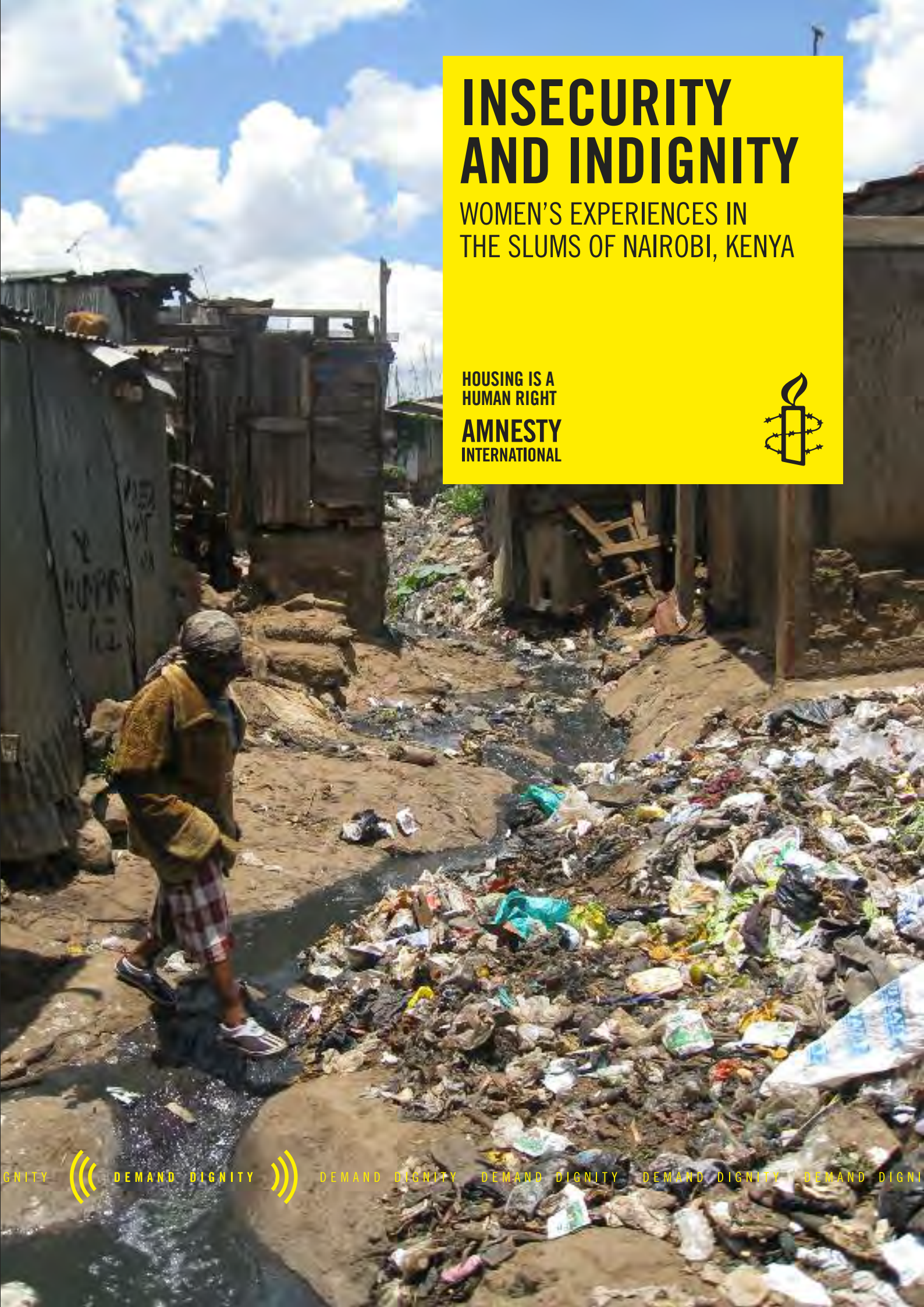

INSECURITY AND INDIGNITY

WOMEN'S EXPERIENCES IN THE SLUMS OF NAIROBI, KENYA

HOUSING IS A HUMAN RIGHT

AMNESTY INTERNATIONAL

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Cover: A woman steps across the polluted water course that runs through Soweto village, Kibera, Nairobi, Kenya, March 2009.

CONTENTS

GLOSSARY

AIDS	Acquired Immune Deficiency Syndrome
APHRC	African Population and Health Research Centre
AWSB	Athi Water Services Board
CBOs	Community-based organizations
CEDAW	Committee on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
COHRE	Centre on Housing Rights and Evictions
CRC	Convention on the Rights of the Child
EMCA	Environment Management and Coordination Act
ESH	Environmental Sanitation and Health
FIDA-K	Federation of Women Lawyers in Kenya
GTZ	German Agency for Technical Cooperation
HIV	Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPS	Implementation Plan for Sanitation
JMP	Joint Monitoring Programme
MDGs	Millennium Development Goals
NCWSC	Nairobi City Water and Sewerage Company
NESHP	National Environmental Sanitation and Hygiene Policy

NGOs	Non-governmental organizations
NWSS	National Water Services Strategy
PPIP-WSS	Pro-Poor Implementation Plan for Water Supply and Sanitation
SDC	Swiss Agency for Development and Cooperation
UN	United Nations
UN-HABITAT	United Nations Human Settlements Programme
UNICEF	United Nations Children's Fund
WHO	World Health Organization

1 US Dollar (US $) = Kenya Shillings (Kshs) 78, as of 2 April 2010

1. INTRODUCTION

"Women, more than men, suffer the indignity of being forced to defecate in the open, at risk of assault or rape …"

Women in focus group discussion in Kibera, 14 February 2010

The majority of Nairobi's residents live in informal settlements and slums,[1] in inadequate housing with little access to clean water, sanitation, health care, schools and other essential public services.

Women and girls living in these informal settlements are particularly affected by lack of adequate access to sanitation facilities for toilets and bathing. Not only do women have different physical needs from men, (for example, related to menstruation) but they also have greater need of privacy when using toilets and when bathing. Inadequate and inaccessible toilets and bathrooms, as well as the general lack of effective policing and insecurity, make women even more vulnerable to rape and other forms of gender-based violence. Violence against women[2] is endemic in Nairobi's slums and settlements, goes widely unpunished and significantly contributes to making and keeping women poor.

Recent positive attempts by the government to improve access to essential services in informal settlements do not address the immediate needs for access to essential public services, including sanitation. Nor do the proposed solutions fully take into account the specific needs of women and girls in these settlements.

This report shows that for many women living in informal settlements, poverty is both a consequence and a cause of violence. Many women who suffer physical, sexual or psychological violence lose income as a result and their productive capacity is impaired. Violence against women also impoverishes their families, communities and societies.[3] For women in abusive relationships, poverty makes it harder to find avenues for an escape. While economic independence does not shield women from violence, access to economic resources can enhance women's capacity to make meaningful choices. The violence women face helps keep them poor in part because their poverty inhibits their ability to find solutions.[4]

Amnesty International recommends that the Kenyan government urgently addresses the issue of gender-based violence in informal settlements. This includes addressing inadequate access to sanitation and public security services as major contributing factors to various

forms of violence that women face. Among other measures, the Kenyan authorities should:

- Ensure equal protection under the law to all the people living in informal settlements including by applying and enforcing legislation requiring landlords to construct toilets/latrines and bathrooms in the immediate vicinity of each household.

- Provide assistance to structure owners who are unable to meet the costs of construction of toilets/latrines and bathrooms.

- Facilitate provision of sanitation by ensuring availability of dumping sites and improved roads.

- Increase the levels of policing in the informal settlements by establishing police posts and ensuring other effective forms of policing in consultation with residents of the slums and settlements.

- Institute other measures to improve security including by increasing the level of street lighting in the informal settlements.

This report is issued as part of Amnesty International's global Demand Dignity Campaign, launched in 2009, which aims to expose and combat the human rights violations that drive and deepen poverty. It follows an initial Amnesty International research report on the housing situation in Nairobi's slums issued in June 2009.[5]

METHODOLOGY

The information in this report was gathered during a period of three months' research which included four weeks of field research in and around Nairobi (two weeks in November 2009 and two weeks in February 2010). During the field research, interviews were conducted with women, government officials, local and international non-governmental organizations (NGOs) and community-based organizations (CBOs). Amnesty International delegates interviewed 130 women identified through CBOs and NGOs working on women's rights and housing rights. About half of the women interviewees were identified by the local groups and NGOs because of their direct experience of gender-based violence. These women then referred Amnesty International delegates to other women survivors of gender-based violence. Interviews were conducted individually and in focus group discussions of varying sizes. Delegates interviewed officials in a number of government ministries, in particular the Ministry of Water and Irrigation and the Ministry of Public Health and Sanitation – both dealing with issues of water and sanitation. Delegates also interviewed officials from the local authority, Nairobi City Council; Nairobi's official water and sanitation service provider – Nairobi City Water and Sewerage Company; the statutory regulator – Athi Water Services Board; and representatives of the Kenya police.

The report's findings are also informed by published and unpublished research by UN agencies and local and international organizations.

Amnesty International delegates visited four of Nairobi's over 200 slums and informal settlements – Kibera, Mathare, Mukuru Kwa Njenga and Korogocho.[6] Kibera, a vast slum in the south-western part of Nairobi's city centre is Kenya's oldest and largest slum with up to 1 million people estimated to be living there on 550 acres of mostly government land. Korogocho stands on both private and public land (in almost equal measure) with an estimated 120,000 people living in about seven villages. Mukuru Kwa Njenga began in 1958 and today hosts up to 75,000 people on about 80 acres of government-owned land which is mainly leased to private developers. Mathare was established in about 1963 and stands mostly on privately owned land. Amnesty International delegates visited three villages in Mathare – Bondeni, Mathare 4A and 4B. All three host up to 45,000 people living on about 99 acres of land.

2. WOMEN'S MIGRATION INTO URBAN AREAS

"For all the troubles the chances of having a better life remain here…"

Women in focus group discussion in Kibera, 11 February 2010

Kenya is no exception to the high rates of rural-urban migration registered in Africa and elsewhere, which contribute to the growth of slums and informal settlements.[7] Kenya's rate of urbanization is considered one of the highest in Africa and projections indicate that up to 50 per cent of the country's population will be urbanized in the next five years.[8]

The driving force behind urban migration for women as well as men is the search for economic opportunity.[9] The choice of Nairobi over other urban centres is because resources and infrastructure are primarily concentrated in Nairobi hence it is perceived to have better economic potential than other urban areas.

However, most women's pursuit of economic opportunities in the city quickly turns into a daily struggle to survive and take care of their families. In one focus group discussion with Amnesty International, women interviewees in Kibera summed up their situation, in the words of one woman in the group, as follows:

> *"Because of the daily struggles to cope with life here we really regret leaving our rural homes to come into the settlement. We often talk of the prospects of going back to rural areas but most of us would be in a dilemma as there may be no rural home or land to return to and possible discrimination that one may face there. For all the troubles the chances of having a better life remain here…"*[10]

Previous studies have explored the gendered nature of poverty in Nairobi's slums and informal settlements, and how women's experience of the causes, manifestations and consequences of poverty differs from that of men. A 2006 study commissioned by the World Bank concluded that "a slum household is more likely to be poor, the larger its household and the more the number of women in it."[11] According to this study, only half of slum dwellers had access to gainful employment but unemployment rates were found to be highest among women and youth.[12]

Women interviewed by Amnesty International during this research confirmed that addressing the insecurity challenges they face not only requires a number of measures that directly address violence, such as public security and a functional justice system, but also requires comprehensive programmes that ensure general socio-economic empowerment particularly of women and the youth.[13]

3. GENERAL INSECURITY AND VIOLENCE AGAINST WOMEN

"…violence against women in the slums is rampant…and emerges as perhaps the strongest cross-cutting theme…"

Women, Slums and Urbanisation: Examining the Causes and Consequences, 2008, COHRE

Crime and victimization surveys indicate that Nairobi's crime rate is relatively high compared to other African cities.[14] High insecurity in the slums and informal settlements is an issue for residents. A 2006 survey revealed that "as many as 63% of slum households report that they do not feel safe inside their settlement… At least one person [per] household [reported] actual experience of a criminal incident over the previous twelve months".[15]

Violence against women is endemic in the settlements. Studies indicate that women from all socio-economic backgrounds and in all areas of Nairobi are at risk of gender-based violence.[16] According to a global study by the Centre on Housing Rights and Evictions (COHRE) which includes a focus on Nairobi, "…violence against women in the slums is rampant…and emerges as perhaps the strongest cross-cutting theme…"[17]

Many of the women Amnesty International spoke to indicated that they would rather suffer in silence than report violence as a crime to authorities or even to their immediate community, social and family networks. In many instances women survivors said that they did not think that the police or even their own communities would view the violence they suffered as a crime, and even if they did, these women did not believe that any action would be taken by the authorities. This was especially so with regards to domestic violence. For these reasons, general criminal surveys or studies and official police reports on crime may not fully capture the magnitude of violence against women or the ever-present threat of such violence for girls and women living in Nairobi's slums and informal settlements.

