Domestic Violence Act [32] and the Prohibition of Female Genital Mutilation Act [33].

### **Challenges Faced by Complainants in Sgbv Proceedings in Ordinary Courts**

In past years, Kenya's justice system has often been seen to either perpetrate or tolerate violence against women through acts of commission or omission, frequently prioritizing cultural norms over the enforcement of women's fundamental rights and freedoms. The country's legal system remains fraught with instances of systemic neglect and failure to protect women's rights. However, the High Court decision in *C.K. (A Child) through Ripples International & 11 Others v. Commissioner of Police & 3 Others* [35] marked a critical turning point. The Court held that the police's failure to enforce Section 8 of the Sexual Offences Act amounted to a violation of the petitioners' right to equal protection and benefit of the law under Article 27(1) [36] of the Constitution. It further observed that this failure contributed to a culture of impunity and tolerance for sexual violence, particularly against girl children. This judicial recognition of systemic failure forms the backdrop for the challenges highlighted below.

Complainants in sexual violence cases face numerous and deeply traumatic challenges during proceedings, which often undermine their access to justice [37]. One of the most significant challenges is revictimization, which arises throughout the prosecutorial process. Survivors are often subjected to prolonged proceedings, minimal support [38] and harsh cross-examination, making them feel as though they are the ones on trial. While there are legal provisions to prevent unfair questioning, these safeguards are inconsistently applied, allowing some defense counsel to overstep boundaries and retraumatize complainants [39].

Delays are another serious concern. Cases may be adjourned repeatedly, especially under "standby fixture" trial systems, which are often changed on short notice. For survivors, particularly those who are young, vulnerable, or know the perpetrator, this delay causes immense emotional stress and degrades the quality of their evidence over time. The uncertainty not only prolongs trauma but also prevents survivors from moving on with their lives [40]. At the same time, the majority of victims/survivors do not report their experiences and pursue their cases, in addition to persistent justice gaps for women, especially with intersecting identities and/or from vulnerable backgrounds, leaving many victims/survivors without adequate protection and responses [41].

Gender bias in legal systems and social stigma constitute further hurdles for victims/survivors [42]. For instance, rape is an acknowledged widespread problem but statistics are not certain due to societal pressures which impress the importance of chastity and honour [43]. The reporting of rape is difficult as many women do not have the education or economic capacity to negotiate the legal system. Raped women are often traumatised and stigmatised and can be abandoned, divorced and declared unmarriageable. The low status of women contributes to their vulnerability in the wider society and within the home [44].

Finally, the language and conduct used in some courtroom settings can further alienate and devalue survivors. Insensitive remarks in oral submissions or written judgments may minimize the seriousness of the offence, deflect blame from perpetrators, or reduce survivors to mere witnesses in their own pursuit of justice [45]. The adversarial nature of the system strips survivors of agency, forcing them to repeatedly recount their trauma before unfamiliar and often unsympathetic audiences.

In summary, survivors of sexual and gender-based violence in ordinary courts are confronted with a justice system that is often slow, uncoordinated, intimidating, and retraumatizing. These systemic failures continue to erode public trust in the judiciary, particularly among victims of SGBV. While the creation of specialized courts such as SGBV Courts has sought to address these issues, sustained vigilance, resource investment, and legal reform are essential to ensure meaningful and accessible justice for all survivors. Justice systems also need to understand and account for the particular legal needs of victims/survivors, including compounding needs for justice arising from complex and parallel criminal and civil proceedings [46]. Identifying GBV-related legal and justice needs is critical to tailor GBV responses to enable effective protection of victims/survivors and ensure access to justice.

### Why Specialized Handling of Sgbv Matters

One of the most transformative advantages of Sexual and Gender-Based Violence (SGBV) Courts lies in their capacity to offer fair, responsive, and survivor-centered justice that ordinary courts often cannot adequately deliver. Unlike general judicial forums, which handle a wide array of matters, SGBV Courts are designed with a specific focus on the complexities of gender-based violence, its patterns, trauma implications, and sociocultural dimensions. This specialization enables judicial officers to engage with such cases with a level of nuance, sensitivity, and legal insight that is often absent in conventional courtrooms.

