

**UNIVERSITY OF NAIROBI**

**SCHOOL OF LAW**

**LLM THESIS**

**TOPIC:**

**THE RIGHT TO EDUCATION IN KENYA: A CRITICAL APPRAISAL OF THE  
LEGAL AND INSTITUTIONAL FRAMEWORK DEALING WITH SEXUAL  
VIOLENCE IN SCHOOLS**

**SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
OF THE MASTER OF LAWS DEGREE AT THE UNIVERSITY OF  
NAIROBI**

**BY:**

**KIMANI SOPHIA WAMBUI**

**G62/65130/2010**

**SUPERVISOR: PROF. WINIFRED KAMAU**

## **DECLARATION**

I, **KIMANI SOPHIA WAMBUI**, do hereby declare this thesis to be my original work and that it has not been submitted elsewhere and it is not due for submission for a degree in any other university.

**Signature** \_\_\_\_\_

**KIMANI SOPHIA WAMBUI**

This dissertation has been submitted with my approval as the University Supervisor.

**Signature** \_\_\_\_\_

**PROF. WINIFRED KAMAU**

## **DEDICATION**

To my family for their unceasing love and support. Your encouragement has been a powerful force towards the completion of this study. Thank you for believing in me.

To all school going girls. This study is a journey towards curbing sexual abuse against girls in schools. It is my hope that girls in schools in Kenya will find schools to be a safe place to learn and that sexual abuse within schools will be a thing of the past.

## **ACKNOWLEDGEMENT**

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Marriage Act, No. 4 of 2014.

Penal Code, Chapter 63 of the Laws of Kenya.

Probation of Offenders Act, Chapter 64 of the Laws of Kenya.

Prohibition of Female Genital Mutilation Act, No. 32 of 2011.

Public Officer Ethics Act, No. 4 of 2013.

Sexual Offences Act, No. 3 of 2006.

Teachers Service Commission Act, No. 20 of 2012.

Treaty Making and Ratification Act, No. 45 of 2012.

## **REGULATIONS**

Sexual Offences (Dangerous Offenders DNA Bank) Regulations, 2008.

Sexual Offences Regulations, 2008.

Teachers Service Commission Code of Conduct and Ethics, 2003.

Teachers Service Commission Code of Regulations, 2013.

## **LIST OF INTERNATIONAL INSTRUMENTS**

African Charter on Human and Peoples' Rights, 1981.

African Charter on the Rights and Welfare of the Child, 1990.

Convention against Discrimination in Education, 1960.

Convention on the Elimination of All Forms of Discrimination against Women, 1979.

Convention on the Rights of the Child, 1989.

Declaration on the Elimination of Violence against Women, 1993.

Declaration on the Right to Development, 1986.

International Covenant on Economic, social and Cultural Rights, 1966.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003.

Universal Declaration of Human Rights, 1948.

## LIST OF CASES

*Charles Oduor Ombogo v Republic*, Criminal Appeal No. 1 of 2012 in the High Court of Kenya at Kisumu.

*Christopher Njau Gitau v Republic*, Criminal Appeal No. 212 of 2011 in the High Court of Kenya at Nakuru.

*Joseph Okoth Opiyo v Teachers Service Commission*, Cause No. 3/2012 at the Industrial Court of Kenya at Kisumu.

*Judges & Magistrates Vetting Board & 2 others v Centre for Human Rights & Democracy & 11 others*, Petition Nos. 13 A, 14 & 15 of 2013 (Consolidated) in the Supreme Court of Kenya at Nairobi.

## **ABBREVIATIONS/ACRONYMS**

AIDS	Acquired Immunodeficiency Syndrome
BOM	Board of Management
CADE	Convention against Discrimination in Education
CEDAW	Convention on the Elimination of all forms of Discrimination against
CRC	Convention on the Rights of the Child
DEVAW	Declaration on the Elimination of Violence against Women
DRD	Declaration on the Right to Development
EFA	Education for All
FIDA	Federation of Women Lawyers
FPE	Free Primary Education
HIV	Human Immunodeficiency Virus
ICESCR	International Covenant on Economic, Social and Cultural Rights
JMVB	Judges and Magistrates Vetting Board
KAACR	Kenya Alliance for Advancement of Children
MDGs	Millennium Development Goals
PTSD	Post traumatic stress disorder
SDGs	Sustainable Development Goals
TSC	Teachers Service Commission
TSRC	Teachers Service Review Committee
UN	United Nations
UNFPA	United Nations Population Fund
UPE	Universal Primary Education

WHO

World Health Organisation

Women

## **ABSTRACT**

This thesis discusses sexual violence as a major impediment to the realisation of the right to education by the girl child in Kenya. It seeks to find out how adequate the legal and institutional framework dealing with sexual violence in schools in Kenya is. This is based on the fact that despite measures having been put in place to curb sexual violence, reports of sexual violence against girls in schools continue to rise. This affects the girl child's education and hinders enjoyment of the right to education. The study also seeks to suggest among other things, if it is found out that the legal and institutional framework is not adequate, recommendations that can be implemented to ensure that girls are protected from sexual violence within the school setting in order to enjoy the right to education.

The method of research was desktop research. Both primary and secondary information sources were reviewed. The study looked at various legislations, regulations and government policies that relate to the area of the right to education and sexual violence in schools. The findings of the research are that the current legal and institutional framework in place has various provisions to protect the girl child from sexual violence in school but it is inadequate. There is need to implement various legal provisions, amend others and make some changes within the institutional framework.

## **1.0 CHAPTER ONE: INTRODUCTION**

### **1.1 Introduction**

This study focuses on sexual violence in schools as a hindrance to the enjoyment of the right to education for the girl child. A child is a person below the age of 18 years.<sup>1</sup> The study analyses the efficacy of the legal and institutional framework in protecting the girl child from sexual violence in schools in Kenya.<sup>2</sup> The focus is on primary and secondary schools. Kenya's 8-4-4 education system is divided into primary, secondary and university excluding the pre-school years.<sup>3</sup> The study will cover children in primary and secondary schools.

The realisation of the right to education ensures that a person has the capacity to enjoy the right to development.<sup>4</sup> When girls do not get quality education, this affects their empowerment and realisation of the right to development later in their adult lives. Quality education ensures opportunities to participate in development of the nation. The study advocates for legal and institutional reforms needed to curb sexual violence against girls in schools with a view to ensuring realisation of the right to quality education for the girl child.

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<sup>1</sup> According to Kenyan Law, a person below the age of eighteen years is a child. The Constitution of Kenya, 2010, defines a child in Article 260, as an individual who has not attained the age of 18 years. The Children Act, in section 2, defines a child as any human being under the age of eighteen years.

<sup>2</sup> The study in reference to gender based sexual violence against the girl child in schools in Kenya covers the entire school setting. This encompasses school related activities; for example, going to school, going home from school, attending a sports day as a student in a particular school e.t.c

<sup>3</sup> Primary education starts at the age of 6 years and consists of eight years of study ending with the Kenya Certificate of Primary Education examination. Secondary school consists of four years and ends with the Kenya Certificate of Secondary Education examination. One can then join tertiary education after completion of secondary school. See <http://www.kenpro.org/papers/education-system-kenya-independence.htm> for more details on the Kenyan education system.

<sup>4</sup> The Center for Global Development, 'Independent Research and Practical Ideas for Global Prosperity,' <[www.cgdev.org](http://www.cgdev.org)> accessed on 31 July 2015

## 1.2 Background

World leaders endorsed the Millennium Development Goals (MDGs) at the United Nations (UN) Millennium Summit in 2000.<sup>5</sup> The Beijing Conference of 1995 stressed the empowerment of women as one of the central development goals of the 21st century. It adopted a Platform for Action which called for the mainstreaming of a gender perspective in development programmes.<sup>6</sup> The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) promotes gender equality in access to social and economic opportunities and political power and provides for the elimination of discrimination against women in the political, social, economic and cultural spheres. Sexual violence against girls in schools is not only a violation of girls' fundamental human rights but also poses a huge challenge to countries committed to achieving the MDGs.<sup>7</sup>

The MDGs expired at the end of 2015 and were replaced by Sustainable Development Goals (SDGs).<sup>8</sup> The SDGs are not to divert effort from the achievement of the MDGs.<sup>9</sup> Kenya's MDGs Status Report, 2013, to UNDP while recognizing that there is still more to be done to achieve the MDGs, refers to sustainable development.<sup>10</sup> Kenya's Vision

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<sup>5</sup> The third millennium development goal advocates for the promotion of gender equality and empowerment of women.

<sup>6</sup> This was the Fourth World Conference on Women held on September 4-September 15, 1995 in Beijing, China.

<sup>7</sup> Action Aid International Kenya, 'Stop Violence Against Girls in School Project,' (2011) <[www.actionaid.org](http://www.actionaid.org)> accessed on 12 May 2015.

<sup>8</sup> Sustainable Development Goals were an outcome of the Rio+20 Conference where member States agreed to develop them to build upon the Millennium Development Goals and include them in the post 2015 development agenda. See <https://sustainabledevelopment.un.org>

<sup>9</sup> Ibid

<sup>10</sup> Kenya's MDGs Status Report, 2013, to UNDP is available at <http://www.ke.undp.org/content/kenya/en/home/library/mdg/2014-mdg-status-report-for-kenya/>

2030 is the blueprint for achieving the MDGs.<sup>11</sup> Therefore, although the MDGs deadline is the end of 2015, Kenya's Vision 2030 recognises the need to have more time to achieve the MDGs.

The Constitution of Kenya, 2010 provides that women and men have the right to equal treatment, including the right to equal opportunities in political, economic, social and cultural spheres.<sup>12</sup> The Constitution<sup>13</sup> and the Children Act<sup>14</sup> provide that education is a fundamental right and every child has a right to education. The Constitution provides for the right to education for every person and particularly provides that every child has the right to free and compulsory basic education.<sup>15</sup> The Children Act<sup>16</sup> provides that basic education is a basic human right that every Kenyan child should enjoy.<sup>17</sup> The Sexual Offences Act deals with offences in schools with a view to preventing sexual violence.<sup>18</sup> Sexual violence against girls in schools affects the right to education by lowering the quality of education for the girl child which later in life places the girl child at a disadvantage in access to opportunities in development. Sexual violence in schools is an apparent vice in the society and there is law in place to curb it.

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<sup>11</sup> This is Kenya's development Agenda that seeks to see development in the social, economic and political aspects in Kenya. Copy of Kenya's Vision 2030 available at <[www.vision2030.go.ke](http://www.vision2030.go.ke)> accessed on 5<sup>th</sup> May 2015.

<sup>12</sup> This encompasses holistic development and is provided for in Article 27(3) of the Constitution of Kenya. Vision 2030 has to do with holistic development in the social, economic and political spheres.

<sup>13</sup> Article 53 (1) (f) provides for education as a right for every person.

<sup>14</sup> Section 7 of the Children Act.

<sup>15</sup> Article 53 (1)(b) of the Constitution

<sup>16</sup> Act No.8 of 2001

<sup>17</sup> Section 7 of the Children Act, 2001.

<sup>18</sup> Section 24 (4) of the Children Act provides that: any person who being the head-teacher, teacher or employee in a primary or secondary school or special institution of learning whether formal or informal, takes advantage of his or her official position and induces or seduces a pupil or student to have sexual intercourse with him or her or commits any other offence under this Act, such sexual intercourse amounting to the offence of rape or defilement, shall be guilty of an offence of abuse of position of authority and shall be liable upon conviction to imprisonment for a term of not less than ten years.

In defining sexual violence, the World Health Organization (WHO) includes a sexual act, an attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic women's sexuality to be sexual violence where either coercion, threats of harm or physical force is used.<sup>19</sup> While sexual violence is gender based violence, not all gender based violence is sexual. Gender based violence is violence that targets individuals or groups on the basis of their gender. Gender based violence against girls and women is violence that is directed against a girl or a woman because of her gender or that affects girls and women disproportionately.<sup>20</sup>

Girls, women, boys and men can all be victims of gender based violence but it is acknowledged that the majority of persons affected by gender based violence are women and girls. The United Nations Population Fund (UNFPA) in its Strategy and Framework for Action to Address Gender Based Violence states that women and adolescent girls are the primary targets of gender based violence and they suffer exacerbated consequences as compared with the consequences men face due to gender based violence.<sup>21</sup> Sexual violence in the school setting affects the girl child disproportionately compared to the boy child.<sup>22</sup> Girls are the majority of out-of-school children with women comprising a sizable

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<sup>19</sup> WHO, 'World Report on Violence and Health,' 149 <[www.who.int](http://www.who.int)> accessed on 32 July 2015

<sup>20</sup> The United Nations' Office of the High Commissioner for Human Rights' [Committee on the Elimination of Discrimination against Women](#) (CEDAW) in its [General Recommendation 19](#) defines gender based violence against women.

