Workshop Report

Sexual Violence Against Kisumu Schoolchildren: Enhancing Accountability

Kisumu, Kenya
January 13, 2015
Acknowledgments

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- Plan International: Ms. Tabitha Ndede-Ojwang; Ms. Irene Wali
Participant List

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- Mary Maisory, Kisumu East Area Education Officer
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- *Cornell University Law School*: Sharon Pia Hickey, Alexandra Kitson, Andrew Yost

- *University of Nairobi*: Caroline Adhaya, Linah Aduda, Mollie Deteh, Margaret Lumumba, Jane Murungi, Elizabeth Odhiambo, Maurice Okech-Owiti, Ronald Rogo, Hussein Wethow
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1. Overview

In September 2014, the University of Nairobi School of Law Human Rights Clinic (“HRC”) and the Cornell Law School Global Gender Justice Clinic (“GGJC”) began a collaborative project aimed at addressing the prevalence of sexual violence against schoolchildren in Kisumu, Kenya. Over the course of several months, the HRC and GGJC researched the scope and nature of this issue. Specifically, the HRC and GGJC’s research focused on the legal and institutional mechanisms that are meant to hold teachers and other actors accountable for preventing and responding to school-based sexual violence. In particular, the HRC and GGJC’s work entailed: researching factual and legal issues; interviewing stakeholders in Kisumu and Nairobi; cataloguing court cases and media reports concerning acts of sexual violence committed against schoolchildren in Kenya.

As part of this collaborative project, the HRC and GGJC hosted a stakeholders workshop (“the Workshop”), titled “Sexual Violence against Kisumu Schoolchildren: Enhancing Accountability.” The Workshop was held on January 13, 2015, at the Imperial Hotel in Kisumu, and was co-sponsored by the Avon Global Center for Women and Justice at Cornell Law School (“Avon Global Center”) and the Avon Foundation for Women. The Workshop’s purpose was to create a forum for stakeholders to collectively examine gaps in responses to sexual violence against schoolchildren and to propose possible solutions. In furtherance of this objective, the Workshop brought together seventeen participants, including stakeholders from the education sector, representatives of local and national government, and employees of nongovernmental organizations (“NGOs”).

The Workshop began with presentations by members of the HRC and GGJC, and then continued with small-group breakout sessions and Workshop-wide plenary discussions. The first breakout session (“Breakout Session I”) and plenary discussion (“Plenary Discussion I”) focused on identifying gaps in accountability and examining why laws meant to prevent sexual violence against schoolchildren are not implemented. In the second breakout session (“Breakout Session II”) and plenary discussion (“Plenary Discussion II”) the participants were asked to propose ways to address these gaps in accountability and to develop a concrete plan of action. As a result of Plenary Discussion II, the participants agreed upon a list of commitments, which became known as the “Imperial Hotel Declaration.” The Imperial Hotel Declaration is reproduced in full on Page

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1 In September 2014, members of the HRC interviewed Kisumu-based representatives of the Kenya National Union of Teachers and the Teachers Service Commission (the government agency constitutionally charged with registering, training, and disciplining teachers, see CONSTITUTION, art. 237(2)(e), 3(a) (2010)). Additionally, members of the HRC interviewed Kisumu-based representatives of Plan International and Watoto Msilie, two NGOs that, among other things, work to address school-based sexual violence. Further, members of the HRC interviewed the Chief of Kisumu and a member of the local police force’s Child Protection Unit.

In January 2015, members of the GGJC conducted interviews in Nairobi. They met with Nairobi-based representatives of several NGOs that, among other things, work to address school-based sexual violence: Plan International, the International Justice Mission, and The Cradle. Members of the GGJC also met with John Chigiti, a Kenyan lawyer specializing in human-rights advocacy, and Winfred Lichuma, Chairperson of the National Gender and Equality Commission (a state agency mandated to address issues of gender inequality, including sexual violence, see The National Gender and Equality Commission Act, (2011) § 8).
33 of this Conference Report. In approximately six months, the University of Nairobi will reconvene participants from the Workshop to assess the progress of their commitments made in the Imperial Hotel Declaration.

2. Introductions and Opening Remarks

Opening Remarks:

- Okech-Owiti, Associate Dean, University of Nairobi School of Law, Kisumu Campus
- Sharon Pia Hickey, Women and Justice Fellow, Avon Global Center for Women and Justice at Cornell Law School
- Elizabeth Odhiambo, Lecturer, University of Nairobi School of Law, Kisumu Campus

Okech-Owiti, Associate Dean of the University of Nairobi School of Law, Kisumu Campus, opened the Workshop by addressing the participants. The Dean thanked the participants for their attendance and expressed his hope that the Workshop would result in real, positive change. More specifically, Dean Okech-Owiti noted that school-based sexual violence is a serious problem in Kenya, and in Kisumu County in particular. Schools are meant to be safe places where children can learn and grow, but far too often children go to school and experience sexual violence at the hands of their fellow classmates or teachers. Still, the Dean noted that this problem, though serious, was one that the participants could begin to address at the Workshop. Moreover, the Dean stated that the University of Nairobi was making a long-term commitment to combat school-based sexual violence. The University of Nairobi would use its position as an academic institution to study this problem, facilitate discussion, and coordinate responses. Finally, the Dean expressed his hope that the participants would leave the Workshop with a specific, concrete plan of action. He hoped that the participants would pledge to undertake concrete steps to begin addressing the problem of school-based sexual violence in a real and meaningful way. Then, in approximately six months, the University of Nairobi would invite the participants to reconvene and assess the progress that they had made.

Sharon Pia Hickey, a Women and Justice Fellow at the Avon Global Center for Women and Justice and a teaching fellow in the GGJC, addressed the participants next. Ms. Hickey explained that the Avon Global Center works with judges, legal professionals, governmental organizations, and NGOs to improve access to justice and eliminate violence against women and girls. Ms. Hickey also described some aspects of the Avon Global Center’s past work, highlighting projects in which the Avon Global Center, working with Cornell’s International Human Rights Clinic and local partners, had researched and analyzed school-based sexual violence in Zambia and South Africa. Ms. Hickey further explained that the HRC and GGJC are law-school clinics,

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focused on promoting human rights and gender justice throughout the world. A law-school clinic allows law students to work under the guidance of supervising attorneys and gain real-world experience representing clients and collaborating with partners. Ms. Hickey explained that the GGJC and HRC had been collaborating as partners for the past half-year. Attorneys and students from both clinics had been working together to research and analyze school-based sexual violence in Kenya, and plan the Workshop. Finally, Ms. Hickey thanked the participants for their attendance and expressed her hope that the Workshop would result in a productive and fulfilling day.

Elizabeth Odhiambo, a Lecturer at the University of Nairobi and a supervising Advocate in the HRC, concluded the introductory portion of the Workshop. Ms. Odhiambo emphasized that the Workshop had a collaborative mission and that the participants were being asked to work together to examine the problem of sexual violence against schoolchildren and propose solutions. She stressed that the Workshop was an open forum and asked the participants to respect each other’s views. She stated that the members of the HRC and GGJC wanted to learn from the participants and hear their thoughts on the prevalence and causes of school-based sexual violence. Ms. Odhiambo also explained that she hoped that the Workshop would provide an opportunity for the participants to learn from each other because any effective response to school-based sexual violence would require collaboration among different organizations and institutions. Finally, to facilitate such an open discussion, Ms. Odhiambo asked the participants to recognize that some aspects of the Workshop should be treated as confidential. Although the Workshop’s findings and proposals would be publicly released, the participants should understand that some of their colleagues might prefer to not have their identities publicly known.

Ms. Odhiambo then moderated a brief session where all the participants introduced themselves and explained which organization or institution they represented. During this time, the participants identified what they hoped to achieve through the Workshop. Notably, many of the participants expressed a desire to “move beyond” workshops and focus their energy on implementing policies and effecting real change on the ground. Workshops allow individuals to generate ideas and formulate plans, but, as several participants stressed, these ideas and plans then need to be followed by meaningful and persistent action.

3. Presentations by the HRC and GGJC

After introductions and opening remarks, the HRC and GGJC gave two PowerPoint presentations. These presentations were meant to provide the participants with basic information relating to school-based sexual violence, and to help frame the issues that the participants would be asked to grapple with throughout the rest of the day. The first presentation focused on the nature and scope of school-based sexual violence and was titled “Sexual Violence against Schoolchildren: A Global and Local Problem.” The second presentation focused on the various legal rights and duties that school-based sexual violence implicates and was titled “Kenya’s Legal Framework Addressing Sexual Violence against Schoolchildren.” Each presentation had two presenters: a member of the HRC and a member of the GGJC. In the section below, the Conference Report summarizes each presentation in further detail.
A. Presentation I: Sexual Violence against Schoolchildren: A Global and Local Problem

Presenters:

- Andrew Yost, J.D. Candidate, Cornell Law School
- Elizabeth Odhiambo, Lecturer, University of Nairobi School of Law, Kisumu Campus

Andrew Yost, a J.D. candidate at Cornell Law School and a student in the GGJC, began this presentation. Mr. Yost argued that sexual violence against children is a global problem and that school-based sexual violence, in particular, is a problem that plagues countries around the world. Mr. Yost noted that the term “sexual violence” encompasses a wide range of acts and has been broadly defined by the World Health Organization (“WHO”). According to the WHO, “sexual violence” includes, among other things, forced or coerced penetration; unwanted touching, caressing, and hugging; and verbal harassment. In 2004, the WHO estimated that approximately 27% of girls and 14% of boys worldwide had experienced sexual violence. Mr. Yost also provided statistics concerning the prevalence of sexual violence against children in the United States, Europe, Swaziland, Zimbabwe, and Tanzania.

More specifically, Mr. Yost argued that a subset of sexual violence against children—school-based sexual violence—is particularly prevalent and problematic. In many countries throughout the world, students face a significant risk of sexual violence when they are at school, traveling to and from school, or engaging in other school-related activities. Mr. Yost provided statistics concerning the prevalence of school-based sexual violence in the United States. He also summarized key findings from the Avon Global Center’s prior work in Zambia and South Africa. Mr. Yost argued that such studies demonstrate an unfortunate fact: school-based sexual violence is a serious problem that exists on a global scale.

Mr. Yost concluded his portion of the presentation by making an analogy. Achieving accountability in cases of school-based sexual violence, he stated, was like water flowing through a pipe from beginning to end. Ideally, an instance of sexual violence should trigger a prompt and uninterrupted process: an individual should be able to report the crime, and that report should lead to just administrative action, a thorough criminal investigation, and ultimately a criminal trial of the accused. Still, in countries throughout the world, gaps in accountability plague this process, acting like holes in the pipe that allow water to leak out. Far

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4 See id. at 2.
5 Id. at 4.
too often, crimes of sexual violence go unreported, investigations are half-hearted, and, as a result, criminal trials never come to fruition. Accordingly, this analogy illuminated the purpose of the Workshop, as the participants were being asked, in effect, to act as plumbers: their job was to identify these gaps in accountability—these holes in the pipe—and devise ways for them to be plugged.⁶

**Ms. Odhiambo** then continued the presentation, arguing that school-based sexual violence is not only a global problem, but also a local problem in Kenya, and in Kisumu in particular. According to a 2010 national survey, approximately 32% of Kenyan girls between the ages of eighteen and twenty-four had experienced an instance of sexual violence before they were eighteen years old.⁷ Further, in 2010, a senior Kenyan official reported that, over the past two years, over 1,000 teachers had been fired for sexually abusing students.⁸ Ms. Odhiambo further explained that school-based sexual violence often occurred on school grounds, on the way to and from school, or in the perpetrator’s home. More specifically, when the violence occurred on school grounds, typical locations included empty classrooms, in or near toilets, and near the perimeter wall or fence of school grounds.

