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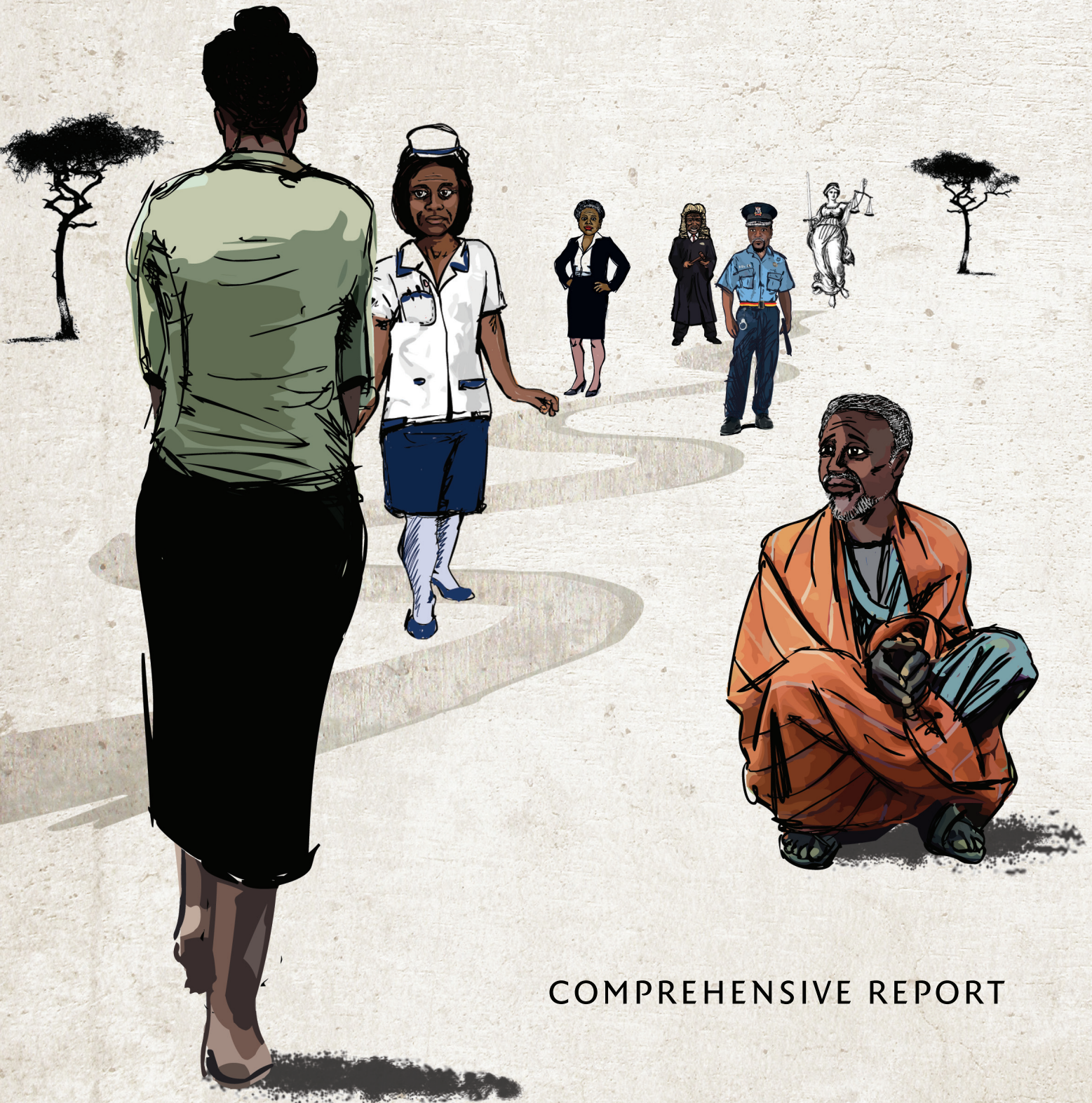
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SEXUAL OFFENCES ACT

IMPLEMENTATION WORKSHOP

25-27 MAY, 2011



COMPREHENSIVE REPORT

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COMPREHENSIVE REPORT



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THANKS & ACKNOWLEDGEMENTS

For both their funding support and consistently sound counsel, the Human Rights Center sincerely thanks the Open Society Institute's International Women's Program and the German Development Cooperation (GIZ), in particular. Many thanks as well to the Finnish Embassy in Nairobi, the Global Fund for Women, and UN Women for supporting the Workshop itself and the drafting, production, and publication of this report. We are indebted to the John D. and Catherine T. MacArthur Foundation and Humanity United, whose program support enables our Sexual Violence and Accountability Project to undertake critical efforts such as this Workshop and report.