Most of the women interviewed did not believe that female victims of violence could get any justice, as the system barely functioned. They felt that there was little or no police presence in the slums and settlements and that they had to overcome a number of obstacles before they could even report such violence to the police. Many women refrain from reporting the violence they suffer because they are afraid of reprisal attacks by perpetrators. Other women will not report cases of violence, particularly rape, because they are afraid of being

stigmatized. A lack of knowledge of the law and how the justice system works also stops women from reporting violence.

Violence against women in Nairobi's slums and informal settlements takes different forms, and is exacerbated by the environment within which these women live. The violence is inextricably linked to their daily lives and routines. Inadequate access to essential services, particularly the lack of access to sanitation and public security, significantly increases women's vulnerability to violence.

4. NOT SAFE – THE NATURE OF VIOLENCE IN SLUMS

"I didn't report it to the police. Even if I did, what good would it do? It wouldn't change anything."

Karen, a resident in Mathare, 18 February 2010

The women Amnesty International spoke to described experiencing different forms of physical, sexual and psychological violence, and the ever-present threat of each form of violence. They also stated that there were many different perpetrators including youth gangs, criminals, intimate partners, family members, employers and government security personnel.

VIOLENCE WITHIN THE HOME

Almost all the women interviewed said that they faced the greatest threat of violence within the confines of their homes and from people who they knew very well and within the family.

Various studies have documented the general high prevalence of domestic violence in Kenya. The 2003 Kenya Demographic and Household Survey found that about one in four married, divorced or separated women had experienced emotional abuse at the hands of their current or most recent husband; 40 per cent had experienced physical violence, and 16 per cent had experienced sexual violence.[18] The study noted that up to two thirds of women who were physically or sexually abused were abused by husbands or other relatives.[19] A recent country-wide study by the Federation of Women Lawyers in Kenya (FIDA-K) reveals that gender-based domestic violence and intimate partner violence is a common feature across Kenya and is overwhelmingly driven by factors "ranging from the low status society accords to women, to poor policy and legal frameworks that condone or ignore the prevalence and perpetuation of domestic violence".[20]

An official of a non-governmental women's legal aid centre located within Kibera told Amnesty International that the centre receives up to ten cases of domestic violence every week, all of which are from homes situated close to the legal aid centre. According to the official, these are mostly cases of "women beaten or raped by their spouses or partners". Often these women have no recourse to the justice system. Their only option is to go to organizations of this kind "which try to do as much as they can to assist survivors especially with medical and psycho-social support but are often powerless to do much to ensure legal redress".[21]

Women survivors of domestic violence told Amnesty International that in their view violence, especially physical violence suffered at the hands of their spouses or intimate partners, was normal.[22] Yunis[23] of Kibera stated:

"*Although my husband often beats me I just have to stay with him because I am married so there is nothing I can do. I don't ever report it because the police will just tell us to reconcile…this is what women who report advise us on*".

Many women do not seek redress because they do not trust the justice system. Speaking on behalf of a focus group of 10 women victims of domestic violence in Mukuru Kwa Njenga one respondent revealed that "the police do not want to be involved in cases of alleged violence perpetrated in the home. They would always advise you to go back and sort it out with the alleged perpetrator".

According to another woman at a focus group discussion in Korogocho:

"*The police often say that they don't want to be involved in such cases…The police, being predominantly male, are often insensitive to women's plight. Their perception is such that women victims are expected to resolve domestic issues without involving the justice system*".[24]

In addition a number of women identified police misconduct as an obstacle to accessing justice. Karen, a victim of rape by her ex-husband, told Amnesty International in Mathare:

> *"I didn't report it to the police. Even if I did, what good would it do? It wouldn't change anything. Men can bribe the police but most women don't have the money to do so…"*

VIOLENCE WITHIN THE SETTLEMENT

The majority of women interviewed by Amnesty International said that perpetrators of violence were mostly unemployed (mainly male) youth and men who are criminals individually or as part of groups or gangs. Muggings, physical attacks, theft and other violence by these individuals and groups are rampant. Though such criminals often target victims at night, women survivors of violence said that they are vulnerable to violence and crime throughout the day. In the past criminal groups have also taken advantage of public disorder, for instance during the post-election violence of 2007/8 when they subjected many women to physical, sexual and other violence. Many women survivors of violence were specifically targeted because of their gender, and some because of their ethnic identity. For most of these women living in the slums and informal settlements, there has been virtually no medical, legal or other remedies for the violence they suffered. Njambi of Kibera told Amnesty International:

> *"It was early morning of 31 December 2007, just after the general elections and during the political violence that followed these elections… My neighbour went to work. She lives a few minutes from the road. She came running back saying that there was a group of young boys raiding houses targeting people from specific tribes for reprisal attacks and that they were raping women. I was unlucky not get out of the house with my children…The youths came into the house; they were carrying weapons of all sorts. Two*

of them placed a machete on my head and shoulders and they said that if I spoke or called out they would kill me immediately. I was hit by something on my back and pushed by someone and I fell to the floor. I felt two people rape me but I don't know how many raped me in total as I lost consciousness... Subsequently I did everything I could do in terms of reporting what happened – including making a report to this [NGO] office but nothing has been done to arrest any of these youths who live here and seem to do what they want to do here. For us women victims of rape and other violence during this period, the post-elections violence, there is little hope that we will see justice ..."

ABUSES BY GOVERNMENT SECURITY OFFICIALS

Nairobi's slums and informal settlements are inadequately policed and residents have complained that they lack sufficient government security services.[25] However in some instances when the police and other government security personnel have intervened or carried out security operations, they have reportedly committed human rights violations. These have included cases of sexual and other forms of gender-based violence committed by the police. The high incidence of sexual and other forms of violence suffered by women at the hands of security personnel, armed groups, criminal gangs, neighbours and relatives amongst other perpetrators throughout the country during the post-election violence has been documented by the Commission of Inquiry[26] and by non-governmental organizations.[27] Amnesty International spoke to six women who were victims of sexual violence at the hands of the police and who testified before the Commission of Inquiry. Two years down the line they all expressed frustration at the lack of justice, including the lack of feedback on progress on any action taken against the perpetrators.[28]

Jane, a single mother of two, living in Kibera narrated her ordeal:

"...It was 30 December 2007 and the violence was at its height with groups of armed youth in running battles with the police...That evening and in the few days that followed, a special contingent of administration police was deployed to keep calm in this area...We were glad that this was so but the police presence turned out to be a nightmare which haunts some of us to this day...It was clear that the police were targeting women for rape as a lot of us underwent rape ordeals... When the police came round to my house I thought they would not harm me. There were seven or eight policemen. Two of them grabbed me and raped me. I was left unconscious. I couldn't get to a hospital because the roads were not accessible at that time. There was nowhere inside Kibera to get treated for these things... I was able to go to hospital two weeks later. I was given medication and they did a few tests. I was pregnant at the time that I was raped and this resulted in complications with the pregnancy... If the police are the ones who are supposed to protect you, but then they behave worse than the common man and only make things worse, then I think it is just worse when they come here... I have testified before the official Inquiry and to the police but to date nothing has been said about our situation..."

VIOLENCE WITHIN THE WORK PLACE

Because of wider societal gender-based discrimination (including in relation to education and access to credit), women are disadvantaged when it comes to work opportunities. Women expressed the view that they struggle to access gainful employment and most of them make do with low paying casual jobs. Many women told Amnesty International that they earned low

wages either through small scale vending within the settlements or casual work as domestic house helps or as casual workers in higher income areas near the settlements in which they live. While their work presented an opportunity to earn much needed income, they faced threats of violence and actual violence as a result of it.

According to one woman in a focus group of 15 women and girls, most of whom are working as domestic house helps in higher income areas around Mathare:

> *"Often to sustain your job you have to put up with sexual and other forms of harassment..."*

Two women in this group also narrated how they had repeatedly been raped by their employers and how one had become pregnant and infected with HIV/AIDS in the process. When asked if they reported the matter to the police or any other official authority one of them said that they "had not reported these incidents to the police because our employers would have been able to bribe them..."

Wangeci of Korogocho told Amnesty International that "the perils of doing casual jobs include the risk of rape and other violence". She described one of many instances of violence she has faced in her work:

> *"Recently I was employed as a domestic help in a residential area not far from here. My employer once locked me up in his house and threatened, while holding a knife, to rape me... Luckily some one heard my screams and he let me leave... I am driven to look for such casual jobs because I am desperate to earn a living and even then I or other women do not deserve such kind of treatment ..."*

WOMEN LIVING WITH AND AFFECTED BY HIV/AIDS

There is a high prevalence of HIV/AIDS in Kenya's slums and informal settlements. It is estimated that the HIV/AIDS prevalence rate in Kibera is 14 per cent - almost double the national prevalence rate.[29] This high prevalence has been attributed to a host of factors, including lack of access to essential services such as health services. There is also a high risk of HIV/AIDS infection in the slums and informal settlements as a result of gender-based violence.

Summing up the violence and stigma faced by women living with HIV/AIDS, Rose of Kibera told Amnesty International:

> *"Women living with HIV/AIDS have an added problem of widespread stigma... I say 'women' because you will not hear of many cases of men living with the disease and facing a similar level of discrimination... For me such stigma affects how I'm able to live as a single widowed mother of three. For example, my main source of income is daily earnings from my informal business selling sukuma wiki [kale] at the local market. But people living around here know of my HIV status and there are many times when I have been told to my face by prospective customers that I should quit this business because of their false belief that I would infect them with the disease merely by touching the vegetables which I sell... People tell me that I need to invest in other business such as cloth selling... I do not have the money capital for such business and even then I really*

think that selling vegetable and fruits is much more profitable as these are food stuff that people need and are high selling..."

For a number of women, living with HIV/AIDS motivated them to move into the slums and informal settlements from their rural homes where they consider that discrimination against women and particularly against those living with HIV/AIDS is much worse. A few told Amnesty International that they were disinherited of their late husbands' land and other property. However, they complained that stigma makes their situation equally, if not more difficult, in the settlements.

VIOLENCE AND FORCED EVICTIONS[30] BY LANDLORDS AND STRUCTURE OWNERS

Forced evictions in Kenya's slums and informal settlements are common.[31] They often involve the mass removal of people – sometimes hundreds of families – without notice and other adequate procedural safeguards required under international legal standards. Such evictions have mainly arisen as a result of planned official projects, such as public railway and road construction or reclamation of public land such as road reserves and river banks. There is also the problem of forced evictions by landlords or structure owners, which is not as well documented.

Most women, in common with the rest of the population in Kenyan slums, do not own the houses in which they live but rather lease them and pay rent – which usually constitutes a significant portion of their incomes. A number of women told Amnesty International of violent experiences, including forced evictions, by landlords or structure owners often because of failure to pay rent or delayed payment of rent. Flora of Mukuru Kwa Njenga said:

"I have stayed in this house for about six months having lived in my former house for the last 16 years...My former landlord would be very unreasonable in his treatment when it came to delay in rent payments even though he would increase the rent payable regularly and at his whim... Before I left the house, I owed just one month's rent arrears and the landlord became very violent towards me. One day he came to the house with some youth and broke down the main door and part of the roof. He threw all my personal belongings out of the house and told me to leave. After I returned my property back into the house, he warned that he would do the same thing the next day... I left that house the following day. "[32]

Lucy, a mother of three living in Mathare, told Amnesty International:

"...My landlord kicked me out of the house in a very brutal way for a two-month default on rent. He hired agents to break into the house when my children and I were away and they threw out everything. I had to sleep in the open for some days before I managed to get to this small house where my three children and I live with a friend who also has two kids... It is common that landlords or house owners use force to evict people in this way... They don't consider the need to give notice... Because of financial difficulties it happens that you may default on rent for a few months... but you will always struggle and ensure that you pay such debt..."[33]

5. WOMEN'S LACK OF SAFETY AND ACCESS TO ESSENTIAL SERVICES

"I am unable to use this toilet because I cannot afford it."

