

Understanding the Sexual Offences Act, 2006 & related Kenyan Laws



A Simplified Pocket Book

*Your Rights, Legal Protections & Reporting
Mechanisms*



YOUTH ALLIANCE
— 4 CHANGE —



WHAT IS THE SEXUAL OFFENSES ACT (2006)?

This Act was enacted to protect individuals from sexual violence and exploitation

WHY IS THIS IMPORTANT?

To raise awareness of sexual offenses and their consequences.

To empower youth to demand justice and accountability.

To guide survivors on where to report offenses and seek help.

Key Legal Definitions

Sexual Offense:

Any unlawful act under this Act, including rape, defilement, sexual harassment, and indecent acts.

Consent (Sections 42-45):

A person consents only if they agree by choice and have the capacity to make that choice. **Consent is NOT valid if:**

Given under force, threats, deception, or intimidation.
The person is unconscious, intoxicated, or mentally impaired.

Key Legal Definitions

Vulnerable witnesses (Section 31):

The court declares a witness helpless or vulnerable because they are the victim, a child or a person with mental disabilities.

Forensic evidence (section 36)

The Act gives the Court power to order for DNA tests to find out if the accused committed the crime or not.

RELEVANT LAWS/FRAMEWORKS

List of Statutes and Regulations (Accessed through www.kenyalaw.org)

1. The Constitution of Kenya, 2010
2. Sexual Offences Act No.3 of 2006
3. Children's Act No.8 of 2001
4. Penal Code, Cap 63 Laws of Kenya
5. Victim Protection Act, No.17 of 2014
6. Sexual Offences Regulations, 2008
7. Sexual Offences (Dangerous Offenders DNA Data Bank) Regulations 2008
8. Sexual Offences (Medical Treatment) Regulations, 2012

1. Penal Code, Chapter 63, laws of Kenya

The Penal Code was previously used to prosecute sexual offences before enactment of the Sexual Offences Act of 2006. After 2006, most of the sections in Penal Code were repealed and a few left relating to sexual offences and are referred to as crimes against morality in the Act.

They include:

Attempting having sexual intercourse with persons with mental disability (Section 146).
Detaining a person against their will for purposes of having sexual intercourse (Section 151).
Section 153 & 154, Section 156, Section 157, Section 162, Section 163, and Section 165.

2. Sexual Offences (Medical treatment) Regulations, 2012

The regulations:

- i. Define the designated persons for medical purpose a nurse, a clinical officer and medical practitioner.
- ii. Provides that a victim, a suspect, a person convicted or a witness of a sexual offence has the right to medical treatment in a public hospital, private hospital or any other medical facility.
- iii. A court may order the collection of the appropriate samples from any person who has been charged with a sexual offence, at such place and subject to such conditions that the court may specify.

What is Sexual and Gender-Based Violence (SGBV)?

SGBV includes any act that causes physical, sexual, or psychological harm based on gender.

Key Sexual Offences & Penalties

Sexual Offence

Rape
(Section 3)

Defilement
(Sec 8)

Definition

Non-consensual
penetration.

Sexual act with a
minor (under 18).

Penalties

10 years to life
imprisonment.

15 years to life
imprisonment.

Cont: Key Sexual Offenses & Penalties

Sexual Offence

Sexual Harassment
(Sec 23)

Child Pornography
(Sec 16)

Deliberate HIV Transmission
(Sec 26)

Definition

Unwelcome sexual advances at work/school.

Creating or sharing explicit content of minors.

Knowingly infecting someone.

Penalties

3 years or Ksh 100,000 fine.

6 years or Ksh 500,000 fine.

15 years to life imprisonment.

Myths and Facts on Sexual Violence

Myth

Husbands cannot rape their wives

When a woman says "NO" to sex, she means "YES"

Rapists are strangers in the dark streets

Men cannot be raped

Men cannot control themselves when they get provoked and excited

Fact

Both women and men have a right to bodily integrity and choose when to have sex. Whether they are married or not

This belief is based on some cultures where women are expected to be shy and resist when approached by a man. A "NO" means "NO" and it has to be firm

Rapists are more often than not people known to the survivors. They include husbands, boyfriends, relatives, neighbours, friends or dates

Men and particularly young boys are vulnerable to rape and require as much care and support as women who have been raped

Men All men and women can control themselves and their sexual activity. Rapists CHOOSE to use sex as a weapon of power. It does not matter how women are dressed.

Myths and Facts on Sexual Violence

Myth

If the victim did not physically struggle with or fight the assailant or scream it wasn't really rape.

A woman cannot sexually assault a man.

Sexual arousal, including climax, erection or ejaculation during a sexual assault means the survivor wanted it or consented to the sexual contact.