A particularly effective feature seen in many specialized courts globally, and increasingly mirrored in SGBV frameworks, is an integrated case management system that ensures consistency, minimizes conflicting judgments, and enhances judicial oversight, all of which are generally lost in the fragmented systems of ordinary courts [47]. It also supports the coordination of support services for survivors [48], such as psychosocial counselling, shelter referrals, and medical assistance services which are often inaccessible or siloed in traditional settings.

Crucially, SGBV Courts mitigate the risk of re-traumatization. Survivors are often forced to recount their experiences multiple

times in different courtrooms, before unfamiliar judges and in procedurally rigid environments. Specialized courts reduce this burden by streamlining proceedings and providing judicial continuity [49]. This approach preserves the dignity and psychological well-being of survivors, affirming that justice should not inflict further harm [50].

Moreover, SGBV Courts are uniquely structured to address the multifaceted legal challenges that survivors often face simultaneously, ranging from criminal action against the perpetrator, to family law issues and civil protection. Ordinary courts, limited by their compartmentalized jurisdictions, frequently fail to see or respond to this interconnected web of legal needs, leaving survivors vulnerable and underserved. In contrast, SGBV Courts, through an integrated model, are better positioned to deliver coordinated, holistic remedies.

Importantly, these courts also serve as centers of specialized judicial competence. They foster the development of expertise among judges, magistrates, and court personnel through continuous training and exposure. This not only improves case outcomes but also strengthens the judiciary's ability to identify implicit biases, interpret the law through a gender-sensitive lens, and respond to trauma-informed evidence.

As part of Kenya's rollout of these courts, ongoing training programs are envisioned to ensure that survivors' needs and priorities are placed at the center of justice delivery [51]. Ultimately, SGBV Courts represent a critical shift toward a more inclusive and equitable justice system, one that recognizes vulnerability, responds to context, and adapts the delivery of justice to meet the real and urgent needs of society's most affected. Unlike ordinary courts, which are often rigid, generalized, and ill-suited for complex social harm, SGBV Courts stand as a model for justice that is not only efficient, but also humane, specialized, and just.

This, therefore, affirms that these courts are not a duplication of existing judicial mechanisms, but a necessary specialization. Given the gravity and growing prevalence of sexual and gender-based violence in Kenya, these courts should not remain few and scattered, they must be intentionally scaled up across the country to ensure access to justice is not a privilege but a protected right. Admittedly, establishing more SGBV courts may seem resource-intensive, and concerns over cost and institutional strain may arise. But these concerns pale in comparison to the human cost, to the dignity, safety, and lives of women and girls who are suffering, disappearing, and dying at alarming rates. Lives are at stake. Justice for survivors cannot be postponed by bureaucracy or budgets. In this moment of national urgency, expanding and legally anchoring SGBV Courts is not just sound policy, it is a moral imperative.

### Comparative Analysis

#### The Fall of South Africa's Specialized Sexual Offences Courts: Lessons for Kenya

South Africa's first dedicated Sexual Offences Court, launched in 1993 at the Wynberg Regional Court, was a pioneering response to rising cases of sexual violence. These courts aimed to minimize victim trauma, improve prosecutions, and promote a coordinated response across the criminal justice system [52].



While they initially showed remarkable success increased conviction rates, faster case resolution, and better victim care, multiple structural and systemic weaknesses led to their collapse [53]. Kenya, currently piloting SGBV courts, must heed these lessons to avoid a similar fate.

### **Lack of Legal Anchoring**

#### **South Africa**

A major weakness of South Africa's specialized courts was their absence of formal legal recognition [54]. Though supported in spirit by the Criminal Law (Sexual Offences and Related Matters) Amendment Act, the courts themselves were not established by statute. This made them vulnerable to policy shifts, allowed for their disbandment without legal process, and led to unclear mandates among stakeholders.

#### **Kenya**

The first SGBV Court was launched at Shanzu Law Courts in Mombasa on the 10th of March, 2022 by the Chief Justice Martha Koome. This was followed by additional courts in Siaya and Kisumu later in 2023 in a similar manner. Despite being a great and noble initiative, these courts still operate through administrative circulars or donor-funded programs without statutory foundation. Section 47A [55]. of the Sexual Offences Act also provides that the Chief Justice may make rules of court for the effective implementation of the Act. This empowers the Chief Justice to formulate procedural rules to guide the handling of sexual offence cases within the judicial system, ensuring consistency, efficiency, and adherence to the principles set out in the Act. Under section 46(a) [56]. of the Sexual Offences Act, the Cabinet Secretary is mandated to prepare a national policy framework to guide the implementation and administration of the Act, with the objective of ensuring acceptable and uniform treatment of all sexual offences, including the treatment and care of victims of such offences, but not a court structure.

