



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Femicide in Kenya: Analysing the Law - Unmasking the Gaps and Enhancing Justice

Raphael Okochil Mirimo<sup>a</sup>

<sup>a</sup>Jomo Kenyatta University of Agriculture and Technology, Kenya

*Received* 13 March 2024; *Accepted* 15 April 2024; *Published* 18 April 2024

---

*In recent years, Kenya has seen its fair share of problems, however, the most prevalent one has been femicide. It has become quite apparent that these atrocities ensuing the country are predominantly targeting the women population. Thus, for a very long time, women have taken it to the streets to decry this human rights abuse but their cries have fallen on deaf ears. They have failed to get redress for this heinous crime due to the lack of a comprehensive legal framework governing femicide in Kenya. Accordingly, it is imperative for the country to develop a well-structured legislative framework to ensure accountability for femicide perpetrators and provide avenues for redress for the victims' families. The framework should encapsulate measures to identify and prevent the root causes of femicide such as gender-based violence. Further, it should affect the appropriate prosecution for the perpetrators. By implementing such legislation, Kenya will be taking progressive steps towards combating femicide and realising the rights to life and dignity of all its citizens, particularly its women. This paper therefore seeks to unmask the root causes of femicide, analyse the current legal framework addressing femicide in Kenya and ascertain how they fall short. Accordingly, this paper will come up with the appropriate recommendations to ameliorate the status quo of the feeble legal framework governing femicide in Kenya. Moreover, it will explore international best practices in dealing with femicide to inform the proposed legislative changes. This exploration aims to ensure comprehensive protection for women in Kenya's legal framework against femicide.*

**Keywords:** Kenya, femicide, women, legal framework, legislative changes.

## INTRODUCTION

Femicide has been defined as intentional killings with a gender-related motivation connected to its root causes, such as discrimination towards women and unequal power relations between women and men in society.<sup>1</sup> It has also been referred to as femicide or gender-related killings of girls and women. Femicide represents the lethal endpoint of a continuum of multiple, overlapping and interconnected forms of gender-based violence. Such homicides usually follow prior experiences of physical, sexual, or emotional abuse.<sup>2</sup>

Lately, Kenya has been grappling with a concerning surge in femicide, reflecting a deeply rooted societal issue with grave consequences for its female population. Amnesty International reported that there have been at least 10 reported cases of femicide in Kenya since 1<sup>st</sup> January 2024.<sup>3</sup> They further reported that over 500 women have been killed from 2016 to 2023, the majority of them were killed by their intimate partners.

Demonstrations have taken place in several cities in Kenya including Nairobi and Mombasa following a series of gruesome murders of young women. The victims included Rita Waeni and Starlet Wahu. Waeni's dismembered remains were discovered stuffed into a plastic bag at a short-term rental property. Her decapitated head was later discovered in Kiambaa, Kiambu County. Campaigners want the authorities to expedite justice for all recent victims of sexual and gender-based violence.<sup>4</sup>

The courts have made attempts to condemn femicide, for instance, Lesit J in *Republic v Ruth Wanjiku Kamande* opined that, 'I want young people to know that it is not cool to kill your boy

---

<sup>1</sup> United Nations Office on Drugs and Crime (UNODC) and the United Nations Entity for Gender Equality and the Empowerment of Women, 'Statistical framework for measuring the gender-related killing of women and girls (also referred to as "femicide/feminicide")' (UNODC) 1-27 <[https://www.unodc.org/documents/data-and-analysis/statistics/Statistical\\_framework\\_femicide\\_2022.pdf](https://www.unodc.org/documents/data-and-analysis/statistics/Statistical_framework_femicide_2022.pdf)> accessed 31 January 2024

<sup>2</sup> Ibid

<sup>3</sup> 'Amnesty International Stands in Solidarity with Women and Girls to Condemn Femicide in Kenya', (Amnesty International, 26 January 2024) <<https://www.amnestykenya.org/amnesty-kenya-condemns-femicide-in-kenya/#:~:text=Nairobi%2C%2026th%20January%202024%3A%20Amnesty.country%20since%201%20January%202024.>> accessed 31 January 2024

<sup>4</sup> Mercy Juma and Anthony Irungu, 'Kenya femicide: Hundreds protest at violence against women' BBC (27 January 2024) <<https://www.bbc.com/news/world-africa-68116854>> accessed 01 February 2024

or girlfriend. Even where you feel disappointed or frustrated don't do it. Instead, it is cool to walk away and thereafter forgive.<sup>5</sup>

However, despite the efforts to address gender-based violence, femicide remains a persistent and complex problem, necessitating a comprehensive examination to understand its prevalence, root causes, and the adequacy of legal responses. This paper aims to shed light on the evolving landscape of femicide in Kenya, offering insights that can inform targeted interventions and contribute to a more just and equitable society.

