



## Policy Brief

August 2015

### Combating Gender Based Violence in Kenya

#### Preamble

Gender based violence is a global phenomenon. Violence particularly intimate partner violence and sexual violence against women are major development, public health problems and violations of women's human rights.<sup>1</sup> Global prevalence figures in 2014 indicate that 35% of women worldwide have experienced either intimate partner violence or non-partner sexual violence in their lifetime. In 2013, 45% of women between the ages 15 – 49 in Kenya have experienced either physical or sexual violence with women and girls accounting for 90% of the gender based violence (GBV) cases reported.<sup>2</sup>

Women in Nyanza where “Voices Against Violence Pilot Project” was being implemented is among the regions that reported higher levels of physical and sexual violence committed by a spouse/partner<sup>3</sup> This worrying trend was further confirmed by statistics presented by a representative of the Gender Violence Recovery Center at Jaramogi Odinga Teaching and Referral Hospital in Kisumu County.<sup>4</sup> She reported that the hospital receives more than 10 cases of defilement of girls below 18 years on a daily basis though many cases still go unreported for diverse reasons. The most

notorious perpetrators of gender based violence in Kisumu East were reported to be boda boda riders and male family members: step fathers, uncles and cousins. Violence against school going girls reportedly escalates during the school holiday months of April, August and December.

In response to this serious problem, a six months’ pilot project dubbed ‘Voices against Violence’ was designed and implemented by Kenya Girl Guides Association with technical and financial support from United Nations Women. It has so far been implemented in 49 selected primary and secondary schools within Kisumu East Constituency.

The main **objective** of the project was to prevent violence against girls and young women within the project area. This policy brief is one of the deliverables of the project and it is intended to identify gaps in the legal and policy framework on gender based violence, and to give recommendations to policy makers on what gaps and challenges need to be addressed to protect women and girls who are the most affected by gender based violence in Kenya.

#### **KENYAN LEGAL AND POLICY FRAMEWORK ON GENDER BASED VIOLENCE-GAPS AND CHALLENGES IDENTIFIED**

##### *Republic of Kenya, Constitution, 2010*

Article 2 of the Constitution defines it as the supreme law of the land. Sub-article (5) incorporates the general rules of international law to form part of the law of Kenya while sub-article (6) states that “any treaty or convention ratified by Kenya shall form part of the law of Kenya under the current Constitution”. Kenya has therefore outlawed gender discrimination and inequality by domestication. These provisions are further expounded in Chapter 4 of

<sup>1</sup> See World Health Organization (WHO), November 2014 Update

<sup>2</sup> Statistics from the Gender Violence Recovery Centre (GVRC) Annual Report 2011-2012

<sup>3</sup> See Kenya Demographic and Health Survey 2014 Key Indicators Report,

<sup>4</sup>Figures were presented at a GBV in Kenya Policy Briefing Media Breakfast organized by Kenya Girl Guides Association at Imperial Hotel in Kisumu on 21<sup>st</sup> August 2015.



the Constitution which adopts the Bill of Rights whole sum and explains each provision in detail. Article 27 is particularly keen on the role of the duty bearers in enforcing the enjoyment of these rights and freedoms.

Kenya is a signatory to several international and regional conventions, treaties and human rights standards and programmes of action that seek to prevent or eradicate gender inequality and discrimination which are the major causes of gender based violence in Kenya. The key international treaties/ conventions and agreements are : Universal Declaration of Human Rights (UDHR) ,1948; Convention on the Elimination of Discrimination Against Women (CEDAW), 1979; United Nations Convention of the Rights of the Child (UNCRC), 1989; United Nations Declaration on the Elimination of Violence Against Women (DEVAW), 1993; Beijing Platform for Action (BPFA), 1995 and the International Conference on Population and Development Programme of Action , 1994.

At regional level, the key regional human rights instruments that promote prevention of and response to GBV are : The African Charter on Human and Peoples' Rights (1981); The African Charter on the Rights and Welfare of the Child (ACRWC), 1990; The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol, 2003); The Solemn Declaration on Gender Equality in Africa (2004); The Intergovernmental Authority on Development Gender Policy and Strategy (2004); The Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children – International Conference on the Great Lakes Region (2006); The African Union Gender Policy (2009) and the Declaration of the Heads of States and Governments of the Member States of the International Conference on the Great

Lakes on Sexual and Gender-based Violence (2011).

