



LOST CHILDHOOD

DRIVERS OF CHILD PREGNANCY IN KENYA



NGEC
National Gender and
Equality Commission

LOST CHILDHOOD DRIVERS OF CHILD PREGNANCY IN KENYA

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National Gender and Equality Commission Headquarters
Solution Tech Place, 1st Flr, Longonot Road,
Upperhill, next to Crowne Plaza Hotel
P.O.BOX 27512-00506, Nairobi, Kenya
Tel +254 2(20)-272-7778/ +254 (20) 3213199

www.ngeckkenya.org

Twitter: @NGECKENYA

www.facebook.com/NGECKKenya

Kisumu Office

Reinsurance Plaza, 3rd Floor, Wing B
Oginga Odinga Street

Nakuru Office

Tamoh Plaza, 1st Floor, Kijabe Street
P.O BOX 15263-401 NAKURU

Garissa Office

Opposite Care International Offices,
Garissa town

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FOREWORD

The vulnerabilities of the girls must be addressed if Kenya is to meet its reporting State obligations and to meet the targets set out in the current adopted Sustainable Development Goals (SDGs) by 2030.

This is the first national public inquiry by the National Gender and Equality Commission (NGEC). The inquiry was conducted in fulfillment of the NGEC's mandate of promoting gender equality and freedom from discrimination. More specifically, NGEC has the mandate of auditing the status of special interest groups. In this regard, the commission may investigate matters on its own initiative, or on the basis of complaints by third parties, in any matter regarding any violations of the principles of equality and freedom from discrimination. The commission will make recommendations on how the matter under investigation should be resolved, and on any improvements considered necessary for the functioning of the institution or institutions concerned.

A variety of methods were used in this inquiry. They included desk review of policies and laws that are specific to the matter and face-to-face interviews with the girls who were pregnant and those who had become child mothers. The team also listened to oral testimonies from some of the child fathers. Focus Group Discussions (FGDs) and Key Informant Interviews with key decision makers in the community and at policy levels further shaped and enhanced the inquiry. The testimonies from the girls were startling and worrying. Society seemed to condemn and punish

underage girls who became pregnant. The girls were profiled as “having loose morals” and being solely responsible for the pregnancy. The inquiry also found out that cultural and traditional practices exposed the girl child to the risk of becoming a child mother or a child wife.

The testimonies from the girls were tested using a human rights and norms framework to establish which rights were violated. The report discusses the findings of the drivers of child pregnancy. It analyses the Kenyan strategies, policies and legal framework available to address and eliminate child pregnancy. The findings point to the fact that most children who get pregnant have no say and control over the situation.

The recommendations arising out of the inquiry proposes new and transformational thinking that considers the fundamental drivers of child pregnancy. The inquiry proposes a number of long lasting solutions that would seek to give women and girls a voice to determine with who and when to engage in sexual relationships at an appropriate age. The girls and boys require the right information to make informed decisions and choices.

The vulnerabilities of the girls must be addressed if Kenya is to meet its reporting State obligations and the

The commission is hopeful that the report will contribute significantly in the efforts of eliminating violations of child rights. I would like to thank all the panelists who worked with me and appreciate the support from the Secretariat.

targets set out in the current adopted Sustainable Development Goals (SDGs) by 2030. In this regard, focus will especially be on Goal 5 to achieve gender equality and empower all women and girls with a view to ending all forms of discrimination against all women and girls and to eliminate all forms of violence against women and girls in the public and private spheres. Other goals are eliminating all harmful practices, such as child marriage and early and forced marriage; Female Genital Mutilation (FGM) and adopting and strengthening sound policies and enforceable legislation for promotion of gender equality and the empowerment of all women and girls at all levels.

I note this is the first child public inquiry report in Kenya whose findings and recommendations are specific to national and county governments. The commission is hopeful that the report will contribute significantly in the efforts of eliminating violations of child rights. I would like to thank all the panelists who worked with me and appreciate the support from the Secretariat. I specifically appreciate the Acting CEO, Mr Paul Kuria for among other efforts, multiple rounds of editing he undertook on the report.

To all Kenyans who gave us their stories that made the analysis herein possible, I say thank you.



**Commissioner Winfred O. Lichuma, EBS
Chairperson.**

ACKNOWLEDGEMENT

Special appreciation goes to those individual witnesses who felt courageous enough to share with us their personal experiences on child pregnancy and child sexual engagement.

The National Gender and Equality Commission (NGEC) acknowledges the participation of the Kenyan children and children-stakeholders who took part in this inquiry on child pregnancy and related child sexual engagement, from various communities across the counties. We would also like to thank all Kenyans who sent memoranda. Special appreciation goes to those individual witnesses who felt courageous enough to share with us their personal experiences on child pregnancy and child sexual engagement. Without their individual and collective voices on the subject, it would not have been possible to attain the objectives of this noble and unique assignment.

The Commission highly acknowledges the members of the Inquiry Panel consisting of Commissioner Winfred O. Lichuma (NGEC and Panel Chair), Commissioner, Dr. Florence Wachira PHD (NGEC), Dr. Owuor Olungah, (PHD) Dr. Margaret Mak'anyengo and Hon Linah Jebii Kilimo - who received oral and written in camera in six regions of the Counties and wrote this Report.

The Commission is grateful for the contributions made by health professionals and institutions, consultants, experts, community leaders, community based organizations, civil society organizations, women groups and other stakeholders. The Commission also thanks government officials from the various institutions for their support and participation in this Inquiry. The Commission further appreciates the support of its development partners, in particular, the United Nations Population Fund (UNFPA) and the UN Women for technically and financially assisting in the undertaking of the Inquiry.

Finally, the Commission also thanks its Child pregnancy Inquiry team consisting of Mugo Muriithi (Inquiry Coordinator), Anne Mary Okutoyi, Dona Anyona, Sylvester Mbithi and all other Commission staff and interns for working tirelessly in planning and undertaking the public hearings, and contributing to the writing of this Report.

For ease of dissemination, the report has an accompanying documentary whose episodes are distilled from the entire process of inquiry. For more information, please contact info@ngeckkenya.org.



Paul Kuria
Acting CEO/Secretary

ACRONYMS AND ABBREVIATIONS

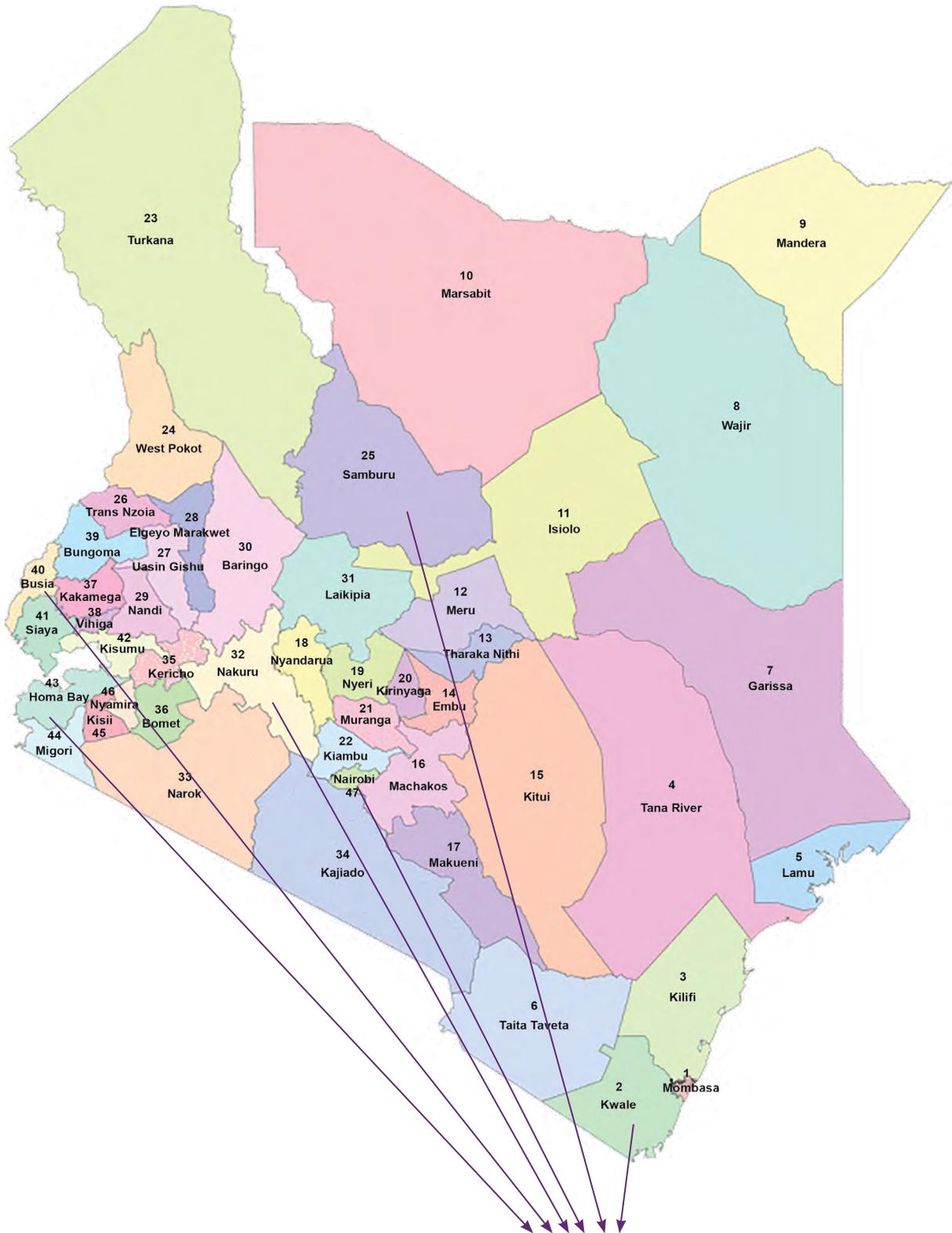
AIDS	Acquired Immune Deficiency Syndrome
ANC	Ante-Natal Care
CBO	Community Based Organisation
CDF	Constituency Development Fund
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CPR	Contraceptive Prevalence Rate
FGM/C	Female Genital Mutilation/Cutting
GBV	Gender Based Violence
GOK	Government of Kenya
HIV	Human Immunodeficiency Virus
ICESCR	International Covenant on Economic, Social and Cultural Rights
KDHS	Kenya Demographic and Health Survey
KNH	Kenyatta National Hospital
MDGs	Millennium Development Goals
MNH	Maternal and Newborn Health
MOH	Ministry of Health
NGO	Non-Governmental Organization
PWD	Persons with Disabilities
SGBV	Sexual and Gender Based Violence
SRHR	Sexual and Reproductive Health Rights
STIs	Sexually transmitted infections
UN	United Nations Organization
UNICEF	United Nations Children’s Fund
UNFPA	United Nations Population Fund
WHO	World Health Organization

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THE 47 COUNTIES OF KENYA



Counties covered by
the inquiry

EXECUTIVE SUMMARY

The drivers of child pregnancy report is a seminal product of an enduring public inquiry conducted by the Commission in six counties, based on existing information on the prevalence rates of child pregnancy from the 2014 Kenya Demographic Health Survey (KDHS). The counties reviewed were Samburu, Kwale, Nairobi, Nakuru, Busia and Homa Bay. A total of 774 children were interviewed. The evidence was corroborated by Focus Group Discussions and Key Informant Interviews with actors in protecting children and the experts' views on the subject matter.

The primary objective of the public inquiry was to establish the magnitude of child pregnancy in Kenya and make appropriate recommendations for managing the situation, both at the National and County Government levels. This report documents the gravity and pervasive trend of child pregnancies situation in the country and the harrowing ordeal experienced by survivors.

The report is divided into six chapters.

Chapter one deals with the framing of the concept of a public inquiry in the right of the Commission's mandate to commence its own investigations *suo moto* or on the basis of a complaint. In this case the public inquiry into drivers of child pregnancies was necessitated by the fact that empirical evidence indicates escalating child pregnancy in the country and a situation that threatens to spiral out of control if left unchecked.

A public inquiry of this nature was important because it involved conducting hearings that entailed

among other things, oral testimonies from the relevant parties on the issue at hand, conducting focused group discussions, key informant interviews and taking statements from key informants. The inquiry proved a powerful platform providing for a non-judicial mechanism to offer redress to victims of widespread human rights violations in a broad and systematic manner.

This public inquiry was specific to child pregnancy as opposed to teenage pregnancy predicated on the fact that the legal and constitutional definition of a child is "anyone under the age of 18 years" whereas a teenager has no set definition. The inquiry was conducted through a participatory consultative process that was divided into five phases, which were sequential and complementary.

Extensive documentary literature review and open sources research on issues of child pregnancy in Kenya was undertaken. Domestic/national, regional and international policies, laws, and treaties relevant to human rights frameworks were reviewed.

Participatory and consultative meetings were held with a wide range of stakeholders including government institutions, civil society organizations, the education sector, labor sector, religious sector, law and justice enforcers, healthcare providers, parents, opinion leaders (community elders and cultural custodians) and professionals.

Chapter two discusses the socio-cultural drivers of child pregnancy in Kenya by examining different literatures on culture and pregnancy. In this context, culture is defined as behaviour patterns that predispose, or are likely to predispose, girls and teenagers to early pregnancy.

The chapter provides insights into the unsettling dilemma faced by parents as they come to terms with the reproduction by their children and the fear of their daughters getting pregnant. Sub-Saharan Africa has been reported to have the highest level of child pregnancy cases in the world. This has been attributed to a number of factors, among them lack of sex education; widespread poverty; lack of parental guidance and counseling; cultural taboos that inhibit sex education; unavailability of contraceptives or low use and lack of access to information and educational opportunities, peer pressure and the social environment, such as inappropriate forms of recreation and rendezvous for premarital sex, among others. The chapter documents situation findings in each of the sampled Counties considering their similarities and diversities of the study areas.

Chapter three delves into the psychosocial and health factors associated with child pregnancy in Kenya. The interactions with the child survivors, care givers, parents, child fathers and expert witnesses pointed to physiological injury, exposure to sexual transmitted infections (STIs) including HIV, unsafe abortion, psychological trauma and depression, inability by child fathers to take up parental responsibility and high maternal morbidity and mortality.

Chapter four explores stakeholders' role and involvement in the management of child pregnancy. The chapter highlights the findings from the site visits that the inquiry panel undertook including missions to schools and shelter homes. The chapter also enumerates the findings from the Focused Group Discussions of the key stakeholders and experts involved in management of child pregnancy. It also draws from the open source that was open throughout the inquiry.

Chapter five interrogates the legal and policy framework on child pregnancy. The chapter notes that Kenya has in place several policies that address child rights issues including child pregnancy. However, it is noted that these policies are not harmonized and lack well-coordinated strategies for implementation. One shortcoming highlighted by this inquiry is the total absence of the child's voice on matters affecting them in compliance to the Convention on the Rights of the Child (CRC), which Kenya has ratified and domesticated through the Children's Act. The reports notes that the institutional framework for addressing matters of the child is weak and needs to be strengthened to ensure that the vulnerability of the girl-child is addressed.

The chapter also discusses other legal instruments including international and regional treaties and commitments that cater for the rights of the child. The fundamental principles are survival and best interest of the child and the principle of non-discrimination. The law also provides for parental responsibility to maintain the child and provide adequate diet, shelter, clothing, and medical care including immunization, education and guidance.

The report observes that while Kenya is on track in amending the discriminatory laws, that have not translated into positive results and a lot more needs to be done to protect the girl child from cultural practices that disadvantages her, causing her to drop out of school. The report notes that constitutional provisions have not been

fully implemented to the best interest of the child and there is need to have age appropriate education on sexuality, social skills, and life skills. Above all, the report faults the religious organizations for opposing the move to introduce sex education in schools maintaining that it will expose the girls

to promiscuity. However, it calls on the religious organizations as stakeholders to reconsider the stand to have age appropriate sex education in school curriculum.

The report notes that the legal framework has not been specific on the subject of girl pregnancy at the detriment of the children who require the information to prevent and cope with pregnancy when it occurs.

Chapter six offers conclusions and recommendations emanating from the inquiry. The findings on all fronts are that child pregnancy is rampant across the country. The recommendations are based on thematic issues addressed in the report among them socio-cultural dimensions, stakeholder's role and involvement, policy and legal framework and institutional bodies and government (county and

national) to take objective measures to mitigate child pregnancies in Kenya.

One shortcoming highlighted by this inquiry is the total absence of the child's voice on matters affecting them in compliance to the Convention on the Rights of the Child CRC), which Kenya has ratified and domesticated through the Children's Act. The reports notes that the institutional framework for addressing matters of the child is weak and needs to be strengthened to ensure that the vulnerability of the girl-child is addressed.



CHAPTER ONE |

1.0 BACKGROUND

Child pregnancy and child marriage are interrelated. According to a UNICEF report of 2015, child marriage affects girls far more than boys. Globally, one in three, or approximately 70 million young women aged 20 – 24 in developing countries were married before the age of 18, with one out of three marrying before age 15.

1.1 The National Gender and Equality Commission

The National Gender and Equality Commission (NGEC) is a constitutional body established pursuant to Article 59 (4) and (5) of the Constitution of Kenya 2010 and the National Gender and Equality Act (2011) with the overall mandate of promoting gender equality and freedom from discrimination in accordance with Article 27 of the Constitution. NGEC's target groups include children, women, youth, older members of society and persons with disabilities, minorities and marginalized groups herein after referred to as special Interest Groups (SIGs) The Commission's functions are stipulated in Section 8 of the NGEC Act, to include monitoring, facilitating, advising and coordinating matters relating to equality and freedom from discrimination.

1.2 The Public Inquiry

A public inquiry undertaken by a National Human Rights Institution is an investigation into systemic human rights violation in which the general public is invited to participate. National inquiries are machineries, which national human rights institutions, like the NGEC, can use to pursue much of their core investigative functions, educating and raising awareness, monitoring and advising on human rights violations. These investigations are conducted in a transparent public manner and involve public evidence from witnesses and experts. The investigations are directed toward examination of systemic patterns of human rights violations with the objective of identifying the drivers and making recommendations, pursuant to the findings. Recommendations made from such public investigations have usually been used to review policy and legal frameworks to end such human rights violations.

Section 8(f) of the NGEC Act specifically mandates it to investigate on its own initiative, or on the basis of complaints, any matter in respect of any violations of the principle of equality and freedom from discrimination and make recommendations for the improvement of the functioning of the institutions concerned. Further, Section 38 of the Act stipulates that such hearings may be open to the public. It is on this premise that the NGEC conducted a public inquiry on child pregnancy in Kenya. Public inquiries involve conducting hearings that entail, among other things, oral testimonies from the relevant parties on the issue at hand, conducting focused group discussions and taking statements from key informants. The importance of public inquiries

is that they constitute a powerful non-judicial mechanism for providing redress to victims of widespread human rights violations in a broad and systematic manner.

1.3 Why focus on child pregnancy?

The legal and constitutional definition of a child is anyone under the age of 18 years. In the recent past there have been disturbing statistics and frequent media reports on child pregnancy across the country, which is a clear indicator of the vulnerability of the Kenyan girl-child and a violation of child rights and protection from sexual abuse and underage pregnancy. Global literature shows that 7.3 million children are annually born to young girls aged 15 to 19. Nearly one-third of these births are from girls under the age of 15, the majority of whom are already in a marriage. According to the United Nations Population Fund¹ (UNFPA, 2014), about twenty thousand girls of age 18 and below in developing countries give birth daily. In Kenya, in 2014, 18percentage of teenage girls aged 15 – 19 had conceived at least once. Girls in the lowest wealth quintile and those with no education were most likely to be pregnant within this age bracket. This was especially so at the Coast and in Nyanza regions. In other instances, defilement of minors has also contributed to child pregnancy.²

The youngest girl to give birth in Kenya was aged 9 years in Kenyatta National Hospital. Child pregnancy in the country has been steadily on the rise. The situation is likely to get out of hand if not addressed effectively. According to Policy Brief No 31 of June 2013 of the National Council for Population and Development (NCPD) childbearing is common and increases dramatically from 2percentage among girls at age 15 to 36percentage among girls of age 19, while the Kenya National Bureau of Statistics indicate that 37percentage of girls and

44percentage of boys ages 15 – 19 have already had sexual intercourse. Furthermore, according to the Kenya Population Situation Analysis Report of 2013, twenty-six in every 100 girls in Kenya are married before they are 18, thereby exposing them to child pregnancy. Child marriages are highest in North Eastern, Coast and Nyanza regions.

Child pregnancy and child marriage are interrelated. According to a UNICEF report of 2015, child marriage affects girls far more than boys. Globally, one in three, or approximately 70 million young women aged 20 – 24 in developing countries were married before the age of 18, with one out of three marrying before age 15.³

Child pregnancy has adverse social, economic, cultural and political consequences. They include early marriage and death. Others are health complications for the young girls, such as low birth weight in newborns, obstetric fistula, school dropout, unsafe abortion, to mention a few. Additionally, children born to very young mothers are predisposed to higher risks of illness and death due to limited access to reproductive health services and proper nutrition. These adverse effects deny the girls the opportunity to fully engage in and enjoy their rights as guaranteed under various laws and policies.

It is against this background that the NGECC conducted this national public inquiry. The findings from this inquiry are expected to contribute towards making recommendations on the protection of children from pregnancy and related sexual offences.

1.4 Objectives the Inquiry

The primary objective of the public inquiry was to establish the drivers and magnitude of child pregnancy in Kenya and make appropriate recommendations for managing the situation, both at the National and County Government

1 <http://www.unfpa.org/adolescent-pregnancy>, accessed 7th October 2015

2 KDHS, 2014/15 available at www.knbs.or.ke

3 UNICEF 2015 report: A post 2015 world fit for children, p. 27

levels. The specific objectives of the inquiry were to:

- Contextualize Kenya's socio-cultural and psycho-medical setting that promote drivers of child pregnancy;
- Explore implementation gaps in the existing relevant laws and policies designed to promote equality, freedom from discrimination and the sexual and reproductive health rights of minors;
- Assess the opportunities that exists within the criminal justice system that is useful for mitigating child sexual violation and their implications on child pregnancy.
- Make appropriate recommendations for redress by both National and County Governments;

1.5 Methodology of the Inquiry

The inquiry was conducted through a participatory consultative process that was divided into five phases, which were sequential and complementary. The phases are discussed below.

1.5.1. Literature Review

Extensive documentary literature review and open sources research on issues of child pregnancy in Kenya was undertaken. Domestic/national, regional and international policies, laws, and treaties and commitments relevant to human rights frameworks were reviewed. The research findings provided immediate working reference materials for interrogating the inquiry information and witnesses. The open sources research was also used to collect data and information from the media and other institutions on the trends on child pregnancy in Kenya.

1.5.2 Stakeholder Consultations

Participatory and consultative meetings were held with a wide range of stakeholders including government institutions, civil society organizations, the education sector, labor sector, religious sector, law and justice enforcers,

healthcare providers, parents, opinion leaders (community elders and cultural custodians) and various professionals. The meetings sought consensus and provision of crucial background information for effective planning and execution of the face-to-face discussions and interviews.

1.5.3 Reconnaissance Missions

Reconnaissance missions were arranged, based on statements taken in the select counties, ahead of the public hearings. The missions involved conducting key informant interviews. These included stakeholders' representatives such as county Children's Officers, County Education Officers, County Health Officers, County Labor Officers and County-based civil society organization. The researchers also conducted focus group discussions with religious leaders, opinion leaders, parents and women who had become pregnant as children.

Potential witnesses were identified. These were either survivors or eyewitnesses, experts, those affected and caregivers. The most compelling cases were identified and sampled for oral testimony. A total of 774 child witnesses drawn from six counties across the country were interviewed. In camera sessions were conducted in each of the counties and a national experts' hearing forum held in Nairobi. The child witnesses constituted both boys (15percentage) and girls (85percentage) of ages 12-18.

1.5.4 Public Hearings

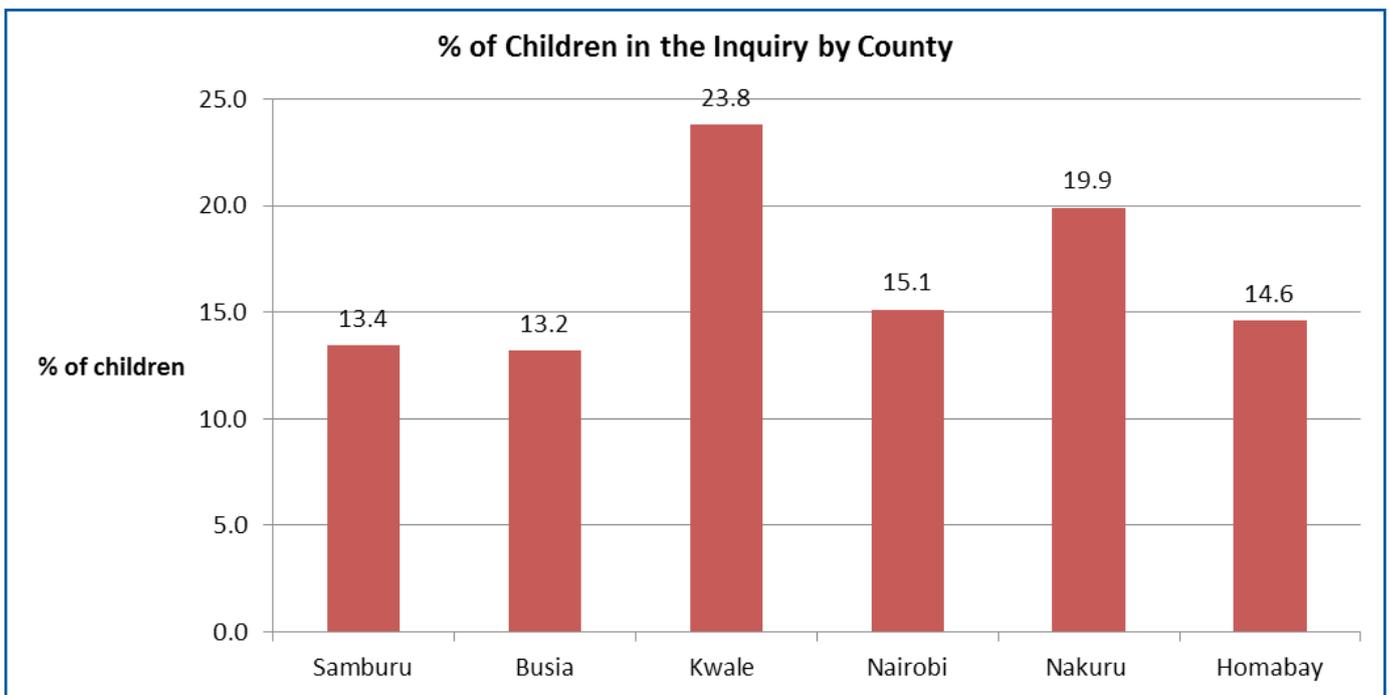
The panel took oral testimonies from the witnesses. The oral testimonies were recorded verbatim. Written memoranda were also received from experts.

1.5.5 Data collection

The actual hearings and data collection took place after the reconnaissance. Data collection tools were developed for children, police officers, judicial officers and health workers. They were FGD guides, Key informant interview guides and observations checklist.

Child pregnancy has adverse social, economic, cultural and political consequences. They include early marriage and death. Others are health complications for the young girls, such as low birth weight in newborns, obstetric fistula, school dropout, unsafe abortion, to mention a few.

Homa Bay. A total of 774 children were interviewed with 130 randomly selected to testify before the panel. The evidence was corroborated by focused group discussions with actors in protecting children and the experts’ views on the subject matter. Figure 2 presents the percentage distribution of children participating in the inquiry by county.



The inquiry was limited to the sampled six counties. However, written memoranda were received from the across the country. The findings were tested against the existing policy and legal framework and the regional and international human rights framework and conclusions and recommendations made. Some of the girls were too shy to testify orally and their written statements were used in analysis.

1.5.6 Data Analysis and Report writing

Narratives, testimonials and other qualitative data were analysed and triangulated with descriptive data gathered using observations and survey methods. The results are presented in this report along main objectives of the inquiry.

1.6 Scope of the Inquiry

Six county governments were sampled across the country, based on existing information on the prevalence rates of child pregnancy. The counties were Samburu, Kwale, Nairobi, Nakuru, Busia and

1.7 Literature Review

1.7.1 Select international human rights law

Kenya has ratified numerous treaties some of which are relevant to the study and will be discussed. Ratification of treaties gives the State obligations to respect, protect, promote and fulfill the rights guaranteed by enacting relevant laws, policies, administrative procedures and guidelines to fulfill the requirements. The analysis of the

findings will use the human rights framework to find out if the States' obligations of respecting, promoting and fulfilling fundamental rights and freedoms has been undertaken as per the minimum standards set up in the treaties. The principal source of human rights is in the international treaties. The analysis of the evidence makes reference to the various treaties, committee's concluding observations in the role of monitoring treaties and the guidance given by way of general comments from time to time on the subject matter and reports filed by the UN Secretary General to the General Assembly for adoption. Kenya has not ratified most of the optional protocols that allow individual complaints mechanism to all individuals to make complaints to the treaty monitoring committees after they exhaust domestic remedy. Kenya has fulfilled its reporting obligations in most treaties and the concluding observations will be considered.

Kenya is a signatory to the transforming the world 2030 Agenda on Sustainable Development Goals adopted by Heads of States and Governments in September 2015. Goal 5 gives a stand-alone range of targets on gender equality and empowering women and girls. Specifically the targets seek, among other things to eliminate all harmful cultural practices, such as child pregnancy, early and forced marriage and female genital mutilation (5.13)⁴

Key international and regional human rights treaties and Kenyan domestic law relevant to the drivers of pregnancy are discussed below.

a) **The Convention of the Rights of the Child (CRC) 1989**

The landmark treaty⁵ was adopted by the General Assembly in 1989. Though issues concerning children had been incorporated in other treaties, it was found necessary to have a specific treaty protecting children. This was influenced by reports of grave injustices suffered by children that included high infant

mortality, deficient health care, limited opportunities for basic education, alarming accounts of child abuse, exploited as prostitutes and exposure to harmful jobs, aspects of children in prison, as refugees and victims of armed conflict.

The CRC sets out common standards taking into account the different cultural, social, economic and political realities of individual States that set up their own measures in implementing the treaty. The CRC is based on four general principles namely: Non-discrimination (art. 2); The Best Interest of the Child (art.3); The right to life, survival and development (art.6) and the views of the child (art. 12)

Kenya signed the treaty on 26th January 1990 followed by accession on 30th July 1990. The accession gave Kenya the obligation to take legislative, administrative, social and educational measures to protect the rights of children. The rights include ensuring maximum child survival and development. Parents have the primary responsibility for a child's upbringing but the State shall provide them with appropriate assistance and develop child-care institutions. State shall protect children from physical or mental harm and neglect including sexual abuse or exploitation. Disabled children shall have the right to special treatment, education and care. Children are entitled to the highest attainable standard of health. State is to ensure that health care is provided to all children. Primary education shall be free and compulsory. Discipline in schools must respect child's dignity. Children shall have time to rest and play and equal opportunities for cultural and artistic activities. States are to protect children from economic exploitation and from

4 The SDGs available at [www.un.org/ga/search/view_doc.asp?A/Res/70/1\\$Lang=E](http://www.un.org/ga/search/view_doc.asp?A/Res/70/1$Lang=E)

5 UN AG Resolution 44/25 of 20 November 1989 available at www.treaties.un.org.

work that may interfere with their education or be harmful to their health or wellbeing. Children must not be tortured or suffer cruel or degrading treatment. Children of minority and indigenous populations shall

The African Charter on the rights of the Child originated because members of the AU believed that the CRC missed important socio-cultural and economic realities particular to Africa. It includes what is considered African values and experiences. Specifically the challenging African traditions that expose children to unsafe environment that promotes child marriage, children born out of wedlock.

freely enjoy their own culture, religion and language. Children who have suffered mistreatment, neglect or exploitation shall receive appropriate treatment or training or recovering and rehabilitation. States shall make the rights set out in the Convention widely known to both adults and children.

b) UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

CEDAW is the centerpiece of the international protection of the rights of women. Often it is described as the international bill of rights for women. The treaty defines discrimination and seeks that States take legislative, and administrative measures to protect the rights of women⁶. Kenya ratified the treaty in 1984 and has complied with the reporting obligations.

c) The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and

Welfare of the Child⁷ recognizes that a child occupies a unique and privileged position in the African Society and that a child should grow up in a family environment in an atmosphere of happiness, love and understanding. It recognizes that for the child physical and mental development requires particular care with regard to health, physical, mental, moral and social development does require legal protection. It recognizes one is a child up to the age of 18 years. The entitlements of the child include non-discrimination based on the parents or legal guardians, race, ethnic group, colour, sex, language, religion and political or other opinion, national and social origin, future, birth or other status. It promotes the best interest of the child in all actions concerning the child.

Every child has rights to survival and development that includes the inherent right to life. The following specific rights of the child are provided. The right to a name and nationality, freedom of expression, association and freedom of thought, conscience and religion. Protection of privacy, right to education, leisure, recreation and cultural activities. Every child who is mentally or physically disabled shall have the right to special measures of protection in keeping with his physical and moral needs and under conditions, which ensure his dignity, and promote his self-reliance and active participation in the community. Every child has a right to enjoying the best attainable state of physical, mental and spiritual health. child labour is forbidden and children are protected against child abuse and torture. The family is the natural unit and State parties shall take

⁶ UN December 1979 available at www.ohchr.org

⁷ OAU DOC. (ab/leg/24.9/490)1990 entered into force on November, 29,1999 and is available at www.au.int and came into force on 29 November 1999. Kenya ratified the Treaty in the year 2000.



