

Legal Status of Child Sexual Abuse (CSA) in Early Childhood Education in Nairobi City County Kenya

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Abstract: Child sexual abuse (CSA) is any sexual act between an adult and a minor or between two minors where one exerts power over the other. The goal for this research was to investigate legal status of CSA in early childhood education. This study used a descriptive survey design and the sampling technique was purposive. It was based in Nairobi City County. The target population comprised of sexually abused children, their parents/guardians and policy makers. The total sample size was ninety-five (95) respondents who included forty-five (45) children who had experienced CSA and forty-five (45) of their parents/guardians and five (5) policy makers/key informants. The research used an interview schedule which was piloted on a randomly selected sample of five (5) children aged 5-8 years who had experienced CSA and their parents/guardians as well as one key informant at Child line Kenya. Cross validity was determined through peer feedback and content validity through expert opinion. Reliability was established through pilot testing of the research instrument to ensure clarity and adequacy of items. The study yielded qualitative data which was analyzed thematically guided by the study goal. Further, descriptive statistics were generated using percentages. Results were presented in figures and texts. Policy makers and parents/ care givers were interviewed on this, their responses revealed that they construed the constitution of Kenya 2010 as a key legislation that guided all other legislations, hence there is need to review all other legislations and align them to the new constitution. Regarding the children's act 2001, the respondents stated that teachers need to be included as key role players in child protection. The Sexual Offences Act 2006 was construed as a key legislation in protecting children, and should be implemented and more stringent measures added to apprehend offenders. The Evidence Act 2009 requires that evidence be given regarding a CSA offence, going to court to give evidence was traumatizing to all involved. The criminal procedure code 2012 was decried as it gave perpetrators the bail option. The study recommended protection and strengthening of the family unit, training of stakeholders on CSA prevention. Inclusion of age-appropriate life skills in school curriculums and teacher training programs on signs of CSA, assessment, reporting procedures, withdrawal of the bail option for those accused of CSA, introduction of stringent measures and operationalization of relevant legislations. This was therefore a significant study as it yielded recommendations for both policy and practice.

Key Words: Child Sexual Abuse (CSA), Key respondents / Policy makers, Legislations.

I. INTRODUCTION

The Child Sexual Abuse (CSA) concept refers to involvement of dependent and developmentally immature children in sexual activities that they do not fully comprehend.

In other words, children are not in a position to consent to such activities, because they are not developmentally prepared. CSA involves physical or psychological power differences whereby a child is used by an adult or an older or more knowledgeable child for sexual pleasure World Health Organization (WHO, 2014).

CSA is not only a crime but is also a serious human rights issue. There is need to treat those affected with dignity and respect and ensure their offenders are brought to book. This requires a comprehensive set of legislations in order to effectively respond to these needs (The National Guidelines on Management of Sexual Violence in Kenya, 2009). Research by The National Society for Prevention of Cruelty to Children (NSPCC) (2016) revealed that in the United Kingdom, England, Northern Ireland, Scotland and Wales, there exists a national legislative framework to protect children from harm. The legislative framework stipulates the penalty for adults who sexually offend children. The frameworks also provide guidance on how professionals must respond to ensure holistic support for children against the CSA vice. This study sought to investigate the legal status of CSA in early childhood in Kenya.

According to Child Abuse Protection Laws (2013), in the United States of America, child protection legislations exist at different levels: federal, state and locally. Legislation protects children from exploitation, harm and danger. The Child Abuse Prevention and Treatment Act (CAPTA), passed by the federal government came to force in 2010 and is the largest body of legislation with regard to the fair, ethical and legal treatment of children. Federal laws provide standards and guidelines; however, most child abuse issues are governed by state laws and regulations. All states have enacted laws that protect children from abuse and neglect. The Legal Resources (2016) analysis reveals that, each state in USA, has developed its own procedure for reporting child abuse cases either to law enforcement agencies or child protective services. Nevertheless, in every state, certain individuals with direct contact with children must report any signs of abuse. Such individuals include teachers, medical professionals and law enforcement personnel. Some states expand this reporting responsibility to all citizens. The current study sought to find out the legal status of sexual abuse in Kenya.