The realization of the Sexual Offences Act Implementation Workshop would have been impossible without the critical partnership of the Task Force on the Implementation of the Sexual Offences Act and the members of the Workshop Steering Committee. Specifically, we were fortunate to have worked most closely with Hon. Lady Justice (Rtd.) Effie Owuor, Jacinta Nyamosi, Samson Mainye and Commissioner Milly Odongo (TFSOA); Dr. Nduku Kilonzo, Carol Ajema and Mary Valai (LVCT); Jane Serwanga and Mariam Kamunyu (FIDA-Kenya); George Kegoro and Judy Gitau (ICJ-Kenya); Lydia Muthiani (COVAW); Mike Wachira and Vicky Wambua (CREAW); Shonali Shome (AIDS-Free World); and Faith Kabata and Buluma Bwire (TFSOA / GIZ).

The summarization of Workshop discussion is based on extraordinary note-taking by a rapporteur team of volunteers from the TFSOA, LVCT, FIDA-Kenya, HRC, AIDS-Free World, and the UCLA Law School International Human Rights Clinic: Mary Valai, Mariam Kamunyu, Faith Kabata, Melissa Carnay, Camille Crittenden, Julie Freccero, Alexa Koenig, Shonali Shome, and Vanessa Baehr-Jones.

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Finally, sincere thanks to the Great Rift Valley Lodge, whose staff members accommodated us all with unflagging flexibility and good humor.

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WORKSHOP KEYNOTE SPEECH BY HON. ATTORNEY GENERAL AMOS S. WAKO

Ladies and Gentlemen:

I am pleased to join you today in this event to critically examine Kenya's position in the implementation of the Sexual Offences Act. The Government is resolutely committed in improving prevention and response to sexual violence through effective administration and implementation of the Sexual Offences Act.

The Sexual Offences Act is a progressive and pioneer legislation in tackling sexual violence in Kenya. It incorporates all forms of sexual violence in one piece of legislation as well as provides progressive provisions for dealing with sexual violence in an integrated fashion to ensure that survivors' rights are wholly protected.

Before I share the Government's achievements, challenges and vision in the implementation of the Sexual Offences Act, it may be helpful to point out that the Attorney General is accountable to Parliament under Statute for superintendence of the Sexual Offences Act.

Much progress has been made across Government in the implementation of the Sexual Offences Act. The Task Force on the Implementation of the Sexual Offences Act is responsible for the effective implementation and the administration of the Act. The achievements include:

- i. Development of the Sexual Offences Regulations;
- ii. Development of a National Policy Framework on the Act through a consultative and participatory process;
- iii. Training of prosecutors, state counsels and police officers on the Sexual Offences Act;
- iv. Public awareness and outreach programmes;
- v. Development of an Action Plan on One Stop Centres / Referral Mechanisms to foster multi-sectoral collaboration;
- vi. Revision of the Prosecutor's manual on sexual violence by the Office of the Director of Public Prosecutions
- vii. Development of the Investigators manual including framing of model charges under the Sexual Offences Act done by the Police Department
- viii. Setting up of Gender Desks by the Police Department across police stations in Kenya;
- ix. Development of a Gender police training manual in conjunction with FIDA-Kenya;
- x. Incorporation of SOA provisions in the induction curriculum of Chiefs and Assistant Chiefs by the Ministry of Provincial Administration and Internal Security;
- xi. Development of the National Guidelines for the Management of Sexual Violence and the Post Rape Care Form by the Ministry of Medical Services;

- xii. The Teachers Service Commission Circular relating to sexual abuse in schools; and
- xiii. The Ministry of Education Guidelines on sexual violence in schools.

These achievements will be discussed in detail by the respective Government Departments today.

The implementation of the Act has not been without challenges, some of the challenges include: cultural attitudes and practices that condone sexual violence hence hindering reporting of sexual violence cases and ultimately the operation of the Act, lack of coordinated multi-sectoral collaboration among the various actors and poor or lack of knowledge both by members of the public and some actors on the provisions of the Act.