Pic: www.health-e.org.za

appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and dissolution. Every child is entitled to parental care and protection.

The African Charter on the rights of the Child originated because members of the AU believed that the CRC missed important socio-cultural and economic realities particular to Africa. It includes what is considered African values and experiences. Specifically the challenging African traditions that expose children to unsafe environment that promotes child marriage, children born out of wedlock. In both treaties the fundamental guiding principles include non-discrimination, the best interest of the child, the life, survival and development of the child, child participation, duties and responsibilities of the child. Kenya ratified

the treaty on 25th July 2000 and has since submitted reports to the relevant committee. Recently the African Union launched a campaign to end child marriages recognizing definition of a child to be below 18 years.

The African Union Commission Chairperson Dr. Nkosazana Dlamini-Zuma, had this to say about the launch:

We must do away with child marriage. Girls who end up as brides at a tender age are coerced into having children while they are children themselves.⁸

The campaign is focused on accelerating change across the continent by encouraging African governments to develop strategies to raise awareness of and address the harmful impact

⁸ From Dr. Nkosazana Dlamini-Zuma, Chairperson, AUC at the International Conference on Family Planning, Addis Ababa, November 2013

of child marriage as well as expediting and invigorating the movement to end child marriage by:

- a) Supporting policy action in the protection and promotion of human rights especially with a view to addressing violence against girls and women promoting gender equitable social norms.
- b) Mobilising continental awareness of and engagement to end child marriage
- c) Removing barriers and bottlenecks to law enforcement.

The two -year campaigns recognizes that the repercussions of marrying as a child affect girls throughout their lives. Marriages often mark the end of girls' education, limit her economic opportunities and expose her to physical, sexual and emotional violence. It also threatens efforts to improve maternal health access in Africa.

1.7.2 The Domestic /National Framework Protecting Child Pregnancy

The Kenyan Legal framework does not specifically provide for protection of child pregnancy. However, the actions of sexual violence that lead to child pregnancy are protected and criminalized. The following key legislations provide for the promotion and protection of Children's rights and are relevant to the aspects of the public inquiry.

a) **The Constitution of Kenya 2010**

The Constitution of Kenya 2010⁹ is the supreme law of Kenya and binds all persons and all organs of State at national and county government. The constitution of Kenya has an elaborate bill of rights in chapter four that protects the right of the child. The rights provided include; Right to life, Equality and freedom from discrimination, Inherent dignity and the right to have the dignity respected and protected, Freedom from security of the person, right to privacy, right not to be subjected to slavery, servitude

and forced labour, freedom of conscience, religion and opinion, Freedom of expression and association, and Access to information.

Specifically in promoting the rights of the children, the Constitution provides that every child has the right to a name and nationality, to be free and compulsory basic education, Basic nutrition, shelter and healthcare, To be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative labour, to parental care and protection which includes equal responsibility of the mother and father to provide for the child whether married or not, not to be detained except as a measure of last resort and when detained to be held for the shortest appropriate period of time separate from adults and in conditions that take account of the child's sex and age. In all, the best interest of the child is of paramount importance.

Children are among vulnerable groups whose needs require protection together with women, older members of society, persons with disabilities, youth, and members of minority or marginalized communities.

Within the framework of economic and social rights, the rights provided for, include the right; to the highest attainable standard of health which includes the rights to; healthcare services, including reproductive healthcare, accessible and adequate housing and to reasonable standards of sanitation, to be free from hunger and to have adequate food of acceptable quality, to clean and safe water in adequate quantities, to social security and to education. Further that a person should not be denied emergency medical treatment and that the State shall provide appropriate social security to persons who are unable to support themselves and their dependants.

9 The Constitution of Kenya available at www.kenyalaw.org

In protection of language and culture, a person cannot compel another person to perform, observe or undergo any cultural practice or rite while promoting the right of the family, the Constitution preserves marriage for adults by providing that. Every adult has the right to marry a person of the opposite sex based on the free consent of the parties. Child means an individual who has not attained the age of eighteen years as per the constitution of Kenya 2010. Disability includes any physical, sensory, mental, physical, or other impairment, condition or illness that has or is perceived by significant sectors of the community to have, a substantial or long-term effect on an individual's ability to carry out ordinary day-to-day activities.

The Act provides for the rights and rehabilitation of persons with disabilities and establishes the National Council for Persons with Disabilities to whose functions include issuing adjustment orders and giving advisories in ensuring protection of the rights of persons with disabilities.

b) The Children's Act

The Children's Act¹⁰ makes provision for parental responsibility, fostering adoption, custody, maintenance, guardianship, care and protection of children, makes provision for the administration of Children's Institutions and gives effect to the principles of the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child and other connected purposes.

The Act defines a child to mean any human being under the age of 18 years. Further it defines child abuse to include physical,

sexual, psychological and mental injury. Children who are below 10 years are referred to as children with tender years. Disabled child means a child suffering from a physical or mental handicap, which necessitates special care for the child. Likewise, early marriage or cohabitation is prohibited with a child or any arrangement made for such marriage or cohabitation.

The law provides safeguards for the rights and welfare of the child. The fundamental principles are survival and best interest of the child and the principle of non-discrimination. Generally, every child has the following rights protected and the best interest of the child shall be a primary consideration, the Right to life, safeguard and promote the rights and welfare of the child, conserve and promote welfare of the child and the opinion of the child is important. No child shall be subjected to any form of discrimination and they are entitled to the right to parental care, right to education, right to health care and protection from child labour. Disabled child has a right to be treated with dignity and to be accorded appropriate medical treatment, special care, education and training free of charge or at reduced cost. Protection from abuse both physical and psychological and those who become victims be accorded appropriate treatment. Protection from harmful cultural rites including female circumcision, early marriage or other cultural rites, customs or traditional practices that negatively affect the child's life, health, social welfare, dignity or physical or psychological development. A child is entitled to leisure, play and participation in cultural and artistic activities. Torture and deprivation of liberty is prohibited. Right to privacy is protected

The law also provides for parental responsibility to maintain the child and provide adequate diet, shelter, clothing, and

¹⁰ See www.kenyalaw.org Revised in 2012

medical care including immunization and education and guidance. They have a duty to protect the child from neglect, discrimination and abuse among others.

c) Sexual Offences Act, No. 3 of 2006

The Sexual Offences Act¹¹ is the primary law dealing with sexual offences, their definition, prevention and the protection of all persons from harm from unlawful sexual acts.

The offences relevant to the public inquiry include; (a) Acts which cause penetration or indecent acts committed within the view of a family member, child or person with mental disabilities (s.7), (b) Defilement (s. 8), (c) attempted defilement (s. 9), indecent act with a child (section 11), promotion of sexual offences with a child (s 12), child sex tourism (section 14), child prostitution (s. 15), child pornography (s. 16), prostitution of persons with mental disabilities (s. 19), incest (s. 20 and 21), administering a substance with intent (s. 27), cultural and religious sexual offences (s.29) among others.

d) Counter-Trafficking in Persons Act, No. 8 of 2010

This Act¹² seeks to implement Kenya's obligations under the United Nations Convention against Transnational Organized Crime particularly its Protocol to prevent, suppress and punish Trafficking in Persons especially Women and Children. It provides for the offences relating to trafficking in persons and for connected purposes. The Act creates offences, trial and remedies for victims of trafficking in persons as well as establishing the Counter-Trafficking in Persons Advisory Committee.

e) Mental Health Act No. 10 of 1989

This Act¹³ sought to amend and consolidate

the law relating to the care of persons suffering from mental disorder or mental sub-normality with mental disorder; for the custody of their persons and the management of their estates; for the management and control of mental hospitals. However the act is archaic and has several shortcomings probably due to lack of interest in the rights of persons with intellectual disabilities. The Kenya National Commission on Human Rights (KNCHR) in its report *Silenced Minds: the Systemic Neglect of Mental Health in Kenya*¹⁴ notes that the Act has never been amended since 1991, is outdated and some of its provisions are not in line with international standards and the Constitution.

f) Penal Code

The penal code¹⁵ is the primary law prescribing offences. Most parts of this law were amended by the sexual offences Act in respect of sexual related offences. S. 146 provides for the offence of unlawfully having carnal knowledge with an idiot or imbecile or attempts to have unlawful carnal knowledge with such a person. It is punishable with imprisonment for 14 years with hard labour. The Security Laws (Amendment) Act 2014 in Section 14 introduced a new section 251A to the penal code creating the offence of Insulting modesty by forcible stripping, which provides that person, who intentionally insults the modesty of any other person by forcibly stripping such person, commits an offence and is liable, upon conviction, to imprisonment for a term not less than ten years. The Security Laws (Amendment) Act, 2014 further in Section 18 introduced a new section 344A to the penal code which provides that a person convicted of an offence under the Sexual Offences Act shall

11 See www.kenyalaw.org

12 See www.kenyalaw.org

13 See www.kenyalaw.org

14 KNCHR, *Silenced Minds: The Systemic Neglect of Mental Health in Kenya* http://www.knchr.org/Portals/0/EcosocReports/THE_%20MENTAL_HEALTH_REPORT.pdf

15 Available at www.kenyalaw.org

be subject to automatic police supervision for a period of five years from the date of his release from prison.

g) Evidence Act

The evidence Act¹⁶ guides the judicial proceedings in taking evidence to prove the occurrence of the offences. After the operationalization on the sexual offences Act, it was amended to allow evidence that is uncorroborated. Section 124 of the Evidence Act provides that corroboration is not necessary in sexual offences when the only evidence is that of the alleged victim of the offence. That the court will receive the alleged evidence of the victim and proceed to convict the accused person if for the reasons to be recorded in the proceedings; the court is satisfied that the alleged victim is telling the truth. This amendment was necessitated to assist in matters where there is no corroboration especially in sexual offences that are mostly committed in secrecy and for children who are traumatized by the evidence.

In many countries in Sub-Saharan Africa, there has been a gradual shift from focus on extended family structures towards concentration on nuclear families. With this change the role of the extended family in educating and role modeling for young people in sexual behaviour has disappeared.

h) Marriage Act 2014

The marriage Act¹⁷ came into force in 2014 as an amendment to consolidate the various laws that existed on marriage and divorce. The Act reiterates the meaning of a child and sets the minimum age of marriage. A person shall not marry unless the person has attained the age of 18 years.(S. 4) . A child is

not competent to witness a marriage and a marriage is void if either party is below the minimum age of marriage. The marriage Act also applies to customary marriage and the notification of the marriage shall confirm that the parties to the marriage are eighteen years of age. (S. 45(3)(a))

i) Teachers Service Act¹⁸

The Teachers Service Act (TSC)¹⁹ is created as a constitutional body with the mandate to register and deregister teachers and to review the standards of education among others. In exercising disciplinary function, TSC can decline to register a teacher who has been convicted of a sexual offence or an offence committed against a learner. Equally the commission has powers to remove from the register any person who has been convicted of a sexual offence or an offence against a pupil or a student. The Commission shall cause the name and particulars of a teacher whose name is removed from the register to be published in the Gazette within one month from the date of such removal. (S.30)

j) Prohibition of Female Genital Mutilation

The objects of the Act²⁰ are to prohibit the practice of female genital mutilation, to safeguard against violations of a person's mental or physical integrity through the practice of female genital mutilation and for other connected purposes. It creates the offence of female genital mutilation. This offence is extended to; a medical practitioner who performs the cut under surgical procedures. It is an offence to aide and abet female genital mutilation, to use premises to perform FGM and to poses tools or equipment, to fail to report the offence and to use derogatory or abusive language. The law establishes a management board whose functions include designing programmes

¹⁶ Ibid

¹⁷ Available at www.kenyalaw.org

¹⁸ Available at www.kenyalaw.org

¹⁹ Ibid

²⁰ Ibid

to create awareness and to advise the government and design programmes aimed at eradicating female genital mutilation.

k) Basic Education Act 2013

The Act²¹ basically gives effect to the rights of the child provided for in Article 53 of the Constitution and seeks to promote and regulate free and compulsory education and sets education standards with quality assurance commission. It redefines a child and sets provision for special needs education. The Act establishes a management board whose function is to advise the cabinet secretary responsible for education on the state of education and service delivery. The Cabinet Secretary in consultation with the board shall provide for learning institutions, appropriate boarding primary and secondary schools in arid and semi- arid areas, hard to reach and vulnerable groups as appropriate and special and integrated schools for learners with disability. The Act provides for free tuition in public schools. Any other charges imposed by a public school must be with approval of the Cabinet Secretary in consultation with County Education Boards but with a proviso that no child shall be refused to attend school because of failure to pay such charges. Primary and secondary education is compulsory and it is an offence for a parent to fail to take their child to school.

l) HIV and AIDS Prevention and Control Act 2006

The law²² provides for measures for the prevention, management and control of HIV and AIDS to provide for the protection and promotion of public health and for appropriate treatment, counseling support and care of persons infected and at risk of HIV and AIDS infection. It provides that a person who is charged with an offence of

a sexual nature under the Sexual Offences Act 2006 may be compelled to undergo an HIV test (S.13(3)). When giving consent for testing of HIV any child who is pregnant, married or a parent or is engaged in behaviour which puts him or her at risk of contracting HIV may in writing, directly consent to an HIV test. (S. 14(1)(b)).

m) Protection against Domestic Violence 2015

The Act²³ provides for protection and relief of victims of domestic violence specifically spouses and children. Domestic violence includes abuse that is related to child marriage, female genital mutilation and virginity testing, offences of defilement, incest and sexual abuse. Domestic relationship includes one being a family member. (s.4) who could be a child including an adopted child. (s.5) A child is by the law able to apply for protection orders if any of the domestic relationship offences occur. A parent or guardian, children officer, police officer, probation officer, a conciliator, social welfare officer or any other person with leave of the court can make the application.

n) The Films and Stage Plays Act

The law²⁴ defines a child to be a person who has attained the age of four years but has not attained age of eighteen years. (s.2) It gives the Kenya Film Classification Board powers to regulate the creation, broadcasting, possession and distribution of films. It is to examine every film and every posters submitted, impose age restriction on viewership and give consumer advice having due regard to the protection of women and children against sexual exploitation or degradation in cinematograph films and on internet. (s.15(1)) The board must also clear and issue certificate for all films for

21 Ibid

22 Ibid

23 Ibid

24 Ibid

exhibition and broadcast. No person shall exhibit any film at an exhibition to which the public are admitted or distribute such film unless he is registered as an exhibitor or distributor by the board (s. 12(1-2)). The Act provides for offences and penalties. (s.32).

o) Persons with Disability Act²⁵

The Act provides for the rights and rehabilitation of persons with disabilities and establishes the National Council for Persons with Disabilities to whose functions include issuing adjustment orders and giving advisories in ensuring protection of the rights of persons with disabilities. Discrimination based on ground of disability is prohibited. The Constitution of Kenya 2010 provides for elaborate rights for persons with disability (Article 54). Specifically, PWDs have a right to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with interests of the person.

p) Witness Protection Act

The law²⁶ provides for protection of witnesses in criminal cases and other proceedings. The Witness Protection regulation 2008 establishes the Witness Protection Unit in the Office of the Attorney General with clear functions to ensure proper protection for the witness. Needs of children, elderly and persons with disabilities shall be given due regard in dealing with witnesses.

1.7.3 The Policy Framework

There are several policies dealing with the reproductive rights of youth, such as the Adolescent Reproductive Health and Development Policy (ARHD) and the National Reproductive Health Policy. The ARHD, in particular, aims at contributing to the improvement of the quality of life and well-being of Kenya's adolescents and youth. According to

the ARHD, sexual activity among young people in Kenya begins early with low contraceptive use contributing to early pregnancy.

The Kenya Health Policy (2012 – 2030), which is premised on the Constitution of Kenya, 2010 and Vision 2030, is also applicable. It seeks to minimize health risk factors, such as unsafe sexual practices. It tasks specific ministries to take appropriate steps in realization of adolescent health issues. The National Youth Policy 2006 highlights teenage pregnancy as one of the key issues that adversely affect the youth. The policy creates various obligations for State parties and the private sector, aimed at ensuring enjoyment of youth rights. Also key is the Population Policy for National Development of 2012, which highlights early pregnancy as a driver of high population growth.

Kenya Population Data Sheet 2011 notes that 43percentage of Kenya's population is below the age of 15 and there is evidence of underage fertility among Kenyan children. This has also been confirmed by Kenya's demographic and health survey reports. The 2014 Kenya DHS For example, observes that 15percentage of women ages 15-19 have already given birth, while 18percentage have begun childbearing – this is to say they have had a live birth, or are pregnant, or with their first child). The proportion of children who have had, or have begun, childbearing has not changed since the 2008 – 09 KDHS. Contraceptive prevalence was also found to be lowest among women aged 15 –19 years.

Despite the government's effort to end child pregnancy and childbearing, statistics still show that progress has been insufficient and that teenage childbearing has increased dramatically over the years among girls aged 15 to19²⁷.

A report released in 2012 as the world marked the International Day of the Girl Child showed that Kenya is one of the countries with higher

²⁵ Available at www.kenyalaw.org

²⁶ Ibid

²⁷ Policy brief No 31 June 2013

It raises many questions; what should be done about the pregnancy? What happens to the education and other future plans that may go unrealized? How will the unborn child be supported? How will the child mother cope psychologically and socially? And of course, what will everyone think? These, and other related consequences, have been drilled into every girl, through the process of enculturation. Yet unwanted pregnancy is still prevalent in Kenya.

levels of teenage pregnancy. Figures at the Kenya National Bureau of Statistics indicate that 37percentageof girls and 44percentage of boys aged 15 – 19 are already sexually active. According to a 2013 population report²⁸more and more young girls in Kenya are getting pregnant and becoming mothers at very tender age. This presented Kenya as being among the countries with a large number of adolescent pregnancy globally with 103 in every 1000 pregnancy in the country being attributed to girls aged 15-19. It further reveals that 26 in every 100 girls in Kenya are married before they reach 18 years with the young marriages being highest in North Eastern, Coast and Nyanza regions. A community-based survey²⁹ on socio-economic determinants of teenage pregnancy, experiences of health problems during pregnancy, and health care utilization patterns among adolescents (12 – 19 years old) in rural Kenya found that 45.9 percentage had had sexual intercourse in the past. Among these, 42.8percentage had been pregnant at least once. It emerged that a significant majority of the teenagers who had been pregnant were not attending school. Fifty-six percent of the first pregnancy occurred while the girl was single.

1.7.4 Contextualizing Culture and Child Pregnancy

Socio-cultural focus is not specifically limited to customs and traditions. In this context, it refers to behaviour patterns that predispose, or are likely to predispose, girls and teenagers to early pregnancy. The term culture as originally defined by the British anthropologist Edward B.

Taylor is “that complex whole which includes knowledge, belief, arts, morals, law, custom, and any other capabilities acquired by man as a member of society”³⁰. Taylor’s definition focuses on beliefs and behaviour that people acquire not through biological heredity but by growing up in a particular society, where they pick up cultural practices that they are exposed to.

Cultures have also been characterized as “sets of control mechanisms- plans, recipes, rules, and constructions, what computer engineers call programmes for the governing of behaviour.”³¹ People absorb these programmes through enculturation in particular traditions. Unwanted pregnancy among adolescents has both short term and long-term implications. It raises many questions; what should be done about the pregnancy? What happens to the education and other future plans that may go unrealized? How will the unborn child be supported? How will the child mother cope psychologically and socially? And of course, what will everyone think? These, and other related consequences, have been drilled into every girl, through the process of enculturation. Yet unwanted pregnancy is still prevalent in Kenya.

Sub-Saharan Africa has been noted to have the highest level of teenage pregnancy in the World. This has been attributed to a number of factors, among them lack of sex education; widespread poverty; lack of parental guidance and counseling; cultural taboos that inhibit sex education; unavailability of contraceptives or low

28 Kenya Population Situation Analysis 2013 report

29 www.ncbi.nlm.nih.gov/pubmed/14719415

30 Tylor, E. B. 1958 (Original 1871). *Primitive Culture*. New York: Harper Torch Books

31 Geertz, C. 1973. *The Interpretation of Cultures*. New York: Basic Books.

Sub-Saharan Africa has been noted to have the highest level of teenage pregnancy in the World. This has been attributed to a number of factors, among them lack of sex education; widespread poverty; lack of parental guidance and counseling; cultural taboos that inhibit sex education; unavailability of contraceptives or low use where they are available and lack of access to information and educational opportunities; peer pressure and the social environment, such as inappropriate forms of recreation and rendezvous for premarital sex, among others.

use where they are available and lack of access to information and educational opportunities; peer pressure and the social environment, such as inappropriate forms of recreation and rendezvous for premarital sex, among others.³²

Ricardo and Baker further observed that these expectations by default give men a disproportionate share of the power and voice in intimate relationships with women. However, in their publication for the World Bank on “Young Men and the Construction of Masculinity in Sub-Saharan Africa,” they posit that despite these norms, young men often have little accurate information on these matters. However, they fear admitting their ignorance, which may lead them to engage in unsafe behaviours that put both them and their partners at risk.³³

In many countries in Sub-Saharan Africa, there has been a gradual shift from focus on extended family structures towards concentration on nuclear families. With this change the role of the extended family in educating and role modeling for young people in sexual behaviour has disappeared.³⁴ This lack of socialization agents has led to improper enculturation and inability of parents to pass down appropriate information on sexuality. This is in contrast to the traditional enculturation process in many of the African communities.

Further, the Guttmacher Institute notes that young women and adolescents are particularly vulnerable to the consequences of unintended pregnancy and by extension abortion in most parts of Africa. They note that this results from the commonness of premarital sex that is seen to be fashionable among many teenagers. While premarital sex is widespread, the stigma around it, resulting from socialization and the culture that demands for virginity among girls, still persists.

One recent study on Kenyan adolescents’ attitudes toward sex and abortion found that only 28percentage of female students believed that a sexually active schoolgirl should be allowed to use contraceptives.³⁵ Besides, prevalent religious anti-sex rhetoric and certain cultural taboos prevent open dialogue about premarital sex at home, or in schools. One study of urban slum dwellers found that mothers struggle to discuss sex and unintended pregnancy with their daughters because they feel embarrassed or shy.³⁶

32 Were, M. 2007. Determinants of Teenage Pregnancies: The Case of Busia District in Kenya in *Economics and Human Biology* Vol. 5 No 2: 322-339

33 Ibid

34 Ojwang, SBO and Maggwa, ABN 1991. Adolescent Sexuality in Kenya, *East African Medical Journal* 68: 74-80

35 Adaji, S. et al., 2010. The Attitude of Kenya in-School Adolescents towards Sexual Autonomy. *African Journal of Reproductive Health* 14 (1): 33-41.

36 Crichton, J. et al., 2011. Mother-Daughter communication about sexual motivation, abstinence and unintended pregnancy: Experiences from an informal settlement in Nairobi, Kenya. *Journal of Adolescence* 10: 1016



CHAPTER TWO |

2.0 SOCIO-CULTURAL DIMENSIONS OF CHILD PREGNANCY IN KENYA

This chapter presents the common and diverse cultural and social factors driving child pregnancies in selected counties of inquiry. Economic and political factors correlated with child pregnancies and violations of child rights are also extensively discussed.

The Chapter presents voices from the six counties namely Busia, Kwale, Homabay, Nakuru, Samburu and Nairobi.

2.1 BUSIA COUNTY

Busia County is predominantly occupied by the Luhya sub-communities of Abasamia (Funyula Sub-county), Abamarachi (Nambale and Butula Sub-counties), Abakhayo (Matayos Sub-county) and Abanyala (Budalangi Sub-County). In addition, the county is home to the Ateso who predominantly occupy Teso North and Teso South Sub-counties. There is also a good representation of the Luo and other migrants from both Kenya and Uganda. Being a border county, it is culturally very diverse.

The main economic activities in the county are trade, fishing and agriculture. The trade is both formal and informal, mainly cross-border exchange with Uganda. There are also those who are formally employed in the National and County Governments, teachers, clerks, and health personnel and in provincial administration. Other employment is in Non-Governmental Organizations (NGOs), Community Based Organizations (CBOs) and Faith Based Organizations (FBOs).

Children in the community are seen to belong to the father. In the event of pregnancy outside wedlock, the children are returned to the fathers. A woman who has had a child out of

wedlock is expected to leave the child with his or her biological father, in the event that she gets married to someone else. This has implications for child socialization, parental guidance and possibility of early pregnancy.

2.1.1 Culture and child Pregnancy

From the discussions in the community, culturally a child was seen as someone below the age of 10. A girl with as much as fledgling breasts is seen as a young adult. She is thus fair game to what is expected of a female adult, including being made to engage in sex. This early exposure to the adult world among the children is one reason they are exposed to other behaviour that will lead them to indulge in sex. They are encouraged to see themselves as mature and ready for motherhood. There is a cultural demand that a man who impregnates a girl should take full responsibility and possibly marry her, as long as they are not relatives. This patriarchal attitude exposes the girl child to further embarrassment and unplanned early marriage. Once she has given birth, she is almost forcefully married off as a second, third or fourth wife to anyone willing to marry her, irrespective of the age difference.

2.1.2 Naming and Replacing the Dead

The Abaluhya people believe in continuity of the family lineage and rebirth of the dead. It was noted that after the death of an elder in the community, there are celebrations after the burial. These celebrations go with merry making, discos “matanga” and other forms of entertainment. During this time, there are sub-cultures that believe that new children should be born and be named for the departed elder. People, therefore, engage in sex so as to bring about new people to be named for the dead. Conception is seen as a good omen, since it is replacing the departed. The Deputy County Commissioner observed thus:

Here in Busia, we have Disco Matangas, which is a cultural-practice-cum-get-together. During the discos, people engage in sexual impropriety with a common view that “*Mwanamkesio wamtu* (this is to say that a woman belongs to no particular man).” Anyone can therefore have sex with her in the process of trying to replace the dead person, by getting her pregnant. It is unfortunate that both women and children are involved in this process. In addition, criminal gangs take advantage and rape girls during disco *matanga*.

However, some members of the community were of the view that the disco *matanga* idea has literally been blown out of proportion and taken away from the traditional cultural context. They noted that the high level of sexual activities in the disco today is as a result of low socialization and sexual permissiveness that has permeated all spheres of society.

2.1.3 Wife Replacement/Husband Inheritance

There is a practice known as “*siebo*,” which could literally mean sorrorate marriage, or husband inheritance, which is the replacement of a deceased wife with her younger sister or niece. In the Western Kenyan communities of the Luo, Luhya and Kisii, there is a belief that it is only the blood relative of a woman who can take good

care of her children in the event of her death. One witness observed:

The cultural practice of *siebo* in which the family has to give out another girl to replace her dead sister has today been commercialized. This is even more so when the husband is a well-to-do person. A young child of 12 can be requested to remain behind after the burial to take care of her sister’s children. That will be the beginning of her marriage to her brother-in-law. If she gets married at 12, she will be a mother of three children by the age of 16.

2.1.4 Poverty and bride-wealth

As a factor of poverty in the community, girls are seen as potential sources of wealth through bride-wealth, paid to their families by prospective husbands. Many girls are encouraged by their parents to be sexually active so as to get married and bring wealth. Others are literally given away for marriage, as a cushion against the adverse effects of poverty. Poverty also increases the girls’ vulnerability to pre-marital sex, transactional sex and therefore, child pregnancy.

The Busia County Assembly Speaker noted that poverty levels in Busia County are very high. He observed that this exposes the girl child and other family members to all forms of impropriety. He observed:

We must admit the huge problem of child pregnancy in Busia, over the years. Poverty levels here are very high and between 68-70percentage of the people live below the poverty line. At the same time, 60percentage of the population is still under the age of 24. The girl child and boy child account for over 50percentage of the population. A large percentage of girls live in absolute poverty and they are therefore, exposed to the ravages of poverty and are very vulnerable to all forms of exploitation, including sexual exploitation.

2.1.5 Double Standards in cultural socialization

The socialization process in the community avoids discussion of sexuality and sexual and reproductive health. Young boys and girls are not encouraged to be knowledgeable on sexual matters in the pretext that there is a

net connection between knowledge and practice. This presumes that if young girls are taught sex education, then they will indulge in early sexual activities. This lack of knowledge and the double standards imposed on the girls' sexuality makes them highly vulnerable.

Mary Okedi of the Children and Culture Committee of Busia County noted that whenever girls get pregnant society mothers are blamed for not adequately socializing them. She laments women's lack of economic opportunities that are necessary for making independent decisions. They are subservient to men and at times the socialization process does not allow them to talk freely to their daughters on matters of sexuality.

A member of the committee further noted that sometimes even the mothers are themselves ill equipped to advise their daughters since they are themselves in need of the advice, being products of the same kind of socialization. A socialization that encourages the boys to be sexually aggressive and expects girls not to have the capacity to negotiate safe sex or even have the knowledge to understand their own bodies. Narratives on first experience on menstruation exemplify these double standards clearly. Young girls are always at a loss and lack someone to assist them cope with first menstruation. What they receive is warnings that go like:

You are now a woman. Do not play with men.
If you do, you will have yourself to blame

2.1.6 Culture of silence in the community

It is common for elders to cover up defilement, rape and incest for fear that the whole community will be stigmatized. They tend to prefer softer community based processes in settling such grave matters.

The predominant Luhya community in Busia County is patriarchal in structure. Women are supposed to be seen and not to be heard. Men dominate decisions in the community. The children belong to the man. It is not uncommon to see a girl who gets pregnant either forced to marry the man responsible, or the child taken to live with the father, soon after delivery.

One of the Members of the County Assembly and a member of the Children and Culture Committee said:

There are several community-based challenges in dealing with rape, defilement and incest. It is even more complicated if it leads to pregnancy. The community does not want to suffer shame through exposure to the outside world. Since people are too scared to face the court process, they are willing to go an extra mile to settle the dispute out of court. The poor are afraid of challenging the rich in this monetized economy, since they may not get justice.

2.1.7 Myths around sexuality

Several myths regarding sexuality encourage sex among children. There are also many myths about HIV infected people having sex with children. Such myths are some of the drivers of pregnancy in children. Some of the common misconceptions narrated are:

- If you do not have sex, then your vagina will block (theory of use and misuse).
- You are likely to have complications at birth because of the narrow vaginal canal.
- Having sex eradicates the pimples from girls faces.
- Having sex leads to having a good figure, shapely breasts and beautiful waist line.

These myths make having sex at an early age look so normative that a girl who has completed High School without getting pregnant is often rumoured to be on family planning pills. Alternatively, she is accused of having had an abortion in the past. During the closed sessions with child mothers, it was clear that girls as young as nine years had been raped by men who were either close family members, or their neighbours. This practice did not spare even those who were physically or mentally challenged. From the testimonies, it was noted that most of the girls contracted HIV after the

rape. We were informed that there have been myths in the community that having sex with a virgin girl cures HIV. Helen was infected with HIV after an uncle raped her. She shared her story thus:

When I lost my father, my mother's sister took me to live with her at Murumba village. Her husband raped me one day telling me that he will give me money for lunch. This continued for a while since he had threatened to kill me if I ever told anyone. I was 12 years by then and had not had sex with anyone else. He ordered me to go for HIV test and when I went, I was diagnosed positive. He hid the results from my aunt and later chased me away. He was also positive and I could see him taking medication but did not understand what the drugs were for. I feel very bitter today over the incident.

The other most disturbing case was of a girl who was raped at the age of three. Though she is now 13, the memory remains fresh and unbearable. She remembers her story:

I was raped at the age of three years. I was returned to my grandmother after being rejected by the person who had married my mother since I was not his child. My maternal uncle raped me several times in the kitchen warning me never to tell anyone including my grandmother. I suffered the pain for long. Later, when my mother took me to go live with her is when her friends detected that I had difficulty in walking and flowing urine that was unstoppable. I was then taken to hospital and diagnosed HIV positive in 2012. I was then put on ARVs and it has been a very painful experience.

2.1.8 Lack of Proper Parenting and Urban Influence

Parenting is today seen as a challenge. The parents are either busy looking for money, or they are too poor to bother about their children. It was also noted that in the past, the role of disciplining children was a shared community responsibility as children were considered to belong to the entire community. Today, individualistic tendencies have cropped in which the families are struggling on their own to bring up children.

The Deputy County Commissioner observed thus:

In this community, we experience poor parenting. Many parents are unable to understand their roles hence exposing their children to child labour, high risk businesses such as hawking bananas and groundnuts, attending disco *matanga* and in the process, engaging in sexual activities.

The father to one of the boys who have been charged with the offence of making a 13-year-old girl pregnant said that parents are unable to understand the character and behaviour of their children. He said that at Buyofu Primary School, there is gross indiscipline among the teachers, parents as well as pupils. Many girls get pregnant.

2.1.9 Patriarchy and Male Dominance

The predominant Luhya community in Busia County is patriarchal in structure. Women are supposed to be seen and not to be heard. Men dominate decisions in the community. The children belong to the man. It is not uncommon to see a girl who gets pregnant either forced to marry the man responsible, or the child taken to live with the father, soon after delivery. The high level of teenage pregnancy also means that a number of girls already have children before marriage.

The speaker of the County Assembly said:

A mother going into marriage with a girl child is in trouble since there are cases where the daughter is converted into a sexual tool by her stepfather since according to him, he is not the biological father. Such cases are hidden since the mothers do not want breakages in their marriages. Even though they may know that their husbands are defiling their daughters, there is little they can do because they are reluctant to rock their marriages. This helplessness exposes the girls to danger and encourages men to defile their stepdaughters.