This exposes them to arbitrary closure, judicial reassignments, and inconsistent implementation. This absence of statutory entrenchment undermines the SGBV Court effectiveness and sustainability. Drawing lessons from countries that have legislatively established SGBV courts, this article argues for the urgent need to codify such courts within Kenya's legal framework to ensure comprehensive and enduring justice for survivors.

### **Inadequate Infrastructure and Specialized Training**

#### **South Africa**

The specialized courts were primarily located in urban areas, denying equal access to rural survivors. This was seen as a violation of the constitutional right to equal protection and benefit of the law. Many of the courts lacked child-friendly spaces, private interview rooms, and trauma-informed courtrooms [57]. There was also no structured program for training judicial officers and no psychological support for frontline workers handling traumatic cases.

#### **Kenya**

Despite the various positive developments in the establishment of SGBV Courts in Kenya, several challenges persist. Geographic coverage remains a significant concern, with many rural areas still lacking access to these specialized courts. Some facilities

lack adequate infrastructure to provide the full range of intended services.

Additionally, resource constraints have also hampered full implementation, with insufficient funding and a limited number of trained personnel affecting the courts' operations. Inadequate support services available for LGBTI persons and victims with disabilities in the court stations also threatens their efficacy and eligibility. There is also a need to increase public awareness about the existence of these courts and their procedures in order to ensure maximum utilization of their services.

### **Recommendations for Strengthening Kenya's Sgbv Courts: Learning from Regional Challenges**

To avoid replicating the setbacks observed in the rollout of Sexual Offences Courts in South Africa, Kenya must approach the establishment and expansion of its SGBV courts with clarity, uniformity, and deliberate legislative planning. Based on the challenges outlined, the following recommendations are proposed:

1. **Re-establish SGBV Courts with Clear Court Models:** Kenya should progressively re-establish Sexual and Gender-Based Violence Courts either as fully dedicated Sexual Offences Courts or as Hybrid Sexual Offences Courts in regions where infrastructure limitations exist. A Hybrid Court would prioritize SGBV matters while temporarily allowing for the adjudication of other cases. However, this should be viewed strictly as a transitional measure, with a clear policy pathway for converting all hybrid models into fully specialized SGBV courts over time.
2. **Prioritize Rollout Based on Resource Mapping:** A nationwide audit should identify existing court stations that are closest to meeting SGBV court standards in terms of facilities, personnel, and case volume. These courts should be prioritized for immediate upgrading and operationalization under a resource-aligned, phased approach, beginning with those that already possess core capacities.
3. **Develop a Ten-Year National Implementation Framework:** Kenya should adopt a long-term rollout plan, targeting full national coverage of Sexual Offences Courts within a specified period, for instance, ten years. It will ensure accountability, in areas such as adequate training of relevant personnel involved in these specialized courts. This should include a detailed roadmap with timelines, budget estimates, monitoring tools, and evaluation mechanisms to ensure institutional accountability.

### **Conclusion**

Beijing+30, marked in 2025, reflected significant progress in gender equality over the past 30 years. Yet, UN Member States recognized that gender-based violence remains a major challenge [58]. Emerging issues like COVID-19 and digital technology have only deepened existing inequalities. Nearly 90% of young adults enrolled in Nairobi's tertiary institutions have witnessed technology-facilitated gender-based violence, with 39% having experienced it personally. While online violence has an extensive reach, the study showed that female students are disproportionately impacted.

By adopting the aforementioned measures, Kenya can build an SGBV court system that is not only structurally sound and

accessible, but also institutionally resilient, survivor-centered, and constitutionally grounded. The stakes are high and as South Africa's example shows, well-intentioned reforms without proper legal, financial, and policy anchoring are vulnerable to stagnation. Kenya has the opportunity to get it right, and must seize it.

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