To counter these challenges the Task Force on the Implementation of the Act together with key relevant actors including civil society is embarking on initiatives that include:

- i. Approval and subsequent operationalization of the National Policy Framework which envisions establishment of a permanent Authority to administer the Sexual Offences Act;
- ii. Establishment of One Stop Centres/Referral Mechanisms foster multi-sectoral collaboration to streamline delivery of services for survivors of sexual violence in the health, justice, legal, social and forensic management sectors;
- iii. Audit and review of all laws, regulations, practices and customs relation to sexual offences to harmonize them with the Constitution and the Sexual Offences Act for effective administration of the Act;
- iv. Development of the Protection of the Welfare of Victims of Offences Bill under Article 50 of the Constitution to ensure that the rights of survivors of sexual violence are realized as envisaged in the Bill of Rights; and
- v. Continued public awareness and outreach in partnership with civil society to educate communities on the rights provided in the Act and the obligations therein.

For effective implementation of the Sexual Offences Act, there must be collaborative working across Government sectors and with civil society organizations. This is the only way to make the progressive provision of the Sexual Offences Act a reality to all Kenyans. This Workshop is important to achieving this aim.

I am therefore pleased to see many of you here today as each of you has a significant role to play in the effective implementation of the Sexual Offences Act. The message we are sending out today is that we are committed to working together through a multi-sectoral approach to sexual violence.

I hope that in this Workshop you will be able to critically examine our position in relation to implementation of the Sexual Offences Act and agree on modalities of multi-sectoral collaboration in the implementation of the Sexual Offences Act.

Hon. Amos S. Wako

Former Attorney General of Kenya (13th May 1991 to 26th August 2011)

Naivasha, Kenya

25 May, 2011

LETTER FROM HON. LADY JUSTICE (RTD.) EFFIE OWUOR

This Report summarizes the presentations and discussions of the Sexual Offences Act Implementation Workshop held at the Great Rift Valley Lodge in Naivasha, Kenya, on 24–27 May, 2011.

The major objective of the Workshop was to take stock of the progress made in implementing the Sexual Offences Act across sectors by facilitating open and informal discussions between Government agencies and civil society organizations. The discussions were constructive, objective and, sometimes, heated. However, the Workshop was useful in identifying concrete ways to enhance implementation of the Sexual Offences Act.

This Report therefore contains an assessment of what has been achieved in the implementation of the Sexual Offences Act, existing challenges, and actionable recommendations to be implemented apace and in the long term.

It is worth underscoring that the Workshop also provided a good opportunity to illustrate the Government's achievements in the fight against sexual violence—many of them firsts in the region. These included progressive and comprehensive legislation on sexual offences, development of a National Policy Framework for the implementation and administration of the Sexual Offences Act, formulation of an Action Plan on the establishment of One Stop Centres and Referral Mechanisms for survivors and development of National Guidelines on Management of Sexual Violence in Kenya.

Following this Workshop, progress has been made on many fronts including drafting and submission of amendments to the Sexual Offences Act, which would create a national coordinating authority and repeal Section 38 of the Act. Further progress has come in finalizing the Chief Justice Rules and making significant strides towards the gazettelement of the Medical Treatment Regulations and the Post Rape Care Form.

I am confident that building on the Workshop momentum there will be more dialogue, in-depth discussions, and joint action among multi-sectoral actors on the issues raised in this Report.

Finally, the Workshop and preparation of this Report was made possible by the Human Rights Center, University of California—Berkeley, Liverpool VCT Care and Treatment, and FIDA-Kenya, with substantial funding from the Open Society Institute—International Women's Program, GIZ, Global Fund for Women, the Finnish Embassy, UN Women, and AIDS Free World. I take this opportunity to extend our gratitude to them.



Hon. Lady Justice (Rtd.) Effie Owuor
Chairperson, Task Force on the Implementation of the Sexual Offences Act

LETTER FROM HON. MR. JUSTICE PHILIP WAKI

The issue of sexual and gender-based violence is of deep concern to me, particularly in light of my work with Kenya's Commission of Inquiry into Post-Election Violence (CIPEV), which I had the privilege of chairing.

Kenya erupted into violence following the 2007 elections. Alongside so much death and destruction, our fellow Kenyans also suffered widespread rape, sexual assault, and related gender-based violence. Evidence presented to the Commission suggested that perpetrators had raped and sexually mutilated their victims with full expectation of impunity.

So far, we as a country have done little to prove them wrong.