<sup>21</sup> This study discusses consequences of sexual violence against girls in schools below which brings out the gravity of the consequences of sexual violence against girls.

<sup>22</sup> This chapter gives statistics below that show the extent to which sexual violence disproportionately affects girls as compared to boys in schools.

majority of illiterate adults and more than 60 percent of the estimated 880 million illiterate adults are women.<sup>23</sup>

The Declaration on the Elimination of Violence against Women (DEVAW) defines gender based abuse as "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".<sup>24</sup> Sexual violence inflicts physical, sexual and psychological harm and therefore constitutes gender-based violence according to DEVAW. Sexual violence is one of the main forms of gender based violence. Other forms of gender based violence are physical and psychological. These include assault and battering, female genital mutilation, intimidation and exploitation.<sup>25</sup> DEVAW identifies educational institutions as one of the areas in which violence takes place.<sup>26</sup>

The Sexual Offences Act<sup>27</sup> specifically addresses the issue of head-teachers, teachers and employees in schools taking advantage of their official position to induce or seduce students to have sexual intercourse with them.<sup>28</sup> The Teachers Service Commission (TSC) Act<sup>29</sup> prohibits registration of persons previously convicted of sexual offences.<sup>30</sup> The TSC Act further provides that a person who has been convicted of a sexual offence

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<sup>23</sup>Human Rights Watch, 'Scared at School: Sexual Violence Against Girls in South African Schools,' (2011). <[www.hrw.org/reports/2001/safrica/](http://www.hrw.org/reports/2001/safrica/)> accessed on 27<sup>th</sup> July 2015

<sup>24</sup> Article 2, Declaration on the Elimination of Violence against Women.

<sup>25</sup> Ibid

<sup>26</sup> Ibid

<sup>27</sup> Act No. 3 of 2006.

<sup>28</sup> Section 24 (4) of the Sexual Offences Act.

<sup>29</sup> Act No. 20 of 2012.

<sup>30</sup> Section 27 of the Teachers Service Commission Act.

or an offence against a pupil or student may be removed from the register after inquiry.<sup>31</sup> These provisions of the Sexual Offences Act and the TSC Act deal with teachers and school workers who commit sexual offences against learners. Legislators were aware that sexual violence within the school setting needs to be dealt with. It is important to ensure that the right to education is realised without the girl child being a victim of sexual violence. In the unfortunate event that a girl becomes a victim of sexual violence within the school setting, steps must be taken to ensure that she goes back to enjoying the right to quality education.

### **1.3 Problem statement**

Sexual violence in schools in Kenya is a hindrance to the enjoyment of the right to education despite formulation and implementation of laws and the establishment of various institutional mechanisms to deal with sexual violence in schools. While the Kenyan government has taken measures to ensure that children enjoy the right to education by ensuring access to education, schools continue to be one of the places where sexual violence against girls is perpetrated by teachers, who are persons in authority in schools. This study seeks to assess the adequacy of the Kenyan legal and institutional framework to protect the girl child from sexual violence in school in order to ensure she enjoys the right to education. It analyses the extent to which laws and institutions guarantee the realisation of the right to education for the girl child by curbing sexual violence in schools.

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<sup>31</sup> Section 30 of the Teachers Service Commission Act.

## **1.4 Research Questions**

The research in this study was guided by the following questions:

- 1.) What are the legal, institutional and policy frameworks in place to deal with sexual violence by teachers, against girls in schools in Kenya?
- 2.) Are the laws, policies and institutions adequate and effective in curbing the vice of sexual violence against girls in schools in Kenya?
- 3.) What are the legal and institutional reforms necessary to ensure that sexual violence in education institutions is eliminated?

## **1.5 Literature Review**

Various studies have been undertaken on the right to education and sexual violence against the girl child in schools in Kenya. Authors bring out different aspects involved in sexual violence against girls in schools. Three themes can be identified and are covered in this study from the studies conducted by the various authors. These are: sexual violence against girls in schools, the right to education for the girl child, and sexual violence and culture.

### **1.5.1 Sexual Violence against Girls in Schools**

The first group of authors clearly brings out the issue of sexual violence against girls in schools by reporting sexual violence incidents in schools thus clearly bringing out the gravity of the vice that hinders enjoyment of the right to education for girls. Jerop states that in a survey where 16.1% girls affirmed that they had been propositioned by teachers, majority of the girls (66.7%) indicated they declined, 15.9% girls ignored but 17.4%

yielded to the proposition and entered into a relationship with the teacher.<sup>32</sup> According to a 2010 national survey on violence against children in Kenya, most persons who experienced any type of unwanted sexual touching before turning 18 years, reported that the first incident occurred in school.<sup>33</sup>

Sexual violence in schools is a reality that affects girls disproportionately compared with how it affects boys in school. Parkes and Chege<sup>34</sup> in discussing sexual violence in schools, point to the hidden nature of sexual violence. They argue that girls and women are much more likely than boys and men to experience sexual violence.<sup>35</sup> Within the school setting, the girl child is at a higher risk of experiencing sexual violence.<sup>36</sup> Effects of sexual violence against girls are far reaching and can be physical, sociological, psychological and economic. Omondi states that psychological effects of sexual violence start immediately after the incident.<sup>37</sup> These psychological effects lower the quality of life for the girl child and distract her from concentrating on education.

### **1.5.2 The Right to Education for the Girl Child**

Sarelin argues that education should not be taken simply as a development goal but as a

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<sup>32</sup> Sarah Jerop, 'Sexual Abuse of School Age Children: Evidence from Kenya' CICE Hiroshima University, Journal of International Cooperation in Education, Vol.12 No.1 (2009) P 181

<sup>33</sup> Republic of Kenya, 'VIOLENCE Against Children in Kenya Findings from a 2010 National Survey,' 12

<sup>34</sup> J Parkes and F Chege, 'Girls' Education and Violence: Reflections on the First Decade of the Twenty-First Century,' (2010). <[www.e4conference.org](http://www.e4conference.org)> accessed 24/06/2014.

<sup>35</sup> Ibid.

<sup>36</sup> Cases of sexual violence against the boy child have been on the rise in Kenya. Most of the reported cases have been in the home or within the church as opposed to the high number of girls who experience sexual violence at school compared to the number of boys who experience sexual violence at school.

<sup>37</sup> S Omondi, 'Implications of The Adversarial Legal System's Procedures to the Special Needs of Child Victims of Sexual Abuse: Balancing The Rights Of Accused Persons And Child Victims of Sexual Abuse In Kenya,' PHD Thesis, University of Nairobi (2013)

right.<sup>38</sup> She gives the example that when education is taken as a development goal, an increase in school enrolment from 30 per cent to 40 per cent is regarded as a success while in a rights-based approach, this increase signifies continued denial of the right to education to the 60 per cent still outside of school. To ensure that the girl child enjoys education, freedom from violence and development, this study discusses a human rights approach.<sup>39</sup>

Ojiambo<sup>40</sup> concludes that while many countries have made progress toward achieving gender equality in access to education, girls continue to face many obstacles that impede their path to learning. Ojiambo discusses the implementation of Free Primary Education (FPE) in Kenya and argues that there is need for reform if education is to spearhead national development in Kenya. He suggests reforms in the curriculum and logistical issues such as staffing. He commends that gender parity has been achieved and where girls are dropping out of school, he attributes this to lack of school fees.

Parkes and Chege argue Education for All (EFA) has been slow in recognising violence as a key concern when it comes to education.<sup>41</sup> They conclude that because the two movements, education and curbing violence, have been somewhat disconnected,

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<sup>38</sup> A Sarelin, 'The right to education from a developing country perspective,' Finnish NGO foundation for human rights (2006) <[www.kios.fi](http://www.kios.fi)> accessed 14 October 2015.

<sup>39</sup> Article 53 (1)(b) of the constitution provides for the right to education for every child and Article 53 (1)(b) provides for protection for the child from all forms of violence. Article 43 of the Constitution provides for social and economic rights that every person has the right to. Development ensures that social and economic rights are available to be enjoyed but a person who is not empowered with the capacity to participate in development will not enjoy the social and economic rights. Education empowers individuals to enjoy the social and economic rights that are part of development.

<sup>40</sup> P Ojiambo, 'Quality of Education and its Role in National Development: A Case study of Kenya's Educational Reforms' KSR Volume 1,(2009)

<sup>41</sup> J Parkes and F Chege, *supra*, note 34

important issues relating to violence have fallen through the policy gap. This study will address some of the issues that have fallen through the policy gap as a result of disconnecting the right of education from curbing sexual violence. The EFA emphasis has been on promoting girls' and boys' access to school. It does not include prevention of violence or measures against and responses to the same. In another study, Chege observes that schools as agents of socialisation may perpetuate sexual violence.<sup>42</sup>

### **1.5.3 Culture and Sexual Violence**

Jerop argues that males lead in sexual related violations because they are the dominant custodians of culture and regulate sexual norms.<sup>43</sup> Customary practices and tradition are in some cases the cause of sexual violence against girls and women.<sup>44</sup> Ojiambo<sup>45</sup> does not mention sexual violence as a factor affecting school attendance for girls. He acknowledges that girls are dropping out of school but the reason he gives for this is lack of school fees. This opens up the debate as to why the girl child drops out of school because of lack of fees while the boy child remains in school. This can be attributed to harmful cultural practices that encourage sexual violence against girls. For example, if there is lack of money to pay school fees, the option is to let the boy child remain in school and marry off the girl child and use the bride price to pay school fees for the boy. Traditional aspects are a factor that contributes to sexual violence against girls by teachers in schools.

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<sup>42</sup> F Chege, 'Education and Empowerment of Girls against Gender-based Violence', CICE Hiroshima University, *Journal of International Cooperation in Education*, Vol.10, No. (2007) 53 - 57.

<sup>43</sup> S Jerop, *supra* note 32

<sup>44</sup> P Kameri - Mbote, 'Violence against Women in Kenya: An Analysis of Law, Policy and Institutions' International Environmental Law Research Centre, 4.

<sup>45</sup> P Ojiambo, *supra* note 41.

The gap that emerges from the literature review is that the subject of sexual violence as an obstacle to the realisation of the right to education has not received adequate attention as authors study the two subjects separately. Authors discuss sexual violence and the right to education as two separate subjects. Freedom from sexual violence in schools ensures realisation of the right to education. The subject has not received adequate research attention aimed at identifying the inadequacies in the legal and institutional framework to deal with sexual violence in schools and propose recommendations for improvement. This study explores the adequacy of the legal and institutional framework in addressing the challenges facing the girl child and preventing her from realising the right to education and in turn to development and is, therefore, timely and necessary to fill the lacuna.

### **1.6 Justification**

There are a number of studies on the issue of sexual violence against girls in schools but these studies do not explore the effect of sexual violence on the realisation of the right to education and there is little analysis of legal and institutional mechanisms in place to deal with the sexual violence in schools. This study seeks to fill this gap by giving an in-depth analysis of the legal framework and mechanisms in place to deal with sexual violence against girls in schools and therefore inform policy to bring about the much needed change in curbing and dealing with sexual violence against girls in schools.

## 1.7 Theoretical Framework

The study is guided by the theory of radical feminism to analyse whether the legal, policy and institutional framework of combating sexual violence in the education sector in Kenya is sufficient to ensure that there is no sexual violence in the educational institutions in Kenya. The study discusses legal reform as an effort to change the existing patriarchal law<sup>46</sup> and to empower women, beginning from childhood.

Radical feminism argues that the law is patriarchal and that the inequality between men and women finds its roots in patriarchy. In essence, they argue that the law is male and therefore favours men and oppresses women. Radical feminists locate the root cause of women's oppression in patriarchal gender relations and seek a total and radical change in social relations. Based on radical feminism, the study analyses how sexual violence against girls in schools is as a result of unequal power relations between men and women and other biases that reinforce male dominance over females. The study suggests reforms aimed at remedying male dominance in schools and institutions involved in dealing with sexual violence against girls.