A female respondent in Kibera, 12 February 2010

Besides the high prevalence of sexual and other forms of gender-based violence that women and girls face in their homes and settlements, their vulnerability to violence is increased because of the scarcity of essential services. This is particularly the case in relation to the absence of adequate sanitation in all the settlements. Women interviewed by Amnesty International described the ever-present risk of gender-based violence because of the long distances they have to travel to reach toilets and other sanitation facilities. The most obvious impact of poor sanitary conditions is the high incidence of diseases and infections. However, as subsequent sections of this report illustrate, the lack of adequate sanitation also has an adverse effect on women's security and their right to freedom from gender-based violence.

This report uses the term sanitation, which comprises a whole gamut of services, including the provision of toilets and shower blocks and related handling of sewage and waste; garbage collection and disposal; drainage and wastewater management. The report focuses on sanitation with regards to access to toilets and shower blocks in the slums and settlements as this is what is most intimately linked to the violence that women face in the settlements.

LACK OF ADEQUATE ACCESS TO TOILETS

A 2006 study commissioned by the World Bank concluded that up to 68 per cent of settlement residents relied on shared toilet/latrine facilities, and that up to 6 per cent of all slum and settlement residents in Nairobi did not have any toilet facilities at all.[34] The official water and sanitation regulator and provider (the Nairobi Water and Sewerage Company and the Athi Water Services Board) estimate that only 24 per cent of residents in Nairobi's informal settlements (with a total population of up to 2 million) have access to toilet facilities at a household level.[35] This situation is attributable, as further discussed in Chapter 7 of this report, to a number of factors linked to decades of government failure to recognize slums and settlements for city planning purposes, and the non-enforcement of applicable domestic laws and standards.

PIT LATRINES

The terms toilet and latrine are used in this report to refer to any facility for the collection and removal of human excreta. Most households in Nairobi's informal settlements use pit latrines – holes in the ground which collect excreta. As these are not connected to sewer systems, latrines need to be emptied on a regular basis in order to remain functional. The waste should be disposed of away from human settlements and water resources.

The World Health Organization and UNICEF's Joint Monitoring Programme (JMP) have defined standards for "improved sanitation". Latrines and toilets are not considered "improved" when they are public or shared between two or more households. Pit latrines are considered as "improved sanitation facilities" when they contain features likely to ensure hygienic separation of human excreta from human contact; for example a slab or platform over the latrine that is firmly supported on all sides, easy to clean, is raised above the surrounding ground level to prevent surface water from entering the pit and has a squatting hole, or is fitted with a seat.[36]

The JMP standard on "improved sanitation" is the official standard used for monitoring progress towards the Millennium Development Goal of reducing by half the proportion of people globally who do not have access to sanitation.

The majority of slum residents, including most of the women interviewed by Amnesty International, use shared pit latrines, if these are available and mostly only during the day.[37] Most women interviewed in all the settlements visited by Amnesty International pointed out that the available pit latrines are usually few and far between. They testified that on average one pit latrine would be shared by up to 50 people living in different households. Previous research by other organizations has put the average number of people using a given pit latrine at an even higher figure. One study pointed out that 150 people shared one latrine facility on average in Kibera settlement.[38] More than half of the 130 women interviewed by Amnesty International stated that they used shared pit latrines, usually not situated within the plot in which their houses or structures were situated, and that they had to walk for some minutes to access the facility.

Most women have to walk more than 300 metres from their homes to use the available latrines. Access to the latrines is especially unsafe for women and particularly at night. The common use of "flying toilets" (human waste disposed of in plastic bags thrown into the open) in settlements is a result of the inaccessibility of toilet facilities.

Women told Amnesty International of a few initiatives by community and non-governmental organizations (NGOs) to build community toilets that are more hygienic and can be used by members of communities. One has to pay on average Kshs.5 (US$ 0.064) to use these facilities, which are only open within prescribed times – most of them close after 8-10 pm or earlier.

One focus group in Korogocho told Amnesty International delegates about their experience with regard to constraints to using one available alternative community toilet in the settlement. Speaking on behalf of the group, one woman stated:

> *"We [women] are the ones primarily responsible for ensuring that our children and dependants can access these community toilets and facilities... The main hindrances to*

using them are the costs involved and the fact that the community toilet facility here closes by 9pm until the next morning at about 6am. How would you afford paying Kshs 5 (US $ 0.064) each and every time a child and yourself uses the toilets? Most of us here have at least three or more children and dependants and can you imagine how much you would spend on toilet use alone..?"[39]

Christine of Kibera told Amnesty International:

"There is a community toilet run by a co-operative society where I live...However I am unable to use this toilet because I cannot afford it. One has to pay Kshs. 2 (0.025 US $) every time you use it and you may have to use the toilet so many times. My neighbours and I have no solution but to use flying toilets as Kiandaa is one of the areas where it is rare to find pit latrines – even of poor quality – within the plots..."[40]

LACK OF BATHING FACILITIES

Most women interviewed by Amnesty International felt that access to shower facilities was even more limited than access to toilets/latrines. Women in Mathare thought that the general lack of shower blocks was mainly because of "the general perception by landlords, house owners or even private developers that what are absolutely necessary are latrines or toilets".[41] As with the lack of toilets, the general lack of shower blocks in the settlements is linked to decades of government failure to recognize Kenyan slums and settlements for city planning purposes, including in particular, the non-enforcement of applicable domestic laws and standards as discussed in Chapter 7 of this report.

Most of the women interviewed by Amnesty International indicated that the dominant practice is for them and their families to use their houses for taking showers. For a few of them the latrines double up as bathrooms or there are small, usually single, bathrooms adjacent to the latrines. These are shared by tens of households and "were rarely in hygienic and clean condition".[42] Women also stated that the majority of the rooms earmarked for bathing offered no personal privacy. A member of a focus group in Mathare told Amnesty International that "they would shower in the knowledge that there was no privacy and that this was a factor in most of them opting to use their houses instead".[43]

Many women complained that using one's house for showers posed further problems relating to lack of privacy. As one woman, speaking on behalf of a group of women in Kibera, explained:

"We have to suffer shame and indignity when using our [mostly one-roomed] houses as every time we have to shower you need to tell the kids or adults to leave the house…At times this is not possible – kids or adults leaving the house…So you have to contend with the reality that you have to shower in their presence. Our moral values and culture do not allow this – showering in front of people especially one's own children."[44]

The use of community or NGO bathrooms is, as with the case of toilets, severely constrained by the user costs and lack of security.

INADEQUATE SANITATION: IMPLICATIONS FOR HEALTH AND PRIVACY

> *"Women, more than men, suffer the indignity of being forced to defecate in the open, at risk of assault and rape. Women, generally being responsible for the home and for children and other dependents, are most affected by a lack of sanitation and by the indignity of living without sanitation…"*[45]

Women interviewed by Amnesty International pointed to health care costs and the lack of privacy as two major effects of the lack of access to sanitation.

There is a high incidence of communicable diseases such as cholera and dysentery which affects households in the slums, particularly children. Women stated that the poor sanitary conditions they live in – which include widespread disposal of human excreta in the open because of lack of adequate access to toilets – directly contribute to the high incidence of poor health in their environments. Individual studies by organizations have shown that most health indicators in the Nairobi slums and settlements are worse than other parts of Kenya including rural areas, in part because of inadequate sanitation.[46] A survey by the African Population and Health Research Centre (APHRC) revealed that infant, child and under-5 mortality rates were 20, 65 and 35 per cent higher respectively, in informal settlements in Nairobi compared to rural areas.[47]

Women told Amnesty International that health care costs, mostly incurred for child dependants, constitute a considerable part of their expenditure. Many face difficult choices between covering these costs and providing for other basic needs, like food, clothing, or even rent. In this sense, the effect of additional health care costs is to drive them further into poverty.

Women also talked about their lack of privacy because of inadequate access to toilets and bathrooms. One of nine women living in houses within one plot in Mathare summarized their situation as follows:

> *"There are two latrines for 20 households [each with an average of four family members]. These, put up by a private developer [independent from the landlords or house owners], are usually not clean as nobody is responsible for their hygiene unless any of us volunteers to do so. They are always left for a long time before being emptied when full. It is almost a year since they were last emptied and now both of them are full and overflowing. Despite this, it costs Kshs 5 (US $ 0.064) per visit to use the latrine. Still we have to use them as women – because you need the privacy…On the other hand, men can just urinate and don't have these problems".*[48]

A woman member of a focus group in Kibera explained:

> *"There is the issue of privacy when you have your menstrual periods and your male neighbors and relations are there waiting as you have to use the bathroom or toilet to change and clean-up. Because it is usually a single room latrine/toilet or bathroom, you have to queue often and people are always knocking on the door rushing you."*[49]

INADEQUATE SANITATION: VIOLENCE AGAINST WOMEN

An NGO official working on access to water and sanitation in Kibera explained that:

> *"The lack of sanitation facilities in Kibera affects women more than men…Men equally face the threat of violence but women are at increased risk of sexual and other forms of gender-based violence. Women tell us regularly how they are at risk of being raped or assaulted after dark or at night if they were to attempt to walk even 100 metres to a latrine near their houses; what chance is there that they would use a facility that may be three times further as is the dominant case here in Kibera?…Even a casual observation during the day reveals that men are not as hampered as women by the lack of toilet facilities… You would see men use the alleys and open places – such as the areas next to the railway lines to urinate…but women cannot do that because of wider public perceptions on decency and dignity…"*[50]

The lack of toilets/latrines and bathroom facilities in the immediate household vicinity puts women at great risk particularly of sexual and other forms of gender-based violence. All women interviewed by Amnesty International referred to the ever present danger of sexual and other forms of gender-based violence particularly at night and sometimes well before dark. For the significant majority of women interviewed, the lack of adequate access to toilets and bath facilities meant that they would not dare use the limited available facilities because they were far away, which compounded the risk of sexual and other forms of gender-based and other violence.

As a member of a focus group of 15 women in Mukuru Kwa Njenga told Amnesty International:

> *"Over half of us take five to ten minutes to get to the toilet. A few have toilets in their plots so it may be safe to go to the toilet at night. If you go out at night you will get raped and assaulted…For women this is unique because it is not just the risk of an assault or mugging but sexual violence as well."*[51]

Women told Amnesty International of the high number of women and girls who have experienced rape and other forms of violence directly as a result of their attempt to find or walk to a toilet or latrine some distance away from their houses. A number of women told Amnesty International how their daughters or children in their custody had suffered rape and other forms of sexual violence while attempting to use toilets mostly at night but sometimes even during the day.