However, neither the perpetration of, nor impunity for, these crimes is limited to the period of post-election violence. Rape, genital mutilation, defilement, and sexual exploitation are ever-present scourges; they are with us even during times of peace. Unfortunately, due to factors such as stigma, under-reporting, and lack of a strong legal framework, these perpetrators have traditionally eluded prosecution. Survivors continue to suffer in silence. They may pass their rapists in the street day after day; they may endure years of psychological trauma without counseling; they may continue to fall prey to sexual exploitation or harassment in order to keep their jobs, feed their children.

Without accountability for sexual and gender-based violence committed in our communities every day, how can we expect to investigate and prosecute crimes that take place in times of crisis?

Our path forward is clear: we must work tirelessly to achieve accountability and provide care for victims of sexual violence at all times, and in all parts of Kenya

Kenya's key weapon against sexual and gender-based violence is the 2006 Sexual Offences Act. It is a far-reaching and progressive piece of legislation that expanded our definition of sexual offences, heightened the penalties for several crimes, and emphasized new elements such as psychosocial support, witness protection, and forensic evidence. However, realization of the law on the ground has met many challenges.

At the Sexual Offences Act Implementation Workshop, held in Naivasha from 25-27 May, 2011, many of us from relevant sectors of both government and civil society gathered to examine our delivery of the Act's promise. We realized that, while we each struggle to fulfill our individual responsibilities under the law, our shared challenge is to determine how to work together to better implement the Act as a full and coherent process. How can healthcare providers, police officers, prosecutors, judicial officers, probation officials, and lawyers work more closely to create a survivor-centered path to justice? How does the Act operate in the context of Kenya's new Constitution, domestic statutes, and obligations under international law? How can it be extended to the most vulnerable, invisible populations in our country?

The workshop was truly an historic event. It was a forum where cross-pollination of diverse experiences and expertise gave rise to new and critical insights. Participants sat together and spoke

frankly about their capacities, deficiencies and needs. We identified priority action areas and began to outline several concrete measures to take forward and send across sectors.

The Workshop has borne early fruit. Some of our recommendations have led to submission of a statutory amendment to the Act. Others have blossomed into collaborative grants for medico-legal partnerships. We even have renewed progress regarding guidance for the courts. However, an improved coordination of response to sexual and gender-based violence in Kenya has only begun.

The Sexual Offences Act Implementation Workshop Report constitutes the culmination of our three days together. It is my hope that its memorialization of our dialogue will not only nourish participants' commitment to collective problem-solving, but will provide a blueprint for all of Kenya's stakeholders who continue to fight against sexual and gender-based violence in our country.

Hon. Mr. Justice Philip Waki

Nairobi, Kenya

October, 2011

**LETTER FROM THE HUMAN RIGHTS CENTER,
UNIVERSITY OF CALIFORNIA, BERKELEY SCHOOL OF LAW**

Dear Friends,

It has been the Human Rights Center's honor and privilege to work so closely with our Kenyan colleagues over the past year to improve accountability for sexual and gender-based violence in their country. We learned a great deal from these able experts and were pleased to contribute our interdisciplinary research, coordination, and technical skills to their efforts. We hope that the collective energy, intelligence, and commitment of our Kenyan colleagues will bring about tremendous progress and good faith collaboration in the coming months.

One thing is clear: full implementation of the Sexual Offences Act will take serious and sustained political will. We have been impressed by the longstanding leadership behind the Act's protections—particularly that of Hon. Njoki Ndung'u, Hon. Millie Odhiambo, the Task Force on the Implementation of the Sexual Offences Act, and former Attorney General Hon. Amos Wako. We hope Kenya's new leaders—especially Hon. Attorney General Githu Muigai, Hon. Chief Justice Willy Mutunga, and Director of Public Prosecutions Keriako Tobiko—will continue to make justice and support for survivors of sexual and gender-based violence in Kenya a priority. We encourage them to work closely with the relevant government bodies and civil society organizations to bridge the gaps that currently exist as obstacles along a survivor's path to justice. We also hope to remain in contact with all of our Kenyan colleagues in order to learn of, and learn *from*, their successes and challenges.

Our deep thanks to the Open Society Institute International Women's Program, GIZ (German Development Cooperation), the Global Fund for Women, and AIDS Free World for making the Workshop possible. Our additional gratitude to the Finnish Embassy in Nairobi and UN Women for supporting the development and production of the Workshop reports.

