

Research Report

# Implementation of the Sexual Offences Act – Justice Sector



**Federation of Women Lawyers Kenya  
(FIDA-K)**

## ACKNOWLEDGEMENT

This research was carried out after four years of coming into effect of the Sexual Offences Act. The key objective of this research was to conduct an assessment on the implementation of the Sexual Offences Act and make recommendations where gaps have been identified. The Comprehensive research would not have been possible without the support and effort of a range of individuals and institutions.

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# SECTION ONE: PRELIMINARIES

## 1.1 Executive Summary

**T**he demand for better data on the magnitude, nature and extent of sexual violence cannot be underrated in the successful advocacy for concerted effort in addressing the vice. While there is increasing recognition of sexual violence in conflict and post-conflict situations as a serious security, health and human rights problem, it is difficult to document and research this subject because of its sensitive nature. This research carried out four years after coming into effect of the Sexual Offences Act aimed at responding to the need for data and improved data collection methodologies, as well as coordinated efforts by all sectors, if the vice is to be successfully addressed.

The research specifically aimed at developing consensus on the extent to which the Act has been able to address the vice; make recommendations for a concerted agenda, in order to improve knowledge and understanding of sexual violence; and facilitate the collection of ‘timely, objective, accurate and reliable information’ on sexual violence. It was observed that data is critical for advocacy, prevention, programme planning and monitoring, and to sustain donor interest in implementation. Different kinds of data are needed for different purposes. The following broad categories of data needs were identified:

- Data to understand the magnitude/nature and extent of sexual violence, including profiles of victims and perpetrators, risk and protective factors and vulnerability assessment.
- Data for effective interventions/services, including better understanding of the needs of survivors, availability of and barriers to services; the extent of impunity and evaluation of services/interventions, including legal and judicial services.
- Data on short and long-term impact and costs of sexual violence on individuals and communities post-conflict.

A range of methodological and ethical challenges were also identified. These included the need to: standardize terminology and data-collection instruments, combine quantitative and qualitative methods, build on work on sexual violence and ensure the safety of data.

# Lessons and Recommendations from the Study

## 1. Surveys

Data on incidences/prevalence of sexual violence, risk and protective factors can only be obtained through a dedicated survey. However, more work is needed to develop consensus on:

- (a) The operational definitions of different forms of sexual violence.
- (b) The minimum, expanded set of data to be collected.
- (c) Guidelines on types of data and best possible methodologies (that address ethical and safety issues) that would be useful in informing prevention and intervention efforts.

## 2. Surveillance

Surveillance using existing case reports also provides useful data, but in order to be useful, the collection of surveillance data (case reports) needs to be simplified and systematised.

## 3. Research on scope and context

A more detailed research agenda on the context of perpetration of sexual violence needs to be developed. This includes qualitative research to better understand: the context in which sexual violence takes place, risk markers for women/communities and the characteristic motivations of perpetrators and whether sexual violence is condemned, condoned or commanded – where and under what circumstances it takes place.

## 4. Benchmarks for assessing progress and effectiveness of interventions

There is a dearth of information on what works for both prevention and response; more systematic evaluation of the work on sexual violence is needed.

## 5. Ensuring good data for advocacy and sustainability

Demands for more and quality data cannot be wished away. Data is needed to justify why rape was put on the political agenda and why it should remain there.

## 1.2 Introduction

The Federation of Women Lawyers is a non-profit, non-partisan membership organization committed to the creation of a society that is free from all forms of discrimination against women. Membership to FIDA-Kenya is open to Kenyan women lawyers and women law students. The organization was started in 1985 after the 3<sup>rd</sup> United Nations Conference on Women held in Nairobi. Currently, there are more than 600 registered FIDA Kenya members.

As the oldest women rights organization in Eastern Africa, FIDA-Kenya has over the years carved itself a niche as a fearless defender of women's rights at the international, national and local level. At the local level, FIDA-Kenya is connected to the local woman through its aid clinics and community action groups that have empowered to grassroot women rights at the municipal levels. At the national level,

FIDA-Kenya is connected with like-minded players with whom it shares practices and innovations. These include strategic institutions of government through which FIDA-Kenya exerts policy and practice influence. FIDA-Kenya has a long-term working relationship with Parliament and the judiciary, and in recognition of its contribution to women rights struggles, FIDA-Kenya sits in a number of strategic committees situated within the government.

FIDA-Kenya uses these chances at the national level to influence transformative change for the indigent woman. At the international level, FIDA-Kenya is recognized particularly as an African actor in the area of women empowerment. FIDA-Kenya enjoys special consultative status with the United Nations Economic and Social Council (ECOSOC) and observer status with the African Commission on Human and People's Rights.

FIDA-Kenya uses these international forums to exert pressure on the Kenya policy makers to act in favour of the marginalized women. It is in the backdrop of this mandate that FIDA-Kenya commissioned this research whose findings will contribute to development of programs and projects, aiming to lobby for the much needed reforms in the Kenyan judicial system regarding the implementations of the Sexual Offences Act.

## 1.3 Background

Kenya's societal norms, cultural practices, behaviours and perceptions, laws, policy and program development usually tend to favour one gender over the other. As a result, gender-based violence is rife. Particularly, physical and psychological violence against women is a major impediment to the progress and the enhancement of the women's socio-economic status. Women's access to justice, medical or post-trauma support is weakened by their inability to pay for these services, weak knowledge of their rights and fear of stigma. This is compounded by malpractices by the police, medical staff and legal service providers; negative cultural attitudes towards victims of sexual violence and lack of effective legislation and policies relating to such offences.

Prior to 2006, gender-based violence was treated as a step child of the law. Offences were mostly considered as 'family matters'. The law enforcement arm of government that was expected to prosecute offenders preferred to allow those involved time to settle the matters amicably, thereby encouraging the vice and the tendency by people to treat most forms of gender violence as a lesser crimes. The judicial process allowed issues of morality to play a key role in supporting or disapproving a case of sexual violence.

The passing of the Sexual Offences Act 2006 (SOA) was seen as a major step in addressing some key forms of gender based violence. This Act came into force on 21<sup>st</sup> July 2006. Prior to its enactment, the law could not adequately deal with sexual violence. Various problems within the law complicated the process of justice for the victims, police and the judiciary. Such inadequacies included: recognition of only a few forms of sexual offences, limited and antiquated definitions of the offences legislated against, sentencing convicted offenders was at the discretion of the magistrates and judges – where in many cases punishment to the offenders did not match the crime, the strict requirement of corroboration to prove rape and other sexual offences and an absolute lack of provisions geared towards protection of survivors of sexual offences when reporting and prosecuting such crimes. This was more prejudicial to women who are the majority of sexual violence victims/survivors.

The aim of the Sexual Offences Act is “to make provisions about sexual offences, their definition, prevention, and protection of all persons from harm, unlawful sexual acts and connected purposes”. Also key is the fact that the Act defines sexual violence as crimes of violence and not of morality, therefore shifting focus of prosecution from the victim to the offender. The Act consolidates the laws on sexual offences in Kenya and makes provisions for new forms of sexual violence, including sexual violence against

men and boys. The Act recognises new forms of sexual offences, consolidates and expands the traditional sexual offences, requires the harmonisation of regulations where an offence is provided for in more than one act and harmonises inter-sectoral collaboration in the prevention, detection, prosecution and punishment of sexual offences. The Act domesticates specific provisions of the UNCEDAW, UNCRC and the ACRWC. It captures recent jurisprudence emanating from the ICTR and ICTY, which define rape and related offences as crimes against humanity. The Act allows for progressive practices in the investigation and prosecution of sexual violence by providing for collection of evidence of all forms by forensic experts that will be used in prosecuting offenders. In addition, the Act incorporates a new aspect of handling: survivors and perpetrators of sexual offences by providing for medical treatment and counseling, orders issued by the court where necessary and in instances where a person is predisposed to misuse of alcohol or drugs. The Act recognises the value of a multi-sectoral approach in handling sexual violence.

The implementation of the Act requires collaboration among the various stakeholders. The government's role is to see that the act is implemented in full and the offenders are prosecuted. NGO's have a role in advocacy, creating awareness, role and collaborating with various government departments to strengthen and complement treatment and rehabilitation programme. Civic education is part and parcel of the Act's implementation and includes changing attitudes and behaviors towards sexual offences inflicted on women, girls and boys.

Literature review indicates that the implementation of the SOA has experienced some challenges in Kenya. These challenges include, but are not limited to:

- Negative cultural attitudes towards women and fear/stigma making reporting of cases a daunting task (for both female and male victims).
- Apathy and delays in following the legal processes.
- Lack of knowledge (ignorance) among key implementers/workers and stakeholders on the act.
- Non-inclusion of the act in the curriculum and any trainings of the stakeholders.
- Lack of full implementation and understanding of the Act by the courts and prosecutors.
- Lack of understanding of the Act by the police.
- Limited resources, both human and financial to tackle sexual offences.
- Lack of proper equipment and experts in the investigation and prosecution of cases
- Weak coordination in the implementation of the Act.

In March 2007, the Hon. Attorney General officially set up a national Task Force on the implementation of the Act with a clear mandate to seek to overcome the above-mentioned challenges and oversee the Acts full implementation. The members of the task force were appointed from all sectors relevant to the implementation of the Act in Kenya. Members include representatives from Parliament, the Judiciary, the Children’s Department, the Gender Department, Ministry of Education, State Law Office, KNCHR, the Health sector and the Law sector including the Police, Prisons, Probation and select civil society organization among them FIDA Kenya, WILDAF, The CRADLE and CLAN.

The Task Force on the Implementation of the Sexual Offences Act, 2006 consists of 30 members with clear terms of reference as set out in Gazette Notice Number 2155 of 16<sup>th</sup> March 2007. The Task Force has a current mandate that expires on 31<sup>st</sup> December 2010.

## 1.4 Objective and Scope of the Research

The key objective of this research was to conduct an assessment on the implementation of the Sexual Offences Act and make recommendations where gaps have been identified. The research has highlighted and documented the conviction and acquittal rates of sexual offenders in two districts: Naivasha and Thika. The research’ focus is on the extent to which the Kenyan justice system has implemented the Sexual Offences Act, so as to gauge the degree to which it has performed its vital task of delivering justice to victims and survivors of sexual offences.

**To perform these tasks, the following actions were undertaken by the researchers. They:**

- Audited the National policy framework and guidelines for implementation and enforcement of Sexual Offences Act, 2006 to secure accessible and uniform treatment of sexual offenders.
- Documented, reviewed and analyzed judicial decisions on sexual offences in superior courts as well as subordinate courts.
- Analyzed the implementation and administration of the Sexual Offences Act on conviction and acquittal of sexual offenders.
- Proposed reforms and recommendations on the administration and implementation of the Sexual Offences Act on conviction and acquittal of sexual offenders.
- Assessed the gaps and strengths of the Sexual offences Act in addressing sexual offences.

## 1.5 Methodology

The research process was participatory, consultative and inclusive to ensure the widest possible blend of ideas and suggestions in making final recommendations. This was pursued through the following strategies:

- Discussing with diverse stakeholders, particularly the members of the Task Force on the implementation of the Act, who are a multi-sectoral representation of stakeholders, to get ideas, indicators of the need and experiences with the provisions of the Act.
- Studying the commitments, provisions and experiences within existing Government programs that offer support to the implementation of the Act.
- Perusing and analyzing court decisions to discern emergent trends in handling sexual offences.
- Using creativity, knowledge and skill to synthesize all the ideas, information and knowledge generated to develop a draft paper and propose action on the identified needs.
- Involving a wide range of stakeholders to generate the ideas, assist in the conceptualization, critique the report and its recommendations.

These strategies were implemented by applying a number of techniques including:

- Desk study of documents, plans, concept papers, strategies, guidelines and other relevant materials.
- Consultations and one on one interviews.
- Visits to court registries.
- Analysis of Law reports.
- Data analysis and compilation of the report.

## SECTION TWO: THE SEXUAL OFFENCES ACT

### 2.1 Positive aspects brought into play through the passing of the SOA

The Sexual Offences Act, 2006 was passed by the National Assembly on the 31<sup>st</sup> May, 2006. It received Presidential Assent on 14<sup>th</sup> of July 2006 and commenced operation on 21<sup>st</sup> July, 2006.

The Act was:

- (a) prompted by an increase in the frequency and severity of sexual violence against innocent members of society, especially children
- (b) conceived in order to bring our practice and legal framework in line with many other countries which have made efforts to treat sexual violence as a peculiar category of criminal offences
- (c) aimed at bringing sexual offences legislation up to date with modern morals, and to close loopholes in the law
- (d) product of a fairly broad consultative process. Some of the stakeholders consulted during the development of the Act included Members of Parliament, the Law Reform Commission, the Juvenile Justice Network, the Law Society of Kenya, FIDA-Kenya, Women and Law in Development in Africa and the Attorney General's office.