The case of 19-year-old Amina of Mathare is illustrative:

> *"I always underestimated the threat of violence when regularly using the latrine which all 12 families who live on the plot where I live use. I would go to the latrine at any time provided it was not too late. This was until two months ago when I almost became a victim of rape… You have to walk for about ten minutes to use the latrine. It was just about 7pm when I had reached the latrine only to encounter a group of four young men – including one who was my neighbor and well known to me… Without saying anything two of them held my hands as one hit me on the face. I partly lost consciousness… I shouted asking them to leave me. I could feel that they were undressing me and one of*

them was saying that they would teach me a lesson on why I should not be out at that time... I am sure that they were about to start raping me when a few people responded to my shouting and came to my rescue and these men ran away... I did not report the incident because one of the four men who was well known later told me if I reported the incident to official authorities or the police they would look for and deal with me..."[52]

Women still risk violence when using the few community/NGO toilets and bathrooms which are available at a fee. Lucy of Kibera told Amnesty International:

"Whenever we are able to afford the costs of Kshs 5 (US$ 0.064) per visit we usually use the community toilet and bathroom unit constructed by public funds – the constituency development fund...However this facility only operates between 8 am and 10 pm... As a woman you can not use these toilets say after 7pm because for some of us they are a ten-minute walk away from my house and the area is insecure with a lot of violent criminal youth groups who would harm you especially as a woman."[53]

Karen of Kibera spoke of women's experiences in using an NGO toilet and bathroom block in the area:

"We have received so many reports of women and girls who have been assaulted and even raped while going to use this facility in the evening or after dark....I do not have to wait for a similar experience in order to know that it is very dangerous for a woman to attempt to use the facility after 7 pm. So I always try and use the facility especially for bath earlier in the evening even if this always means that I have to disrupt my schedule including the small-scale vending business that I do at the market..."[54]

Women also told Amnesty International how they are harassed and intimidated by members of the community when using shared facilities. As a representative of a focus group in Kibera explained:

"You would be using the latrine – which we sometimes have to use for showering as well and there would be a queue of neighbours also wanting to use it. This means that we have got to find other ways of keeping ourselves clean. For starters we are better off using our houses for showering purposes...we will rather that than risk harassment in sharing congested facilities."[55]

Women spoke of a number of ways they try to mitigate the threat of violence, including where possible, showering or using latrines in groups or asking male members of the family to accompany them to the latrines at night.

However most of them were of the view that these options would only be possible if the facilities were available and accessible in the first place. In addition for some, such as Mama Mwangi of Kibera, being single and heads of households means that the option of male relatives providing them and/or their children with security or accompanying them to use the toilets at night does not exist.[56]

The majority of women interviewed by Amnesty International indicated that using latrines or toilets at night was out of the question. A member of a focus group discussion in Mukuru

concluded that: "we would be much better off with the availability of more facilities close by our houses or within plots".

6. INTERNATIONAL LEGAL OBLIGATIONS RELATING TO SANITATION

"Sanitation, more than many other human rights issues, evokes the concept of human dignity"

Report of the UN independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, 2009

Kenya is party to the International Covenant on Economic, Social and Cultural Rights[57] (ICESCR) which recognizes the right to an adequate standard of living (Article 11). Article 3 of the ICESCR requires that women should be able to enjoy this right on an equal basis with men.

The Committee on Economic, Social and Cultural Rights has clarified that "Article 11, paragraph 1, of the Covenant specifies a number of rights emanating from, and indispensable for the realization of the right to an adequate standard of living "including adequate food, clothing and housing". The use of the word "including" means that this catalogue of rights was not intended to be exhaustive. The Committee has clarified that the right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.[58] Most states that have ratified the ICESCR have explicitly stated that the right to an adequate standard of living implicitly includes sanitation. The 177 States that participated in the 1994 Cairo Conference on Population and Development, including Kenya, recognized in the conference's Programme of Action that:

> *"Countries should ensure that all individuals are given the opportunity to make the most of their potential. They have the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation."*[59]

The 171 States that participated in the Second United Nations Conference on Human Settlements (Habitat II) in 1996, including Kenya, recognized in the outcome document of the conference that: "Everyone has the right to an adequate standard of living for themselves and their families, including adequate food, clothing, housing, water and sanitation, and to the continuous improvement of living conditions".[60]

The UN Committee on Economic, Social and Cultural Rights (CESCR) also considers access to water and sanitation as core obligations and elements in the realization of other rights under the ICESCR including the rights to housing and health.[61]

Kenya's national policies recognize the rights to sanitation and water. Kenya's National Water Services Strategy (NWSS) for 2007 – 2015 states as a guiding principle that: "Sustainable access to safe water and basic sanitation is a human right."[62] The 2007 National Environmental Sanitation and Hygiene Policy (NESHP) states that: "As a basic human right, all Kenyans should enjoy a quality of life with dignity in a hygienic and sanitary environment and be free from suffering any ill health caused by poor sanitation."[63] The current draft Constitution adopted by Parliament and subject to a referendum in August 2010 states that every person has the right to reasonable standards of sanitation.[64]

Article 27 of the UN Convention on the Rights of the Child (CRC) recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.[65] This Article has consistently been interpreted by the Committee on the Rights of the Child, the treaty body in charge of monitoring and interpreting the CRC, to include access to clean drinking water and sanitation.[66]

The UN Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation states further that emerging trends in human rights law points to developments on sanitation as a distinct right:

> *"…Sanitation is not just about health, housing, education, work, gender equality, and the ability to survive. Sanitation, more than many other human rights issues, evokes the concept of human dignity; consider the vulnerability and shame that so many people experience every day when, again, they are forced to defecate in the open, in a bucket or a plastic bag… Dignity closely relates to self-respect, which is difficult to maintain when being forced to squat down in the open, with no respect for privacy, not having the opportunity to clean oneself after defecating and facing the constant threat of assault in such a vulnerable moment. One might argue that, because dignity pervades the issue of sanitation and sanitation cannot be entirely subsumed into any other existing human right, it should be considered a distinct human right… Due to the essential importance of sanitation for maintaining a life with human dignity, it could be argued that it is as important as other explicit components of the right to an adequate standard of living, such as food, clothing and housing, and could be implied under that right."*[67]

The UN Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation has also explained that sanitation is an integral part of numerous human rights including the rights to an adequate standard of living, adequate housing, health, education, water, work, life, physical security, the prohibition of inhuman or degrading treatment, gender equality, and the prohibition against discrimination.[68]

Kenya is legally obliged to respect, protect and fulfil the right to adequate housing as provided by Article 11 (1) of the ICESCR and the right to health, guaranteed under Article 12. The Committee on Economic, Social and Cultural Rights has identified various factors that should be taken into account to determine what constitutes "adequate housing".[69] These factors include the availability of services, materials and infrastructure and that an adequate

house must contain certain facilities essential for health, security, comfort and nutrition. It has emphasized that "all beneficiaries of the right to adequate housing should have sustainable access to … sanitation and washing facilities".[70]

The UN Committee on Economic, Social and Cultural Rights has interpreted the right to health as "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation…"[71]

In General Comment No. 15, the UN Committee on Economic and Social Rights states the obligation of states thus:

> *"In accordance with the rights to health and adequate housing (see General Comments No. 4 (1991) and 14 (2000)) States parties have an obligation to progressively extend safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children."*[72]

The UN Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation has stated with regard to the availability and accessibility of sanitation services that:

> *"There must be a sufficient number of sanitation facilities (with associated services) within, or in the immediate vicinity, of each household, health or educational institution, public institutions and places, and the workplace… Physical accessibility must be reliable, including access at all times of day and night. The location of sanitation facilities must ensure minimal risks to the physical security of users… Moreover, sanitation facilities should be constructed in a way that minimizes the risk of attack from animals or people, particularly for women and children"*[73]

This view reiterates earlier guidelines developed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights which also addressed the issue of distance to sanitation facilities stating that:

"Everyone has the right to a water and sanitation service that is: (a) physically accessible within, or in the immediate vicinity of the household, educational institution, workplace or health institution; … (c) In a location where physical security can be guaranteed."[74]

The Independent Expert has indicated that states are obliged to respect, protect and fulfil human rights as they relate to sanitation.[75] These include:

- *Obligation to respect*: The government must refrain from measures which threaten or deny individuals or communities existing access to sanitation. [76]

- *Obligation to protec*t: The government must ensure that non-state actors act in accordance with human rights obligations related to sanitation, including through the adoption of legislative and other measures to prevent the negative impact of non-state actors on the enjoyment of sanitation. When sanitation services are operated by a private provider, the state must establish an effective regulatory framework.[77]

- *Obligation to fulfill*: The government must take steps, applying the maximum available resources, to the progressive realization of economic, social and cultural rights as they relate to sanitation. States must move as expeditiously and effectively as possible towards ensuring access to safe, affordable and acceptable sanitation for all, which provides privacy and dignity.[78] When people, for reasons beyond their control, are genuinely unable to access sanitation through their own means, the state is obliged to provide sanitation services.[79]

On the basis of international standards, it is clear that sanitation is a component of the right to an adequate standard of living and governments have obligations to ensure adequate sanitation to all. This is also essential to ensuring the realization of the rights to adequate housing and health. It is therefore welcome that Kenya has recognized the right to sanitation as a distinct right. It is furthermore clear that: "The inextricable links between sanitation and so many human rights requires States to ensure access to sanitation that is safe, hygienic, secure, affordable, socially and culturally acceptable, provides privacy and ensures dignity in a non-discriminatory manner."[80]

7. GOVERNMENT FAILURES

"On this plot there are about 10 families including mine…We have no latrine or toilet and this has been the case for the last four years I have been here…"

Justine in Korogocho settlement, 17 February 2010

As a result of decades of government failure to recognize Kenyan slums and settlements for city planning and budgeting purposes, millions of residents have been and continue to be denied a range of essential services provided by the government to other residents of the city.[81] By the government's own admission slums and settlements "lack adequate physical infrastructure [including] sewer systems, drainage, water and sanitation facilities…Where such facilities exist they are in a poor state or are results of illegal connections."[82]

The effects of years of neglect in the provision of essential public services are evident in the problems that residents face with regard to water and sanitation. In recent years there have been commendable public water sector reforms.[83] Although there has been progress in implementing these reforms, they have yet to result in significant improvements in the accessibility and availability of clean water for the majority of the residents of slums and informal settlements.[84]

There is even slower progress with regard to access to sanitation. The official water and sanitation provider and regulator in Nairobi (Nairobi City Water and Sewerage Company (NCWSC) and Athi Water Services Board (AWSB)) acknowledge that: "Sanitation in [Nairobi's] informal settlements is altogether much worse and more complex than water supply…"[85] They explain part of the reason for slower progress regarding sanitation despite recent reforms in the water sector as follows:

> *"While NCWSC and those retailing its water are the primary actors in the delivery chain for water supply services, this is not the case for sanitation, which is primarily the purview of individual households. Waterborne sewerage is the only component of broadly defined sanitation that is under the direct responsibility of NCWSC. The nominal responsibilities for other components [drainage and solid waste] are shared between households, community groups and municipal agencies…"*[86]

In reality, most individual households do not have control over sanitation facilities. Rather, the "providers" of sanitation are structure owners.[87] However, the government's policies on water and sanitation are silent on the regulation of structure owners. Neither the Ministry of Public Health nor the Ministry of Water appear to plan any cooperation between themselves and the local authority – the Nairobi City Council – in order to require structure owners to ensure access to sanitation, and to provide assistance to those households that are unable to construct latrines themselves.

Moreover, the government has not done enough to facilitate the provision of services to empty pit latrines. The poor state of the roads into settlements and other factors such as the long distances to the official dumping site have contributed to high costs of latrine emptying services. In addition to the basic reluctance of landlords and private developers to provide pit emptying services, the high costs of these services act as a further disincentive to maintaining services.[88]

As this report shows, it is the lack of access to sanitation (in particular toilets and shower blocks) that puts women at a further risk of violence in the settlements.

GAPS IN OFFICIAL AND NON-GOVERNMENTAL EFFORTS TO IMPROVE SANITATION

The official regulator of water and sanitation services within Nairobi, AWSB, and the water service company, NCWSC, (both in charge of public piped water supply and sewerage services) operate as independent entities. The service provider, NCWSC, operates as a company. The government retains statutory oversight authority over the operations of both bodies.

The official water regulator and service provider have, since 2008, acknowledged the dire situation with regard to access to water and sanitation, including the dearth of toilets/latrines and related sanitation facilities, in Nairobi's slums and informal settlements.[89] It is on this basis that the two bodies formulated a plan,[90] publicly released in 2009, aimed at improving access to water and sanitation in Nairobi's informal settlements.