## CAUSES OF FEMICIDE IN KENYA

**Economic Disparities:** The socioeconomic status of individuals is closely linked to femicide. Women facing challenges may face a risk of violence since they can't afford to leave abusive environments or seek help. Reliance on their abusers for support can keep women stuck, in relationships raising the likelihood of femicide occurring.

**Inadequate Legal Framework:** In her work, Patricia Kameri-Mbote, 'Violence Against Women in Kenya', she opines that the state's inaction and ambivalence towards violence against women exacerbate the issue.<sup>6</sup> Even though Kenya has scarce laws in place to protect women from violence, enforcement and implementation are often inadequate. Gaps in the existing legal framework, such as insufficient penalties for perpetrators of femicide, hinder justice for victims and fail to deter future incidents. Yet, with the full knowledge of these dire consequences, the state remains silent on femicide.

**Cultural Norms:** Some traditional cultural beliefs and practices in Kenya instigate femicide. These norms may include the acceptance of gender-based violence as a means of maintaining control over women. Furthermore, practices such as female genital mutilation (FGM), and expectations regarding women's subservience to men are also normal in some parts of Kenya.

---

<sup>5</sup> *Republic v Ruth Wanjiku Kamande* Crim App No 102/2018

<sup>6</sup> Patricia Kameri Mbote, 'Violence Against Women in Kenya: An Analysis of Law, Policy and Institutions' (2000) 32 *International Law Research Centre*

These cultural beliefs can normalize violence against women and breed a climate where femicide is more likely to occur.

## EFFECTS OF FEMICIDE IN KENYA

**Loss of Life:** The most immediate consequence of femicide is the loss of innocent lives. This leads to immeasurable personal tragedy for the victims and their loved ones.

**Psychological Trauma:** Survivors of femicide attempts, as well as family members and witnesses, may experience significant psychological trauma, including depression, anxiety, and post-traumatic stress disorder (PTSD).

**Children left without Caregivers:** Femicide leaves many children orphaned or without primary caregivers, potentially leading to disruptions in their education, emotional well-being, and future prospects. These children may become susceptible to poverty, exploitation, and violence.

**Community Fear/Insecurity:** Femicide contributes to a sense of fear and insecurity within communities, particularly among women who may fear for their own safety and well-being. This fear can limit women's mobility and participation in public life, further exacerbating gender inequality and social exclusion.

## THE KENYAN LEGAL FRAMEWORK ON FEMICIDE

**The Constitution of Kenya 2010:** The Constitution is the supreme law of the Republic and it binds all persons and all State organs at both levels of government.<sup>7</sup> The Constitution of Kenya accords every person the right to life. It states that a person shall not be deprived of life intentionally, except to the extent authorised by the Constitution or other written law.<sup>8</sup> It further protects every person from torture or being treated inhumanely.<sup>9</sup> These rights and freedoms cannot be limited. These Articles protect women from gender-based violence/femicide.

---

<sup>7</sup> Constitution of Kenya 2010, art 2(1)

<sup>8</sup> Constitution of Kenya 2010, art 26

<sup>9</sup> Constitution of Kenya 2010, art 25(a)

Article 27 provides for equal protection of both women and men before the law and in all spheres of life including, political, economic, cultural and social spheres.<sup>10</sup> It prohibits any discrimination and obligates the State to take measures to address any disadvantage suffered by any individual or group because of past discrimination.

Article 28 posits that every person has inherent dignity and the right to have that dignity respected and protected.<sup>11</sup> Article 29 protects every person from any form of violence from either public or private sources.<sup>12</sup> Further, it protects every person from being subjected to torture in any manner, whether physical or psychological.<sup>13</sup>

In case any of the aforementioned rights has been violated, the State has been given a duty to ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.<sup>14</sup>

**The Penal Code Cap.63, Laws of Kenya:** Femicide has not been expressly defined or provided for under the Penal Code, however, it prohibits every form of violence in its provisions. It is not worthy that some salient provisions under the Act cover this crime, including Sections 202 and 203. These Sections provide for manslaughter and murder, respectively.