The dominance theory is an approach taken by radical feminists. Mackinnon, in putting forward the dominance theory, argues that social arrangements of patterned and cumulative disparity can be internally rational and systematic yet unjust.<sup>47</sup> This is the case in Kenya's education sector where the social arrangements of disparity are rational

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<sup>46</sup> In this context, the law that does not do enough to protect girls and young women from gender based sexual violence is patriarchal as it allows male dominance to be expressed through sexual harassment and oppression of girls by men in educational institutions.

<sup>47</sup> C A Mackinnon, *The problem of Marxism and Feminism: Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989) 3-4.

and systematic yet unjust. This is because, looking at the law, it has put mechanisms in place to combat sexual violence in schools.<sup>48</sup> This makes the arrangement in the schools rational. However, injustice is still very much a daily occurrence going by the number of incidents of sexual violence against girls in schools. The power of men over women in society is evident in the vast cases of sexual abuse of women by men.

Mackinnon's dominance approach threads its way across existing law and expresses the reason equality law exists in the first place.<sup>49</sup> Despite significant social change, gender inequality has persisted because of unequal power relations in society. This social change is legal and institutional change.<sup>50</sup> Injustices experienced by women flow not mainly from gender-based distinctions in the law, but from subordination to men in society and the legal culture of patriarchy. Sexual violence is a reality of male superiority and thus oppression of women in schools. The study suggests reforms in educating the society in order to challenge the patterns of socialization that lead to sexual violence against girls. The reforms involve teachers and students in the schools with a view to educating all parties on sexual violence and particularly empowering girls so as to overcome male dominance that leads to sexual violence in schools.

MacKinnon argues that the "real rules" of women's everyday lives are not based on women's talents or life experiences, but are contrived according to patterns of

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<sup>48</sup> The Sexual Offences Act criminalizes sexual acts against students by those in authority in schools and the establishment of a gender desk at every police station in Kenya is to encourage the reporting of gender based violence.

<sup>49</sup> C A Mackinnon, *Difference and Dominance: Feminism Unmodified* (Cambridge: Harvard University Press, 1987) 32-45.

<sup>50</sup> *Ibid.*

socialization, popular culture, and common notions of masculinity and femininity.<sup>51</sup> Schools are an important part of socialization. Children spend most of their time in school than at home. This is the best place to deal with the socialization that entrenches unequal power relations between men and women as the norm.

## **1.8 Hypotheses**

- 1.) The policy and legal framework and particularly, provisions of the Sexual Offences Act and the Teachers Service Commission Act regarding sexual violence against students by persons in authority in schools are not sufficient to deal with the problem of sexual violence in schools.
- 2.) The institutional mechanisms in place to identify and punish perpetrators of sexual violence within schools are at present inadequate in effectively curbing the vice of sexual violence in schools.
- 3.) Legal amendments and implementation of the law in the institutional framework is necessary to ensure that sexual violence in education institutions is eliminated.

## **1.9 Research Objectives**

### **1.9.1 Main Objective**

To evaluate the existing policies, laws and institutional mechanisms for dealing with sexual violence in schools and propose reforms that will eliminate barriers and loopholes that lead to perpetuation of sexual violence against girls in schools denying them access to quality education.

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<sup>51</sup> Ibid.

### **1.9.2 Specific Objectives**

- 1.) To appraise the provisions of the Sexual Offences Act and the Teachers Service Commission Act on sexual violence against girls by persons in authority in schools and provisions of other national and international laws on sexual violence against girls and women.
- 2.) To analyse whether the provisions of the Sexual Offences Act regarding sexual violence against girls by persons in authority in schools and the provisions of the Teachers Service Commission Act, effectively deal with the problem of sexual violence in schools
- 3.) To identify institutional mechanisms and procedures necessary to report and deal with sexual violence in schools.

### **1.10 Research Methodology**

The methodology used in this study was desk based review comprising of the examination of existing literature to help situate this current study within the context of existing evidence. The research was enriched through the analysis of statutes, subsidiary legislation, law reports and government policy papers. In addition to primary sources, secondary sources used include textbooks, journals, articles, research papers, study cases, articles, newspapers and magazines, the internet and other materials relevant to this study.

## **1.11 Chapter Breakdown**

Chapter one provides an overview of the essence of the research. It covers the background of the research, the statement of the problem, justification of the study, objectives of the study, hypotheses of the study, theoretical framework, literature review, methodology used and the chapter breakdown.

Chapter two is an analysis the existing legal and policy framework that guarantees the right to education in Kenya. This is in order to ascertain the commitment of the government in ensuring realisation of the right to education. It further seeks to highlight the gaps and needs in effective provision and implementation of mechanisms in place to ensure enjoyment of the right to education.

Chapter three analyses the legal and institutional framework in place to deal with sexual violence within schools in Kenya and particularly sexual violence perpetrated by teachers who are persons in authority within the school setting. It investigates the adequacy of the domestic legal framework to curb sexual violence to ensure the realisation of the right to education by the girl child in Kenya.

Chapter four is divided into two parts: the conclusion and the recommendations. The conclusion is a summary of the research findings to prove or disprove the study's hypotheses. The recommendations comprise proposals for legal and institutional reforms necessary to effectively deal with the issue of sexual violence against girls in schools in order to ensure that girls realise the right to education.

## **2.0 CHAPTER TWO: THE RIGHT TO EDUCATION IN KENYA AND PROTECTION FROM SEXUAL VIOLENCE**

### **2.1 Introduction**

This chapter explores the right to education in Kenya and analyses the legal framework at the international and the domestic level. The right to education is recognized both internationally and nationally. Kenya has ratified most international treaties that protect the right to education. Like all other human rights, discrimination is prohibited when it comes to enjoyment of education. The girl child should access quality education without facing any discrimination based on gender. The law provides for the right to education and also protection from sexual violence. Therefore, measures to protect the girl child from sexual violence within schools should be given as much attention as the provision of the right to education.

### **2.2 The constitutional right to education in Kenya**

The Constitution provides that the general rules of international law form part of the law of Kenya and that any treaty or convention ratified by Kenya forms part of the law of Kenya.<sup>52</sup> This is one of the milestones in the Constitution which makes Kenya a monist state.<sup>53</sup> Previously, all treaties ratified by the government had to be domesticated in order to apply as local law. Under the current constitution, international treaties that Kenya has ratified are automatically domestic law on ratification. Except where a treaty so requires,

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<sup>52</sup> Article 2 (5) and 2 (6) of the Constitution.

<sup>53</sup> Dualism is the system in which international law is treated and looked at separately from the international laws that a state ratifies while monism treats domestic laws and international laws as one and the same and international law carries the same gravity as the national laws.

the ratified treaty does not need to be translated into national laws as the act of ratification renders treaties as national laws.<sup>54</sup>

Article 43 of the Constitution provides for the economic and social rights of an individual. Article 43(1)(f) provides that every person has the right to education. The economic and social rights in article 43 are: the right to healthcare, adequate housing, adequate food, clean water and education. Education is an enabling right. It enables a person to enjoy the economic and social rights that development ensures are available. Article 53(1)(b) entitles every child to the right to free and compulsory basic education. Article 53(1)(d) gives every child the right to be protected from all forms of violence. The right to education and protection from sexual violence is therefore constitutional in Kenya. Article 53(2) embodies the best interest of the child principle by providing that a child's best interests are of paramount importance in every matter concerning the child.

## **2.3 International law**

### **2.3.1 The Universal Declaration of Human Rights**

The 1948 Universal Declaration of Human Rights (UDHR) is the first international human rights document on the rights that each human being is accorded by virtue of being human.<sup>55</sup> It provides that everyone has the right to education.<sup>56</sup> It outlaws discrimination by providing that everyone is entitled to the rights and freedoms any distinction on the basis of race, colour, sex, language, religion, political or other opinion,

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<sup>54</sup> Commission for the Implementation of the Constitution < [www.cickenya.org](http://www.cickenya.org) > accessed on 10/06/2014

<sup>55</sup> Article 1 of the Universal Declaration of Human Rights provides that all human beings are born free and equal in dignity and rights.

<sup>56</sup> Article 26 of the Universal Declaration of Human Rights.

national or social origin, property, birth or other status.<sup>57</sup> Despite a declaration not being legally binding, Kenya's ratification of the UDHR in 1990 shows commitment to human rights. Kenya's commitment to human rights is further shown by ratification of other international human rights instruments. The UDHR principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding.

### **2.3.2 Convention on the Rights of the Child**

The 1989 United Nations Convention on the Rights of the Child (CRC) provides for the protection of the child from sexual abuse.<sup>58</sup> It calls upon state parties to take legislative, administrative, social and educational measures to protect the child from sexual abuse.<sup>59</sup> This Convention was fully domesticated by the Children's Act.<sup>60</sup> It is the most rapidly and widely ratified international human rights treaty in history.<sup>61</sup> The Convention changed the way children are viewed and treated. Children are now treated as human beings with a distinct set of rights instead of as passive objects of care and charity.<sup>62</sup>

The CRC embodies the best interest of the child principle in Article 3. The best interest of the child principle means that a child must be considered before a decision affecting the child's life is made. The most important consideration is the effect the decision will have on the child and not what the parties involved in the matter want. This is a principle

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<sup>57</sup> Article 2 of the Universal Declaration of Human Rights.

<sup>58</sup> Article 34 of the Convention on the Rights of the Child.

<sup>59</sup> Article 19 of the Convention on the Rights of the Child.

<sup>60</sup> Act no. 8 of 2001

<sup>61</sup> See [www.unicef.org](http://www.unicef.org) accessed on 11<sup>th</sup> June 2014

<sup>62</sup> Ibid

that has established itself through all matters and legislation affecting the well-being of the child and is an overarching common law principle that has been used to assist courts and other institutions in the decision-making process.<sup>63</sup> It covers actions by all persons including public or private social welfare institutions, courts of law, administrative authorities or legislative bodies.

The CRC defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”<sup>64</sup> Kenyan law has adopted the same definition in the Children Act.<sup>65</sup> The CRC provides for the right of the child to education in Article 28 and state parties are obliged to make primary education compulsory and free to all. State parties are to take measures to encourage regular attendance at schools and ensure reduction of drop-out rates. Measures to stop sexual violence against girls in schools in turn reduce the dropout rate for girls.

### **2.3.3 The International Covenant on Economic, Social and Cultural Rights**

The 1996 International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for the right to education. Kenya ratified it in 1972. It recognises that education enables effective participation in a free society.<sup>66</sup> Participation in development is one of the benefits of education. Therefore, the ICESCR outlines the direct link between the right to education and the right to development. By virtue of the right to self-determination every human being has the right to determine their political status and

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<sup>63</sup> Y Dausab, ‘The best interest of the child; Children’s rights in Namibia,’ (2008).

<sup>64</sup> Article 1 of the Convention on the Rights of the Child.

<sup>65</sup> The Children Act of Kenya defines a child as any human being under the age of eighteen years.

<sup>66</sup> Article 13(1) of the International Convention on Economic Social and Cultural Rights.

freely pursue their economic, social and cultural development.<sup>67</sup> Despite the introduction and provision of free and compulsory primary and free tuition in secondary education in a bid to ensure realization of rights in the ICESCR, girls' access to education remains limited, in part due to traditional attitudes as well as high dropout rates due to pregnancy, early and forced marriages.<sup>68</sup>

Education is empowerment and thus necessary in order to determine and pursue the status a person wants. Provision of the right to self determination cannot be exercised without the necessary education that empowers women to pursue economic, social and cultural development. Harmful cultural practices curtail the enjoyment of economic, social and cultural rights. Cultural practices are harmful to the girl child more than they are harmful to the boy child because they oppress women.<sup>69</sup> Therefore, it is necessary to eradicate harmful cultural practices to ensure the enjoyment of economic, social and cultural rights.

#### **2.3.4 Convention on the Elimination of All Forms of Discrimination against Women**

The 1979 International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) outlaws discrimination and was ratified by Kenya in 1984. It specifically defines discrimination as any distinction, exclusion or restriction made on the basis of sex.<sup>70</sup> While CEDAW provides for women's rights, it is important and should be considered in this study on sexual violence against girls in schools. This is because for women to participate in and enjoy the right to development, it is critical that they have

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<sup>67</sup> Article 2 of the International Convention on Economic Social and Cultural Rights.