Across Asia and generally across the world, sexual abuse and exploitation adversely affects the lives of countless children, from preschool boys and girls to adolescents. Despite many

countries in the region being signatories to the CRC, no country in Asia is exempted from CSA (UNICEF, 2009). South Asia is home to half of the world's child brides, where 46 per cent of women aged 20-24 are given out for marriage before they attain 18 years. The current study sought to find out the legal status of sexual abuse in early childhood education.

Similarly, in china the CSA phenomenon is dichotomous one cited by Nan (2013). Unlike Hong Kong and Taiwan, the mainland does not have systematic laws to deal with child sexual abuse. This is because the mainland is conservative and sexuality is considered a taboo topic. Schools only joined in the sexuality education after the title was changed from "child sex abuse" to "safety education". This study sought to establish the legal status of child sexual abuse in early childhood education.

The African Child Policy Forum (2014), conducted desk-based research in order to review the Harmonization of laws in Nineteen Eastern and Southern African Countries, with the goal to provide a more global outlook of the situation of CSA in Africa. Findings showed that most African Governments are signatories to the international, regional and national child protection legal documents. This shows considerable commitment to address sexual exploitation among children. However, most of these frameworks are inadequate. Consequently, most countries are either reviewing existing child protection legislations or are in the process of drafting new child protection legislations to align them with international and regional obligations and developments. Mozambique for example has a constitution that gives children a right to protection in a generic way by requiring families to teach them moral and social values. This makes children vulnerable to customary and religious practices, which leave loopholes for sexual abuse in children especially through early marriages which keep young girls from going to school (The Law Reform Report on Child Protection in Mozambique, 2014). Such legislations influence early educational uptake negatively. The current study sought to find out the legal status of sexual abuse in early childhood education in Nairobi City County.

Kenya acknowledges the need to protect children and is consequently a signatory of both the UNCRC and The ACRWC respectively. Secondly, it has enacted legislations such as the supreme law (Constitution of Kenya); The Children's Act 2001; The Sexual Offences Act 2006; The Witness Protection act 2006; The Criminal Procedure Code CPC 2012 and The Evidence Act 2009, all with the aim of protecting children from abuse. The Policy aligning Education to the Constitution of Kenya and Vision 2030 seeks to amalgamate all these efforts in ensuring all Kenyan children including those with special needs such as the emotional and behavioural needs of sexually abused children, get an education. Notably, in spite of all these efforts, most children who experience the CSA vice in their early years are out of

school missing out on education due to issues related to the CSA vice.

Kenya has enacted the children's act 2001. It is the Act of parliament in which the rights of children are embedded. In part II of the Children's Act, section 15 states that a child shall be protected from sexual exploitation. This has a positive influence on the educational wellbeing of those affected. However, the legislation is mute regarding child protection in social media, a current agent of CSA among young children. This section also fails to recognize the potential that educators (teachers) have in protecting children from CSA, a vice whose outcomes impede the learning process of young children. Githinji (2011) states that 65% of children aged 3-6 years do not access ECDE services. Further, part III section 26 omits child protection from CSA as part of parental responsibilities.

The sexual offences act, 2006 as stipulated in GoK (2006) is yet another piece of the Kenyan legislation with many benefits for those affected by CSA. It's status entails definition of sexual offences, the different types and their penalties. It also provides for preventive and protective measures when cases of sexual assault arise. It is the most authoritative legislation in prosecution of sexual offences and is superior to all other legislations in this regard. This legislation prescribes various penalties for perpetrators of CSA, for example, those who abuse children below the age of 8 years are supposed to get a life sentence according to GoK, 2006. The sexual offences act 2006 provides for preventive and protective measures when CSA cases arise. This led the government to setup Gender Violence centres in various hospitals where children can access free psychosocial support.