2.1.10 Other causes of child pregnancy

Besides the foregoing causes of teenage pregnancy, the inquiry was also informed of other related causes. These included the following:

i. Boda boda operators

Boda boda operators are seen as being well resourced. From time to time, they are seen

to be “helping” girls with free rides on their motorbikes, to and from school. Some give them money for basic needs. They are generally seen as “saviours” in desperate moments. However, the treasurer of the boda boda Association of Busia exonerated his members from blame and placed the blame squarely on parents. He said:

The problem is not *boda boda* but the parents. Before you commit someone to carry your daughter to school, you should know the person and his other details. However, at the age of 17, most of the *bodaboda* riders do not have many responsibilities and since they get reasonable resources, the young men see the money as a means of luring the young girls. Parental neglect and suffering of the young girls is what increases their vulnerability and makes them easy prey. It is the girls who ask for lifts and this enhances familiarity and the *bodaboda* is seen as caring and hence possibilities of sexual favour that may result into pregnancy.

The case of Eunice, whose child was fathered by a *boda boda* man summarises this. She said:

I got pregnant while I was in Class 8. I was living with my maternal grandmother after the death of my parents. The father to my child is a *bodaboda rider*. He used to carry me to school and even buy me goodies that I needed. He at times gave me money, like one hundred and fifty shillings. I began seeing him while I was in

Class 7 in the second school term. After school, I would visit him where he rented a house and would spend most of the weekends with him. We would have sex whenever I visited. When my uncle warned me, I thought he was a bother, until I got pregnant. The *bodaboda* man abandoned me after the pregnancy and now it is my uncle who helps me after the death of my grandmother.”

ii. Cross border trade and the trailer drivers

The existence of different sources of money, the parking of the long distance trailers before crossing to Uganda and other economic activities in the town expose the girls to potential predators. Given the economic difficulties that the girls go through, the presence of people with resources to spare increases the possibilities of transactional sex.

iii. Illiteracy, Ignorance and School dropouts

Many of the girls who are forced to repeat one class or the other in school will usually opt out of school instead.



After opting out, the only other activity is to roam in the villages where they get hooked up with men. Illiteracy is also rampant in the community and, hence, inability to access educational information on matters of sexuality. This ignorance has entrenched the myths already discussed.

iv. **Child to child sexual experimentation**

Resulting from the poor parenting, impropriety and the degree of sexual permissiveness in the community – further enhanced by male circumcision that makes boys see themselves as “mature men,” there are many cases of child-child sexual experimentation resulting in pregnancy.

Some child mothers admitted, in camera, to luring their age mates into early sex. They narrated how they could meet in the sugarcane plantations, in the bush, in maize plantations, or in other secluded places in the village to have sex. We spoke to a 13-year-old girl who was five months pregnant. She had dropped out of school in Class 5. She confessed thus:

One day as I was coming from school at around 4.00 pm, I met my boyfriend and I asked him if he could come and see me at home in the evening. He agreed to come and I then went home and cheated my mother that I was going to look for firewood. We were to meet in the bush. We actually met there and had sex for the first time. We carried on that way for a long period, from the beginning of 2013. We changed from the bush to an abandoned house next to our home. I then got pregnant but did not know. One day, my mother asked me what was wrong with me. She took me to hospital and it was established that I was 4 months pregnant. My father chased me away from home. I was accommodated for two weeks by a good samaritan who was our neighbor.

Asked whether she was in love with the 14-year-old boy, she responded in the affirmative, that she was in love and was not forced to have sex with him. On his part the

boy narrated how the girl requested him to visit her. He admitted to seducing her and having sex with her in the bush severally.

There were many other cases where the girls admitted that the boys or men who made them pregnant were boy friends with whom they were in love. In fact most of them were proud to be mothers. They narrated other cases that they knew of where the girls had procured abortion. The Class 5 girl reported that in her school – Buyofu Primary School – three Class 8 girls and two in Class 7 had aborted and many more had become pregnant.

v. **Orphan hood and paternal desertion**

Owing to the high cases of HIV and AIDS, many families are orphaned and children have to fend for themselves. This exposes the girls to sex related risks. Some are forced to be fostered and hence receive minimal parental care. Others are ushered into adult roles at a very early age hence. This makes them highly vulnerable.

vi. **Use of mobile phones**

Mobile phone technology has been accused of contributing to teenage pregnancy. The bodaboda operators noted that they are usually called and instructed to carry certain girls across the border to Uganda where they have clients. In the view of the chairman of the bodaboda association, the use of mobile phones has exposed girls unduly and parents are unable to monitor those who communicate with their young girls. Girls also want to own mobiles and since they do not have resources or income, they fall prey to those who can buy the gadgets for them.

vii. **Misdemeanor among teachers**

Teachers have been accused of preying on girls and contributing to teenage pregnancy. As is the case of Buyofu Primary School, some girls who appeared in camera narrated how they have had sexual encounters with

their teachers. It was reported by some female teachers that girls are very vulnerable to male teachers' demands. Teachers use threats, inducement and even punishment to ensure that girls yield to their demands.

Adelaide was a 16 year old. Despite being mentally retarded, she was sexually molested, allegedly by a high school teacher. He impregnated her. In her own words:

The guy got me on my way home from school and requested me to go home with him to school at Butiri Secondary School where he lived as a teacher. He said he would give me twenty shillings. We became close and he would also sneak into my room at home, where I slept, and have sex with me and leave very early in the morning before anyone was awake. From the time he realised that I was pregnant, he has never appeared again.

The above case was reported and the teacher arrested. He was interdicted awaiting the DNA tests after delivery. The problem is that the test is very expensive and the family may not afford it. It was also noted that the issue of mean score in national examinations leads to very crowded school timetables that put pressure on teachers as well as the pupils. The parents want their children to pass so the teachers arrange extra lessons. The pupils are made to come to school as early as 5.00 am and this timing opens up the children to sex related risks. In addition, it encourages some pupils to want to befriend teachers in the pretext that they will be coached and therefore, pass exams highly. Intimate relationships develop between the girls and the teachers, often leading to child pregnancy.

2.2 KWALE COUNTY

Kwale County is located in the Coast Region of Kenya. The inhabitants of Kwale include the Digo, Duruma and Kamba. The Digo and the Duruma are subsets of the Mijikenda make up the majority. Tourism is the main service

industry and a predominant economic activity in the region. The county is made up of four sub-counties namely Matuga, Msambweni, Kinango, and LungaLunga. Poverty levels among the indigenous people are very high and education levels low. There is high Islamic influence, with a preference for the Madrasa form of education more than the formal education, especially among the predominantly Muslim Digo community.

Women in the county are generally accorded low status. They have limited capacity to make independent decisions. This is accompanied by high divorce rates sanctioned by the Islamic religion among the Digo. In the event of divorce, women take the custody of the children, hence exacerbating the poverty among them as a demographic group. There are limited economic activities other than tourism related activities. Most families do small-scale farming and livestock rearing. The predominant economic activity in the areas close to the Indian Ocean is fishing and tourism. The beaches offer the most employment opportunities in the county. Marriages are contracted and consummated when the girls are still very young. Weddings are cherished in the community and people sell land and other property just to have a lavish wedding. The weddings can be time consuming and very expensive. Night discos are part of the wedding celebrations. Men in the county have an average of four wives, each with an average of four children.

2.2.1 Early/Forced Marriage

Cultural practices predispose girls to pregnancy in Kwale. Since girls are commoditized in the

Among the Duruma and the Digo, there is a culture of commemorating the dead during the burial and two years after. These parties and night dances provide an opportunity for teenagers to meet and engage in indiscriminate sexual intercourse, which often results in early pregnancy.

community, most are married off early for bride wealth. This largely forced marriage extends to young boys who may be unlucky to impregnate a fellow child in the village. Giving birth out of wedlock is frowned upon. The young parents are therefore forced to live together as man and wife. One child father narrated his case:

When I was in Class 7, I had an affair with a girl who was in Class 8 in the same school. We used to have unprotected sex at my home and she conceived. She was brought to our home as my wife through mutual agreement by our parents. Although I was not ready for fatherhood, my parents have accepted to assist us have a wedding since we love each other.

In a similar case, a girl got married after being sent out of school at the age of 13 after getting pregnant. She narrated her case thus:

One day in 2010, I was on my way to the shop when I met my boyfriend called Ramah. He was a bodaboda operator. He told me that he loved me and asked for sex. I obliged. We continued having sex till I got pregnant after which I was sent away from school. He then took me to their home where I stayed until I gave birth. After the death of his mother, he chased me away and married some other girl. By this time, I already had a second child with him. I now live with my mother just struggling for a living.

The County Director of Education singled out bodaboda operators as people having great negative influence on the education completion rate among girls. He said that this was a common problem in Kinango where they are either directly responsible for the pregnancy or they were used as conduits to transport the girls to other men.

There are also child-child affairs in the community. A case that involved a young secondary school boy and a primary colleague ended up in a trial marriage. The boy narrated thus:

I was in Form two when I got seriously involved with a girl in Class 5. We had sex several times. She later conceived. We tried to conceal the fact and even unsuccessfully attempted an abortion. Since I was being sponsored in school, my sponsors stopped

paying my school fees when they got to know what I had done. Both of us therefore dropped out of school. I decided to find manual work in Mombasa where the girl accompanied me. We tried to survive on my paltry earnings. We got a stillborn baby. We later decided to come back home and asked my grandmother for forgiveness. She also asked her parents for forgiveness and both of us went back to school. I am now once in Form Three 3 while she is in Class Seven.

2.2.2 In-breeding or sex between relatives

In some cases, the survivors of rape and incest are married off to the perpetrators of heinous acts, hence increasing the pain of the young girls.

It was also noted that the sleeping pattern in most of the communities where brothers and sisters share sleeping spaces may lead to sexual experimentation. In addition, sharing a room with teenage daughters and sons may be very inappropriate when parents make love in the presence of their children, separated only by the darkness. The inquiry heard of three cases where this sleeping arrangement was seen as the cause of the sexual encounter and hence pregnancy.

It was reported that among the Mijikenda, poor parents often encourage their daughters to go out and bring money through prostitution. There is also a culture in which the girls bring men to their parent's house in a form of matrilocality. This is encouraged by the designs of the houses and the living arrangements that expose the daughters to parental lovemaking and hence poor socialization.

2.2.3 Cultural ceremonies: Weddings and funerals

Among the Duruma and the Digo, there is a culture of commemorating the dead during the burial and two years after. These parties and night dances provide an opportunity for teenagers to meet and engage in indiscriminate sexual intercourse, which often results in early pregnancy.

Civil Society representatives noted that the

culture of “*Matanga*” is so rampant that people may not even go to school for up to five days after burial, just engaging in celebrations. *Harusi* or weddings are elaborate ceremonies that involve “*kustarehe*,” literally meaning leisure but in this context involves sexual affairs

2.2.4 Bride-wealth and poverty

Resulting from poverty in the community, many girls are seen as potential sources of wealth through the practice of bride wealth. They are encouraged by their parents or forced by circumstances to be sexually active so as to get married and bring wealth. Others are literally given out for marriage as a cushion against the adverse effects of poverty. Poverty also increases the girls’ vulnerability to pre-marital sex, transactional sex and therefore, child pregnancy.

The Education CEC noted that in Kinango, for instance, by the time a girl is in Class 6, she is already exposed to sex and the parents will usually have begun receiving bride wealth. Thereafter, girls are transferred between schools as a conduit to marriage. The transfers are meant to hoodwink the education officers about the girl’s whereabouts. The movement from one school to the other is meant to ensure that the dropout is not traced immediately.

The case of a Form Two dropout and the subsequent suffering she went through is a testimony to the effects of poverty. One girl narrated thus:

I dropped out of school in Form Two, after my mother was arrested and was supposed to pay a fine of fifty thousand shillings. We had borrowed the money and it required to be returned. We were forced to do manual work and complemented with prostitution to raise the money to repay the loan. I have continued being a prostitute and do not see how I can come out of it. Poverty exposes you and can force you to do anything for survival. Girls are getting pregnant and having unsafe abortion. The beaches provide hope and access to quick money.

2.2.5 Incestuous Relationships and the Culture of Silence

Male relatives, including fathers and uncles defile girls, particularly among the Duruma. Elizabeth, the director of the NGO Young Mothers Kenya (YMK) based in Msambweni observed that incest was a common occurrence in the Kwale region and most of the children born out of incest were killed. Most of the cases where the father defiled a daughter had some connection to witchcraft and greed for riches. We had this testimony from a teenage girl:

I was in Class 4 at the age of 14. My parents had separated and we all lived with our father. One day, after coming back from his many travels, my father called me and told me that he had been directed to either kill one of us or have sex with me in order for us to get rich as a family. He then forced me to have sex with him. He pampered me with money, clothes, better food and other presents. He defiled me every Friday and Saturday. When I got pregnant he took me to hospital in Lunga Lunga for an abortion. Even after aborting, he continued having sex with me, threatening me with dire consequences in the event that I reported to anyone. It was the neighbours who eventually reported to my mother who then went to the police to report.

Another 14-year-old girl narrated how her father performed what appeared to be witchcraft on her and raped her severally including having sex with her on her own mother’s bed. She even later discovered that her father had earlier had similar encounter with her two elder sisters. She was blamed for exposing the father and was disowned by him. Her maternal uncle adopted her and she now lives at the rescue home trying to go back to school. She is however, still very bitter because her father also chased away the mother because of her case.

In another case of rape, a young girl of 14 years old reported how her father repeatedly raped her. When she told her mother, she was warned not to say this again. The mother, in fact, believed that the daughter was lying. When she discovered that she pregnant, she attempted

suicide by taking poison. The neighbour rushed her back to hospital where she was treated. When the case was reported to the police, her father was arrested but later acquitted even though no DNA examination was ever done on the child and him. Her mother has since disowned her, claiming that what she did was shameful. She would scold her during the court proceedings whenever she went to testify. The girl revealed that she has attempted suicide several other times. She was rescued by the Young Mothers Kenya (YMK) and is back in school.

The Chairman of the Public Service Board observed thus regarding incest:

Incest is an abomination among the Digo and Duruma communities though it is considered a private family affair. Traditionally, there would be rituals to cleanse the child, or at times sacrifice the child. Some families could secretly take drastic measures against any member who committed incest. Incest is seen as someone eating his own eggs and mothers who go to court are seen as having acted beyond cultural expectations and as destroyers of homes instead of being seen as seekers of justice for their children.

2.2.6 Defilement of young girls by strangers and acquaintances

Some of the girls reported how they had been victims of defilement either by strangers or people known to them or their neighbours. A nine-year-old girl narrated how she was raped at 6 years by a neighbor who had sent her for water at the shop. Upon her return, he raped her.

Another nine-year-old girl recalled how a married man who was a frequent customer to her grandmother raped her. The girl said that she later reported to her grandmother who went to the police and the matter was in court at the time



Pic: www.givingartfully.com

of this inquiry. The culprit was out on bond. She also contracted a venereal disease out of this encounter.

A sorrowful case of defilement involved a mentally retarded girl who was defiled as the mother had gone to church. Her mother noted that though there were too many defilement and rape cases in the community, no action was taken, because of poverty, ignorance and the conspiracy of silence in the community.

It is apparent that frequent defilement was a factor of lack of closer parental attention and guidance. Most of the rape cases involved young girls under the care of their grandmothers. Most were also the products of broken marriages. The grandmothers were mostly aged and lacked the capacity to supervise them closely.

2.2.7 Lack of proper Parenting and urban Influence

Parenting is today seen as a challenge. At the coast, the cultural acceptance of polygyny and the ease with which divorce or separation is accepted has made women vulnerable. Single motherhood is common. Many girls live with their mothers and maternal grandmothers, their parents having divorced. This exposes the children who lack basic amenities and the necessary parental guidance necessary for proper upbringing.

In situations where the girls get pregnant, mothers are always on the receiving end. They are blamed for not being able to discipline their daughters. Some of the girls reported that after getting pregnant, their fathers told them that they could not educate “mothers and their children.” One girl reported that she got pregnant when the boyfriend promised to buy her sanitary towels that her parents could not provide. Since she needed them, she accepted his advances. She accompanied the man to Kwale town where they had sex. She conceived and dropped out of school. Parents also note that exposure to the media and the rapid urbanization has complicated the process of socialization as most girls are watching movies and films that expose them to sex and other exotic liberties.

2.2.8 Patriarchy and male dominance

The communities in Kwale are largely patriarchal, with some elements of matriarchy. Women are valued little among the Duruma. Decisions in the community are mainly male based. It is not uncommon to see a girl who gets pregnant forced to marry the man behind the pregnancy.

Patriarchy also makes girls to be obsessed with marriage. The impression is that a woman’s life is only complete when she is anchored to a man. Young girls look forward to their marriages, hoping that it is a rosy life. However, once they get married, they soon get disillusioned. In essence most girls get in and out of marriage within short spans of time. Patriarchy also cherishes polygyny, which is reported to make men irresponsible. People with many wives cannot adequately discipline their children and their socialization is left to the individual mothers. In such cases, there is very low discipline among the children.

The CEC in charge of Women, Children, Culture, Talent Management and Social Services noted that the cultural acceptance of polygyny, where a man can have up to four wives, leads to what

he terms “**scattered parenting**” and “**divided loyalty**” which unduly exposes the children. He further observes that most coastal cultures face frequent marriage breakdowns and there are no clearly defined cultural institutions that can take care of children from divorced or separated families. This scanty community concern for distressed children exposes the girls to abuse.

2.2.9 Other causes of Child Pregnancy

Besides the above causes of child pregnancy, the inquiry was also informed of other related causes, among them the following:

i. **Tourism and the allure of the beaches**

The beaches are strident with the allure of money. The phenomenon of sex tourism is enticing to young girls from poor families. There is free flow of alcohol and money at the many entertainment joints along the coastal strip. They are tempting and often irresistible to the young girls. Tragically, it exposes them to potential predators. Given the economic difficulties that the girls go through, the presence of pleasure seekers with disposable money increase the possibilities of transactional sex.

One clergyman lamented that there was too much nudity, sex, salacious advertisements and misuse of young girls in the hotel industry. Some were compelled to serve as bar attendants or waiters while either naked or partly naked in the interest of attracting clients.

ii. **Illiteracy, Ignorance and school dropout**

Many girls in primary school have already reached puberty. It was observed that one can be 14 years but still in Class 3. At this age, one should be completing Class 8 and joining Secondary School. Such girls can hardly cope with school. If such a girl is forced to repeat any class because of poor performance, she is likely to opt out of school instead. After opting out, the only other activity would be to roam the villages and get

hooked up with men. There is also very high illiteracy rate in the community and hence, inability to access educational information on matters of sexuality.

In camera sessions with the girls revealed that most of them had wrong information regarding the link between menstruation and pregnancy. While they indicated that they had been taught about menses in school, the information they had was faulty. It was a factor in their engaging in sex, believing wrongly that they would not conceive.

iii. Use of mobile phones and modern technology

Mobile telephony has been associated with teenage sex and pregnancy at the coast. It has enhanced money transfer and limited parental influence and control. Dates are privately arranged on such platforms as Facebook and Whatsapp. There is very little that parents can do about this and the subsequent encounters. The internet is the biggest single driver of social contact among young people. There are online dating sites and people meeting and transacting business in the cyber space away from the inquisitive parental eyes. A session with two girls who work in the tourism industry in Ukunda revealed that they were currently dating foreigners whom they had met through Facebook – one from Germany and the other one from Australia. A County Government official asked rhetorically, **“How do we effectively tame technology?”** He observed that once the girls own phones, they can access pornography and interact with men with ease. Moreover, such men will lure them into sex through buying them airtime.

iv. Misdemeanor by teachers

Some teachers have been accused of being predators on girls and responsible for teenage pregnancy. Many primary schools have male teachers, exclusively. Some of

them exploit the innocence of the girls. When they conceive, such girls are silenced through bribery or promise of marriage. The girls are then forced to lie that their fellow pupils are the ones responsible for the pregnancy. Given the level of poverty, some parents see the teachers as potential good husbands to their daughters. They therefore become part of the conspiracy of silence. Teachers who are taken to court have been known to pay their way out of the criminal justice system.

A number of girls got pregnant through sexual liaisons with fellow children. Some got pregnant while they were as young as 12 years old and admitted having had sex with boys as young as 13 years. It was not uncommon for a Class 6 girl to say that she has had several boyfriends and that they had on more than one occasion had sex without protection.

2.3 HOMA BAY COUNTY

Homa Bay County takes its name from Mount Homa and its many bays. It is a county in the former Nyanza Province of Kenya. It borders Kisumu County to the north, Kisii County to the east, Migori County to the south and Lake Victoria to the west. Fishing on the lake and agriculture in the mainland are the key economic activities in the county, accounting for the largest share of household income in the region. With about 80percentage of Kenya’s part of Lake Victoria being in Homa Bay, the county has the longest shores of Lake Victoria and a number of islands. It is the leading supplier of fresh lake fish in Kenya.

The inhabitants of HomaBay are predominantly Luo, followed by the Abasuba. The Abasuba are predominantly found in Mbita and Suba sub-counties. The rest of the population comprises a minority of immigrant ethnic minorities

through intermarriage. There is also a migrant community of workers and business people. The Luo culture is the most dominant in the county and has a stronghold on the residents' sexual lives.

2.3.1 Traditional socialization of children

Although child pregnancy and child sexual-activity is common in Homa Bay, the traditional Luo community socialized their girls to avoid early sexual activity. Girls were encouraged to interact with boys but were barred from engaging in penetrative sex. The roles of socializing the boys and the girls were the preserve of grandparents. A girl was socialized by the grandmother. She would introduce topics on sexuality in her hut, where the girls spent their nights. The socialization happened in a “*siwindhe*” where girls were sensitized to manage their lives. Boys, on the other hand, were socialized by the grandfathers in his hut, which was known as “*duol*.” Over the years, owing to the high death rates and increased emigration and urbanization, grandparents do not play a significant role in the lives of the youth.

The community has shifted from the traditional communal approaches of socialization to a high level of individualism, hence compromising the notion that a child belongs to the whole community.

2.3.2 Defilement

Some of the stakeholders described Homa Bay County as a den of child defilement. The Deputy County Commissioner noted that teenage pregnancy resulting from defilement was very high. He singled out Ndhiwa Sub-county as the worst affected.

A number of girls got pregnant through sexual liaisons with fellow children. Some got pregnant while they were as young as 12 years old and admitted having had sex with boys as young as 13 years. It was not uncommon for a Class 6 girl to say that she has had several boyfriends and that they had on more than one occasion had sex

without protection. Take, for instance, the case of 16-year-old Akoth who reported thus:

I am 16 years old now and in Class 8, but I got pregnant while in Class 7 with a boy who was in Class 8. We started dating while I was in Class 6 and he was in Class 7. I could visit him at his home and, since he had a house (*simba*), we would make love in the house. He however, had other girlfriends but I was the only one who got pregnant.

Several other girls related similar stories, indicating that teenage sex is common in the community and parents are unable to find a solution. All the girls reported that the boys bought them presents and gave them money, ranging from as low as fifteen shillings to highest of five hundred shillings. In other situations, the girls noted that the boys bought them presents including edibles (Mandazi, sambusa etc.), clothing, shoes and small items.

Besides teenage sex among themselves, there were other cases where grown up men took advantage of the young girls. Some of the cases involved teachers, *bodaboda* riders and other people in the community including the fisher folks and business people. Some of the prominent cases included that of Dorothy who noted thus:

I am 16 years old and 9 months pregnant. I was impregnated by a man who used to pay my school fees after the death of my parents and I did not have anywhere to stay. He bought me sanitary pads and gave me Kshs 200 per month.

A similar case involved a 16-year-old girl with a two-year-old baby, who was abandoned by the mother at birth and lived with her grandmother. She said that a man she suspected to be a teacher had lured her from home, promising to take her where her biological mother lived. He defiled her, instead.

Another case involved a 16-year-old girl who is a mother of two, having been defiled twice by the same teacher at the school where she was a pupil. She reported that the teacher approached her to be his lover while she was in Class Six. She

resisted and reported him to the headmaster. However, one day in 2012, the said teacher called her to the office since she was the office girl. He ordered her to remain behind to close the doors and windows. He then ordered her into the deputy headmaster's office where he raped her. He threatened to kill her if she reported. She however, told her sister who went to school the next day to ask him. He begged her sister not to report him and gave them one hundred shillings so that they could keep quiet about the matter. After three months, she realized she was pregnant.

When she told her mother about the pregnancy, the mother reported the teacher to the police and a case file was opened. They were however told to wait for her delivery for a DNA test. When she delivered, the court took blood samples for the test. The teacher had earlier on at the police station accepted that the child was his but he later changed the story.

Later on a second account, the same teacher in 2014 waylaid the same girl in the company of his brother, abducted her scaring her with a knife and took her hostage. He took her to his house where she stayed from 10.30 am to around 11 pm. He had sex with her and later took her with him to his second house at the primary school where he teaches. She was held hostage in this house for two days during which the man defiled her. She was later taken to Kabuoch market and given out to another woman who locked her in a house for nine days.

When the woman was told that her father was searching everywhere for her, she was given out to another man who once again defiled her. She was however, able to use the man's phone to contact her father who came for her and took her to the police station to report. The teacher bribed the police who

instead ordered that she should be detained. She was put in adult cells for four days before her father negotiated for her release. In her own words:

The same teacher has defiled me twice and I feel very bitter that I have been unable to get justice. The DNA was taken in 2013 and the judgment was due at the end of May 2015 and the results are not yet ready. I hope that I will be able to get justice. This same man has defiled me and keeps threatening me and I feel helpless and vulnerable. At the moment, I am a mother to his two children based on rape and he appears not to even bother about it and no one apparently cares.

2.3.3 Child Marriage

Traditionally among the Luo, a girl who accidentally got pregnant out of wedlock could be forced to get married to the defiler or given out for marriage to an older man as a second wife. She was derogatorily referred to as "*Afuongo luorore*," which was to say that she was of loose morals. This practice is noted to give a semblance of normalcy to girls who get pregnant at a young age since there are culturally acceptable options.

This also extends to child-to-child marriages. Take for instance the case of Quinter a sixteen-year-old mother who went back to school after she could not manage as a child wife. She recalled:

I got pregnant with a boyfriend who was working as a carpenter in Ndhiwa while I was in Form One. When I realized that I had conceived, I got so scared and ran away from home to join him as his wife. My parents did not know where we were since we left Ndhiwa to live in Homa Bay Town. Here, I suffered after delivery since we had no food or money for medication. I later learnt that my husband was a drug addict. I stayed with him for about five months after delivery and the problems became unbearable. He was then accused of stealing from the employer and he disappeared leaving me alone. I begged for food from neighbours until one day, a neighbour from home went and told my mother who arranged to come for me. I then went back home and was taken back to school".

2.3.4 Sex for Fish and or Fish for Sex

Although the sex for fish and fish for sex business is mostly confined to adults, minors have become increasingly involved in the business either independently or as in most cases being used by their

parents and or relatives. Women who are unable to offer themselves to the fishermen and fish brokers in exchange for fish end up offering their young daughters and female cousins instead.

The fish industry is also unregulated and untaxed. The young fishermen at times have access to what is considered to be so much money that they end up being customers to the flesh industry and or being the prime targets of young girls looking for survival means. The boys have resources and they easily lure the young girls whom they pay handsomely.

2.3.5 Poverty/Parental Negligence/Orphanhood

Poverty and parental negligence is widespread across HomaBay County thus further compounding the problem of child sexual exploitation leading to child pregnancy. Many poor parents are unable to provide for their families hence neglect them to fend for themselves. As a result, children are exposed to sex predators in search of livelihood or are forced to voluntarily engage in sexual relationships (including sexual work) with whoever offers to provide for them. The inquiry noted that many girls have been double orphaned or are single orphans who are either living with grandparents or other relatives. The situation of poverty makes the girls very vulnerable and accompanied by limited parental guidance and control, many girls find themselves unable to resist the male offers.

A number of girls reported that being orphans and being unable to fend for themselves were the reasons why they got into sexual relationships that ultimately led to pregnancy. For example, one girl reported that the man who impregnated her was her sole provider, since both of her parents are dead and even the uncle she lived with died. All her other siblings were in an orphanage. Another girl noted that she was abandoned and lives with her auntie whose

The Samburu traditionally cut their girls at around ages 10-13 years. This has however reduced to girls of as low as 7-9 years being circumcised, resulting from the shame that the father is subjected to whenever it is said at the time of circumcision that his daughter has had an abortion or sexual intercourse.

daughters have been very abusive and keep on telling her how she is a burden to their mother. The girl noted that after the death of her mother while she was still in Class Two, life had never been the same. She had lived with cousins where life had been tough and fending for herself had been the available option.

Even in situations where both parents are still alive, a number of girls report that poverty and parental inability to provide push them to fend for themselves. In all the cases, it was evident that the girls received some form of payment for their services. In addition, the parents have abdicated their socialization roles. The traditional communal living is no longer cherished. Children are not seen as property of the entire community for discipline purposes. This has led to a situation where other people care less about the welfare of their neighbors' children.

2.3.6 Luo Culture and Disco Matanga

Some cultural activities in the Luo community encourage harmful sexual practices that expose young girls to potential predators. Some of the cultural practices include **Cultural avoidance and space sharing**. It is a common practice among the Luo to seek for sleeping places away from home for their teenage girls. Either the girls go to sleep at a neighbouring home or in the hut built for the young sons known as “*simba*.” The practice exposes the girls to a wide range of predators. It was reported in the FGD that this *simba* principle encourages even incestuous relationships since teenagers of opposite sex are allowed to sleep in the same room without parental watch.

2.3.7 Cultural celebrations at Funerals and other Special Gatherings

Many events in the Luo community are marked with pomp and celebration. After the burial of an adult in the community, *disco matanga* is a must and this is an opportunity for the young girls to meet men and/or boys. Take for instance the case of one girl who went with a friend to a *disco matanga* and she later disappeared leaving her alone at the mercy of a young man who offered to escort her back home but on the way opted to have sex with her and she got pregnant.

Celebrating the macho man: The Luo culture celebrates and encourages young men to be macho and social conquerors. This is even encouraged by parents who feel good that their sons are men enough and can date girls. This semblance of acceptance encourages boys to have girl friends at an early age hence teenage pregnancy.

2.3.8 Other Causes of Child Pregnancy

Besides the above causes, other reasons advanced for the teenage pregnancy in the region include:

- i. **Commodification of the girl child:** Girls are seen as commodities to be sold off for the bride-wealth to bridge the poverty gap.
- ii. **HIV epidemic and orphanhood:** HIV/AIDS has had a devastating effect in Homa Bay County. Many families have been infected or affected. There are child headed households or grandparent headed households that have increased the vulnerability of the girls.
- iii. **Peer pressure among girls:** The need to conform and be seen to be trendy encourages schoolgirls to have boyfriends. Many girls noted that they wanted to be like the other girls who have “**friends with benefits**”.
- iv. **BodaBoda motor cyclists:** Most of the *bodaboda* operators have been accused of being the biggest predators who lure the girls into sex. The resources they control in a poverty stricken environment are at once an attraction and a threat to the girls. In

addition, they offer free rides to the girls to and from school and can easily confuse the girls.

- v. **Keshas and religious gatherings including faith healing:** Some community members noted that religious crusades need to be regulated since they act as meeting points for the teenagers. They noted that even some religious leaders lack the moral authority to guide the youth and are themselves predators. Faith healing was reported as a dangerous area for the girls. A Legio Maria father was singled out as having impregnated very many girls in the community under the pretext of being a faith healer.
- vi. **Lack of knowledge on contraceptives and sexuality:** It was noted that girls have limited knowledge on contraceptives and sex education is not a common thing in the villages. This results from the misconception that knowledge about sex will lead to the practice. Apparently, ignorance is more costly than having the knowledge.

2.4 NAKURU COUNTY

Nakuru County is in the former Rift Valley Province of Kenya. It borders Narok to the west, Kajiado to the south, Kiambu to the east and Nyandarua to the north. The county is highly cosmopolitan, owing to the large influx of migrant labour into the flower farms. The main ethnic communities in the county are the Kikuyu and the Kipsigis. Others include the Luhya, Luo, Maasai and Kisii, among others.

Flower farming is the backbone of Naivasha economy with fishing on Lake Naivasha and tourism (Mt Longonot, Hell’s Gate National Park, Lake Naivasha and Lake Elementaita and conservancies) being quite significant economic drivers. Other important economic activities in Naivasha include power generation at the Olkaria Geothermal Power Station, dairy farming, livestock keeping and agriculture in the more arable mainland. Teenage pregnancy

was reported to be rampant in Naivasha by the officials in the education sector as well as the administration sector. The girls themselves confirmed this as well as other key stakeholders during the public hearings.

2.4.1 Child Defilement

Child defilement was identified as a leading cause of child pregnancy. In the informal settlements associated with flower farms where the cases are more widespread, it was noted that parents leave for work as early as 5.00 am and return home as late as 7.00 pm. Owing to poverty occasioned by low wages, these parents cannot afford to hire house helps and therefore, leave their children under no supervision. This exposes the children to sexual violence and indeed many of the defilements occur during the day at homes where predators (neighbours, friends and strangers) take advantage of the children left on their own.

Among the cases that reported defilement included a 15-year-old mentally unstable girl from Kabati. The mother reported that a stranger raped her at Kinamba. The mother is apparently a single mother with four other children and is unable to effectively fend for them.

Another case of defilement involved peer pressure and other girls luring a 16-year-old girl to a party with KDF soldiers who ultimately raped her and she conceived. Other reported defilement involved a police officer, strangers and a step-father.

The case was reported of a blind girl who lived with her grandmother in Siaya County. One day, the grandmother went to the market and a stranger sneaked into the home and raped her. He left her unconscious. The man was not identified, though the grandmother reported to the Assistant Chief of the area.

