



## **“160 Girls” University of Toronto, IHRP Panel Presentation**

**January 24, 2011**

**Christine Kung’u, Human Rights Barrister and Solicitor, Nairobi, Kenya**

### **Social Background:**

**Women and girls bear the brunt of violent conduct** in the Kenyan Society. Cultural and social stereotypes contribute to physical and sexual violence against women and girls. Sexual and Gender based violence revolves around patriarchal notions about roles of men and women in society by which the man is in control and the woman the subject beholden to the whims and wishes of the man. This is not to say that boys are not abused. NGO’s are reporting more and more cases of young boys getting abused-physically, sexually.

Kenya is a **Patriarchal society** sex based assignment of roles project the inferiority of women over the superiority of men. The social values therefore reflect that the man is supreme and the law re-imprinted inherent gender imbalances and reinforced women’s exclusion from mainstream society.

There has been **a cry for change both formal and substantive**. Women have been less able to enjoy certain rights, poor access to education. Due to the more open political space, civil societies as well as some MPs were able to engineer certain changes. Laws on sexual offences had been skewed against women..e.g. while penal had proscribed rape, the prosecution of the offence had been bogged down by deficiencies in the Law as well as in procedure.

Practices of communities that occupied the region were discriminatory towards women and girls. Cultural practices such as early marriages, abductions, FGM have led to higher risk of children being abused. The paternalistic socialization in Kenya, also raised discrimination against women and children.

Defilement remained the most common form of sexual abuse among children as in the previous years. This trend showed that sexual violence against children has not depreciated despite increased awareness campaigns conducted by various CSOs and government agencies.

Majority of sexual abuse case are still girls, although the number of boys getting abused is also on the rise. There is rampant increase in defilement and sexual abuse of children.

### **Every half hour a person is raped in Kenya**

- From 1991-2005 there was an upsurge in the number of women and children reporting cases of sexual violence of diverse nature, including rape.
- In **1991**- in a mixed secondary school, boys invaded girls’ dormitories and **raped 70 girls** leading to 19 deaths.
- Youngest rape survivor- 5 months old and oldest- 86 year old.

- A joint report by Teachers Service Commission and a non-profit making organisation revealed that **12,660 girls** were sexually abused by their male teachers over a 5 year period from 2003-2007. Out of these, **only 633** teachers were charged with sexual abuse. In the year **2010**, more than **1,000 teachers** have been fired for sexually abusing girls.
- Police statistics showed that rape and defilement were the most prevalent crimes in 2010, even as other offences reduced by 5% of 57,828 crimes reported in **2010**, **785** rapes and **2,660** children defiled. In 2009, 729 rapes and 2,242.

### **Laws governing the prosecution of Sexual Violence against children:**

- The Constitution of Kenya (Bill of Rights. **Sec 53 (1) (d):** Every child has a right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour
- The Sexual Offences Act, 2006:  
**Defilement of a child-aged 11years or less-life imprisonment**
  - aged between 12-15years- not less than **20 years**
  - aged between 16-18 years-not less than **15 years**
- The Children's Act, 2001
- The Employment Act
- The Criminal Procedure Code

### **Challenges of seeking legal redress in cases of sexually assaulted children**

#### **1. Slow judicial system:**

- It is very frustrating for most complainants (children) people who file complaints on behalf of the children, to find a justice system that is not quick in dispensing justice. There are cases that have taken too long in court, more than two years. During this time several procedural setbacks are at play: **transfer of judges or magistrates, loss of police files, unavailability of witnesses, absence of police doctor or investigating officer**, among other things.
- It is the **responsibility of the state** to ensure access to justice for its citizens, particularly the vulnerable ones.
- **Culture of judicial restraint**, courts instead of becoming liberators, became instruments of subjugation.