![Image](location-KAVS-2010)

After analyzing the prevalence of school-based sexual violence in Kenya, Ms. Odhiambo discussed its various causes and consequences. She noted that school-based sexual violence can

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⁶ Mr. Yost and the GGJC are indebted to Umazi Malingi, Christine Mwakai-Mwago, and Samuel Karanja of the Nairobi office of the International Justice Mission (“IJM”) for this analogy. In the days before the Workshop, these individuals graciously met with members of the GGJC to explain what type of work IJM had done in the area of addressing school-based sexual violence. During this meeting, the GGJC members were shown a presentation that used this analogy to explain IJM’s mission. The analogy resonated with the members of the GGJC, who adapted it to explain the purpose of their Workshop. The clinic members are truly grateful for IJM’s help and inspiration.


be linked to several different social causes, including gender stereotypes, a lack of oversight by parents and school authorities, and a lack of comprehensive sex education for students. With regard to consequences, Ms. Odhiambo reported that students who experience sexual violence risk developing depression, having suicidal thoughts, and going through other developmental problems. Fear of experiencing sexual violence also contributes to increased school-dropout rates among girls. Additionally, students who experience sexual violence risk becoming pregnant. These pregnancies can then lead students to drop out of school, enter into early marriages, or seek unsafe abortions. Finally, Ms. Odhiambo discussed obstacles to reporting instances of sexual violence. She noted that children often do not seek services after experiencing sexual violence because they are not aware that a crime has occurred, are afraid of getting into trouble, or do not want to embarrass themselves or their families.

B. Presentation II: Kenya’s Legal Framework Addressing Sexual Violence against Schoolchildren

Presenters:

- Alexandra Kitson, J.D. Candidate, Cornell Law School
- Ronald Rogo, Lecturer, University of Nairobi School of Law, Kisumu Campus

Alexandra Kitson, a J.D. candidate at Cornell Law School and a student in the GGJC, gave the first half of this presentation, which consisted of an overview of Kenya’s obligations to address school-based sexual violence under international and regional human rights law. Ms. Kitson first explained that a treaty creates binding obligations upon those states that are parties to it. She further explained that Kenya’s Constitution expressly incorporates Kenya’s treaty obligations and general rules of international law.10 Ms. Kitson noted that, in this way, the recognition of international human rights is firmly established in Kenya’s legal framework.

More specifically, Ms. Kitson explained that Kenya is a party to multiple international treaties that obligate Kenya to address sexual violence in schools. These include the Convention on the Rights of the Child (“CRC”), the International Covenant on Civil and Political Rights (“ICCPR”), the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).11 As Ms. Kitson explained, these treaties broadly require Kenya to prevent and respond to school-based sexual violence.12 In particular, some of these treaties require Kenya to ensure that students who have experienced sexual violence have available to them meaningful

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12 See, e.g., CRC art. 19(1) (requiring states to take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence . . . including sexual abuse”); ICCPR art. 7 (protecting all persons from torture, and “cruel, inhuman or degrading treatment”).
avenues for obtaining redress, and that students who have been sexually abused are provided the tools to recover, are reintegrated into society, and continue their education.

Next, Ms. Kitson explained that Kenya has additional duties to protect students from sexual violence in schools under several regional human rights treaties. These treaties include the African Charter on Human and Peoples’ Rights, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, the African Charter on the Rights and Welfare of the Child, the Protocol on the Prevention and Suppression of Sexual Violence against Women and Children, and the African Youth Charter. Like the international treaties that Ms. Kitson had previously discussed, these treaties require Kenya to protect schoolchildren from sexual violence and to help children who have been sexually abused recover and obtain justice.

Finally, Ms. Kitson explained that, under this international and regional legal framework, children enjoy a right to education; however, to meaningfully access their right to education, Kenyan children must be able to attend school without being subjected to sexual violence. School-based sexual violence ultimately disrupts children’s studies and denies them an opportunity to learn and grow. Failing to address this problem not only strips children of the futures that they deserve, it also constitutes a violation of Kenya’s obligations under international and regional law.

Ronald Rogo, a lecturer at the University of Nairobi and a supervising attorney in the HRC, then continued the presentation. Mr. Rogo presented an overview of Kenya’s domestic legal framework, focusing on provisions relevant to addressing sexual violence against schoolchildren. As Mr. Rogo explained, Kenya’s Constitution includes an expansive Bill of Rights that binds all

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13 See, e.g., CRC art. 19(2) (requiring states to establish “effective procedures . . . for identification, reporting, referral, investigation, treatment and follow-up of instances” of child mistreatment); CEDAW Committee, General Recommendation No. 19 (11th session, 1992) (concluding that gender-based violence is a form of discrimination against women and recommending that states provide, among other things, “[e]ffective complaints procedures and remedies” for victims of gender-based violence).

14 See, e.g., CRC art. 39 (requiring states to take “all appropriate measures to promote physical and psychological recovery and social reintegration” of children who have been abused); see also CEDAW art. 10(f) (requiring states to take “all appropriate measures” to reduce female student dropout rates and to organize programs for women and girls who leave school early).

15 See, e.g., African Charter on the Rights and Welfare of the Child art. 16 (requiring states to protect children from sexual abuse and to establish “effective procedures” to report, treat, and follow up on instances of child mistreatment).

16 See, e.g., id. art. 11; ICESR art. 13.

state organs and private actors.\textsuperscript{18} Under the Bill of Rights, children enjoy, among other things, a right to education,\textsuperscript{19} a right to health,\textsuperscript{20} and a right to not be subjected to any form of violence.\textsuperscript{21}

Moving beyond the Constitution, Mr. Rogo discussed two key pieces of Kenyan legislation: the Sexual Offences Act and the Children Act. The Sexual Offences Act criminalizes various forms of sexual violence, such as rape, defilement, sexual assault, and sexual harassment.\textsuperscript{22} It also expressly includes a provision that punishes teachers, head teachers, and other school employees if they use their position of authority or trust to “induce” or “seduce” a student to engage in sexual activity.\textsuperscript{23} Mr. Rogo explained that school-based sexual violence often involves the commission of one, or several, of these crimes. As such, an individual who commits an act of school-based sexual violence could face criminal liability under the Sexual Offences Act. Further, Mr. Rogo explained that the Children Act codifies many of Kenya’s international obligations to protect children, guaranteeing, among other things, their right to be free from sexual exploitation, and physical and psychological abuse.\textsuperscript{24} The Children Act emphasizes that, in all matters concerning a child, her or his best interests should be the “primary consideration.”\textsuperscript{25} Mr. Rogo argued that this principle should guide the disciplining and prosecution of individuals who commit acts of sexual violence against schoolchildren.

Next, Mr. Rogo discussed Kenya’s regulatory framework, analyzing the Teachers Service Commission (“TSC”) Regulations and the TSC’s Code of Conduct and Ethics for Teachers (“Code of Conduct”). Mr. Rogo explained that the TSC is the state agency constitutionally charged with

\textsuperscript{18} Id. art. 20(1).
\textsuperscript{19} Id. art. 53(1)(b).
\textsuperscript{20} Id. arts. 43(1)(a), 53(1)(c).
\textsuperscript{21} Id. arts. 29(c), 53(1)(d).
\textsuperscript{23} See id. § 24(4).
\textsuperscript{25} Id. § 4(2).
training, supervising, and disciplining teachers. Among other things, the TSC can deregister a teacher who sexually abuses a student. Further, Mr. Rogo explained that the Code of Conduct prohibits teachers from engaging in “any sexual activity whatsoever” with a student. This includes flirting with students and making sexual requests. Furthermore, Mr. Rogo noted that the Code of Conduct requires every teacher to report a suspected violation of its provisions. Indeed, with regard to sexual violence in particular, the TSC has said that all teachers must make a report when they have “reasonable grounds” to believe that a student has been sexually abused. Any teacher who fails to make such a report will face disciplinary action.

Mr. Rogo then detailed several standard operating procedures (“SOPs”) promulgated by the Task Force on the Implementation of the Sexual Offences Act, established by the Sexual Offences Act. He explained that, although the SOPs are not legally binding, they provide authoritative examples of “best practices” for schools, enforcement agencies, and other service providers. For instance, according to these SOPs, a teacher who receives a report of sexual violence should immediately reassure the student that the matter will be handled confidentially. The teacher should then refer the student to counseling and a health facility. The teacher should also refer the matter to the education office, a child-protection department, and law enforcement agencies. These agencies should involve the student’s parents when following up on the case and also refer the student and his or her parents to organizations that provide legal aid.

4. Identifying Gaps in Accountability

A. Breakout Session I

Breakout Session I focused on identifying gaps in accountability that allow individuals to commit acts of sexual violence with impunity. During this session, the participants were divided into four groups, and each group was asked to read the same four hypotheticals, which are reproduced in the Appendix. Each hypothetical was intended to address different issues relating to accountability and school-based sexual violence. Generally, the hypothetical’s “main character” faced the choice of reporting an instance of sexual violence or deciding how to follow up on a report that he or she had already made. After reading each hypothetical, the participants were asked to discuss and answer the following three questions.

1. What usually happens in these circumstances?

26 See CONSTITUTION, art. 237(2)(e), 3(a) (2010).
27 See The Teachers Service Commission Code of Regulations for Teachers, (Revised 2014) § 153(2)(b), (c) [hereinafter TSC Regulations].
29 Code of Conduct § 22(1)(b), (c).
30 Code of Conduct § 37(2).
31 See Teachers Service Commission, TSC/Circular No. 3, Protection of Students/Pupils from Sexual Abuse 2 (Apr. 29, 2010).
32 Id. at 3.
2. Ideally, what should happen in these circumstances?
3. What obstacles and challenges prevent the answers given in questions 1 and 2 from being the same?

The participants were asked to first answer these questions from the perspective of the hypothetical’s main character. If the participants had additional time, they were asked to then consider the roles of other stakeholders who might be involved in responding to the situation. Each group was given flip chart papers and a marker to record its answers. A representative from each group then presented these answers to the Workshop as a whole during Plenary Discussion I.

B. Plenary Discussion I

Moderator:

- Ronald Rogo, Lecturer, University of Nairobi School of Law, Kisumu Campus

Mr. Rogo moderated Plenary Discussion I. During Plenary Discussion I, the participants discussed the answers that they had generated during Breakout Session I. The purpose of Plenary Discussion I was to identify specific obstacles and challenges to achieving accountability in cases of school-based sexual violence. Having the participants share their answers from Breakout Session I gave the participants an opportunity to collectively examine these issues and learn from each other. It was also hoped that Plenary Discussion I would allow the participants to begin to note areas of consensus and/or dissension with regard to the specific obstacles and challenges that they identified.

In the following section, the Conference Report summarizes each hypothetical and the responses that the participants gave. The summaries of the participants’ responses are based upon the groups’ recorded answers, notes that rapporteurs took while embedded in the groups during Breakout Session I, and oral statements that participants made during Plenary Discussion I. The Conference Report does not identify which group is responsible for a particular answer; rather, it examines the points raised during Plenary Discussion I as a whole.