2.4.2 Incest

Incest is linked to the flower farms in a number of ways, i.e. the influx of cheap migrant labour

from Nyanza and Western Kenya with no means to get their own accommodation in Naivasha. They end up sharing single rooms with their relatives who are already working on the flower farms.

A high number of single women on the farms end up getting involved in marriages of convenience with single men on the farms.

A girl of 16 years narrated how her stepfather defiled her for several years. The defilement began when she was in Class Four. She reported to the mother who sought police intervention. The man temporarily ran away but he later came back and raped her again, warning her never to report. He continued raping her over time, whenever the mother was at work. She got married later at a young age and lives in fear of the stepfather.

2.4.3 Child sex work

Child sex work (both voluntary and coerced) is a major contributor of child pregnancy in Naivasha Sub-county, especially along the Maimahiu-Nakuru Highway.

A number of young girls confessed that sex trade was their only means of survival after dropping out of school. Many girls indicated that they had migrated from as far as Western Kenya, other parts of the South Rift and Samburu to get clients in the sex transactions. The confession of a 17-year-old girl and a mother to a 3-year-old son captures the essence of the teenagers' predicament. She said:

I dropped out of school in Class Eight in 2008 because I lacked school fees. I lost my father and my mother could not afford to educate us. We were five kids. I decided to come to Naivasha to try my luck and find a way of feeding my son and also assisting my mother. I have no special skills and it is only through prostitution that I can get some money. We have no fixed abode, we just roam the streets and if lucky, we get a man for sexual trade."

Another girl who got pregnant while prostituting indicated that she did not even know the father

of her baby since she used to engage in unprotected sex with many different men. She said that she was the progeny of a single mother and they lived with in a rented room with two other siblings. They were not able to fend for themselves. She therefore decided to engage in prostitution as a means of survival.

All the girls who are engaged in sex trade said that it is not an easy task and at times, men abused them and failed to pay them after intercourse. Most clients did not want to use condoms and this exposed the girls to high health risks and unwanted pregnancy.

Other than those who patronise the ‘sex highway’, there is a growing tendency for parents to get their children into ‘sex for money’ engagements with men who are financially well off, including setting them up with the aim of extorting money by negotiating not to report the cases to the police. This practice is said to be so common as was reported by the key informants during the Focus Group Discussions. The participants said that owing to the high levels of poverty and single parenthood, some mothers have no survival means and encourage their daughters to go out and fend for themselves and for the families. Others even tell their young daughters that they are **“sitting on Gold or their “bodies are supermarkets”**. The notion here is to make the girls feel that they are able to mint money from men using sex as a tool.

2.4.4 Cultural practices

Cultural practices like male circumcision and FGM were seen to expose both girls and boys to premarital sex and hence the possibilities of child pregnancy and child marriages. The Maasai community residents of Naivasha Sub-county continue to practice FGM among their girls after which they are given out to older people as wives to those who can pay bride wealth.

The lack of culturally sanctioned cushioning mechanism via the extended family exacerbates the problem of orphans in the urban centers. As a result, children are exposed to sex predators in search of livelihood or are forced to voluntarily engage in sexual relationships with whoever offers to provide for them.

Two cases were reported of child fathers who confessed that after circumcision, they were told that they were now grown-ups and should be more careful. They were ordered to live away from women and were encouraged to be self-reliant and independent. This independence to them meant being able to be free, date girls and even become fathers.

The migrant workers into the flower farms have brought with them their own cultural practices that encourage child marriages and intra-family sexual relations leading to cases of incest as noted earlier.

2.4.5 Poverty/parental negligence

Despite the existence of prestigious tourist hotels and horticulture in Naivasha, poverty remains widespread in many parts leading to parental negligence on their children. Many children are therefore, forced to fend for themselves and end up engaging in underage sexual relationships in exchange for sustenance. This has resulted in many children getting into consensual sexual relationships with men in exchange for money, gifts and food leading to child pregnancy.

Low pay on the flower farms in Naivasha makes it very difficult for parents to fend for their families and to keep their children in school. Many of the girls who testified complained of poverty and a general lack of basics in their backyard.

A 17-year-old girl and a mother of one noted thus:

I was a student and since I did not feel loved by my mother, I got involved with a man who was working in the neighbourhood. He gave me five hundred shillings and had sex with me on several occasions. When I

got pregnant, my mother chased me away and had to live with my elder sister. Up to now, my mother deserted me and I do not feel like living anymore.

2.4.6 Early/child marriages

Early/child marriages are common practices among the pastoral communities in Naivasha. Early marriage is also seen as a coping strategy away from the biting poverty and lack of basic essentials at home. Inter-generational and Intra-generational sex is common. In addition, suffering and lack of parental care and guidance lead most girls as well as boys into early marriages hence teenage pregnancy. Take the case of the two 18-year-old boy and girl who got romantically involved in 2009 while in Class Eight. The girl got pregnant while in Form Three and they both claimed to still love each other and were “willing to get married.” Although the girls’ mother has little objection, the boy’s parents seemed to be encouraging their son out of the relationship saying that the girl was from a poor family.

2.4.7 Poor housing

The flower farms provide housing to its workers. The houses visited were single rooms which the children – whether young, adolescents or grownups shared with parents.

This means that parents at times have sex in complete view of their children. This may compel the teenagers to also experiment with their sexuality hence, teenage pregnancy. In addition, many women working in the flower farms are divorced, separated or widowed and engage in casual relationships with other men not related to their teenage daughters. This increases the chances of the men preying on the step-daughters alongside their mothers.

2.4.8 Orphanhood

HIV and AIDS has had a devastating effect on families. In addition, Naivasha was an epicentre of post elections violence that orphaned many families. The orphans are highly vulnerable and suffer devastating consequences. Poverty and

inability to fend for themselves makes orphans to be highly vulnerable. Young girls are exposed to potential predators and the men take advantage of their situation. This was a driver to child pregnancy. Many of the girls who appeared before the panel said that they had lost at least one parent.

2.4.9 Peer Pressure and media influence

Girls in the teenage age are prone to high-level peer pressure that exposes them to high level vulnerabilities. In the hearing, “jam sessions” were seen as places where girls frequented as a result of peer influence. Most girls accompanied their friends and got involved with boys so as to appear “trendy and modern”.

One girl said that she was in Form Two when she got pregnant, after getting the man friend in a jam session where the men could lure them, pay their entry fees and entertain them by buying them alcohol and soft drinks. Her friend, who already had a boyfriend, introduced her to the discos. Most girls also said that they were forced through peer influence to have boy friends who could buy for them presents and show them love.

One girl aged 17 and a mother said that she got involved with a man through Facebook. The man later invited her to Limuru where they had sex and she conceived but she lost track of the man:

I met a man through Facebook. We chatted for sometimes then he invited me to meet him in Limuru. He sent me fare through MPESA. When I reached Limuru, I met him and straight away went into a lodging for sex. Unfortunately, I got pregnant that day. He just escorted me to the bus stage after sex and I came back to Naivasha. Later, I could not reach him as he changed his phone number and Facebook account. I did all these because other girls were doing so and my friends even encouraged me to be adventurous.

2.4.10 Drug and alcohol abuse

During the FGD with the various stakeholders, it was noted that alcohol consumption and drug abuse are common practices in Naivasha. This exposes both boys and girls to danger, as they

are not in full control of their faculties after drinking. The teaching profession has also been accused of harbouring heavy drunkards who act as bad role models to the teenagers.

It was noted that presence of the small packages of lethal, toxic and cheap drinks has had devastating effects on the youth. It creates temporary madness and confuses the youth. In their stupor, everything goes.

2.5 SAMBURU COUNTY

The Samburus are a nomadic pastoralist people. They keep cattle, camels, goats and sheep. Their world is built around a sophisticated “cattle complex.” Every product of the cattle is used for one purpose or the other. They use the horns as containers and music instruments, the skin for clothing and bedding, cow dung for fuel, animal fat as a cosmetic, milk and meat as food. They are totally committed to their stock, almost to the virtual exclusion of everything else. Their cattle are their life; their wealth; their livelihood and the symbol of status and success within the tribe.

Gender and age define societal groupings with strong patriarchal structures that elevate men above everybody. Descent is defined along patrilineal lines, with patrilocal post marital residence. Women are defined as either married, young women of marriageable age, more so after circumcision or children. The concept of age among women is strongly tied to the rite of passage since a woman who has not been circumcised is not allowed to give birth and is still seen as a child. Once a girl/child is circumcised, they are elevated to the marriageable status, their age notwithstanding.

Men on the other hand progress through several age sets. The first important achievement for a man is to become a Moran. It is also a status symbol for a woman to have a son who is a Moran. Basically, female status and prestige is acquired in relation to the men in her life – her husband, or her sons. The young “warriors” (Morans) who are considered the army of the

community, providing security, live separately from the rest of the community and do not eat or associate with women. They can be easily distinguished by their elaborate beads and hairstyle.

The Morans or warriors are the most striking members of Samburu society and are inevitably attractive to young girls. They enjoy convivial and relatively undemanding life with permissive sex for roughly 14 years. Most of them will at one time or another have many lovers who demonstrate affection with lavish gifts of beads.

Although she is not allowed to make major decisions, the major workload of constructing houses falls upon the woman. She is responsible for building and maintaining the home, chopping and gathering firewood, gathering and preparing food and raising the children. Young girls have to build their own houses (*Singira*) after circumcision where they will live and entertain their boyfriends without any parental objection.

Children are taught to care for the animals beginning at a very young age. It was noted that the Samburu choose the children who are considered last and with undesirable characteristics to take to school. In essence, schooling is seen as a punishment for the lazy. The most loved children are taught the ways of the community which is pastoralism.

Girls begin preparing early for motherhood by helping with the household chores and caring for their siblings. When adolescent girls attend dances organised by the Morans of their clan, they are acutely aware of the importance of looking their best at such gatherings. They smear ochre on their shaven heads, darken their eyebrows with charcoal and paint intricate designs on their faces. A girl who does this well is likely to earn praise from a Moran and probably become his mistress, enjoying his protection. The unfortunate thing is that this relationship is forged by mutual physical and sexual attraction

even though each knows that their relationship has no future.

Since both of them come from the same clan, marriage is forbidden. Over the years, the Moran will heap beads upon his lover or bead a girl as a symbol of his love and while the girls may feel passionately about a certain man; they are taught from an early age that these feelings are irrelevant, for they will never wed someone of their own choice. Girls are taught that the marriage bond is not based on physical attraction or emotion, but instead that it is a long-term sound investment forged by her family, particularly her father and or brothers.

2.5.1 Implications of the Samburu Culture and How it Drives Child Pregnancy

A girl as young as 8 years may be considered mature for marriage as long as she has undergone female genital mutilation. Cultural practices predispose girls to child pregnancy and early forced marriages.

2.5.2 Female Genital Mutilation/Cutting and sexual permissiveness

Female Genital Mutilation (FGM) sometimes called Female Genital Cutting (FGC) or Female Circumcision (FC) refers to procedures that intentionally alter or cause injury to the female genital organ for non-medical reasons. The Samburu community practices type ii FGM/C. This is the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora. To the Samburu, this practice is known as *muratare*. It is seen as a rite of passage that enables one to be accepted and respected as a member of the community.

The Samburu traditionally cut their girls at around ages 10-13 years. This has however reduced to girls of as low as 7-9 years being circumcised, resulting from the shame that the father is subjected to whenever it is said at the time of circumcision that his daughter has had an abortion or sexual intercourse. To minimise the chances of either, the girls are initiated at a

more youthful age. It is reported that both parents have to be present during the actual cutting. After the circumcision, the elders will gather and ask repeatedly whether the girl was “clean,” meaning that she had not had an abortion or pre-circumcision sex. If she is “clean”, the elders will spread butter (*ngorno*) on her father’s head, symbolising blessings upon the family and as a sign of respect. This makes the father very proud.

Culturally, after circumcision, the girl is considered mature and the next stage of honour is forced marriage and motherhood. Once circumcised, the girl is also expected to build her own house known as “*singira*” where she gets male visitors and engage in sex. This culturally sanctioned permissiveness therefore, exposes the young girls to child pregnancy and possible birth complications. At Lorubae Primary school at Archer’s post where girls were being trained on their rights as part of the Alternative Rite of Passage, one girl had this to say:

Circumcision makes girls think that they are now of age and can engage in sexual intercourse. After the cut, the circumciser tells you to wake up and go since you are now a big woman.

FGM/C is a deeply rooted cultural practice that the old men in the community who appeared before the inquiry were reluctant to denounce. This is because to them, “It is normal,” they said. It is what has been before them, it is what it is, and it is what will be after them. This sense of received helplessness among the victims makes the practice look like a divine cultural activity that defines the Samburu.

The Chief of Loosuk Location, who has been at the forefront of fighting against early marriage and FGM/C said that he has been nicknamed since his daughters who are all in the university and are not circumcised have been branded as “Turkana.”.

2.5.3 Early/Forced Child Marriage

This is connected to the practice of FGM. From the key informant interviews, it was noted that the

Samburu believe that they invest their wealth in their girls. One informant said,

If your daughter is not cut, then she will not have a husband and, therefore, no wealth.

Girls are seen as mere stores of value and, especially, cattle. Once the girl has reached an age where her breasts start sprouting, or shows other signs of womanhood such as menstruation, enlarged hips and other body parts, she is considered ready for marriage.

The parents (fathers) arrange for her circumcision and gives her out in marriage to an older man than herself. She is not expected to resist the person since men have the ultimate and final word. To the parents, her worth is calculated on the basis of possible bride wealth. The Children Officer confirmed that girls as young as 10-13 years are already given out for marriage. During the camera sessions with child mothers, some confessed having run away from marriage to people who were the age of their grandfathers. At times, after being married off, the girls were forced to live with their husband's mothers either as part of family bonding or to be allowed to mature since they may have been too young.

A 12 year girl narrated how she had been given out for marriage at the age of 9 to a man of 40 years who already had other wives. She was not given an opportunity to go to school. She narrated her story thus:

The man came to our *manyatta* brought sugar and talked to my father for the first time. He came again and talked to my father for the second time and for the third time, he brought cattle and I then got circumcised and given off to him as a wife. I wanted to run away and go back home but I feared my father who would not accept me back.

All the 13 girls interviewed in camera said they had been given out for marriage at a tender age, between 9 and 14 years. Each of them had given birth. Although a number of them had been rescued and taken back to school by an NGO

working in the area, most of them are still child mothers and wives out there in the community.

2.5.4 Beading by the Morans

As earlier noted, a Moran is culturally allowed to choose a girl/child of his liking and bead her as a form of “rudimentary engagement.”

Once beaded, it is considered that the girl has been booked and earmarked by her lover. Nobody else in the community can come to the girl's rescue since this bond has the parent's nod. The beading, which is mostly among individuals from the same clan, is a license to sexual intercourse.

It is however, noted that the lovers cannot get married. They all know that they engage in sex for enjoyment. In the unfortunate event of pregnancy, abortion is procured in a very crude manner through a process known as *airon*, which is abortion by pressing the abdomen. Women will sit on the girl, or kneel on her and press very hard until the baby comes out. Other abortion methods include drinking of herbs and cow dung dissolved in water. In the event that the child is born, it is instantly killed using tobacco. In some cases, it could be given away to another community. One of the key informant noted that this crude abortion leads to many deaths that go unreported in the community. She said:

Many girls in Samburu North and East die in the homes and no one would ever dare talk about it. The crude abortion methods that are conducted by women in the bush are responsible for very many deaths. However, community members have an oath of secrecy and the girls are just forgotten as soon as they die. No one even sees this as a problem.

One Moran can bead several girls while a girl can only be beaded by one Moran. A Moran who has beaded a girl can actually kill any other Moran who is seen fooling around with her. All beaded girls must wear a necklace called *Lopon* as a sign of their status.

The beading is noted to be a prime contributor



Pic: www.aljazeera.com

to underage pregnancy and the fact that the Morans are irresistible. Girls tend to see them as protectors and most of the girls feel safe engaging with them.

The Morans or the warriors known in the community as Warani are not just the protectors of the community and the soldiers but are an authority unto themselves. They not only bea young girls but are feared as potential rapists and people who are literally above the law. One of the key informants said:

The Morans are the most feared people in this community. They can molest you, rape you or do anything with you. One has to befriend them so as to receive their protection.

One of the key informants noted that at one point, girls were removed from school so as to marry the Moran. She lamented thus:

During a certain period, we witnessed girls being removed from school in Samburu North and South

at Barsaloi in the guise that the Morans did not have wives to marry. Elders were literally getting the girls out of schools to be married off in the community.

2.5.5 Patriarchy

The Samburu community has a very strong patriarchal family system in which the father is the ultimate authority. Men have the ultimate word in practically everything including the control of female sexuality. The level of gender imbalance is so high that one sympathizes with the women.

Women are expected to be the socializing agents for their girls. In this regard, they are expected to teach the girls good morals and to be role models to the girls. Yet in reality, they are mere spectators to the cultural happenings. They have no say over who marries their daughters, they cannot take their daughters to school unless through the express authority of the husband and the men can give away their young daughters to

their older friends without the women having a say.

In essence, this type of socialization implies that a girl, or a woman, cannot resist any sexual advance, nor can they have the power to negotiate safe sex. Their safety in terms of pregnancy and or disease is in the hands of men and in most cases, fate.

2.5.6 Culturally Sanctioned Dances

The Samburu community has traditionally sanctioned dances in which each Moran is allowed to be paired with his girlfriend. During such dances, new initiates are accorded an opportunity to dance and socialize with their peers of the opposite sex. This association looks like a licence to illicit sex and results in child pregnancy. Owing to the permissive nature of the Samburu community, it appears that these dances are organized to allow the young Morans to identify their potential girlfriends whom they can bead.

2.5.7 Lack of Proper Parenting, Poverty and Urban Influence

In the Samburu Community, there appears to be very limited concern for the rights of the girl child. From birth, she is seen as store of wealth and there are no set down rules and guides that concerns the growth of the girl child. Mothers are unable to protect themselves and therefore, wallow in cultural ignorance. Lack of sex education exposes the girl child to all manner of experimentation. In urban areas, around Maralal and other towns, the levels of poverty, disease, ignorance and hunger caused by drought, lead many girls to prostitution and transactional sex. This is mainly done as a means of survival.

2.6 NAIROBI COUNTY

Nairobi neighbours Kiambu County to the North West, North and North East; Machakos County to the East and South East and Kajiado County to the South, South West and West. Nairobi County is divided into nine sub-counties namely

Dagoreti, Westlands, Lang'ata, Kasarani, Starehe, Kamukoji, Makadara, Embakasi and Njiru.

Currently the county has seventeen (17) constituencies. Nairobi is a cosmopolitan and multi-cultural city with almost all the ethnic groups of Kenya are represented. It is the most populous city in East Africa and the 12th largest city in Africa, with an estimated population of over 3 million as of 2009 population census. Nairobi city is one of the most prominent cities in Africa politically and financially and is home to thousands of Kenyan businesses and over 100 major international companies and organizations, including the United Nations Environment Programme (UNEP) and the main coordinating and headquarters for the UN in Africa and Middle East, the United Nations Office in Nairobi (UNON).

Nairobi is an established hub for business and culture. The Nairobi Stock Exchange (NSE) is one of the largest in Africa and the second oldest exchange on the continent. It is ranked 4th in terms of trading volume and capable of making 10 million trades a day. The Globalisation and World Cities Study Group and Network (GaWC) defines Nairobi as a prominent social centre. But Nairobi is also home to one of the largest urban slums in Africa (Kibra) besides many other slums: the breeding centres of urban poverty. Politically, it is managed under the Nairobi City County headed by an elected Governor.

2.6.1 Socialization of Children

In the urban environment, people become individualistic and relationships are transitory, superficial and impersonal.

Child socialization in this context is a private affair within the nuclear family. Other important agents of child socialization belong to the schooling system, the mass media and to a larger degree the peers. The housemaids, or nannies, also participate actively in the process of child socialization. The role of the extended family is diminished and parents who should be the

primary agents of socialization are at times too busy for their children.

Lack of closer attention from parents means that teenage pregnancy and child sexual-activity is so common in Nairobi so that to some children, becoming a child mother is normal.

2.6.2 Early exposure of children to Sex

This starts at the family level, especially among the poor slum populations where – due to small single unit dwellings – parents often engage in sex in the presence of their children. This is a factor of what is considered normal home-based sex work among poor women in slum areas. But even where sex work is not the motivation, it is normal for a married couple to have sex in the full awareness of their children, given the poor and crowded housing conditions. Whole families often share a little single room as their home – comprising the kitchen, living room and bedroom. In other cases, relatives and friends engage in sexual activity in the presence of children who begin to internalize it as a normal and desirable activity and soon follow suit. During the hearing, a girl asked the panel what one should do if the parents engage in sex in their presence. She said that they also have desire just like any other human being with bodily sexual needs that must be satisfied.

Fathers have sexual relations with the house helps in the presence of children, with negative impact on the children. A girl complained:

We are always blamed for acting under peer pressure and accused of irresponsible behaviour. What would you say about my 50-year-old father who has slept with practically every housemaid that mum has ever employed? What peer pressure is the 50-year-old suffering from?

But even where sex work is not the motivation, it is normal for a married couple to have sex in the full awareness of their children, given the poor and crowded housing conditions. Whole families often share a little single room as their home – comprising the kitchen, living room and bedroom. In other cases, relatives and friends engage in sexual activity in the presence of children who begin to internalize it as a normal and desirable activity and soon follow suit.

2.6.3 Poverty/parental negligence

Closely associated with the early exposure of children to sex is poverty among urban poor slum dwellers. This results in many parents being unable to provide for their families hence neglecting them to fend for themselves. As a result, children are forced to join child gangs and child sex workers engaging in other forms of criminal activities such as alcoholism and drug abuse for livelihood and protection. The consequence of poverty and child exposure is gang rape euphemistically referred to in Kiswahili slang as *kuchotwa*. There is also excessive consumption of alcohol and use of other drugs.

Wealthy parents have also been accused of abdicating their parental duties and engaging in what may be termed “bribing their children” through giving them more money, allowing them to go to discos and other social places where they run the increased risks of getting pregnant. They do this because they do not have enough time from their busy schedules to parent adequately. In some instances, when the daughters get pregnant, they have easy access to abortion services away from the glaring eyes of the public.

2.6.4 Child Labour/Trafficking

Many children from poor families, unable to continue with education, and those migrating to Nairobi from upcountry are forced to work as house helps and farm/garden helps for little pay. Their employers easily exploit them sexually. Other fellow male domestic workers and neighbours also do the same to them. Sometimes they voluntarily offer sex for money and other gifts to supplement their incomes. A number of girls who appeared before the panel indicated

that they travelled to Nairobi in what appeared as some form of child trafficking to work in people's homes as house-helpers. This unduly exposed them to dangers and later entered into relationships of convenience to their detriment.

2.6.5 Peer pressure

Peer pressure is a strong driver of child pregnancy and consensual child sexual activity within Nairobi County. Most children are under constant pressure from their peers to get into a sexual relationship, such that this has become one way to gain acceptance, recognition and status among peers. A number of girls noted that they know that they got into bad companies and this misled them to engage in sexual intercourse at an early age. One girl said:

We could sneak out of home to visit boyfriends in the company of other girls. We could not even listen to our parents. I attempted sexual intercourse only once and got pregnant. I truly regret that decision as it has messed my life.

Another girl reports that she was left alone at home. Her friends took her out to meet their boyfriends where she was also introduced to a man she says drugged her and had intercourse with her against her wish and she conceived. Generally, many girls tend to blame peer pressure and the need to conform as a reason for engaging in sexual activities. Some even indicated that having a child is the "in-thing" among girls in some estates. They observed that if you do not have a child by the age of 24, "*Umechapa*" meaning that you are behind schedule.

Other instances of peer pressure are in the birthday parties, called *bashes* in the estates. Then there are jam sessions, common in town and estate pubs. Group behaviours and internet dating, among others, also encourage this behaviour.

2.6.6 Defilement

We heard about several cases of defilement and sodomy during the hearings. Three boys narrated how their caretakers sodomised them in children's homes. Strangers, as well as people known to them, have also defiled girls.

Examples of such defilement include the case of a 14-year-old who indicated that her brother's friend had forceful sex with her after drugging her in her own brother's house. After she got pregnant, her parents were very hostile to her, and she had to run away from home.

2.6.7 Child Marriage

Child marriages result from desperation and inability to find help. Most girls therefore, resort to marriage as a way of running away from their problems. This is common with double orphans and those who are neglected and do not have a way out.

One girl who out of desperation also moved in with a man narrated her story:

"After getting pregnant, the situation at home got worse and I therefore, decided to go live with the man. I got my baby while living with him. He is 24 years old and I was 16 years and he does not have a job. We are just struggling and at times I can get help from my mother".

2.6.8 Orphanhood

Being an orphan makes poverty situation worse and many girls are forced to fend for themselves in difficult circumstances. Given the age and lack of skills to sell in the labour market, many girls become victims of child sexual exploitation leading to child pregnancy.

The lack of culturally sanctioned cushioning mechanism via the extended family exacerbates the problem of orphans in the urban centers. As a result, children are exposed to sex predators in search of livelihood or are forced to voluntarily engage in sexual relationships with whoever offers to provide for them. A number of the girls in the inquiry noted that they were living with relatives, neighbours, strangers or mere acquaintances.

2.6.9 Media Influence

In Nairobi, the influence of the media and other ‘plastic’ living has led a number of girls astray. The lack of role models, presence of many entertainment joints and the anonymity with which the urban dwellers engage has enabled many girls to experiment with their sexuality to their disadvantage.

The FGD reported the existence of strip clubs in some estates in Starehe where girls strip in the evening for a fee. This leads in most cases to sexual activities and there are ready clients. They noted that some parents set their children free to go look for money. The presence and abundance of pornographic literature unduly exposes the girls. The County Commissioner Nairobi noted thus:

“Access to information via the many video dens, movie selling shops, DVDs, access to pornographic materials has become so easy hence high levels of sexual experimentation by the youth. How can all these sectors be regulated to protect the girl child?”

The media should therefore, be controlled in a manner that assists the young girls in becoming good citizens.

2.6.10 Other Causes of Child Pregnancy

The following were some of the other issues that the girls and other stakeholders singled out as responsible for child pregnancy:

i. Adventurism/Macho culture

Most girls in their teenage years are too adventurous and in their adventure, they tend to experiment with their sexuality. These at times lead to teenage pregnancy. Most girls see motherhood as a certificate to her fecundity and social prestige. The boys also have macho culture that makes them feel brave in multi-sexual encounters and take advantage of the fellow teenage girls.

ii. Drug and Alcohol abuse

There is a general abuse of drugs and extensive alcohol consumption, which

enhances the teenage vulnerabilities hence pregnancy. In Kamukunji, there is too much consumption of Miraa (*Mogoka*), which is chewed in Eastleigh from 2pm to midnight hence minimal parenting. There are also very many drug dens and traffickers who lure the youth to be peddlers or consumers. Most commonly abused drugs include marijuana, cocaine, heroin and the many cheap brands of alcoholic drinks.

iii. Cultism

There were claims that there are cults that lure girls into sexual orgy i.e. a case in Kariobangi where a stranger allegedly came and wrote “Devil X” on the arms of several girls. It is alleged that once such a girl offers a man a handshake, the man feels the urge to go and sleep with her. She will then remit the money to the boss who controls the cult. This cultic behaviour is seen to be controlled from some central place with a well-knit network. The sex becomes addictive and money that accrues from this process is shared with the girls receiving little as compared to the owners of the network.

iv. FGM/C in Kamukunji

The presence of the Somalis in Kamukunji encourages FGM/C, which exposes the girls to early marriage hence teenage pregnancy. This is a perfect case of cultural practices that are carried over to the urban areas. Some of the cuttings are done in the many clinics found in Eastleigh. In some instances, women undergo de-infibulation and re-infibulation after delivery in the pretext of tightening their vaginal openings for men’s enjoyment.

v. Lack of knowledge on contraceptives and Sexuality

Girls have limited knowledge on contraceptives and sex education and there is also a disconnect between knowledge and practice. The school system does not teach sexuality and sex education, as it should be.

The parents are also not keen in socialising their children on matters sexuality and the grandparents who were traditionally responsible agents of socialisation are no longer there as urban centers encourage individualism and nuclear family as opposed to extended family.

vi. General indiscipline among girls

Unlike the past, some girls are just irresponsible and difficult to control or tame. Teenagers have a defiant attitude that was traditionally unknown. It is common to find teenagers from different communities developing what can be called an urban culture that is environmentally specific. Most children believe that they know their rights and that parents or anyone else should not interfere. Some tend to believe in what they see in the movies not bearing in mind that the scripts are acted. Sex in the urban context is no big deal and the existence of many social joints and lodges provide hiding places for the teenagers. There is a general deviant behaviour that pervades all urban centers with Nairobi seen as most decadent.

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| CHAPTER THREE

3.0 PSYCHOSOCIAL AND HEALTH FACTORS ASSOCIATED WITH CHILD PREGNANCY IN KENYA

This chapter examines the impact of child pregnancies beyond the physiology of the child and their babies to psychological and medical health consequences on the child, their immediate family and the born and unborn child. The chapter explores the extent of these effects on present and future lives of the survivors and minor perpetrators.

3.1 Contextualizing psychological and health factors

When a girl becomes pregnant or has a child, her health, education, earning potential and her entire future may be in jeopardy, trapping her in a lifetime of poverty, exclusion and powerlessness.³⁷

A teenager who is pregnant will experience intense emotions as soon as she has realized she has missed her monthly period.³⁸ Her emotions may start out as confusion, fear, excitement, frustration, and resentment. As she tries to figure out how she feels about being pregnant, how she will tell her parents, and what she will tell the father of the baby if she knows him. She will naturally be very overwhelmed. There are times she has to make choices on whether to keep or terminate the pregnancy or give up the child for adoption. These are big questions that many young girls are not ready to face or answer. When a girl finds out that she is expecting a baby, she is thrown into confusion since situations are pushing her into womanhood when she is still a child with child needs to be met by her parents. All of this intense emotional upheaval interferes with her education and completing assignments and tests in school. Some pregnant teens are so overwhelmed that they may contemplate suicide, dropping out of school, or running away from home rather than face their parents or deal with these life-changing decisions. Majority of the girls eventually keep the pregnancy and are forced to drop out of school.

According to the Kenyan National Adolescent Sexual and Reproductive Health Policy 2015, a number of factors have been associated with adolescent pregnancy. While some children who are adolescent may choose to get pregnant, many pregnancies occur in the context of human rights violations such as child marriage, coerced sex or sexual abuse. Furthermore, lack of reproductive healthcare services for adolescents particularly lack

37 Motherhood in Childhood; Facing the challenge of adolescent pregnancy; UNFPA State of the World Population 2013

38 How Adolescent Parenting Affects Children, Families, and Communities <http://www.urbanchildinstitute.org/articles/editorials/how-adolescent-parenting-affects-children-families-and-communities>

of contraceptive education and affordable, available contraceptive commodities. The use of contraceptives among married and unmarried adolescents is generally low in developing regions.

Adolescents also face greater reproductive health complications during pregnancy because they are not fully physiologically and biologically prepared for pregnancy due to, among other factors, gynecological immaturity and incomplete pelvic growth. Further, they are vulnerable to high risk behaviours that are likely to impact upon their health, such as smoking, substance abuse, anaemia, malaria, HIV and AIDS, as well as other sexually transmitted infections. An adolescent's health is likely to be compromised because of limited access to health education, finance, antenatal care and skilled birth attendance.

An estimated 4.4 million adolescents worldwide undergo abortion every year. In comparison with adults, adolescents are more likely to delay the abortion, resort to unskilled persons to perform it, use dangerous methods and present late when complications arise. Complications as a result of the abortions are more likely to occur. Consequently, adolescents seeking abortion or presenting with complications of abortion should be considered as a medical emergency.

Adolescent pregnancy increases the risk of maternal mortality and morbidities including unsafe abortion, prolonged labor, delivery and post-natal complications. Estimates from developing countries indicate that pregnancy and delivery complications, including unsafe abortion, are the second leading causes of death for girls below 20 years. A recent study conducted on the incidence and magnitude of abortions in Kenya showed that girls below the age of 19 accounted for 17 percentage of all women seeking post-abortion care services and about 45 percent of all severe abortion-

related admissions in Kenyan hospitals in 2012.³⁹ In addition to physiological immaturity, delay in receiving medical attention or emergency obstetric care at a health facility contributes to high rates of obstetric fistula among adolescents. Although there was lack of accurate prevalence data in Kenya, studies in Africa indicate that 58 -80 percentage of women with obstetric fistula are under the age of 20. According to KDHS 2008-2009, nearly half (47percentage) of pregnancy among adolescents were unintended and less than half of girls aged below 20 reported that they delivered in a public or private health facility or with the help of a skilled birth attendant. Young women aged 15-19 years are 3 times more likely to become infected with HIV than young men; women of 20-24 years are over 5.5 times more likely to become infected than their male peers. However, in some older age groups the gap narrows and in others men are more likely to be infected with HIV. They also present with high levels of lack of information on prevention and management.

3.2 Health impacts of Child Pregnancy

The interactions with the child survivors care givers, parents, child fathers and expert witnesses pointed to the following as the health impact on child pregnancy.

3.2.1 Physiological Injury

The girls below 18 years are immature in physique and face dangers of harming their uterus during delivery. Testimonies from the girls indicated that some of them had suffered injury during delivery. One girl testified that she suffered fistula that remained untreated for a long time due lack of information and ignorance of her parents and she was too young to comprehend what was happening to her. She continued to have leakage of urine and faeces for many years. Thanks to a good Samaritan who came to her rescue. The World Health Organization (WHO) report indicates that adolescent girls who give birth each year have a

39 Incidences and Complications of Unsafe Abortion in Kenya, Key Findings of a National Study August 2013 available at www.aphrc.org

much higher risk of dying from maternal causes compared to women in their 20s and 30s.⁴⁰

Due to the age, majority of the girls got assisted delivery through caesarean section. This is because their birth canals are not fully formed ready for delivery.