This plan summarizes residents' lack of access to water and sanitation and is certainly a step in the right direction. It prioritizes certain solutions in dealing with the sanitation "problem". These include four approaches involving: (a) the promotion of community managed pay ablution blocks including bio-latrines[91]; (b) construction of simple systems for waste discharge; (c) supporting improved pit latrine emptying services; (d) facilitation of community connections to sewerage networks.[92]

In implementing this plan the official water and sanitation service regulator and provider are currently engaged in pilot projects whose implementation involves partnerships with NGOs working on water and sanitation, community groups and a host of small-scale service providers.[93] In an interview with Amnesty International the water regulator stated that in the last two years "40 ablution blocks [comprising of toilet and shower facilities]" have been set up in settlement areas including the four visited by Amnesty International.[94]

However, challenges remain including in relation to the insecurity that women face. Community or public facilities remain few and far between, and invariably involve walking for long distances through insecure neighborhoods with poor public lighting.

Justine of Korogocho narrated:

> *"On this plot there are about 10 families including mine...We have no latrine or toilet and this has been the case for the last four years I have been here...There is that small structure in the middle of the houses and that is the shower facility. It is poorly constructed and offers no privacy especially to us as women but it helps...We are glad that there is now a community bio-gas toilet and facility constructed here [through collaboration between the official water service provider and Umande Trust, an NGO]. Still, this is not adequate. We have to walk for about 15 minutes from here to get to the facility which is down by the river. And you have to pay some user fees of Kshs 2 (US $ 0.025) which is quite expensive...The facility opens at 6 am and closes at 10 pm...For me I don't think I can dare walk there to use it after 7 pm..."*[95]

Justine's experience is consistent with the views of most women interviewed by Amnesty International.

Pre-dating the initiatives by the official water and sanitation provider and regulator NGOs, other agencies have over the last years built community sanitation blocks comprising of toilet and shower facilities in the settlements, though these are very few.

The community sanitation facilities, though positive, still fall short of the significant sanitation needs of settlement residents – they are inadequate in number and are often not accessible.

Amnesty International acknowledges that ensuring access to sanitation facilities of high quality (for example, linked to a sewerage system or ecological sanitation) in the immediate household vicinity will be a long-term venture and is a goal that can only be progressively realized. However, the objective of ensuring access to pit latrines at the household level of adequate quality is one that can be achieved over the short and medium term, through regulation and provision of assistance to households. This goal is essential to address immediate and urgent sanitation needs specifically of women and girls, including their ability to use facilities without risk to their safety, security, privacy and dignity.

FAILURE TO ENFORCE EXISTING LAWS AND REGULATIONS

There is very little, if any, sewerage coverage or alternative disposal mechanism for waste in the slums and informal settlements. Nairobi's generally dysfunctional sewerage system further alienates slum and informal settlement residents who have almost no access to public sewer lines and waste disposal systems.[96]

Most of the latrines used by residents are disused. They are full and are rarely emptied, and pose serious health problems to residents in addition to the general poor sanitation conditions in the settlements. Women attributed the disuse to failure by structure owners or landlords to take hygiene standards seriously. A representative of a focus group in Mathare stated that landlords "would not bother about emptying of latrines which they have constructed".[97] According to one of four women who live on a plot of land housing about 27 households in Mukuru Kwa Njenga, "all the families share one pit latrine which is always only emptied when it is full and overflowing".[98] Amnesty International was informed both by the residents interviewed and a representative of Nairobi City Council that mainly because

many of the settlement areas do not fall within the boundaries covered by formal urban plans, public government/local authority facilities for pit emptying services are in general rarely used in the settlements.

The official water and sanitation provider and regulator have said that in Nairobi's slums and informal settlements "…Latrine emptying and sludge removal are handled by small scale operators working under unsanitary conditions. Sludge is disposed haphazardly either in the rare sewer inlets or in rivers and drainage ditches…"[99]

Under Kenyan law the primary responsibility to ensure adequate access to sanitation at a household level rests with the private individuals and companies that own the houses and structures inhabited by most people living in the settlements.[100] The Public Health Act and relevant provisions of the applicable Building Code[101] make provisions regarding minimum standards which include sanitary requirements. The local authorities and public health officials supervise the compliance of these standards by individual private developers.[102] However, Amnesty International found that these laws and regulations were not enforced in any of the settlements visited. This was partly because the settlements fall outside areas covered by urban plans and as a result, proper sanitation infrastructures, including settlement connection to public sewer lines were not ensured.[103] Non-enforcement of existing laws has directly resulted in the lack of adequate toilet and shower facilities in settlements.

Despite an official government policy now recognizing the existence of settlements[104] and the formal adoption of a government slum upgrading programme[105] there has been little change in the practice of government officials and the local authority, the Nairobi City Council. They still consider slums as irregular. The Nairobi City Council's city planning department told Amnesty International that slums and informal settlements are yet to be included in the city's urban plans.[106] The official water service provider and regulator have admitted that "informal settlements fall outside the formal planning framework of the State authorities, and therefore lack legal standing. The City Council and all other utilities rarely plan the provision of services to these areas."[107] Services still not being planned for or provided include those relating to sanitation.

City Council officials told Amnesty International that "the Council was developing a new master urban plan which will incorporate the government's slum upgrading initiative and eventually ensure that planning regulations and building codes can be relevant to the situation in the slums".[108] It is not clear when this proposed plan will be finalized and how it will be implemented considering other challenges including the widespread lack of security of tenure in the settlements. It is also not clear how these plans will be implemented in line with the ongoing government slum upgrading programme. The slum upgrading programme has long-term goals to improve infrastructure and access to essential public services in the slums and settlements.[109]

The absence of any official supervision of existing laws and standards means that private developers, including landlords and structure owners, often construct houses without complying with sanitation requirements. Structure or house owners focus primarily on maximizing incomes by renting out a high number of structures or houses and paying little attention to the availability and adequacy of sanitation facilities. Residents told Amnesty International that a single structure owner would usually own tens of houses but not pay

attention to the needs of families for toilets and shower spaces.[110] Most residents, usually tenants, can do nothing about the poor sanitation or the fact that structure owners are not complying with existing laws and standards because City Council and public health authorities will not act, as they still consider slums and informal settlements irregular.

Mama Alice of Kibera told Amnesty International:

> *"On this plot of houses we are about ten households. I have stayed here for the last four years. It is only 2 months ago that the owner of the houses decided to put up one pit latrine and a bathroom... For most of the part that we have lived here we have had to be using the neighbouring plot's sole pit latrine which is shared by as many families as we have on this plot. All this time we had to use our houses for shower... Whenever we asked him [the landlord] about the lack of a latrine he would tell us that whoever tenants wanted to leave the plot should just do so..."*[111]

Speaking on a behalf of members of a focus group in Kibera, one resident said:

> *"In our view it is the responsibility of landlords or structure owners to put up toilets and shower blocks...It is only that the government does not ensure that this happens. If the government insisted on enforcing this responsibility we would not have such a big problem with the lack of toilets and shower blocks..."*[112]

The Kenyan government's obligation to protect human rights, including the right to an adequate standard of living, the right to adequate housing and the right to health requires it to enforce its own laws and take all other necessary measures to safeguard people from infringements of these rights.

The continued exclusion of slums and informal settlements from the city's planning processes, in particular the non-enforcement of existing sanitation standards, results in stark disparities in access to sanitation facilities between slums and informal settlement areas and other residential areas.

As a party to the International Covenant on Civil and Political Rights (ICCPR), Kenya is required to ensure that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.[113] The right to equality before the law requires that administrative officials must not act arbitrarily in relation to the protections available under existing law.[114] Though the administrative authorities can take into account individual characteristics, the distinction in treatment should not amount to discrimination,[115] which would breach Kenya's obligations under the ICCPR and ICESCR.[116]

In particular, the Committee on Economic, Social and Cultural Rights has clarified that "The exercise of Covenant rights should not be conditional on, or determined by, a person's current or former place of residence; e.g., whether an individual lives or is registered in an urban or a rural area, in a formal or an informal settlement, is internally displaced or leads a nomadic lifestyle. Disparities between localities and regions should be eliminated in practice..."[117] The Committee also considers tenure status to fall within "property", as a prohibited ground of discrimination.[118]

Under these standards, the Kenyan government should ensure that people living in informal settlements are not excluded from the protections contained in the Public Health Act and Building Code. In addition, the government should take measures to ensure that the minimum standards established by such legislation are ensured, as a matter of priority, within informal settlements.

THE FAILURE TO GUARANTEE MINIMUM LEVELS OF SECURITY OF TENURE

Decades of lack of planning has led to the haphazard growth of housing structures in Kenya's settlements and slums. This is one factor behind the very high degree of congestion. In Kibera, with an estimated population of up to 1 million people, up to 2,500 people live on one hectare of land.[119] In addition, hundreds of families in all the settlements live on land reserved for roads and other public infrastructure and on other land which is unsuitable for human habitation including river banks. Because of this, there is no legal security of tenure for the land on which most residents live. Lack of security of tenure is one of the main obstacles to the realization of the rights to adequate housing and access to essential public services.

Amnesty International has previously documented the general lack of security of tenure in Nairobi's settlements and called on the Kenyan government to ensure a minimum degree of security of tenure that guarantees protection against forced eviction and enables the realization of residents' access to essential services in the short, medium and long term.[120]

Private developers are reluctant to invest and improve housing and related infrastructure in Nairobi's slums and informal settlements because there is no security of tenure.[121] Another key constraint to increasing the number of toilets and shower blocks, even by official institutions, is the lack of physical space within the congested housing structures in all the settlements. These constraints are acknowledged by the government which has formulated plans to deal with the question of land tenure in slums and settlements. The recently adopted land policy (2009)[122] acknowledges that:

> *"The essence of 'informal' or 'spontaneous' or 'squatter' settlements is the absence of security of tenure and planning... Many Kenyans live as squatters, in slums and other squalid places..."*[123]

The policy outlines a number of steps that the government plans to take in order to deal with the lack of security of tenure.[124] These include, "taking an inventory of...people who live in informal settlements; "ensuring that land subject to informal settlement is developed in an ordered and sustainable manner" and "developing, in consultation with affected communities, a slum upgrading and resettlement programme under specified flexible tenure systems".[125]

However these plans do not provide a timeline setting out when they will be put into effect. And while these plans are long-term they do not address the immediate short term issues such as lack of access to sanitation facilities and how this exacerbates the violence against women.

8. EFFORTS TO MEET MDG TARGETS AND CONSISTENCY WITH HUMAN RIGHTS

"…the particular needs of women in informal settlements should be taken into account through consultation."

Ministry of Health, National Environmental Sanitation and Hygiene Policy, 2007

Kenya has affirmed the international Millennium Development Goal target on sanitation to reduce by half, between 1990 and 2015, the proportion of people without sustainable access to basic sanitation.[126] It has adopted water and sanitation policies that aim to fulfill MDG targets and also the rights to water and sanitation. Its policies reflect human rights principles to a significant extent, for example by including a focus on increasing access of people living in poverty to plans for water service delivery.[127] However, there are gaps in ensuring consistency with Kenya's international human rights obligations.[128]

A significant gap is the government's failure to identify and address the specific barriers faced by people living in settlements or women in access to sanitation. The 2007 National Environmental Sanitation and Hygiene Policy (NESHP), prepared by the Ministry of Health, indicates that the particular needs of women in informal settlements should be taken into account through consultation.[129] However, the policy does not analyze or acknowledge women's vulnerability to violence due to lack of sanitation at the household level. It also fails to adequately prioritize the needs of women, who are at significant risk of or experience violence because of a lack of adequate sanitation. The NESHP does not address the issue of the non-enforcement of the Public Health Act in ensuring access to sanitation in informal settlements. It states that:

> *"An inter-ministerial task team, with representation from local authorities, will be set up to gather specialist skills and experience and to develop approaches, guidelines, and standards for addressing the ESH [Environmental Sanitation and Health] needs of marginalized urban communities. The team will engage all stakeholders and address issues such as land ownership, security of tenure, the role of chiefs and landlords, and scope for involving small-scale service providers… Special attention will be given to ways*

of ensuring that landlords and developers of properties invest in and construct suitable sanitation facilities for tenants and home buyers."[130]

While such a process is welcome, the government also needs to identify the immediate measures it will take to fill the gaps in enforcement of existing laws and to facilitate the provision of adequate sanitation to the most disadvantaged groups, including women who are at risk of violence.