The Act domesticates the provisions of a number of conventions, including the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Convention on the Rights of the Child and the African Charter on the rights and Welfare of the Child.

The Act provides for a number of new offences and widens the scope and the definition of some of the offences previously provided for under the Penal Code. Some of the most significant provisions of the Act relate to:

- (a) **Deterrent and punitive sentences:** The sentences are punitive and deterrent and provide for minimum sentencing, thus leaving no room for judicial officers to hide behind the veil of discretion and pass lenient sentences to sexual offenders.
- (b) **Age of consent:** The Sexual Offences Act criminalizes sexual activity with and among persons Below the age of eighteen years.

- (c) **Corroboration:** The Act has reduced dependence on corroborative evidence in cases of sexual violence as far as prosecution is concerned.
- (d) **Protection of vulnerable witnesses:** The Sexual Offences Act seeks to protect certain witnesses whether being complainants or otherwise who are likely to be vulnerable by reason of age, intellectual or psychological/physical impairment, trauma, cultural differences, the possibility of intimidation, race, religion, language, the relationship of the witness with any party to the proceedings, nature of subject matter or any other factor that the court considers relevant. This ensures that crucial evidence is obtained from the witness in a manner that preserves the dignity of that witness.
- (e) **Proper investigations:** The Act regulates the collection and storing of forensic evidence related to sexual offences. It criminalizes intentional interference with a scene of crime or any evidence relating to the commission of a sexual offence. Interference in this case is defined to include interference with witnesses as well as acts or omissions that would hinder/obstruct investigations or materially misrepresent any evidence. The Act also exclusively reserves the power to discontinue investigations or prosecution of complaints of sexual offences by police officers to the Attorney General. The foresaid provisions ensure that investigation of sexual offences is done in such a manner as to provide evidence that is reliable in prosecution of sexual offenders. They also ensure that the police officers do not have room to distort evidence or terminate cases that would otherwise lead to the successful conviction of sexual offenders.
- (f) **Treatment and supervision of convicted sexual offenders:** Previous legislations focused mainly on the protection of victims through punishment of sexual offenders and did not adopt the approach of rehabilitation or supervision of those offenders. The Act provides that a court can make an order for treatment and professional counseling of a convicted sexual offender where it is satisfied that the convict is dependent or has propensity to misuse alcohol or any drug or is suffering from any other disorder and may benefit from treatment. The Act also empowers courts to order for supervision of dangerous sexual offenders where such person is given a custodial sentence without the option of a fine. A person may be declared a dangerous sexual offender if such a person has:
  - (i) More than one conviction for a sexual offence.
  - (ii) Been convicted of a sexual offence which was accompanied by violence or threats of violence; or
  - (iii) Been convicted of a sexual offence against a child.

The Act also requires that a convicted sexual offender discloses his/her conviction when applying for employment which places him in a position of authority or care of children or vulnerable persons. Failure to make such disclosure is a criminal offence. Further, the Act requires that the Registrar of the High Court maintains a register of convicted sexual offenders.

- (g) **Extra-territorial jurisdiction:** The Act confers jurisdiction on Kenyan courts over acts committed outside Kenya by citizens of Kenya or persons permanently residing in Kenya, where such acts would have constituted sexual offences in Kenya. However, such offenders may not be convicted of those offences where they have been acquitted or convicted of the same offences in the country where the offence was committed.

In addition the Sexual Offences Act makes provision for new offences not previously covered under Kenyan law which include the following:

- Rape of male persons.
- Sexual assault.
- Compulsion or inducement of another to engage in indecent act.
- Defilement of male children.
- Gang rape.
- Child trafficking for sexual purposes, child sex tourism, child prostitution, child pornography.
- Trafficking of persons for sexual exploitation.
- Sexual harassment.
- Sexual offences relating to persons in position of authority or trust.
- Willful infection of other persons with HIV or other life threatening sexually transmitted diseases.
- Forcing a person to engage in a sexual act for cultural or religious reasons.
- Interference with crime scenes or evidence of sexual offences.

## 2.2 Benefits seen with the passing of the Act; Perspective of the Thika Focus Group Discussion

- Number of defilement cases in hospitals has reduced. This has been observed by those working within the hospitals.
- More women are reporting cases of violence to the hospital, mainly of domestic and by intimate partners, that have resulted in sexual abuse and violence.
- Most courts conduct cases ‘in camera’ and this has increased confidence in the court system, so more victims/survivors are willing to go report cases.
- Some awareness has been created on the procedures to take if raped and this has improved prosecution of sexual violence, as more people present to police stations with well preserved evidence.
- Police stations have introduced gender desks which handle such cases. This has improved prosecution because the victims/survivors are less threatened by the reporting procedures.
- Medical personnel handling survivors take care of the psychological welfare of the child victims/survivors, this encourages more children to report.
- Severe sentences act as deterrents. The probation workers have noted that those they deal with are desperate not to be convicted of sexual violence, as they fear they will end up incarceration for long periods of time.
- Pregnancy among minors has reduced.
- Cases/incidences of teachers having sexual relations with their students are in the decline.
- Sexual harassment in the workplace has reduced particularly within the police stations where new female officers were greatly harassed.

## 2.3 Benefits seen with the passing of the Act: Perspective of the Naivasha Focus Group Discussion

- 19 and 20 year olds who are still schooling are engaging in sexual relations with girls of about 16 or 17 years are jailed when arrested. Sexual activities within this young age are on the decline because of these arrests.
- More people are opening up about rape incidences and talking about it, as they realize there is no shame and they are not to blame.
- Many offenders have been imprisoned since the passing of the Sexual Offences Act.
- Men have slightly changed their perspective about women being largely sexual organs, and now address their female counterparts more respectfully. They are fearful of committing sexual crimes lest they are prosecuted and convicted of a sexual offence.
- Managers/Administrators/Supervisors referred to generally as 'Bosses' have realized that sexual harassment is an offence, and sex for favors or for employment is wrong. This has reduced such incidences in the flower farms.
- Police are more receptive to reports from women on sexual related crimes, this has encouraged reporting of such cases.
- More reports are emerging about rape because people's awareness has increased.
- The all inclusiveness of the SOA awareness to include even religious denominations e.g. Muslims has helped increase awareness of the SOA and reduce sexual crimes.
- The number of cases that get convictions when subjected to the court system has increased, this is encouraging particularly to new survivors/ victims of the offences.
- More convicts of incest cases are in prisons. This has been attributed to the wider definition of incest in the Act and peoples resolve to report cases notwithstanding family relationships and concerns.
- A high proportion of the inmates in Naivasha maximum prison is of sexual offence offenders.

- The Act allows a person with mental disabilities to give evidence, this has enabled the prosecution of such cases (sexual violence against persons with mental disabilities).
- The minimum sentences (which are often high and/or punitive) have acted as a deterrent particularly in defilement cases.
- Gender desks have been set up at Police Stations and has enhanced the reporting of cases.
- FIDA-Kenya awareness programs on Sexual Offences Act has helped to create the awareness on the Act.

## 2.4 Gaps in the Act

- The Act does not adequately heed Article 39 of CRC which requires party states to make provision for rehabilitation of children who are victims of sexual abuse. There is inadequate focus on this beyond a mention of provision to be made for treatment orders granted for victims of sexual offences.
- The Act has not made any mention of situations where a Kenyan child is abused by a non-Kenya person who is not resident in Kenya and the offence is committed outside Kenya. Article 4 of OPC requires party states to try and establish such jurisdiction in their law, so as to protect their children.
- The Act has no provisions on international mutual assistance in dealing with sexual crimes against children in terms of Article 6 of OPC. In the absence of such provisions, the international mutual assistance (if any) becomes a matter of treaty and bilateral arrangements or the vagaries of executive fiat. The best interests of the child are best served if this is written in statute.
- Similarly, Article 5 of OPC requires party states, by their law, to make sexual offences against children to be extraditable offences. This has not been done. It can be done by amendment to the extradition Acts. Otherwise again, as with international mutual assistance, this serious matter is left to oscillate according to the squalls of treaties and political realities. Our children will be the losers.
- Section 38 transgresses the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the

Child, both of which Kenya has ratified. Section 38 violates Kenya's Children Act, which was in force at the time of enactment of the Sexual Offences Act. Finally, Section 38 goes against the common law principles of fairness and equity.

## 2.5 Gaps identified in the Thika Focus Group Discussions

- Sexual violence within subsisting marriages is not covered under the Act.
- Sexual offences should not be bailable. Bail terms and conditions should be high and difficult to provide easily.
- Teachers who commit sexual offences are not dealt with harshly as prescribed under the Act by the TSC. This lack of clear disciplinary policy within the teaching profession does not bode well for children. The Act should make specific reference to teachers who sexually abuse their students/pupils.
- Training on issues of sexuality and character particularly during formal schooling should be incorporated into the curriculum.

## 2.6 Gaps identified in the Naivasha Focus Group Discussions

- In cases where very old persons are the victims, and the offenders are found guilty, they should be given stiff minimum sentences.
- The Act should encourage coordination of all the relevant sectors involved in prosecution/handling of sexual violence for effectiveness.
- The Act should establish a Legal Aid scheme for victims/survivors who often feel defeated when the accused engages the services of a lawyer.
- The negative impact of highlighting cases of sexual violence in the media should be addressed (punitive damages against the media) in the Act.

## SECTION THREE: IMPLEMENTATION OF THE SOA PART I

### 3.1 Task Force on the Implementation of the Sexual Offences Act (TFISOA)

**T**he Honorable Attorney General, as the responsible Minister under the Sexual Offences Act, set up the 'Task Force on the Implementation of the Sexual Offences Act to oversee the application of the Act. The Task Force is chaired by Hon. (Rtd) Lady Justice Effie Owuor, consists of 30 members and has clear terms of reference as set out in the Gazette Notice Number 2155 of 16<sup>th</sup> March 2007. It is thus important to assess the extent to which this multi-sectoral structure has been able to oversee the full implementation of the Act.

#### **The key activities that the Task Force aimed to implement are:**

1. Develop National Policy Framework and Guidelines for the implementation & administration of Sexual Offences Act, 2006.
2. Develop Regulations for the implementation of the Sexual Offences Act, 2006.
3. Put in place Policies and Measures for the protection, treatment and care of victims of sexual violence and treatment, supervision and rehabilitation of sexual offenders.
4. Develop an Inter-Sectoral National Action Plan and Coordinating Framework to promote, monitor and evaluate the effective implementation of the Act.
5. Audit and review all existing policies, laws, regulations, practices and customs relating to sexual offences and make recommendations for the modification, amendment or abolition where necessary, so as to be consistent with the provisions of the Act.
7. Implement public education, awareness and sensitization programmes and campaigns on the mandate of the Task Force to promote the objects of the Act.

The Current Mandate of the task force expires on 31<sup>st</sup> December 2010.

## National policy Framework & guidelines for administration of sexual violence

The final document by the Task Force is expected by 1<sup>st</sup> August 2010 which will be presented to the Hon. AG for tabling in the cabinet.

Other than the drafting of Regulations for the Act, another key project that the same Task Force has undertaken is the development of the national policy framework and guidelines for administration of the Act.

The policy is developed pursuant to the Terms of Reference in Gazette Notice No. 2155 – ***‘Task Force on Implementation of Sexual Offences Act, 2006 No. 3 of 2006’*** appointed by the Attorney General on 16<sup>th</sup> March, 2007. Specifically this policy falls under section (a) of the Terms of Reference of the Task Force which mandates the Task Force to develop a national policy framework and guidelines for the administration of the Sexual Offences Act and also section (d) which requires the development of an inter-sectoral National Action plan and coordinating framework to promote, monitor and evaluate the effective implementation of the Act within the Republic of Kenya. The Policy sets out to address broad areas namely:

1. It defines an environmental landscape within which sexual offences are committed and a platform of action for public officers (defined in the policy according to the Act) involved in the administration of the Act.
2. While the Act clearly defines the penalties involved in every offence, the policy presents circumstances, triggers and offers a broad based knowledge horizon on sexual offences for the administrators of the Act, aimed at largely promoting prevention and curbing the growth of sexual offences in Kenya.
3. It is an inter-sectoral policy which is intended to harmonize all sectors together through a common work plan and monitoring and evaluation framework.
4. It proposes the establishment of a coordinating body under a Director who will manage the Secretariat and the interlocutors in the sectors covered under it including the State Law Office, Judiciary, Police, Prisons, Probation, Health, Education, Children’s Department, Public Administration, Gender Commission, Civil Society and Private Sector.