3.2.2. Exposure to Sexual Transmitted Diseases (STIs) including HIV

Girls who had been defiled and or raped presented with untreated STIs. Some of the girls narrated in tears how they had contracted HIV and AIDs as a consequence of forced and unprotected sex. A 13-year-old girl also painfully recalled how she had been defiled by her uncle (mother's brother) severally when she had gone to visit the grandmother. She was about 6 years old. Upon return home her mother noticed a discharge from her private parts and took her to hospital. Tests done revealed that she had contracted STI. Further, an HIV test indicated that she was HIV positive.

A number of children interviewed in all the six counties had depression and suicidal thoughts. Majority of them were not on any treatment and had not received any trauma counselling. Some of the young mothers had suffered long term Post-traumatic Stress Disorder, stress and depression. Some of the cases were needy and few girls were referred to health facilities that had trauma-counselling center for example Kenyatta National Hospital GBV centre during the inquiry.

3.2.3. Unsafe Abortion

The World Health Organization (WHO) defines unsafe abortion as a procedure for terminating an unwanted pregnancy either by persons lacking the necessary skills or in an environment lacking minimum medical standards or both. In 2008, WHO estimated 47,000 women die

annually due to unsafe abortion⁴¹. More recently the estimates increased to 68000 deaths and more than 5 million suffer long-term health complications⁴²

Adolescent girls are more likely to get HIV infection from unprotected sex because of biological factors that make women more vulnerable to HIV infection. Socialisation and lack of information to make informed decision did contribute to the ignorance exhibited by girls who got pregnant.

Testimonies indicated that 'forced abortion' is culturally accepted among the Samburu especially where the pregnancy occurs when a girl has not yet been circumcised. These pregnancies occur as a result of impregnation by a boyfriend or a Moran who has beaded the girl but not ready to marry her because she is uncircumcised. The method of abortion described by some witnesses was very crude. One elderly woman told the panel that once the pregnancy is known and is unwanted, the girl is taken away from the home to seclusion and old women put pressure on her stomach including jumping or

stepping on the abdomen with pressure resulting in rapture of the placenta. Eventually the baby comes out. It is not clear what percentage of girls die of excessive vaginal bleeding or how many children survive this painful ordeal. It is likely that there is a high maternal mortality rate of the child mothers who usually develop complications while undergoing

the abortion process at home in hiding. Most of them never get to access the health facilities.

In another case, a father impregnated her daughter in Kwale County and took her to a

41 Preventing Unsafe abortion by WHO available at www.who.int

42 Lisa B Haddad and Nawal M Nour, 2009: Unsafe Abortion: Unnecessary Maternal Mortality in journal *Obstetrics and gynecology*

40 WHO MPs Notes Vol.1 No.1 October 2008 available at www.who.int

nearby clinic to undergo unsafe abortion. The girl said;

An expert witness from the Centre for Reproductive Rights informed the panel that studies done indicate that adolescents engage in unsafe and forced sex and get unwanted pregnancy. Since they lack information and guidance to access health care, they procure unsafe abortions at home or using unqualified health service providers. The expert noted that the girls suffer haemorrhage, damage to internal organs, rupture of the uterus and even death. Women and girls have been found to use very crude methods of abortion, for example inserting knitting needles and other sharp objects to open the uterus in order to expel the foetus. Many adolescent present to hospital with complications related to unsafe abortion and undergo post abortion care that is offered in most health facilities.

It is regrettable that girls are forced to go under this cruel and painful process yet their lives can be saved from both unwanted pregnancy and unsafe abortion.

3.2.4 Psychological trauma and depression

The child mothers interviewed described childbirth as *'the worst and most painful experience they ever had in their lives'*. One of them said that she would never want to have a baby again. Most of the girls gave birth in their homes under unhealthy conditions and risked suffering post-natal complications. Due to high poverty levels, the caregivers for the girls who gave birth lacked means of following up on referral to health facilities where it was necessary or recommended.

A number of children interviewed in all the six counties had depression and suicidal thoughts. Majority of them were not on any treatment and had not received any trauma counselling. Some of the young mothers had suffered long term Post-traumatic Stress Disorder, stress and depression. Some of the cases were needy and few girls were referred to health facilities that

had trauma-counselling center for example Kenyatta National Hospital GBV centre during the inquiry.

One expectant child from Samburu appeared very depressed. The panel established that she had not received any form of counseling or psychological support having been defiled by a pastor who had provided her shelter when she ran away from undergoing FGM. She had not slept well and eaten for many days and suffered weight loss and looked anaemic. The doctor in the panel examined her and found that she urgently needed medication and referred her to the nearest hospital for further treatment. She urgently needed medical and psychological care that was not available in Maralal District Hospital.

In Nairobi, a girl of about 4 years, and residing in a temporary shelter, was presented to the panel, in the company of her caregiver. A relative had defiled her more than once. She could not speak about the incident when interviewed. She was extremely withdrawn and unable to communicate; she required specialised child psychological services. She had not received any counselling at all from the time the incident occurred. The referral and follow up was organized.

In Kwale, a man defiled his 14-year-old daughter who was living with her grandmother. Another girl was defiled by her father for many days in a different room in the home while her mother was asleep. Her mother was informed but decided to remain silence. Her father meanwhile threatened to kill her if she disclosed the matter. The girl reported the matter to a woman neighbour who took her to Msambweni Hospital where she stayed for three weeks and was informed that she was pregnant. She had major injuries in her private parts. The mother never cared and never followed up on the matter. The girl tried to kill herself by taking poison but she was rescued. The matter was reported to the police and the father was arrested. Her mother hated her for

reporting the father to the police. She continued with school and delivered when she was only 13 years old. By the time she gave her testimony to the panel she was very depressed and still suicidal. She urgently needed to be seen by a psychiatrist and started on medication and counselling. Her son also looked anxious and depressed. She rarely got visitors to see her in the rescue centre. Occasionally her uncle would visit. The doctor in the panel examined her and prescribed antidepressant medications and recommended that she be attended to by a counsellor. Unfortunately, there was no counsellor in Kwale County Hospital.

Many girls who were child mothers or expecting were quite depressed when they testified before the panel. A number of the other girls in Nairobi County were noted to have suffered long term psychological trauma, stress and depression. They were very emotional and would easily cry during the interview. Lack of adequate facilities to protect and care for such children enhances their suffering.

One girl from Samburu County was devastated, following repeated rape and defilement by people whom she had previously trusted. She was so traumatized that she was severely depressed and suicidal. She was not able to feed and developed dehydration and wasting due to lack of nutrition. Her case was a medical and psychiatric emergency that needed urgent admission for feeding and treatment by a psychiatrist and counsellor. Despite there being a fully equipped hospital in Maralal, there were no mental health professionals there hence this girl had to be transferred to Nakuru PGH, which was over 100 km away.



Pic: www.buzzkenya.com

In Naivasha, the panel interviewed a 17-year-old girl who was defiled when in form 2 by some boyfriends she had gone out with to attend a night party. She said that the boys laced her drink with a sedative and she fell asleep only to wake up and find that she had been defiled. When her parents discovered that she was pregnant, the father chased her away together with her mother. Eventually the grandfather convinced the father to take back both mother and daughter. She later pursued the matter of child support with the man who had impregnated her who was a soldier in the army at Gilgil Army Barracks. Unfortunately, the man had been transferred and nobody would give her details of his whereabouts. She felt exploited and angry. At one time she felt depressed and suicidal. She even attempted to strangle the baby but did not succeed. She needed urgent counselling services and psychiatric care as she was still suffering from depression. The referral was made.

In Home Bay County, a 16-year-old girl was raped twice by a schoolteacher and the third time by a watchman. The teacher requested her to be the lover but she declined. He insisted by writing love letters to her but

she declined. He found her at school one day alone and defiled her. She reported the matter to her parents and subsequently to the police. Her sister and mother confronted the teacher but he was not cooperative. The girl was examined and a Police Abstract Form popularly known as the p3 form was filled and the culprit arrested and charged. A DNA test was requested by the Homabay court but the results have never been availed to court for a period of 3 years. The girl delivered a baby who is at home with her mother. The teacher was acquitted for lack of evidence and continues to teach in the same school. A year later the same teacher abducted her again. He took her to his house where he raped her for a whole day. He transferred her and locked her in another house and held her prisoner for 10 days. On the 10th day she managed to escape while pretending to go out to fetch water. In the process the watchman who was in the neighbourhood also raped her. Meanwhile her parents were looking for her. Finally, they found her and reported the matter to the police who declined to take her statement. The parents pleaded with the police but did not succeed. She eventually went home to her parents, delivered a second baby and she is now traumatized, depressed and fearful. She kept crying throughout the interview. The teacher has reportedly threatened to kill her if he sees her next and he is walking freely with no support to the two children he fathered.

In Busia County, a woman was chased away from her matrimonial home by the in-laws after her husband defiled their daughter and made her pregnant. She reported to the police and he was arrested. The father ran away soon after the incident but kept sending threatening messages that he would have them killed. They were living in extreme fear and stress with no job and no source of income.

The narrative from the stories above demonstrate the psychological suffering and trauma and depression the girl child has to endure.

3.2.5 Psychological effects of child fathers

In HomaBay County, a girl aged 14 years old was impregnated while in standard 6, by her boyfriend of three years aged 16 years. The boy was in Form Three. The girl confessed that the mother had advised her about abstaining from sex. After delivery, her mother forced her to begin using family planning. It turned out that the girl and her mother had limited knowledge about reproductive health and HIV infection. Many girls interviewed were ignorant about sexuality and reproductive health. In many cases, no one had given the girls information on sex, sexuality and why it is important to abstain from early-unprotected sex.

There were several reported cases where experimental sex was between two consenting children. Some of the children had moved into marriage as a consequence of the pregnancy either voluntarily or being forced by the parents/guardians. The girls and boys confessed to leading a very stressful life. In one incident in Kwale, the children agreed to go back to their parents, seek for forgiveness and request to go back to school leaving the baby under the care of the girl's parents.

3.2.6 Psychosocial impact of child pregnancy

The child mothers whether married or not presented with psychological stress bordering on mental disorder. Those pregnant were very anxious, having had no exposure to what to expect especially for delivery. The girls who had delivered gave varying stories with traumatic experiences. Most girls upon delivery had to take care of the newborn babies. They also dropped out of school with little hope of returning to school. They were also disowned by society, excommunicated from church and abandoned by the men or boys who impregnated them. They suffered psychological trauma and depression.

In all the counties visited, there was no adequate psychosocial support for the girl's survivors

of violence. Some girls were forced into marriage once the parents or guardians had information that they were pregnant. Equally, the panel interviewed child- fathers who informed the panel that they were forced into marrying the girls to provide shelter for them since their parents did not want to support them for having brought shame to the family. The girls were victimized, ostracized and discriminated within families. Psychologically the girls were not prepared to become mothers and wives at that early age and therefore, presented with stress and feeling of rejection. In circumstances where marriage is found to be the solution, the girls drop out of school to become child mothers. Girls felt stigmatized by the early and unwanted pregnancy. Some of the girls ran away from home since they did not want to be married off by the parents. Unfortunately, there are limited provisions for shelters. Some girls told the panel that they were forced to stay with their grandmothers after rejection by the biological parents who were upset that they had brought shame to the family by getting pregnant. Some health care providers tormented the girls by openly discussing their age with judgmental misgivings as to why they allowed themselves to become pregnant. The panel noted that all the counties visited lacked youth/ children friendly services or mental health services to protect, care and support such children. As a result, their psychological trauma persisted.

Many of the children who appeared before the panel feared physical harm. They felt insecure following



Pic: www.nyspirit.com

threats by family members or perpetrators. Other children feared being abandoned by relatives or guardians and did not know where they would go next. Girls with disabilities suffered the most, especially those with mental disabilities that made it difficult for them to communicate effectively. They continue to suffer quietly, especially where cases have not been finalized.

Another consequence was the risk to the health of the infants born to these mothers. Some girls brought their babies along during the interviewing process. Most of the children mothers do not have adequate financial support to take care of themselves and their babies. Hence maternal and child nutrition is likely to be compromised. Some of the child mothers were weak looking and appeared malnourished and lacked proper clothing to keep the babies warm. In other cases, grandmothers stepped in to assist the girls especially those orphaned and those chased away from their homes by their parents.

3.2.7 Availability of sexual gender based centers

Most counties did not have Sexual Gender Based Violence (SGBV) centres. The panel visited County Referral Hospitals

where it was confirmed that there were no SGBV centers except in Naivasha sub County Hospital where a functioning GBV center was identified. The center was a makeshift unit constructed using corrugated iron sheets. The environment was not conducive for clients since it was still under construction. One nurse from the center reported receiving cases of SGBV and providing them with free post rape care services. Post-rape care services include emergency treatment of injuries, prevention of Sexually Transmitted Diseases, Post Exposure prophylaxis against HIV infection and prevention of pregnancy. In this center, they were able to collect forensic specimens for medico-legal purposes. They were using P3 forms for documentation and not the MOH PRC form 100. They were able to provide trauma-counselling sessions for the survivors.

The Naivasha GBV centre works closely with the gender desks in the police station which is usually manned by a police officer who is trained in GBV. There are times when they experience challenges working with the police where a survivor does not get the required assistance. Some survivors arrive late (after 72 hours) making it difficult for them to manage the patient.

In Kwale County Referral Hospital, there was a shortage of skilled medical personnel with only 3 clinical officers trained in SGBV. They reported using the P3 form alone without the recommended MOH PRC form 100.

In most counties, there were no mental health care professionals to treat traumatised and depressed patients who required counselling and psychiatric services. There were no counsellors specialised in treating children, adolescents and adult survivors except in Nairobi and a few in Naivasha.

Kenyatta National Hospital (KNH) was the only institution with a fully-fledged SGBV outpatient facility using the correct forms and with qualified staff. The KNH GBV center was able to

provide specialised services including trauma counselling, support groups and linkage of survivors to NGOs for legal intervention.

Poor infrastructure contributed to further delays of assisting the girls reach health facilities for their reproductive health needs due to bad road network. This also obstructed health workers from responding to emergency services adequately. Hospital also reported a considerable number of stillbirths from young adolescents or children mothers. Some infants were premature and of low birth weight. Many girls had to be assisted to deliver through caesarean because of the undeveloped pelvis to allow normal delivery.

3.2.8 Health risks in access to reproductive health care services

Samburu County hospital was one of the best-equipped hospitals visited by the panel. The hospital had an organized system in the management of reproductive health services. Health care providers reported that most of the affected girls do not access hospitals and end up delivering at home (79percentage) with the help of Traditional Birth Attendants (TBAs). The remaining 21percentage are brought to hospital with severe complications. They do not have information on how many mothers fail to reach the hospital and perhaps die at home. They reported that some of the major barriers preventing Samburu girls from accessing health care services include the negative cultural practices, a poor road network, long distances from the hospitals and insecurity. There were no psychologists or trained counsellors on site during our visit.

Many of the children failed to receive skilled care during delivery as per the WHO recommendations. It was noted that the child

mothers who did not attend antenatal clinic, did not deliver in hospital and also failed to take the newborn babies for immunisation. For a safe pregnancy, childbirth and postnatal experience, mothers and babies need continuum of care that starts in the household and community and extend to health care systems. It is recommended that pregnant mothers go on balanced diet and be supported by families and be given relevant information. They are expected to learn about immunisation, infant feeding and neonatal care and prevention.⁴³ Needless to say, child mothers do not access any of the recommended treatment. The only institution with an active adolescent clinic was KNH. The County administration informed the inquiry panel that they did not have any authority from the National Government to administer or manage adolescent/youth friendly services (YFS). The YFS are still under the National Government docket.

The Ministry of Health (MOH) developed National Guidelines for Provision of Adolescent Youth-Friendly Services (YFS) in Kenya to address the gaps in health service delivery for youth and adolescents.⁴⁴ With the development of the new guidelines, the Government and NGOs now have a framework that will guide all stakeholders towards improving access to SRH services for young people. Whereas the guidelines are a positive step, their implementation is critical if these rights are to be realized. Some of the key reasons for establishing YFS is to prevent health related complications resulting from delayed treatment. The youth are less likely to recognize health related symptoms resulting in delayed treatment. They are more likely to leave diseases untreated because they are afraid of the outcome, worried about the stigma or do not believe that they will be treated well at the clinic. They are more likely to be ignorant about reproductive

health matters concerning their bodies, more likely to have early unprotected sex resulting in unwanted pregnancy and unsafe abortions leading to maternal and child mortality. As a result of the ignorance, they are more likely to have early forced marriage, sexual transmitted infections, mental health problems, alcohol and drug abuse and to be sexually abused.

Child pregnancies are likely to contribute to high maternal morbidity and mortality. Samburu County has high maternal mortality and morbidity. For most residents here, access to health care has been poor due to a variety of factors including extremely harsh weather conditions and insecurity.

Poor infrastructure contributed to further delays of assisting the girls reach health facilities for their reproductive health needs due to bad road network. This also obstructed health workers from responding to emergency services adequately. Hospital also reported a considerable number of stillbirths from young adolescents or children mothers. Some infants were premature and of low birth weight. Many girls had to be assisted to deliver through caesarean because of the undeveloped pelvis to allow normal delivery. Child mothers failed to make antenatal visits and had home deliveries and there were high chances of mother –to child transmission of HIV.

The evidence remotely pointed to the inadequacies in the health facilities to manage the situation of children who are expectant and seeking services. The infrastructure in remote areas was poor making the facilities inaccessible. Emergency response was also hampered. These occasioned delays in the children reaching facilities for safe delivery. Most facilities lacked child friendly services with qualified professionals to offer counselling services. Facilities were also not equipped to handle complications presented by the child mothers. There was dilemma from healthcare workers as to whether they should put the children on contraceptives after delivery or not.

43 WHO Pregnant adolescents delivering on global promises of hope available at www.who.int

44 National Guidelines For Provision Of Adolescent Youth-Friendly Services (Yfs) In Kenya, Moh <https://www.k4health.org/sites/default/files/National%20guidelines%20for%20provision%20of%20youth%20friendly%20services.pdf>

In most counties, there were no mental health care professionals to treat traumatised and depressed patients who required counselling and psychiatric services. There were no counsellors specialised in treating children, adolescents and adult survivors except in Nairobi and a few in Naivasha.

Child pregnancy places severe stress on the children and compromises their health. The health care system is also ill prepared to provide them with adequate services and the home environment becomes too hostile for them to handle. Child friendly services and an understanding public may be necessary so as not to double jeopardize the lives of young girls.



CHAPTER FOUR

4.0 STAKEHOLDER ROLE IN THE MANAGEMENT OF CHILD PREGNANCY

This chapter presents synthesized findings on the role of various stakeholders in the life of children with greatest responsibility in preventing and managing incidences of child pregnancies. The inquiry carefully selected stakeholders from various levels of government, religious circles, communities and non-state actors to understand their preparedness and past experiences in preventing child pregnancies.

4.1. Findings from secondary schools

The inquiry panel as part of its hearings visited two secondary schools in Busia County one boys and the other one girls to get views of the children on the issue of child pregnancy. The assumption was that majority of the secondary school children are below 18 years. The inquiry panel held discussions with students from Nambale Boys Secondary School in Busia where an anonymous questionnaire was administered to 90 boys on several parameters of sexual and reproductive knowledge including their experience of child pregnancy, sexual abuse, sexual relations, and abortion incidences. Similarly, the inquiry panel visited Kisoko Girls Secondary School in Busia and administered a short survey to 100 girls. Table 4.1a and 4.1b present summary of the response.

Table 4.1a. Findings from Nambale Boys

Inquiry question	Percentage of responses (N=90)
If they knew of any girl who experienced child pregnancy	58.5
Whether respondents has a girlfriend	75.4
Whether respondents has ever been sexually abused	16.5
Whether respondents is sexually active	74.7
Whether respondents is married	1.1
Whether respondent has been tempted to have sex with a relative	21.5
Whether respondent knows of an abortion case in their community	70.6
Whether respondents knows of a case where the consequences of abortion resulted to death	15.3
Whether respondents can abstain from Sex	64.3

Table 4.1b: Findings from Kisoko Girls

Inquiry question	Percentage of responses (N=100)
Whether respondent has ever been pregnant	5.5
Whether respondent has been at one time sexually abused	7.0
Whether respondent has a boyfriend	75.0
Whether respondent's boyfriend are over 18 years of age	35.3
Whether respondent knows of an abortion case in their village	71.9
Whether the abortion they knew took place at home	80.9
Abstinence as the most effective measure towards curbing child pregnancy	90.

Over one half of the boys were aware of children who had experienced pregnancy. Nearly one-fifth of the boys had

suffered sexual assault in their lifetime. About 70percentage of boys and girls were aware of abortion incidences among children. Most girls 80percentage admitted that abortion occurs at home. More girls (90percentage) compared to boys (64percentage) believe that abstinence can prevent pregnancy among children.

The above findings indicate that children require well-prepared information package and concerted effort in empowering them as the first line of tackling the problem of child pregnancy. There is a disconnect between knowledge and behavior that should concern the stakeholders in this field of child protection.

4.2 Findings from rescue shelters and homes

Rescue shelters and homes remain a critical protective measure of victims of child pregnancy especially in cases of defilement, incest and escape from child marriages and FGM. The inquiry panel sought to hear from some of the actors in the communities that have taken the initiative of providing shelters to these children in the absence of government facilities.

The inquiry panel visited and interviewed the following rescue shelters/homes

- a) Mary Immaculate Rescue Centre – Suguta Mar-Mar Samburu County
- b) Samburu Girls Foundation – Mararal Samburu
- c) Young Mother’s Rescue Centre-Kwale County
- d) WRAP – Nairobi County
- e) Naivasha Rescue Centre-Nakuru county

These shelters are managed by non-governmental organizations and rely on donor funds and well-wishers for sustainability. Among the categories of children in these institutions include survivors of:

- child marriages
- sexual violation
- domestic violence
- child pregnancy
- incest
- Abandoned children
- Orphans

Some of the centres were structured to cater for specialised needs of girls. For instance the centres visited in Samburu County were specific to the rescue of girls escaping from FGM and early marriages. The shelter in Kwale County specifically rescues children who are pregnant and have no safe place to stay. The centre gives hope for the girl mothers and keeps their babies close to the mothers allowing them to be nurtured while the mothers are undergoing training, resume school and advocates for mother and child bonding.

The shelters provide a raft of services to the children among others the provision of basic needs including food, shelter, clothing, education and health care, love and comfort with attempts to restore their dignity. Most of the children interviewed also feared for their lives especially the cases that were linked to harmful cultural practices like FGM, forced early marriages and cases of incest. In such cases the shelters provided for their protection and security from the community. The shelters also provided the needy girls with legal and paralegal assistance for the cases of defilement and sexual abuse that had been filed in court. Psychosocial support was a need that the girls required as many of them were traumatised and some were suicidal.

The shelters further provided for vocational training as a means of economic empowerment and income generating activities for the girls and further prepare them and the communities for their re-integration back to society. In case of Samburu, it gave the girls the opportunity to resume their education at the levels they had stopped. The Young Mothers Rescue Centre in Kwale gave opportunities to the child mothers who got pregnant through incest and were rejected. WRAP in Nairobi though meant for children, had been forced to take in needy mothers accompanied by their children.

The shelters face several challenges in their quest to recue girls. Inadequate financial

support, lack of government and community support and inadequate facilities were cited as the major challenging factors in their operations. Other challenges reported were legal representation and follow up in matters under investigation or in court. The director of Young Mothers Rescue Centre in Kwale told the panel that once the girls are rescued, the centre shoulders all the expenses. It takes resources to treat the girls and prepare them for health facility delivery where they have to pay the costs. In the follow up on matters pending before court, the travel expenses. DNA tests and follow up with the police are challenging not to mention the care of the born babies. When the matters are finally presented to courts of law, the girls have to be accompanied by a counsellor from the facility for safety. The courts grant very many adjournments and most times the perpetrators are acquitted for lack of sufficient evidence required for successful convictions. Other notable issues include corruption and interference by relatives and perpetrators, delay of court cases where most of the perpetrators are released on bond whereas other cases are terminated without any reasons. The perpetrators continue to be free and to threaten some of the child mothers. In some cases, she is forced to call in police to protect the girls in the centre occasioned by threats from perpetrators and the community.

4.3. Child mothers at Young Mothers Rescue Centre

One girl from Uganda said that her father was so harsh that he used to beat her up frequently. She became rebellious and ran away from home. She left the village to Kampala town where she stayed with friends and engaged in prostitution. She would call her father but he would be hostile refusing to allow her back. She travelled to Kenya, stayed in Nairobi, kept trying to call her father but he was abusive. She met friends in Nairobi with whom she stayed with and got pregnant. She travelled to Mombasa, was arrested by police and stayed in remand for 5

months. Eventually the police referred her to the Youth rescue centre.

Another girl stated that her father did not like her and abandoned them when they were young. She studied up to standard 7. In term 3 she had sex with a boyfriend and got pregnant. The boy wanted her to abort the baby but she declined. She reported the boy and he was arrested and released on bond. She got pregnant a second time and delivered the child. She was married off to the father of the child only for him to start beating her. Her mother upon hearing about the physical abuse went for her and took her to a hospital where she was treated but the mother reported the matter to the police. She and her boyfriend were put in remand for underage marriage. She was released although the boyfriend is still in remand and the case is on-going. She said nobody had given her any information on sex and the risks.

A 14-year-old girl from Lunga Lunga, had trouble with school fees. The father had declined to pay fees and the mother would go and plough the *shamba(land)* together with the children, to raise money for her fees. Her father repeatedly demanded that she goes with him somewhere for medical treatment although she was not sick. She tried to refuse but was eventually forced. He went with her and raped her after administering some drugs on her that made her confused, drowsy with a heavy tongue. Initially she tried to tell her mother but was unable to do so. She suffered as she had to go to school. In school she could not perform or concentrate in her work. Her academic performance declined and eventually her mother noticed that something was wrong with her. By this time the father raped her the second time as she slept in his room. The mother finally confronted her and she opened up and narrated the whole story. She was relocated to her maternal uncle's place where she was assisted to report the matter to the police. The father was arrested but the court dismissed the case and the father acquitted despite

availability of evidence. She was eventually referred to the Youth rescue centre where she is getting support. She would like to go back to school. She is still very traumatised by what happened to her and keeps crying. She requires further counselling and psychosocial support.

Another child mother aged 13 years was sent by her maternal grandfather to buy cigarettes. She was defiled when she brought him the cigarettes. He told her not to tell anyone. He kept having sex with her for about one month. She told her mother who initially did not believe her. She finally told the neighbours who told her mother again. The mother took her to school where she reported the matter to the teachers. The matter was reported to the police and the grandfather was arrested. The grandfather denied raping her and the matter is pending in a court. The girl appeared very distressed and uncomfortable with psychological pain. This girl needed further psychosocial intervention. Her dream is to go back to school.

A 14 year old girl lived with her grandmother, was raped by her father for many days in a different room in the house while her mother was asleep. Her mother knew but kept quiet. She informed the mother but the mother advised her to keep quiet about it. Her father meanwhile threatened to kill her if she reported the matter. The girl reported the matter to a woman neighbour who took her to Msambweni Hospital where she was hospitalized for 3 weeks. She had major injuries in her private parts. The mother never cared and never followed her. She tried to kill herself by drinking poison but she did not succeed. The matter was reported to the police and the father was arrested and the matter is pending DNA test. Her mother hated her for reporting the father to the police. She continued with school and delivered on when she was 13 years old.

4.4. Dialogue with government and community based stakeholders

The key stakeholders who participated in the County based focused group discussions included though not limited to teachers, national and county government representatives, civil society actors, the judiciary, community opinion leaders and administrators (chiefs, religious leaders, elders), representatives of the children's department, the national police service, office of director of public prosecution and health workers. Key issues emerging from the dialogues include:

i. **Lack of implementation of laws, policies and regulations.**

It was noted that Kenya has a raft of laws, policies and regulations, however the challenge is lack of understanding and implementation by relevant agencies and stakeholders that deal with children issues. The non-implementation of the anti FGM legislation and other children related laws was seen to perpetuate FGM practices, child marriages and child pregnancy and cases of defilement and rape. The County governments seek to enact county specific laws to curb harmful practices that endanger the lives of the girls.

ii. **Challenges faced by the security agencies in mitigating sexual violations against children**

The police acknowledge the existence of child sexual violation, child pregnancy, FGM and early marriages and admit that most of the cases are never reported and or properly investigated because of the strong cultural practices that encourage the use of community structures to address such matters. There is ignorance among community members in addressing matters lawfully and legally for fear of victimization of the survivors hence lack of witnesses. Lack of knowledge on when to report and how to preserve the evidence leads to acquittals. A poor infrastructure also makes it difficult for victims to report and the police to respond in good time. This is however, being addressed by introducing

fulltime gender desks at police stations manned by trained officers on sexual and gender based violence. There is need for sensitizing the community on the importance of reporting cases.

iii. Poor parenting and lack of guidance

Factors that contribute to the problem of early childhood pregnancy include parental conflicts and separation resulting in absentee parents leaving children without supervision or leaving small children in custody of grandmothers. Many times the grandmother is not able to replace the mother in the upbringing process.

Religious leaders stated that poor moral values in the society lead to child neglect resulting in ignorance and exploitation. Further, those children who grow up without guidance end up being rebellious and undisciplined.

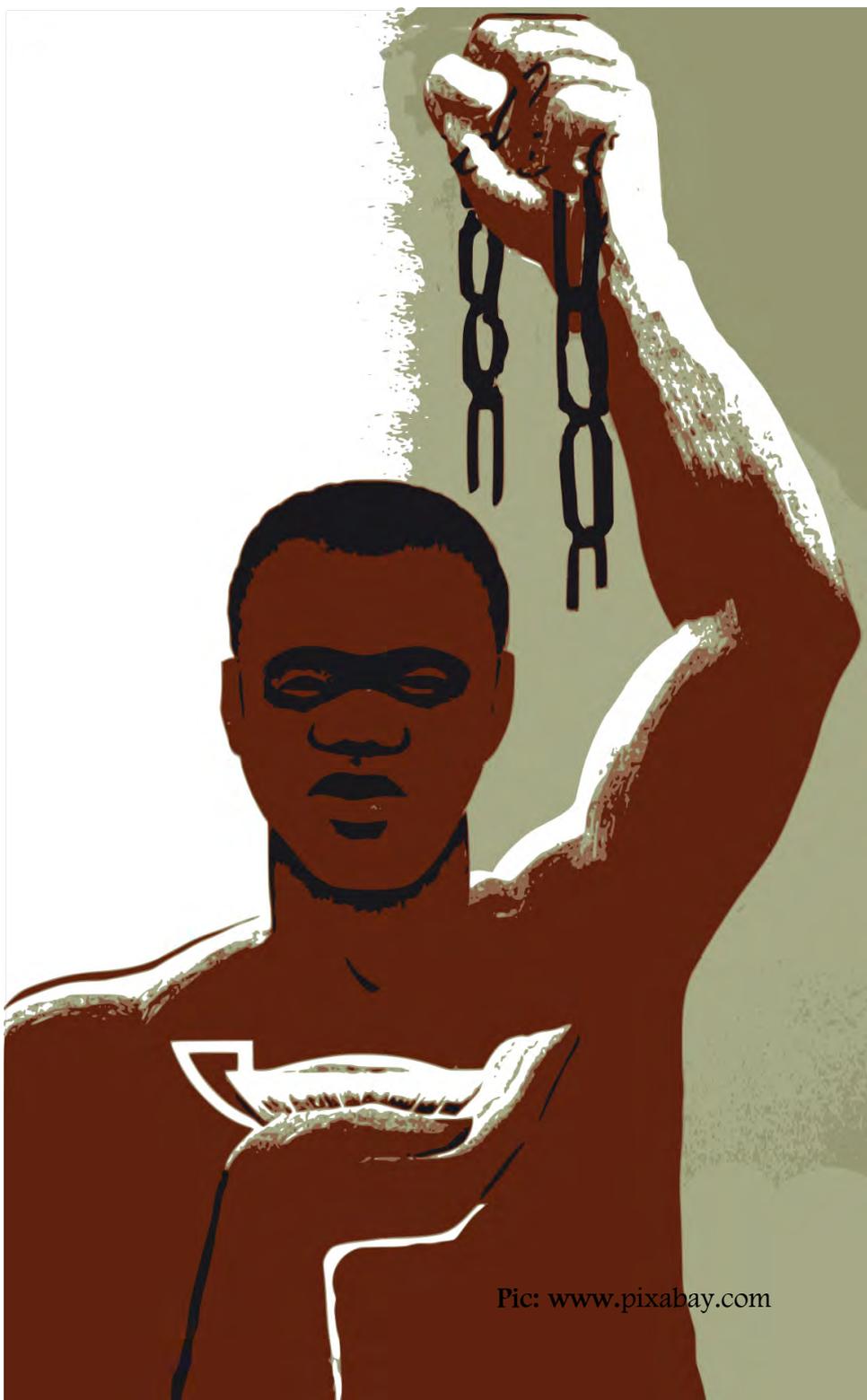
iv. Poverty

Poverty and dysfunctional families are root causes for child sexual abuse and child pregnancy. Lack of income results in child labour where children are at risk of child sex. Some children miss basic essentials such as sanitary towels, lotions, creams and underwears thereby rendering them vulnerable to exploitation by bodaboda operators, teachers, sex

seeking tourists and other perpetrators. Majority of the girls are from poor families hence face financial challenges to support themselves and their children thereby dropping out of school.

v. Lack of education

Lack of knowledge and education increases the risk of child sexual abuse. Inadequate sex education in schools promotes ignorance. Life skills lessons are not taught in schools because the subject is not examinable. Teachers therefore



Pic: www.pixabay.com

prioritise only examinable subjects that contribute to the national ranking of schools. There are schools that do not have teachers who are experts in guiding and counselling. There are also instances where teachers have been reported and accused of sexually abusing their students and many cases go unreported. Children in mixed schools are more vulnerable to early sexual practices and early child pregnancy than children in single sex schools.

vi. Social and cultural factors

Culture has been and remains the biggest impediment to the protection and empowerment of children in the counties that were visited. Fighting child pregnancy, early marriages and FGM is deemed elitist in its approach; hence cultural influence is very dominant. The retrogressive cultures which promote men to marry and divorce contribute to broken marriages and single parents having to struggle to take care of their children with their meagre resources, thereby rendering children vulnerable to abuses. Discos and negative peer influence are risk factors that expose children to abuses.