<sup>68</sup> FIDA, 'Gender Audit Study of the 10<sup>th</sup> Parliament' < [www.fida.com](http://www.fida.com) >

<sup>69</sup> Cultural practices that are harmful to the girl child and that foster sexual violence against the girl child have been discussed in chapter 2 of this study and include female genital mutilation and child marriages.

<sup>70</sup> Article 1 of the International Convention on the Elimination of All Forms of Discrimination.

had quality education which begins when the adult woman is a child. CEDAW provides for equal rights of women with men in the field of education.<sup>71</sup>

CEDAW does not contain specific provisions on gender based violence but by providing for equal rights of women with men in the field of education, it opens a door to discuss and deal with any obstacle in the way of the girl child's right to education which includes sexual violence is. Furthermore, CEDAW Committee's General Recommendation Number 19 of 1992 is on violence against women.<sup>72</sup> The Recommendation notes that the definition of discrimination in Article 1 of CEDAW includes gender-based violence. It further notes that gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence. The CEDAW committee recommends that states parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.

### **2.3.5 Convention against Discrimination in Education**

The Convention against Discrimination in Education (CADE), 1960, in defining discrimination in Article 1 includes any distinction that has the effect of depriving access to education and limiting an individual to education of an inferior standard. Sexual violence against girls in schools creates a distinction between girls and boys. Sexual violence deprives the girl child of quality education. Because of its psychological consequences, the girl child will not be receptive even if quality education is being

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<sup>71</sup> Article 10 of the International Convention on the Elimination of All Forms of Discrimination.

<sup>72</sup> The CEDAW Committee's General Recommendation Number 19 of 1992 is available at <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>

offered. To be precise, no matter the quality of the education or state of the art education facilities, the existence of sexual violence automatically makes the education offered of an inferior standard because education is the overall experience at school and not just sitting in the classroom. Kenya has not ratified the Convention against Discrimination in Education. With the central role education has in development and with the Kenyan Government's commitment to gender equality in education and development, Kenya should ratify this Convention.

### **2.3.6 The African Charter on Human and People's Rights**

The African Charter on Human and People's Rights, 1981, incorporates the African point of view to human rights and incorporating the right to education shows that it is a right recognized and fully accepted by African countries. Kenya ratified it in 1992. It provides that every individual has the right to education.<sup>73</sup> It also clearly states that the rights are to be enjoyed without distinction of any kind.<sup>74</sup> This is a major step in the right direction as a starting point to ensuring that the girl child realizes the right to education in African Countries.

### **2.3.7 The African Charter on the Rights and Welfare of the Child**

The African Charter on the Rights and Welfare of the Child, 1990, provides for Protection against Harmful Social and Cultural Practices in Article 21. Kenya ratified this Charter in 2000. State parties are required to take appropriate measures to eliminate harmful social and cultural practices affecting the welfare of the child and in particular

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<sup>73</sup> Article 17 of the African Charter on Human and People's Rights.

<sup>74</sup> Article 2 of the African Charter on Human and People's Rights.

customs and practices discriminatory to the child on the grounds of sex and to prohibit child marriage. This seeks to address the harmful cultural practices that promote sexual violence against girls. Article 11 (1) of the Charter provides for the right to an education for every child.

### **2.3.8 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol)**

Kenya ratified the Maputo Protocol in 2010. The Protocol defines violence against women to include all acts that cause or could cause physical, sexual, psychological and economic harm.<sup>75</sup> Sexual violence causes all the four types of harm identified by the Maputo Protocol. There is no kind of violence against women that should be tolerated. However the gravity of sexual violence makes it necessary to prioritise it and deal with it through all mechanisms possible.

Sexual violence in schools causes physical harm because it is against the body of the victim. Sexual violence is extremely traumatic and in the school setting it is directly related to denying quality education to girls which leads to economic harm later in the future of girls and women for lack of educational qualifications. The Maputo Protocol in providing for the right to education and training is very specific on the elimination of sexual violence in schools. It obligates state parties to protect women, especially the girl-child from all forms of abuse, including sexual harassment in schools and other educational institutions and provide for sanctions against the perpetrators of abuse. All women who are victims of sexual violence should have access to counseling and

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<sup>75</sup> Article 1(f) of the Maputo Protocol.

rehabilitation services. It calls for the elimination of stereotypes that perpetuate discrimination, in textbooks, syllabuses and the media and integration of gender sensitisation and human rights education at all levels of education curricula including teacher training.

The Maputo protocol is, therefore, very specific in dealing with sexual violence against the girl child within schools. Although the protocol has already been ratified, proper laws are yet to be enacted to ensure it is fully operational.<sup>76</sup> There is need for structures and processes to implement the protocol. The constitution requires the state to enact legislation to implement its international human rights obligations and there is need for creation of laws to guarantee effective implementation of the protocol's provisions.<sup>77</sup>

## **2.4 National Law**

### **2.4.1 The Children Act**

The Children Act is a domestication of the Convention on the Rights of the Child and was enacted to give effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The best interest of the child principle is given primary consideration in all actions concerning children. This principle is given in section 4 (2) of the Children's Act. The Children Act provides for the right to education. Section 7(1) entitles every child to education, the provision of

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<sup>76</sup> Supreme Court of Kenya judge Njoki Ndung'u's statement found on <[www.eassi.org](http://www.eassi.org)> accessed 9/10/2014

<sup>77</sup> Article 21 (5), the constitution: The State shall enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms.

which is the responsibility of the Government and the parents. Free basic education is compulsory under section 7 (2) of the Act.

The Children Act states that the duty to protect a child from abuse is a part of parental responsibility<sup>78</sup> and describes an abused child as being in need of care and protection.<sup>79</sup>

Section 2 of the Act defines child abuse to include physical, sexual, psychological and mental injury. Sexual violence causes physical, sexual, psychological and mental injury.

Children are protected from engagement in sexual activity under section 15 of the Children Act. Children in need of care and protection are entitled to the protection of the law and specifically through the courts. Section 119 of the Children Act describes who a child in need of care and protection is. A child who has been sexually abused or is likely to be exposed to sexual abuse is in need of care and protection.<sup>80</sup> A child who is who is prevented from receiving education or a female child subjected or likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child's life, education and health is a child in need of care and protection.<sup>81</sup>

#### **2.4.2 Basic Education Act**

The Basic Education Act<sup>82</sup> was enacted to give effect to Article 53 (1) (b) of the Constitution that provides every child with the right to free and compulsory basic education. It guarantees the implementation of the right to free and compulsory basic

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<sup>78</sup> Section 23 of the Children Act.

<sup>79</sup> Section 119 of the Children Act.

<sup>80</sup> Section 119 (1) (n) of the Children Act.

<sup>81</sup> Section 119 (1) (h) of the Children Act

<sup>82</sup> Act No 14 of 2013

education<sup>83</sup> and provides for the establishment of pre-primary, primary and secondary schools and adult and continuing education centers within a reasonably accessible distance within a county.<sup>84</sup> The Basic Education Act provides for the establishment of National and County Education Boards.<sup>85</sup> The functions of the National Education Board include working with the relevant authorities and agencies to ensure that all the barriers to the right to quality education are removed and that the National and County governments facilitate the realisation of the right to education by all Kenyans.<sup>86</sup> County Education Boards are to collaborate with the TSC on teacher management within the counties.<sup>87</sup>

## **2.5 Policies on Education in Kenya**

Various legal and policy interventions have been established to ensure that gender equality is embedded in Kenya's quest for development.<sup>88</sup> The Kenyan Government is committed to provision of quality education with education taking one of the largest share of resources allocated to a single function.<sup>89</sup> Sessional Paper No. 10 of 1965 on African Socialism and its Application to Planning in Kenya emphasises equal

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<sup>83</sup> Part IV

<sup>84</sup> Section 28 (2)(a) of the Basic Education Act

<sup>85</sup> See Part II and Part III of the Basic Education Act.

<sup>86</sup> Section 5 (2) of the Basic Education Act.

<sup>87</sup> Section 18 (1) of the Basic Education Act outlines functions of the County Education Boards.

<sup>88</sup> These include the enactment of the National Commission on Gender and Development Act in 2003 now repealed by the National Gender and Equality Commission Act 2011, the establishment of the National Gender and Equality Commission, introduction of gender desks in key parastatals and police station, the introduction of the women's enterprise fund, the passing of the National Policy on Gender and Development in 2006 and the 30% presidential decree on affirmative action in public appointments, among others.

<sup>89</sup> Minister for Education, Science and Technology, Paper Prepared for Presentation at the Council on Foreign Relations Washington DC by Prof. George Saitoti, 'Education in Kenya: Challenges and Policy Responses,' Government of Kenya (2004).

opportunities with regard to education<sup>90</sup> and gives Universal Primary Education (UPE) as one of the critical issues to be resolved.<sup>91</sup> Sessional Paper No. 1 of 2005 on Policy Framework for Education, Training and Research provides that education and training to all Kenyans is fundamental to the success of the Government's overall development strategy<sup>92</sup> and acknowledges the Government's commitment to the provision of quality education and training as a human right for all Kenyans.<sup>93</sup> Free Primary Education (FPE) was introduced in 2003 and all fees and levies for primary education were abolished.<sup>94</sup> The implementation of FPE is critical to the attainment of UPE<sup>95</sup> which is in line with achievement of Education for All (EFA).<sup>96</sup>

More recently, Kenya has adopted other policies on education. The Policy Framework for Education and Training, 2012 and the second Medium Plan Term of Vision 2030, 2013 are two policies on education that have been adopted. According to The Policy Framework for Education and Training, 2012 one of the strategies of the Government to ensure realization of the right to education is to implement the Children Act and the Sexual Offences Act. The second Medium Plan Term of Vision 2030, 2013 emphasises on quality education. Sexual violence lowers the quality of education female students receive as it passes through the filter of sexual violence to reach the students.

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<sup>90</sup> Clause 11 Sessional Paper No. 10 of 1965.

<sup>91</sup> Clause 72 Sessional Paper No. 10 of 1965.

<sup>92</sup> Clause 1.2, Sessional Paper No. 1 of 2005.

<sup>93</sup> Clause 1.8, Sessional Paper No. 1 of 2005.

<sup>94</sup> Minister for Education, Science and Technology, *supra* note 23.

<sup>95</sup> Achievement of Universal Primary Education is the second goal in the United Nations Millennium Development Goals in order to ensure that children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.

<sup>96</sup> Education for All (EFA) is an international initiative first launched in 1990 to bring the benefits of education to every citizen in every society. See [www.worldbank.org](http://www.worldbank.org)

## **2.6 The gap between provision of the right to education and enjoyment of the right by the girl child**

It is evident that the Kenyan Government is committed to ensuring that children realise the right to education. The government has ratified various international legal instruments as discussed above and put in place mechanisms to ensure that children realise the right to education. After the introduction of FPE in 2003, there was an influx of children into primary schools. To ensure smooth transition into secondary education, the government took a further step and further allocated resources to secondary schools.<sup>97</sup> Despite these measures, sexual violence within the schools continues to hinder enjoyment of the right to education.

In my view, there are a number of factors that contribute to the enjoyment of the right to education. These are: Accessing the school, remaining in school until completion and receiving quality education while in school. The government has ensured access through FPE and this ensures gender parity in school enrollment. However, this does not mean that all children who enroll in school continue until completion of their studies and that they receive quality education. Sexual violence within schools lead to female students dropping out due to pregnancy or sexually related illnesses and also affects the quality of education in the case where the female student is distracted and cannot concentrate due to fear because of a teacher demanding sexual favours after school.

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<sup>97</sup> Kenya National Commission on Human Rights, 'Uphold the Right to Education', <http://www.knchr.org/>, Accessed on 7<sup>th</sup> September 2016.

## **2.7 Conclusion**

The right to education and the protection of children from sexual violence are both provided for in the Kenyan policy and legal framework. The commitment of the Government is clear with introduction of FPE, allocation of resources to the education budget and the enactment of the Sexual Offences Act. However, there is a disconnect because schools continue to be a place where sexual violence takes place with the perpetrators of the sexual violence being teachers, among others.