Hypothetical 1

The Problem: Hypothetical 1 centered on a student, Atieno, who was defiled by a well-known boda boda man while she was traveling to her primary school in Kisumu early in the morning. After the defilement, Atieno continued to school and immediately told her counselor, in confidence, what happened. The participants were asked to examine how the counselor usually would, and ideally should, respond.

The Responses: When describing what usually happens in these circumstances, the groups’ answers varied. Several responses indicated that the counselor would report the defilement

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35 A boda boda is a motorcycle taxi.
to the head teacher of the school or to the next highest authority; however, more frequently, the responses indicated that the counselor would, for various reasons, be hesitant to report the defilement. In particular, several responses stated that the counselor would instruct Atieno to go home and tell her parents. Alternatively, some groups thought that the counselor might tell others about the defilement, but that this would have negative consequences for Atieno because members of the community might somehow blame Atieno for the *boda boda* man’s actions.

When describing what **should happen** in these circumstances, the groups’ answers were more consistent. The groups emphasized that Atieno should immediately receive medical treatment and counseling. The groups also stated that the counselor or head teacher should make a report to the police and that Atieno’s parents should be informed of what happened. Once the matter had been referred to the police, the groups stressed that there should be a coordinated response. The police should work with a specialized Child Protection Officer and liaise with the Chief, who could use his or her contacts to locate the *boda boda* man. Finally, the groups stressed that, even at this early stage, the police should aim to prosecute the accused in a Court of Law and should therefore collect the evidence and witness testimonies required.

When asked to identify **obstacles and challenges**, the groups’ responses were wide ranging. A common theme was that the counselor might not report the defilement because he or she fears bringing stigma upon Atieno, her family, and the school. Similarly, the counselor might not report the defilement because he or she fears retribution from the *boda boda* man, his family or his clan. Another common theme was that the counselor might not know how to proceed because he or she lacks training in how to respond to sexual violence. In particular, groups noted that the counselor might not know where to make a report or how to help Atieno in other ways, e.g., to refer Atieno to a medical center. More cynically, groups also noted that the counselor might be aware of the reporting procedures but simply decide to not make a report. In this vein, several responses indicated that the counselor might not perceive the defilement as a crime that warrants reporting. For example, he or she might not believe Atieno’s allegations because the *boda boda* man is generally known in the community as a “good person.” Worse still, the counselor might believe Atieno but decide to not report the defilement because she or he believes that the *boda boda* man is not actually “dangerous.” In this way, the groups indicated that there is often a “disconnect” between the community’s perception of a perpetrator and the actual acts of sexual violence that he or she commits. This disconnect can lead community members, including counselors and other school officials, to not believe or simply overlook an event such as the one that happened to Atieno.

**Hypothetical 2**

**The Problem**: Hypothetical 2 told the story of a teacher, Jonathan, who was recently transferred to Lakeview High School. At Lakeview, Jonathan began noticing that several of his colleagues act inappropriately towards students. One of these teachers had been transferred to Lakeview from another school after being accused of defiling a student. Now, at Lakeview, this teacher often told female students that they were “so beautiful” and “would make great wives.” Another teacher often sat very close to female students when he helped them with their assignments. Jonathan even overheard students say that this teacher once grabbed a student’s breast. Finally, Jonathan heard rumors that a third teacher was “dating” a student. When Jonathan
started at Lakeview, the head teacher told Jonathan to let him know if “anything improper” was “going on.” Still, Jonathan’s colleagues at Lakeview did not seem concerned, and Jonathan did not know whether any of these three teachers had actually defiled a student.

The Responses: When asked to describe what usually happens, the vast majority of responses indicated that a teacher in Jonathan’s position would remain silent and not report these three teachers. Groups noted that Jonathan might make a report to the head teacher, but, even then, there was a risk that the head teacher would not take the report seriously. In particular, the groups consistently noted that a teacher telling students that they are “so beautiful” and would “make great wives” would generally not be perceived as constituting sexual violence. Several groups also noted that some of the behavior troubling Jonathan would, in fact, be considered “normal.” Finally, the groups noted that, even if Jonathan made a report, the teachers would not likely be adequately punished: rather than facing a full disciplinary investigation, the teachers would simply be transferred to another school.

When asked to describe what should happen, the groups’ responses were quite consistent. Groups uniformly indicated that Jonathan should make a report to the head teacher, and that the head teacher should initiate an investigation. In particular, the groups stressed that the three teachers should be shown how their actions contravened the Code of Conduct. Two groups stated that the teachers should be “reminded” of their obligations under the Code of Conduct, suggesting that the groups thought that teachers should be given an opportunity to change. Several of the groups also highlighted the fact that one teacher had been transferred from another school after being accused of defiling a student. To address the issue of such teachers being transferred, the groups recommended that the TSC create a database of teachers who have been accused of sexual violence.

When asked to identify obstacles and challenges, the groups’ responses indicated that ignorance was a main stumbling block. During their professional training and induction, teachers are not taught what constitutes sexual violence or teacher misconduct. As a result, many teachers in Jonathan’s position would not be certain that anything improper was actually occurring. In fact, the groups noted that many teachers would mistakenly presume that sexual violence requires penetration. As such, they would not report what Jonathan has heard and observed. Additionally, some groups noted that many students would not know that the actions of these three teachers were reportable offences. Moreover, even if students were aware that the teachers had acted improperly, the students might not know how to lodge a complaint. More specifically, several groups noted that, despite laws to the contrary, many schools do not have copies of the Code of Conduct and TSC Regulations available on site.36 Thus, if Jonathan wanted to make sure that the behavior that he was observing was improper, he would have to find copies of these materials on his own.

36 The TSC Regulations provide that schools are required to have at least two copies of the TSC Regulations available on site. See TSC Regulations § 185(b). Furthermore, every teacher should “make a deliberate effort to obtain a copy” of the Code of Conduct and “study the same so as to understand its provisions.” See Code of Conduct, Leadership Letter, Gabriel Lengoiboni, CBS, EBS, Secretary/Chief Executive of the Teachers Service Commission. During the Workshop, several participants stated that by law every school must have three copies of both the TSC Regulations and the Code of Conduct.
Hypothetical 3

The Problem: Hypothetical 3 centered on Achieng, the head teacher at a primary school in Kisumu. A teacher at Achieng’s school was accused of defiling an eleven-year-old female student, Ujana. A school counselor told Achieng about the alleged defilement, and Achieng notified the County Director of Education of this report. The County Director acted upon the report and conducted a thorough investigation. Moreover, Achieng notified the police of the alleged defilement, and the officer that Achieng spoke with said that the police would “look into” the matter. Still, four weeks later, Achieng was not sure that a criminal investigation had actually been opened. Meanwhile, Ujana’s attendance at school had become very inconsistent, and when she attended school, she acted timid and was unable to concentrate. Personally, Achieng felt that the teacher should be criminally prosecuted for defiling Ujana, but Ujana’s parents told Achieng that they just wanted this entire tragedy to “be over.”

The Responses: When asked to describe what usually happens in these circumstances, the groups indicated that the hypothetical depicted a typical series of events. This hypothetical was meant to generate discussion of law enforcement agencies’ response to reports of school-based sexual violence. The groups indicated that police, as shown in the hypothetical, often fail to follow up on reports in a prompt and diligent manner. In addition, groups indicated that Ujana’s parents expressed sentiments that similarly situated parents often express. According to the groups, parents frequently decide to not pursue a criminal case because they fear that the case will bring shame to their child and the family. Also, teachers frequently persuade (or “bribe”) parents to not pursue a criminal prosecution by offering them money or something else of value as “restitution” for the crime.

When asked to describe what should happen in these circumstances, the vast majority of responses emphasized taking prompt and effective action. The TSC, the police department, and Ujana’s parents should all follow up on the report, making sure that the teacher is held accountable for his crime. Specifically, the groups noted that the administrative investigation had been completed and that the teacher should be suspended if the investigation disclosed sufficient facts of his guilt. Also, the groups stated that the matter should now be referred to the TSC and that the school should convene a Board of Management meeting and invite the County Director to attend. Still, the groups noted that the lapse of time between the administrative and criminal investigations was unfortunate. Ideally, the administrative and criminal investigations should be concurrent. Finally, the groups stated that Ujana should receive counseling, especially because she seems to be struggling with school.

When asked to identify obstacles and challenges, the groups’ responses emphasized what was, by now, a well-repeated theme. Throughout the day, many Workshop participants had stated that criminal prosecutions often fail because the perpetrator pays the student’s family to not pursue a criminal case. Participants noted that this is particularly prevalent in cases of teacher-on-student sexual violence because teachers have a relatively high income when compared to many of their students’ families. Here, the groups noted that Ujana’s parents seemed reluctant to pursue a criminal case. Consequently, they would likely be willing to accept a “settlement” from the
teacher. Additionally, the groups noted that cultural perceptions of the defilement might create significant challenges. Members of the community might be sympathetic to the teacher and actually blame Ujana for accusing him and thus spoiling his reputation. Specifically, several groups noted that girls in Ujana’s position are sometimes accused of “bringing down” the perpetrator and “tarnishing” his family’s name. Finally, the groups noted that Achieng was, to some extent, a model head teacher. Too often, head teachers will not report a case of teacher-on-student sexual violence, fearing that the teachers of their school will “turn on them” if they do.

Hypothetical 4

The Problem: Hypothetical 4 concerned a sexual relationship between a head teacher, Mrs. Otieno, and a sixteen-year-old male student at her school, Opiyo. One day, Mrs. Otieno asked Opiyo to carry some things to her house, where she defiled him. Over the course of several months, Mrs. Otieno continued to have sexual relations with Opiyo. Meanwhile, Opiyo started to be less concerned about his schoolwork and even became disruptive in class. Opiyo’s mathematics teacher, Daniel, noticed this change and expressed his concerns to Opiyo. Opiyo told Daniel that he did not need to take directions from teachers now that Mrs. Otieno considered him “a man.” Opiyo also asked Daniel to keep his relationship with Mrs. Otieno secret. Daniel felt that he should report the relationship, but he was troubled by several considerations. He feared that reporting on Mrs. Otieno would make his colleagues dislike him and that he could be fired in retaliation. Also, Mrs. Otieno was well connected in the community, so Daniel could face other repercussions. Finally, Opiyo did not seem to be upset by what was happening: in fact, he walked around school with new confidence.

The Responses: When asked to describe what usually happens in these circumstances, there was broad consensus among the groups: because Mrs. Otieno is a woman and Opiyo is a boy, this illicit relationship would be met with “silence” and a lack of concern. In the first place, a teacher in Daniel’s position would likely not report the relationship. Opiyo did not seem concerned with what was going on, and in fact, seemed to be enjoying Mrs. Otieno’s attention. Furthermore, Mrs. Otieno was Daniel’s boss, and the groups indicated that his fears of being fired and disliked

37 Under Kenyan law, criminal proceedings can be initiated by “the making of a complaint.” The Criminal Procedure Code, (2012) Cap.75 § 89(1). “A person who believes from reasonable and probable cause” that a crime has been committed may make an oral or written complaint to a magistrate with jurisdiction. See id. § 89(2), (3). “[A]ny time before a final order is passed,” a complainant may withdraw a complaint, resulting in an acquittal of the accused. Id. § 204. Still, the court has discretion to grant or deny this motion to withdraw, see id., and at least one commentator has stated that a complainant cannot withdraw a complaint without the prosecutor’s consent, see PATRICK KIAGE, ESSENTIALS OF CRIMINAL PROCEDURE IN KENYA 4 (2013). Furthermore, although the complainant is typically one who is “directly, immediately and personally affected by the criminal acts of the accused,” there is a strong argument that “the State by virtue of having an interest in the protection of the rights of all its citizens may itself be seen as a complainant, with the right to not only complain, but also to prosecute.” KIAGE, ESSENTIALS OF CRIMINAL PROCEDURE IN KENYA 3. The law on this point seems to be unsettled, but at least one Kenyan court has recognized that a public prosecutor can serve as a complainant. See id. at 3–4 (citing Republic v. Mwaura, KLR 209 [1979]). As such, Kenyan criminal procedure does not allow a perpetrator to legitimately circumvent the criminal justice system by paying a student’s parents restitution. See also The Sexual Offences Act § 40 (providing that the decision to discontinue an investigation into or a prosecution of a sexual offence rests with the Attorney General).
by his colleagues were well founded. Indeed, one group mentioned that Daniel would likely be transferred if he reported Mrs. Otieno. Even if Daniel reported this relationship, the groups stated that others would likely not take the report seriously. Finally, the groups noted that Mrs. Otieno was well connected in the community. This further suggested that any report would not be acted upon because Mrs. Otieno could use her connections to cover up the relationship and ensure that she would not be administratively or criminally punished.