Manslaughter has been defined as any unlawful act or omission with unintentionally causes death to another person.<sup>15</sup> Murder on the other hand has been defined as any unlawful act or omission with malice aforethought, which causes death to another person.<sup>16</sup>

On a broader spectrum, I think it is safe to say that femicide might fall under the aforementioned umbrella of murder or manslaughter. However, this only goes to show that there is a need to have express laws regulating femicide in order to curb its prevalence in the country.

---

<sup>10</sup> Constitution of Kenya 2010, art 27

<sup>11</sup> Constitution of Kenya 2010, art 28

<sup>12</sup> Constitution of Kenya 2010, art 29(c)

<sup>13</sup> Constitution of Kenya 2010, art 29(d)

<sup>14</sup> Constitution of Kenya 2010, art 48

<sup>15</sup> Penal Code, Chapter 63, Laws of Kenya, s 202

<sup>16</sup> Penal Code, Chapter 63, Laws of Kenya, s 203

**The Protection Against Domestic Violence Act 2015:** This is an Act of Parliament that provides for the protection and relief of victims of domestic violence. Additionally, it provides for the protection of a spouse and any children or other dependent persons. Section 13 of the Act provides that the court may make a protection order if it is satisfied that, firstly, the respondent is using, or has used, domestic violence against the applicant, or a child of the applicant's family, or both.<sup>17</sup> Lastly, the making of an order is necessary for the protection of the applicant or a child of the applicant's family or both.<sup>18</sup>

The redress offered under the miscellaneous provisions of the Act envisions instances where domestic violence aggravates femicide. Section 33(1) of the Act provides that where any offence, other than one referred to in this Act, is committed by a respondent upon an applicant during or in furtherance of the commission of any act of domestic violence, the court convicting the respondent thereof shall have regard to such circumstances as aggravating the offence committed when assessing the sentence to be imposed.<sup>19</sup> Section 33(2) states that, for the avoidance of doubt, a prosecution under the Act or any other law shall not prevent the applicant from seeking protection or redress under the Act, these redresses have been envisaged under Section 32 of the Act.<sup>20</sup>

**The Police Service Standing Orders 2017:** Chapter 14 of the Orders provides that every police arms and ammunition shall only be used in the lawful execution of duty, official training, or range practices. Accordingly, it prohibits any police officer from using police arms and ammunition for private purposes.<sup>21</sup>

Since Kenya has seen its fair share of femicide in the hands of police spouses, the Police Service Standing Orders aim to prevent misuse and contribute to a safer environment, ultimately assisting in the efforts to combat femicide in the country.

---

<sup>17</sup> Protection Against Domestic Violence Act 2015, s 13

<sup>18</sup> *Ibid*

<sup>19</sup> Protection Against Domestic Violence Act 2015, s 33(1)

<sup>20</sup> Protection Against Domestic Violence Act 2015, s 33(2)

<sup>21</sup> Police Service Standing Orders 2017, ch 14

## REGIONAL AND INTERNATIONAL FRAMEWORK ON FEMICIDE

By dint of Articles 2(5) and 2(6) of the Constitution of Kenya, the general principles of international law form part of the law of Kenya.<sup>22</sup> This means that any treaty or convention that Kenya ratifies shall automatically form part of the national laws. Further, Article 21(4) imposes on the State the obligation to enact and implement legislation to fulfil its regional and international obligations to respect, promote and protect human rights and fundamental freedoms.<sup>23</sup>

### REGIONAL FRAMEWORK ON FEMICIDE

**The African Charter on Human and People’s Rights:** At the regional front, the Organisation of African Unity through the African Charter on Human and People’s Rights in Article 18 (3) makes provisions for states to ensure the elimination of every discrimination against women and to ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.<sup>24</sup>

### INTERNATIONAL FRAMEWORK ON FEMICIDE

**The International Covenant on Civil and Political Rights (ICCPR):** Article 6(1)<sup>25</sup> of the Covenant protects every person’s right to life and Article 7<sup>26</sup> of the Covenant protects everyone from torture or cruel, inhuman or degrading treatment or punishment. Article 9(1)<sup>27</sup> protects the right to liberty and servility of a person, the Covenant may be construed as covering the issue of gender-based violence such as femicide.<sup>28</sup>