### **3.0 SEXUAL VIOLENCE BY TEACHERS AS A HINDRANCE TO ENJOYMENT OF THE RIGHT TO EDUCATION**

#### **3.1 Introduction**

This chapter investigates the laws and mechanisms in place to deal with sexual violence within the school setting and the challenges to effective implementation of that law and effectiveness of the mechanisms to curb sexual violence within schools. Kenya's National Law provides protection for the child, including protection against sexual abuse. Various national laws that deal with sexual violence against children are discussed and analysed below. The number of children enrolling in school has risen with the introduction of FPE and gender parity has been achieved. Sexual violence within schools creates a legal challenge to the enjoyment of the right to education by hindering realisation of the right and being discriminatory since girls are disproportionately affected by sexual violence compared to boys.

#### **3.2 The Sexual Offences Act**

The passing of the Sexual Offences Act 2006<sup>98</sup> was a major step in addressing some key forms of gender based violence.<sup>99</sup> Although the focus of the Sexual Offences Act is not children, it is the main statute on sexual offences. Kenya made a milestone in dealing with sexual offences and gender-based violence through the enactment of this Act.<sup>100</sup> The Act offers better protection from sexual violence to children as compared to the Children

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<sup>98</sup> Act no. 3 of 2006

<sup>99</sup> Federation of Women Lawyers Kenya, 'Research Report, Implementation of the Sexual Offences Act,' 7.

<sup>100</sup> N Ndung'u, N Baraza and H Birungi, 'The making of the Kenya sexual offenses act, 2006: Behind the scenes,' (2009) 1.

Act and the Penal Code.<sup>101</sup> While the Penal Code provided for sexual offences, it had shortcomings.

The penal code categorized sexual offences as offences against morality while offences against morality carried much lighter sentences than offences against the person. Lack of minimum sentences upon conviction made the penal code a poor deterrent to when it came to sexual offences. There are some sexual offences covered under the Penal Code. These are covered under part XV of the Penal Code. They include defilement of imbeciles or idiots in section 146, detention of females for immoral purposes in section 151 and conspiracy to defile in section 157.

The Sexual Offences Act, among other offences, covers sexual offences relating to children. These offences include: commission of acts which cause penetration or indecent acts within the view of a child in section 7, defilement under section 8, committing an indecent act with a child under section 11, promotion of sexual offences with a child under section 12, child trafficking under section 13, child sex trafficking under section 14, child prostitution under section 15 and child pornography under section 16. While these offences can take place outside the school setting, some can be committed within the school setting.

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<sup>101</sup> The Sexual Offences Act amended provisions of the Penal Code dealing with sexual crimes as it outlines in its Second Schedule.

### 3.2.1 Defilement

The Sexual Offences Act provides for the offence of defilement in section 8(1). A person who commits an act which causes penetration with a child is guilty of defilement. The issue of consent does not arise. Whether or not the child consents to the act of penetration, it is an offence. Punishment for defilement depends on the age of the victim. Where the child is eleven years or less, the sentence is imprisonment for life.<sup>102</sup> Where the child is between eleven and fifteen years, the sentence is imprisonment for a term of not less than twenty years.<sup>103</sup> Where the child is between the age of sixteen and eighteen years, the sentence is imprisonment for a term of not less than fifteen years.<sup>104</sup> In my view, the difference in the sentences might show the recognition of the fact that a seventeen year old might be mature enough to willingly participate in a sexual act. However, the Sexual Offences Act still seeks the protection of children against sexual violence.

The Sexual Offences Act provides that where it is proved that the child deceived the accused into believing that he or she was over the age of eighteen years at the time of commission of the offence and the accused reasonably believed that the child was over the age of eighteen years, this is a defence to the crime of defilement.<sup>105</sup> Steps that the accused person took to ascertain the age of the complainant are taken into account in considering this defence. In my view, this defence should not be allowed when it comes

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<sup>102</sup> Section 8 (2) of the Sexual Offences Act.

<sup>103</sup> Section 8 (3) of the Sexual Offences Act.

<sup>104</sup> Section 8 (4) of the Sexual Offences Act.

<sup>105</sup> Sections 8 (5) and 11 (4) of the Sexual Offences Act.

to teachers. Teachers in schools should be presumed to know the ages of their students and to know that they are under 18 years old.

The Sexual Offences Act further provides that where here the accused person is related to a child within the prohibited degrees of blood or affinity, the defence of believing the victim was not a child does not apply.<sup>106</sup> Teachers should be included as persons to whom the defence of deception of age by victim does not apply. They should be presumed to know the ages of their students. Students in primary and secondary schools should be presumed to be below eighteen years of age until proved otherwise and especially by their teachers.

### **3.2.2 Teachers and other school employees as perpetrators of sexual violence against students**

Section 24 of the Sexual Offences Act deals with sexual offences relating to persons in positions authority and trust. Section 24 (4) is a key provision when it comes to dealing with sexual violence in schools. It provides that *any person who being the head-teacher, teacher or employee in a primary or secondary school or special institution of learning whether formal or informal, takes advantage of his or her official position and induces or seduces a pupil or student to have sexual intercourse with him or her or commits any other offence under this Act, such sexual intercourse not amounting to the offence of rape or defilement, shall be guilty of an offence of abuse of position of authority and shall be liable upon conviction to imprisonment for a term of not less than ten years.* This section

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<sup>106</sup> Sections 8(8) and 11(5) of the Sexual Offences Act.

recognizes that employees in schools can also be perpetrators of sexual violence against students.

The provision in section 24(4) imposes stricter punishment on teachers and other school employees by ensuring that for sexual offences that have a conviction sentence that is less than ten years, teachers and other school employees who are perpetrators of crimes against students face a stiffer sentence that is not less than ten years. For example, a person found guilty of child pornography, upon conviction, is liable to imprisonment for a term of not less than six years or to a fine of not less than five hundred thousand shillings or to both and upon subsequent conviction, for imprisonment to a term of not less than seven years without the option of a fine.<sup>107</sup> In such a case, if the perpetrator is a teacher or a school employee and the victim a student, the minimum sentence will be ten years and not six years.

### **3.2.3 Sexual offenders register and DNA Data Bank**

A person who is convicted of a sexual offence against a child may be declared as a dangerous sexual offender.<sup>108</sup> The Act provides for the maintenance of a register for convicted sexual offenders by the Registrar of the High Court and any person who has reasonable cause to examine the register may do so.<sup>109</sup> A sex offender whose name is in the register is to notify the registrar of the High Court if he leaves a job, obtains a new job, leaves a school or enrolls in a new school.<sup>110</sup> The data base was officially set up in

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<sup>107</sup> Section 16 of the Sexual Offences Act provides for the offence of child pornography.

<sup>108</sup> Section 39 (1) of the Sexual Offences Act.

<sup>109</sup> Section 39 (13) of the Sexual Offences Act.

<sup>110</sup> Regulation 4, Sexual Offences Regulations, 2008

2012 when the sexual offenders register was launched under the custody of Office of the Chief Registrar of the Judiciary.<sup>111</sup> The sexual offenders register was rolled out in 2014. The details in the register include the name, age, place of the residence, photograph and fingerprints of the offender.<sup>112</sup> Details of convicted sexual offenders are sent to the Registry at the office of the Chief Justice.

There are some challenges in the current operation of the sexual offenders register. Maintenance of the hard copy records raises the challenge of difficulty in updating the records and ease of access of the records. One major issue is updating the register after a convicted offender appeals. There are inconsistencies in filing in the forms by the different courts and it is not mandated which judiciary official is to fill in the form. These challenges are currently being addressed in various forums prepared by registrar at the office of the Chief Justice. Meetings with stakeholders are ongoing to address conversion of the sexual offenders database into electronic format to address the challenges of having the records in hard copy.<sup>113</sup>

The Act makes provision for the establishment of forensic laboratories to assist in collection, storage and analysis of evidence to assist during trials.<sup>114</sup> If this is implemented effectively, it will increase the number of cases which are successfully

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<sup>111</sup> The Hon. Dr. Justice W Mutunga, D.Jur, SC, E.G.H. Chief Justice/President, Supreme Court of Kenya, 'The remarks of the chief justice during the launch of the National Sexual Offenders Register and Presentation of The Draft Rules Under The Sexual Offences Act 2006,' < [www.judiciary.go.ke](http://www.judiciary.go.ke)> accessed on 17/6/2014.

<sup>112</sup> A Muchigi, principal magistrate – office of the registrar, interview by nation media on 7<sup>th</sup> May 2014 available at <[www.nation.co.ke/news](http://www.nation.co.ke/news)>

<sup>113</sup> The information on the operation of the sexual offenders register was given by Stanley Mutuma, who is currently working on the sexual offenders register in the office of the Chief Registrar of the Judiciary.

<sup>114</sup> Section 36 of the Sexual Offences Act.

prosecuted. Sexual Offences (Dangerous Offenders DNA Bank) Regulations, 2008, provide guidelines for handling of the DNA Data bank. The Director of the Criminal Investigations Department is to establish and maintain the DNA Data Bank.<sup>115</sup> Regulation 13 allows access to information contained in the DNA data bank to any person that the Director considers appropriate for the purposes of the proper operation and maintenance of the DNA data bank.

### **3.3 Teachers Service Commission Act: dealing with teachers as perpetrators of sexual violence against students**

The Teachers Service Commission (TSC) established under the Teachers Service Commission Act<sup>116</sup> is guided by the principles of public service in the Constitution<sup>117</sup> and the national values and principles of governance.<sup>118</sup> Taking the best interest of the child into account is a guiding principle for TSC to operate by.<sup>119</sup> One of the functions of the Commission is to monitor the conduct and performance of teachers. In monitoring the conduct of the teachers, TSC is to take into account the best interest of the child. Discipline of teachers because of misconduct is part of TSC's mandate and the best interest of the child should be upheld at all times. The Public Officer Ethics Act assigns TSC as the responsible Commission for teachers registered under the TSC Act.<sup>120</sup> The TSC Code of Conduct and Ethics lays down standards of ethical conduct and behaviour for teachers and for the officers and employees.

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<sup>115</sup> Regulation 3, of the Sexual Offences (Dangerous Offenders DNA Bank) Regulations, 2008.

<sup>116</sup> Act No.12 of 2012

<sup>117</sup> Article 232 of the Constitution of Kenya.

<sup>118</sup> Article 10 of the Constitution of Kenya.

<sup>119</sup> Section 14 of the Teachers Service Commission Act.

<sup>120</sup> Section 3 (7) of the Teachers Service Commission Act.

### **3.3.1 Disciplinary Procedure for Teachers who commit Sexual Offences**

The 2014 TSC Code of Regulations for Teachers gives the disciplinary process to be followed in the case of misconduct by a teacher.<sup>121</sup> Any person having an allegation of misconduct against a teacher can report to the TSC headquarters, county offices, head of an institution, board of management (BOM), non-state actors or law enforcing agency. A fair hearing is to be given and the rights of minors protected. Before the disciplinary process begins, the investigation panel investigates the matter, gives a written report to the County Director and the TSC Secretary and indicates to TSC if the disciplinary process ought to start.

If the disciplinary process is to commence, TSC or BOM serves the accused teacher with a letter of interdiction. A teacher issued with a letter of interdiction is to leave the institution he teaches at within 48 hours and report to the TSC sub-county office once a month. When the teacher appears before the disciplinary panel, the TSC disciplinary committee examines its witnesses and the teacher is given a chance to cross-examine the witness. The disciplinary committee gives a decision, with reasons, within 28 days of the proceedings coming to an end. The accused teacher has the option to appeal to the Teachers Service Review Committee (TSRC), within 90 days of rendering of the decision.<sup>122</sup>

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<sup>121</sup> Part XI of the TSC Code of Regulation for Teachers is on disciplinary matters.

<sup>122</sup> The Teachers Service Review Committee is established under regulation 155 of the Code of Regulations for Teachers, 2014. It is an adhoc committee with the mandate to consider and determine reviews arising from the discipline process of the Teachers Service Commission.