The key factors hindering the effective implementation of the constitution and by extension the international and regional treaties, conventions and programmes of action has mainly been lack of political good will, state reservations as well as ineffective enforcement. This is mainly attributed to lack of mechanisms to effect discernible sanctions against non-compliance and poor performance of the duty bearers. Secondly, the Kenyan Constitution as progressive as it may appear in its spirit and letter fails to provide clear mechanisms of how the embedded culture of violence in many tribes in Kenya can be rooted out, to free women and girls from violence. Moreover, it fails to provide mechanisms for educating the society to shun cultural practices and beliefs that perpetuate violence.

#### ***Children's Act 2001***

Though this Act has been in force since March 2003, the National Child Protection Policy was only recently developed to enhance its enforcement. Initiatives by the National Government to ensure its effective rolling out to benefit the intended beneficiaries have not been matched with resources both financially and technically This is very clear from the research done in Kisumu East which established that very few school going boys and girls were aware of the existence of the Children's Department.

#### ***Persons with Disabilities Act, 2003***

The Persons with Disabilities Act, 2003 has very progressive and responsive provisions to promote and protect the rights and freedoms of persons with disabilities both adults and children. However, the National and County Governments have not put enough measures in place to address the basic rights and needs of persons with disabilities especially girls and



women who are the most vulnerable to violence in the private and public settings like schools.

#### ***Sexual Offences Act, 2006***

The research established that the enactment of the Sexual Offences Act has not been matched with adequate capacity building of law enforcement officers who need to be trained on how to adequately handle cases of gender based violence. Civil Society Organizations have actively worked to educate the public but the government has not fully taken up this responsibility as is required.

#### ***Penal Code Cap 63 (Revised Edition 2012)***

This law does not sufficiently address Sexual Gender Based Violence (SGBV) which is prevalent within Kenyan society. In fact, sexual gender based violence is only inferred by virtue of interpreting the vice as an assault as provided for under section 250 and 251. This therefore means that the vice cannot be adequately investigated or prosecuted through the penal code.

#### ***Teacher Service Commission (TSC) Act, 2012 and Basic Education Act, 2013***

It was noted that the level of awareness of these two Acts of Parliament among the duty bearers chiefly the teachers, parents and other stakeholders in the education sector is very low. The same case applies to the children –girls, boys and male as well as female youth who are the rights holders.

This Policy Brief is further informed by other laws not explained in detail but the gaps and challenges identified have also been provided.<sup>5</sup>

---

<sup>5</sup> Other national instruments include the Criminal Procedure Code (Revised Edition 2012), 12, the Prohibition of Female Genital Mutilation Act (2011), the National Gender and Equality Commission Act (2011), the Political Parties Act (2011), the

#### ***Gender in Education Policy, 2007***

Prevention and response to school related gender based violence (SRGBV) is addressed in the Education Gender Policy (2007). The policy recommends mainstreaming of policies that address GBV at all education levels; establishing modalities for dealing with SGBV including harassment; developing of a framework for co-ordination of stakeholders involved in efforts of providing a safe learning environment, it is far from realizing its objectives due to low levels of legal and gender awareness among the educational stakeholders including the girls, boys, families and teachers.

#### ***Ministry of Health National Guidelines on the Management of Sexual Violence in Kenya, 2009***

Despite its holistic approach to addressing the problem through a comprehensive care provision system that brings all the relevant stakeholders under one roof, it is not well disseminated and may only be accessible to health workers alone. The public need to be properly educated on their health options in cases of sexual violence or assault.

#### ***Multi sectoral Standard Operating Procedures (SOPs) for Prevention of and Response to Sexual Violence in Kenya (2013)***

This framework was developed by the Task Force on the Implementation of the Sexual Offences Act (TFSOA) to provide for the minimum package of care to be accorded to survivors across sectors-health, legal and psychosocial, and outline referral pathways in

---

Elections Act (2011), the Sexual Offences (Medical Treatment) Regulations (2012), the Matrimonial Property Act (2013), Marriage Act (2014), and the Protection from Domestic Violence Act, 2015.



cross sectoral management of survivors. However, wholistic as the approach is, the main challenge is low levels of awareness among the stakeholders due to limited dissemination.