When asked to describe what **should happen** in these circumstances, the groups emphasized that this case should be treated like any other instance of sexual violence. The fact that the perpetrator was a woman and the student was a boy does not mean that the offences should go unreported. Additionally, the groups emphasized that this fact should not have any bearing on responses to the report or minimize the punishment that Mrs. Otieno receives. Mrs. Otieno repeatedly defiled Opiyo: she should be promptly removed from her position as head teacher and tried on criminal charges.

When asked to **identify specific obstacles and challenges**, the groups first noted the role of patriarchal gender stereotypes. Many would not think that a female teacher can actually defile a male student or that this act is an offence that warrants reporting. Indeed, some of the participants’ comments suggested that Opiyo might even be commended for “seducing” Mrs. Otieno: in the eyes of some members of the community, Opiyo would be seen as having become “a man.” Addressing a related point, the groups also noted that, far too often, fathers are uninvolved in parenting. Young boys like Opiyo need male mentors to help explain issues of sexuality, but parenting is typically borne by mothers. Finally, the groups noted that Mrs. Otieno’s high status and connections create a “big obstacle” to ensuring that she is held accountable. Given Mrs. Otieno’s connections, Daniel might think that reporting the relationship would be futile, and, in some communities, Daniel would be right.

**5. Mid-Day Transition**

**Moderator:**

- Linah Aduda, LLB Candidate, University of Nairobi School of Law, Kisumu Campus

Following Plenary Discussion I, the Workshop participants adjourned for lunch. After they returned, Linah Aduda, an LLB candidate at the University of Nairobi and a student in the HRC, led a transition from the first half to the second half of the day. Ms. Aduda first presented a list of key points, which are reproduced in the Appendix, that the participants had raised during Breakout Session I and Plenary Discussion I. The list highlighted some of the key obstacles and challenges to addressing school-based sexual violence that the participants had identified during the first half of the day. Ms. Aduda then explained that the second half of the Workshop would focus on charting a way forward. Having identified gaps in accountability and challenges to implementing existing laws, the participants would be asked, during the afternoon sessions, to brainstorm and propose specific ways that NGOs, schools, law enforcement agencies, teachers’ unions, and government agencies could better prevent and respond to school-based sexual violence.
6. Prevention, Responses, Challenges, and Collaboration

A. Breakout Session II

Moderator:

- Hussein Wethow, LLB Candidate, University of Nairobi School of Law, Kisumu Campus

**Hussein Wethow**, an LLB candidate at the University of Nairobi and a student in the HRC, introduced Breakout Session II, explaining its purpose and format. During Breakout Session II, the Workshop participants were divided into four sector-specific groups: two groups represented the Education Sector,\(^\text{38}\) one group represented the NGO sector, and one group represented the Government Sector. Working within these groups, the Workshop participants were asked to brainstorm concrete ways in which their sector could better prevent and respond to sexual violence against schoolchildren. Specifically, the participants were asked to discuss and record their answers to the following questions:

1. What specific challenges do you face as a sector in preventing and responding to sexual violence against schoolchildren?
2. What specific improvements can you make within your own sector to increase your effectiveness?
3. What specific challenges do you face in collaborating with other sectors to effectively address this problem? What challenges do you face in collaborating with the Education Sector in particular?
4. What specific improvements can you make to facilitate your collaboration with other sectors, and the Education Sector in particular?

B. Plenary Discussion II

Moderator:

- Ronald Rogo, Lecturer, University of Nairobi School of Law, Kisumu Campus

**Mr. Rogo** moderated Plenary Discussion II. During Plenary Discussion II, a representative from each sector-specific group presented that group’s answers from Breakout Session II to the Workshop as a whole. Sharing the answers generated during Breakout Session II was meant to foster collaboration across different sectors. It was hoped that participants would learn about the challenges that other sectors face and then consider how they, in their own individual and  

\(^{38}\) The majority of the Workshop participants had education-sector backgrounds. Having two groups represent the Education Sector ensured that each breakout group would consist of four or five participants to better facilitate discussion. Individuals with education-sector backgrounds were randomly placed into one of the two Education Sector groups. As such, there was no pre-determined difference between these two groups.

In the section below, we differentiate the two Education Sector groups as “Education Sector 1” and “Education Sector 2.” Because the two groups deliberated separately during Breakout Session II and presented their answers separately during Plenary Discussion II, we treat them separately in those sections of the Conference Report. When the participants broke into sector-specific groups to propose action items for the Imperial Hotel Declaration, the members of Education Sector 1 and 2 joined together. As such, the Imperial Hotel Declaration lists the commitments of a single Education Sector.
in institutional capacities, could help address those challenges. In sum, Plenary Discussion II was envisioned as an opportunity for the Workshop participants to collectively chart a plan of action, using the answers generated during Breakout Session II. In the section below, we summarize the points that each sector-specific group raised. These summaries are based upon the groups’ recorded answers, notes that rapporteurs took while embedded in the groups during Breakout Session II, and the oral presentations that group representatives made during Plenary Discussion II. At the end of each subsection, a chart details the specific improvements that the group recommended.

NGO Sector

1. Specific challenges that the NGO Sector faces in preventing and responding to sexual violence against schoolchildren

   The group representing the NGO Sector cited several specific challenges that the NGO Sector faces in preventing and responding to sexual violence against schoolchildren. These challenges included a lack of coordination between different NGOs, and between NGOs and “duty bearers,” i.e., government entities that have an obligation to prevent and respond to school-based sexual violence. In addition, the group noted that police stations in Kisumu are not well equipped to address cases of sexual violence. Because of a lack of space within the police station, police sometimes question a student about a crime of sexual violence while the alleged perpetrator is in the same room or visible through a window. Further, cases of school-based sexual violence ideally should be handled through the police force’s specialized Child Protection Unit (“CPU”). Although the police force in Kisumu has a CPU, the group stated that it not frequently used.

   The group also stated that there are no rescue centers in Kisumu to help students who have been sexually abused. These rescue centers could serve several important functions, as students could go to a rescue center to receive post-abuse services, referrals to other service providers, and legal aid. Further, the group noted that a perpetrator is sometimes released on bond and can locate the student and intimidate or harm him or her. Rescue centers could provide students with places of refuge while an investigation or case is ongoing, thus ensuring that the perpetrator cannot access the student. Ultimately, the group noted that inadequate protections for the safety of reporting students can deter students from cooperating with an investigation and may even give students reason to not report the crime in the first place.

   Finally, the NGO group noted that, because schools start early and end late, students who live far away from school often have to walk to and from school before dawn and after dusk. During these dark hours, students are particularly vulnerable to attackers that they might encounter en route. Indeed, one group member reported that studies indicate that most girls who are raped while traveling between home and school are raped between 5:30 AM and 6:00 AM. Still, the group noted that at least one NGO had recently begun to address this problem by petitioning to have schools start later in the day. As such, the group hoped that one specific challenge that NGOs

39 A rescue center is a temporary place of refuge for victims of sexual abuse during police investigations. Preliminary interviews revealed that abused children are usually housed in a center for orphaned children while investigations are taking place, but these homes are not equipped to meet the specific needs of survivors of sexual violence.
face—the prevalence of students being attacked in the early-morning hours—would soon be overcome.

2. Specific improvements that the NGO Sector can make to improve its effectiveness

In response to these challenges, the group representing the NGO Sector made several recommendations to improve this sector’s effectiveness. In particular, the group suggested improving the coordination between different NGOs. The group further recommended increasing NGOs’ advocacy efforts, and expanding NGOs’ legal-aid clinics and rights-awareness programs. The group also noted that programs focused on economic empowerment can help combat school-based sexual violence in a significant way. For example, if families are economically empowered, children might be less likely to trade sex for food. Likewise, economic empowerment might make a student’s parents less likely to accept money from a perpetrator in exchange for not pursuing a criminal case.

3. Specific challenges that the NGO Sector faces in collaborating with other sectors and the Education Sector in particular

The group representing the NGO Sector cited several challenges that NGOs face when collaborating with other sectors. Notably, the group stated that projects are often plagued by a lack of commitment. Typically, a project starts with a large team, but, by the end, only a few, dedicated team members remain. This lack of commitment causes projects to lapse, and also causes breakdowns in communication between different organizations and sectors. As such, the group noted that a related challenge to collaboration is that different NGOs and government organizations often undertake duplicative projects. If there were better coordination between different NGOs and between NGOs and government actors, there could be a more efficient approach to problem solving.

More specifically, the group noted several barriers to effective collaboration between NGOs and law enforcement. Namely, it suggested that investigators could be better trained on how to collect and preserve physical evidence of sexual violence, how to interview children, and, in particular, how to interview children who have experienced sexual violence. If police fail to collect and preserve key evidence, the facts establishing the perpetrator’s guilt may be insufficient. NGOs that work as legal advocates for children who have been sexually abused then face an uphill battle when trying to ensure that the perpetrator, and any other liable party, is held criminally and/or civilly accountable.

The group representing the NGO Sector also noted that a lack of facilities often plagues collaboration between different sectors. The resources that are needed to respond to a case of sexual violence are not always found in the same place. For example, a student may go to a gender-violence recovery center to receive treatment, but that student will then have to wait for a rape kit to come from another location on a different day. Accordingly, the group noted that there should be better coordination between recovery centers, and that the recovery centers should be open at all times. Additionally, some group members noted that these centers are supposed to provide their services free of charge; however, because of corruption, individuals seeking help are sometimes asked to pay.
With regard to collaborating with the Education Sector in particular, the group noted that the culture of silence that often permeates schools can create significant challenges for NGOs. Teachers are often able to commit acts of sexual violence with impunity because other teachers and students are unwilling or unable to report the crime. In particular, the group noted that teachers will sometimes feign ignorance of a colleague’s misconduct and that administrators and union officials will sometimes try to cover up the crime. Further, the group noted that teachers exert a significant amount of power and influence over students. If a teacher asks a student to keep an abuse secret, the student will likely comply. In this way, a culture of silence hampers collaboration between the NGO and Education Sectors. NGOs need to break through this culture before they can work with members of the Education Sector in a meaningful way.