TSC may take disciplinary action against a teacher whose criminal proceedings are pending before a court of law or who has been acquitted by a court of law for an offence TSC is handling. TSC is not bound by any finding of any court in criminal proceedings relating to a teacher's disciplinary case. The TSC Code of Regulations for Teachers provides that the decision of the TSRC is final.<sup>123</sup> This means that the accused teacher cannot appeal to the High Court. Before the establishment of the TSRC, a teacher could appeal TSC disciplinary panel's decision. In *Joseph Okoth Opiyo v Teachers Service Commission*,<sup>124</sup> the Industrial Court ordered the reinstatement into employment of the appellant who was a teacher who had been dismissed by TSC following disciplinary procedure where he was accused of a sexual offence against a student.

The Constitution in Article 165 (6) grants the High Court supervisory jurisdiction over subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court. One can therefore argue that the High Court's jurisdiction over the TSRC is therefore constitutional and cannot be ousted. The Supreme Court in *Judges & Magistrates Vetting Board & 2 others v Centre for Human Rights & Democracy & 11 others*,<sup>125</sup> found that the High Court does not have jurisdiction to review the process or outcome of the Judges and Magistrates Vetting Board (JMVB). Section 23(2) of the sixth schedule of the Constitution is clear and provides that the process of vetting judges is not subject to question in, or review by, any court.

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<sup>123</sup> Regulation 155(7) TSC Teachers Code of Regulations, 2014.

<sup>124</sup> Cause No. 3/2012 at the Industrial Court of Kenya at Kisumu.

<sup>125</sup> Petition No. 13a of 2013 (as Consolidated with Petition No. 14 of 2013 and Petition No. 15 of 2013) in the Supreme Court of Kenya at Nairobi.

In my view, the decision of the Supreme Court will not apply when it comes to the TSRC because unlike the JMVB, the TSRC is not established by the constitution. Teachers who have gone through the TSC disciplinary procedure and have appealed to the TSRC and wish to appeal to the High Court can do so.<sup>126</sup> Furthermore, a teacher aggrieved by the decision of the TSRC can argue that judicial review is a constitutional provision for any person whose rights and fundamental freedoms have been aggrieved as provided for in Article 23 (1) and 23 (3)(f) of the Constitution.

### **3.3.2 Employment of persons previously convicted of sexual offences**

Under section 27 of the Teachers Service Commission Act, a person previously convicted of a sexual offence is required to disclose the conviction when applying for employment that will place him in a position of authority or care of children. A person applying for registration with TSC as a teacher in the Register of Teachers will be refused registration if he/she is not of good moral character and/or has been convicted of a sexual offence or an offence committed against a learner.<sup>127</sup> These are the grounds related to sexual violence in refusal of registration as a teacher. This means that any person who has been convicted of a sexual offence cannot be registered as a teacher. This legal provision is very important in keeping sexual predators out of Kenyan schools. TSC can be granted access to the Register of Convicted Sexual Offenders.<sup>128</sup>

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<sup>126</sup> The JMVB has a constitutional mandate arising from the third schedule of the Constitution, section 23. While the TSC is established under Article 237 of the Constitution, the TSRC is not established by the constitution but by the Teachers Service Commission Regulations, 2014 and therefore, the High Court's jurisdiction over it is not ousted.

<sup>127</sup> Section 27 of the Teachers Service Commission Act.

<sup>128</sup> The Sexual Offences Regulations, 2008, Regulation 9 (f)

### **3.3.3 Removal of sexual offenders from Register of Teachers**

A person who has been convicted of a sexual offence or an offence against a pupil or student may be removed from the register after inquiry.<sup>129</sup> The language of this provision is not mandatory meaning that a person convicted of a sexual offence could fail to be removed from the TSC register of teachers. A person who TSC has directed should be removed as a result of disciplinary proceedings instituted under the TSC Act may also be removed from the register after inquiry. In April 2015, the names of 126 teachers were removed from the register after they were taken through a disciplinary process and found guilty of sexual misconduct against students.<sup>130</sup>

A teacher whose name is removed from the register can be reinstated by direction of TSC. Reinstatement to the register is prompted by an application of the concerned teacher or on the Commission's own motion.<sup>131</sup> Application for reinstatement onto the register can only be made after a period of eighteen months from the date of removal. A point of concern here is that the Act does not require reasons for reinstatement to be given. In my view, this opens up the reinstatement process to abuse and corruption. There is a loophole in that a person who has been convicted of a sexual offence cannot be entered into the register of teachers while a teacher removed from the register can be reinstated. The loophole is that a teacher convicted of a sexual offence might be reinstated but one who was not previously a teacher cannot be registered as a teacher with TSC if previously

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<sup>129</sup> Section 30 of the Teachers Service Commission Act.

<sup>130</sup> <http://www.standardmedia.co.ke/article/2000008685/tsc-to-tame-sexual-abuse-in-schools> Accessed on 9/10/2015

<sup>131</sup> Section 31 (1) of the Teachers Service Commission Act.

convicted of a sexual offence. The language of the Act should be made clear as it is clear that the legislators' aim was to keep sexual offenders out of schools.

### **3.4 Protection of children in private schools**

Discipline of teachers not in the employment of TSC is limited to offences leading to removal from the register of teachers.<sup>132</sup> Sexual offences lead to removal from the register and thus the TSC Act has covered sexual violence in both private and public learning institutions which is commendable. With regard to registration of private schools, a person cannot register a private school if, among other grounds, a teacher employed in the school is not registered by TSC or if the proprietor or manager of the school has been convicted of any crime against children under the Sexual Offences Act and Counter Trafficking in Persons Act.<sup>133</sup> It seems that this is a provision which is not enforced because there are teachers employed by the board of management (BOM) for various schools. These BOM teachers are not registered by TSC since their employers do not make it a requirement. However, the TSC Act includes discipline of teachers not under TSC's employment where sexual offences are involved.

Section 51 of the Basic Education Act gives the choice to attend private school for any person requiring basic education. Recognizing that there is a large number of parents that choose to take their children to private schools, the Act provides that private schools have to be registered.<sup>134</sup> A private school is not to be registered if a teacher employed in the

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<sup>132</sup> Section 33(3) of the Teachers Service Commission Act.

<sup>133</sup> Section 50 (2), Basic Education Act.

<sup>134</sup> Section 51 of the Basic Education Act.

school is not registered by the TSC or the proprietor or manager has been convicted of any crime against children under the Sexual Offences Act.<sup>135</sup>

### **3.5 Public Officer Ethics Act**

The Public Officer Ethics Act<sup>136</sup> objective is to advance public officers' ethics by providing for a Code of Conduct and Ethics for public officers. Teachers registered under the TSC Act are public officers and must adhere to the Public officer ethics Act.<sup>137</sup>

Teachers are under the obligation to protect and promote the human rights and freedoms of students without discrimination.<sup>138</sup> Teachers are not to engage in any sexual activity with a student regardless of whether or not the student consents.<sup>139</sup> Teachers are also forbidden from requesting for or exerting pressure on students for sexual favours and are not to flirt with students.

### **3.6 Challenges to curbing sexual violence against the girl child in schools.**

Despite the positive contributions of the legal and institutional mechanisms and particularly the Sexual Offences Act and the Teachers Service commission Act and other national laws, there are some outstanding issues that need urgent attention in order to eliminate sexual violence against the girl child in Kenyan schools.

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<sup>135</sup> Section 50 of the Basic Education Act.

<sup>136</sup> Act No. 4 of 2013.

<sup>137</sup> Regulation 3 of the Teachers Service Commission Code of Conduct and Ethics.

<sup>138</sup> Regulation 5 (1) the Teachers Service Commission Code of Conduct and Ethics.

<sup>139</sup> Regulation 9 (1) the Teachers Service Commission Code of Conduct and Ethics.

### **3.6.1 Implementation, enforcement and amendment of legal and policy provisions**

- a. In light of the above analysis of the legal and institutional framework in place to deal with sexual violence in schools in Kenya, it is evident that Kenya has put in place a legal framework to deal with sexual violence. However, implementation of institutional mechanisms and enforcement of laws is ineffective in various aspects. The requirement that teachers are to be registered with the TSC whether or not they are under TSC's employment is not enforced in private schools.<sup>140</sup> Section 50 (2) of the Basic Education Act prohibits registration of a private school where a teacher employed in the school is not registered by TSC. Private schools do not strictly adhere to this requirement and BOMs of private schools fail to enforce registration of teachers with the TSC.
  
- b. The defence of deception as to age of the victim that is available for a person charged with defilement creates a loophole for teachers to plead the defence.<sup>141</sup> As persons in authority over students, teachers and other school workers should not be allowed to plead the defence of deception as to age. They should be presumed to know that their students are below 18 years for primary and secondary school students.

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<sup>140</sup> A news report by AllAfrica stated that TSC directed that management boards and proprietors of private schools hire professionally qualified teachers who are registered with TSC and put mechanisms and structures in place to address sexual abuse <http://allafrica.com/stories/201403120375.html> accessed 10 October 2015.

<sup>141</sup> Under section 8(5) of the Sexual Offences Act, where it is proved that the child deceived the accused into believing that he or she was over the age of eighteen years at the time of commission of the offence and the accused reasonably believed that the child was over the age of eighteen years, is a defence to defilement.

### 3.6.2 Poor prosecution of sexual offences

The DNA databank regulations have not been implemented. Their effective implementation will lead to successful prosecution of sexual offenders.<sup>142</sup> One of the reasons for poor prosecution is lack of DNA evidence.<sup>143</sup> In Kenya, DNA analysis of all forensic evidence in criminal cases is analysed by the laboratory in the office of the Government Chemist. The laboratory faces various challenges including ongoing need for equipment maintenance and supplies, understaffing and backlog of work.<sup>144</sup> Most prosecutions of perpetrators fail as a result of inadequate investigations and poor evidence collection and preservation.<sup>145</sup> Poor investigations and failure to follow procedure are other reasons for poor prosecution of sexual offenders.<sup>146</sup> The police have an obligation to conduct proper investigations in cases of sexual abuse.<sup>147</sup>

In *Charles Oduor Ombogo v R*<sup>148</sup> the appellant, who was a teacher, had been charged with defilement and committing indecent act with a child, who was his student. Justice Chemitei in allowing the appeal stated that the case had been poorly investigated. In *Christopher Njau Gitau v R*<sup>149</sup> which was an appeal from conviction, the appellant had been accused of defilement against a girl who was his student. The High Court quashed

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<sup>142</sup> Kenya's current DNA collection and analysis system needs improvement. Kenya's public crime lab is overwhelmed by backlogs of unanalysed DNA samples and is not adequately equipped to handle the increasing influx of DNA samples and evidence. The problems of backlogs and the lack of up-to-date technology result in significant delays in the administration of justice. See the Report to the Attorney General on Delays in Forensic DNA by CSI Nairobi, March 2008.)

<sup>143</sup> ACORD, Kenya: An audit of legal practice on sexual violence, (2009) 15

<sup>144</sup> Taskforce on implementation of the Sexual Offences Act workshop Report (2011) 22

<sup>145</sup> ACORD, Supra note 199.

<sup>146</sup> Ibid

<sup>147</sup> In the landmark "160 girls" case, petition No. 8 of 2012 at the High Court of Kenya in Meru, the young girls successfully challenged the Kenyan Government on failure to conduct prompt, effective and proper investigations into their complaints of defilement.

<sup>148</sup> Criminal Appeal No. 1 of 2012 in the High Court of Kenya at Kisumu.

<sup>149</sup> Criminal Appeal No. 212 of 2011 in the High Court of Kenya at Nakuru.

the conviction, set aside the sentence and sent the case back to the subordinate court for retrial on the ground of non-compliance with the Criminal Procedure Code.<sup>150</sup>

### **3.6.3 Harmful cultural practices**

Harmful cultural practices encourage sexual violence against girls in schools. There has been increase in the school enrollment rate in Kenya but the retention rate of girls has been low compared to boys.<sup>151</sup> One of the factors contributing to girls dropping out of school is harmful cultural practices.<sup>152</sup> Some harmful cultural practices like female genital mutilation and early marriage lead to sexual violence against the girl child and dropping out of school due to early marriage and pregnancy. When harmful traditional practices are accepted in schools, sexual violence against the girl child is encouraged.