**Other Weaknesses noted were;**

- a. Poor documentation of Gender Based Violence cases and uncoordinated research, monitoring and evaluation of GBV laws, policies and programme implementation.
- b. Socio-cultural factors that promote gender discrimination and gender inequality
- c. Inadequate child protection policies in schools.
- d. Low levels of awareness of the existing Gender Based Violence support services among school girls and boys.
- e. Inaccessibility to the justice system for most Gender Based Violence survivors, many are poor and ignorant about their rights.
- f. Inadequate human and financial resources to operationalize the national child protection system.

**Recommendations**

- 1. More investment in research, monitoring and evaluation of implementation of Gender Based Violence laws and policies is needed by the National Government and international partners.
- 2. There is a need to enhance support services for victims of violence including crisis intervention, information and referral, support Groups, free Counselling and free access to medical services.
- 3. Increased capacity building for all the key stakeholders and main implementers in the

National Child Protection System on the legal and gender aspects with the intention of treating violence survivors with dignity and respect.

- 4. There is a need to strengthen the Child Protection Systems in schools. Students and teachers should be constantly educated and made aware about child rights in violence cases. This should also extend to the community level.
- 5. National and County Governments should facilitate the creation of child centred and gender responsive school environments that provides safe spaces in particular for girls who are a vulnerable group.
- 6. The National and County Governments in conjunction with civil society must provide free legal advice and in cases where the survivors cannot afford legal services, legal aid must be provided for survivors of Gender Based Violence.
- 7. Safe houses for Gender Based Violence survivors is necessary as a crisis intervention mechanism. This is because many survivors may be homeless and lack capacity to take care of themselves as many are no longer safe in their homes.
- 8. The National and County Government need to provide sufficient human and financial resources for effective implementation of the relevant Gender Based Violence laws and policies.



### **Conclusion**

This policy brief provides recommendations that can help to achieve lasting change in view of the observations made on the critical gaps in the Kenyan laws and policies and the challenges facing the implementation of the same. The Policy Brief asserts that it is important to address the aforesaid gaps and challenges by enacting legislation and develop policies that will address the socio-cultural factors that promote discrimination against girls and women across the country as well as promote gender equality through greater representation of women in decision-making and governance positions. This will help move towards a safe and violence free environment with greater promotion and protection of children's and women's human rights through the full implementation of the National Child Protection System.

The above measures call for a co-ordinated approach and harmonized strategies by the key stakeholders to help actualize the different sectoral responses to meet the various needs of the GBV survivors. To address fully the consequences of violence and the needs of victims/survivors, it requires a multi-sectorial response with sufficient technical, financial and human resources to match the need.

### **References**

Gender Violence Recovery Centre (2012). Annual Report 2011-2012

Ministry of Health. (2009). National Guidelines on the Management of Sexual Violence in Kenya

National Council of Children Services. (2009). The Framework for the National Child Protection System for Kenya

National Gender and Equality Commission. (2014): National Monitoring and Evaluation Framework towards the Prevention of and Response to Sexual and Gender Based Violence.

Republic of Kenya. (Revised edition, 2009): Penal Code, Chapter 63.

Republic of Kenya. (2001): Children's Act

Republic of Kenya (2003): Persons with Disabilities Act

Republic of Kenya. (2006): Sexual Offenses Act

Republic of Kenya, Ministry of Education. (2007): Gender Policy in Education

Republic of Kenya. (2010): Constitution of Kenya

Republic of Kenya. (2012): The Teachers Service Commission Act.

Republic of Kenya. (2013): The Basic Education Act

Republic of Kenya (2015): The Kenya Demographic and Health Survey Key Indicators

UNICEF & Republic of Kenya, (2010): Violence against Children in Kenya Findings from a 2010 National Survey

World Health Organization, 2014: November, Update



**For more information contact:**

**The Chief Commissioner  
Kenya Girl Guides Association  
Arboretum Road, Off Statehouse  
Road  
P.O. Box 40004-00100 GPO, Nairobi,  
Kenya  
Tel: +254 701 918 212/718 233 736  
Email: [info@kgga.co.ke](mailto:info@kgga.co.ke)  
Website: [www.kgga.co.ke](http://www.kgga.co.ke)**