

## Sexual Offences Bill

**W**E, the management Board of the Forum for African Women Educationalists (FAWE) -Kenya Chapter have read and critically analyzed the provisions entrenched in the proposed Sexual Offences Bill 2006.

Our overall mission is to support girls and women to acquire education for development by ensuring that girls and women access education, are retained in school and perform to the best of their ability.

The proposed Sexual Offences Bill 2006 has addressed some of FAWE Kenya's strategic objectives, which are:

- Influencing education policies and practices to ensure that gender is mainstreamed and that they are gender responsive,
- Creating awareness through various advocacy initiatives across the board on the importance of educating girls and women,
- Putting demonstrative interventions to demonstrate how girls and women can be supported to enhance their education, and
- Replicating and mainstreaming the best practices in girls and women education for the purposes of scaling up to the entire country

### Rationale

Sexual harassment is increasingly being reported in our schools, education and training institutions today. Pregnancy and eventual early marriage of school girl's account for 31 per cent and 32 per cent for all school dropout cases reported in rural and urban primary schools respectively.

Nationally, pregnancy and early marriage accounts for 31.3 per cent of all girls drop out cases in primary schools. At secondary school level the nation is losing 5.1 per cent of girls before they complete Form Four with Nairobi province leading at a drop out rate for girls of 7.4 per cent followed closely by North Eastern province at 7.1 per cent. Only 4.6 per cent of boys drop out before completing Form Four. This is by far attributed to incidences of sexual harassment of school girls and boys in and out of school.

Sexual harassment is an unfortunate, often damaging, experience that girls and boys face daily in their school lives. Quite apart from the ultimate forced sexual act, sexual harassment includes abusive language and gestures, sexual advances, touching and groping, passing unwanted notes, and character assassination through graphics.

The victims are often times silent sufferers, particularly when they are in the same environment with the perpetrators. Sexual harassment harms both boys and girls physically, psychologically and emotionally. It embarrasses, humiliates and shames the victims. Because of the negative attitudes and practices in the African cultural set up, such as forced marriage, abduction, it is seen as act of normal practice and is therefore tolerated. Girls are particularly vulnerable, rendering them susceptible to early pregnancy and STI and HIV infection, which lead to poor performance, stigmatization, dropping out of school and possibly death.

There is a lot of pressure on boys, as well, culturally and from their peers, to engage in sexual practices in order to prove their manhood. Because they are "men", the society expects them to handle such pressures. There are therefore no mechanisms to assist boys to deal with such pressures.

Some staff members in education and training institutions have been reported as perpetrators of sexual harassment. Yet sexual harassment has far reaching implications for the teaching and learning processes. Consider a girl who has just been sexually harassed by a male teacher now sitting in class taught by the same teacher. Such a girl will be traumatized and unable to concentrate on her studies. The presence of the perpetrator will elicit anger, fear and resentment that hinder learning.

Most education systems do not adequately address the issue of sexual harassment in teacher training. Therefore, some teachers and administrators do not have the necessary skills to detect and handle sexual harassment in the classroom, or even to recognize its impact on teaching and learning. Teachers must create a conducive school environment that is free of all forms of sexual harassment. This starts with the

# Support Girls and Women to Acquire Education for Progress



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teachers themselves as educators exercising sexual self-control and avoiding any situation that may lead to sexual harassment. Teachers must see themselves as guardians and remember that they are responsible for the students' safety, welfare and well being. They must, as well, make it absolutely clear that they will not tolerate such activity in the classroom and school environment.

FAWE Kenya Chapter wishes to identify key issues in the proposed Bill which directly affect education for girls and women.

### Unfavorable school & home environment

The proposed Bill, in Section 33 should direct the minister to enact a policy, which requires employers to ask prospective employees, before employment to declare whether they have been previously convicted of a sexual offence. A person who is taking a position of authority or employment in a children's institution must be compelled to declare previous convictions and specifically sexual offences. Children ought to be protected from former convicts and potential sexual offenders especially in education and training institutions.

The proposed Bill should provide for institutions to be enjoined as offenders where they have contributed, provided the environment and/or been involved in any manner whatsoever, in the commission of a sexual offence. Section 2, 12 and 14 of the proposed Act which address the

manufacture, distribution, supply and exposure of pornographic material.