There are cultural practices in Kenya that promote sexual violence against girls. Education forms a major pillar in progressing or demunitising aspects of culture.<sup>153</sup> Schools are a place where children should be educated on harmful cultural practices and empowered to speak out when they are subjected to harmful practices. Some of the cultural practices that promote sexual violence against girls include female genital mutilation and early child marriages. Female genital mutilation is a rite of passage into adulthood and a girl is seen as ready for marriage despite still being a child. Teachers might see the girls as ready for marriage after female genital mutilation and sexually violate them within the school.

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<sup>150</sup> Chapter 75 of the Laws of Kenya.

<sup>151</sup> Right to Education Project, Right to Education Country Fact Sheet, Kenya, March 2014 at 23.

<sup>152</sup> Ibid

<sup>153</sup> Kenya Alliance for Advancement of Children (KAACR), 'Cultural Practices That Hinder Children Rights Among The Digo Community – Msambweni District, Kwale County', 6 <<http://resourcecentre.savethechildren.se/library/cultural-practices-hinder-childrens-rights-among-digo-community-msambweni-district-kwale>> accessed on 2<sup>nd</sup> October 2015.

The Marriage Act<sup>154</sup> provides that a person must have attained the age of 18 years to get married.<sup>155</sup> Kenya has one of the highest child marriage prevalence in the world, estimated to be 25 to 30%.<sup>156</sup> Section 14 of the Children Act prohibits female circumcision, early marriage or other cultural rites, customs or traditional practices that are likely to negatively affect a child's life, health, social welfare, dignity or physical or psychological development. This is in recognition of the negative effects of harmful cultural practices on children. Section 29 of the Sexual Offences Act makes it an offence for a person to force another person, for cultural or religious reasons, to engage in a sexual act or any act that amounts to an offence under the Act and provides for imprisonment for a term of not less than ten years upon conviction.

The Prohibition of Female Genital Mutilation Act<sup>157</sup> prohibits female genital mutilation.<sup>158</sup> Despite criminalisation of female genital mutilation, girls and women continue to face pressure and stigma if they refuse undergo the process and the practice is still rampant.<sup>159</sup> In April 2011, the Director of Public Prosecutions created a 20 member prosecution unit to track cases of female genital mutilation, educate communities about the law and accelerate prosecutions.<sup>160</sup> Within its first few weeks, the unit brought several cases to court involving parents, circumcisers and a chief who failed to report female

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<sup>154</sup> Act No. 4 of 2014

<sup>155</sup> Section 4 of the Marriage Act.

<sup>156</sup> See <https://plan-international.org/>

<sup>157</sup> Act No. 32 of 2011

<sup>158</sup> Part IV of the Prohibition of Female Genital Mutilation Act provides for various offences relating to female genital mutilation and section 29 provides for the penalty. The penalty for any offence committed under the Act is imprisonment for a term of not less than three years, or a fine of not less than two hundred thousand shillings, or both.

<sup>159</sup> See <https://plan-international.org/ending-fgm-and-child-marriage-kenya>

<sup>160</sup> See [www.equalitynow.org](http://www.equalitynow.org)

genital mutilation.<sup>161</sup> Despite the government's efforts, traditional practices that are deeply embedded in culture promote sexual violence against girls and are still being practised. A major reason that the law does not seem to effectively curtail sexual violence against girls is because the law has to contend with prevailing cultural traditions.<sup>162</sup> Some communities continue to subject the girl child to female genital mutilation and forced early marriage immediately after female genital mutilation.<sup>163</sup> The acceptance of cultural practices that sexually violate the girl child affect the girl child's education and find acceptance in schools which should be agents of change and education against harmful cultural practices.

#### **3.6.4 Awareness and education**

The girl child and society in general needs to be educated on the provisions that aim to curb sexual violence in schools. There is need for continuous education. The various parties involved in the enforcement of the Sexual Offences Act need education and training in order to carry out their responsibilities under the Act effectively. The parties involved include teachers, parents, the police, doctors and magistrates. Educating the girl child on the Sexual Offences Act and the right to education will empower the girl child to report any sexual violence to her or another girl. The empowerment of the society in handling sexual offences will deter perpetrators of sexual violence. All sectors involved

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<sup>161</sup> Ibid

<sup>162</sup> P Mbote, *supra* note 41 at 16.

<sup>163</sup> KAACR, *supra* note 85.

in dealing with sexual offences need training to ensure that they appropriately handle sexual offences.<sup>164</sup>

### **3.7 Conclusion**

In this chapter, sexual violence as a hindrance to enjoyment of the right to education has been discussed. The inadequacies of the legal and institutional framework have been identified in the analysis. The key finding in this chapter is that there are legal provisions and institutional mechanisms to deal with sexual violence against girls in schools but implementation, enforcement and amendment is required in order to curb sexual violence in schools in Kenya.

The next chapter is a conclusion to the study and gives recommendations based on the findings of the study to meet the challenges identified in the study in dealing with the issue of sexual violence against the girl child in schools in Kenya.

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<sup>164</sup> The 2011 Sexual Offences Act Implementation Workshop Report indicated that there is a linkage challenge. Sexual violence cannot be addressed by any one sector alone. The community, health sector and law enforcement sectors all need to work together and play their part.

## **4.0 CHAPTER FOUR: CONCLUSION AND RECOMMENDATIONS**

### **4.1 Introduction**

The first part of the chapter is a conclusion of the entire study. The second part of the chapter entails recommendations based on the findings of the study to meet the challenges identified in the study in dealing with the issue of sexual violence against the girl child in schools in Kenya.

### **4.2 Conclusion to the study**

This study endeavoured to analyse the legal and institutional frameworks and mechanisms in place to deal with sexual violence against girls in schools in Kenya. The aim was to investigate whether the laws and measures in place are adequate to effectively ensure that girls in Kenya realise the right to education in an environment that is free from sexual violence. Sexual violence is an obstacle to girls obtaining quality education. Quality education is the key to participating in development later in life. The study endeavoured to prove that with measures in place to effectively curb sexual violence, girls will be in a position to obtain quality education.

The analysis in the study was premised on feminist theory of law. In this respect, the focus of the analysis in the foregoing chapters is the extent to which the laws and institutions are established on the basis of unequal power relations in society and they at the same time perpetuate unequal power relations. The unequal power relations are majorly due to harmful cultural practices and lack of empowerment

of girls and the society in general. The recommendations in this chapter are based on feminist legal theory and how it can be used to deal with sexual violence in schools. In addressing unequal power relations in schools, sexual violence will greatly reduce when girls and women are empowered. The school will be a centre of empowerment leading to the realization of the right to education in schools free from sexual violence against girls.

Chapter one gave an introduction and background to the study. The chapter gave a detailed background of the study clearly bringing out the need for analysis of the legal framework and institutions in place to deal with sexual violence in schools in Kenya. It covered: the background of the research, the statement of the problem, justification of the study, objectives of the study, hypotheses of the study, theoretical framework, literature review, methodology used and the chapter breakdown.

Chapter two investigated the right to education in Kenya and analysed the legal framework at the international and the domestic level. Kenya has ratified most international treaties that protect the right to education and prohibit discrimination. The conclusion was that measures to protect the girl child from sexual violence within schools should be given as much attention when it comes to implementation, as the provision of the right to education.

Chapter three analysed the legal and institutional framework in place to curb sexual violence against girls in schools in Kenya. The key finding of this chapter is that there are legal provisions on the right to education and protection of children from sexual violence in schools. Despite this, the provisions of the Sexual Offences Act and the Teachers Service Commission Act regarding sexual violence against students by persons in authority in schools need to be enforced and some amendments are required to deal with the problem of sexual violence in schools.

Kenya has developed a comprehensive legal and institutional framework to protect and implement the right to education. However, there are challenges to enforce certain laws and ensure protection of the girl child from sexual violence in schools in Kenya and sexual violence within schools remains a major hindrance to enjoyment of education by the girl child. The following are recommendations to ensure that schools are places where the girl child realises the right to education without encountering sexual violence.

### **4.3 Recommendations**

These recommendations have been obtained after investigation of the legal and institutional framework in place in order to identify the improvements that are needed. The Sexual Offences Act and the TSC Act are timely and necessary in dealing with sexual violence against girls in schools in Kenya and have put in place important measures. Despite the provisions of the Sexual Offences Act and the TSC Act, sexual violence is one of the major obstacles to girls enjoying the right to education in schools in Kenya. The following recommendations are made with regard to legal and institutional

framework dealing with sexual violence against girls in schools in Kenya, with a view to ensuring realization of the right to education by girls in schools without encountering sexual violence.

#### **4.3.1 Enforcement and implementation of legal provisions**

- a. Mechanisms need to be put in place to enforce the requirement that teachers are to be registered with the TSC whether or not they are under TSC's employment. Action needs to be taken against private schools and their BOMs where they employ teachers who are not in the TSC register. TSC should monitor and put effective mechanisms in place to ensure that section 50 (2)(b) of the Basic Education Act is enforced. This section prohibits the registration or maintenance of a private school where a teacher employed by the private school is not registered under TSC. With the current trend of non-enforcement of this provision, teachers who are sexual offenders will continue to perpetrate sexual violence against girls in schools.
- b. The DNA databank for sexual offenders that is established by the Sexual Offences DNA Databank regulations needs to be established. Effective implementation of the Databank will lead to successful prosecution of sexual offenders. This is because DNA evidence will be handled correctly. Poor prosecution of sexual offenders is a contributing factor to the continued vice of sexual violence against girls in schools. Effective prosecution of sexual offenders is deterrent and will reduce incidents of sexual violence against girls in schools.

### **4.3.2 Legal amendments**

- a. Amendment of section 31 of the Teachers Service Commission Act.

Section 31 of the Teachers Service Commission Act empowers the commission to reinstate a teacher whose name has been removed from the register. Section 31 provides that reinstatement to the register is prompted by an application of the concerned teacher or on the Commission's own motion. Reasons for reinstatement are not required. The Act should be amended to make it a requirement for reasons for reinstatement to be given. This will avoid abuse of power by TSC.

- b. Sexual offenders once teachers not to be re-instated to be clear.

Section 27 of the TSC Act provides that a person applying for registration with TSC as a teacher in the Register of Teachers will be refused such registration if he/she is not of good moral character and/or has been convicted of a sexual offence or an offence committed against a learner. This is aimed at keeping sexual predators out of school. A teacher can be found guilty of a sexual offence by the TSC discipline panel even where a court of law does not convict the teacher of a sexual offence. This study recommends that in addition to those convicted of a sexual offence not being re-instated as teachers, those found by the TSC disciplinary panel to have breached the TSC Code of Regulations in the case of a sexual offence, should also not be re-instated as teachers despite not having been convicted by a court of law. The study also recommends that teachers who were aware of the sexual abuse but did not take any action should be subject to the disciplinary procedure and removed from the register of teachers with a warning given if re-instated.

c. Deception of age as a defence.

The Sexual Offences Act provides for the defence of deception of age by a child, where the accused reasonably believed that the child was over the age of eighteen years, for the crimes of defilement and indecent act with child.<sup>165</sup> Steps that the accused person took to ascertain the age of the complainant are taken into account in considering this defence. These provisions should be amended to exclude teachers from the list of people who can plead the defence of deception of age. Teachers in schools should be presumed to know the ages of their students and to know that they are under 18 years old.

The Sexual Offences Act further provides that where the accused person is related to a child within the prohibited degrees of blood or affinity, the defence of believing the victim was not a child does not apply.<sup>166</sup> Teachers should be included as persons to whom the defence of deception of age by victim does not apply under a different relationship category being that of teacher and student. This is because they should be presumed to know the ages of their students. Students in primary and secondary schools should be presumed to be below eighteen years of age until proved otherwise and especially by their teachers.

#### **4.3.3 Ratification of the Convention against Discrimination in Education**

The CADE lays down the international legal obligations for the right to education and promotes the right of every person to education, without discrimination or exclusion. Kenya has not ratified this Convention. With the importance of education in development

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<sup>165</sup> See sections 8 (5) and 11 (4) of the Sexual Offences Act.

<sup>166</sup> Sections 8(8) and 11(5) of the Sexual Offences Act.

and the commitment of the Government to ensure the realisation of the right to education by every child, ratification of the Convention against Discrimination in Education is timely and essential. This will ensure the prioritisation and implementation of mechanisms necessary for the advancement of the education agenda in Kenya and curbing sexual violence that is an obstacle to girls enjoying the right to education in schools in Kenya.