**4. Specific improvements that the NGO Sector can make to improve its collaboration with other sectors and the Education Sector in particular**

The group representing the NGO Sector offered several recommendations aimed at improving collaboration with other sectors. To begin, the group recommended ensuring that teachers are aware of children’s rights and adequately trained in ways to prevent and respond to sexual violence. For instance, the group specifically recommended requiring that all employees in the Education Sector sign a child-protection policy. Additionally, the group recommended increasing students’ involvement in this issue. Drama clubs, for example, could allow students to engage in school-based advocacy and educate their fellow classmates on sexual violence. Similarly, the group noted that “speak-out” (or “suggestion” or “complaint”) boxes allow students to become directly involved in the reporting process because they can report crimes of sexual violence directly to NGOs. Still, the group noted that such boxes are only effective if teachers cannot tamper with the boxes or remove reports. As such, the boxes need to be secure and regularly monitored.

The group also made several recommendations regarding reproductive rights and health. Specifically, Kenya’s Reproductive Health Care Act gives children between the ages of ten and seventeen years old the right to obtain contraceptives without their parents’ consent. Still, the group noted that many children do not receive adequate sex education. As a result, children might be more inclined to engage in sexual activity because they mistakenly believe that all

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contraceptives protect against HIV and STIs. Accordingly, the group recommended having contraceptives distributed at child-friendly booths, staffed with peer counselors who can explain proper contraceptive use and educate students about methods for preventing pregnancy and STIs, including abstinence. Relatedly, the group stressed that NGOs should work with students who become pregnant and encourage them to return to school. Presently, some NGOs provide daycare services to help young mothers continue their education, and the group recommended expanding such programs.

Finally, the group suggested that NGOs could help train law enforcement in evidence handling and in interviewing techniques. NGOs could teach investigators how to identify and preserve key pieces of physical evidence, thus helping to ensure that investigators build the strongest case possible against the accused. Furthermore, NGOs could help educate law enforcement on the issues involved in interviewing children, particularly those who have experienced sexual violence. Cooperating with an investigation can leave an emotional and psychological toll on a child who has experienced sexual violence. Ultimately, investigators need to be trained in techniques that help ensure that a child who has experienced sexual violence is not further traumatized while aiding a criminal investigation.

### Summary of NGO Sector Recommendations

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<th>Ways to Increase its own Effectiveness</th>
<th>Ways to Improve its Collaboration with Other Sectors</th>
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<tbody>
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<td>• Enhance communication between different NGOs</td>
<td>• Education Sector</td>
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<tr>
<td>• Enhance communication between NGOs and duty bearers</td>
<td>o Require all school employees to sign a child-protection policy</td>
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<tr>
<td>• Increase advocacy efforts</td>
<td>o Ensure that teachers and school employees are trained on how to prevent and respond to sexual violence</td>
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<tr>
<td>• Expand legal-aid clinics and rights-awareness programs</td>
<td>o Support student organizations, like drama clubs, to encourage students’ involvement in addressing school-based sexual violence</td>
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<tr>
<td>• Implement initiatives focused on economic empowerment</td>
<td>o Install speak-out boxes that allow students to file reports directly to NGOs</td>
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42 See id. § 34(1)(a) (requiring the Reproductive and Child Health Care Board, in consultation with other state entities, to “facilitate the provision of adolescent-friendly reproductive health and sexual health information and education”).
### Education Sector 1

1. **Specific challenges that the Education Sector faces in preventing and responding to sexual violence against schoolchildren**

   The first group representing the Education Sector noted that the sector is severely limited by a lack of personnel and budgetary constraints. As the group explained, Area Education Officers (“AEOs”) in Kisumu County are given an unmanageable workload. A single AEO may be asked to oversee quality control in nearly a hundred schools across the county, and each school is supposed to be assessed once a term. Moreover, if a report of sexual violence is filed in any one of these schools, the AEO is supposed to travel to the school to conduct an on-site investigation; however, the investigation is supposed to consist of at least three investigators, and the AEO is often alone. Accordingly, an AEO must frequently ask two laypersons to assist in an investigation. But finding such help is only the first hurdle. Because of budgetary constraints, the AEO often lacks a vehicle or fuel to travel to the school, which can significantly delay the on-site investigation. Furthermore, an AEO is charged with other responsibilities, such as overseeing extracurricular activities and exams. In this way, the sheer magnitude of an AEO’s workload prevents the AEO from supervising teachers and administrators to the optimal degree.

   Even if an investigation is instituted, the group noted that other challenges remain. In many cases, an AEO only hears about a case of sexual violence after a deal involving the payment of compensation between the perpetrator and the student’s family has deteriorated. As such, the AEO is sometimes starting his or her investigation long after the sexual violence has occurred. Additionally, AEOs have security concerns because they are easily identified by the accused.

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<td>- Improve sex education in schools</td>
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<tr>
<td>- Encourage students who become pregnant to return to school</td>
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<tr>
<td>- Provide daycare services to help young mothers return to school</td>
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43 Under section 145 of the TSC Regulations, which concerns investigations into allegations of teacher misconduct, a team of at least three investigators is required in some, but not all, circumstances. See id. § 145(2)(b), (3)(b) (requiring a team of at least three investigators when the investigation is instituted by the County Director and either (1) the investigation concerns allegations against any teacher other than the “Head of the Institution” and there is “no functional” Board of Management in the school; or (2) the investigation concerns allegations against the “Head of the Institution” and there is either no Board of Management or the school is a primary school). The regulations do not expressly require an on-site visit to the school; however, they do require a level of evidence gathering and face-to-face confrontation that would likely make an on-site visit to the school a practical necessity. See id. § 145(6) (giving the accused teacher, among other things, the right to appear in person before the investigators, the right to be present when the investigators question witnesses, and the right to adduce evidence and challenge any adverse evidence).
teacher or the accused teacher’s friends and family. These individuals might discover where an AEO lives and threaten the AEO or the AEO’s family with harm if the investigation is not dropped. Further, the group noted that investigations can create conflicts of interest, as an AEO might be related to the accused teacher or to the head teacher who failed to supervise the accused teacher. Because the department is short-staffed, a replacement AEO will not likely be assigned, and these conflicts of interest can impede an investigation or call the investigation’s integrity into question.

Expanding upon these specific concerns, the group noted that the Education Sector’s ability to prevent and respond to school-based sexual violence generally suffers from a failure to implement existing laws. On paper, the TSC’s rules and policies are sound and clear; the issue is consistently implementing these rules and policies on the ground. For instance, no one disputes that a teacher who sexually abuses a student cannot simply be transferred to another school. Still, the practice of transferring an offending teacher remains prevalent, either because the offending teacher bribes his or her superiors or because those superiors lack the will to follow the official procedures. In theory, supervisors are supposed to ensure that individuals comply with the national rules and policies; however, as explained above, those supervisors are often overburdened. In this way, the Education Sector faces a truly difficult and significant challenge: ensuring that individual teachers and administrators adhere to their professional obligations.

Finally, the group noted that some teachers are unsure of how to report a case of sexual violence given the seemingly overlapping roles of the county and national governments. Basic education is under the jurisdiction of the national government, but school-based sexual violence is also a problem that could be addressed at the county level. In particular, teachers need a better understanding of when reporting is mandatory, who within the school has the authority to make a report, where they should file reports, and whether the county or national government has the mandate to respond. The group also noted that county and national policies concerning school-based sexual violence could potentially conflict. As such, teachers would benefit from having a single, uniform policy to follow.

2. Specific improvements that the Education Sector can make to improve its effectiveness

In response to the Education Sector’s budgetary and personnel constraints, the group proposed two solutions. First, the group recommended hiring additional AEOs or staff to conduct investigations. The group acknowledged, however, that hiring additional staff would be difficult

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45 See id. 4th Sched., Part 2 § 14 (2010) (giving county governments the power to “ensur[e] and coordinat[e] the participation of communities . . . in governance at the local level” and to “assist[] communities to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level”).
given the Education Sector’s budgetary constraints and the fact that allocating additional funds would likely require coordination between different government agencies at the national level. Second, the group recommended creating a carpool network to address AEOs’ travel needs. Often, other government officials or NGO employees travel to a school or its vicinity. If an AEO was without a vehicle or fuel, the AEO could travel with these other individuals to conduct his or her on-site investigation into a report of sexual violence.

The group also proposed several solutions going beyond these personnel and budgetary constraints. Specifically, the group recommended working with musicians and entertainers to create media that educates children on their rights and the issue of school-based sexual violence. Further, the group recommended creating safe houses to provide places of refuge for students who have been sexually abused. Like the group representing the NGO Sector, this group noted that students are often afraid to cooperate with an investigation or even report an abuse because the perpetrator—often a teacher—will likely know how to locate the student. As such, ensuring that the perpetrator cannot gain access to the student is essential to the administrative disciplinary process. Finally, the group noted that many investigations fail because the perpetrator pays the student’s family to not cooperate or report the case. Accordingly, the group recommended that members of the Education Sector lobby to create laws that deter parents from agreeing to such arrangements.

3. Specific challenges that the Education Sector faces in collaborating with other sectors

With regard to cooperating with other sectors, this group cited several challenges. First, the group noted that working with the Government Sector is difficult because each government agency has its own bureaucracy. To get something done, a person needs to be familiar with the inner workings and personnel of that specific government agency. Second, the group noted that working with the NGO Sector can be difficult because NGOs tend to be reactive, focusing on fixing problems that have already occurred. As the group explained, this can lead NGOs to undertake duplicative work, as several different NGOs will try to solve the same problem without coordinating with each other. Reactivity can also cause NGOs to lose sight of the Education Sector’s present and future needs. Third, the group noted that government employees risk being fired if they publicly speak out on an issue. As such, government employees have a strong incentive to remain silent, even if they see something wrong.

4. Specific improvements that the Education Sector can make to improve its collaboration with other sectors

The group made several proposals to address these barriers to collaboration. First, it recommended taking a different approach to problem solving. As the group explained, organizations often focus on short-term goals, which are tied to a particular project or initiative. If the project or initiative fails, the goals tend to be forgotten. Instead, the group recommended focusing on long-term goals that do not depend upon the success of a particular project or initiative. This approach would allow more organizations to contribute to achieving these goals over time and also help ensure that the goals are self-sustaining. Second, the group recommended using sports clubs, school organizations, and church groups to create spaces to mentor children. In this context, the group noted that traditional community structures once provided spaces for
community elders to mentor children; however, these traditional community structures have been lost or diminished in recent times. Third, the group stressed that other sectors can speak out publicly on an issue, even if government employees cannot. Specifically, the group stated that NGOs and teachers’ unions could serve as “powerful allies” in effecting change because they can “shout” about an issue in public.

### Summary of Education Sector 1 Recommendations

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<th>Ways to Increase its own Effectiveness</th>
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<tbody>
<tr>
<td>• Hire additional staff to supervise teachers and investigate reports of sexual violence</td>
<td>• NGO Sector</td>
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<tr>
<td>• Create a carpool network to help AEOs conduct on-site investigations at schools</td>
<td>○ Encourage NGOs to publicly speak out on school-based sexual violence</td>
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</table>
| • Work with musicians and entertainers to create age-appropriate media that educates children on sexual violence | • NGO and Government Sectors  
| • Establish safe houses to shelter students who have experienced sexual violence and need protection |   ○ Focus on creating long-term goals that are not tied to the success of a single project or initiative          |
| • Lobby to create laws that deter parents from accepting payments from perpetrators in exchange for not cooperating with administrative and criminal investigations |   ○ Mentor children through sports clubs, school organizations, and church groups                                  |

### Education Sector 2

1. **Specific challenges that the Education Sector faces in preventing and responding to sexual violence against schoolchildren**

The second group representing the Education Sector cited several challenges that the Education Sector faces when preventing and responding to school-based sexual violence. Several of these challenges related to broad social conditions. Specifically, the group noted that poverty makes children vulnerable to sexual violence and that parents sometimes fail to perform their parental responsibilities. In addition, the group noted that children fear reporting abuse because it may result in social stigma. In this context, one group member related that he had heard of teachers reading reports of sexual violence in public, using the reports to publicly shame or reprimand the reporting children.