We hope that the Workshop recommendations and record we present in this comprehensive report and its companion summary will promote improved implementation of the Sexual Offences Act by providing both a roadmap for future action and a platform for broader public engagement.

With heartfelt thanks,

Kim Thuy Seelinger, JD
Director, Sexual Violence & Accountability Project

October, 2011

INDEX OF ABBREVIATIONS

| | |
|----------|--|
| CREAW | Center for Rights Education and Awareness |
| COVAW | Coalition on Violence Against Women |
| DNA | Deoxyribonucleic acid, which contains unique genetic traits that can be traced to any human or other living organism |
| DPP | Department of Public Prosecutions |
| DRH | Division of Reproductive Health |
| FIDA-K | Federation of Women Lawyers, Kenya |
| GBVIMS | Gender-based Violence Information Management System |
| HRC | The Human Rights Center, at the University of California, Berkeley |
| ICJ-K | International Commission of Jurists-Kenya |
| IDP | Internally displaced person(s) |
| LVCT | Liverpool VCT Care and Treatment |
| MOMS | Ministry of Medical Services |
| MOPHS | Ministry of Public Health and Sanitation |
| P3 Form | Police medical examination document, used to document the physical impact of various acts of violence |
| PRC Form | Post-Rape Care Form, used by healthcare providers to document the physical and psychological impact of sexual offences |
| SOA | 2006 Sexual Offences Act |
| SGBV | Sexual and Gender-Based Violence |
| TFSOA | Task Force on the Implementation of the Sexual Offences Act |
| UNHCR | The United Nations High Commissioner for Refugees |

Terminology Notes:

The terms “victim” and “survivor” are used interchangeably depending on speaker’s preference, intent, and context; both refer to an individual who has suffered an act of sexual or gender-based violence.

Certain government agencies referred to in the Workshop session summaries are currently in the process of restructuring, renaming, or removal based on the Kenyan Constitution enacted August 27, 2010. In the session summaries, all government agencies are referenced as referred to by Workshop participants during 25–27 May, 2011.

EXECUTIVE SUMMARY

This report presents the objectives, discussion, and findings of the Sexual Offences Act Implementation Workshop, held in Naivasha, Kenya, 25–27 May, 2011. It serves as the full record of three days of discussion and provides a background to Workshop participants' final recommendations for improved implementation of Kenya's Sexual Offences Act.¹

The idea of such a convening was first conceptualized by the University of California's Human Rights Center, in the context of research conducted by its Sexual Violence and Accountability Project. The Workshop was then brought to fruition in conjunction with Kenya's Task Force on the Implementation of the Sexual Offences Act and the Workshop Steering Committee. Along with the Task Force, the Steering Committee included representatives from Liverpool VCT Care and Treatment (LVCT), Federation of Women Lawyers-Kenya (FIDA-K), International Commission of Jurists-Kenya (ICJ-K), Coalition on Violence Against Women (COVAW), Center for Rights Education and Awareness (CREAW), the German Development Cooperation (GIZ), AIDS Free World, and the Human Rights Center, University of California, Berkeley (HRC).

The overarching objective of the convening was to improve implementation of Kenya's 2006 Sexual Offences Act (SOA) by bringing together more than eighty six participants drawn from a cross-section of government and civil society organizations. They came from around the country to discuss sectoral capacity challenges and explore ways to improve the *overall* process of protection envisioned by the Act.

During the workshop, participants discussed the gains made by the Kenyan government and civil society organizations in responding to sexual violence.

Workshop participants also identified critical challenges that remain in the implementation of the Sexual Offences Act—both within their individual sectors and then as an overall, cross-sectoral process. Discussion illuminated several obstacles in both categories. Workshop participants prioritized several baseline improvements common to the entire implementation structure. They also explored ways to adjust response to emergency situations. Finally, participants discussed how to improve government engagement with informal community mechanisms and protect particularly vulnerable groups.

The recommendations that resulted ranged from making fundamental improvements to the coordination of government and civil society actors, to specific suggestions as to strengthening individual sector capacities.

¹ For a summary of the Workshop session discussions and recommendations, please see the companion document: *The Sexual Offences Act Implementation Workshop, 2011: Summary Report*, available at <http://hrc.berkeley.edu>, under "Publications."

Critical among participants' recommendations was the call for a permanent national coordinating body to orchestrate and oversee coherent implementation of the SOA, as well as enhanced communication between government and civil society.