Bodaboda operators contribute to childhood pregnancy by luring young schoolgirls with money and in the process impregnating them. Some elderly men tend to engage in incest on their children or grandchildren believing that they will become wealthy as advised by witchdoctors.

In most cultures adolescent girls are considered mature for sex or early marriage and therefore fail to complete their education. To financially support themselves, many girls depend on small manual jobs.

vii. Drug and substance abuse

There are reported cases of children's drinks being laced with drugs when they go for night parties with their boyfriends. The girls

are drugged and sexually abused. Drug and substance abuse among young children is a contributing factor to sexual violations of children.

viii. Sex tourism and hotel industry

Representatives from the Hotel industry acknowledge that child prostitution and exploitation is rampant. Some interviewees recommended enforcement of laws to prevent both child prostitution and sex tourism.

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ix. Intimidation and threats from perpetrators

Court cases on sexual offences take very long resulting in demoralization of children, parents, lawyers and prosecutors. It was reported that most perpetrators who are released on bond, intimidate their accusers and even threaten them with death in case they report. The commonly reported cases include defilement, attempted defilement, sexual assault, early marriages, incest, indecent act, sexual exploitation and threatening of children. Statistics indicate that the actual successful convictions under the sexual offences Act, are only about 50percentage.

The sentencing of offenders need to be stringent so as to deter others. Currently this is not the case. In the cases of girls procuring abortion and being prosecuted, several factors have to be taken into account during prosecutions including best interest of the child. The courts have failed to take note of the incriminating circumstances for children.

4.5. Health sector

The panel established that the Ministry of Health has come up with a gender and equality policy that has been passed on to the cabinet for approval. This policy deals with issues of reproductive health, rights to access to reproductive health and encompasses both girls and boys. The ministry has a unit of reproductive health that has the reproductive health policy. This unit is also drafting guidelines on dealing with gender-based violence and how to deal with the issues of the girl child in terms of prevention of pregnancy. They did acknowledge that the effects of child pregnancy were real and worrying because of the health impact occasioned by deliveries that increase maternal mortality. Some of the young children get stillbirths.

In terms of prevention, the main issue is the access to reproductive health prevention measures for children. The Ministry indicated that they are preparing various policies and review the existing ones to comply with the Constitution of Kenya 2010. Notably what is lacking is an implementation framework for the various policies. There is also the need for child/youth friendly health facilities across the country that should integrate sex education and mental health. A one stop SGBV center is also a key recommendation for offering redress and health services to the victims the panel was told.

4.6. Judiciary

The panel sought to understand the judicial process that seemed to acquit most perpetrators

for cases that were prosecuted leaving the young girls frustrated and traumatised yet stranded with ‘fatherless’ babies.

The major finding from the judiciary is that the laws exist with weak enforcement. There is big disconnect between the law, the implementation and the awareness both to the society and the law enforcement officers. For instance the police dismiss many cases brought to court due to defective charge sheets. It is also very common to have cases being compromised either by family withdrawing the cases even before they reach the courts. Cases facing teachers as perpetrators are also very common but prosecuting them is hard since in most cases they would be covered up by the society. The issue of DNA and forensic evidence also remains a stumbling block towards achieving justice due to lack of proper facilities and the Government Chemist takes too long to present the evidence. Judiciary pointed an accusing finger at the Office of Director of Public Prosecution for shoddy investigations.

The sentencing of offenders need to be stringent so as to deter others. Currently this is not the case. In the cases of girls procuring abortion and being prosecuted, several factors have to be taken into account during prosecutions including best interest of the child. The courts have failed to take note of the incriminating circumstances for children.

4.7. Sexual and reproductive health and rights for children

Unsafe abortion is an issue that needs attention as it has a link to maternal mortality. Up until the year 2014 the Ministry of Health developed standards and guidelines on the management of sexual violence and within that guideline the ministry recognized that a survivor of rape could access safe abortion if they got pregnant out of that rape. The ministry has since then withdrawn these guideline which poses a great challenge since the health professionals rely on the guidelines that the ministry issues. In the

absence of these, it is impossible that any one will access abortion for a pregnancy out of rape. This is indeed a step backward in terms of the gains achieved in garnering support for safe abortion.

The experts noted inconsistencies in the laws for instance whereas the law criminalizes under 18 marriages, the Marriage Act exempts Muslim marriages from the application. In essence the law is saying that girls who are under age can marry as long as they have attained puberty because that is what is recognized by Islamic law. This is a contradiction that needs to be addressed and harmonized within the context of the Marriage Act.

The other challenge is the increasing incidences of sexual violence in schools and the Ministry Eand TSC have not fully addressed the issue. There is an upsurge in cases of teachers violating girls but a lot of times they are transferred or subjected to internal processes that do not offer justice to the victim. When teachers are sacked, they are able to find their way into private schools or establish their own schools and continue to endanger the lives of the girls. There needs to be action by the government in monitoring such perpetrators to avoid recurrent abuses.

Many girls who are sexually abused and become pregnant do not report the cases in good time because of the stigma that surrounds it. Others are too young to understand that a crime has been committed and that they must speak out. Most of the children are given goodies such as very little money and threatened not to speak out. It is challenging for the children since in most cases people of trust defile them. There need to be policies that can address stigma and this would actually complement the laws. The government therefore needs to have strategies for creating awareness so that the communities also understands and plays a role in monitoring the perpetrators. The re-entry policy for the girls who get pregnant in schools is not fully implemented as was intended. There are still incidences where girls are sent away from schools when pregnant and their education dream shuttered in spite of the existing policy allowing her reentry into school after delivery.

One expert said that to curb the child pregnancy we must fully implement the marriage law by registration of all marriages including traditional marriages to compel everyone to comply with age of marriage.



CHAPTER FIVE

5.0 THE LEGAL AND POLICY FRAMEWORK ON CHILD PREGNANCY

“The children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their childhood should be joy and peace of playing, learning and growing. Their future should be shaped in harmony and cooperation. Their lives should mature as they broaden their perspective and gain new experiences.” World Declaration on the Survival, Protection and Development of Children: (World Summit for Children 30 September 2001)⁴⁵

5.1 Policy Framework

Child pregnancy has been a societal issue of concern for a long time. Within the Constitutional definition, a child is one below 18 years. The main concern has been that child pregnancy interferes with the girl child’s right to education, the enjoyment of the highest standards of health and in addition preventing the girl child from enjoying their childhood as a right.

Public Policy is a system of regulatory measures, courses of action and funding priorities concerning a given issue of public interest. It is an attempt by a government to address a public issue by instituting decisions and actions pertinent to the problem at hand in order to resolve it within a given time.

Kenya has over time developed various policies to address issues of children especially in education but there has been no specific policy on child pregnancy. The policies developed have focused on health and child protection. This section reviews some of the policies with a view to analyzing how they address the challenges of child pregnancy based on the findings of the public inquiry.

The Sessional Paper No. 1 on African Socialism and its application to planning in Kenya (1965)⁴⁶ outlawed discrimination on the basis of sex and emphasized social justice and equal opportunities with regard to education. The implication of this policy was that in the interests of natural justice, both boys and girls would be provided with equal opportunities to access and complete education to the highest levels possible.

⁴⁵ We the children, Meeting the Promises of the World Summit for children; Kofi A. Annan Secretary –General of the United Nations June 2001 available at www.unicef.org

⁴⁶ GOK, 1965.Sessional Paper No. I on African Socialism and its application in Kenya, Government Printer

5.1.1 Kenya Vision 2030

The Kenya vision 2030⁴⁷ is a long-term development policy adopted in 2003 geared towards transforming Kenya into a newly industrializing middle-income country providing a high quality of life for its citizens by 2030. It is premised on three pillars: political, economic and social. Education is key factor within the Social Pillar. The Second medium term plan (2013-2017)⁴⁸ identified key policy actions, reforms and programmes to be implemented by the Government within this period. One such programme was to strengthen access to Universal Primary Education and to provide wider access to secondary education for all primary school leavers. The Government would also increase support for policies and institutions devoted to promoting gender equity and full implementation of policies for protection of rights of handicapped and vulnerable groups and strengthen education against Female genital mutilation (FGM).

The Second medium term plan (2013-2017) programmes of strengthening access to education shows that it does not provide strategies to capture eligible children aged six and above to be presented for admission to school neither does it provide for mechanisms to stem drop out from primary education due to various area specific reasons including Female Genital Mutilation (FGM) and other cultural practices.

The inquiry found a close relationship between Female Genital Mutilation (FGM) and child pregnancy especially in Arid and Semi-arid Areas (ASAL) regions. Although the Government did establish the FGM board to address the menace, the Board requires to be adequately facilitated to have an impact among communities that still practice FGM.

47 Government of the Republic of Kenya, 2007, Kenya Vision 2030. Ministry of Planning and National Development available at www.vision2030.go.ke

48 GOK, Kenya Vision 2030, Second medium term plan 2013-2017, MOPND

5.1.2 National policy on marginalized and vulnerable children, 2004

The Constitution defined marginalized group as a group of people who, because of laws or practices before, on, or after the effective date, were or are disadvantaged by discrimination on one or more of the grounds provided in Article 27 of the Constitution of Kenya (2010). The government identified marginalized groups, nomadic or communities as those who live in geographically isolated areas or in areas of overcrowding (slums) or in conditions considerably different from the dominant society.

This National policy on Marginalized and Vulnerable Children⁴⁹ proposed that the Ministry of Education together with other stakeholders would implement various programmes to support the most vulnerable children, girls, and women in the Arid and Semi-Arid lands and urban slums. They would establish Rescue centers for girls who have been salvaged from early marriages and female genital mutilation and also conduct advocacy for girls' education through community social mobilization campaigns, media and role modeling. They would empower and sensitize communities on inhibitive cultural practices to girls' education such as FGM and early marriages. They would also undertake affirmative action especially for girls and women to access further education and training e.g. in awarding of bursaries and scholarships to girls through the Constituency Bursary Fund. They would also ensure in-service training of teachers and school management was child centered and gender responsive. They would introduce peer education, guidance and counseling, peace education and institutionalize child friendly schools through the development of a school safety manual.

The inquiry found that the policy remains good only on paper. For Arid and Semi-Arid Lands (ASAL) the panel visited Samburu and found that

49 GOK, 2004. Policy on Marginalized and Vulnerable Children. MOE

there is still a lot of resistance to the education of girls on the basis of culture and traditions. These areas have the biggest teacher shortages and there are no rescue centers or shelters established by the Government to protect children who escape from sexual violence like FGM and forced early and child marriages. This is despite express provision for rescue centers by Government in the policy document.

The inquiry established that there are few rescue centers across the country run by private actors especially Non-Governmental Organizations (NGOs) and Religious Organizations.

5.1.3 The national children's policy 2008

The policy⁵⁰ was developed to act as a regulatory framework for coordinating all policies and legal frameworks geared towards promotion of children's rights. Its objectives include provision of direction and purpose in establishing social and child protection mechanisms and also provide a framework for addressing issues related to children's rights and welfare in a holistic and focused manner.

The policy proposed that all children would be protected from hidden barriers detrimental to their accessing free education and that age-appropriate and gender responsive information, life skills and materials would be provided at all levels of a child's development. The policy also proposed that child-protection systems would be established as well as mechanisms to receive and respond to cases of child sexual abuse. Temporary shelters for children who have been sexually abused would be established.

The establishment of the National Council for Children Services (NCCS) was a positive development towards a holistic approach to matters of the child. However, the council operates within the umbrella of the Ministry of Labour, Social Security and Services and has very little capacity to operate independently. Further,

street children who now constitute a reasonable proportion of children in Kenya are managed in a different Ministry of Devolution and Planning. There is also the State corporation namely the Child Welfare Society of Kenya, which also operates independently. The spreading of Children's matters across Government agencies and departments has resulted in weakening of systems meant to protect children's rights. There is need to integrate children's services under one strong umbrella body for harmonization and effectiveness. There is also need to ensure effective participation of children in matters that affect them.

This policy borrows heavily from other existing policies. It does not however include teen mothers as a target group but includes children living with elderly guardians, children in child-headed households, orphaned children and children who are abandoned or neglected.

5.1.4 National policy on orphans and vulnerable children 2005

The goal of the National Policy on Orphans and Vulnerable children⁵¹ was developed to ensure that orphans and vulnerable children are protected from all forms of abuse, exploitation and discrimination and ensure their full and meaningful participation in all matters affecting their lives. The policy defines a child in need of care and protection to include a child who is pregnant, is exposed to domestic violence and a female child subjected to or is likely to be subjected to Female Genital Mutilation (FGM), early marriage or to customs and practices prejudicial to the child's life, education and health.

This policy borrows heavily from other existing policies. It does not however include teen mothers as a target group but includes children

⁵⁰ Government of Kenya 2008, The National Children's Policy. National Council for Children's Services

⁵¹ Government of Kenya 2008, The National Children's Policy. National Council for Children's Services

living with elderly guardians, children in child-headed households, orphaned children and children who are abandoned or neglected.

5.1.5 Education-Sector Policies

5.1.5.1. Sessional Paper No.1, 2005⁵²-A policy framework for education and training: reforming education and training in Kenya

This policy defines equity in education and training as embracing issues such as equal opportunities for all, access, retention and completion. This Policy framework was to give direction to the overall goal of Education for All (EFA) by 2015 that Kenya had committed itself through the Jomtien⁵³ and Dakar conferences on Education. The ministry of education set specific objectives aimed at ensuring that all children, including girls, children in difficult circumstances, and those from marginalized/vulnerable groups, have access to and complete free and compulsory primary education. The Government committed to eliminate gender and regional disparities in primary and secondary education by 2005 and to ensure that the learning needs of all are met through equitable access to appropriate learning and life-skills programmes.

5.1.5.2 National school health policy 2009

In 1996 the ministry of education did issue a re-Entry policy (1996)⁵⁴ through a circular directing re-admission into the mainstream of formal education of adolescent mothers who had dropped out of school. The circular conveyed a policy decision that allowed girls to stay in school up to the time they delivered and to resume their studies as soon as they were strong enough to do so. If a girl was denied this chance, then the parents or the girl would report to the nearest education office and have the school

compelled to re-admit her. Through this policy young girls were given another opportunity to continue with their studies.

In 2009, the Ministry of Education jointly with the then Ministry of Public Health and sanitation issued the national School Health Policy⁵⁵ that was express on the re-entry of girls. The policy provides for strategies of dealing with identified gender issues. On Teenage Pregnancy in School, the policy acknowledges that pregnancy is one of the causes of school drop out by girls and there is need to protect the girls from teenage pregnancy and supported if pregnancy occurs to enable them to pursue their education. The policy outlines that girls will undergo voluntary medical screening once per term, pregnant female learners shall be allowed to continue with classes for as long as possible. Both the student and her parents shall undergo counseling on the importance of ensuring a good outcome of the pregnancy by attending ante-natal clinic and ensuring safe delivery and possibility of continuing with education after delivery. Action will be taken including legal action to punish the father of the unborn child if an adult and if child father (below 18 years) to receive counseling and rehabilitation.

Young mothers shall be encouraged to exclusively breast-feed the children for 6 months and to attend child welfare clinics (youth friendly) and to ensure the babies are vaccinated. At the appropriate time, the adolescents mothers may seek re admission into the same school or if they wish to join other schools. The practice to allow the girl to go back to school is that parents/guardians are encouraged to make adequate arrangements for the care of the child at home while the young girl resumes school. As far as possible the teenage mother to join at the level where she dropped out and the school administration shall make all efforts to treat the teenage mother like other students and not to keep reminding her of her mistake.

52 GOK, 2005. Sessional Paper No.1 A Policy Framework For Education and Training: Reforming Education and Training in Kenya. MOEST

53 UNESCO, 1990, World Conference on Education For All, Jomtien, Thailand

54 Ministry of Education Circular on Re-entry of girls, 1996

55 Ministry of Public Health and sanitation and Ministry of Education 2009



The inquiry found a close relationship between Female Genital Mutilation (FGM) and child pregnancy especially in Arid and Semi-arid Areas (ASAL) regions. Although the Government did establish the FGM board to address the menace, the Board requires to be adequately facilitated to have an impact among communities that still practice FGM.

The policy states that counseling services shall be available to the teenage mothers with emphasis on life skills for avoidance of future unplanned pregnancy. Confidentiality and professionalism shall be adhered to in handling the teenage mother.

The inquiry found a general lack of awareness and understanding of both the policy and the guidelines. The application of these guidelines was therefore not uniform in all areas. In some areas like Kwale re-entry is very low but very high in other areas such as HomaBay County.

The inquiry found that some schools have continued to send away girls who get pregnant as soon as they are detected while others allow them to stay on as long as possible. Some schools

re-admitted the girls after delivery but others viewed them as providing a bad example to the rest of the girls in the school preferring that they be admitted in other schools. This stigmatization and the inherent costs associated with change of schools keeps a great proportion of child mothers at home. It is also true that several socio-cultural factors were preventing young mothers from returning to school. The Policy implementation process appeared to be hindered by limitation of resources, diverse viewpoints and expectations.

5.1.5.3 Gender in education policy 2008

The general objective of Gender and Education policy⁵⁶ developed in 2008 was to provide guidelines on the establishment of mechanisms

56 Government of Kenya, 2008. Gender in Education Policy. Ministry of Education

The inquiry finds that numerous rights protected at the international, regional and national levels to protect children have been violated. They include the right to be free from sexual and gender based violence, the right to access sexual and reproductive health education and family planning information, the right to education, the right to be free from practices that harm women and girls, the right to equality and non-discrimination, the right to privacy, the right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment (fistula), the right to consent to marriage, the right to health including sexual and reproductive health, and the right to life.

to eliminate gender disparities in education in relation to access, enrolment, retention, completion, performance, transition, quality and outcomes. This would increase participation in education of disadvantaged children; eliminate sexual harassment and Gender Based Violence (GBV). It would ensure that curriculum design, development and implementation, pedagogy and Teacher Training processes and materials were gender responsive.

The policy acknowledged that most teachers lacked knowledge and skills in gender related matters. It proposed to improve learning facilities, increase the number of boarding schools for girls and boys in Arid and Semi-Arid areas, urban informal settlements and other low potential areas.

The ministry would enhance programmes for prevention of child-labour, encourage girls' participation and retention in school and ensure that learning environment was gender responsive. The Government would enforce rules and regulations that prohibit sexual harassment in schools, develop and implement

clear anti-sexual harassment and anti-GBV policies at all levels in the ministry and in all educational institutions. It would establish and strengthen guidance and counseling departments at all levels in the Education Sector. The ministry would ensure re-entry policy for child mothers and also for boys and provide accelerated learning opportunities for them. It would also institute follow-up programmes for girls and boys who drop out of school or are adversely affected by pregnancy, forms of GBV and other socio-cultural barriers.

This policy puts a lot of focus on girl's education and its implementation has resulted in increased enrolment such that in most areas enrolment of girls has attained parity with that of the boys. However, increased instances of drop out through pregnancy is likely to erode the benefits if the government does not pay attention to the following:

- a) Persistent skills gap for most teachers in gender related matters;
 - b) Lack of structured guidance and counseling in primary schools.
 - c) Many instances of teacher's sexually abusing girl students and getting away with it.
 - d) Poor or total lack of teaching of social skills.
- The inquiry found that time meant for teaching the social skills was used to complete syllabi of examinable subjects.

Many schools do not follow up on girls who drop out of school. Increasing cases of teachers sexually molesting their pupils require more attention. While they are considered indisciplined and managed through the TSC's disciplinary procedures, there is need to institute criminal proceedings besides dismissal of the teacher. The inquiry did not find any role played by Parents-Teachers Associations in policy enforcement.

5.1.5.4 Education and training sector gender policy 2015

Launched on 29th January 2016, the Education and Training Sector Gender Policy⁵⁷ reviewed the earlier

57 GOK, 2015 Education and Training Sector Gender Policy, MOE

Gender in Education Policy, 2008. According to the Ministry, the review was necessitated by the provisions in the Constitution (2010) that ushered in a new legal framework with a bill of rights that called for every child's right to basic education. It was also to facilitate realization of goal three of the Sessional Paper No. 14 of 2012⁵⁸ to eliminate gender and regional disparities in Basic Education by 2017.

The Policy proposes to ensure a safe and secure environment for all learners through strengthening the teaching of life skills education; strengthening gender and guidance and counseling units at all levels to effectively handle sexual violence. The policy guides that institutions will develop and implement institutional GBV policies. The Policy revisits the re-entry Policy and proposes that the ministry will develop National education re-entry guidelines for all learners that will ensure learners who drop out will be given a second chance. Girls who get pregnant while in school will be allowed to continue learning. After delivery, they will be re-enrolled back to their school or placed in other appropriate school and institutions. The policy however is categorical that babies of these girls will not be allowed in schools. The ministry will also institute and strengthen child protection mechanisms and provisions in school and institutions.

The inquiry found that Family Life Education is no longer taught in schools. Sex education and life skills education are not taught either since they are non-examinable. Teachers also said that they do not have skills in the specific content they are meant to teach. The inquiry found that one of the greatest obstacles facing a girl who wants to re-enter school is who to baby sit and care for the babies while away in school. The new policy proposes to develop strategies to eliminate gender gaps by 2017 a promise the country will have to

wait. The challenge is that the policy makes many assumptions on the parental responsibility. One girl who got pregnant, was chased away by her mother and lived with a neighbor had this to say:

My grandmother paid my fees to return to school. My mother had chased me away from home while pregnant. I used to leave my baby-sitting in a basin at the neighbours home to go to school since I had no one to care for him. On return from school I would get my baby in a very pathetic situation, dirty and hungry and crying...

5.1.6 Health sector policies

5.1.6.1 National adolescent sexual and reproductive health (ASRH) policy 2015

The Policy⁵⁹ identifies the following specific objectives: Promotion of adolescent sexual reproductive health and rights; Contributing to increased access to ASRH information and age appropriate comprehensive sexuality education (AACSE); Contributing to reduction of STIs burden, including HPV and HIV as well as improvement of appropriate response for infected adolescents; Reduction of early and unintended pregnancy; Reduction of harmful traditional practices, Reduce drug and substance abuse; Reduction of sexual and gender-based violence (SGBV) incidences amongst adolescents to improve response; and Addressing the special SRHR-related needs of marginalized and vulnerable adolescents.

The Policy seeks to enhance the Sexual Reproductive Health status of adolescents in Kenya and contribute towards realization of their full potential in National development. The policy intends to bring Adolescent Sexual and Reproductive Health and Rights issues into the mainstream of health and development. It examines the prevailing social, economic, cultural and demographic context of sexual and reproductive health of adolescents including its implications for and consequences to their health and development. The implementation

58 GOK, 2012. Sessional Paper No. 14 of 2012. Sessional paper no.14 of 2012 on reforming education and training sectors in Kenya, MOE

59 Government of Kenya 2015. The National Adolescent Sexual and Reproductive Health Policy. Ministry of Health



of the policy shall be guided by the principles of: Respect for human rights and fundamental freedoms including the right to life, human dignity, equality and freedom from discrimination on the basis of gender, sex, age, disability, health status, geographical location or social, cultural and religious beliefs and practices; Responsiveness to varying sexual and reproductive health needs of adolescents in provision of care; Provision of holistic and integrated ASRH information and services through multi-pronged and multi-sectoral approaches that are effective and efficient in reaching adolescents with information and services; Recognition of the critical role parents, guardians and communities play in the promotion of SRH of adolescents; Involvement of adolescents in the planning, implementation, monitoring and evaluation of ASRH programmes for effective programme implementation, promotion of partnerships and creation of open channels of communication for achievement of mutual goals and utilization of evidence-based interventions and programming.

5.2 Legal Framework

Globally, the discussions focus more on child marriage and not specifically on child pregnancy. Child pregnancy may arise from child marriage or other sexual relationships out of marriage. These include cases of defilement and rape or consenting sex with an adult or a fellow child. Child marriage is a truly global problem that cuts across countries, cultures, religions and ethnicities. Child Brides estimates that 700 million women alive today were married as children.⁶⁰ One in 3 girls in the developing world are said to be married before 18 years and that 142 million is estimated will be married as children by end of the decade.⁶¹

Child marriages happen because of many factors that include traditions, gender roles, parenting, and security. The UN estimates that 15 million girls experience child marriages each year.

Nyaradzayi Gumbanzvanda, the Africa Union

60 Girlsnotbrides.org

61 supra

Goodwill ambassador on ending child marriage in Africa had this to say at the National Launch of The AU Campaign to End Child Marriage in Africa in July 31st, 2015.

We have a crisis on our land. The UN estimated that 15 million girls experience child marriage each year....We must move from vulnerability to voice and leadership. Africa is young and full of innovations. This energy must be harnessed to ensure that we have lasting solution.⁶²

5.3 Human rights violations due to child pregnancy

The inquiry finds that numerous rights protected at the international, regional and national levels to protect children have been violated. They include the right to be free from sexual and gender based violence, the right to access sexual and reproductive health education and family planning information, the right to education, the right to be free from practices that harm women and girls, the right to equality and non-discrimination, the right to privacy, the right not to be subjected to torture or other cruel inhuman or degrading treatment or punishment (fistula), the right to consent to marriage, the right to health including sexual and reproductive health, and the right to life. A few of the violated rights will be analyzed using the evidence gathered during the inquiry.

a) The right to equality and non-discrimination

The Universal Declaration on Human Rights in article 2 states that everyone is entitled to all the rights and freedom without any distinction on one grounds based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁶³ The Covenant on Civil and Political rights reiterates similar protection and

gives the State the obligation. All individuals are recognized without distinction of any kind such as race, colour, sex, religion, political or other opinion, ethnic or social origin, property, disability, birth or other status.⁶⁴ Specifically to children, the Convention on the Rights of the Child (CRC)⁶⁵ provides that State Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions or beliefs of the child's parents or beliefs of the child's parents legal guardians or family member It is the obligation of the State to respect parental responsibilities or a member of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child to provide in a manner consistent with the evolving capacities of the child appropriate direction and guidance.

In respect of women and girls with disability, the Convention on Right of Persons with Disability (CPRD)⁶⁶ obligates State Parties to recognize that women and girls with disabilities are subjected to multiple discrimination and to take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedom.

The African Charter on Human and People's Rights or otherwise known as the Banjui Charter⁶⁷ provides that the State shall ensure the elimination of any discrimination against women to ensure protection of the rights of women and children as stipulated in international declarations and conventions. The African women's protocol makes it mandatory for the State to combat all forms of discrimination against women through providing appropriate legislative, institutional and other measures

The Covenant on Economic, Social and Cultural

62 The AU, the Republic of Zimbabwe Launces AU Campaign to end Child Marriage in Africa, August 2nd, 2015 available at <http://www.sa.au.in/en/ontent/republic-Zimbabwe> accessed on 14th November, 2015

63 http://www.ohchr.org/EN/UDHR/Documents/UDHR_translations/eng.pdf

64 www.ohchr.org/Documents/professionalInterst/cesr.pdf

65 www.ohchr.org/Documents/professionalInterst/crc.pdf

66 CRPD Art. 6 (1)

67 Article 18 (3) of the Charter

Rights (ECSR) ⁶⁸ likewise provides that State Parties to the covenant will undertake to guarantee rights provided therein without discrimination based on enumerated grounds. This include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The Convention of Elimination of all forms of discrimination against Women (CEDAW) broadly defines discrimination and states thus:

the term discrimination against women shall mean any distinction exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or vilifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, irrespective of their marital status, on a basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” ⁶⁹ It is the responsibility of the State to take appropriate measures including legislation to ensure full development and advancement of women, for the purpose of guaranteeing the rights.⁷⁰

Despite the provisions of equality and non-discrimination, girls (children) who find themselves pregnant are discriminated and ostracized, majority of the cases reported drop out of school due to stigma or administration demanding that they leave because of peer influence to the other girls in school who are not pregnant. In cases of schools, the action is illegal because there exists a back to school policy endorsed by the Ministry of Education as discussed earlier.

In some cases, girls indicated that while the administration did not ask them to drop out of school, there was subtle discrimination by

fellow pupils and teachers with attempts to mock them. In other cases absenteeism related to pregnancy is not tolerated by the school administration. At times parents are prevailed upon by the administration to find alternative schools for the pregnant girls. This disparages the girls and causes them shame. This contributes to the high rates of dropouts. The legal rights of pregnant girls is trampled upon without due regard to their psychological trauma given the circumstances that led to their unwanted pregnancy. The situation gets worse when they become mothers, thus breastfeeding and have to go to school.

The study found out that the children who dropped out of school on own volition or forced by administration did not know their rights and the existence of the back to school policy.

The Constitution of Kenya 2010 in article 27 provides for Equality and Freedom from discrimination. The principle of equality and non-discrimination is recognized among the national values and principles of governance whenever we apply or interpret the constitution, enact or interpret laws or make or implement public policy decisions.

While Kenya is on track in amending the discriminatory laws to align with the Constitution 2010, that has not translated in positive results and a lot more needs to be done to protect the girl child from cultural practices that disadvantage her, causing her to drop out of school due to early unwanted pregnancy.

Equality and non-discrimination principle runs through the constitutional framework. For example Art.26 of the Constitution provides for the right to life with restrictions on when abortion is permitted. Where in the opinion of a trained health professional there is need for emergency treatment or the life or health of

68 Article 2 (2) of the ICESCR

69 Art. 1 of CEDAW

70 Art. 3 of CEDAW

the mother is in danger or if permitted by any other written law. Equality includes the full and equal enjoyment of all rights and fundamental freedoms. Direct and indirect discrimination is prohibited.

The State shall not discriminate directly or indirectly against any person on any ground including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth⁷¹

The State is obligated to give full effect to the equality provision by taking legislative and other measures including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.

The other related rights include right to dignity.⁷² Freedom and security of person, specifically not to be subjected to any form of violence from either public or public or private sources, nor subjected to torture in any manner whether physical or psychological, or treated or punished in a cruel, inhuman or degrading manner.⁷³

The right to privacy is also protected⁷⁴the entitlements of children are provided in Art. 53(1)(a),(b),(c),(d), (f) and 53(2) of the Constitution. The rights include the right to name and nationality from birth, free and compulsory basic education, right to basic nutrition, shelter and health care to be protected from abuse neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative labour, to parental care and protection which includes equal responsibility of the mother and father to provide for the child whether they are married to each other or not. In all the undertakings, the best interest of the child is of paramount importance.

71 See Article 27(4) of the CoK 2010

72 Article 28

73 See Article 29 (c), (d) and (f) of the Constitution

74 See Article 31

The State has failed to promote the right to equality and non-discrimination as provided for by the Constitution of Kenya 2010 and the international and regional treaties.

b) The Right to consent to marriage

The international Treaties and Conventions stipulate that marriage is for consenting adults. Therefore, child marriages are forbidden and a violation of the children rights.

The inquiry heard stories of children below 18 years who were forced into marriage to old and mature men involuntarily as a consequence of being pregnant. Other cases the panel heard concerned child-to-child marriages. While some children indicated that they loved one another and made a decision to get married as minors, others got married out of desperation and as a coping mechanism to get the situation under control. Others were forced by parents and or guardians to get into a marriage union. The end result is two frustrated children having to take care of another child.

Child marriage happens because adults believe they have the right to impose marriage upon a child. This denies children particularly girls their dignity and the opportunity to make choices that are central to their lives, such as when and whom to marry or when to have children. Choices define us and allow us to realize our potential. Child marriage robs girls of this chance “(Desmond Tutu and Graca Machel⁷⁵).

The inquiry heard stories from girls who got pregnant after being forced into child marriage because of harmful cultural practice like FGM. Other children were forced into marriage as a consequence of getting unwanted and unexpected pregnancy.

Early marriage sanctions the end “of childhood

75 Quotation from UNICEF report on a profile of child marriage in Africa – Girls not Brides available at <http://www.unicef.org> (New York: UNICEF, 2014)

and prematurely ushers in adulthood, depriving children of the necessary time afforded by adolescence to prepare their bodies, minds and emotions to become mature sources, caring parents and proactive citizens.⁷⁶

The Universal Declaration on Human Rights (UDHR) provides for age of marriage. Men and women of full age have the right to marry (Article 16 (i)) and marriage should be entered into with free and full consent of the intending spouses. The International Covenant of Civil and Political Rights recognizes the right of men and women of marriageable age to marry and found a family, with free and full consent and that States shall take appropriate rights and responsibilities of spouses as to the marriage during marriage and dissolution, (Article 23 (2-4)). The International Covenant on Economic and Social Cultural rights states that marriage must be entered into with full consent of intending spouses.

The Convention on Elimination of all forms of discrimination against women is more explicit and provides that State Parties shall take appropriate measures to eliminate discrimination against women in matters relating to marriage and family relations and in particular shall ensure on basis of equality of men and women (Article 16 (i)).