**The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):** CEDAW has clearly defined discrimination as any distinction, exclusion or

---

<sup>22</sup> Constitution of Kenya 2010, art 2

<sup>23</sup> Constitution of Kenya 2010, art 21(4)

<sup>24</sup> The African Charter on Human and People’s Rights 1986, art 18

<sup>25</sup> International Covenant on Civil and Political Rights 1969, art 6(1)

<sup>26</sup> International Covenant on Civil and Political Rights 1969, art 7

<sup>27</sup> International Covenant on Civil and Political Rights 1969, art 9(1)

<sup>28</sup> *Ibid*

restriction made on the basis of sex which has the effect of impairing or nullifying the recognition or enjoyment, by women, of human rights and fundamental freedoms in the political, social, economic, cultural or spheres.<sup>29</sup>

Femicide has been defined as intentional killings with a gender-related motivation connected to its root causes, such as discrimination towards women and girls and unequal power relations between women and men in society. Therefore, femicide has been subtly encompassed in the definition of discrimination under CEDAW. Thus, State Parties are obligated not only to ensure that women are not discriminated against but also to come up with preventive measures to combat the same. This may include *inter alia*: training, adoption, implementation and monitoring of legal provisions to investigate, prosecute and apply the necessary legal sanctions and provide for reparations in all cases of femicide.

## CASE LAWS

***Coalition on Violence Against Women & 11 others v Attorney General of the Republic of Kenya & 5 others; Kenya Human Rights Commission (Interested Party); Kenya National Commission on Human Rights & 3 others (Amicus Curiae) [2020] eKLR***

In this case, 2 Petitioners averred in their submissions that their rights were violated by virtue of the state's failure to prevent the same. Those rights infringed were the right to life, prohibition of torture and security of the person. They submitted that they suffered severe impacts of gender-based violence including, loss of livelihood, posttraumatic stress disorder, HIV infections and psychological trauma due to the State's failure to take steps to protect their lives, carry out investigations, and secure effective implementation of the national laws to protect the right to life.<sup>30</sup>

---

<sup>29</sup> United Nations General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women 1981, art 1

<sup>30</sup> *Coalition on Violence Against Women & 11 others v Attorney General of the Republic of Kenya & 5 Ors; Kenya Human Rights Commission (Interested Party); Kenya National Commission on Human Rights & 3 Ors (Amicus Curiae)* P No 122/2013



The court found that the right to life, the right to protection from torture and the right to security of the person were guaranteed under Articles 3 and 5 of the Constitution of Kenya. Further, it relied on the Human Rights Committee's General Comment No. 31 on the ICCPR in paragraph 8 which posited that:

Article 2, paragraph 1 of ICCPR provides that the obligations are mandatory for States [Parties] but don't apply directly between individuals under international law.<sup>31</sup> While the Covenant isn't a substitute for domestic law, States must protect individuals not only from state violations but also from actions by private entities that could undermine Covenant rights.<sup>32</sup> Failure to ensure Covenant rights as required by Article 2 could lead to violations if States fail to prevent or address harm caused by private entities.<sup>33</sup> From this General Comment No.31, the court inferred that the state was obligated to protect its citizens' rights from threats by the state or individuals.

The Court further relied on a persuasive precedent, *Florence Amunga Omukanda & Anr v Attorney General & 2 Ors* where the Court held that: "the State has a legal duty and a positive obligation to protect each of its citizen's rights to security of their person and their property by securing peace through the maintenance of law and order."<sup>34</sup>

Consequently, the Court in the *Coalition on Violence Against Women* case above, the court held that the state cannot escape liability and that there was a violation of the right to life, protection from torture, inhuman and degrading treatment and right to security of the person of the said Petitioners.<sup>35</sup>

## CHALLENGES FACING THE KENYAN LEGAL FRAMEWORK CONCERNING FEMICIDE

---

<sup>31</sup> United Nations Human Rights Committee (HRC), CCPR General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant 2004

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

<sup>34</sup> *Florence Amunga Omukanda & Anr v Attorney General & 2 Ors* P No 132/2011 & 197/2012

<sup>35</sup> *Coalition on Violence Against Women & 11 others v Attorney General of the Republic of Kenya & 5 Ors; Kenya Human Rights Commission (Interested Party); Kenya National Commission on Human Rights & 3 Ors (Amicus Curiae)* P No 122/2013

Article 21 of the Constitution imposes an obligation on the State to enact and implement legislation to protect and promote human rights and freedoms.<sup>36</sup> However, the state has not legislated any law that expressly provides for femicide even though it violates a number of women's rights and freedoms.