Further, increased resource allocation to implementing agents was seen as necessary to fulfillment of individual stakeholder responsibilities under the Act. This was repeatedly noted in the case of provision of witness protection, awareness-raising about the SOA, improved investigatory and prosecutory capacity, and improved provision of psychosocial support for survivors of sexual offences in Kenya.

Data collection and dissemination about sexual offences in Kenya was an additional area requiring further development and coordination.

Finally, Workshop participants identified areas requiring additional research, including models of integrated medico-legal services, models of witness protection, the design and maintenance of offender databases, and potential strategies for productive engagement between formal and informal justice systems.

This Comprehensive Report memorializes the Workshop discussion, findings, and ultimate recommendations. It also summarizes relevant updates related to either Workshop recommendations or SOA implementation generally.

SEXUAL AND GENDER-BASED VIOLENCE IN KENYA

The 2003 Kenya Demographic Health Survey (KDHS) reported that 16% of women in Kenya from 15–24 years old had experienced sexual violence in the previous year. The 2008–2009 KDHS further reported that 1 in every 5 (21%) women in Kenya aged 15–49 had experienced sexual violence. Much of this violence came at the hands of their spouses. Moreover, the same 2008/2009 study found that 12% of Kenyan women ages 15–49 reported that their first experience of sexual intercourse was against their will.

Despite this grim picture, Kenya has made great strides in addressing sexual violence as a medico-legal issue. This is evidenced by existence of several policy frameworks, which have been put in place to guide development of response and prevention to SGBV. These include the Sexual Offences Act (2006), the Health Ministries' National Guidelines on the Management of Sexual Violence (2009), and the Kenya National HIV/AIDS Strategic Plan.

THE 2006 SEXUAL OFFENCES ACT

Prior to 2006, high levels of sexual and gender-based violence in Kenya went largely unaddressed by Kenya's courts due to limited definitions of offences, a weak legal framework, discretionary sentencing, and general taboos that permeated both the formal and informal justice sectors. Law enforcement and prosecutors alike were ill-equipped for the challenges that arise in sexual and gender-based crime. Strict requirements for corroboration of testimony intimidated survivors of intimate crimes for which there were no eyewitnesses. Further, there was no anticipation of psychosocial support, much less witness protection for those brave enough to come forward and hold their perpetrators accountable in court.

In 2006, thanks to the extraordinary advocacy efforts of both civil society and political champions like then-Parliamentarian, Hon. Njoki Ndung'u, the Sexual Offences Act of 2006 (SOA) was passed. It came into force on July 21, 2006. The Act serves as a consolidated, stand-alone piece of legislation regarding sexual offences and replaces the few scattered penal code provisions then in existence.²

More than revising and consolidating provisions regarding sexual and gender-based violence, the SOA re-defines sexual violence as crimes of violence instead of crimes of morality—heightening the emphasis on bringing perpetrators to justice. It also expands the scope of acts considered sexual offences, adding new crimes such as sexual assault (Section 5), gang rape (Section 10), child trafficking (Section 13), and intentional transmission of HIV or other life-threatening conditions (Section 23). This expanded enumeration of crimes is accompanied by a liberalization of notions of “victim” and “perpetrator”—the SOA is gender neutral, allowing for cases in which men and boys may be victims and females may be perpetrators. The SOA refined the penalties for defilement, tying the punishment to the age of the victim. The Act also establishes minimum sentences for some of the most serious sexual offences.

In terms of practice, the SOA calls for cross-sectoral delivery of inter-linking services, across the health, law enforcement, legal, and forensic sectors. For example, it places new emphasis on the collection and admission of forensic evidence into sex crime cases. It also creates a set of databanks for the registration of convicted sexual offenders and their DNA. Moreover, it provides for psychosocial counseling for survivors and, where deemed appropriate, rehabilitative counseling for the accused.

A generally forward-thinking and progressive piece of legislation, the SOA is of course a product of political compromise. Even the law as passed contains items of controversy. For example, a “false allegation” provision in Section 38 has become a lightning rod for activists. This infamous provision provides that a victim or witness deemed to have given false testimony can receive the

² Kenya's Sexual Offences Act (current as of May, 2011) can be found online at <http://hrc.berkeley.edu>, under “Sexual Violence & Accountability.”

same sentence the accused would have received if found guilty. Activists have argued that the mere chance of losing a case and then being blamed for having made a false allegation is enough to prevent victims from coming forward. This feared “chilling effect” has made Section 38 of the SOA a prime target for repeal.