**D**evelopment policies do not affect Kenyans uniformly. Women and girls constitute 50% of Kenya's population, but majority of them are among the most illiterate and poor in the country. A number are still affected by customary law and practices which have for long perpetuated their oppression. In order for the Government to spur economic growth and thereby reduce poverty and unemployment amongst women, men, boys and girls across economic, social and cultural lines, as outlined in the Vision 2030 (Vision 2030 MTP 2008-2012:117), the policy is one of the measures intended to contribute to the attainment of this vision. Unlike other offences where physical compensation through fines or custodial sentences may recompense the victim, sexual offences leave a permanent and long term scar on the victims, their families and by extension entire communities.

The need for a National Policy and Guidelines on the Administration of sexual offences became compellingly necessary. For an effective implementation of the SOA, a coherent and comprehensive overall policy framework is necessary to guide the different sectors and agencies involved in the administration and management of sexual offences. To this end, the National Policy and Guidelines proposes concrete steps, institutional mechanisms, monitoring and evaluation. The policy underpins specific measures that are sufficient for effective implementation of the Sexual Offences Act. Further, it reflects and builds upon past experiences and commitment of the Government, Civil Society Organizations including Religious Organizations and Development Partners to the need for such a policy.

The level of disconnections that currently exist amongst sectors dealing with administration and management of sexual offences process dictates the need for a coordinated administration of justice in cases of sexual offences as a prerequisite to ensuring that both victims and perpetrators of sexual violence receive fair treatment. In this regard, a thorough and elaborate investigation which is well coordinated, professional and ethically executed that leads to irrefutable evidence able to support a strong prosecution, is critical if justice has to be attained.

The police and medical personnel handling sexual offences have been a weak link in the chain of justice. Sexual offences being sensitive require specially trained personnel to handle both victims and perpetrators to preserve and present evidence. Victims and complainants should equally be handled humanely when they report offences or seek medical attention as they require support throughout the whole process.

Some police officers who have received specialized training on management and investigation of sexual offences, due to staff deployment policy, are often redeployed to other departments where the acquired skills become redundant. Overcoming this problem requires frequent training and retraining.

Medical personnel especially those manning peripheral health institutions where majority of sexual offence victims seek medical attention are equally limited in terms of facilities to provide comprehensive management of sexual victims and their perpetrators. Facilities to collect and preserve evidence are largely lacking. There is for instance, only one Nairobi based DNA laboratory in the country. All specimens have to be transported to this single laboratory. With the limited infrastructure and resources, most DNA materials deteriorate and are rendered poor in quality and unhelpful as evidence in a court of law.

Prosecution cases involving sexual offences are often dismissed due to poor investigations and lack of sufficient and supporting evidence. Justice is also often delayed due to frequent adjournment of the court proceedings and the absence of first hand witnesses such as the victims. In other cases, the doctor and relatives or guardians fail to appear before the courts. In other instances, victims are prevailed upon by the family or local administration to drop their cases and accept compensation from the offenders. Traditional and community laws prevail as the first point in recourse.

The overall objective of the National Policy and Guidelines on the Administration of Sexual offences Act is to facilitate a coordinated resource intensive approach in addressing sexual offences covering the following sectors and cross cutting issues:

- Justice and Governance.
- Social Sector: Health, Education and Training.
- Livelihood, Security and Poverty.
- Cross Cutting Issues.
- In built in the policy is the Implementation Framework and Resource Mobilization.

## **The Inter-Sectoral National Action Plan and Matrix**

This document is being developed alongside the national policy.

## **Regulations for the SOA**

Two sets of regulations (DNA data bank and general) have been published by the Hon. AG and are now part of the law. The Regulations on medical treatment orders are yet to be gazetted.

## Sexual Offences (Dangerous Offenders DNA Data Bank) Regulations

Key terms that have been defined under this include:

- ‘DNA data bank’ means the Dangerous Offenders DNA Data Bank established under section 3 of these Regulations
- ‘dangerous offender’ is a person declared as such under section 39 of the Act
- ‘the Act’ means the Sexual Offences Act, 2006
- ‘director’ means Director, Criminal Investigations Department
- ‘the Minister’ means the Attorney General of the Republic of Kenya
- ‘designated person’ includes a nurse registered under section 12(1) of the Nurses Act, Cap 257, Laws of Kenya; or a clinical officer registered under section 7 of the Clinical Officers (Training, Registration and Licensing) Act, Cap 260, Laws of Kenya.
- ‘medical practitioner’ is a medical practitioner registered in accordance with section 6 of the Medical Practitioners and Dentist Act, Cap 253, Laws of Kenya.

### Dangerous Offenders DNA Data Bank

The Director, Criminal Investigations Department, shall, for criminal identification purposes, establish and maintain a dangerous offenders DNA data bank, consisting of a crime scene index and dangerous offenders’ index.

The crime scene index shall contain DNA profiles (samples) derived from bodily substances that are found:

- at any place where a sexual offence was committed,
- on or within the body of the victim of a sexual offence,
- on anything worn or carried by the victim at the time when a sexual offence was committed,
- on or within the body of any person or thing or at any place associated with the commission of a sexual offence.

DNA data bank shall also contain, in relation to each of the profiles (samples), information from which can be established:

- in the case of a sample in the crime scene index, the case number of the investigation associated with the bodily substances from which the sample was taken,
- in the case of a sample in the dangerous offenders index, the identity of the person from whose bodily substance the sample was derived,
- procedures

Also outlined in the Regulations is the procedure that the Director of Criminal Investigations shall take when:

- the DNA samples are found to belong to a person whose details are already in the data bank,
- in regard to cross border investigations of sexual offences

## **Restrictions**

The Regulations also set out restrictions with regard to the use and access of the data bank. These include:

- The fact that no person who receives a DNA profile for entry in the dangerous offenders DNA data bank shall use it or allow it to be used other than for the purposes of the administration of the Act.
- No person shall, except in accordance with these regulations, communicate or allow to be communicated a DNA profile that is contained in the DNA data bank or any other related information.

## **Handling of samples**

The Regulations also set out procedures for transportation, storage and destruction of samples

## **Sexual Offences Regulations, 2008 (General)**

The key terms defined under these General Regulations include:

- ‘the Act’ means the Sexual Offences Act, Chapter 3, 2006
- ‘the Minister’ means the Attorney General of the Republic of Kenya
- ‘Prohibited Publications Review Board’ is the Board established under Section 53(3) of the Penal Code, Chapter 63, Laws of Kenya

The Regulations prescribe circumstances under which the court can enhance sentence. These include:

- The number of times the perpetrator of the offence has committed the Offence.
- The age of the victim(s) of the sexual offence.
- The age of the perpetrator(s) of the sexual offence.
- The victim impact statements adduced in accordance with section 33(b) of the Act.
- Whether force was used.
- Prior criminal history.

### **Other General Regulations developed include:**

- Classifying prohibited publications.
- Classifying designated persons and medical practitioners.
- Establishing the Register of Offenders.
- Victim impact statements.

## **Sexual Offences (Medical Treatment) Regulations, 2008**

(Awaiting Publication in the Official Kenya Gazette)

The Regulations outline the procedure that police officers must adopt when a sexual offence survivor reports to the station. The Regulations also introduce Form PRC1. This form is a comprehensive recording tool that will be used at all hospitals and any health facility.

## **Audit of Laws Policies, Customs & Practices that impact on the administration of the Act**

This remains an unfunded activity.

### **Amendment of the SOA**

A first working draft document has been drafted but is yet to be validated.

## **Other relevant aspects requiring amendment for full effect of the Act**

### **Sections 3, 4 and 5: Enhancement**

**T**he provisions of the Sexual Offences Act on enhancement of sentences need further clarification and/or amendment. Most magistrates do not have the jurisdiction to sentence people for life yet they try defilement cases involving children below 11 years. Related provisions of section 357 of the CPC provides that the High Court cannot enhance a sentence to mete out that is higher than the trial court had jurisdiction to award. A cursory reading of the provisions on enhancement under the SOA does not clearly define who is to enhance the sentence, is it the court of first instance or the High Court. There is therefore need to re-look at the aspect of enhancement of sentences viz a viz the CPC.

### **Section 5: Sexual Assault**

Sexual assault as provided under Section 5 of the SOA needs some amendment/clarification. The ingredients of the offence can be misleading as the term unlawful is not defined.

### **Section 8: Criminal liability in cases of defilement**

There is need to set age limits (on criminal liability) in cases of defilement so as to cater for instances involving two minors under circumstances where it is difficult to determine who the aggressor was.

## **Section 11: Indecent act**

The definition of indecent act as provided in the SOA is not clear and this directly imparts prosecution under the charge of indecent assault. The definition therefore needs to be amended for better impact.

## **Sections 26 & 36: Deliberate transmission of HIV or any other life threatening STI and Evidence of medical, forensic and scientific nature**

The provisions of these sections be amended for clarity as they make the court have conflicting roles to play in issues concerning evidence.

## **Section 31 (4) (b): Intermediaries**

The issue of intermediaries is new and needs further legislation and/or clear rules to guide its implementation. The rules must be drafted bearing in mind the provisions of the Constitution and the Evidence Act.

## **Section 36: Evidence of medical or forensic nature**

Under Section 36 of the Act, there is need to state that the medical examination can be conducted by medical practioners including clinical officers.

# **Relevant issues to note**

## **Abduction**

In addition the offence must also be included in the SOA to cater for instances of abduction for sexual purposes.

## **The Penal Code**

There is need for amendment to re-introduce the offence of Abduction.

## **The Traffic Act**

There is need for amendment to provide for offences and penalty in instances of public service vehicles that display pornographic pictures and videos.

## Confessions

The AG should make Rules indicating at what stage a confession should be taken and who should record or take such confessions.

## Position Paper on One Stop Units for Survivors of Gender Violence (SGBV)

Has been completed and adopted by the Task Force.

## Locating one stop centers

In setting up a one stop unit for sexual violence survivors, reference must be had to the following:

- **Prevalence rates in the target area.** Adequate statistics must provide information on the numbers and order of frequency. It would not for example be suitable to establish such a unit within an area which supports all other criterion but where the more common forms of violence are physical assault.
- **Nature of prevalence** (child or adult survivors). It is important to segregate the data to establish the ratio of adult as well as numbers child numbers. It would be a waste of resources to set up a unit that emphasizes on child support when majority of the cases in the region involve adults.
- **Proximity to police stations and posts.** The unit must be able to serve at least one big/busy police station or a smaller/less busy station and a number of police posts.
- **Proximity to other reference points.** The one stop unit must be situated in a place which offers quick reference point to other service providers. Hence the popularity of targeting hospitals as location points.
- **Population of geographical coverage areas.** The unit must be central to a large enough or proportionate area.
- **The sex of the majority of the victims.** For example, men/boys will have specific needs as compared to women/girls. Thus, this must be established to ensure that the correct staff and support programs are developed.

## Recommendations

**T**he One Stop Survivor support Center in Kenya is “a system rather than a place”. SGBV services are currently offered under the health system where health, medical and psychological needs are attended to. In order to complete the One Stop Center requirements, there is need to bring in police and judicial services, which are under different roofs. A system must be created for the co-ordination between these services as it may not always be feasible to bring these services under one roof.

The creation of just one model unit is not recommended because even if one model center was created, it could not be replicated fast enough to respond to the escalating SGBV crisis through-out the country. It is therefore recommended that the existing services be improved through the creation of a referral system that will link all these services and build their capacities to collectively offer comprehensive and better co-ordinated survivor support services.

The GVRC at Nairobi Women’s Hospital, Kenyatta National and Kitale District Hospital are the closest to complete models that can be used as homegrown Kenyan solutions. The gaps in these facilities can be bridged in the next two years to create models for others to emulate. Similar foundations exist at the Coast General Hospital, Naivasha, Taita Taveta, Karen, Nyeri, Thika, Moi Referral Hospital and other public hospitals where this service was introduced by the Ministry of Health in 2004. TFISOA should use its influence to get the necessary resources so that these facilities can build on and improve what they already have.

In all the existing facilities, the challenge lies in the inclusion of the other partners in the four pillar framework and particularly to strengthen the links with police and legal pillars, which in all cases is the most challenging. The TIFSOA should use its comparative advantage to improve the legal and security pillars, including the development of standards of procedure so that the identified gaps can be bridged.