Kenya has adopted ambitious national targets to contribute to the fulfillment of the relevant MDG target. According to the National Water Services Strategy (NWSS) for 2007 – 2015, the Ministry of Water and Irrigation commits to collaborate with other concerned ministries, in particular the Ministry of Health and Sanitation (the lead for sanitation), to increase access to basic sanitation from 55 per cent to 77.5 per cent in urban settings.[131] It further states as a principle that: "Not more than four households shall share a basic sanitation installation."[132] The Ministry of Water and Irrigation's Pro-Poor Implementation Plan for Water Supply and Sanitation (PPIP-WSS) aims to increase access to sanitation in urban areas by 900,000 people a year between 2008 and 2015.[133] The Plan concentrates on promoting low cost installations such as water kiosks and basic on-site sanitation.[134] Under the Plan "on-site sanitation" refers to facilities, such as latrines, that do not involve the use of piped networks to transport human waste.

The policy aims to link operators of water outlets and public toilets to formal water service providers to ensure urgent basic access to those who do not have such access or have inadequate access, with a view to gradually replacing informal provision of water with formal provision of better quality.[135] The Ministry of Water and Irrigation also intends to extend the provision of ablution blocks in informal settlements, to provide information on sanitation and, where possible, to provide subsidies to assist low-income households to establish environmentally sound toilet facilities.[136]

The Ministry's planned approach is likely to increase access to water and sanitation for people in informal settlements. However, it does not address the need for relevant government bodies (including the Ministry of Local Government through the local authorities) to require structure owners to ensure access to sanitation for the majority of the residents in informal settlements. A significant portion of Kenya's urban population lives in informal settlements, therefore policies that do not adequately address the gaps and constraints regarding sanitation needs – including women's circumstances in informal settlements – are unlikely to succeed in meeting the government's target to increase access to basic sanitation to 77.5 per cent in urban areas across the country.

The 2007 National Environmental Sanitation and Hygiene Policy (NESHP), prepared by the Ministry of Health indicates that the government will contribute to attaining the Millennium Development Goals by ensuring that by 2015, all households will be made aware of the importance of improved environmental sanitation and hygiene practices for improved health, and that 90 per cent of households will have access to a hygienic, affordable, and sustainable toilet facility, improved housing, food safety, usage of safe drinking water and safe disposal of wastes.[137] However, the policy is silent on what additional measures, if any, the government will implement to ensure that owners comply with their responsibility under Kenyan law to provide adequate sanitation for their properties. It does not indicate what the

government will do to remove other barriers to access to adequate sanitation. In short, the policy does not address the need to address urgent and immediate sanitation needs in the settlements.

9. INSUFFICIENT POLICING INCREASING INSECURITY

"For up to 1 million people estimated to be living in Kibera, there is virtually no regular police post or station."

NGO official working on security reforms, 16 February 2010

The ever-present threat of rape and other violence that women face in the settlements is conditioned and exacerbated by the lack of adequate security services – including policing and other essential services such as adequate public street lighting. Women who spoke to Amnesty International raised the rampant insecurity in their neighbourhoods and the lack of effective police presence and other measures that would ensure better security.[138]

The lack of public security services is just one more consequence of the failure to recognize Kenyan slums and settlements for city planning and budgeting purposes over the last decades, as discussed in Chapter 7 above. There is little police presence and no permanent police station or post in Kibera, Kenya's largest informal settlement. A police official heading one of three regular police stations located in areas adjacent to Kibera and with a mandate to extend police services into Kibera told Amnesty International that "the police effectively remedy the lack of a permanent police post by conducting regular police patrols. We also rely on a contingent of administrative police attached to the office of provincial administration situated in the outskirts of Kibera. They have power to conduct arrests even if they cannot detain suspects who they eventually bring to one of three police stations/posts outside Kibera..."[139]

An official working with an NGO dealing with security sector reforms in Kenya described the lack of effective policing in the settlements as follows:

> *"It is impossible to ensure effective police presence in Kibera through the current government approach of what I would term as 'remote policing'. The area has different needs and the context is such that the government should have at least one or more police posts or stations within the settlement. Formally the general statistics are such that there is one policeman for every 700 Kenyans.[140] The need to increase this police to population ratio has been expressed including by a recent official police reform body. However this figure does not even begin to capture the policing situation in Kibera. For*

up to 1 million people estimated to be living there, there is virtually no regular police post or station. In contrast, in middle and high income areas adjacent to Kibera, with about one tenth of Kibera's population, you have got at least three police posts or stations..."[141]

A high-ranking police representative expressed a similar view and indicated to Amnesty International that "plans are underway to establish at least one police post or station for Kibera although it is not clear when these plans would be implemented".[142]

Generally in Kenya, women survivors of sexual and other forms of gender-based violence face a myriad of obstacles in their attempts to seek justice, including: widespread ignorance of the law on the part of the public and victims of violence; low reporting rates of such violence to the police and an even lower percentage of cases that result in prosecutions; difficulties relating to gathering of medical evidence; inefficient, expensive, inaccessible and discriminatory court systems and lack of protective shelters or places of safety for victims.[143] Women victims of violence in the settlements face formidable challenges in their attempts to access justice, just like their counterparts in non-settlement areas. Nearly all victims of violence interviewed had not reported the violence to the police. They stated a number of reasons for this, including their distrust of the system, the experience of other victims who had been frustrated in their attempts to seek justice, and negative attitudes of official authorities.[144] In addition, they cited the lack of effective police presence in all settlements visited by Amnesty International as a major constraint to women's access to justice mechanisms.

A group of 10 victims of recent sexual and other forms of gender-based violence in Kibera told Amnesty International that they would usually not report their experiences for formal action in significant part because of the long process involved. Speaking on behalf of this group, one woman explained:

"The process of just filing a report of the violence would take days if not weeks. You would have to report an incident to the local chief and the administrative police here in Kibera. In turn they would refer you to the regular police located in Kilimani police station or Jamhuri police post... This is a process that will entail lots of travel and expenses..."[145]

An NGO official working on access to justice in Kibera further elaborated on the limited capacity of the police:

"Because it is the regular police, rather than administrative police, who have the power to conduct criminal investigations, administrative police [who are attached to the government administration in the immediate outskirts of Kibera] are really handicapped in any investigations of most crimes, including cases of sexual and gender-based violence. For example, administrative police would not have police medical examination forms – which are indispensible in cases of sexual and gender-based violence. In addition they lack capacity to undertake criminal investigative work as they lack police holding cells and strictly they do not have powers to detain suspects... Therefore they would have to refer cases to the regular police. Most victims of crime would prefer not to go through administrative police as this would be a long route which adds to general problem of delay..."[146]

A majority of women talked of the urgent need to improve the security in their environments. The lack of effective police presence, they said, led to gangs and vigilantes attempting to fill the security vacuum but these groups were often a major source of the violence that they face.[147]

Speaking on behalf of a focus group in Kibera one woman told Amnesty International:

> *"There are usually a few patrols by the police from time to time. Even these few patrols are not helpful because the police usually just come here to extort money from residents. The government should ensure better and acceptable policing in the settlements...Obviously our communities should be more involved and better organized in how we can improve the situation ourselves. However there are official measures that can be taken, including the establishment of formal police posts or stations within Kibera. We also need better public lighting. The dark alleys pose the main security problem in most parts of Kibera and we don't understand why there is public street lighting in just a few areas and absolutely none in most areas..."*[148]

Similar views were expressed by women interviewed in Mukuru Kwa Njenga, Mathare and Korogocho. They also said that the issue is not as simple as more deployment of the police or the establishment of police posts/stations within the settlements; equally important is the need to build public confidence and trust in the police.[149]

Discussing the challenges of extending community public sanitation facilities in the settlements, the water regulating authority told Amnesty International that in order to ensure the public's effective use of the facilities, the "government must make considerable efforts to improve the security situation, not just in improving police presence but also by involving the communities more closely in improving the general security situation in the settlements".[150]

10. KENYA'S INTERNATIONAL OBLIGATIONS RELATING TO VIOLENCE AGAINST WOMEN

"The concept of due diligence is central to the role of government in preventing violence against women."

Making Rights a Reality: the Duty of States to Address Violence against Women, Amnesty International, 2004

Kenya is party to international human rights treaties which expressly prohibit violence against women. These include; the African Charter on Human and Peoples' Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. It has signed but not yet ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

Kenya ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1984. The Committee on the Elimination of All Forms of Discrimination against Women (the CEDAW), charged with overseeing the implementation of this Convention, stated in its General Recommendation 19 that violence against women constitutes a violation of women's internationally recognized human rights.[151]

Kenya is responsible under international law for human rights violations and acts of violence against women perpetrated by both state and non-state actors. Such responsibility arises not only from state actions, but also from the omissions and failures of the state to take positive measures to protect and promote women's rights. The state also has a duty to prevent human rights violations by non-state actors, as well as to investigate allegations of violations and to provide effective remedies to victims.[152] States are accountable for the actions of non-state actors if they fail to act with due diligence to prevent, investigate or punish such acts and provide an effective remedy. Due diligence means that states must take appropriate and effective steps in responding to human rights abuses, even where those abuses are perpetrated by private individuals (non-state actors). The concept of due diligence is central to the role of government in preventing violence against women.[153] Required official

measures to meet this requirement include training the police and judiciary, establishment of special police bodies, improvements in the criminal justice system and awareness-raising.

The Convention on the Elimination of All Forms of Discrimination against Women, to which Kenya is a state party, requires state parties to take all measures necessary to prevent gender-based violence. Such measures should include not only legal measures such as penal sanctions, civil remedies and avenues for compensation, but also preventive measures such as public information and education programmes, and protective measures, including support services for victims of violence.[154]

This report demonstrates the need for adequate sanitation facilities and street lighting and effective public security in order to address the gender-based violence faced by women in Nairobi's slums and settlements. The government should include measures to address these issues in its efforts to ensure compliance with the Convention on the Elimination of All Forms of Discrimination against Women.

11. CONCLUSION AND RECOMMENDATIONS

"…the essential importance of sanitation for maintaining a life with human dignity…is as important as other explicit components of the right to an adequate standard of living…"

Report of the UN independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation, 2009

Gender-based violence is endemic in Nairobi's slums and settlements, goes unpunished and significantly contributes to making and keeping women poor. Women's experiences show that lack of adequate access to sanitation facilities and the lack of public security services significantly contribute to the incidence and persistence of gender-based violence. The inadequacy and inaccessibility of toilets and shower places and the general lack of effective policing and ensuing insecurity put women at a heightened risk of rape and other forms of gender-based violence.

As highlighted in Amnesty International's report, *The Unseen Majority,* and this report, the historical failure to incorporate the slums in urban plans and budgets has led to the denial of essential services to people living in informal settlements in Nairobi. The government has taken some positive steps to address this situation, by developing plans to integrate informal settlements into city planning. The government has also developed policies recognizing their rights to water and sanitation and to extend such services to informal settlements.

However, the slow pace of reform ensures continuing failures by the government to respect, protect and fulfil the human rights of people living in Nairobi's informal settlements. The continuing exclusion of informal settlements from the city's planning processes results in stark disparities in the location of police stations and access to sanitation facilities within informal settlements as compared to non-informal settlement areas. The government's continuing failure to ensure a minimum guarantee of security of tenure for people living in informal settlements also limits their ability to access adequate sanitation and leaves them vulnerable to forced evictions.

The government has failed to protect people living in informal settlements from human rights abuses by private actors and to ensure that they have equal protection under the law. This is particularly with regards to legal requirements that landlords and structure owners should provide sanitation facilities. These failures have significantly increased women's vulnerability to gender-based violence.

The government has not exercised due diligence to prevent, investigate or punish gender-based violence and provide an effective remedy to women and girls who experience such forms of violence in the informal settlement areas. It has also not ensured an accessible, effective and non-discriminatory policing system which respects human rights. It has not taken measures to provide protection measures and shelter to victims of gender-based violence and to engage in adequate consultation with affected women on how best to provide these services.

These failures affect Kenya's ability to meet its MDG target on sanitation. Unless the government takes steps to ensure that its efforts to meet the MDG target are fully consistent with its human rights obligations by addressing the gaps and failures highlighted above, it is unlikely to meet its commitment.