#### **2. P3 Form and PRC Form:**

- For any assault cases, the complainant receives a P3 form at the police station, which the government doctor is required to fill out after examining the victim of the sexual assault. However, the P3 form is not detailed and is not adequate to fill out. The PRC-1 Form was rolled out during the National Reproductive Health Strategy 2009-2012. It is being lauded because it can be filled by any qualified nurse, clinical officer or doctor and it can be produced in court as evidence. However, the sole government doctor, was uncertain that it could replace the P3 form. Further, there are doctors who have stated that the PRC-1 Form is too detailed and looks more like a research tool.

The P3 Form is very basic, catches the physical state and any injuries to the genitalia, with special reference to the labia majora, labia minora, vagina, cervix and also notes presence of discharge or venereal diseases.

- The **P3 form** is supposed to be given to the victim/survivor, free of charge. However, in some rural areas some victims are required to **pay about Kshs. 1,500 (20 dollars)**. This they are informed is transport allocation for the doctor to go to court and testify. Then the guardian, in the case of a child reporting, would have to choose between using the money for food, or to buy a document.
- The PRC Form and the P3 form are supposed to be complementary. The PRC form should be used by the government doctor to fill out the P3 form.

### **3. Poor investigations and prosecutions**

- Although there is a Prosecutors Reference Manual on the Sexual Offences Act, prosecutions are conducted poorly.
- Missing police files during court proceedings.
- **Poor handling of exhibits by police**
- **Police stall or push investigations.**
- **Corruption within the police circles, particularly where investigations involve one of them**

### **4. Contradicting medical reports:**

- In most cases the medical reports from hospital and the P3 form filled by the government doctor, usually have conflicting findings.

### **5. Cultural and social stigma in reporting cases:**

- There are still issues of stigmatization with regard to sexual violence hence victims may be reluctant to report and instead resort to alternative methods of resolution within communities. The stigma also comes from a lack of a supportive justice system.
- In some cases, the children are blamed. Particularly in cases of girls who are **tomboys**, they end up being blamed as trying to bring shame to the family as they were the ones playing with the boys all the time.
- Threats/fear of repercussions

### **6. Ignorance by the public:**

- Despite the awareness surrounding the sexual Offences Act, many people did not know what **steps to take** in the event of such an occurrence or even what type of preventive measures to take.
- **Preservation of evidence:** Most people do not know not to wash the victim or the clothes or any other piece of evidence. Therefore, the police are reluctant to proceed with a case where they feel that they do not have physical evidence.
- **Failure to report** incidents as soon as possible. This therefore means that most time it is very difficult to have evidence of the sexual assault, etc.

### **7. Gender Desks:**

- Police officers with no training on gender responsiveness, no skills in handling survivors of SGBV.

- Minimum resources to equip and train the police officers to effectively manage gender desks.

## **Equality Provisions in the New Kenyan Constitution**

- **Preamble:** Recognises that Kenyans aspire ‘for a government based on the essential values of human rights, equality, freedom, democracy, social justice and the rule of law.
- **Sec 29 ©:** Every person has the right to **freedom and security** of the person, which includes the right **not to be subjected to any form of violence** from either public or private sources.
- **Prob:- Claw-back section 24 (5)** which applies to persons practicing the Muslim faith. It takes us back to the “personal laws” exceptions.
  - Detailed Bill of rights: sec. 53: **Every child has a right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour**
- Children rights are specifically stated in the new Constitution.
- The Equality provision is **section 27**

27. (1) **Every person is equal before the law and has the right to equal protection and equal benefit of the law.**
- (2) Equality includes the full and equal enjoyment of all rights and Fundamental freedoms.
- (3) **Women and men** have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.
- (4) 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, color, **age**, disability, religion, conscience, belief, **culture**, dress, language or birth.
- (5) **A person shall not discriminate** directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).
- (6) To give full effect to the realisation of the rights guaranteed under this Article, **the State shall take legislative and other measures**, including **Affirmative action programmes** and policies designed to redress any disadvantage suffered by individuals or groups because of past Discrimination.
- (7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.
- (8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that **not more than two-thirds of the members of elective or appointive bodies** shall be of the same gender.