Beyond these broader social challenges, the group also cited several challenges within the school system itself. School curricula do not focus on sex education, and, as a result, children are often unsure of what constitutes “sexual violence.” This creates an obstacle to reporting because children are then sometimes unaware that a crime has actually occurred. Furthermore, teachers are often unsure of the reporting procedures and may simply tell a student who reports an abuse to inform her or his parents. The group further noted that guidance counselors are often not
adequately trained and might not be familiar with basic counseling techniques and the rules of confidentiality. Indeed, the group explained that a “guidance counselor” is not a trained counselor at all, but rather, simply an ordinary teacher that has been appointed to the position.46 Finally, the group noted that head teachers are not told why a teacher is being transferred to their school and head teachers are powerless to refuse the transfer. According to the group, a head teacher would likely be disciplined if he or she tried to obstruct a transfer, even if he or she argued that the transfer was an attempt to cover up an act of sexual violence.

2. Specific improvements that the Education Sector can make to improve its effectiveness

Many of the group’s recommendations focused on increasing students’ awareness of sexual violence and ensuring that students know the steps that they can take after experiencing sexual abuse. In particular, the group noted that students take a course in “Life Skills,” but that sexual violence is not discussed. Moreover, because Life Skills is not included in students’ standardized testing, teachers sometimes use time allotted for Life Skills to teach other subjects, such as Mathematics. Accordingly, the group recommended including education on sexual violence in Life Skills and creating mechanisms to ensure that the students actually receive this instruction.47

Relatedly, the group noted that many teachers are hesitant to discuss matters relating to sexuality with their students. As such, schools should initiate health talks where teachers can discuss sexuality with students in an age-appropriate manner. To help do this, the group recommended framing the talks around topics that children will understand and be interested in. For example, when dealing with younger students, a teacher could ask the students where football players put their hands when forming a wall to block a free kick. The teacher could then explain that this area is a person’s “private parts” and that teachers should never touch students in this area. Additionally, the group recommended empowering and supporting student governments and barazas in schools, noting that students might be more willing to have health talks amongst themselves.

47 The group explained that Life Skills is often not taught because of the “mean-score syndrome” that plagues the Kenyan school system. Schools are publicly ranked based upon their students’ performance on standardized tests, and this ranking system pressures schools to primarily focus on increasing their students’ average test scores. Consequently, courses that are not tested—such as Life Skills—fall to the wayside, and schools put little emphasis on fostering informal learning opportunities between teachers and students, as teachers are pressured to simply prepare students for the standardized tests. Recently, however, the Ministry of Education announced that schools will no longer be ranked based upon their students’ exam results. See Augustine Oduor, Ban on Schools Rankings to Stay, Says PS Belio Kipsang, STANDARD DIGITAL (Dec. 11, 2014), 1, http://www.standardmedia.co.ke/business/article/2000144340/ban-on-schools-ranking-to-stay-says-ps-belio-kipsang; Ouma Wanzala, Government Bans Ranking of Schools by Exams, NAIROBI NEWS (Nov. 29, 2014), http://nairobinews.co.ke/government-bans-ranking-of-schools-by-exams/; see also Press Release, Ministry of Education, Science and Technology, Ban on Ranking of Schools and Students Followed Consultations (Nov. 28, 2014), available at http://www.education.go.ke/home/index.php/downloads/category/9-2014-press-releases.
The group also made several recommendations focused on teacher discipline. In particular, it noted that, contrary to the law, many schools do not have copies of the TSC Regulations and the Code of Conduct on site. As such, the group recommended providing each school with copies of these documents and using teachers’ inductions to ensure that they know their obligations under these rules and regulations. Similarly, the group recommended providing schools with logbooks and daily-occurrence books, where administrators could record, among other things, whether a report was made and whether an administrative action was taken. These types of records could allow community members and government officials to monitor a school and track the school’s history of addressing sexual violence. Finally, the group recommended “allow[ing] everyone” to report cases of school-based sexual violence to the proper authorities; however, as explained in the footnote below, this recommendation requires some clarification.

Several of the group’s recommendations focused on improving reporting mechanisms. The group noted that speak-out boxes can be effective but that teachers can sometimes identify the student who made the report by the handwriting. The group recommended addressing this problem either by changing the format of a report or by ensuring that teachers cannot access the contents of a box. Relatedly, the group noted that reports of sexual violence too often become topics of staff-room “gossip”; therefore, it recommended creating stricter rules of confidentiality to govern

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48 Under Kenya’s Criminal Procedure Code, any “person with reasonable and probable cause” to believe that a crime has been committed can make a written or oral complaint of that crime to a magistrate with jurisdiction. See The Criminal Procedure Code § 89(1)-(3). Additionally, within the context of the education system, the TSC Regulations provide that “[a]ny person with information that a teacher has engaged in misconduct” may lodge a written or oral complaint. See TSC Regulations § 144. More stringently, the Code of Conduct requires all teachers to report violations of its provisions and any other unlawful behavior. See Code of Conduct § 37(1), (2). The TSC has directly spoken on this issue in the context of school-based sexual violence, stating that all teachers “must” make a report when they have “reasonable grounds” to believe that a student has been sexually abused in or outside of school. See Teachers Service Commission, TSC/Circular No. 3, Protection of Students/Pupils from Sexual Abuse 2 (Apr. 29, 2010). “Any teacher, TSC employee or TSC agent who fails to report a case of sexual abuse, actual or alleged shall face disciplinary action.” Id. at 3.

As several participants noted, matters can become complicated when the perpetrator is someone who enjoys a position of authority in the school, such as a head teacher. Still, teachers are allowed to make reports directly to police or “any organization working with Child Protection issues in the area.” See id. at 2. Further, any teacher with “reasonable grounds” to believe that a student has been sexually abused must make a report directly to the TSC. See id. As such, all teachers are allowed, and, in fact, required to go outside the administrative hierarchy of their particular school when reporting cases of sexual violence. See id.
reporting. Finally, the group recommended increasing the number of female teachers employed in schools because female students might be hesitant to report an abuse to a male teacher. Ideally, the number of male and female teachers in a school should be equal; however, the group noted that, typically, a disproportionate number of teachers are male.

3. Specific challenges that the Education Sector faces in collaborating with other sectors

Most of the challenges that the group cited concerned the Education Sector’s collaboration with NGOs. The group noted that some NGOs are unaware of what actually goes on in schools, and, consequently, NGO projects can interfere with the school’s operations. Similarly, the group noted that NGOs sometimes approach the problem of school-based sexual violence presuming that teachers, as a whole, are part of the problem. In such cases, NGOs create “solutions” that circumvent teachers, rather than empowering teachers to address sexual violence in a meaningful way. Group members stated that this bias is unfortunate because it ignores two key facts: teachers are ideally positioned to prevent and respond to school-based sexual violence, and the vast majority of teachers work hard to protect their students. Finally, the group noted that many NGO projects, though well intentioned, suffer from a lack of follow-through. NGOs approach schools with ideas and plans that do not always result in a real and meaningful commitment.

Moving beyond NGOs in particular, the group noted some additional challenges to collaboration. In general, many employees in the Education Sector do not have time to extensively network. As such, they are often not aware of how service providers in other sectors can help teachers and students combat school-based sexual violence. The group also noted that law enforcement personnel are sometimes dismissive of reports of school-based sexual violence, leaving teachers to think that nothing can or should be done. Ultimately, the Education Sector is on the front lines of addressing school-based sexual violence; however, it cannot address this problem alone.

4. Specific improvements that the Education Sector can make to improve its collaboration with other sectors

Several of the group’s recommendations concerned sharing information. First, the group recommended encouraging NGOs to publish their studies of school-based sexual violence and to make these studies readily accessible to members of the Education Sector. Second, the group stated that every school and every county office of the TSC should be required to keep records of reports of sexual violence. These records would also detail the specific actions that school personnel took to follow up on each report. The Education Sector could then make these reports publicly available, thus increasing transparency and helping other stakeholders better understand the nature and scope of this problem. Third, the group noted that other sectors could help the Education Sector organize and fund inter-school dialogues on sex education and sexual violence. As the group explained, schools receive funds to convene for daylong seminars on topics like science and mathematics; the group recommended organizing similar seminars to address sexual violence as well.

49 See Code of Conduct § 37(3) (stating that all reports of teacher misconduct “shall be dealt with in strict confidentiality with a view to protecting the source”).
Beyond these recommendations, the group proposed several other ideas to further collaboration. Specifically, the group recommended having school “liaison officers,” who could follow up on reports of sexual violence until they reached the courts. The group stated that a liaison officer should not be the head teacher of a school. Additionally, the group recommended clarifying the reporting process and having training courses on sexual violence for teachers and parents. The group also recommended working with NGOs to help economically empower families. Finally, the group recommended distributing free sanitary towels to girls because perpetrators sometimes use these towels as “payment” for sex. The group noted that the Ministry of Health distributes sanitary towels but emphasized that this problem still persists.50

**Summary of Education Sector 2 Recommendations**

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<tr>
<th>Ways to Increase its own Effectiveness</th>
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<tbody>
<tr>
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<td>• NGO Sector</td>
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<tr>
<td>• Establish health talks where teachers can discuss sexual violence with students</td>
<td>o Encourage NGOs to publish studies on sexual violence and make these studies available to members of the Education Sector</td>
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<tr>
<td>• Support and empower student governments and barazas</td>
<td>o Work with NGOs to economically empower students’ families</td>
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<tr>
<td>• Ensure that all schools have copies of the TSC Regulations and Code of Conduct on site</td>
<td>• Government Sector</td>
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<tr>
<td>• Provide schools daily-occurrence books to record reports of sexual violence and the specific administrative actions that were taken in response</td>
<td>o Employ liaison officers who can work with police in following up on reports of sexual violence</td>
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<tr>
<td>• Allow all persons to report acts of sexual violence</td>
<td>o Clarify the reporting process</td>
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<td>o Have every school and every county office of the TSC keep public records of reports of sexual violence and the specific administrative actions that were taken in response</td>
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<td>o Fund inter-school dialogues and seminars on sex education and sexual violence</td>
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Government Sector

1. Specific challenges that the Government Sector faces in preventing and responding to sexual violence against schoolchildren

The group representing the Government Sector cited several challenges relating to the overlapping roles of the TSC and the Ministry of Education. The group noted that these government agencies operate under separate laws—the TSC Act and the Basic Education Act respectively—and that these laws can sometimes be in tension. For instance, the group explained that the TSC has claimed that it alone has authority to address school-based sexual violence because its mandate includes training and disciplining teachers. Nevertheless, the Ministry of Education has broad jurisdiction over school management and school standards. As such, the Ministry of Education seems to have authority to address school-based sexual violence as well. This overlapping jurisdiction could perhaps foster collaboration between the TSC and Ministry of Education, but the group noted that there is generally a lack of “synergy” between these two agencies. Ultimately, this creates confusion on the ground, as the group stated that there are “no clear lines” to help head teachers know which agency they should report to on matters of school-based sexual violence.