Though respectable progress has been made toward realizing the Act’s full potential, both the government and civil society are still learning how to wield this weapon effectively. The different sectoral responses are yet to be aligned to the provisions of the SOA.

THE TASK FORCE ON THE IMPLEMENTATION OF THE SEXUAL OFFENCES ACT

The Task Force on Implementation of the Sexual Offences Act (“TFSOA” or “Task Force”) was established by the Attorney General on March 16, 2007, via *Gazette Notice 2155*. The Task Force’s mandate is to oversee the implementation of Kenya’s 2006 Sexual Offences Act. A critical but temporary monitoring body, the Task Force’s original period of appointment was set to expire on December 30, 2010. However, its appointment was later extended to December 31, 2012, by *Gazette Notice No. 743* of January 21, 2011. Its membership includes representatives from both government and civil society, with its leadership currently vested in Chairperson Hon. Lady Justice (Rtd.) Effie Owuor.³

The Task Force’s responsibilities, as outlined in its terms of reference, are to develop and oversee the intersectoral implementation and administration of the SOA. It is also charged with ensuring consistency among the Act and other existing laws, policies, regulations, and customs. Finally, the Task Force is responsible for overseeing all research, public education, and sensitization campaigns necessary to fulfill its mandate and promote the objectives of the SOA.



Hon. Lady Justice (Rtd.) Effie Owuor, current Chair of Kenya’s Task Force on the Implementation of the Sexual Offences Act.

³ A list Task Force members, current as of October, 2011, is provided in the appendix.

THE WORKSHOP: BACKGROUND, OBJECTIVES, AND DESIGN

The Workshop was designed to bring key representatives from all the relevant sectors to the same table. It would contribute to improved implementation of Kenya’s 2006 Sexual Offences Act by creating an active dialogue among stakeholders from both government and civil society, as well as urban and rural areas of Kenya. Participants would represent fields vital to the discussion—health-care providers, lawyers, police, forensic scientists, judges, legislators, and community advocates. They would not only examine individual sector challenges in SOA implementation: together, they would step back and take a bird’s eye view of the entire process in order to diagnose and address critical breakages in the links *between* sectors.

The workshop that resulted was truly a collaborative and historic effort, bringing eighty-six participants to Naivasha’s Great Rift Valley Lodge from 25–27 May, 2011. The Workshop consisted of interlocking plenary and breakout sessions that enabled focused discussion as well as general dialogue about small-group findings.

Day 1 of the Workshop was aimed at evaluating the status quo with respect to implementation of the Sexual Offences Act, and charting the anatomy of an “ideal process” for accountability as envisioned by the historic legislation. On Day 2, participants diagnosed critical challenges within and between sectors and assessed proposed solutions. On Day 3, participants considered special issues related to improving the response to sexual and gender-based violence in Kenya, identifying next steps and priority action items.



Participants of the SOA Implementation Workshop, 25–27 May, 2011, in Naivasha, Kenya.

WORKSHOP SESSION SUMMARIES

Participants' discussions during the Workshop's plenary and concurrent (breakout) sessions were closely noted by Workshop rapporteurs. These notes are summarized below, without editorialization.

Day 1: May 25, 2011

Plenary Session 1: Opening Remarks

This plenary session was attended by all Workshop participants. George Kegoro of the International Commission of Jurists - Kenya moderated the presentations.

First, three Workshop sponsors offered brief words of welcome: Jacinta Nyamosi of the Task Force on the Implementation of the Sexual Offences Act; Carole Osero-Ageng'o of the Open Society Foundations, International Women's Program; and Camille Crittenden of the Human Rights Center at the University of California, Berkeley. They commended participants for attending this historic, cross-sectoral meeting and observed with some satisfaction that the mere gathering of so many distinguished stakeholders had already raised the profile and importance of the Sexual Offences Act.

Following this, three esteemed Kenyan leaders offered their thoughts and encouragement to the assembled Workshop participants.