Secondly, The Penal Code's provisions are not as wide as to encompass all incidences of femicide especially where they leave the definition of offences to courts that take a narrow view. The problem is that the State machinery is hesitant to prosecute cases involving femicide.<sup>37</sup>

Further, the Penal Code does not impose sufficient penalties for the perpetrators of femicide. Thus, the victim's estate never gets sufficient redress for the loss of their loved ones. There's only limited machinery for making reparations to the deceased family.

As far as meeting the calls for enforcement of the rights of women is concerned, the security forces have not been trained on ways of handling cases involving abused women. There are no counselling facilities or safe homes for women who have been met with gender-based violence. In fact, even sentences handed out to the perpetrators are lenient considering the gravity of the committed crimes. Consequently, it is apt to state that in the area of violence against women, very little exists in the justice system to protect the abused and other women and girls in general.

## CONCLUSION

In conclusion, femicide is a deeply rooted issue that continues to pervade the land of Kenya. This issue can be attributed to the ingrained patriarchal cultural practices such as allowing men to beat their wives. The normalcy of gender-based violence has brewed for such a long time and has ended up giving birth to the vile act of femicide. Consequently, women in Kenya have been forced to sip the bitter effects of these adverse cultural practices.

Thence, this issue demands urgent attention and comprehensive legal reforms, especially from the government. While the existing legal framework, including the Constitution, Penal Code,

---

<sup>36</sup> Constitution of Kenya 2010, art 21

<sup>37</sup> Mbote (n 6)

Protection Against Domestic Violence Act, and Police Service Standing Orders, provides a foundation, significant gaps persist. The challenges outlined, such as the absence of specific femicide legislation, inadequate penalties, and a lack of support systems simply highlight the imperative for immediate action.

The regional and international frameworks, particularly the African Charter on Human and People's Rights and the Declaration of Elimination of All Forms of Violence Against Women, offer additional avenues for addressing femicide and upholding women's rights. However, their effectiveness hinges on domestic implementation and alignment with Kenya's socio-cultural context.

Therefore, it is time for the Kenyan government to break its silence on the issue of femicide and take the requisite steps towards protecting women's rights. These steps include enacting new legislation, amending the existing laws and providing accessible legal aid. Accordingly, this will not only combat femicide but also ensure justice for all its citizens, particularly its women.

## **RECOMMENDATIONS**

### **This paper proposes five recommendations:**

Firstly, it proposes the implementation of a new Act to tackle femicide in Kenya. The Act is to be referred to as 'The Prevention of Gender-based Violence Act'. The Act will start by defining violence against women and men then it will tackle femicide in a separate Section. Additionally, it will explicitly establish the right to life free from any form of violence against women regardless of their age, gender, culture or any other factor. Finally, the Act will mandate the government to formulate measures to prevent femicide in Kenya (perhaps by establishing special safe houses to attend to women who have been victimized by gender-based violence)

Secondly, it recommends the amendment of Part XIX of the Penal Code Cap.63 of the Laws of Kenya to include femicide as a separate crime. The title of this Chapter should also be amended to read 'Crimes Against Life'. There will be a Section under this chapter prohibiting femicide against a woman because she's of a female gender.

Thirdly, it recommends that the sentencing of any person found guilty of committing an offence of femicide should receive a punishment of life imprisonment and an unwavering minimum sentence of 15 years where there are compelling reasons.

Penultimate, the paper further endorses the ratification of the Declaration of Elimination of All Forms of Violence Against Women which provides for a robust legal framework tackling femicide.

Finally, there should be affordable and accessible legal aid options for victims of domestic violence and femicide. This includes the cost, time and proximity to legal instruments and institutions. It also includes emotional and psychological care to ensure that they are not further victimised and/or further traumatised in the process of seeking justice.