Moving beyond these two agencies, the group also noted that challenges stem from the allocation of power between the national and county governments. Under the Constitution, education and law enforcement are under the authority of the national government. As such, preventing and responding to school-based sexual violence generally falls within the national government’s purview. Still, the group argued that county governments should have a significant role in addressing school-based sexual violence: the causes and conditions of school-based sexual violence can differ across communities, and local authorities are best positioned to understand and respond to each community’s particular circumstance. Presently, the Constitution does not provide a clear framework that would enable county governments to play a role in addressing school-based sexual violence. The group stated that the absence of such a framework is a barrier to addressing this problem at the local and county level.

Many of the other challenges that the group cited related to disciplining teachers. Specifically, the group noted that, in recent years, the TSC has taken a more decentralized approach

51 See CONSTITUTION, art. 237(2)(e), (3)(a) (2010).
52 See The Basic Education Act, (2013) § 5(2) (detailing the functions of the National Education Board).
and given local Boards of Management ("BOMs") greater authority to discipline teachers. Still, the group expressed concern over this approach, noting that members of BOMs do not always have adequate training in matters of sexual violence and proper teacher conduct. Consequently, as the group explained, sometimes a BOM will give a teacher who commits an act of sexual violence a mere "slap on the wrist." Furthermore, the group noted that disciplining teachers is one of the TSC's core functions under the Constitution. As such, the TSC should always remain closely involved in disciplinary matters. Yet, the group noted that the TSC’s disciplinary tribunals suffer from a lack of transparency. People on “the outside” do not know how the tribunals operate, and even teachers who are called before the tribunals are unsure of their rules and procedures.

Finally, the group stated that many challenges exist at an individual level. Teachers do not receive enough training on ethics and children’s rights, and government officials are sometimes not appointed on the basis of their qualifications. As such, the group echoed sentiments that other groups had expressed, noting that many challenges stem from a sheer lack of will to implement existing laws. Indeed, as one participant explained, Kenya has good laws to prevent school-based sexual violence and punish offending individuals; however, “you can have the best laws in the world, but if you don’t have good people—good men and women—to implement that law, then that law is not going to be enforced.”

2. Specific improvements that the Government Sector can make to improve its effectiveness

To begin addressing these challenges within the Government Sector, the group recommended increasing the public’s participation in policy making. In particular, the group recommended giving teachers greater roles in the regulation-making process, as many teachers do not feel real ownership of the Code of Conduct and the TSC Regulations. Additionally, the group recommended engaging with civil-society stakeholders that focus on child-related matters, using their expertise to inform policy. Finally, the group suggested creating a legal framework to allow the public to observe disciplinary hearings before the TSC tribunals. This could help make the tribunals more transparent and trusted.

Beyond increasing public participation and the participation of teachers, the group also recommended fostering cooperation between different government agencies. Specifically, the group recommended reviewing the TSC and Basic Education Acts to ensure that they direct the TSC and Ministry of Education to operate in harmony. Further, the group recommended improving the TSC’s cooperation with law enforcement agencies because school-based sexual violence cannot simply be addressed through administrative channels. Finally, the group recommended

54 See The Teachers Service Commission Act § 20 (authorizing the TSC to either “generally or in a particular case, delegate to any committee or to any member, officer, staff or agent of the [TSC] the exercise of any of the functions of the [TSC]”). For their own part, BOMs do not expressly have statutory authority to discipline teachers. See The Basic Education Act § 59 (detailing the functions of BOMs). Still, BOMs exercise broad oversight over school operations and are broadly authorized to carry out any function incidental to their enumerated powers. See id. § 59(q) (authorizing BOMs to “perform any . . . function to facilitate the implementation of [their] functions under [the Basic Education Act] or any other written law). Disciplining teachers could arguably fall under the scope of a BOM’s incidental powers.

55 See The Basic Education Act §§ 56, 57 (describing the composition of a BOM and the qualifications for membership).

56 See CONSTITUTION, art. 237(2)(e).
better training for the members of TSC tribunals in procedural and substantive law. This training could help ensure that the tribunals use fair administrative procedures and also help the tribunals identify when teacher misconduct must be referred to law enforcement because the misconduct may constitute a criminal offence.\(^{57}\)

3. **Specific challenges that the Government Sector faces in collaborating with other sectors and the Education Sector in particular**

   In response to this question, the group noted several challenges that the TSC, in particular, faces when trying to collaborate with other organizations. Reiterating one of its earlier points, the group noted that the TSC lacks a legal framework to allow the public to meaningfully participate in policy making. Furthermore, the group noted that the TSC lacks a policy framework to inform its collaboration with NGOs and other government agencies. Finally, the group noted that NGOs sometimes presume that they can or should usurp the TSC’s mandate to train, supervise, and discipline teachers. But the group argued that this presumption is unfounded. The TSC has the resources and constitutional authority to address school-based sexual violence. As such, it must have a meaningful role in any comprehensive solution.

4. **Specific improvements that the Government Sector can make to improve its collaboration with other sectors and the Education Sector in particular**

   The group emphasized that the Government Sector could overcome several challenges by working with teachers’ unions. The group explained that teachers’ unions often focus on manageable problems with straightforward solutions, but noted that these unions have the resources and influence to tackle broader social issues like sexual violence. Indeed, the group suggested that the next time that the TSC signs a collective-bargaining agreement with teachers, the agreement could include a child-protection pledge. Furthermore, the group noted that teachers’ unions could help educate teachers on the Code of Conduct and teachers’ reporting obligations, thereby encouraging teachers to combat sexual violence by policing themselves.

   Beyond working with teachers’ unions, the group also noted that different government agencies could cooperate with other organizations and stakeholders. In particular, the group recommended having the TSC form partnerships with police, prosecutors, and judges to help coordinate the administrative and criminal-justice response to school-based sexual violence. Likewise, the TSC could form partnerships with NGOs and generally encourage stakeholder involvement in policy making. Relatedly, the group recommended revising the TSC’s legal framework to allow for more public participation and to create greater transparency.

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\(^{57}\) This group also recommended creating a database internal to the education sector that would list known sexual offenders in a given county. While not yet established, the Sexual Offences Act expressly requires the Registrar of the High Court to maintain a register of “convicted sexual offenders,” which may be examined by “any person who has reasonable cause.” The Sexual Offences Act § 39(13); see also Sexual Offences Regulations, (2008) § 7(1).
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<td>- Increase the role of teachers in the regulation-making process</td>
<td>o Increase collaboration with teachers’ unions</td>
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<td>- Create a legal framework to allow members of the public to observe TSC disciplinary tribunals</td>
<td>o Encourage teachers’ unions to address school-based sexual violence</td>
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<tr>
<td>- Review the TSC and Basic Education Acts to ensure that the TSC and Ministry of Education operate in harmony</td>
<td>o Encourage teachers’ unions to train teachers in the Code of Conduct and teachers’ reporting obligations</td>
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<td>- Improve the TSC’s cooperation with law enforcement</td>
<td>o Include a child-protection pledge in collective-bargaining agreements between teachers and the TSC</td>
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<tr>
<td>- Train members of the TSC tribunals in fair-hearing procedures and substantive criminal law</td>
<td>o Foster partnerships between the TSC and participants in the criminal justice system such as police, prosecutors, and judges</td>
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<td>- Create an internal education-sector database of convicted sex offenders</td>
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<td>o Form partnerships with NGOs</td>
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<td>o Revise relevant legal frameworks to allow for greater public participation and create more transparency</td>
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7. The Imperial Hotel Declaration

Based on the points raised during Plenary Discussion II, the participants were asked to formulate a list of specific commitments that each sector would undertake to address the problem of school-based sexual violence. Participants from each sector—Education, NGO, and Government—conferred amongst themselves and then presented these commitments to the Workshop as a whole. The HRC and GGJC then compiled these commitments to produce a single document, the Imperial Hotel Declaration, which is reproduced below. In approximately six months, the University of Nairobi will invite participants to reconvene and assess the progress that they have made in implementing their commitments under the Imperial Hotel Declaration. As such, the Imperial Hotel Declaration represents a culmination of the participants’ daylong efforts and a lasting commitment to address school-based sexual violence in Kisumu.

THE IMPERIAL HOTEL DECLARATION

As Decided January 13, 2015, by Participants of the Workshop “Sexual Violence against Kisumu Schoolchildren: Enhancing Accountability,” with the Goal of Completion within Six Months:

The NGO Sector:

- Will conduct advocacy to establish i) a safe house ii) a child protection unit in the police station and iii) a gender-based violence ("GBV") recovery center in Kisumu; and
- Will receive a status report from the Judiciary on violence against children in Kisumu and use that status report to inform demands of the government.

The Education Sector:

- Will sensitize parents on sexual violence against schoolchildren in Kisumu County;
- Will discuss sexual violence in fourteen primary schools and fourteen secondary schools in the seven sub-counties and give a report once a term; and
- Will give health talks on sexual violence against schoolchildren in Kisumu County once a term; a teacher will be in charge of each school and give a report on the program’s progress once a term.

The Government Sector:

- Will implement the following commitments in collaboration with the University of Nairobi and the Kenya Union of Post-Primary Education Teachers (“KUPPET”):
  - The National Gender and Equality Commission will incorporate the TSC as a main duty bearer to hold accountable in its role to prevent and respond to GBV;
  - The University of Nairobi will train members of the TSC tribunals on GBV laws and fair-trial procedures;
  - KUPPET will train one hundred teachers’-union representatives on GBV legislation in collaboration with the TSC; and
  - The University of Nairobi will engage with the TSC to ensure public participation in disciplinary proceedings/tribunals.
8. Post-Workshop Thoughts

In her closing remarks at the Workshop, Ms. Hickey noted that sexual violence, and school-based sexual violence in particular, is a global problem that, far too often, goes unacknowledged. Finding a collection of individuals willing to discuss this issue in a critical and honest manner is a rare occurrence. But the HRC and GGJC found such a collection of individuals at the Workshop. Reiterating Ms. Hickey’s remarks, the members of the HRC and GGJC would like to again thank the participants for their enthusiasm, hard work, and careful reflection. The clinic members believe that the Workshop produced meaningful commitments, and they look forward to working with the participants, and their respective organizations and institutions, in the future.

At the same time, the members of the HRC and GGJC would like to offer some concluding thoughts, based upon insights that the Workshop participants shared and the clinic members’ own post-Workshop reflections. Throughout the day, the participants offered numerous ideas to begin addressing school-based sexual violence. Out of practical necessity, only a handful of these ideas could be incorporated into the final Imperial Hotel Declaration. Still, some of the ideas that were not included in the Imperial Hotel Declaration seem particularly beneficial. As such, the HRC and GGJC believe that they warrant implementation.

First, during Plenary Discussion II, the first group representing the Education Sector recommended creating a carpool network to help AEOs conduct on-site investigations into reports of sexual violence in schools. This proposal seems practical and feasible. Accordingly, the clinic members recommend that Kisumu-based representatives of the TSC, various NGOs, and different government agencies work to create a carpool network to help AEOs. These representatives are, of course, best placed to determine the details of how this network would operate. Still, it could be as simple as creating a weekly or monthly email chain where individuals could post when and where they intend to travel. If an AEO ever found him or herself without a vehicle or fuel, the AEO could simply refer to the email chain and contact a person who was traveling to the school or its vicinity.