Further the betrothal and the marriage of a child shall have no legal effect, and all necessary action, concluding legislation, shall be taken to specify minimum age for marriage and to make the registration of marriage in official registry compulsory. Similar section is in the CPRD in respect of people with disabilities.

At the regional level the African Women Protocol call on State parties to enact legislations at the national level to guarantee the following:

- No marriage without free consent of both parties

- Minimum age of marriage is 18 years
- Monogamy is encouraged and preferred and the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected
- Every marriage recorded in writing and registered in accordance with national laws.

On 2nd April, 2014, The office of the High commissioner for Human Rights released a report titled ‘preventing and eliminating child early and forced marriage’.⁷⁷ The report was developed pursuant to the request from the Human Rights Council. The report confirms the definition of a child to be one below 18 years. It noted that the committee on The Rights of the Child has called on State parties to review the age of majority if it is set below 18 years. Early marriage is used interchangeably with ‘child marriage’ and refers to marriage involving a person aged 18 years in countries where the age of majority is attained earlier or upon marriage. It also applies where both parties are below 18 years. The report states that forced marriage can under certain circumstances amount to slavery and slavery-like practices. This is when the child is used for sexual purposes in exchange for goods or payment in cash or in kind.

The Marriage Act 9 in Kenya defines a child to be an individual who has not attained 18 years. In the general provision, marriage means the voluntary union of a man and a woman whether in monogamous or polygamous union and registered in accordance with the Act. (Section 3 (i)). The minimum age of marriage is set at 18 years, (Section 4). Between the two witnesses to a marriage, one cannot act as a witness if they are aged below 18 years. The age limit now applies to all forms of marriage thus Christian, Civil, Customary or Islamic law is presumed to be polygamous or potentially polygamous (section 6). The marriage Act prohibits certain

76 Thematic Report Unrecognized sexual abuse and exploitation of children in child, early forced marriage

77 UN office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 4 “contemporary Forms of Slavery,” (1991), <http://www.refworld.org/docid/4794773bo> accessed on 10th October, 2015.

relationship. It stipulates that a person cannot marry their own child or grandchild among others (Section 10). Likewise a marriage is void if either of the party is below the minimum age of marriage or parties are within the prohibited marriage relationship, and that the consent of either party has not been freely given (Section 10 (i) (a), (b) and (e)).

Under Customary law, parties to the marriage are to give notification to the Registrar of such marriage within two months of completion of relevant ceremonies. The notification should among others confirm that the parties to the marriage were 18 years of age at time of marriage and that they are not a prohibited relationship category and that the parties freely consent to the marriage (Section 45 (3) (a)(b)and (c)).

From the foregoing, all child marriages contracted under Customary Law in Kenya violate the marriage Act and must be annulled. If this action is taken, it would prevent solemnizing of marriages with minors. Criminal sanctions must follow the violators.

c) The right to be free from practices that harm women and girls.

The practice of early and forced marriages and female genital mutilation/cutting falls into the category of harmful cultural /traditional practices. The public inquiry was told how young girls aged between 8 and 14 are forcefully circumcised and thereafter forced to marry older men. Among the Samburu, once a girl goes through the cut she is ready to become a wife.

The Vienna Platform of Action arising from the World Conference 1994 on Human rights stressed the importance of working towards the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practice, cultural prejudices and religious extremism (paragraph 35).The World Conference on human rights did urge States to

repeal existing laws and regulations and remove customs and practices that discriminate against women and cause harm to the girl child.

From the 1994 ICPD Cairo, Governments were asked to take effective action to eliminate all forms of coercion and discrimination in policies and practices. Measures should be adopted and enforced to eliminate child marriages and female genital mutilation (paragraph 5.5) In the Beijing Platform for Action, any harmful aspect of certain traditional and customary or modern practice that violates the rights of women should be prohibited and eliminated. The newly adopted sustainable Development Goals⁷⁸(SDG) 5 provides for the gender equality goal with target 5.3 calling for elimination of all harmful practices such as child , early and forced marriage and female genital mutilation.

The report from the office of the High Commission on Human Rights on preventing and eliminating child, early and forced marriages acknowledges that in order to eliminate the practice, States require to address the widespread cultural and social acceptance of child and forced marriage and provide a platform for societies that practice it to see the benefits of delaying marriages and ensuring that girls go to school. There should be involvement of older women and men and boys.

The CEDAW calls on State parties to modify or abolish existing laws regulations and customs and practices that discriminate women (Article 2 (f)).

The Constitution of Kenya stipulates that any law including customary law that is inconsistent with any act or omission in contravention of the Constitution is invalid (Article 2 (4)). Further the Constitution recognizes culture as the foundation of the nation (Article 11). A person shall not be held in slavery or servitude or forced labour

⁷⁸ A/RES/70/1 Resolution by the General Assembly on 25th September 2015; Transforming our world: the 2013 Agenda for Sustainable Development available at www.documents-dds-ny.un.org



Pic: www.fotolia.com

(Article 30) while the right to use the language and participate in cultural life of the person. Choice is guaranteed, it is however limited because no person shall compel another person to perform, observe or undergo any cultural practice or rite (Article 44 of the Constitution).

The prohibition of Female Genital Mutilation Act is set to prohibit the practice of Female Genital Mutilation (FGM), to safeguard against violation of a person's mental or physical integrity through the practice of Female Genital Mutilation. The CRC obligates State parties to take effective and appropriate measures with a view of abolishing traditional practices prejudicial to the health of children.

At the regional level, the African Women Protocol asks State parties to combat all forms of discrimination against women through appropriate legislative, institutional or other measures. Specifically, in Article 5 State parties shall prohibit and condemn all forms of practices, which negatively affect and the human rights of women and contrary to recognized international standards. State parties shall take all necessary legislative and other measures to eliminate such practices including:

- Creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programmes.
- Prohibition, through legislative measures backed by sanctions of all forms of female genital mutilation, scarification medicalization of FGM and all other practices in order to eradicate them
- Provision of necessary support to victims of harmful practices through basic services, legal and judicial support, emotional and psychological counselling as well as vocational training to make them self-supporting.
- Protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.

The Kenyan prohibition of female genital mutilation law establishes a Board of management with sole purpose of coordinating public awareness programmes against the practice of FGM and to design programmes to eradicate FGM committed by medical practitioners or trainees. It is an offence to aid and abet, consent or procure FGM (S. 20). It is an offence to procure a person to engage in FGM in another country (S. 21) to use premises to perform FGM (S. 22) and being in possession of tools or equipment for purposes of performance of FGM (S. 23). The law makes it an offence

for one to fail to report the commission of the offence (Section 24) and to use derogatory or abusive language intended to ridicule or embarrass a woman who has not undergone FGM or a man for marrying a woman who has not undergone FGM (S. 25).

The office of Director of Public Prosecution has commenced numerous Criminal Cases in enforcement of the law. There are very few cases reported of early and forced marriage. Most communities cover up.

While Kenya is on track in amending the discriminatory laws to align with the Constitution 2010, that has not translated in positive results and a lot more needs to be done to protect the girl child from cultural practices that disadvantage her, causing her to drop out of school due to early unwanted pregnancy.

d) The Right to access sexual and reproductive health education and family planning information

Almost all the children who appeared before the Panel did not have access to sexual and reproductive health information prior to getting pregnant. Majority of them indicated that family planning information was also not provided after delivery.

Notably, the child mothers did not have comprehensive sexuality education. The girls acted and engaged in premature sexual relations with fellow minors or mature men without any preventive information. Some girls were lured in to relationships with people well known to them including teachers, neighbours and relatives especially fathers and uncles. From the FGDs held, between parents and teachers, it was challenging to establish whose responsibility it was to educate the children on the Sexual Reproductive Health and Rights. It was obvious during the inquiry, there were blame games between teachers and parents. The children were conflicted and lacked proper guidance and therefore lacked role models and had no

guidance on which to make informed decisions on issues of sex. The panel learnt that sexual education is not part of the syllabus of Kenyan Education system.

None of the young mothers had information provided at health care services even after delivery. Girls and boys experience biological change in their bodies, they also grow emotionally and get attracted to persons of the opposite sex. There is urgent need for information to respond to their emotional maturity. Kenya as a country needs to agree who and how that information requires to be communicated.

The CRC recognizes the right to autonomy. It acknowledges that minors are evolving and need to make decisions affecting their lives. It recognizes that some minors are more mature than others (Article 5). The information will enable the mature minors to make meaningful choices and decisions. The information will help them protect themselves from unwanted pregnancy and STIs and HIV infections. Children are entitled to the right to health including reproductive rights. The Convention on Elimination of all Forms of Discrimination Against Women (CEDAW) in article 10 obligates State parties to take all appropriate measures to eliminate discrimination against women in order to ensure them equal right with men in the field on education 10 (c) provides for elimination of any stereotyped concept of the roles of men and women at all levels in forms of education and other types of education which will help achieve this aim and in particular by revision of text books and school programmes and the adaptation of teaching methods.

Article 10 (h) obligates State parties to ensure access to specific educational information to help ensure the health and well-being of families including information and advice on family planning. Further the Convention on Persons with Disabilities provides that State parties shall take effective and appropriate measures

In all the counties visited during the inquiry, there were several cases under investigation by the police and others before the courts for determination. The concern however was and continues to be the very low success rate in securing convictions for the perpetrators. Over 700 girls interviewed during the inquiry were pregnant illustrating obvious cases of defilement yet majority if not all of the individuals responsible had not been brought to book. In Busia for instance, majority of the cases the office of the DPP was handling were on defilement. The officers admitted that the investigations by their counterparts in police were substandard and as a result, majority of the prosecutions ended in acquittals due to lack of incriminating evidence.

to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure the rights of persons with disabilities to have access to age-appropriate information, reproductive and family planning education and recognised, and the means necessary to enable them to exercise these rights are provided. The Banjul Charter provides for the right of every individual to have the right to receive information (Article 9 (i)). The African Women's protocol has an elaborative section

on right to health and reproductive rights. Article 14 (i) of the protocol provides thus:

- 1 (c) the right to choose any method of contraceptive*
- (d) the right to self-protection and be protected against sexually transmitted infections including HIV*
- (e) the right to be informed on one's health status and on the health status of one's partner, particularly if affected with sexually transmitted infections including HIV/AIDS in accordance with internationally recognised standards and best practices*
- (f) the right to have family planning education.*

The Kenya Constitution 2010 protects economic and social rights (Article 43). Specifically it provides for the right to the highest attainable standards of health, which includes the right to health care services, including reproductive health care. The right to information is also guaranteed. The Constitution of Kenya 2010 protects every citizen to access information. The State has obligation to publish and publicize any important information affecting the nation. A child is also entitled to the right to free and compulsory basic education (Article 53(b)) and the right to basic nutrition, shelter and health care (Article 53 (c)). The Children's Act provides that every child is entitled to free and compulsory basic education.

The Kenyan debate on access to sexual and reproductive health education and family planning for school going children has been very controversial. The Church has opposed the move to introduce the sex education in school holding that it will expose the girls to promiscuity. For this reason, the legal framework has not been specific on the subject at the detriment of the children who require the information to prevent and cope with pregnancy when it occurs.

The constitutional provisions have not been fully implemented to the best interest of the child. There is need to have age appropriate education on sexuality, social skills, life skills.

e) The right to be free from sexual and gender based violence

Sexual and Gender Based Violence is one of the consequences arising from child pregnancy. Children narrated cases of defilement and rape that went unreported. In some of the cases the girls suffered in silence from fear of exposing their perpetrators who were known to them.

Girls within Samburu County were forced to go through the cruelty of Female Genital Mutilation that was done by old women. The panel was informed of the effects of FGM that included difficulties in sexual debut and in passing urine. Other girls suffered complications during delivery and had to undergo vaginal repair after they tore their vaginal muscles during delivery. At the tender age, the girls' bodies are not ready to carry pregnancy leading to complications during pregnancy and birth.

For cases that were prosecuted, majority ended up with acquittals because of numerous reasons as discussed under the case law for example uncorroborated evidence from children, lack of supporting evidence, fear of the girl to incriminate the perpetrators if they are known to them or are family members. In communities where FGM is a rite of passage, TBAs/circumcisers, are protected by cultural gate keepers honoured and are not be reported. The panel was told of parental or community interference by settling criminal matters related to child pregnancy out of court. Evidence is not properly presented before courts of law. Delays by the police, or the government analysis, led to acquittals. DNAs were never received in time and delayed prosecution of matters in most cases leading to acquittals.

The UDHR prohibits anybody being subjected to torture or to cruel inhuman or degrading treatment or punishment (Article 5). The same article is repeated in the International Covenant on Civil and Political Rights (CCPR) (Article 7). The Convention Against Torture (CAT) defines the term Torture to mean – Article 1:

any act by which severe pain or suffering, whether physical or mental is intentionally inflicted on a person for...any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public officer or other person acting in an official capacity...

The CRC obligates State parties to ensure that no child is subjected to torture or other cruel, inhuman or degrading treatment (Article 37 (a)). In respect of persons with disabilities, State parties shall take all effective legislative, administrative judicial or other measures to prevent persons with disabilities on an equal basis with others from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

The African Women Protocol calls for protection of every woman's right to respect for her dignity and protection of women from all forms of violence particularly sexual and verbal violence (Article 3 (4)). It further requires State parties to among other things enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public. Article 4(2)(a) obligates States to adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women. Further the State to identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence, actively promote peace education through curricula and social communication in order to eradicate elements in traditional and cultural beliefs, practices and stereotypes which legitimize and exacerbate the persistence and tolerance of violence against women and to punish the perpetrators of violence against women and implement programmes for the rehabilitation of women victims.

The Sexual Offences Act makes provisions for sexual related offences and penalties: In respect of child pregnancy, penalties are provided for the offences of defilement, rape, attempted rape, sexual assault, compelled or induced indecent acts. There are also offences of attempted defilement, gang rape, indecent act with child or adult, promotion of sexual offences with a

child, child sex tourism, child prostitution, child pornography, and exploitation of prostitution, incest by both male and female persons, sexual harassment, sexual offences relating to position of authority and persons in position of trust are among the preferred charges.

The newly enacted Protection Against Domestic Violence Act⁷⁹ (PADV Act) came into force in 2014. The purpose of the law is to provide for protection and relief of victims of domestic violence and to provide for the protection of a spouse and any children or other dependents.

The definition of domestic violence is abuse that includes child marriage, female genital mutilation and forced marriages, defilement, emotional or psychological abuse, incest, physical abuse and sexual abuse among others. The strength of the PADV Act is the application of protection orders by affected parties including affected children. However quick analysis reveals that the devil is in the details.

The challenge in implementing of the new law lies in failure to provide safe houses and or custody for the parties applying for protection orders. The inquiry listened to narrations from girls on incidences of incest by girls' fathers. Girls were also defiled by persons either known or unknown to them.

The inquiry heard evidence from girls who alleged that teachers had defiled them. Some teachers were prosecuted and found guilty while others were acquitted for lack of evidence. The Teachers Service Commission Act⁸⁰ has the mandate to register and deregister teachers. Among the grounds for refusal to register is if a teacher has been convicted of a sexual offence or an offence committed against a learner.

The TSC Act is weak in aspect of punishing the teachers who defile and or rape children yet do not get prosecuted or when prosecuted

leads to acquittal. In unconfirmed reports in some situations, teachers compromise to be set free. Children continue learning under difficult circumstances with teachers who are pedophiles. The removal from the register for teachers can only be done where there is a conviction of sexual offence (S, 30 & 27). As indicated, it is in the interest of the offending teachers to buy their freedom, not to be removed from the register. In any case as earlier hinted, even where they are struck from the role of teachers, they find way into private schools, which is dangerous to the girls.

However, a teacher can go through disciplinary process and among the offences include immoral behaviour including sexual intercourse, sodomy, lesbianism and sexual harassment. Regrettably, TSC did not avail data on the number of teachers disciplined annually on sex related offences and what measures were taken.

The Prohibition of Female Genital Mutilation Act is enacted to prohibit the practice of FGM and safeguard against violation of a person's mental or physical integrity through the practice of FGM. The penalties include imprisonment for a term of not less than three years or to a fine of not less than Two Hundred Thousand shillings or both.

Other than cases presented during the public inquiry, numerous cases have been reported in both electronic and print media demonstrating that child pregnancy is rampant in the country. The standard media digital in 2014 for instance reported at least 140 schoolgirls fell pregnant in Mt. Elgon and 200 girls in Kisii. There is no county that is spared of the vice.

f) The Right to life

Testimonies pointed to high levels of maternal mortality arising from early child pregnancy. Testimonies also indicated that their partners lured children into unsafe abortion. Majority may have succumbed to the unreported incidences of girls who lost their lives.

79 Came into commencement 4th June 2015

80 Available at www.kenyalaw.org

The international framework has made attempts to mitigate maternal mortality and morbidity. The General recommendation No. 14 of the International Committee on Economic, Social and Cultural Rights outlines the standards required for health⁸¹. States are required to make the services available, accessible, affordable and of good quality. The reproductive health services must be available for all women of childbearing age requiring using them. It is the right of every woman to receive adequate care during childbirth. The CEDAW committee notes that State parties must ensure women have appropriate services in connection with pregnancy, childbirth and post-natal. Making available quality health care will reduce the preventable deaths related to delivery.

The WHO has elaborate guidelines on prevention of unsafe abortion. Safe abortion in this study was occasioned by ignorance, lack of information and criminalization of the procedure with the stigma it carries. In the Kenyan's concluding observation during the 7th CEDAW periodic review, the committee expressed concern that illegal abortions remain one of the leading causes of maternal mortality and asked Kenya to consider reviewing the restrictive abortion laws that lead to women seeking unsafe and illegal abortions. The committee noted that the Kenyan policies in health failed to pay attention to complications arising from unsafe abortion.

The Ministry of Health has put in place numerous policies to decrease maternal deaths occurring from preventable deaths. The current data stands at 362 per 100,000 live births.⁸² The First Lady Her Excellency Margaret Kenyatta is spearheading a campaign to end maternal mortality. She has engaged with all the 47

County Governments promoting access and availability to services by donating a mobile clinic to every County. The Government abolished user fees for maternal expenses and this has increased the number of mothers seeking to deliver in health facilities. However the implementation on the policy has remained unclear to service providers and seekers.

In terms of preventing unsafe abortion, the Constitution of Kenya 2010 in article 26 provides for protection of the right to life in article 26. It permits safe termination of pregnancy if in the opinion of a trained health professional, there is need for emergency treatment, or the life or health of the mother is in danger, or if permitted by any other written law. (Article 26(4)). In response to the constitutional framework, the Medical Practitioners and Dentists Code, the Nursing Council of Kenya and the Clinical Officers and the Pharmacy and Poisons Boards have reviewed their codes and regulations to align them with the constitution. The Ministry of Health launched standards and Guidelines on Unsafe Abortion in 2013 but withdrew them immediately thereafter alleging none participation of all stakeholders. The challenge medical practitioners face is the lack of a common position and understanding on how to process to terminate pregnancy when the life and health of the mother is in danger. There is urgent need for the ministry to address this lacuna to save the lives of young mothers who face numerous consequences arising from unsafe abortion. In some other jurisdictions, pregnancy through defilement or rape would fall within the allowable conditions.

Senator Hon Judith Sijeny tabled before the Senate the Reproductive Health Care Bill on 8th April 2014. This Bill seeks to provide for the recognition of reproductive rights; to set the standards of reproductive health and provide for the right to make decisions regarding reproduction. The Bill is currently at the committee stage with several amendments

81 General Comment No. 14 Para 12 available at www.unchr.ch/tbs/doc.

82 Kenya Demographic Health Survey 2015 available at www.dhsprogram.com

proposed. The Bill has provisions seeking to obligate the National and County Governments to ensure accessibility of family planning services including contraceptive methods, counseling, and free information and education and also make available information and education on natural family planning methods. It also provides for the reproductive health of the adolescents ensuring that adolescent friendly reproductive health services shall be provided at all adolescent friendly reproductive health centers. On first reporting by the Media, the religious groups were vehemently opposed to the Bill and alleged that it was seeking to provide family planning to school children. In the view of the panel, the dangers occasioned by child pregnancy require tolerance and sobriety in finding the best way forward.

The Prohibition of Female Genital Mutilation Act is enacted to prohibit the practice of FGM and safeguard against violation of a person's mental or physical integrity through the practice of FGM. The penalties include imprisonment for a term of not less than three years or to a fine of not less than Two Hundred Thousand shillings or both.

5.4 Case law/litigation

Numerous criminal cases have been filed in Kenyan courts across the country on sexual offences against girls including defilement, attempted defilement, sexual assault, early marriages, committing an indecent act with a child, incest, among others. In all the counties visited during the inquiry, there were several cases under investigation by the police and others before the courts for determination. The concern however was and continues to be the very low success rate in securing convictions for the perpetrators. Over 700 girls interviewed

during the inquiry were pregnant illustrating obvious cases of defilement yet majority if not all of the individuals responsible had not been brought to book. In Busia for instance, majority of the cases the office of the DPP was handling were on defilement. The officers admitted that the investigations by their counterparts in police were substandard and as a result, majority of the prosecutions ended in acquittals due to lack of incriminating evidence.

This observation is supported by numerous reported cases across the country where courts have acquitted perpetrators for lack of sufficient evidence. The following cases illustrate the point:

a) Criminal Appeal No. 42 of 2014, High Court of Kenya at Embu, Samuel Mugendi Njeru v. R83

The appellant was charged and convicted with the offence of Defilement of a girl with intellectual disability. On appeal however, the conviction was set aside upon analysis of the evidence relied upon by the trial court. However, the appellant court found the appellant guilty of the alternate charge of committing an indecent act with a child contrary to section 11(1) of the Sexual Offences Act. The judge refers to the girl with intellectual disability as being '**mentally retarded**' which is a derogatory term and illustrates lack of awareness by our judicial officers on Persons with Disabilities' sensitive language and terms.

b) Criminal Appeal No. 196 of 2013, High Court of Kenya at Kakamega, S.A v. R84

The appellant was charged and convicted with the offence of defilement of a 13-year-old girl. He appealed on several grounds including that the prosecution relied on shoddy investigations by the police, the accused had not been scientifically tested

83 Samuel Mugendi Njeru v Republic [2015] eKLR <http://kenyalaw.org/caselaw/cases/view/107892/>

84 S.A v Republic [2015] eKLR, <http://kenyalaw.org/caselaw/cases/view/111950/>

to show that he committed the offence and the evidence relied on was fabricated and uncorroborated. The prosecution had called a total of 5 witnesses including the complainant. Despite the provision in section 124 of the Evidence Act that provides that corroboration is not mandatory in sexual offences provided the judge is satisfied that the victim is telling the truth, the appeal court was not satisfied the offence of defilement had been proved upon re-evaluation of the evidence relied upon by the trial court and consequently acquitted the appellant. However, the appeal court found the appellant guilty of the alternative lesser charge of committing an indecent act with a child.

c) Criminal Appeal No. 19 of 2014, High Court of Kenya at Homa Bay, David Opedhi Oima v. R85.

The appellant was charged with the offence of gang defilement contrary to section 10 of the sexual offences Act and in the alternative, committing an indecent act with a child contrary to section 11(1). The trial court discharged him of gang rape but reduced the charge to attempted defilement and sentenced him to 10 years imprisonment. The prosecution had brought five witnesses to prove its case. These included the medical doctor who had examined the victim and found bruises and blood in her private parts. Despite the appellant having been positively identified by the victim as among the perpetrators and the appeal court noting that indeed the offence of gang defilement was proved beyond reasonable doubt, the trial court did not grant him a chance to defend himself. The appeal was consequently allowed due to the mistakes of trial court but the appellant was not set free as the judge ordered for a re-trial.

d) Criminal Appeal No. 26 of 2013, High Court of Kenya at Kisumu, Joseph Owuonje v. R.

The appellant in this case was charged, convicted and sentenced to life imprisonment for the offence of defilement of a girl aged 6 years old. What was clear both in the appeal and the trial court was that the girl was indeed defiled. The contested issue however was whether the appellant was positively identified as the defiler. The finding of the trial court that the victim positively identified by the victim and corroborated by the testimony of a 9-year-old boy was reversed on appeal leading to his acquittal. It is not clear whether the appeal court considered the provisions of section 124 of the Evidence Act that corroboration of victims of sexual offences is not necessary if the trial court is satisfied the victim is telling the truth.

The above cases illustrate a pattern of the challenges prosecutors face in securing convictions in sexual offences.

Two landmark constitutional petitions will be discussed. This is due to the inaction and or ineffectiveness of various government agencies especially the police and the Teachers Service Commission thus violating constitutional rights and fundamental freedoms of girls guaranteed in the constitution, international and regional instruments ratified by Kenya;

e) Petition No. 8 of 2012, High Court of Meru, C K (A Child) through Ripples International as her guardian & next friend) & 11 others v Commissioner of Police/Inspector General of the National Police Service & 3 others 86

Popularly known as the 160 girls' case

85 David Opedhi Oima v Republic [2014] eKLRhttp://kenyalaw.org/caselaw/cases/view/100046/

86 C K (A Child) through Ripples International as her guardian & next friend) & 11 others v Commissioner of Police / Inspector General of the National Police Service & 3 others [2013] eKLR, http://kenyalaw.org/caselaw/cases/view/89322/

because at time of filing the case, Ripples International had sheltered over 160 girls in Meru who had experienced sexual abuse.⁸⁷ This petition was filed through Ripples International a civil Society Organization on behalf of 11 girls within Meru County who claimed to be survivors of defilement and other forms of sexual violence and child abuse. It was brought against the police and other law enforcement agencies for their alleged neglect, omission, refusal, or failure to effectively investigate the girls' complaints and take the necessary action under the laws occasioning injustice for failure to bring the perpetrators to account for their unlawful acts.

While the police officers have the duty to protect its citizens, their actions or omissions in this case was glaring. The police officers in the stations that the defilement cases were reported, neglected, omitted, refused and failed to conduct prompt, effective, proper and professional investigation into the petitioner's complaints. They also failed to record the petitioners' complaints in the police Occurrence Book. Further, they failed to visit the crime scenes or interview the witnesses or collect and preserve evidence or perform any other duty that would have brought the perpetrators to justice. Some police officers are said to have loudly interrogated the children hence rendering them to humiliation, embarrassment and degrading treatment. The neglect by the police to conduct proper investigations on the defilement cases led to physical and psychological trauma. In one instance an Administration Police Officer defiled a 12 year old as a result of which she conceived,

thereby bringing out the culpability of the security agencies in their failure to protect vulnerable children.

The court was satisfied that the police had failed to conduct prompt, effective, proper and professional investigations into the girls' complaints of defilement thereby violating their fundamental rights and freedoms under the constitution.

f) Petition 331 of 2011 (W.J and another v. Astarikoh Henry Amkoah, Teachers Service Commission (TSC) and others⁸⁸

This petition was filed on behalf of two girls aged 12 and 13 years respectively alleging violation of their constitutional rights to education and health as a result of defilement by the Deputy Head teacher and their Kiswahili teacher. They were both standard 6 pupils in a primary school located in Nakuru County. Mr. Astarikoh Henry Amkoah was charged in Nakuru Chief Magistrates Court Criminal Case No 224 of 2010 but acquitted. However the TSC administratively dealt with the teacher through disciplinary proceedings, found him culpable, dismissed him from employment and struck him from the roll of teachers as per their disciplinary mandate. The case against the TSC and the other respondents was that it was vicariously liable for the acts of sexual abuse committed by the teacher. The TSC argued that it had taken all the statutory steps imposed on it by law including issuing a circular with respect to sexual defilement by teachers and prohibiting all forms of contact between pupils and teachers and was therefore not liable for the actions of the Mr. Astarikoh Henry Amkoah. The court made a finding that the teacher had defiled or otherwise sexually assaulted the two minors despite having been acquitted in the criminal case. The TSC and the other respondents namely

⁸⁷ Dr. Winifred Kamau, Kieya Kamau, Case Comment – Victory for 160 Girls in Defilement Constitutional Challenge

Petition No. 8 of 2012, High Court of Meru, C.K. (A Child) & 11 Others v. Commissioner of Police/Inspector-General of the National Police Service & 2 Others [2012] eKLR

<http://kenyalaw.org/kl/index.php?id=4504>

⁸⁸ W.J & another v Astarikoh Henry Amkoah & 9 others [2015] eKLR

The police officers in the stations that the defilement cases were reported, neglected, omitted, refused and failed to conduct prompt, effective, proper and professional investigation into the petitioner's complaints. They also failed to record the petitioners' complaints in the police Occurrence Book. Further, they failed to visit the crime scenes or interview the witnesses or collect and preserve evidence or perform any other duty that would have brought the perpetrators to justice.

the School, the State through the office of the Attorney General (AG) were found vicariously liable for the acts of the teacher and the girls awarded 5 million Kenya Shillings in damages. Justice Mumbi Ngugi in her judgment noted thus:

...162. With respect to the 1st respondent (the teacher) and others similarly situated, it is important to send the message that any teacher who violates his duty as a teacher, who abuses the trust of parents who leave their vulnerable children in his charge, and who turns, like a wolf, against them, will be held civilly liable, even though he may escape criminal culpability....

....164. With respect to the State through the TSC, it must up its game with respect to protection of minors. It cannot shuffle paedophiles from one school to another, and finally, content itself with dismissals. It has to put in place an effective mechanism, whether through an inspectorate department within TSC or the Quality Assurance Department within the Ministry, to ensure that no-one with the propensity to abuse children is ever given the opportunity to do so. Dismissal, and even prosecution, while important, can never restore the children's lost innocence.



CHAPTER SIX

Pic: www.pixabay.com

6.0 CONCLUSIONS AND RECOMMENDATIONS

Most child mothers end up being rejected by those responsible for their pregnancy in which case they become single parents at a very early age. This burdens them to a level that they are not in a position to participate in elevating their situations in life. They start life at a total disadvantage in which they have to fend for themselves and their children without the necessary assistance and comfort of a family of procreation.

6.1 Conclusions

1. The primary objective of the public inquiry was to establish the causes and magnitude of the child pregnancy in Kenya and make appropriate recommendation for managing the situation both at the national and county levels of government. The public inquiry set to contextualize Kenya's socio-cultural and psycho-medical setting that promote child pregnancy within communities and make appropriate recommendations for redress by stakeholders responsible for prevention and management of child pregnancies; To explore implementation gaps in the existing relevant laws and policies designed to promote equality, freedom from discrimination and the sexual and reproductive health rights of children and to assess the opportunities that exists within the criminal justice system that is useful for mitigating child sexual violation and their implications on child pregnancies.
2. The findings are that child pregnancy is rampant across the country as evidence from the sampled counties demonstrates. The effects of child pregnancy are both harmful to the present as well as future lives of child parents, their babies and family members. The major cause of child pregnancies lie in the socio-cultural fabric of society and the changes in the socialization process in different communities. The girl's dreams of growing up as a child are shattered. It impacts on their health, education, productivity and social well-being. Several children's rights are violated in the process. The impact is different for the girls growing up in urban and rural settings. . The fears of the girl vary from sexual abuse, exposure to harmful cultural practices like Female Genital Mutilation (FGM) to child marriages.
3. Child pregnancy brings about child mothers and/or fathers who are least prepared for parenthood. This compromises their growth and retards their progress in all spheres of life. It affects the child's life and violates their rights. Most child mothers end up being rejected by those responsible for their pregnancy in which case they become single parents at a very early age. This burdens them to a level that they are not in a position to participate in elevating their situations in life. They start life at a total disadvantage in which they have to fend for

themselves and their children without the necessary assistance and comfort of a family of procreation.

4. Generally, most child mothers, miss opportunities to grow their careers if they do not resume schooling. They miss the opportunity to be children, play with their age mates, develop friendship with other children at their levels, and get properly socialized on matters of the community. The lack of educational attainment retards their growth and dis-empowers them later in life. This in essence leads to a cycle of poverty in which the little girl ends up having to endure endless poverty and at the same time pass this same condition to her offspring.
5. Kenya has several policies that address child rights issues including child pregnancy. These policies are not harmonized and well-coordinated for implementation. One shortcoming highlighted by this inquiry is the total absence of the child's voice on matters affecting them in compliance to the Convention on the rights of the child, which Kenya has domesticated.
6. The institutional framework for addressing matters of the child is weak and needs to be strengthened and specially to ensure that one umbrella body handles all matters. The role of the Child Welfare Society and that of the National Council for Children Services should be synchronized and strengthened to enhance effectiveness and to centralize coordination of matters of the child.
7. In cases where the young girls are rejected at the community level and lack proper foundation and communal support, they get solace in the streets where they are likely to eke out a living. Prostitution becomes an option since she has to fend for herself and her child. In the inquiry, a number of girls reported that they were on the streets working as sex workers.
8. Some families have opted to resort to unsafe abortion whenever they discover that their underage girls are pregnant. Among the Samburu, when a child becomes pregnant before being circumcised, this is seen as a taboo and abortion is procured. If she has had the mandatory circumcision and conceives with her beader who is a Moran from the same clan, she is forced to abort. The old women take her to the bush for a crude abortion. This process can lead to many deaths that go unreported in the community. There are other forms of backstreet abortions that some children are subjected to once they conceive. All the practices expose the girl to life-threatening conditions and leave permanent scars in their lives. While the Constitution of Kenya 2010 does authorize safe and legal abortion by trained health care providers to save the lives of the mother, the penal code of Kenya has not lifted the criminal sanctions attached to the exception authorized by the constitution. In January 2016, the African Commission on Human and people's Rights launched a continental campaign for decriminalization of abortion. WHO finds that unsafe abortion is a public health crisis and contributes to 30 percent of maternal death in Sub-Saharan Africa. The Commission urges countries to implement and comply with the commitments made to the protocol to the African Charter on Human and People's Rights in Africa (Maputo Protocol) that authorizes medical abortion to save live of women.
9. In many communities, pregnancy before marriage is frowned upon and when a child conceives, the first reaction is to blame the mother for having failed in her duties as the prime agent of socialization. This may cause tension at the family level and in some extreme circumstances, the mothers are chased away. The girl is seen as an outcast who is ostracized, condemned and chased

away from home. Many of the girls in the inquiry were living with their aunties or grandparents having been ostracized.