The National Framework on Gender Based Violence (NFGBV), which was launched in the Year 2009 spells out the requirements for offering comprehensive support services to the survivors of violence. It was developed under the National Commission on Gender and Development, which is also a member of the TFISOA, with the collaboration of all the stakeholders and given to the Ministry of Gender for implementation. There is a National Plan of Action under preparation and TFISOA

should use its influence to advocate with the Treasury for the allocation of the necessary resources for the National Plan of Action.

The needs of children, both female and male, as well as adults with special needs such as disability in mental capacity, hearing and sight should be given special attention. The Ministry of Education is a key player in the protection, prevention and provision of survivor support services and must be brought into the inter-agency team as a matter of great urgency.

There is urgent need to establish a structured co-ordinating machinery to bring together the various initiatives. This is the urgent task ahead of the SGBV partners and the TFISOA can take the initiative to a higher notch by bringing all the players together to see how the implementation can be expedited. Members of the TFISOA come from the line ministries that developed the National Framework and the National Plan of Action. They should liaise with colleagues who were involved in this process to co-ordinate their efforts.

The Reproductive Health Division of the Ministry of Health developed the National Guidelines for the Management of Rape/Sexual violence back in 2004. These guidelines were introduced to the health system and are operating in several hospitals. The major challenge is to build the capacities of all health personnel to deal with issues of SGBV, so that survivors can receive care at all health centers, as is the case with HIV/AIDS, family planning and reproductive health services for the youth. The TFSOA should therefore use its influence to increase resource allocation for the Ministry of Health to increase the numbers of staff who are sensitised and trained to provide SGBV survivor support. The national guidelines are accompanied by the tools for gathering critical data and these should be made available in all health facilities.

The Kenyatta National Hospital GVRC has embarked on a programme to train sexual assault forensic examiners (SAFE) with the support of USAID. The TFISOA should request an expansion of this initiative to train a critical mass of SAFE and to ensure that in the short term, the four pillar teams operating around some selected health facilities have among them trained SAFE, including health and police personnel. This training has also been extended to the police officers in selected areas, but a lot more needs to be done.

The greatest challenge identified is safe-guarding the rights of survivors to be treated with fairness, respect, dignity and privacy. Outside the health facilities, the survivors need to be reasonably protected from the accused offender; assisted with the court processes including legal counsel and representation, and supported economically so that they can pursue justice to its conclusion. This remains the greatest challenge and the TFISOA is the best placed to tackle it. Chiefs and administrative officers should

be brought into the four pillar umbrella, trained and mandated to protect survivors. Magistrates and prosecutors need training and sensitisation so that they can join the survivor support system. Funds should be allocated for supporting the very needy survivors since many of them give up on the cases for lack of resources.

Every survivor support system should have an outreach programme in the areas that have the highest prevalence of violence. The outreach programme should include safe havens where female and male survivors can get emergency help, safety and security before referral to higher service facilities. The out-reach programme should include a community education and sensitisation programme to stop violence, support survivors, address the needs of perpetrators and generally create a culture of zero tolerance to violence. All OSC must have toll free support help lines for emergency calls and responses.

The out-reach programme must include strategies for working with men in general and also targeting perpetrators of violence with the objective of finding the root causes of sexual and gender based violence, understanding the relationship between flawed masculinities and the prevalence of sexual and gender based violence and seeking homegrown solutions to transform their behavior and promote the culture of respect for human rights of females and males.

The TFSA must address the challenge of the placement of a police officer at all GVRM centres and the availability of DNA machines for analysis of samples from all One Stop Centers. These challenges should be tackled in the immediate follow-up programme and planned as part of the long term programme for all OSP.

The medical costs associated with SGBV survivor support care are very high. The TFSA should embark on advocacy work to ensure the financing. The TFSA should spearhead an emergency preparedness programme to deal with any eventualities that may arise. The inter-ministerial programmes that were initiated in the 2007/2008 crisis must remain active and used as a model for ensuring preparedness in all areas. Funding should be set aside to train and facilitate inter-agency co-ordinated teams as part of the OSC system.

## **Rules of the Court**

The Sexual Offences Act introduced new progressive legal orders and procedures and the Rules of Court will address these while guiding the court on application of such new procedures. These include:

- Appointment of support persons during court procedures.

- Taking of evidence of vulnerable witness.
- Special measures applicable in instances of intimidated witness.
- Special arrangements for vulnerable witnesses.
- Application for special arrangements.
- Denial of special arrangements.
- Reporting restrictions applicable to the media.
- Application to hold hearing *in camera*.
- Court's power to admit evidence taken in earlier proceedings.
- Examination during trial.
- Evidence given outside the courtroom.
- Audiovisual record of evidence of vulnerable witness.
- Exception to rule against hearsay evidence.
- Determination of vulnerable witness of use of special arrangements.
- Evidence in chief in the form of a prior statement.
- Reports of identification prior to trial.
- Power to prohibit personal conduct of defence.
- Register of sexual offenders.

## PART II

### 3.2 Towards Implementing the Act

The implementation of the Act requires a multi-sectoral approach by the wider justice system; which includes the following: the Judiciary, Department of Public Prosecution, Police, Prisons, Probation and Aftercare, Provincial Administration and for purposes of the SOA, the Health, Government Chemist. With the coming into force of the SOA the legal and justice sector were required to take steps that would facilitate the implementation of the Act. These steps include:

STEP	STATUS
o Identify areas under the SOA that require the Chief Justice to make rules/guidelines for procedure	o The Judiciary is yet to come together and do this, although the Chief Justice has commissioned the Task Force to develop a first draft for their input/adoption
o Develop and implement training programs for judicial officers on the Act, Rules and Regulations	o The Judicial Training Institute is operational; however a curriculum for the institute that will guide career progression is yet to be developed.
o Develop Rules and Guidelines on provision of witness protection boxes (structures, measurements, dimensions and how and when they should be constructed	o Develop Rules and Guidelines on provision of witness protection boxes (structures, measurements, dimensions and how and when they should be constructed
o Design procedure to allow for speedy hearing and determination of cases involving sexual offences	o There is need for the judiciary to establish the number of cases under the Act- this will guide the development of specific procedures to address the backlog and taking into account the specific circumstances around such cases (trauma of witnesses etc)
o Develop and put in place a pilot project Register of Offenders as established under the Regulations for the SOA	o The judiciary is yet to operationalize these Regulations that require the establishment of Register of Offenders

o Produce Reports on progress of filed cases involving sexual offences	
o Develop a curriculum on the Act for inclusion in the Education Sector	o The education sector- through the support of CREAM was able to undertake an audit of its ability to implement the Act. o The work on the curriculum is yet to be undertaken.
o Develop training programs on the SOA for Prosecutors, Police, Lawyers, Health workers and members of the Provincial Administration	o Training manuals have been developed and sporadic training programs implemented by different stakeholders
o Develop IEC material and literature on the SOA	o Need for more IEC material
o Develop a policy for the establishment of safe houses for survivors of sexual violence	o Not developed as yet
o Undertake activities that will assess progress towards full implementation of the SOA (e.g. court cases, articles, areas for amendment..)	o Unfulfilled
o Undertake general awareness activities on the objects of the Act, Rules and Regulations	o Unfulfilled
o Set up a specific unit within the DPP to deal with and handle cases under the SOA	o In place but in need of additional support in order to be better equipped.
o Amend the Police training curriculum to incorporate provisions of the SOA	o In progress
o Develop specimen charges and disseminate to all police stations	o Developed, need for wider dissemination including to judiciary and lawyers
o Operationalise establishment of the data bank within the Police CID	o Not yet operational
o Develop a training program on the use of forensic science for nurses, clinical officers and police	o Not yet operational
o Develop and adopt crime scene kits for use in prosecution of sexual offences	o Not yet operational

o Implement the training programs for Prosecutors, Police and Nurses	o Not yet operational
o Develop rules and guidelines on classification of offenders	o Not yet operational
o Develop Rules and Guidelines on pre-release procedures for both adults and juveniles	o Not yet operational
o Develop Rules and Guidelines on addressing sexual offences occurring within the prison setting	o In progress
o Develop a training program on the SOA for prison, probation and welfare officers	o Not yet operational
o Develop and adopt Probation and Aftercare Policy for sexual offenders and survivors of sexual violence	o Not yet operational
o Conduct research and studies on the nature and extent of sexual violence against children	o Not realized
o Develop and adopt training programs to address violence against children particularly commercial sexual exploitation and child trafficking	o Not realized
o Develop and adopt Rules and guidelines to guide the process of identification, collection, protection and storage of samples under Sections 26, 35 and 36 of the Act	o Not operational
o Develop and adopt Guidelines for the treatment & rehabilitation of sexual offenders	o Not operational
o Develop and adopt Guidelines for identification and preparation of facilities for treatment of sexual offenders	o Not operational
o Develop and adopt Guidelines for the mode of recording relevant information including in instances of HIV & AIDS	o Not operational
o Revise and update, Operationalize and disseminate form PRC <sub>1</sub> to medical facilities throughout the country	o In progress
o Develop training programs for health personnel on the Act, Rules, Regulations and Guidelines	o Not operational

## Impediments to the Implementation of the Act Identified at the Study Focus Areas

The Implementation of the Act has seen a number of challenges. The group discussions identified a number of such challenges.

### THIKA

#### Challenges to the Implementation/impact of the Act and or to Impact of the Act

- There is need for more awareness on the Act, as many people do not know what it states.
- More false claims are arising under the Act, as they want to subject them to harassment.
- The faith leaders who propagate the vice hide behind the cloak of religion.
- Financial constraints hence people cannot get lawyers to assist their cases and they finally lose.
- Fear of the unknown leads many to not wanting to engage the Act.
- Witnesses are lax in reporting and this makes it more difficult to prosecute cases.
- People interfere with witnesses and make them lax to report.
- When cases go to court, they are not given the urgency they deserve and the more they delay the more likely the witnesses (particularly children) are to forget the details and thus make poor witnesses and affect prosecution. More magistrates specialized in dealing with children matters need to be deployed in the region.
- The media poses a challenge to morality particularly when handling children who are exposed to a lot of sexually explicit material and information, thus grooming them into sexual engagement.
- Slackness within the parents and guardians leads to children being left on their own and this coupled with peer influence leads to sexually active children.

### Challenges to the Implementation/impact of the Act

- Need for more awareness; there has not been adequate awareness creation on the provisions of the Act
- Need for simplified information material on the Act
- Need for streamlining of all aspects during investigations so that it can build up to a strong case. For example, noting that a child was defiled and not raped so that a P3 will stand in court.
- 'Poverty' offers a challenge to the success of the Act as parents withdraw cases when offenders offer them monies.
- People are hesitant to report cases because the court processes are slow and time consuming.
- People are hesitant to engage the court system because of corruption.
- Mishandling of evidence by the members of the public makes prosecution of the cases more difficult.
- Distance to court and the cost of transport may prove prohibitory to successful prosecution of cases.
- Interference by family members in cases of incest hinders good prosecution.
- Many cases in court concerning sexual relations between children and their parents. They both complain about reporting the incidences.
- Culture offers deterrence to successful implementation of the Act as people hide behind their practices and traditions when confronted with the law.
- Stigma is a challenge for persons with disabilities as the parents do not want their children to suffer double stigma.
- The need for human mind readers and interpreters to assist the victims of sexual violence in court subsists.
- When the offender is a person working with the security/justice sector, they receive bad reception when engaging with the justice system.
- There is need to handle survivors/victims with care and not forget that they are traumatized, as this causes them to engage even better with the justice system.

- The filling of the P3 is paid for in practice at the medical centres.
- Abduction and compromising of victims to sabotage the court process is prevalent.
- Time taken to prosecute cases in court can lead to fatigue, thus people stop prosecuting cases.
- Victims/survivors seem to be forgotten after the offender has been arrested.

# SECTION FOUR: COURT CASE TRENDS ANALYSIS

This section offers an overview of trends emerging in cases of sexual violence. The trends cover the period just before the passing of the Act and immediately after the Act came into force. Focus has been made on two districts, Thika and Naivasha, both of which have been reported as having high cases/incidences of sexual violence.

## 4.1 Court Register – Thika Sexual Offences Related Cases For the Period 2005-2009

### Summary

Status	No. of cases	%
Discharged	5	7
Acquitted	21	31
Withdrawn	9	13
Terminated	2	3
Sentenced	13	19
Pending before court (PBC)	17	25
Total no. of cases	67	100

### Key observation

The review of register covered the period 2005 to date, however the registers for 2006 and 2008 were not availed as they were being used in the courts on some urgent matters.