Second, during Plenary Discussion II, several groups stated that children are not adequately educated on sexual violence. In particular, the second group representing the Education Sector noted that Life Skills, as a class, is often not taught, and that, if it is, it typically does not include instruction on sexual violence. Life Skills seems to be a natural setting to teach students what constitutes sexual violence, how it can be prevented, and how one should respond. As such, we recommend conducting a searching review of school curricula to determine the extent to which students are educated on sexual violence in general and in Life Skills in particular. This review should also include an assessment of whether Life Skills is consistently taught. If that review concludes that instruction on sexual violence is wholly lacking or somehow insufficient, then we further recommend modifying these curricula to remedy any gaps.

Third, and finally, in some form or fashion, almost every group during Plenary Discussions I and II expressed confusion over the legal framework that exists to address school-based sexual violence. Groups stated that reporting procedures are unclear, that the respective roles of the national and county governments are uncertain, and that a perpetrator is
somehow able to immunize him or herself from criminal prosecution by paying a student’s family restitution. Such confusion can have dire consequences: a teacher might want to help a student who has been sexually abused but be uncertain of how she or he can help that student and how to proceed. Accordingly, the clinic members recommend taking steps to address this confusion by ensuring that teachers and other school employees have materials that comprehensibly explain Kenya’s laws relating to school-based sexual violence. Government agencies like the TSC, Ministry of Education, the Office of the Director of Public Prosecutions, and the National Gender and Equality Commission seem well positioned to prepare and distribute such materials. NGOs and academics could also contribute to these efforts.
Appendix

A. Workshop Program

Sexual Violence Against Kisumu Schoolchildren: Enhancing Accountability

University of Nairobi School of Law Human Rights Clinic (HRC)
Cornell Law School Global Gender Justice Clinic (GGJC)
Tuesday 13th January 2015; Imperial Hotel, Kisumu

8:00 AM — 9:00 AM      Arrival and Registration
9:00 AM — 9:30 AM      Introductions, Expectations, and Outlining the Day
9:30 AM — 10:15 AM     Presentation: Sexual Violence Against Schoolchildren: A Global and Local Problem
10:15 AM — 11:00 AM    Presentation: Kenya’s Legal Framework Addressing Sexual Violence Against Schoolchildren
11:00 AM — 11:30 AM    Tea Break
11:30 AM — 12:30 PM    Breakout Session I
12:30 PM — 1:30 PM     Plenary Discussion I: Identifying Gaps in Accountability
1:30 PM — 2:30 PM      Lunch
2:30 PM — 3:30 PM      Breakout Session II
3:30 PM — 4:30 PM      Plenary Discussion II: Solutions, Coordination, and Next Steps
4:30 PM — 5:00 PM      Closing Remarks and Vote of Thanks
5:00 PM — 5:30 PM      Post-Workshop Tea Break and Departure
B. Breakout Session I Hypotheticals

Sexual Violence Against Kisumu Schoolchildren: Enhancing Accountability

University of Nairobi School of Law Human Rights Clinic (HRC)
Cornell Law School Global Gender Justice Clinic (GGJC)
Tuesday 13th January 2015; Imperial Hotel, Kisumu

Breakout Session I: Hypotheticals for Discussion

Instructions: Each hypothetical depicts a story. Kindly read the story and think about the following questions:

(1) What usually happens in these circumstances?
(2) Ideally, what should happen in these circumstances?
(3) What obstacles and challenges prevent the answers given in (1) and (2) from being the same?

Please discuss each question with the other members of your breakout group, and record your group’s responses using the materials provided. Provide answers for each question above for each of the four hypotheticals. To begin, please focus on answering the questions from the perspective of the “main character” in the hypothetical. If your group has extra time, then please consider the roles of other stakeholders who would be involved in responding to the situation. During the first plenary discussion, each group will report back to the larger group and we will reflect upon these responses.

Hypothetical 1

Atieno is in standard eight in Jaber Primary School in Kisumu. Morning tuition classes begin at 6.30am and she has to walk 2 kilometers to her school. On the way to school one morning, Ochieng, a well-known boda boda man, attacks and defiles her. After the assault, Atieno continues to school and immediately tells her counselor, in confidence, what has happened.

Hypothetical 2

Jonathon is a newly transferred teacher at Lakeview High School in Kisumu. When Jonathon first arrived at Lakeview, the head teacher told Jonathon to let him know if “anything improper” is “going on.” Recently Jonathon is noticing some behavior that he doesn’t think is appropriate.
One male teacher often tells his female students that they are “so beautiful” and would “make great wives.” This teacher was transferred from another school after he was accused of defiling a fourteen-year-old student. Another male teacher sits very close to female students when he helps them with their assignments, and Jonathan has even overheard his students saying that, one time, this teacher grabbed a student’s breasts. Furthermore, a student has told Jonathan that a third teacher has begun “dating” one of his students: a sixteen year old.

Still, the other teachers at Lakeview don’t seem to think that these three teachers are acting improperly, and Jonathan does not know whether any of the three teachers have actually defiled a student.

Hypothetical 3

Achieng is the head teacher at Great Lakes Primary School in Kisumu. Recently, a male teacher at Great Lakes was accused of defiling an eleven-year-old female student, Ujana. A school counselor told Achieng about the alleged defilement, and Achieng promptly informed her County Director of the report. The County Director then conducted a thorough investigation into the report, which involved interviewing the accused teacher, the counselor, Ujana, Ujana’s family members, and several of Ujana’s friends.

Achieng had also reported the alleged case of defilement to the local police. The police officer that Achieng spoke with indicated that they would “look into” the report; however, almost four weeks have passed, and Achieng is not sure whether a criminal investigation has really been opened. In the meantime, Ujana’s attendance at school has become very inconsistent. Even when Ujana attends school, she acts timid and does not seem able to concentrate on her work. Personally, Achieng feels that disciplinary proceedings are not enough: the teacher should be tried in a criminal court. By contrast, Ujana’s family members seem indifferent about a criminal case. Ujana’s mother and father have told Achieng that they just want this entire tragedy to “be over.”

Hypothetical 4

Mrs. Otieno is the head teacher of Rift Valley High School in Kisumu. She is well liked and well connected in the community. After the morning tuition, Mrs. Otieno asks sixteen-year-old Opiyo to remain behind. She instructs him to carry some heavy luggage to her house, and once inside she asks him to move something from her bedroom. Once inside the bedroom, she asks him to undress and get into her bed, whereupon she defiles him. This occurs on numerous occasions over the next month, and Opiyo’s personality begins to change: he is less concerned with his schoolwork and has become disruptive in class.

Opiyo’s mathematics teacher, Daniel, becomes concerned at the change in Opiyo. Daniel privately shares his concerns with Opiyo and Opiyo tells Daniel that he feels too mature to be taking orders from teachers, now that Mrs. Otieno considers him “a man.” Opiyo insists that he does not want anybody else to know about “their secret.” Daniel has not been in this situation before and given Mrs. Otieno’s popularity and contacts in the community, he thinks that reporting the head teacher might make him disliked by his colleagues, or that he might lose his job in retaliation. Moreover, Opiyo does not seem upset: in fact, he now walks around the school with a new confidence.
C. Mid-Day Transition Talking Points

1. Stigmatization of the girl, her family, and the school
2. Lack of witnesses
3. Cover ups by the schools
4. Compensation (deals between the perpetrator and family)
5. Perpetrator may flee
6. Counselors within schools are untrained
7. Lack of consistent reporting procedures (ideally, one should refer the girl to the medical center first, then liaise with police, then the CPU, then the Chief)
8. Teachers not aware that misconduct does not require penetration
9. Teachers transferred, and this is sometimes considered appropriate punishment
10. Most schools do not have the Code of Conduct and the Regulations, and there should be three copies
11. There is often no induction of the new teachers; induction would help familiarize teachers with the Code of Conduct and the Regulations
12. Students are not sensitized about their rights
13. Life skills does not teach about sexual violence; life skills not on exam, so teachers will use the time to teach other subjects
14. Community will believe that the victim is “bringing down” the culprit
15. Teachers and unions will come out in support of the perpetrator
16. Police take a long time to act because they cannot get anything out of it, i.e., there is no one to bribe because the victim is a child
17. Lack of qualified health workers at county and local levels; such workers are required to fill out P3 forms
18. No one would believe the boy (they assume that a female cannot defile a boy)
19. Boy will not think that anything wrong has happened (macho mindset)
20. Lack of clarity in the reporting system; to whom do you report to first? (Chief? Head teacher? Etc.)
21. Issue of rich women establishing schools to defile boys
22. Education Act specifies that a teacher of the same gender should handle the case, but this doesn’t take into account the sexual orientation of the teacher
23. The prevalence of sexual violence against children with disabilities
24. Strengthen witness protection
25. Cases of sodomy (there is a rise in such cases)
26. Rise in early marriages for religious reasons; lack of reporting because of religious reasons
27. Increased availability of contraceptives leading to an increased prevalence of sexual violence because of the reduced risk of pregnancy
D. Breakout Session II Discussion Questions

Sexual Violence Against Kisumu Schoolchildren: Enhancing Accountability

University of Nairobi School of Law Human Rights Clinic (HRC)
Cornell Law School Global Gender Justice Clinic (GGJC)

Tuesday 13th January 2015; Imperial Hotel, Kisumu

Breakout Session II

During this breakout session, we would like you to think about and discuss ways to combat sexual violence against schoolchildren in Kisumu. To do so, please read and answer the questions below. These questions ask you to reflect upon different ways that you can work to better prevent and respond to sexual violence against schoolchildren. They also ask you to think about different ways that you can collaborate with other sectors, and the education sector in particular, to better address this problem.

Please make your answers as specific and concrete as possible. Where possible, provide specific examples that illustrate the challenges that you face and the solutions that you propose. Please record your answers using the materials provided and select an individual to act as a spokesperson for the group. During the second plenary discussion, each group will report back to the larger group and we will reflect upon these responses.

1. What specific challenges do you face as a sector in preventing and responding to sexual violence against schoolchildren?
2. What specific improvements can you make within your own sector to increase your effectiveness?
3. What specific challenges do you face in collaborating with other sectors to effectively address this problem? What challenges do you face in collaborating with the education sector in particular?
4. What specific improvements can you make to facilitate your collaboration with other sectors, and the education sector in particular?
### E. List of Relevant NGO/CBOs in Kisumu

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<thead>
<tr>
<th>Organization</th>
<th>Contact Name</th>
<th>Contact Number</th>
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</thead>
<tbody>
<tr>
<td>Coalition on Violence Against Women (COVAW)</td>
<td>Nancher Akoth Adeka</td>
<td>0713935707</td>
</tr>
<tr>
<td>The Cradle</td>
<td>Mary Agienda</td>
<td>0714836002</td>
</tr>
<tr>
<td>Family Support Community Based Initiative (FASCOBI)</td>
<td>Victorine Orondo</td>
<td>0722394298</td>
</tr>
<tr>
<td>Kenya Female Advisory Network</td>
<td>Easter Achieng Oketch</td>
<td>25403541092</td>
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<tr>
<td>KUAP Apostolate Programs</td>
<td>Nancy Okoth</td>
<td>0720704364</td>
</tr>
<tr>
<td>Masculinity Institute</td>
<td>Vera Atieno</td>
<td>0728469726</td>
</tr>
<tr>
<td>Plan Kenya</td>
<td>Helen Apiyo</td>
<td>0725025678</td>
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<tr>
<td>Voices of Women in Western Kenya</td>
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<td>Watoto Musiliye</td>
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