- 10.** Children who get pregnant while in school are likely to be expelled from school, stopped from attending church or from being a close member of the prayer groups, judged as immoral and seen as a sinner who has failed to obey the scriptures. Culturally, she is seen as a loose child who is not respectful of her body. The same condemnation is rarely directed to the boy or man who is responsible for the pregnancy. This double standard burdens the girls further and alienates them from the community from which they should receive care and empathy.
- 11.** Many children who get pregnant suffer low self-esteem, shame, rejection and stigma resulting from communal condemnation. They face a hostile environment that sees them as social misfits who have not only degraded themselves but have also destroyed the reputation and societal standing of their families. The stigma is exemplified in rebukes, gossip, slander and backbiting that puts a lot of strain on the young children. This rejection and exclusion in the community in the process of re-integration may make her become a destitute.
- 12.** In many of the communities visited, children who got pregnant are forced into early marriages. They were given out in marriage to the men or boys who had defiled them. Part of the settlement for the pregnancy was to have the boy or another child get married to the pregnant child. Cases of such forced marriages were reported in all counties visited. Girls who marry young enter into informal unions that deny them basic protection and social status and leads to isolation with limited support structures. They have limited decision-making power and are vulnerable to gender based violence.
- 13.** The legal age of maturity in Kenya has been set at 18 years. The assumption is that no child will drop out of school or get married before the maturity age. However, the reality on the ground indicates non-enforcement of the law since girls are married off below 18 years. The social pressure at family level exposes parents to violate the law and marry off their girls while still children.
- 14.** Evidence revealed that the male adults and care givers that children are likely to trust like teachers, fathers, cousins, and uncles are the same ones who sexually molest them. The vice of child pregnancy must be stopped and children must be allowed to be children and to grow up as such. The girl children must be allowed to enjoy all their fundamental rights and freedoms. Child pregnancies indeed expose girl -children to the dangers of increasing the statistics of high maternal and child mortality and malnutrition. They are exposed to sexually transmitted diseases that include HIV and AIDS. The immaturity of their sexual organs exposes them to dangers of Fistula with all its complications.
- 15.** While the Kenya law criminalizes sexual abuse, there is a very weak enforcement framework at societal/community, police, investigation, prosecution and within the judicial set up. The judicial protection mechanism requires attention. Most of the

Schools have failed to protect the girl child. Cases were reported where the teachers forced the pregnant girls to drop out of school in pretext that it would be a bad influence to the other girls. In some schools, sexual harassment from male teachers and school boys contributed to girls' exposure to unprotected sex and by extension child pregnancies. In other instances, male teachers lure the children into sexual relationship by providing gifts such as food, sweets and sanitary pads or money.

children interviewed did not know about the existence of the law and so were their parents, guardians and caregivers. In Kenya, ignorance of the law is not a defense. Despite the requirement in the Marriage Act (No. 4 of 2014) that all marriages be registered, the citizens have not complied with this and the enforceability of the same is unknown and weak. Most pregnant children or those who have become mothers are married off as 2nd, 3rd and even 4th wives. This type of marriage involving underage persons is null and void, yet continues to exist. Evidence in the inquiry showed that women who married while children and were uneducated, stood a high chance of allowing their girl children to marry at similar early ages.

- 16.** There are legal challenges in prosecuting offences related to child pregnancy. Defilement, rape, attempted defilement and attempted rape are offences committed in secrecy and supporting evidence is usually scanty. Children rely on adults either parents, relatives or care givers to report the matters. The care givers either give the support or compromise leading to most cases not being prosecuted. Alleged offenders upon release on bond threaten witnesses. In such cases if complained about and verified, the bond should be withdrawn. DNA tests should help in the forensic evidence to identify paternity; The Government Chemist has not been well equipped to undertake this role. The Government should consider resourcing and equipping the department while the County Governments should work with the police to set up forensic laboratories in local facilities. All efforts must be made to sensitize the communities on the existing laws. Some communities do interfere with the cases and settle disputes out of court through traditional mechanisms.

- 17.** Matters of sexual offence are criminal to be left to out of court settlements or by elders within communities. The courts are obliged to reject such requests and individuals capable of making such requests should be prosecuted. The Chief Justice, the Inspector General together with the Director of Public Prosecution must deal with the allegations of corruption that are said to compromise the arrests, investigation prosecution and final judgment and sentencing of accused persons.
- 18.** Girls who got pregnant through sexual abuse remained fearful of the environment and most of them indicated their fear of men. The children suffered physical, psychosocial, psychological and emotional injury. Majority of girls regretted having been forced into motherhood while children. Others had been rejected by their own families and felt depressed. Some girls got exposed to having multiple partners, multiple pregnancies and getting into prostitution to fend for the child or children and other extended family members. If not corrected, the children stand a high chance of further repeated cycle of sexual abuses for commercial purposes that may include forced prostitution, child labour and premature exposure to sexual activities and premature deliveries.
- 19.** The girl children are not safe even in their own homes. There are reported numerous cases of incest especially from biological fathers, that ended up in child pregnancies. The children are traumatized with actions from their parents. Girls who were defiled by their fathers told the inquiry that their mothers disowned them and blamed them for implicating their fathers. Others were rejected and ostracized. Those who were lucky to be rescued were kept in shelters run by private actors. The government has not considered it necessary to provide shelters for protection despite the recent legislation promoting domestic protection from violence.

- 20.** Cultural practices like Female Genital Mutilation (FGM) predisposes the young girls to early marriage and consequently child pregnancies. These practices are retrogressive, outlawed and must be eradicated if not stopped. In some cases, parents offer their pregnant children into marriage as a safeguard to avoid societal embarrassment for their children engaging in pre-marital sex. Parents seldom think about the consequences of early marriage. The high levels of poverty predispose parents to force their daughters to early marriages for purposes of compensation through payment of bride-wealth.
- 21.** Schools have failed to protect the girl child. Cases were reported where the teachers forced the pregnant girls to drop out of school in pretext that it would be a bad influence to the other girls. In some schools, sexual harassment from male teachers and school boys contributed to girls' exposure to unprotected sex and by extension child pregnancies. In other instances, male teachers lure the children into sexual relationship by providing gifts such as food, sweets and sanitary pads or money.
- 22.** The 2030 Agenda for *Sustainable Development goal number five (5) targets* requires member States such as Kenya to commit to ending child pregnancy by having clear measureable indicators that will monitor the progress in ending the most abusive retrogressive and harmful practices that predispose the girl-child to early and child pregnancy.
- 23.** The role of the law enforcement agents namely the police, the judiciary and the Director of Public Prosecution (DPP) came under attack during the hearings. While the office of DPP blamed the police for shoddy investigations, the judiciary was quick to indicate that the office of the DPP did not present evidence that is water tight to lead to a conviction. On the other hand, members of public including the sexual abuse survivors found the courts unfriendly for child offenders and in some cases compromised to acquit the suspects. The Government chemist was unable to undertake forensic examinations required to boost the evidence of complainants. The Government Chemist admitted that they could not cope with all the demands and they were not well funded to undertake the tasks required of them by the law. The police role is clear to receive the complaints, investigate the matter, preserve the evidence and forward the cases to the Director of Public Prosecution (DPP) for prosecution. While the police gave their difficulties in undertaking their work, the panel found a lot of negligence, compromise and reluctance in pursuing the matters. The police are under obligation to receive all complaints and it is unbelievable that some evidence pointed to certain police officers who refused to record sexual abuse cases. The investigation and collection of evidence was poorly done enhancing chances of acquittals for suspects.
- 24.** Children must be prepared to appear in court. The children victims who testified were terrified with the court process and experience and often broke down and could not sustain the questioning process in open courts or even where held in camera. In Sweden for example they have made it possible for the child to be involved as little as possible with the legal process.⁸⁹ The child's only involvement is to give their story in a single video recorded police interview. The idea is to spare the child psychological pressure associated with being part of the legal process and instead the child is offered psychological treatment if there is need. The National welfare Committee actively intervenes to protect the child from further violations.

⁸⁹ Christina Back; Legal Process in child Sexual Abuse, Linköping University medical dissertations No. 1338, 2012,

Child victims have special needs in the criminal justice process but their needs have been neglected. The actors in the criminal justice system must establish such needs and address them.

25. The child may require safe protection and or shelters. This has been provided by CSOs and there is need for the government at national and county government to invest in this. The process of getting a witness on the witness protection programme is slow and not available to all who need it. Gender inequality is seen as one of the drivers of action of tolerance and acceptance and silence on Gender Based Violence (GBV). Women are devalued and men continuously violate and abuse them. It has been found that fostering more gender equitable norms among youth has contributed in reduction of child, early marriage, keeping girls in schools delays early marriage and by extension early engagement in sex.

6.2 Recommendations

The inquiry presents priority recommendations into three categories. The first category is priority recommendations for national and county governments. The second category is recommendations to specific government agencies, Ministries or departments including constitutional commissions and independent offices. The third category is specific recommendations to six counties covered in the inquiry.

6.2.1 National Government

- I. To provide leadership and political good-will to all initiatives on prevention and response to GBV including prevention of child pregnancy.
- II. Kenya to consider decriminalization of abortion to bring it in line with article 26 of the constitution that gives exception where the life and health of the mother is in danger. Further Kenya to consider lifting the reservation it placed on article 14 and 10 of the Maputo protocol and sign onto the African Commission on Human Rights Campaign to decriminalize abortion.
- III. Kenya has ratified the convention on the rights of the child (CRC) and not the optional protocols. Kenya should consider ratification of all optional protocol to the treaty.
- IV. Kenya must strive to implement the Kenya Constitution 2010, the children’s Act and all international and regional treaties ratified.



The National Gender and Equality Commission is a constitution Commission with the mandate to promote gender equality and freedom from discrimination. It has the responsibility to monitor and audit the realization of equality to eliminate any discrimination based on numerous grounds including sex, gender, education etc. It commissioned the inquiry and has the responsibility to ensure full implementation of the recommendations.

- V. Work closely with private sector as the main provider of digital services to develop strict regulations and control of cyber space for sexual crimes targeting girls and boys.
- VI. To strengthen Child witness protection programs to protect witnesses and survivors from the perpetrators of sexual offences including where such are relatives and caregivers to the children.
- VII. There is need to invest in female role models for girls to build their confidence and self-esteem
- VIII. The government should consider voting resources towards installation of rescue centers or shelters for the abused girls and boys, and GBV recovery centres with capacity to offering forensic laboratory services

6.2.2 Institutional Specific Recommendation

i. Teachers Service Commission (TSC)

TSC punishes offending teachers by dismissal and de-registration for sexual related offences. This is one way in ensuring a safe environment for the children in schools. The names of those found culpable are published in the Kenya gazette. In addition TSC need to:

- Fast track full enforcement of TSC Code of Ethics. The inquiry heard of many cases where teachers are sexually molesting girls without notice of employer either because of lack of mechanisms to enforce the code and curb the vice.
- TSC must popularize the contents of their circular that prohibits school teachers from having any contact with pupils outside the normal teacher-pupil relationship i.e. inviting them into their houses or staff room at night.
- TSC must go beyond publishing names of the deregistered teachers in the Kenya Gazette but

instead do so in daily newspapers with wide circulation and also make announcements on local FM radio stations. The pedophiles must be ostracized, never to come into contact with any children again.

- The Ministry responsible for Education and TSC must provide means in school to deal with psychological trauma and stigma the survivors have to go through. The Guiding and Counseling department in all schools must be equipped with well trained teachers to handle the cases as they get presented. All attempts must be made to protect the vulnerable children from sexual abuse and harm especially in institutions of learning as a duty of care.
- The ruling by Justice Mumbi (though appealed) raises pertinent issues on civil liability arising from duty of care in sexual violence cases of teachers as persons under authority. TSC must disseminate the ruling clearly to put the perpetrators, the State and TSC on alert. (See commentary by John Chigiti Advocates as seen in the story of June 15th, 2015 in the Star Newspaper).

ii. Ministry of Education

The inquiry recommends that the Ministry of Education:

- Must promote girls access to high quality Education and have clear re-integration programs for girls who drop out of school owing to pregnancy. Special attention must be placed on children with disability to support their education and welfare of their babies. Children with disability suffer disproportionately from pregnancies.
- The back to school policy must be enforced since the panel found most girls drop out of school once they are discovered pregnant. We must strive to increase the literacy level by

keeping the girls in school and re-admitting them after delivery. The girls should be supported to go back to school to improve opportunities for their future lives. This will end the circle of poverty. Low education levels have intergenerational impacts as well. There is no doubt that literate, educated mothers will make quick decisions about the value of education, understand the health need of their children and keep their girl child in school to delay early marriage and pregnancy.

- There is need to invest in professional guiding and counseling to equip every school with relevant skills and to have safer facilities for the girls.
- Target the child mothers who are married by providing alternative convenient basic education for out-of-school women and girls to provide the necessary skills to improve literacy. These will assist them acquire alternative livelihoods skills to allow them find their families.
- To consider annually producing publicly the sex disaggregated data that will inform planning and monitor the percentage of girls who drop out due to pregnancy or child marriages.
- Parents must support the girls to go back to school after delivery failure to which the ministry must put sanctions in the education Act.
- The government must ensure age appropriate sex education is taught in all learning institutions. Pregnancy hinders girls' education and information on protection is the best prevention.
- Schools must introduce child rights clubs and must expose all teachers to the Child protection Circular of 2008, the code of conduct, children's Act and the constitution. In addition, teachers should all be trained in guidance and counseling. Every Secondary School should have life skills education once a week.

- It may be important to construct more boarding schools where the girls can be safe and also to take care of the nomadic lifestyle
- We need to empower the girls with education including those from extremely poor, ethnic minorities and from indigenous populations and the disabled to say 'No' to unwanted sex, No to harmful cultural practices including FGM and early child pregnancy and to enable them prosecute the perpetrators as per law provided.
- We must invest in child and adolescent education and stop early marriages
- Learn how to engage boys and men to ensure gender transformation by challenging existing cultures

iii. Ministry responsible for Health

The Inquiry recommends the following:

- There is need to have children/youth friendly reproductive health services in every facility. The needs of child mothers must be addressed by availing basic information on puberty, menstruation and pregnancy. This is to avoid stigma associated with seeking services. Education message must focus on prevention of pregnancy
- Health providers to protect girls from forced medical procedure to sterilize the girls to limit their fertility. Such requests particularly to children with disabilities are made by care givers or the perpetrators.
- Health providers must be trained not to violate the rights of the disabled girls who become mothers at an early age. These will ensure they seek health friendly services avoid injury to infants during delivery and use appropriate delivery methods to avoid further injury to the child mothers.
- Studies have shown that children of child mothers have higher rates of infant mortality and often experience high rates of stunting under five child mortality under nutrition. The right information must be given including care for the infants.
- Consider having comprehensive sexuality education that is age appropriate. These is aimed

at ensuring they receive adequate information on sexuality and expose them to seek answers and have accurate information not to be misled by peers and men who take advantage of them.

- Cases of girls having obstetric fistula resulting from serious injuries go unreported and unattended. The girls are ashamed, stigmatized and isolated. Parents must be sensitized to help the girls deliver in health facilities where fistula damages will be immediately repaired and avoid home deliveries.
- Consider release of standards and guidelines to manage termination of pregnancies where allowable by law in accordance with Article 26 of the Constitution.

iv. The Judiciary

The inquiry found that the Registrar of the high court has not established the register for committed sexual offenders as per s. 39(13) of the sexual offences Act. It requires that the Registrar of the High Court to maintain a register of convicted sexual offenders. The register can be examined by anybody who has interest including potential employers checking the register for trends on offenders especially if they are to be assigned to deal with children.

The inquiry recommends the following to the judiciary:

- The register to be established immediately so that citizens can examine the records.
- The courts to prioritise hearing of sexual offences related matters especially where minors are involved.
- Give appropriate orders and minimum sentences in line with the Sexual Offences Act in safe guard of the best interest of the child.
- Treat the survivors as vulnerable witnesses and give protection orders where they are required or requested.
- Protect the survivors during cross examination in order to maintain dignity of the survivors
- The Chief Justice to establish rules that

can allow the High Courts to periodically review the minimum sentences given by the subordinate courts. It is the responsibility of all the actors, police, investigators, prosecutors and the judicial offices to enforce compliance with the minimum sentences preferred by law.

- Make the courts children friendly and create safe houses for children who have been abused and are seeking justice.
- The judicial training institute should work closely with NGEN to include gender and inclusion training for judicial officers. The Judiciary must be trained to understand and deal with evidence from girls with disability who suffer because of their unique vulnerability.
- The children lack legal capacity to act on their own behalf. Because of their physical and mental vulnerability they require special attention in order to cope with their situation.
- To consider the establishment sexual offences courts that will exclusively deal with cases of sexual violence.

v. Director of Public Prosecution (DPP)

The inquiry makes the following recommendations for the DPP:

- Most cases have been discharged for want of evidence. It is the duty of the office of the DPP to supervise police investigations and ensure correct charges are preferred and that the witnesses are prepared to withstand the evidence in chief and cross-examination.
- The prosecutors must act as the link between the court and the witnesses who are very vulnerable and confused with psychological trauma.
- The office of DPP should help witnesses who require protection from the office of the Witness Protection Agency by making the applications to facilitate such protection.
- Priority must be given to cases that require DNA tests. Investigations are not complete without the forensic test results that must be availed to courts.

- The survivor must be linked to other services for example psychological Counselling and Medical attendance.
- It is the responsibility of the prosecutor to shield the survivor witnesses from further trauma during prosecution.

vi. The Government Chemist

The department housed at the Ministry of Health is expected to provide forensic investigations on samples provided by the police. It also provides crucial evidence to prove or disapprove paternity/maternity of children. The evidence from the government evidence can render conviction or acquittal.

The inquiry recommends:

- The Government Chemist to be set up as an independent office in each of the 47 counties. The services must be devolved to facilitate and aid in quick resolution of sexual offences. The office should be adequately funded to undertake crucial role in sexual offences matters.
- To develop a charter of delivery of service for citizens to be educated on how long the analysis takes in order to fast-track the process.
- There is need to improve the communication between government Chemist and the police to ensure results of analysis are received and presented to court in good time before closure of the matter
- Some of the analysis could be undertaken at the local facilities in Country hospitals. The County Governments should consider partnering with the Government Chemist to facilitate such analysis.
- The record keeping at Government Chemist must be improved in order to identify the police officers presenting and collecting the exhibits with reminders when they are not collected on time.

vii. The National Police Service

The panel recommends:

- Perpetrators in position of authority should

be prosecuted as per s.24 of the sexual offences Act for offences relating to position of authority. This will see teachers and other administrators facing full force of the law.

- The police to ensure the gender units are re-introduced in every station and police posts. There is need to establish full-fledged gender units and equip them with full trained officers.
- Upon receipt of complaint, perpetrators must be arrested and presented to a court of law within set time limits.
- Evidence received during investigations must be well preserved and handed over to the Government Chemist for analysis and results collected in good time for the onward transmission to the court of law.
- It is the responsibility of the police to investigate, record statements from witnesses and submit evidence to the office of the Director of Public Prosecution (DPP).
- To avoid acquittals on defective charges, the police have to ensure they stop presenting defective charges.
- Where paternity has been denied, they must present the DNA analysis and investigators and must testify in court. The Government must fully meet the forensic analysis- DNA costs.
- The police must assist the survivor to prepare for their testimony including accessing medical facilities for checkup and to get the samples.

viii. National Gender and Equality Commission

The National Gender and Equality Commission is a constitution Commission with the mandate to promote gender equality and freedom from discrimination. It has the responsibility to monitor and audit the realization of equality to eliminate any discrimination based on numerous grounds including sex, gender, education etc. It commissioned the inquiry and has the responsibility to ensure full implementation of the recommendations.

The inquiry recommends to NGEC to:

- Publicize by dissemination, the findings of the public inquiry report by development of IEC materials and policy briefs addressed to various actors.
- As a monitoring body to continuously monitor the effectiveness of the existing laws and policies in ensuring that perpetrators are punished and that there are no child mothers, child wives and all children access the right to education. This will boost implementation of laws and policies.
- Raise awareness on the subject matter and support the campaign to end sexual violence against girls and stop sexual harassment at home, at school and from the community. This can be through the media and programmes with various council of elders.
- To consider filing Public interest litigation on the issues raised in the inquiry.
- To train police officers, prosecutors and judicial officers on the importance of their role in dealing with sexual violence especially that meted to children.
- To upscale the programme of working with Community Council of Elders to change their mind set on the identified harmful cultural practices.
- To work with other actors and develop standardized training manuals to raise awareness on the dangers of GBV.
- Review the existing training curriculum and coordinate trainings by various actors

ix. The Ministry Responsible for Gender

The panel recommends the ministry:

- To undertake a comprehensive and coordinated multi sectorial approach in ending child pregnancies and marriages. It must engage both public and private actors, CSOs, Faith Based Organizations and Communities including women groups, community leaders, National Human Rights Institutions to wit KNCHR, CAJ and NGEC and all other actors including judiciary, the National Police Service, Office of DPP, the Prison among others.
- Oversee the implementation of all relevant laws that touch on prevention of child pregnancies and ending child marriages. All policies, laws, strategies and actions must be guided by the best interest of the child.
- Should consider introduction of national legislation that will support the establishment of shelters and a support fund for the victims nationally and at the County government level.
- The Government must invest in providing comprehensive care for survivors of violence that include safe environment to rebuild their lives. Domestic violence must be addressed as well. The care could be provided through centers that can provide:
 - a. Medical care
 - b. Psychological support
 - c. Legal services
 - d. Emergency services
 - e. Confidential counselling services
- To consider the launch of a National campaign to end child marriages and to link it to the AU campaign to end child marriages. The campaign must denounce the cultural acceptance of child marriages; practice of FGM and to engage communities to embrace the benefits of keeping girls in school till majority age.
- To enhance promotion of women's economic empowerment and access to productive resources in existence like Women enterprise fund, Uwezo Fund, Youth fund and funds for persons with severe disabilities.
- To expand male involvement program to identify male champions to pledge to give commitment not to condone gender based violence and to end the harmful cultural practices like FGM and child marriage.
- Should implement training programmes for all public actors concerned with ending child pregnancies and marriages.
- Lobby for extra resources to enable collection of Data, research and monitoring and

evaluation and dissemination of best practices by the Kenya National Bureau of Statistics and the NGEC.

x. Children’s Department

There is urgent need to address the issue of whether children services are devolved. Most aspects have remained in abeyance because of clarity of the function. The best interest of the child is denied as structural issues remain unresolved. The panel recommends:

- The Inter-Governmental Committee to address the issue of devolution of children services including other social services.
- The children’s offices country-wide must be strengthened and proper coordination with the police and the courts enhanced.
- Strengthen the Area Advisory Councils and devolve them to the lowest levels so that they can effectively deal with children’s issues.
- Children with disabilities must be given special attention in addressing their mothering role and needs. Many are abandoned by families and often are defiled by known and unknown persons who take advantage.

xi. Parliament:

The parliament has the opportunity to review all relevant laws to protect children from exploitation and suffering child pregnancies. In particular, parliament should consider review of the sexual offences act to remove the biases where minors (boys & girls) Engaged in Consensual Sex. Some sections of the Sexual Offences Act disproportionately discriminate the boy child against the girl child where prohibited sex is by consent. The law does not provide for any punishment where two minors (boy and girl) engage in penetrative sex. The law only punishes the boy child. Boys who have been convicted for defilement are imprisoned. Critics have argued that S.8 (1) and 11 (1) of the Sexual Offences Act should be declared invalid. The panel finds these sections of the Sexual Offences Act discriminatory and recommends a review of the same to treat all children fairly.

6.2.3 County governments

- Ensure proper infrastructure is in place to facilitate adequate GBV prevention and response. The county government should consider voting resources towards installation of rescue centers or shelters for the abused girls and boys, and GBV recovery centres with capacity to offering forensic laboratory .
- Provide Child/Adolescent Friendly Services in all county health facilities to care for the vulnerable children and the child mothers who need special medical care and socio economic empowerment.
- There is need for health facilities to establish fully equipped Mental Health Units providing services in line with the mental health Act and policy. These services should include child and adolescent friendly facilities with trained staff.
- Counties should strengthen the drug abuse prevention and support programs developed by NACADA, and scale up drug and substance abuse prevention programs in schools.
- Undertake advocacy and awareness programmes to educate the community on existing laws and policies to prevent child pregnancies. Particular focus should be placed on reducing the vulnerability of children with disabilities from well-known double tragedies of child pregnancies

Specific Recommendations to the six Counties visited

The inquiry makes the following specific recommendations directed to the six counties that participated in the study for use in the immediate programs for mitigating child pregnancies. The recommendations are organized by county even though some overlap and apply to more than one county:

i. Samburu County

- Instituting alternative rites of passage among the girls so that the actual cut is not done. This process should go alongside with closer involvement of the parents who should be sensitized on proper parenting.

- Enhancing access to formal education so that the community can also benefit from the social amenities and programmes that the government is providing to its people.
- There is need to create awareness on the existing laws, their implications and fines for any breach. The community is not aware of the anti-FGM prohibition Act 2011 and the children's Act 2001.
- Engaging the community elders in sensitization for progressive change against Cultural practices that are harmful to society and exposes the girl child unduly.
- There is need for parental care and the protection of the child by the family, community, and society at large including the government. The children's offices must be strengthened and proper coordination with the police and the courts enhanced.
- County governments should domesticate the laws and make them culturally relevant in the local contexts.
- Parents should be sensitized against child betrothal, early marriages and the overall treatment meted out to the girl child in the community.
- Networking and linkage with Community and NGOs within the county can enhance mobilization of resources to support the girl child.

ii. Nairobi County

- Nairobi and other urban centers must see the best ways of taking care of the girl child and reducing her vulnerability in the urban setting.
- Special attention need to be given to the eradication of the many drug dens and the criminal gangs that pose great danger and threat to the girl child.
- There is need for legal regulation of the many children homes where they boy child gets sodomised and the girl child is defiled.
- Special attention needs to be given to the suffering street families. A holistic approach to rehabilitation is needed so that the dignity

of these families is protected and their human rights observed.

iii. Busia County

- Instituting county legislation at the County level that protects the girl child from vices like disco '*matanga*' is necessary.
- Creating avenues to reach out to women groups through churches, Chief barazas to create adequate role models for the girls in the community.
- There is need to have refresher training for the fishermen around the beaches (Sio Port) on the dangers of their behaviour and possible exposure to diseases. Alternatively, fishermen need to be encouraged to form cooperatives where they can save their money and engage in other useful ventures.
- Engaging the community elders in sensitisation for progressive change to the many cultural practices that are harmful to society such as Disco matanga, SIEBO, polygyny and the low value accorded to women.
- Work with the bodaboda community and come up with very tough regulations that will govern the industry. They need to be educated on the law protecting children.

iv. Kwale County

- Institutionalize and have policy framework to protect the girl child from exploitation.
- Empowerment through women groups is acknowledged and the government is encouraged to invest more in women and girl child as a means to get out of the high poverty levels within the community.
- The government should assist the girls by enhancing access to formal education, enabling girls to return to school after deliveries and according them the necessary assistance including boarding facilities and psycho-social counseling to deal with the possible stigma.
- Engaging the community elders in sensitisation for progressive change to the

many cultural practices that are harmful to society such as Disco matanga, polygamy, prolonged wedding ceremonies and related rituals and the low value accorded to girls and women in general.

- Community elders must revisit the issue of incest and the role of parenting. Sanctions should be in place to punish the many perpetrators of incest that is happening within the families. The idea of incest being seen as a private affair must be checked and collective community action instituted.
- County government should domesticate the laws that are girl child friendly and make them culturally relevant in the local contexts.
- Parents should be sensitised against early marriages, unsafe abortions and the overall treatment meted out to the girl child in the community. This should also tackle the issue of the conspiracy of silence currently protecting perpetrators of heinous acts.
- There is need for intensive civic education in the community and the creation of role models who can be emulated. Parents need to ensure that they are responsible people and guide their children towards a better and bright future. This could involve radio talk shows, school based curricula, Children's rights clubs among others. The example of Kwale Welfare Education Association that empowers through education should be emulated.
- The hotel industry requires regulation and continued monitoring to ensure adherence to proper and fair practices that do not expose the girls to prostitution. Tourism industry has to observe certain moral guidance that ensures proper ethical conduct.

v. Homa Bay County

- There is need for serious sensitization on the protection of children, reporting of cases and proper follow-up mechanisms.
- Creating safety nets for the orphaned and vulnerable children in the community and cushioning the poor from the stresses of life. This is urgent since the HIV and AIDS has

had devastating effects and many families are affected.

- There is need to have refresher training for the fishermen around the beaches on the dangers of their behaviour and possible exposure to diseases. Alternatively, fishermen need to be encouraged to form cooperatives where they can save their money and engage in other useful ventures.
- Engaging the community elders in sensitisation for progressive change to the many cultural practices that are harmful to society such as Disco matanga, wife inheritance, polygyny and the low value accorded to women.
- The bodaboda community must be positively engaged and regulated to protect the girl child. Stiff penalties should be instituted on those who prey on vulnerable girls.

vi. Nakuru County

- Economic empowerment programmes to offer alternative sources of livelihoods and family support to vulnerable families is necessary.
- Poverty alleviation activities aimed at the provision of decent housing for people living in informal settlements and those working in the flower farms and also raising their socio-economic status
- Engaging with the flower farms owners to raise the wages of their workers and providing better amenities for their families
- Proper laws and regulation need to be put in place to deal with the long truck drivers and to ensure that they do not prey on the young girls. They should be held responsible for their actions.

6.2.4 The general community

The benefits of ending child pregnancies and child marriages are transformative and far-reaching. It is a strategic way to advance women's rights. Communities are the greatest resource in preventing and ending child pregnancies. The following are some of the ways that are suggested for communities and all agents

that work with communities to deal with socio cultural issues of child pregnancies.

- Everyone must be a child's minder and communities must re-engineer socialization process and valuing of children as assets and future resources.
- Communities must invest in building children's self-esteem and encourage them to question injustice, be practical and improve in their behavior.
- There is need for serious sensitization on the protection of children, reporting of cases and proper follow-up mechanisms with the criminal justice system.
- There is need for a change of attitude by all the sectors of society, thus the church, local administrators, the parents and the community at large.
- There is need for sensitization of parents on their roles through public barazas to ensure that they take their roles seriously and to protect their daughters.
- There is need to create safety nets for orphaned and vulnerable children in the community and cushioning the poor from the stresses of life.
- Improve on the governance and enhance public participation so that women can have a voice in the community and act as role models to the girls.
- Communities need to enhance structures to protect the girl child and the boy child as well in order to realize gender equality.
- Parents should be sensitized against early marriages, unsafe abortions and the overall treatment meted out to the girl child in the community. High prevalence on incest within communities is worrying and elders need to address it to protect the young children
- The NGOs engaged in rescue operations should liaise very closely with the chiefs and the children's officers to ensure that those in need of their services are reached.
- Create a Community Empowerment Programme that enables girls and women

to have livelihood options and deal with the high levels of poverty that make girls highly vulnerable. This could be the enhancement of the orphan and OVC remittances.

- There is need for review of the marital union and strengthening the family as the basic unit of human socialization. Fathers should be encouraged to take their responsibilities seriously.
- Parents should reduce, stop or limit the dependency of their children for survival to avoid pushing them out to prostitution.
- Marriage stability is necessary since the frequent divorces and separations are proving very detrimental to the welfare of children more particularly the girls.
- There should be avenues of facilitating witnesses of child abuse to reach courts since in most cases, poverty hampers the dispensation of justice in situations where people are acquitted for lack of evidence resulting from reluctant witnesses.
- Sensitization of stakeholders and the community on identification, prevention and response for sexual and GBV cases is a must. The community must be sensitized about the importance of reporting early in case of sexual violation.
- Encouraging girls to go back to school and provide the necessary environment for the girls to learn and excel. This should be done by enhancing access to formal education, enabling girls to return to school after deliveries and according them the necessary assistance including boarding facilities and psycho-social counseling to deal with the possible stigma.
- Use of ICT by children must be controlled and monitored by parents and communities must facilitate playing grounds for outdoor games to engage children.

REFERENCES

Conventions and international instruments

1. The Convention on the Rights of Persons with Disabilities (CRPD)
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The National Gender and Equality Commission (NGEC) is a Constitutional Commission established pursuant to Articles 59 (4) and (5) of the Constitution and operationalized through the National Gender and Equality Commission Act, 2011 with overall mandate to promote gender equality and freedom from discrimination as per Article 27 of the Constitution by auditing, facilitating, monitoring and advising on the integration of these principles in all national and county policies, laws and administrative regulations. NGEC's target groups include women, youth, persons with disabilities (PWDs), children, the elderly, and minorities and marginalized groups.

Additional specific functions of the Commission are presented in NGEC Act of Parliament (section 8a-p) of 2011.

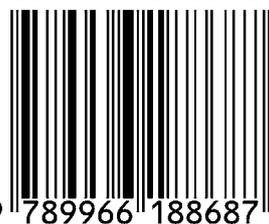
Additional information about NGEC can be obtained from www.ngeckenya.org



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