The overall observation on the cases reviewed to date paint a gloomy picture as far as the successful prosecution of sexual offences cases is concerned. A good percentage of the cases have failed to deliver a sentence. 7% of the cases have been discharged and 31% of the cases have seen the defendants being acquitted for various reasons such as lack of sufficient evidence. The pending cases represent 25% of the cases reviewed. The majority of the pending cases are relatively current. It is important to

note that these percentages could have been different if the missing registers were availed.

The success rate is at a low of 25% and even then, the sentences are not as punitive as expected and there is need to review the actual court files to ascertain the main reasons as the trend is worrying. Access to the files however was not possible.

## 4.2 Court Register-Naivasha (Sexual Offences Related Cases For Period 2005-2009)

### Summary

A review of the court covering the period 2005 to date for sexual offences related cases indicated the following:-

A total of 132 cases were registered as sexual related offences and the majority of these cases were found to be defilement and or attempted defilement. The cases were at various stages as follows:

Status	No. of cases	%
Discharged	8	6
Acquitted	28	21
Withdrawn	3	2
Files closed	1	1
W/arrest	3	2
Sentenced	14	11
Pending before court (PBC)	75	57
Total no. of cases	132	100

### Key Observations

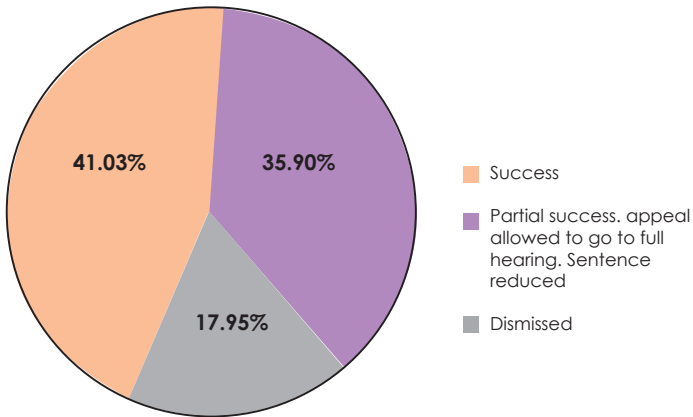
1. The majority of the cases are yet to be conclude, and thus a high percentage comprise the category of cases pending before court. A large proportion of these pending cases are recent cases i.e. filed in 2010. however there are a number of cases that date as far back as 2005, which are yet to be

concluded and the majority of the suspects are out on bond. [During the focus group discussions it emerged that the victims who happen to reside in the same locality with such accused persons who are out on bond tend to feel that there is no justice]. It is also noted that as the majority of the cases are for defilement, the memory capacity of the victims is bound to play negatively with the passing of time and this could work against a successful prosecution.

2. The case trend could be indicative that defilement cases are prevalent in the region and may be on the rise. Secondly the observations during the focus group discussions observed that the enactment of the SOA has created awareness amongst the community and the crimes against children are now being reported and action being taken appears to find support.
3. It would be important to find out from the other sectors of the justice system (such as the police and doctors) whether rape cases are reported there and why these do not (if reported) find their way into the judicial system. In addition, the fact that no other crimes under the Act e.g. sexual harassments are being reported and charges brought to court, would also need to be established.
4. The success rate in the prosecution of sexual offences is relatively low. Only 11% of the cases reviewed have been successfully prosecuted and even in these cases, apart from the two cases where the accused received a long term sentence, the majority of the cases resulted in relatively lighter sentences being awarded e.g.10 years for defilement, suspended sentences and probation. However it should be noted that some of the cases were filed under the old provisions in the Penal Code before the coming into effect of the SOA.
5. The number of acquittals for lack of sufficient evidence or defective charge sheets is relatively high at 21%. There is need for more training and coordination by the various stakeholders i.e. police, children department, hospital the state law office to ensure that the charge sheets are properly prepared and proper evidence obtained prior to filing the case in court.

## 4.3 Sexual Offences Appeal Cases (Kenya Law Reports)

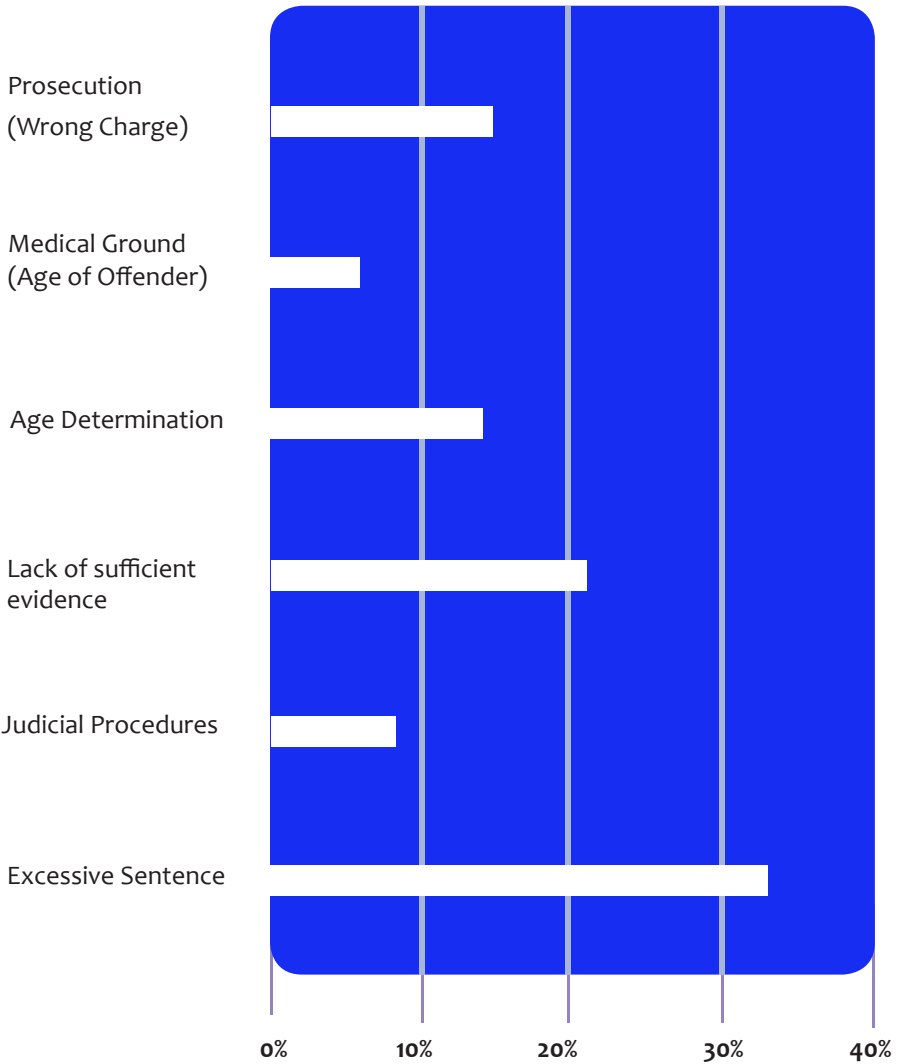
### Judgement



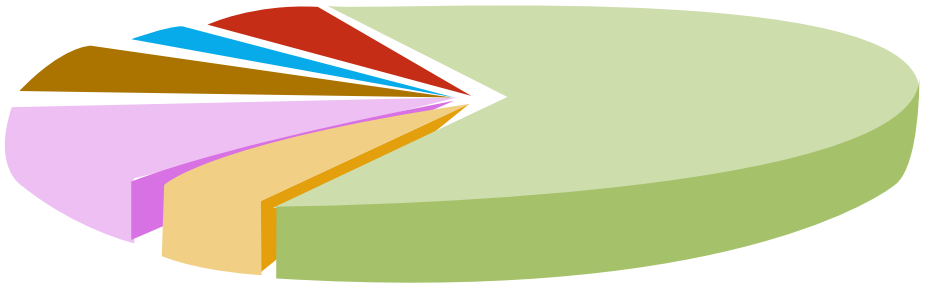
The successful appeals were mostly on the following grounds:-

- Excessive sentence by the court of the first instance
- Constitutional reference (mainly on grounds of having been detained for a longer period than by law allowed, before being charged in court)
- Judicial procedures
- Lack of sufficient evidence
- Age determination
- Medical grounds( failure of adequate medical evidence and age of offender etc)
- Prosecution – wrong charge

# Types of Offences



# Types of Offences



- Defilement
- Attempted Defilement
- Rape
- Rape and Sexual Assault
- Gang Rape
- Sexual Assault

# SECTION FIVE: CONCLUSIONS AND RECOMMENDATIONS

## Recommended action points for the relevant sectors towards full implementation of the Sexual Offences Act

### Justice And Governance Sectors

### Social Sectors

#### (a) Health

- Ensure that survivors of sexual violence access and use basic health services and facilities free of charge
- Increase the availability of quality services at health facilities to care for survivors of sexual offences
- Improve the capacity of health care providers to collect, preserve and present evidence to the judicial system
- Sensitize health providers and law enforcement officers on the guidelines for trauma management of survivors (post rape, defilement assault incest, sodomy etc care)

#### (b) Education and Training

- Provide safety from sexual violence to all pupils and students in learning institutions.
- Educate parents and community on the contributory factors of child sexual abuse and need to protect children.
- Facilitate the reporting of sexual offences cases amongst the poor and vulnerable.

- Build partnerships to increase collaboration, enhance implementation capacity and expand outreach.
- Continuously identify and appraise environments with high potential for sexual offences and institute preventive measures.
- Educate and sensitize the public especially the poor and vulnerable on the importance of reporting all sexual offences to the police.
- Conduct in collaboration with State Law Office public legal literacy awareness on Sexual offences utilizing all reliable channels of communications.

## Cross Cutting Issues

### (a) Gender dimensions

- Comprehensively popularize the Sexual Offences Act (2006) in order to increase knowledge amongst public especially women and girls in order to protect victims and to curb the vice.
- Educate Kenyans in rural and urban areas on the legal process on sexual offenses.

### (b) Children's Concerns on Sexual Offences

- Use of legal instruments, institutions and structures to protect and safeguard the welfare of children from all forms of sexual abuse
- Partner with civil society to develop strategies for multi-stakeholder interventions to mitigate the impact of sexual offenses on children in different circumstances
- Establishment of appropriate rehabilitative centers for physical and psychological recovery of child sex abuse victims.

### (c) Culture and Traditions in Sexual Offences

- Strengthen the prosecution department to deeply understand traditional and behavioural aspects of perpetrators to enable them try cases of sexual violation in a friendly environment that respects the privacy of the victim.

(d) **Media and Civil Society on Sexual Offences**

- Build the capacity of the media on the sexual offences and engage them in relaying the right messages to public.
- Advocate for responsible promotional and marketing activities
- Support Media houses to champion the fight against sexual violence

(e) **Civil Society**

- Develop strategies for multi-stakeholder interventions to mitigate the impact of sexual offences especially of children and the poor
- Provide rehabilitation for victims of sexual offences

## Reports of the Two Focus Group Discussions Held in Thika and Naivasha

### Consultative Forum Meeting For FIDA-Kenya Held At Thika December Hotel On 6<sup>th</sup> July 2010

1. The meeting started with a prayer followed by introduction by all present.
2. Mrs. Njeri Kigoro was the mobilizer and she welcomed all present with a positive message about FIDA-Kenya. She then welcomed the Consultant, Milly Odongo and her assistant.
3. Levi Obondo then introduced the participants to the subject of the research, namely, “The Research On The Conviction And Acquittal Rates Of Sexual Offenders With An Emphasis On The Effectiveness Of The Sexual Offences Act” that was enacted in 2006. The agenda for the day was then agreed as follows;
  - (a) Background and Theme of Session
  - (b) Successes/Gains arising from the Enactment of the SOA
  - (c) Gaps and Challenges of the SOA
  - (d) Way Forward
4. **Background and Theme of Session**

Milly Odongo, after a brief on FIDA-Kenya the organization and its mandate, then gave a background of the Act and the highlights of the Act. The highlights included:

  - Rape and attempted rape
  - Sexual assault
  - Compelled or induced indecent acts
  - Acts which cause penetration or indecent acts committed within the view of a child or person with mental disabilities (New!)
  - Defilement and attempted defilement

- Gang rape (New!)
- Indecent act with a child or adult
- Promotion of sexual offences with a child (New!)
- Child; trafficking, sex tourism, prostitution and pornography (New!)
- Exploitation of prostitution and prostitution of persons with mental disabilities
- Trafficking for sexual exploitation (New!)
- Incest by male and female persons
- Sexual harassment (New!)
- Sexual offences relating to position of authority and persons in position of trust (New!)
- Deliberate transmission of HIV or any other life threatening sexually transmitted disease (New!)
- Administering a substance with intent
- Distribution of substance by juristic persons (New!)
- Cultural and religious sexual offences (New!)