#### **4.3.4 Training, sensitisation and public awareness**

There is a need for a training needs assessment followed by appropriate training of all stakeholders with regard to sexual violence against girls in schools in Kenya. This includes: students, teachers, TSC officers, medical practitioners, law enforcers and the general public. It is important to have government funded nationwide campaigns against sexual violence in schools.

TSC should put in place mechanisms to ensure that the Sexual Offences Act is taught in schools and that students are made fully aware of their rights. This is in order to prevent rogue or indifferent teachers from failure to ensure that the topics are taught in schools for awareness. In addition to students, parents should be sensitized on sexual violence against students in schools, the relevant legal provisions and the steps to take in case of cases of sexual violence. There should be nationwide campaigns on the media.

#### **4.3.5 Training of prosecutors**

Prosecutors should be trained on prosecution of sexual offences for effective prosecution and consequent conviction of sexual offenders. This should not be a one-time training but should be regular training. Prosecutors should be trained on the procedure, conducting investigations, handling evidence and how to treat and deal with victims of sexual offences and those who come to report sexual offences at the police stations. Training of prosecutors will ensure successful prosecution and conviction of sexual offenders.

#### **4.3.6 Parents Teachers Associations**

Parents' Associations established under the third schedule of the Basic Education Act should be involved in dealing with sexual violence in schools. The Associations should be educated on sexual offences and reporting mechanisms to ensure accountability of school heads and TSC in disciplining teachers who perpetrate sexual offences. Parents Associations should be involved in following up on cases of sexual violence in schools and members appointed to be part of committees dealing with reporting of sexual violence in their respective schools.

#### **4.3.7 Eradication of harmful cultural practices**

Laws on eradication of harmful cultural practices have not been effective in curbing harmful cultural practices that promote sexual violence against girls. This shows the deep entrenchment of traditions to such an extent that legislation is not fully effective. To reinforce legislation educating communities and empowering girls is necessary to deal with harmful cultural practices. Education and information campaigns should continue

with the negative consequences of harmful cultural practices that promote sexual violence against girls being highlighted.

## BIBLIOGRAPHY

### Books and studies

Freeman M and Veerman D A, *Lloyd's Introduction to Jurisprudence* (Sweet & Maxwell 2001)

MacKinnon C, *Feminism Unmodified* (Harvard University Press 1987).

Mackinnon C, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

Musembi C, Kameri-Mbote P, Kamau W and Baraza N, *Promoting the human rights of women in Kenya: a comparative review of the domestic laws* (UNIFEM Regional Office for East and Central Africa 2010).

Ndung'u J, Baraza N and Birungi H, *The making of the Kenya sexual offenses act, 2006: Behind the scenes*, (2009)

Omondi S, *Implications of the Adversarial Legal System's Procedures to the Special Needs of Child Victims of Sexual Abuse: Balancing the Rights of Accused Persons and Child Victims of Sexual Abuse in Kenya* (University of Nairobi, PHD Thesis, 2013).

Shanley M L, *Feminism, Marriage, and the Law in Victorian England: 1850 – 1895* (Princeton: Princeton University Press, 1989).

### Journal Articles

Barasa S, Wamue-Ngare G and Wanjama L, 'Experience of school-related gender-based violence by pupils and the culture of silence: A case of primary Schools in Kasarani District.' (2013) Vol.1 No. 3 International Journal of Education and Research.

Chege F, 'Education and Empowerment of Girls against Gender-based Violence' (2007) Vol.10 No. 1 Center for the Study of International Cooperation in Education Hiroshima University, Journal of International Cooperation in Education 53.

Jerop S, 'Sexual Abuse of School Age Children: Evidence from Kenya' (2009) Vol.12 No.1 Center for the Study of International Cooperation in Education Hiroshima University, Journal of International Cooperation in Education 177.

Kamau W, 'Legal Treatment of Consent in Sexual Offences in Kenya' (2014) Vol. 10 No.1 The Law Society of Kenya Journal 26.

Ojiambo P, 'Quality of Education and its Role in National Development: A Case study of Kenya's Educational Reforms' (2009) Vol 1. No. 1 Kenya Studies Review 133.

Suda C, 'Gender Disparities in the Kenyan Labour Market: Implications for Poverty Reduction' (2002) Vol.11 No.3 Nordic Journal of African Studies 301.

Turner W, Conover P and Lowery D, 'Redistributive Justice and Cultural Feminism' (1996) Vol 45 The American University Law Review 1276.

Wilum T, Pamela J and David L, 'Redistributive Justice and Cultural Feminism' (1996) Vol. 45 The American University Law Review 1275.

### **Online articles**

ACORD, 'An Audit of Legal Practice on Sexual Violence' <[www.acordinternational.org](http://www.acordinternational.org)> accessed 14 July 2014.

Action Aid International Kenya, 'Stop Violence Against Girls in School Project' (2011) Stop Violence Against Girls in Schools <[www.actionaid.org](http://www.actionaid.org)> accessed 3 February 2015

ActionAid, 'Stop Violence against girls in School: Violence against Girls and the Right to Education' (2013) <[www.ungei.org](http://www.ungei.org)> accessed 3 February 2015.

Agency for Cooperation and Research in Development, 'Violence against Women in Africa, An imported Agenda or a Hidden reality? Reflections from University Students in Africa' (2011) <[www.acordinternational.org](http://www.acordinternational.org)> accessed 3 February 2015.

Alessandra L S, 'The right to education from a developing country perspective' (2006) Finish NGOs Foundation for Human Rights' <[www.kios.fi](http://www.kios.fi)> accessed 19 October 2015.

Center for Global Development, 'Independent Research and Practical Ideas for Global Prosperity' <[www.cgdev.org](http://www.cgdev.org)> accessed 17 July 2015.

Centre for Applied Legal Studies, University of the Witwatersrand School of Law Cornell Law School's Avon Global Center for Women and Justice and International Human Rights Clinic, 'Sexual violence by educators in south African Schools' (2014) <[http://events.sas.ac.uk/events/list/ies\\_pastevents](http://events.sas.ac.uk/events/list/ies_pastevents)> accessed 17 September 2015

Centre for Global Development, 'Education and the Developing World,' (2002) <[www.cgdev.org](http://www.cgdev.org)> accessed 17 July 2015.

Creighton C and Yieke F, 'Gender Inequalities in Kenya,' <<http://pwrdc.ps>> accessed on 24 June 2014.

FIDA Kenya, 'Research Report, Implementation of the Sexual Offences Act' <[www.fidakenya.org](http://www.fidakenya.org)> accessed 17 February 2015.

FIDA Kenya, 'Implementation of the Sexual Offences Act: Research Report' (2010) <[www.fidakenya.org](http://www.fidakenya.org)> accessed 17 February 2015.

FIDA Kenya, 'Kenya Civil Society Position on Nepal; A gender Perspective' (2003) <[www.fidakenya.org](http://www.fidakenya.org)> accessed 17 February 2015.

FIDA Kenya, 'Towards Integrating Gender in the Transitional Justice process in Kenya' <[www.fidakenya.org](http://www.fidakenya.org)> accessed 17 February 2015.

FIDA, Gender Audit Study of the 10<sup>th</sup> Parliament, <[www.fidakenya.org](http://www.fidakenya.org)> accessed 17 February 2015.

FIDA-Kenya and the International Women's Human Rights Clinic, Georgetown University Law Center, 'Kenyan Laws and Harmful Customs Curtail Women's Equal Enjoyment of ICESCR Rights' (2008) <[www.fidakenya.org](http://www.fidakenya.org)> accessed 11 May 2015.

Government of Kenya, 'Taskforce on Implementation of the Sexual Offences Act Workshop Report,' (2011) <[https://tfsa.files.com/2012/06/soa\\_report\\_summary\\_w\\_cover-2.pdf](https://tfsa.files.com/2012/06/soa_report_summary_w_cover-2.pdf)> accessed 6 October 2015

Government of Kenya, Minister for Education, Science and Technology, Paper Prepared for Presentation at the Council on Foreign Relations Washington DC by Prof. George Saitoti, 'Education in Kenya: Challenges and Policy Responses' (April 2004) <[www.cfr.org](http://www.cfr.org)> accessed on 7 July 2015.

Herman O, 'The Monist Dualist Dilemma and the Place of International Law in the Hierarchy of Valid Norms under the Constitution of Kenya 2010' (2012) <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2099043](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2099043)> accessed on 22 July 2015.

Human Rights Watch, 'Scared at School: Sexual Violence Against Girls in South African Schools,' (2011). <[www.hrw.org/reports/2001/safrica/](http://www.hrw.org/reports/2001/safrica/)> accessed on 27<sup>th</sup> July 2015

Institute of Economic Affairs Kenya, 'Profile of Women's socio-economic status in Kenya' (2008) <[www.ieakenya.or.ke](http://www.ieakenya.or.ke)> accessed on 24/06/2014.

J Parkes and F Chege, 'Girls' Education and Violence: Reflections on the First Decade of the Twenty-First Century' (2010) <[www.e4conference.org](http://www.e4conference.org)> accessed on 24/06/2014.

Kameri - Mbote P, 'Violence against Women in Kenya: An Analysis of Law, Policy and Institutions' International Environmental Law Research Centre.

Kitetu C, 'Gender in Education: An overview of developing trends in Africa' (2008) Department of Languages and Linguistics Egerton University, Kenya <[ke.boell.org](http://ke.boell.org)> accessed on 11 November 2013.

Kwabena Gyimah-Brempong, 'Education and Economic, Development in Africa' Paper prepared for the 4<sup>th</sup> African Economic Conference, October 27-29, 2010, Tunis <[www.uneca.org](http://www.uneca.org)> accessed on 7 October 2015.

National Council for Population and Development, 'Policy brief no. 26 of 2012, Sexual and Gender Based Violence in Kenya: A Call for Action' (2012) <[www.svri.org/popcouncil](http://www.svri.org/popcouncil)> accessed on 7 October 2015.

NGO Advisory Council for Follow-up to the UN Study on Violence against Children, Five Years On: a global update on violence against children (2011) <[www.childhelplineinternational.org](http://www.childhelplineinternational.org)> accessed on 4 July 2015.

Yuan N, Koss M, and Stone M, 'The Psychological Consequences of Sexual Trauma' <<http://www.vawnet.org/applied-research-papers>> accessed on 7 July 2015.

Parkes J, and Heslop J, 'Stop Violence Against Girls in School; A cross country analysis of baseline research from Ghana, Kenya and Mozambique' ActionAid International (2011) <[www.actionaid.org](http://www.actionaid.org)> accessed on 17 November 2014.

Paul A, 'Cultural Practices That Hinder Children Rights among The Digo Community – Msambweni District, Kwale County' Kenya Alliance for Advancement of Children <[resourcecentre.savethechildren.se](http://resourcecentre.savethechildren.se)> accessed on 17 September 2015.

Report from the NGO Advisory Council for Follow-up to the UN Study on Violence against Children (October 2011) <<http://www.childhelplineinternational.org>> accessed on 7 October 2015.

Sarelin A, 'The right to education from a developing country perspective,' Finnish NGO foundation for human rights (2006) <[www.kios.fi](http://www.kios.fi)> accessed on 11 July 2015.

UNESCO, 'Education Counts: towards the Millenium Development Goals' (2010) <[www.unesco.org](http://www.unesco.org)> accessed on 7 July 2015.

United Nations Development Fund for Women, 'Ending Violence against Women and Girls: Evidence, Data and Knowledge in the Pacific Island Countries' <[www.unicef.org](http://www.unicef.org)> accessed on 7 July 2015.

VSO Jitolee, 'Policy Brief on Gender Based Violence, Health Policy Paper' <[www.vsojitolee](http://www.vsojitolee)> accessed on 24/6/2014.

WHO, 'World Report on Violence and Health' <[www.who.int](http://www.who.int)> accessed on 2 October 2015.

Dausab Y, 'The best interest of the child; Children's rights in Namibia' (2008) <[www.kas.de/upload/.../namibia/Children\\_Rights/Children\\_h.pdf](http://www.kas.de/upload/.../namibia/Children_Rights/Children_h.pdf)> accessed on 7 July 2015.

Zaida M, Dick S and Boerma J, 'Protecting school girls against sexual exploitation: A guardian programme in Mwanza, Tanzania' <[www.ungei.com](http://www.ungei.com)> accessed on 11 September 2015.