In the current world of technology and freedom of expression children may be exposed to pornographic material through institutions such as the media, school or training facility, which may deter a child's participation in education. The youth are greatly influenced by what they see and read in the media and the content affects children's education. Girl children are more vulnerable to sexual abuse when exposed to such material.

Gender insensitive school environments which perpetuate incidents of sexual abuse of girls are some of the underlying causes for gender disparities in education.

### Sexual relationships and consent among children

The Bill should recognize that children have no capacity to consent on sexual negotiation among themselves, and the Bill should prohibit them from engaging in sexual activity. This will deter sexual relations amongst children. Sexual relations among children is a major discipline issue in most education institutions and contributes to the highest percent of girls pregnancies in school and eventual drop-out.

The Bill should have a general provision which states that where the accused person is under the age of 18 years, upon conviction for committing any sexual offence in the Bill, the court should sentence the accused person in accordance with the provisions of the Borstal Institutions Act and the Children's Act. Additionally, the minister should also draft a policy requiring that persons under eighteen found guilty of engaging in sexual acts shall be taken through corrective measures to change their behavior and continue with their education.

### Negative social attitudes

Noting that Female genital mutilation (FGM) contributes to girls' premature withdrawal from school and that once a girl has undergone circumcision she is considered an adult woman and ready for marriage, hence her 'adult behavior' includes sexual activity and conflicts with her participation in schooling.

Further to this there are medical complications that result from FGM and teen-age pregnancies that contribute to drop-out of school by girls. The girls in communities that practice FGM therefore lose out on education once they have been circumcised. It is worth noting that the Children's Act prohibits FGM and the Sexual Offences Bill seeks to extend this protection to adult women forced into FGM. This Bill will give girls a choice and protect girls and women from forced FGM.

The Bill needs to go further in section 31 to deter institutions from carrying out circumcision of girls and women. It is common knowledge that some institutions and other institutions engage in conducting FGM.

### Impact of sexual offences on education of girls and women

Sexual violence has many harmful consequences, both short and long term which include trauma, depression, unwanted pregnancy, pelvic inflammatory disease, infertility, STDs, partial or permanent disability, HIV/Aids, suicide, and death. Psychological consequences of sexual violence include fear, distrust, and anxiety, feelings of guilt and/or shame, difficulty concentrating, depression and even thoughts of suicide.

A recent national survey on child abuse in



Kenya indicates that nearly two out of 10 girls who have been raped become pregnant and close to three out of 10 contract a sexually transmitted infection. Survivors of sexual violence suffer from isolation, stigmatization, poor performance at work, absenteeism, financial difficulties. The impact of sexual offences on school girls is greater given that they have a young mind and cannot cope with such stressful circumstances. This affects their participation in education to a great extent.

### Stiff Penalties

All the minimum sentences proposed in the Act, especially those offences meted against children, should be enhanced. Once a child is sexually abused, more often than not, her life is curtailed. Sections 3(3) and 5(2) of the Sexual Offences Bill provide for a minimum sentence of ten years imprisonment for a person who rapes or sexually assaults another. The ten year minimum sentence for the rape or sexual assault of an adult does not even come close to the minimums set in the neighbouring countries.

A definition of the term 'juristic' person should be included in Section 2 of the Act. The penalties meted out to this group of persons should be tough and deterrent. Further the penalties for juristic persons should be streamlined in all the sections. We propose that a minimum prohibitive fine be prescribed for this category of offenders.

Section 8 of the Sexual Offences Bill, which has entailed the defenses to defilement, should be deleted. If legally, a child does not have the legal capacity to consent, then it negates the concept of consent to have instances where a child can be said to have consented. Children should not be allowed to consent on any matter of sexual negotiation or activity. This will ensure that our children are safe and protected and able to excel in their education without fear.

### Gender responsive policies

The Bill should direct the Minister to specifically draft a policy to prohibit persons, hotels, clubs, restaurants and institutions from dispensing alcohol and other intoxicating substances to persons under the age of 18 years. Abuse of these intoxicating substances negatively interferes with a child's performance in education and makes them more vulnerable to sexual abuse, especially girls.

We are convinced that educating girls and women is one of the single most investment with the highest return, hence the Forum for African Women Educationalists Kenya Chapter urges all Kenyans to support the sexual Offences Bill 2006.



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