**The Amendments to the Act in 2007 were also highlighted and included:**

- The meaning of the word gang to mean one or two persons
- Add on to the meaning of the act of sexual assault as follows “ into or by any part”
- Section 16 which clarified definition of pornography
- Indecent act
- First schedule

**5. Successes/Gains Arising from the Enactment of the SOA (2006)**

The plenary discussions on the successes / gains arising from the Act revealed the following:

- (a) The act has been effective for persons with legal knowledge or persons who have been aware of the Act

- (b) The number of defilement cases has reduced as reported by the participant from the hospital and this could be attributed to the reduction of the vice due to effectiveness of the SOA.
- (c) Married women who have been battered have freedom to access health facilities and be treated and assisted to report matters to the police station.
- (d) Sexual offence cases are being heard in camera and is encouraging victims to seek justice.
- (e) The court is also educating on measures to be taken in cases of rape (e.g. preservation of specimen etc).
- (f) Police are more supportive to victims who are reporting cases in police stations
- (g) Police departments have introduced Gender Desks which are used by victims; this is a more friendly and private environment and hence more conducive for victims to report the offences committed against them.
- (h) The doctors are handling the cases in a more professional manner, e.g. use of counsellors.
- (i) The heavy sentences has helped deter the crime.
- (j) Harassment of commercial sex workers has reduced.
- (k) Pregnancy rates for minors has reduced.
- (l) Sexual relationships between teachers and students has reduced.
- (m) Harassment at places of work especially in the Armed Forces has reduced.
- (n) Cases/incidences of children having sexual relations with their students are on the decline
- (o) Medical personnel handling survivors take care of the psychological welfare of the child; this encourages more children to report.

## Gaps and Challenges of the SOA

The Challenges highlighted by the plenary discussions included the following:

- (a) Lack of civic education for elderly people.
- (b) The penalties/sentences not being enforced fully in a number of cases.
- (c) Frustrations of parents at police stations when reporting cases of sexual violence especially involving defilement.
- (d) Many cases are not being reported.
- (e) Poverty – Inability to hire lawyers to represent victims in seeking justice or to support the justice process e. g logistics of reporting, attending court etc. In addition, there is exploitation through the offenders’ ability to buy out the victims or compromise the law enforcers.
- (f) Abuse of the law through harassment of innocent persons.
- (g) Need for public awareness as many people are neither aware nor conversant with the Act, hence ignorant to the provisions of the Act. i.e. What constitutes a crime under the Act, and what penalties there are, etc.
- (h) Absence of witnesses frustrating prosecution
- (i) Interference with the witness(es)
- (j) Delays in prosecuting cases to do with minors is counterproductive in obtaining justice. This is because minors often forget the facts, hence they keep on changing their statements, thereby creating room for the offenders to be let off the hook.
- (k) Compromising of victims and witnesses using administration (chiefs, police etc).
- (l) Lack of policy to guide the Act.
- (m) Religious leaders who propagate the vice hide behind the cloak of religion.
- (n) Parenting – Failure of guidance i.e. lack of time to groom our children, hence contributing to the increase in immorality and the vice.
- (o) The school syllabus – Christian Religious Education (CRE) lessons switched to Social Ethics, hence denying the pupils what could be catering for their morals. The school syllabus needs to be addressed so that issues of principals and morals are adhered to at any early age.

## The Gaps highlighted

- (a) Sexual harassment against men: The participants felt that the Act is more in favour of women than men and hence discriminatory.
- (b) Bailable provisions: It was felt that the ability of the offenders to be released on bail is frustrating the ideals of the Act as this allows the offenders back into society and in some cases in the same environment with the victim. This is not only traumatizing for the victim but in many cases creates an opportunity for them to compromise witnesses or negotiate their freedom. It also leaves a feeling in the society that there is no justice.
- (c) Lack of policy from the Teachers Commission on the matter of sexual offences committed by the Teachers on their students/pupils. This lack of clear disciplinary policy within the teaching profession does not bode well for children.
- (d) Training in issues of sexuality and character particularly during the formal schooling should be incorporated into the curriculum.
- (e) The provisions on incest are not comprehensive.

## 6. The Way Forward

- (a) Create public awareness through civic education and public campaign
- (b) Step up legal aid more so to the vulnerable groups of society
- (c) Implement the National Policy and guidelines to the SOA
- (d) FIDA-Kenya to step up sensitization programs on the Act
- (e) Create awareness on the organizations that support victims under SOA
- (f) Incorporate the Youth in the sensitization programs
- (g) Positive attitude towards voluntary services to combat the vice
- (h) Special courts to be established especially for juveniles
- (i) Gender desks to be made more friendly
- (j) Facilitate Police movement
- (k) Increase capacity of police (numbers and telephone lines, resources, etc.)
- (l) Have increased coordination amongst all stakeholders i.e. prisons, hospitals, police and NGOs.
- (m) Sentences to be fully enforced

# Consultative Forum Meeting for FIDA-Kenya held at La'belle Hotel On 21<sup>st</sup> July 2010

## Focus Group Discussions (Naivasha)

**T**he Sexual Offences Act, 2006 provides high penalties which can offer deterrence. However, for the victim/survivor, the damage has already been done and there is no equivalent compensation. Most of the people in prison are offenders from rural areas, this implies that a majority of the offences happen in the rural settings.

### Successes brought about by the Act

- 19 and 20 year olds who are school going children engaging in sexual relations with girls of about 16 or 17 and are jailed when arrested.
- There is need to create more awareness particularly among the youth and the age group that is just getting out of teenage but are still in school and are likely to fall prey to provisions of the Act.
- More victims are opening up about rape incidences and talking about it, as they realize it is not their fault.
- Many men have been imprisoned since the Act came into effect.
- Men have slightly changed their perspective about women being largely sexual organs.
- People have realized that sexual harassment is an offence and sex for favors or to get employment is wrong. This has reduced these incidences in the flower farms.
- More reports are emerging about rape because people have a clearer understanding of what rape is.
- The number of cases that get convictions in court has increased somehow and this is encouraging particularly to new survivors/ victims.
- More perpetrators for incest cases are in prisons.
- More sexual violence convicts are in prisons.
- The Act allows persons with mental disabilities to give evidence, and this has

enabled the prosecution of such cases (sexual violence against persons with disabilities).

- The minimum sentences have acted as a deterrent particularly in defilement cases.

## Challenges

- Need for more awareness.
- Need for simplified information material on the Act.
- Need for streamlining of all aspects during investigations so that it can build up to a strong case. For example, noting that a child was defiled and not raped so that a P3 will stand in court.
- 'Poverty' offers a challenge to the success of the Act as parents withdraw cases when offenders offer them monies.
- People are hesitant to report cases because the court processes are slow and will take their time.
- People are hesitant to engage the court system because of corruption.
- Mishandling of evidence by the members of the public makes prosecution of the cases more difficult.
- Distance to court and the cost of transport may prove prohibitory in successful prosecution of cases.
- Interference by family members in cases of incest hinders effective prosecution.
- Many cases in the courts concerning sexual relations between children and the parents are complaining of reporting the incidences.
- Culture offers barriers to successful implementation of the Act as people hide behind their practices and traditions when confronted with the law.
- Stigma is a challenge for persons with disabilities as the parents do not want their children to suffer double stigma.
- Human mind readers and interpreters to assist the victims of sexual violence in court.
- When the offender is a person working with the security/justice sector they receive bad reception when engaging with the justice system.

- There is need to handle survivors/victims with care and not forget that they are traumatized as this causes them to engage even better with the justice system.
- The filling of the P3 is paid for in practice at the medical centres.
- Abduction and compromising of victims to sabotage the court process is prevalent.
- Time taken to prosecute cases in court can lead to fatigue and thus people stop prosecuting cases.
- Victims/survivors seem to be forgotten after the offender has been arrested.

### **The Way Forward**

- Incorporate sexual education in the school curriculum.
- In cases of the very old who are victims, where the offenders are found guilty they should be given stiff minimum sentences.
- Disseminate the Act to include simplified versions.
- Encourage coordination of the sectors involved in prosecution/handling of sexual violence.
- Legal aid.
- Need for an organization that will advocate for the rights of children given the high prevalence of sexual violence.
- The impact of highlighting cases in the media could also have some negativity.
- Rape cases and defilement convicts are largely from the Kalejin community. There is need to investigate this further.

# Case Trends Analysis

## Thika Court Registry

	Case Number	Republic vs Accused	Charge	Verdict/Result
1.	3413//09	Samuel Odhiambo Owino	Defilement of a girl	
2.	3450/09	Samuel Njaramba Mwaura	Incest with a child	Discharged under Sec 87(5) CPC
3.	3449/09	Joseph Kimani	Incest with a child	Withdrawn under Sec 89 {5(1)} CPC
4.	3649/09	Stanley Ndungu Nganga	Defilement of a girl	Acquitted under Sec 210 of CPC
5.	3721/09	Samuel Gacoya Kimathi	Defilement of a girl with mental disability	
6.	3759/09	Simon Kamande Mwangi	Defilement	
7.	3801/09	Mueni Musili	Defilement of a girl	Serve 5 years
8.	3820/09	Deramare Lekimariri	Attempted rape	
9.	3939/09	David Waigi Thairo	Attempted rape	
10.	3944/09	Jackson Irungu Macharia	Rape	Acquitted under Sec 202 of CPC
11.	3955/09	Robert Kitome Mogerri	Incest of a child	
12.	3991/09	Simon Njoroge Maina Samuel Wainaina Eric Kamau Kioi	Defilement of a child	Acquitted under Sec 215 of CPC
13.	4134/09	John Mutinda Watua	Incest	10 years imprisonment
14.	4177/09	Jason Mwangi	Attempted rape	
15.	4/07	Joel Maina	Attempted defilement. Indecent act with a child of 11years	Acquitted under Sec 215 of CPC
16.	37/09	Githuka Mwangi	Unnatural offence	Acquitted under Sec 215 CPC
17.	39/07	Martin Wainaina Kinyanjui	Gang rape	Consolidated with 3879/06. Verdict pending
18.	43/07	Joseph Kamande Kimani	Defilement. Indecent act with a child	12 years imprisonment
19.	45/07	George Kihigo Njuguna	Rape	Withdrawn under Sec 87(a)
20.	48/07	Samuel Mwaura Njoroge	Incest by males	Withdrawn under sec 87(c)

21.	50/07	Cliff Otieno Ajoni	Defilement	Withdrawn 87(a) CPC
22.	57/07	Paul Waweru Njau	Defilement	Acquitted Sec 210 CPC
23.	110/07	Timothy Mburu Karibi	Attempted defilement	
24.	476/07	John Mwangi Karanu	Defilement	3 years probation
25.	510/07	Stanley Karanja Mwaniki	Defilement	Terminated under Sec 87(a) CPC
26.	512/07	Mutua Mutinda	Attempted rape	6 years imprisonment
27.	513/07	Gideon Mutiso Katuto	Defilement. Compelled indecent act	5 years imprisonment
28.	518/07	Samuel Gachoya Kimathi	Attempted rape	Acquitted sec 202 CPC
29.	906/07	Edward Nguthi Mwangi	Defilement of a girl	
30.	1056/07	Peter Kamau Kibugu	Attempted rape	Acquitted under Sec 215 CPC
31.	1207/07	George Ngucu Njuguna	Defilement of a girl	
32.	1288/07	Tito Marshall Abony	Defilement	
33.	1290/07	John Ndungu	Unnatural offence	Acquitted under Sec 215 of the CPC
34.	3908/05	John Karanja Mutua	Defilement	Withdrawn under Sec 87(a)CPC
35.	4036/05	Peter Kabae Kiana	Defilement of girl	Acquitted under Sec 215 CPC
36.	4081/05	Zakaria Muriuki Kariuki	Defilement of girl	
37.	4098/07	Kennedy Mwangi Nganga	Attempted defilement of a girl under 16years	3 years probation
38.	4114/05	Benson Ochieng Owuor	Defilement of a girl	Withdrawn under Sec 87(a) CPC
39.	4176/05	Paul Kuria Muigai	Attempted defilement	Acquitted under Sec 215 CPC
40.	4291/05	Titus waweru Marubu	Defilement of a girl under 16 years	Acquitted under Sec 215 CPC
41.	4362/05	John Nganga Wakanyi	Defilement of a girl under 16 years	Discharged Sec 87(a)
42.	4376/05	Joseph Mburu Ndungu	Defilement of a girl	20 years imprisonment
43.	4377/05	Peter Mwangi Kinyua	Unnatural offence	Discharged under sec 215 CPC
44.	3447/05	Anthony Bernard Mwanzia	Defilement of a girl under 16years	Acquitted
45.	3491/05	Edwin Maina Mwihaki	Defilement of a girl under 16years	Withdrawn
46.	3522/05	Ndirangu	Rape	Acquitted