According to RoK (2009), the Evidence Act 2009 is an Act of parliament used in all judicial proceedings before court. It determines the facts. The Evidence Act requires that evidence to prove facts that are alleged by a child affected by CSA be given directly, meaning a facial contact between the perpetrator and the affected child in court, which is traumatizing (Omondi, 2014).

The Criminal Procedure Code CPC (2012) stipulated in RoK (2012) is yet another Act of Parliament that makes provision for the procedure to be followed in criminal issues. Its status is that it is the act that provides for the bail option. This means that a CSA perpetrator who bails himself is released back to the community where he may choose to interfere with investigations as well as threaten the affected children and their families.

The Witness Protection act 2006 in RoK (2006) provides for the protection of witnesses in cases involving crime. It provides for general protection of children witnesses. Children affected by CSA qualify for this because they testify on sexual offences. In fact, they are usually in dire need of protection from perpetrators of the CSA crime. This is further supported by a case study conducted by Kiprono, Ngetichi and Mwangi (2015) on child witness protection challenges in Kenya which showed that whereas the Protection Act does a commendable

job in its pursuit to protect witnesses, there are challenges when it comes to dealing with children cases due to inadequately trained technical staff and lack of facilities to handle such cases.

The overall goal of this study therefore was to establish the influence of outcomes associated with CSA on Children in Early Childhood Education aged 5-8 years in Nairobi city county, Kenya.

II. METHODOLOGY

This study adopted a descriptive survey design. According to Abagi (1995), descriptive research design is a design that is suitable in the description of what exists in a social system. In the current study, it brought out the existing status of CSA. It allowed for the collection of all data describing the variables from primary sources: sexually abused children, parents/guardians, teachers and key informants. The descriptive design also allowed for discovery of the rate at which CSA and learning occurs. It also allowed discovery of how psychological disorders associated with CSA affect learning.

The legal status of CSA was captured through the interview schedule for parents/guardians, which had a section for policy makers. The legal status of CSA was measured thematically.

Location of the Study

This study was carried out in Nairobi City County which was purposively selected. The rationale for this choice was that Nairobi City County being a metropolitan city is home to several informal settlements which record high prevalence of CSA (Wachira, Walioli and Okongo, 2018). More importantly, Nairobi City County hosts the Nairobi Women's Hospital's GVRC which is the only such facility in Kenya and the East African region (Nairobi Women's Hospital GVRC, 2018). It receives an average of 230 victims of abuse per month, out of these 45 percent are children reiterates (Nairobi Women's Hospital GVRC, 2018). Consequently, the medical team vetted 40 of the children affected by CSA and confirmed them as fit to participate in the study.

Nairobi also hosts other study sites, which provided data for this study namely: Children's department, Child line Kenya, The Teachers Service Commission (TSC) as well as Kenya Institute for Curriculum Development (KICD). These institutions have government policy makers/ key informants who are stakeholders in the development of policies and curriculums for children. These reasons resulted in the researcher purposefully selecting the Nairobi City County as the ideal site for this study.

Sampling Techniques

Purposive sampling technique was used in selection of the study location: Nairobi City County. The rationale for this was that, this county records the highest CSA prevalence countrywide (Namai, 2017). This meant that this rare sample was available in Nairobi. Sexually abused children and their

parents/guardians were selected through purposive sampling. This is because sexually abused children are hard to come by since the vice is hardly reported. Hence, all the children aged 5-8 years in NWH and the children's department who were sexually abused a month before the study and were found to have PTSD, depression and anxiety after assessments were selected for the study. Key informants for the study were also purposively selected. This is because KICD, TSC, Child Line Kenya and Children's department are authorities regarding educational related policies and legislations.

Sample Size

The total sample size for this study consisted of 95 respondents. It was determined as follows; Sexually abused children were 45. Their parents/guardians were also 45. They were 10% of the 455 prevalence of CSA survivors who develop psychological disorders after sexual abuse according to RoK (2010). Mugenda (2003) states that 10% of the accessible population is enough sample for a study where samples are difficult to find. Also, the parent/guardian of every sexually abused child was also interviewed bringing the figure to 90. Parents/ guardians of any gender were acceptable. Finally, five government officials were purposively chosen: One from the department of children's services, one from TSC and one from Kenya Institute of Curriculum Development (KICD).