Fact

A "freeze" response is a normal response to trauma, rendering a victim unable to physically fight back. Furthermore, offenders are not looking for a fight and they use many forms of coercion, threats and manipulation to commit sexual violence. Many victims do not fight back because they are afraid or feel compelled to cooperate. Alcohol and other drugs are often used to incapacitate victims

Although the majority of perpetrators are male, people of all genders can be both victims and perpetrators of sexual violence.

Sexual arousal, including climax, erection and ejaculation are physiological responses that may result from mere physical contact or even extreme stress. These responses do not imply the survivor wanted or enjoyed the assault and do not indicate anything about sexual orientation.

Procedures for SGBV Victims

GET TO A SAFE PLACE AND GO THE NEAREST HEALTH FACILITY WITHIN 72 HOURS

At the health facility you will be examined & treated for STIs, HIV, pregnancy and get a referral. Counselling is done for the victim and family as well.

REPORTING TO THE POLICE

At the police station, you will report and a record will be made in the occurrence book (OB). You will get an OB number. Also record a statement & sign it as well as a P3 form.

WHAT ARE MY RIGHTS AS A SURVIVOR OF SEXUAL VIOLENCE?

- Choose when, where, how and with whom to have sex
- Engage in consensual sex in all situations at all times
- Have your choice respected and protected by society and the law
- Willingly decide to lay a charge of rape with the police
- Access termination of pregnancy and post abortion care in the event of pregnancy from rape
- Legal representation

Roles of Duty Bearers

Judiciary

Adjudicate cases involving SGBV and implement the various provisions of the SOA in a specific case.

Create new procedures/practices by providing an interpretation of the various legal provisions in appropriate cases.

Government Chemist

Receiving samples on SGBV cases from Police and storing and securing exhibits safely. Conducting, analyzing, examining samples and developing unbiased findings. Submission of the report to the Police. Attending court as expert witnesses.

Department of Children Services

Respond to cases of child abuse, neglect, exploitation and intervene on behalf of any child who requires care and protection and is in danger of imminent injury or harm,

Police

Establishment of functional gender desks at the police stations/posts. Investigating cases of SGBV.

Arresting the suspect or perpetrator of SGBV. Providing a P3 form to the survivor.

Collecting and preserving exhibits from the survivor. Ensuring security for the survivor and his/her family.

Submitting to and collecting the exhibits from the government chemist.

Availing exhibits and witnesses for the prosecution when required. Giving evidence in court as required.

Roles of Duty Bearers

- **Health Care Provider**
 - Providing treatment and psychological care to SGBV survivors including Post Exposure Prophylaxis (PEP).
 - Collecting and giving evidence in court (expert witnesses). Referral and linkage of survivors to police and community interventions.
- **Prosecution**
 - Supervising the Police in the investigation of sexual offenses. Ensuring the drafting of correct charges.
 - Pretrial preparation for survivors and witnesses of SGBV cases. Presenting evidence in court - both exonerating and incriminating evidence.
 - Examining and cross-examining witnesses in court.
 - Making relevant applications in court – for example, protection of vulnerable witnesses, counseling of survivors, treatment of offenders, assessing the survivors or witnesses, and sentencing of the convict.
- **Probation**
 - Conduct offender assessment and submit an unbiased report to court as ordered.
 - Supervision and aftercare of ex-convicts. Psychosocial support.

What do I do with this information?

Ending SGBV requires a shift in societal norms, stronger systems, and empowered communities. You can take:

- Reactionary measures -reporting and demanding for accountability.
- Long term measures-Embrace story telling in our communities to break the silence.
- Be brave and inspire positive change in your community

KNOW YOUR RIGHTS & TAKE ACTION!

☒ "SEXUAL VIOLENCE IS A SERIOUS CRIME. SPEAK UP, REPORT, AND SEEK JUSTICE!"


☒ EMERGENCY CONTACTS

☒ 1195 GBV HELPLINE

Refs

- https://www.kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/SexualOffencesAct_No3of2006.pdf
- Ministry of Health, National Standard Operating Procedures for Management of Sexual Offences Against Children (2018),
- NGECC, National Monitoring and Evaluation Framework toward Response and Prevention of Gender-Based Violence in Kenya,
- https://www.unodc.org/pdf/criminal_justice/HB_for_the_Judiciary_on_Effective_Criminal_Justice_Women_and_Girls_E_ebook.pdf (last accessed on 6th August 2021).
- Ministry of Health, National Guidelines on the Management of Sexual Violence in Kenya (2014)
- Ministry of Devolution and Planning, National Policy for Prevention and Response to Gender Based Violence
- <https://pbi-kenya.org/sites/pbi-kenya.org/files/>
- Myths And Facts about Sexual Violence, <https://www.law.georgetown.edu/your-life-career/health-fitness/sexual-assault-relationship-violence-services/myths-and-facts-about-sexual-violence>
- <https://pbi-kenya.org/sites/pbi-kenya.org/files/>



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