47.	3523/05	Paul Muli Ndungu	Defilement	Discharged
48.	3592/05	Samuel Kinyanjui Ndichu	Defilement of a girl under 16 years	
49.	3687/05	Peter Gitau Maina	Rape	Acquitted
50.	3710/05	Joshua Kangethe Muiruri	Rape	Discharged
51.	3718/05	Harun Mburu Nganga	Defilement of a girl under 16 years	Acquitted
52.	3779/05	Raphael Mutuku	Defilement	Acquitted
53.	3852/05	Joseph Kamande	Defilement of a girl under 16 years	Withdrawn
54.	3864/05	Richard Gichuhi	Attempted rape	Proceedings terminated
55.	478/05	Patrick Mbure Njuguna	Defilement	2 years probation
56.	2568/05	Alex Mwangi	Defilement of a girl	2 years probation
57.	2585/05	Wilson Kinuthia Njoroge	Rape	Acquitted
58.	2631/05	Stanley Ngigi Wachuka Stephen Irungu Wagune Nicholas Gitee Majua	Defilement of imbecile and indecent assault on a woman	All acquitted
59.	2727/05	Peter Mutunge Njoroge	Rape	
60.	2741/05	Joseph Mbugua Karanja Jaran Mumo Njuguna	Attempted rape	Consolidated with 1074/05 and 518/05
61.	2823/05	William Gichuhi Francis Chege	Rape and indecent assault	Acquitted
62.	2962/05	Samuel Ngich Ngige	Defilement of a girl under 16 years	Withdrawn
63.	3155/05	Stephen Mbugua Kagai	Defilement of a girl	Acquitted
64.	3240/05	Michael Murumbe	Defilement of a girl under 16 years	1 year probation
65.	3272/05	James Gitau Wanjiru	Defilement of a girl under 16 years	Acquitted
66.	3358/05		Attempted defilement of a girl under 16 years	3 years probation
67.	2568/05	Alex Mwangi	Defilement	Date 2years 20.9.08

# Court Register

## Naivasha (Sexual offence related cases for period 2005-2009)

	CASE NUMBER	REPUBLIC vs ACCUSED	CHARGE	RESULT
1.	109/05	Isaac Gitari Njeri	Defilement	PBC
2.	3241/05	Michael Njenga Mburu	Defilement	PBC
3.	3300/05	Stephen Wairegi Wangui	Defilement	PBC
4.	3825/05	Benard Kipsang Rono	Defilement	PBC
5.	3837/05	Daniel Koimburi		
6.	3838/05	Patrick Ndugwe	Defilement	PBC
7.	3913/05	Simon Kinyua Kuria	Defilement	Case withdrawn
8.	894/06	Francis Njuguna Karanja	Defilement	Withdrawn under sec 87(a)
9.	936/06	Peter Ouma Okatch	Defilement	Sec 204 CPC
10.	1098/06	Patrick Chege Kariuki	Defilement	PBC
11.	1120/06	Alfred Kiprotich Kimwei	Defilement	10 year imprisonment
12.	1137/06	Kalvin Ochieng Anyongo	Defilement	Discharged Sec 215
13.	1146/06	John Makaru Kimani	Defilement	Discharged Sec 87(a)
14.	1215/06	David michoki Kinyanjui	Defilement	204 CPC
15.	1314/06	Peter Njoroge Kanyuira	Defilement	Acquitted Sec 210
16.	1393/06	Peter Kibutu Mwangi	Defilement	Acquitted Sec 210
17.	1424/06	Joseph Ndungu Ciori	Defilement	Discharged Sec 87(a)
18.	1468/06	Robert Sichara	Defilement	Acquitted Sec 215

19.	1495/06	Charles Warui Karanja	Defilement	PBC
20.	1601/06	William Nduati Njoroge	Defilement	Discharged Sec 210
21.	1607/06	Geofrey Kalii	Defilement	Discharged Sec 210
22.	525/06	David Mwaira	Defilement	PBC
23.	635/06	Francis Kaingu Mathai	Defilement	PBC
24.	683/06	Wilfred Masinde Khasabuli	Defilement	PBC
25.	2923/06	Charles Gathuo Mwangi	Defilement	Acquitted under Sec 215 CPC
26.	2974/06	Peter Githengi Wambui	Defilement	Acquitted under Sec 210 CPC
27.	2979/06	Daniel Thuku Njai	Defilement	3 year probation
28.	3089/06	Joseph Kamau	Defilement	15 yea probation
29.	3154/06	John Kamau wambui	Defilement	PBC
30.	3165/06	Michael Mutisya Mulu	Defilement	Acquitted
31.	71/06	Paul Kinuthia maina	Defilement	W/arrest 87(a)
32.	131/06	Josiah Nyangota Olango	Defilement	Acquitted under Sec 210 CPC
33.	145/06	Paul Kasikar Olenaripa	Defilement	Acquitted under Sec 215 CPC
34.	186/06	Daniel Gitau Maingi	Defilement	Acquitted under Sec 210 CPC
35.	197/06	John Gitundu Karibe	Defilement	Acquitted under Sec 204 CPC
36.	451/06	Peter Mwai Karanja	Defilement	PBC
37.	514/06	Goefrey Ochieng Oumo	Defilement	Acquitted under Sec 215 CPC

38.	621/06	Henry Mwangi Wambui	Defilement	Acquitted under Sec 210 CPC
39.	675/06	David Chege Karanja	Defilement	PBC
40.	789/06	Gerishon Mugasigi Museria	Defilement	Acquitted under Sec 210 CPC
41.	797/06	Elijah Ngugi Maina	Defilement	Acquitted under Sec 204 CPC
42.	127/07	Bernard Njuguna Kamau	Defilement	Acquitted under Sec 87(a)
43.	128/07	Stephen Ndirangu Ngugi	Defilement	PBC
44.	136/07	Paul Mukabi Oseni	Defilement	Withdrawn under Sec 87(a) CPC
45.	138/07	Moses Kimani Nganga	Defilement	PBC
46.	147/07	Peter Mwai Karanja	Defilement	PBC
47.	179/07	Moses Kamau Ndingu	Defilement	PBC
48.	328/07	David Mbugua Chege	Defilement	Acquitted under Sec 210 CPC
49.	336/07	Richard Maina Wagira	Defilement	Acquitted under Sec 215 CPC
50.	1237/08	Kahara Kiiru	Defilement	Acquitted under Sec 87(a) CPC
51.	1414/08	Duncan Otochi	Defilement	PBC
52.	1438/08	Titus Oteyo Onyango	defilement	Acquitted under sec 215 CPC
53.	1452/08	Joshua Maina Mwangi	defilement	PBC
54.	1553/08	Joseph Kamau Nyambura	defilement	PBC
55.	1614/08	Joseph Muturi Ndirima	defilement	PBC

56.	1699/08	Nzili Karuruma	defilement	PBC
57.	1738/08	Ayub Odere	defilement	Discharged under Sec 87(a)
58.	1756/08	Hudson Mulongo Wanyonyi	defilement	PBC
59.	1956/08	Fred Wanyama	defilement	File closed
60.	1979/08	Daniel Mukei Matheka	defilement	PBC
61.	2153/08	James Katua Wambua John Kimani Muthoni		
62.	2315/08	Peter Wanyoike Gichohi	Defilement	Acquitted under Sec 202 CPC
63.	1053/09	Charles Gathuo Mwangi	Defilement	PBC
64.	1054/09	Eustace Murage Ngata	Defilement	PBC
65.	1113/09	Reuben Wairegi Waitthaka	Defilement	30year imprisonment
66.	1421/09	Daniel Mwangi Kamau	Defilement	Acquitted under Sec 210 CPC
67.	1626/09	Julius Mungai iruti	Defilement	Acquitted under Sec 210 CPC
68.	2035/09	Joseph Wachira Hiuhu	Defilement	PBC
69.				
70.	2094/09	Samuel Mbugua Kihwanga	defilement	PBC
71.	3110/09	John kago mwangi	Defilement	PBC
72.	3211/09	Francis Njuguna Mwangi		
73.	3216/09	Kennedy Nganga	Defilement	3 years rehabilitation
74.	3223/09	Eliud mugo Kingori	Defilement	PBC

75.	1683/09	William Njuguna Kinyanjui	Defilement	Acquitted under Sec 210 CPC
76.	1785/09	David Njihia Kariga	defilement	PBC
77.	1978/09	Samuel Wahome Muthoni	defilement	PBC
78.	23/09	Francis Kungu Mwangi	defilement	W/Arrest file closed
79.	56/09	Joseph Mahirimu Ndungu	defilement	W/Arrest file closed
80.	92/09	Japheth Oganji Kongo	defilement	PBC
81.	184/09	Peter Njoroge Gitau	defilement	PBC
82.	579/10	Samson Amboka Mukoma	Defilement	PBC
83.	617/10	Hudson Indazi	Defilement	PBC
84.	511/10	Josephat Lamario Nakire	Defilement	Acquitted
85.				
86.	786/10	Robinson Letok	Defilement	PBC
87.	816/10	Vincent Ambani	Defilement	PBC
88.	834/10	Joseph Gachuri Thuku	Defilement	PBC
89.	846/10	David Mwangi Nyambura	Defilement	PBC
90.	863/10	Joseph Kahinga Kimani	Defilement	10 years imprisonment
91.	864/10	Francis Ekeno Edupu	Defilement	PBC
92.	867/10	Paul Chege Njenga	Defilement	PBC
93.	876/10	Ben Talum Agingo	Defilement	PBC
94.	926/10	Paul Ndungu Kamau	Defilement	PBC
95.	276/10	Isaac Waiyaki	Defilement	PBC

96.	302/10	Stanley Waweru Kagure	Defilement	PBC
97.	303/10	Mariko Muchoki	Defilement	PBC
98.	428/10	Josphat mwai Ngingo	Defilement	PBC
99.	451/10	Isaac Murungi Ngure	Defilement	PBC
100.	479/10	Godfrey Mwocha Macharia	Defilement	PBC
101.	480/10	Wilson Ngugi Wanjiku	Defilement	PBC
102.	739/10	Stanley Sang Kemboi	Defilement	PBC
103.	848/10	David Kinyanjui Kabue	Defilement	PBC
104.				
105.	898/10	Moses Kamau Maina	Defilement	PBC
106.	943/10	Raphael Kimani Waweru	Defilement	PBC
107.	1303/10	Anthony Kariuki Ndungu	Defilement	87 (a) CPC
108.	950/10	Naftali Nyambitho Nyasime	Defilement	PBC
109.	1003/10	Thomas Eskon Eyapan	Defilement	10yrs suspended sentence
110.	1011/10	George Manyusi Obaga	Defilement	PBC
111.	1055/10	Daniel Njuguna Paul	Defilement	PBC
112.	1066/10	Samuel Njoroge	Defilement	3yrs rehabilitation
113.	1092/10	Goefrey kimothe Gikonyo	Defilement	PBC
114.	1114/10	Stephen Mwangi Ndungu	Defilement	4 months Kamiti Youth
115.	1135/10	James Njuguna Wangari	Defilement	PBC
116.	1136/10	Elijah Wanyonyi	Defilement	PBC

117.	1145/10	David Njenga	Defilement	PBC
118.	82/10	Francis Miano Maina	Defilement	PBC
119.	152/10	Jerevasio Gitonga Gicheru	Defilement	PBC
120.	200/10	Samuel mwangi Karanja	Defilement	PBC
121.	13/10	Ibrahim Macharia Ali	Defilement	PBC
122.	24/10	Benson Parkes	Defilement	10 years imprisonment
123.	61/10	Johana Kimani Gitau	Defilement	PBC
124.	85/10	David Wambugu Maina	Defilement	PBC
125.	92/10	Peter Kuria Wanjiru	Defilement	30 years imprisonment
126.	188/10	Joseph Ngugi Mugure	Defilement	PBC
127.	200/10	Patrick makumba Motanya	Defilement	215 CPC
128.	204/10	George Gathere	Defilement	10yrs imprisonment
129.	306/10	Brian Odhiambo	Defilement	Discharged
130.	357/10	Joseph Githinji Mwangi	Defilement	PBC
131.	366/10	Moses Maina Jane	defilement	15yrs imprisonment
132.	489/10	Alex mwendwa Mutambuki	defilement	PBC