Amnesty International recommends that the Kenyan government addresses the issue of gender-based and other forms of violence in Nairobi's slums and settlements. This includes taking steps to urgently ensure improved access to essential public services such as water, sanitation and public street lighting and eliminating disparities in access to such services between informal settlements and other localities. The government needs to ensure that government programmes and policies, including slum upgrading programmes, address immediate needs in relation to security of tenure and access to essential services, in addition to medium – and long-term goals.

RECOMMENDATIONS

In light of these findings, Amnesty International makes the following recommendations.

To the Kenyan government:

- Ensure equal protection under the law to all the people living in informal settlements including by applying and enforcing legislation requiring landlords to construct toilets/latrines and bathrooms in the immediate vicinity of each household;

- Provide assistance to structure owners who are unable to meet the costs of construction of toilets/latrines and bathrooms;

- Facilitate provision of sanitation by ensuring availability of dumping sites and improved roads;

- Increase the levels of policing in the informal settlements by establishing police posts and ensuring other effective forms of policing in consultation with residents of the slums and settlements;

- Institute other measures to improve security including by increasing the level of street lighting in the informal settlements;

- Take immediate measures to improve confidence in the justice system and policing, including by improving channels of communication with police so that it is easier for women to report crimes against them;

- Take immediate measures to improve legal awareness by supporting programmes for civic education on legal rights, and legal aid programmes to provide support to women seeking justice;

- Develop, in line with government commitments under the National Land Policy and slum upgrading strategy, land ownership and land use laws that provide a minimum degree of security of tenure by guaranteeing legal protection against forced eviction, harassment and other threats;

- Ensure that all cases of gender-based violence are promptly investigated and the perpetrators brought to justice in fair trials that do not lead to the imposition of the death penalty;

- Ensure that the relevant government authorities and departments including the Ministries of Water and Irrigation and Public Health and Sanitation, the Nairobi City Council, the Nairobi Water and Sewerage Company and the regulatory board – the Athi Water Services Board – coordinate their efforts to improve the water and sanitation situation in the settlements;

- Review existing national policies and plans aimed at meeting the sanitation MDG target to include measures to ensure access to toilets at the household level in informal settlements as a matter of urgency, including through enforcement of legislation requiring such provision by landlords and structure owners;

- Address the factors contributing to violence against women, including improving access to education, job creation schemes, financing for women's businesses, so that women can improve their working conditions;

- Ensure that provisions on economic, social and cultural rights, including the right to "accessible and adequate housing, and to reasonable standards of sanitation", in Article 43 of the Proposed Constitution are retained and reflected in government practice and relevant domestic legislation and policies;

- Sign and ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights without delay.

To the international community, including the UN and key donors:

- Provide assistance to the government of Kenya in fulfilling its obligations to guarantee the right to adequate housing especially in the context of women's security and access to essential services in informal settlements, and ensure that such assistance is consistent with international standards on human rights.

ENDNOTES

[1]Approximately 2 million, over half, of Nairobi's residents are estimated to be living in slums and informal settlements.

[2]The UN Committee on the Elimination of Discrimination against Women (the CEDAW) defines gender-based violence as: "violence directed against a woman because she is a woman or which affects a woman disproportionately. It includes physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty", see CEDAW *General Comment No. 19: Violence against Women UN*. Doc.A/47/38 at 1 (1993). Paras 6-7. Another definition of violence against women is: "...any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life", see, Article 1 of the UN Declaration on the Elimination of Violence against Women, proclaimed by the UN General Assembly on 20 December 1993.

[3]*The Gender Trap: Women, Violence and Poverty*, Amnesty International, 2009, p 3 (AI Index: ACT/77/009/2009).

[4]Amnesty International, *ibid*.

[5]*Kenya - the Unseen Majority: Nairobi's Two Million Slum-Dwellers*, Amnesty International, 2009 (AI Index: AFR 32/005/2009) ("the Unseen Majority").

[6]The choice of the four slums and informal settlements is representative only and is based on the fact that Amnesty International has worked on these slums and settlements for its research on the first report.

[7]UN HABITAT says in its 2010 global report, *State of the World's Cities 2010/2011*, that "every year 14 million more people join the urban population in sub-Saharan Africa. Approximately 30% of these go on to live in "formal" urban areas and act as agents and beneficiaries of formal urban and economic growth. The remaining 70% live in informal or slum conditions. Of these, just 2% can expect to escape these conditions", see < http://www.unhabitat.org/documents/SOWC10/R1.pdf > (last accessed, 20 April 2010).

[8]"History of Urbanization and Proliferation of Slums in Kenya", UNHABITAT, 2007, available at <http://www.unhabitat.org/downloads/docs/4628_72173_GC%2021%20History%20of%20Urbnization%20in%20Kenya.pdf > (last accessed 20 April 2010).

[9]*Women, Slums and Urbanisation: Examining the Causes and Consequences*, 2008, COHRE, p 107.

[10]Amnesty International interviews in Kibera, 11 February 2010.

[11]*Inside Informality: Poverty, Jobs, Housing, and Services in Nairobi's Informal Settlements*,

2006. S. Gulyani, Debrata Talukdar, Cuz Potter, The World Bank, p12 "("*Inside Informality*").

[12] *Ibid*, p8.

[13] Amnesty International interviews and focus group discussions, 11-22 February 2010.

[14] See, generally, *Nairobi Victimisation Study*, Stavrou, S, UNCHS (Habitat), Intermediate Technology Development Group- East Africa, 2001.

[15] *Inside Informality* (n 11 above) p40.

[16] See for example, *Survivors speak: A snapshot survey on violence against women in Nairobi*, Ravestijn, S, UN-HABITAT & Intermediate Technology Development Group- East Africa, 2002.

[17] *Women, Slums and Urbanisation* (n 9 above) p14.

[18] *Kenya Demographic and Health Survey*, Government of Kenya, 2003, p 23.

[19] *Ibid*.

[20] *Gender-Based Domestic Violence in Kenya*, Federation of Women Lawyers in Kenya, 2008, p 6.

[21] Amnesty International interview with official of Christ the King Legal Aid Centre, 11 February 2010.

[22] Amnesty International focus group discussion in Mathare, 18 February 2010.

[23] The names of women victims of gender-based violence used in this report have been changed in order to protect their privacy and ensure that their security is not compromised.

[24] Amnesty International focus group discussions in Korogocho, 17 February 2010.

[25] Further discussed in chapter 9 below, of this report.

[26] The Commission was established as a result of the political mediation, the Kenya National Dialogue and Reconciliation, between the two main political parties following the disputed elections and led by the former UN Secretary General Kofi Annan. The Commission's mandate was to investigate the facts and circumstances surrounding the violence, the conduct of state security agencies in their handling of it, and to make recommendations concerning these and other matters.

[27] See, *Report of the Commission of Inquiry into the Post Election Violence*, Commission of Inquiry into the Post Election Violence, 2008, Chapter 6; *A rapid assessment of Gender Based Violence during the Post election violence in Kenya (January – February 2008)*, Centre for Rights Education and Awareness, 2008.

[28] Amnesty International individual interviews in Kibera, 15 February 2010.

[29] *The Right to Water and Sanitation in Kibera, Nairobi, Kenya- an Action Research Report*, Umande Trust, COHRE & Hakijamii, 2007, p9.

[30]The UN Committee on Economic, Social and Cultural Rights defines forced evictions as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of and access to, appropriate forms of legal or other protection." UN Committee on Economic, Social and Cultural Rights, *General Comment No. 7, The Right to Adequate Housing*, para 3. The UN Commission on Human Rights has also recognized that forced evictions constitute gross violations of a range of human rights, in particular the right to adequate housing, *UN Commission on Human Rights Resolution 1993/77*, para 1.

[31]See, Amnesty International's report, *the Unseen Majority* (n 5 above) pp 12-21.

[32]Amnesty International individual interviews in Mukuru Kwa Njenga, 16 February 2010.

[33]Amnesty International individual interviews in Mathare, 18 February 2010.

[34]*Inside Informality* (n 11 above) p 48.

[35]*Strategic Guidelines for Improving Water and Sanitation Services in Nairobi's Informal Settlements*, Nairobi Water and Sewerage Company & Athi Water Services Board, 2009, p13.

[36]World Health Organization and United Nations Children's Fund Joint Monitoring Programme for Water Supply and Sanitation, *Progress on Sanitation and Drinking-water: 2010 Update*, WHO and UNICEF, 2010, p12 and 'Types of drinking-water sources and sanitation', http://www.wssinfo.org/definitions/infrastructure.html (last accessed, 31 May 2010).

[37]The study, *Inside Informality* (n 11 above) p 48.

[38]Umande Trust, COHRE & Hakijamii (n 29 above) p 13 citing, *Small-Scale Independent Providers of Water and Sanitation to the Urban Poor*, Water and Sanitation Programme (WSP), 1999, p.13 and comparing this average ratio to an "optimum 10-20 persons per unit".

[39]Amnesty International interviews in Korogocho, 17 February 2010.

[40]Amnesty International interviews in Kibera, 12 February 2010.

[41]Amnesty International focus group discussion in Mathare, 18 February 2010.

[42]Amnesty International focus group discussion in Kibera, 14 February 2010.

[43]Amnesty International focus group discussion in Mathare, 18 February 2010.

[44]Amnesty International focus group discussions in Kibera, 14 February 2010.

[45]*Sanitation: A human rights imperative*, COHRE, WaterAid, SDC and UN-HABITAT, 2008, p3.

[46]See generally, *Population and Health Dynamics in Nairobi's Informal Settlements*, African Population and Health Research Center (APHRC), 2002.

[47]*Ibid*, p xiv.

[48]Amnesty International focus group discussions in Mathare, February 2010.

[49]Amnesty International focus group discussions in Kibera, Makina village 19 February 2010.

[50]Amnesty International interview with official of Umande Trust, 9 February 2010.

[51]Amnesty International focus group discussions, Mukuru, 17 February 2010.

[52]Amnesty International individual interviews in Mathare, 18 February 2010.

[53]Amnesty International individual interviews in Kibera, 19 February 2010.

[54]Amnesty International individual interviews in Kibera, 19 February 2010.

[55]Amnesty International focus group discussions, Kibera, 19 February 2010.

[56]Amnesty International individual interviews in Kibera, 14 February 2010.

[57]Kenya acceded to the ICESCR on 1 May 1972.

[58]United Nations Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The right to water* (2002), U.N. Doc. E/C.12/2002/11 (2003), para. 3 ("General Comment No. 15").

[59]Principle 2.

[60]The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action, Principle 11.

[61]With regard to the right to health, see UN Committee on Economic, Social and Cultural Rights (CESR), General Comment No. 14: *The right to the highest attainable standard of health*, UN ESCOR, 2000, para. 43 (c)

[62]Ministry of Water and Irrigation, National Water Services Strategy (NWSS), (2007 – 2015) Ministry of Water and Irrigation, August 2007, section 3.4.

[63]Ministry of Health, National Environmental Sanitation and Hygiene Policy, July 2007, "Executive Summary" para 1.

[64]Proposed Constitution of Kenya, 6 May 2010, Art. 43(1) (b).

[65]Kenya ratified the CRC on 31 July 1990.

[66]See, for example, Concluding Observations of the Committee on the Rights of the Child: Ethiopia. U.N. Doc. CRC/C/ETH/CO/3 (2006), at para 61.

[67]*Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, A/HRC/12/24, 1 July 2009, paras 55, 57-58.

[68]*Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, paras 13-54.

[69]CESCR, General Comment 4, *The Right to Adequate Housing*, UN Doc.E/1992/23, 13 December 1991, para 8.

[70]CESCR, General Comment 4, *The Right to Adequate Housing*, UN Doc.E/1992/23, para 8 (b).

[71] UN Committee on Economic, Social and Cultural Rights, General Comment No. 14: The right to the highest attainable standard of health (Article 12), E/C.12/2000/4, 11 August 2000, para 11.

[72]CESR, *General Comment No. 15: The right to water* (2002), U.N. Doc. E/C.12/2002/11 (2003), para. 29 ("General Comment No. 15").

[73]*Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, para 75.

[74]United Nations Sub-Commission on the Promotion and Protection of Human Rights, Res. 2006/10, *Promotion of the realization of the right to drinking water and sanitation*, (2006), UN Doc. A/HRC/Sub.1/58/L11, adopting the *Draft Guidelines for the realization of the right to drinking water and sanitation* (2005), UN Doc. E/CN.4/Sub.2/2005/25, para. 1(3).