Sample Size

Sample Description	Gender		Targeted Sample	Sample size	Percentage
	M	F			
Children affected by CSA	10	35	45	45	50%
Parents/guardians	6	34	45	40	44%
Children's homes	5			5	
Policy makers/Key Informants	2	3	5	5	5.5%
Total	18	77	95	95	100%

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The data was analyzed thematically. Findings were summarized as follows;

i) The Constitution of Kenya 2010

The policy makers as well as the parents/caregivers were asked if they knew any and legislations which address CSA. Their responses showed that they construed the constitution of Kenya as a key legislation that guided all other legislations which protects children from the CSA vice. They also stated that legislations are dynamic and require review in order for them to commensurate with the current constitution. Hence, there is need to review all legislations including those that address CSA issues in order to align them to the new constitution.

ii) *The Children's Act 2001*

Respondents in this study stated that the children's Act 2001 influenced learning positively in that it is the act of parliament in which the rights of children are embedded. Part II section 15 mandates child protection from sexual exploitation. However, section 21 has a negative influence in that teachers are not included among child protectors, yet they play a key role in child protection. In this study, parents and guardians reported that where the teacher was supportive the abused children thrived academically and where the teacher was not supportive, the child affected by CSA dropped out of school.

iii) *Sexual Offences Act 2006*

It addresses penalties for perpetrators of CSA. Respondents in this study highly commended the sexual offences Act as a legislation that supports sexually abused children; however, both the policy makers as well as the parents lamented about its lack of implementation. One of the policy makers stated the following;

Legislations such as Sexual Offences Act are helpful to sexually abused children and should be followed to the letter by the authorities. Currently very few offenders get apprehended (Policy maker A).

Respondents also said that this legislation would be a total solution to the CSA vice if it included castration of CSA perpetrators. The sexual offences act also advocates for preventive and protective measures when CSA cases arise.

iv) *The Evidence Act 2009*

Respondents stated this as the legislation used to generate evidence that a crime was committed and hence determines facts. It therefore requires that allegations made by a complainant be proved by fact and be given orally and directly in court meaning a facial contact between the perpetrator and the sexually abused child. This study found that respondents decried this provision and stated that the children are usually already traumatized by the CSA ordeal, rendering them unable to give evidence coherently and confidently, hence should not be put to task to prove their case in court.

In the current study, respondents said that one of the reasons why children failed to attend school regularly was because of attending police and court routines. One guardian refused to consent to the study and said her two children should be left to heal naturally. This is because reporting the CSA case to the police and the court processes which followed traumatized both the children and the guardian. Child respondents also said they hated the police and court routines and that such routines kept them from going to school. This made them lag behind in terms of learning. Some parents said they withdrew children from school, so that they could clear with the police as well as the court case first.

III. RECOMMENDATIONS FOR LAW ENFORCERS

There is need to address the gaps in the legislations by making them more stringent to the perpetrator but more friendly to sexually abused children in Early Childhood Education. The option of bail should be withdrawn and children should not be required to present themselves in court as the process is traumatizing and wastes children's learning time. There is need for operationalization of legislations, for instance policy makers felt that the sexual offences act is ideal but it is not well operationalized. Further, in this study, out of the 45 abused children, only 5 perpetrators were arrested.

Law enforcement agencies like the police need to take up their full mandate, in order curb CSA completely. However, all law enforcers such as police, chiefs and opinion leaders as well as stakeholders such as NGOs, need to be trained on how to prevent CSA, as well as how to report, manage and refer the affected children. Teachers need to be included as child protectors in the children's act. Legislations and policies are working documents requiring upgrading due to changing times, changes in society as well as emerging issues. For example, social media is an issue now and children need online protection.

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