## Definition of terms

PBC – Pending Before Court

CPC – Criminal Procedures in Court

## APPEAL CASES

	NO.	CASE NO.	PARTIES	OFFENCE	JUDGMENT
1	CA-112 of 2003 (HC-Nku)	CA-112 of 2003 (HC-Nku)	Francis Mugo v Republic	Defiling a minor (below 14)	Case to reduce sentence period of (20) yrs dismissed. N appeal was for leniency due to appellant relatively young age.
2	CA-178 of 2007 Judgment (26-5-08)	No. 178 of 2007	Raphael Ogongo v Republic	Defiling a girl	Case to reduce sentence. Conviction quashed and sentence set aside due to use of wrong clause of Act(SOA) instead of penal code but retrial ordered.
3	CA-196 of 2007	No.1307of 2005	Silas Ogoro v Republic	Defilement	Court orders a medical examination to determine age before appeal could proceed as his age was a borderline case during the trial and no medical examination taken before sentence
4	CA-82 of 2008 Nrb Courts Judgement 17-9-2008	No.480 of 2007 at Garisa	Abdisallan Burale Abdi v Republic	Defilement and fraudulent pretence of marriage	Appeal succeeded and conviction and sentence of 20 yrs quashed on grounds of lack of standard proof of age and reliability of evidence of victim( reported matter when she was already 8 months pregnant and when the accused had refused to marry her
5	CA-58 of 2007 Nrb-Courts	No 650 A of 2006	Daimar Musa Ali v Republic	Defilement of a girl below the age of 18yrs	The appeal was allowed, the conviction quashed and vacated and a retrial ordered by the court.. initial charge was abduction under penal code sec. 142. the magistrate changed charge to section 8(4) of SOA at the judgement level.
6	CA- Criminal Misc. No. 148 of 2008. Machakos	No. Criminal case no 731/2007 Kangundo	Mwanzia Ivati v Republic	Attempted rape and alternative charge of indecent assault	The appellant sought release on bail pending hearing of appeal on the alternate charge having been acquitted of main charge. The judge granted appeal as chances of success were high.

7	CA-140 of 1982 HC at Nakuru		Citau v The Republic	Sexual assault on female	The appeal was dismissed due to sufficient evidence of the appellants guilt.
8	CA-1 of 2008 HC at Kakamega		Samuel Omukuba Ongura v Republic	Rape, defilement of a child	The court ordered that the trial of the accused should proceed and the same shall be accorded priority by the trial court since the constitutional rights to be produced in court within the period described in section 72(3) of the constitution had not been violated.
9	CA-178 of 2007 SRMC at Nyando courts	No:1705 of 2005	Raphael Ogongo Akumu v Republic	Defilement of a minor {16 yrs of age}	The appeal succeeded and conviction and sentence of 20 yrs quashed due to criminal procedures not followed by magistrate. Change of magistrate during trial. - Also use of wrong Act i.e section 149 of SOA instead of Section 149 of the penal code for crime committed in 2005.
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10	CA-126-2007 Eldoret	HC.cr .a No 24 of 2006	James Nyamweya v Republic	Defilement of a minor aged below 16yrs	Appeal dismissed but sentence reduced from 40 yrs to 15 yrs as finding of court was of attempted defilement and not defilement as initially charged and offence committed in 2004 thus sentence was considered excessive
11	CA-185 of 2006 CMC in Nyeri	No.200 of 2006	Kamaro Wanyigi vs Republic	Rape	The court substituted the sentence of 20 yrs imprisonment on the appellant with the term served so far with the result that the appellant shall be set at liberty since he is an old man of 67 yrs and a first time offender and initial sentence of 20yrs far exceeded the minimum sentence of 15 yrs.

12	CA-148 of 2007 SRMC Homa Bay	No 365 of 2007	Abdulaziz Mohammed v Republic	Defilement	The court allowed the appeal, quashed the conviction and set aside the death sentence that had been imposed on the appellant because the appellant's constitutional rights as provided under section 72(3) was violated and the court has a duty to raise the issue on its own motion.
13	CA-130-2007 Eldoret	HCCR. No.105 of 2006	Fred M. Bwayo v Republic	Defilement of a girl of 6yrs	The court allowed the appeal partially and reduced sentence from 20 yrs to 15 yrs as sentence was heavily influenced by SOA and yet offence was committed in 2005. However it dismissed grounds that evidence relied upon was solely from the child as it is now allowed under SOA.
14	CA-80 of 2008 HC in Kisumu	No 133 of 2007	Jacob Odhiambo Omumbo v Republic	Defilement of a girl under 11yrs age	The appeal was dismissed and the life imprisonment sentence passed against the appellant by the lower court upheld.
15	CA-36 of 2008 MC Nyando	No 2006 of 2006	Solomon Kahi Mwangi v Republic	Rape	The appeal was dismissed and the sentence was reduced to 10 yrs because the appellant was a first offender and the sentence imposed by the trial court was deemed rather harsh.
16	CA-11 of 2008 HC Nakuru Judgement(29-1-10)		Erro Oba vs Republic	Penetration of an imbecile aged 17 yrs	The appeal was allowed and the sentence imposed by the trial court set aside. The appellant was set at liberty. The prosecution omitted the words intentionally and unlawfully in the charge sheet as proscribed in SOA section 3 meaning was charged with no offence as per the act. And also as the victim was a person of a mentally challenged mind who cannot give consent, then creates a gap in the Act that needs to be addressed and possible amendments required. Pls note that appellant succeeded notwithstanding the fact that he had pleaded guilty in the first trial.( see pdf 61136 for details)

17	CA-157 of 2007 HC in Malindi	No 940 of 2007	W.H.C v Republic	Defilement of a child aged 13 yrs	The appeal was dismissed as the sentence was deemed legal.
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18	CA-376 of 2007 Eldoret	No 92 of 2005	Kimbo Ligale Ibrahim v Republic	Defilement of a girl	The appeal succeed partially as the appeal set aside the sentence of 23yrs and substituted it with a sentence of 15yrs. Court considered sentence then too punitive and no justification as such ( NB. charge was under the penal code)
19	CA- 9 of 2008 HC in Eldoret	No 59 of 2006	Kennedy Lusaka Wanjala v Republic	Rape	The appeal was dismissed and the sentence of 30 yrs was set aside and substituted with a sentence of 15 yrs.
20	CA-8 of 2008 HC in Kitale	No 70 of 2006	David Kiundu Simiyu	Defilement of a girl	The appeal partially succeeded with the sentence of 40 yrs being set aside and substituted it with a sentence of 15 yrs with hard labour. The reduction was as result of the court of appeal considering sentence too harsh and made reference and were guided by implication to minimum sentences (15yrs see section 8.2 of SOA though offence occurred in 2004.
21	CA-25 of 2008 HC in Bungoma		Andrew Masinde John v Republic	Attempted defilement	The court quashed the conviction and set aside the sentence and a retrial was ordered due to no medical evidence to prove the age of the victim and the court had imposed an illegal sentence of 20 yrs while the sentence provided for under section 9(1) of the SOA is 10yrs imprisonment which was applied. There is need to look at the evidence Act section124 just to see there is no conflict with SOA as to evidence from a minor

22	CA-232 of 2008 HC in Nakuru		Oloitoishe Lorangai v Republic		The court dismissed the appeal because the minimum sentence could not be challenged as harsh or excessive
23	CA-320 of 2006 HC Mombasa	No 266 of 2006	Peter Ooko v Republic	Defilement of a girl aged 15yrs	The court ordered the appeal to be deemed duly filed and shall proceed to admission and hearing in accordance with the law. However before appeal could be heard his sentence was revised upwards to 20yrs being the minimum sentence up from the 15yrs he had been sentenced (magistrate erred but sought revision)
24	CA- 320 of 2008 HC in Kisumu	No 79 of 2008	Daniel otieno Oracha v Republic	Defilement	The appeal was allowed by the court which set aside the order summarily dismissing the appeal and ordering the high court to hear the appeal
25	CA-47 of 2004 HC in Kericho	No 421 of 2004m	R.O.M v republic	Two counts of Defilement of girls under 16yrs	In the first count, the appeal was rejected due to sufficient evidence. On the second count the appeal was also rejected and the court did not interfere with the appellant's sentence of life imprisonment. Court orders Appellants name entered in list of dangerous persons.
26	CA-319 of 2008 HC in Nyeri	No 1171 of 2006	Charles karuga Kinyua v republic	Sexual Assault	The court allowed the appeal, quashed the conviction and set aside the sentence imposed since there were numerous contradictions in the complainant's evidence. And more so that the charge sheet did not state the word unlawful
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27	CA-280 of 2004 HC in Nakuru		Michael Odhiambo v Republic	Defilement of a girl	The court allowed the appeal, quashed the conviction and set aside the sentence due to uncorroborated evidence of a child (10yrs)
28	CA-112 of 2003 HC at Nakuru	No 26 of 2003	Francis Mugo v Republic	Defilement of a girl aged 10 yrs	The court dismissed the appeal and the sentence of 14yrs with hard labour confirmed
29	CA-1 of 2008 HC at Kisumu		George Ochieng' owino v republic	Sexual assault of a girl aged 16yrs	The appeal was dismissed due to firm and consistent evidence
30	CA-58 of 2007 HC at Nairobi	No 650 A of 2006	Daimar Musa Ali v Republic	Defilement of a girl below the age of 18yrs	The appeal was allowed, the conviction quashed and vacated and a retrial ordered by the court since the trial had not been conducted i accordance with the law as no legal provisions were allowed to alter the charge.
31	CA-404 of 2009 HC at Nairobi	No 1017 of 2008	Jon Cardon Wagner v Republic	Three principle counts of Defilement	The court admitted the applicant to bail of million shillings and the appellant ordered not to depart from the jurisdiction of the court after being sentenced to 20 yrs imprisonment. The appeal is yet to be heard
32	CA- 4 of 2005 HC at Nyeri	No 32 of 2001	Wanjiru v Republic	Sexual assault	The appeal was dismissed due to the fact that the appellant's guilt was proved beyond reasonable doubt.
33	CA-165 of 2006 Kisumu Courts	No 42 of 2004	Ayjevo v republic	Defilement of a girl under the age of 16yrs	The appeal was dismissed as the court held sworn evidence does not corroborate.
34	CA- 158 of 1984 HC at Kisumu	No 158 of 1984	Republic v Oyier	Rape and sexual assault	The court allowed the appeal due to insufficient evidence.

35	CA-100 of 1984 HC at Nakuru		Mwangi v Republic	Rape and sexual assault	The appeal was allowed due to lack of corroboration of the appellant's evidence of identification.
36	CA-210 of 2003	No 395 of 2002	Mohamed vs Republic	Sexual assault	The appeal was dismissed due to insufficient evidence that he accused committed the crime.
37	CA-351 of 2006 HC at Malindi	No 113 of 2003	Kalu v Republic	Rape, Gang rape and sexual assault	The appeal was allowed, the conviction and sentence of the court set aside
38	CA-84 of 2008 HC at Mombasa	No 11 of 2004	Ali v Republic	Rape and Indecent assault	The appeal was dismissed as the complainant's evidence was sufficiently corroborated by circumstantial evidence as the Superior Court correctly found.
39	CA-8-2007 at Eldoret	HC. R. a No 63 of 2006	Lazaro.K.Simiyu v Republic	Defilement of a minor(12yrs)	Appeal was dismissed but sentence reduced from 20 yrs to 10 yrs



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Name of Friend \_\_\_\_\_

Please tick appropriate title:

Corporate Body	Organisation	Individual
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### Details of Applicant

#### ORGANISATION OR CORPORATE BODY

Contact person		Mobile
Telephone	Code	City
Mailing address		
E-mail		Fax
Physical address		
Road/Street	Building	Floor
Email		Fax

#### INDIVIDUAL

Male	Female
ID/PP/DL. No.	Occupation
Telephone	Mobile
E-mail	Fax
Mailing address	Code

CATEGORY	KSHS/YEAR	COLOUR CODE
Lifetime friend	100,000 and above	Gold
Sustainer Friend	51,000 – 100,000	Silver
Committed Friend	10,100 – 50,000	Copper
True Friend	5,100 – 10,000	Blue
Supportive Friend	2,100 – 5,000	Green
Loyal Friend	1,000 – 2,000	Red

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I enclose herewith cheque/cash to the value of \_\_\_\_\_ For the Year \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_ Received by \_\_\_\_\_ Date \_\_\_\_\_