[75]*Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, para 64.

[76]*Report of the independent expert on the issue of human rights obligations related to access to safe drinking water and sanitation*, para 64.

[77]*Ibid*, para 64.

[78]*Ibid*, para 64.

[79]*Ibid*, para 67.

[80]*Ibid*, para 81.

[81]See, *the Unseen Majority* (n 5 above) p7.

[82]*Slum Upgrading Programme Volume 1: Implementation Strategy 2005-2020*, Government of Kenya, 2005, pp 17-18.

[83]For an official documentation of recent water reforms in Kenya see generally, Ministry of Water and Irrigation (2007) *Water Sector Reform in Kenya and the Human Right to Water*; (2007) *The National Water Resources Management Strategy (2007-2009)*; (2009) *Water Services for Kenya: National Water Services Strategy and Pro-poor Implementation Plan*.

[84]*See, the Unseen Majority* (n 5 above) pp 8-9.

[85]*Strategic Guidelines* (n 35 above) p 13.

[86]*Ibid*.

[87]Almost all interviewees who spoke to Amnesty International were tenants. Previous research and studies by other organisations have pointed to the fact that majority of settlement residents are tenants who do not own the houses or structures they live in. According to one study, W.Mitullah, "Understanding Slums: Case Studies for the Global Report on Human Settlements, 2003 – The Case of Nairobi, Kenya", p 13, all the interviewees for the study "were renting houses or structures" and this was in keeping with almost all studies on the

slums and informal settlements in Kenya which find that most residents are tenants. One study found that "over 80 per cent in five of the six slums covered were tenants, with owner-occupiers in four of the five slums [under study] being less than 10 per cent".

[88]Amnesty International interviews with NGO workers, Kibera Laini Saba, February 2010.

[89]Amnesty International interview with Nairobi Water and Sewerage Company – Informal Settlements Division, 22 February 2010.

[90]*Strategic Guidelines* (n 35 above).

[91]'Bio-latrines' are defined in the Guidelines as "latrines are regular ablution blocks equipped with an underground dome, where excreta accumulate from the toilets above. The methane released by the excrement is captured and reused for power. Eventually, the remaining waste is used for fertilizer."

[92]*Strategic Guidelines* (n 35 above) pp 18-19.

[93]Amnesty International interview with Nairobi Water and Sewerage Company – Informal Settlements Division, 22 February 2010.

[94]Amnesty International interviews with Athi Water Services Board, 23 February 2010.

[95]Amnesty International individual interviews in Korogocho, 17 February 2010.

[96]See, *the Unseen Majority* (n 5 above) p9.

[97]Amnesty International focus group discussion in Mathare, February 2010.

[98]Amnesty International focus group discussions in Mukuru, February 2010.

[99]*Strategic Guidelines* (n 35 above) p 13.

[100]The Local Government (Adoptive by-laws) (Building) Order 1968, revised 2009 ('Building Code') (applicable countrywide and made under the Local Government Act, Chapter 265, Laws of Kenya) provides in section 3 (1) that the by-laws apply with respect to "any person who erects a building or develops land or changes the use of a building". The applicable standards include provisions on "drainage", "sanitary conveniences" and "sewers" which are considered mandatory in the construction of "any building" and under which standards on issues such as latrine, bath and lavatory accommodation and sewage and waste water disposal are provided for (Part II of the Code, sections 167-208). Sections 118 and 119 of the Public Health Act, Chapter 242, Laws of Kenya, make provision on what constitutes "nuisance" under this law – including poor sanitary conditions in a building/premise and empowers public health officials to take action to ensure such nuisance is redressed. Section 126A of the Act provides for the power of "every municipal council and every urban and area council" to make and enforce by-laws in relation to buildings and sanitation.

[101]*Ibid*.

[102]*Ibid*. Since the enactment in 1999 of the Environment Management and Coordination Act (EMCA), with the aim of better environmental protection, the enforcement of building and sanitation standards is also linked to the enforcement of the EMCA which falls under the mandate of the National Environmental Management Authority established under this Act.

[103]This conclusion is reached based on Amnesty International's interviews with the Nairobi City Council, City Planning Department, 23 February 2010 and the Ministry of Public Health and Sanitation, 22 February 2010.

[104]*Sessional Paper No. 3 on National Housing Policy for Kenya*, Government of Kenya, 2004, para 30.

[105]*Slum upgrading Programme Volume 1: Implementation Strategy 2005-2020*, Government of Kenya, 2005. The challenges regarding the implementation of the government slum upgrading programme are discussed in Amnesty International report, *the Unseen Majority* (n 5 above) pp 22-29.

[106]Amnesty International interviews with Nairobi City Council, City Planning Department, 23 February 2010.

[107]*Strategic Guidelines* (n 35 above) p14.

[108]Amnesty International interviews with Nairobi City Council, City Planning Department, 23 February 2010.

[109]The official slum-upgrading programme is discussed in detail in Amnesty International's report *the Unseen Majority* (n 5 above) pp 22-29.

[110]Amnesty International interviews and focus group discussions, 11-22 February 2010.

[111]Amnesty International individual interviews, 15 February 2010.

[112]Amnesty International focus group discussions, 15 February 2010.

[113]International Covenant on Civil Political Rights, Article 26.

[114]*U.N Covenant on Civil and Political Rights: CCPR Commentary,* M. Nowak, 2005, p. 606. See also the discussion on the drafting history of this provision, pp. 601 – 604.

[115]According to the Committee on Economic, Social and Cultural Rights, discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights. Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects. UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, *Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)*, E/C.12/GC/20, 10 June 2009, paras 7 and 13.

[116] Article 2(2) of the ICESCR obliges each State Party "to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Similarly, Article 2 of the ICCPR provides that "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its

territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". In addition, Article 26 of the ICCPR sets out a broader requirement of equality and provides that the "law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

[117]UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, para 34.

[118]The Committee has previously commented that Covenant rights, such as access to water services and protection from forced eviction, should not be made conditional on a person's land tenure status, such as living in an informal settlement. Committee on Economic, Social and Cultural Rights, General Comment No. 20, para 25.

[119]*Women, Slums and Urbanisation* (n 9 above) p 106.

[120]See, *the Unseen Majority* (n 5 above) p 13

[121]*Ibid*, p13.

[122]*Sessional Paper No.3 of 2009 on National Land Policy*, Government of Kenya, 2009 ("Land Policy").

[123]Land Policy, para 209.

[124]*Ibid*, para 210.

[125]*Ibid*.

[126] For more information see http://www.un.org/millenniumgoals/ (last accessed, 24 May 2010).

[127]*The Significance of human rights in MDG-based policy making on water and sanitation: An application to Kenya, South Africa, Ghana, Sri Lanka and Laos*, COHRE, 2009, p. 7-9; *Kenyan-German development cooperation in the water sector: Assessment from a human rights perspective,* M. Katui Katua, A. Khalfan, M. Langford and M. Lüke, GTZ, 2007, p5; *Water Sector Reform in Kenya and the Human Right to Water*; Ministry of Water and Irrigation, 2007, pp. 13-22.

[128]For further analysis of the need to apply the MDGs in a manner consistent with human rights standards, see, *From Promises to Delivery: Putting Human Rights at the Heart of the Millennium Development Goals*, Amnesty International, 2010 (AI Index IOR/41/012/2010).

[129]National Environmental Sanitation and Hygiene Policy (n 63 above) p.9.

[130]*Ibid*, "Executive Summary", paras 11 & 12.

[131]Ministry of Water and Irrigation, National Water Services Strategy (NWSS), (2007 – 2015) Ministry of Water and Irrigation, August 2007, section 3.3.

[132]*Ibid*, section 3.4, p. 8.

[133]*Ibid*, section 5.3.

[134]Pro-Poor Implementation Plan for Water Supply and Sanitation, section 6.1.

[135]Pro-Poor Implementation Plan for Water Supply and Sanitation, sections 3.4, 5.1, 6.2.

[136]Ministry of Water and Irrigation, Implementation Plan for Sanitation (IPS) 2009**,** August 2009, section 6.3 & 7.2.4.

[137]National Environmental Sanitation and Hygiene Policy (n 63 above), "Executive Summary", para 2. However, the specific goals in the document apparently aim to achieve universal access, rather than only to 90 per cent of households: "Every school, institution, household, market and other public places will have access to, and make use of, hygienic, affordable, functional, and sustainable toilet and hand washing facilities," Chapter 1, section 1.2, Goal ii, p 1..

[138]In addition to policing majority women talked of the roles of other initiatives such as socio-economic programmes for unemployed youth and 'community-based policing' –involving the roles of the community in assisting the police and official security institutions in preventing crime. There have been initiatives to introduce 'community-based policing' in Kenya, including the development of a draft National policy on community-based policing (2004) and already piloted in a number of settlement areas including Kibera. See *Progress and challenges in police reform in Kenya*, Saferworld, 2006; *Implementing community-based policing in Kenya*, Saferworld, 2008. For a general detailed discussion on 'community-based policing' in Kenya, see, *Report of the National Task Force on Police Reforms,* National Task Force on Police Reforms, *2009*, pp 182-199 at p 190 the Report cites and discusses the absence of a legal framework to underpin the initiative, among other reasons, for its lack of success.

[139]Amnesty International interviews with Officer Commanding Police Division, 22 February 2010.

[140]The NGO official, estimating the current police: population ratio to be 1:700, told Amnesty International that the actual police: population ratio would be higher than that quoted in official figures. The recent official police reform task force report (relying on statistics provided by the police) indicate the ratio of police to population as of the year 2009 to be 1:533 (projected in the year 2010 to be 1:546), see *Report of the National Task Force on Police Reforms* (n 138 above) p 166.

[141]Amnesty International interviews with NGO official working on security sector reforms, 16 February 2010.

[142]Amnesty International interviews with police officer, Officer Commanding Police Division, 22 February 2010.

[143]See generally, *Kenya: Rape – the invisible crime*, Amnesty International, 2002, (AI Index: AFR 32/001/2002 and more recently, *Gender-Based Domestic Violence in Kenya*, Federation of Women Lawyers in Kenya, 2008, p 6.

[144]Amnesty International interviews, 11-22 February 2010.

[145]Amnesty International focus group discussions in Kibera, 19 February 2010.

[146]Amnesty International interview with NGO official, 16 February 2010.

[147]Amnesty International individual interviews and focus group discussions, 12 – 22 February 2010.

[148]Amnesty International focus group discussions, 12 February 2010.

[149]Amnesty International interviews and focus group discussions, 12-22 February 2010.

[150]Amnesty International interviews with Athi Water Services Board, 23 February 2010.

[151]UN Committee on the Elimination of Discrimination against Women *General Recommendation 19*: *Violence against Women*, UN. Doc. A/47/38 at 1 (1993), Paras 6-7.

[152]UN Convention on the Elimination of All Forms of Discrimination against Women, Article 2 (e).

[153]See, Making *Rights a Reality: the Duty of States to Address Violence against Women*, Amnesty international, 2004 (AI Index: ACT 77/049/2004).

[154]Committee on the Elimination of Discrimination against Women, General Recommendation 19, para 24.

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INSECURITY AND INDIGNITY
WOMEN'S EXPERIENCES IN THE SLUMS OF NAIROBI, KENYA

More than half the residents of Nairobi live in informal settlements and slums. Their housing is inadequate and they have little access to clean water, sanitation, health care, schools and other essential public services.

This deprivation hits women and girls particularly hard. They need greater privacy than men when using toilets and taking baths. Many women have to walk long distances to reach these facilities, which after dark becomes especially dangerous. Violence against women is widespread in Nairobi's slums and settlements where ineffective policing results in rape and other violence against women going largely unpunished. Gender-based violence drives women into poverty and prevents them from escaping poverty.

After decades of failure by the state to ensure access to essential services, there are moves to address the situation. However, these efforts fall short of providing urgently needed solutions and do not take account of the experiences of women.

This report examines the experiences of women living in four slums in Nairobi. It calls on the Kenyan government to address gender-based violence against women and to ensure women's access to sanitation and public security services.

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