First, Hon. Mr. Justice Philip Waki, Court of Appeals Judge and chair of the 2008 Commission of Inquiry into Post Election Violence (CIPEV), opened the session with a personal greeting and reflections. He reviewed the occurrence of sexual and gender-based violence during Kenya's political and ethnic strife in early 2008, noting the recurrent link between poverty and heightened vulnerability to attack. Justice Waki reminded the participants that sexual and gender-based violence was a concern in Kenya even prior to the most recent election. He noted the sobering number of *reported* rape cases in Kenya during the early 2000s and the general increase since then. Longstanding penal code provisions criminalizing sexual and gender-based violence had been limited in scope and rife with practical evidentiary challenges. Justice Waki described



Hon. Mr. Justice Philip Waki, Chair of the Commission on the Inquiry into Post Election Violence.

how, thanks to the extraordinary efforts of civil society stakeholders and then-parliamentarian Njoki Ndungu, the Sexual Offences Act of 2006 (SOA) had been born, raising the profile of sexual and gender-based violence as a critical issue. The SOA also expanded the definitions of offences, imposed minimum sentences (however controversial), and attempted to curb perceived evils such as abuse of authority and the lodging of false allegations.

And yet, Justice Waki noted, full implementation of the SOA has been slow to follow. He observed that although a government task force was established to oversee enforcement of the Act, low levels of prosecution indicate substantial challenges. Justice Waki urged Workshop participants to think carefully about what kind of institutional structure is needed to roll out the SOA's protections in a full and meaningful way. He commended participants for committing to thinking creatively about these linkages, while also taking community, technological, and structural realities into account.

Next, Hon. Lady Justice (Rtd.) Effie Owuor, chair of the Task Force, warmly greeted the participants and expressed thanks that they had gathered to assist in the SOA's implementation. After asking participants to briefly introduce themselves, Hon. Lady Justice (Rtd.) Owuor noted that though the Task Force had made significant progress toward implementing the Act, considerable challenges remained. Specifically, she cited increasing incidences of sexual violence despite the passage of this far-reaching law, lack of forensic evidence leading to acquittal, inadequate psychosocial support for survivors of sexual and gender-based violence, and counter-productive community norms that impede survivors who wish to seek justice through prosecution.

Finally, Hon. Mr. Justice Waki graciously delivered remarks that had been prepared by the Hon. Attorney General Amos Wako, who had been unexpectedly detained in Nairobi and could not attend. Through Justice Waki, the Hon. Attorney General Wako commended the Task Force for its numerous achievements to date. For example, he noted the Task Force's development of Sexual Offences Regulations, as well as a comprehensive National Policy Framework to support the Act. He further noted that under the Task Force's leadership, prosecutors, state counsel and police officers had been trained on the Sexual Offences Act, and public awareness and outreach programs had been established. The Attorney General referred to several other measures, as well: the development of an Action Plan on One Stop Centers / Referral Mechanisms to foster multi-sectoral collaboration; the revision of the Prosecutor's manual on sexual violence by the Office of the Director of Public Prosecutions; and the Police Department's development of an investigations manual, in addition to the establishment of "gender desks" in police stations throughout Kenya.



Task Force Chair Hon. Lady Justice (Rtd.) Effie Owuor sits with Dr. Nduku Kilonzo (LVCT) and Jane Serwanga (FIDA-Kenya) at the pre-Workshop media briefing, May 2011.

The Hon. Attorney General also noted several ongoing challenges. He specifically mentioned the need to have the National Policy Framework—and its envisioning of a permanent Authority to oversee implementation of the SOA—approved and operationalized. He emphasized the need to establish referral mechanisms to streamline survivors' access to multiple services. He stressed the need to review and harmonize the SOA's relationship to other pieces of Kenyan legislation, as well as to develop the Protection of the Welfare of Vic-

tims of Offences Bill in order to safeguard the rights of all survivors—including those who have experienced sexual violence. Community education and sensitization similarly remain a challenge. The Hon. Attorney General closed with thanks to all participants for having gathered in good faith to secure effective government–civil society collaboration to support the Act’s implementation.

Plenary Session 2: Status Updates from Government

This plenary session, attended by all Workshop participants, described the Kenyan government’s response to sexual violence and plans for the SOA’s implementation. It also provided an opportunity for civil society stakeholders to establish government contacts and learn about the SGBV-related work of various ministries.

The statements delivered by government representatives are summarized below.

OFFICE OF THE PRESIDENT, BY MR. CHARLES ONDIEKI

Mr. Ondieki began his comments by explaining the role of the Office of the President, which uses its national network to contribute to the maintenance of law and order, implement government policies, coordinate and safeguard government resources, and respond to emergent issues. He said that a large part of this mandate involves working with local chiefs, as well as high-level officials in the Provincial Administration, including Provincial Commissioners, District Commissioners, and District Officers.

Prior to 2006, the Office of the President had no formal training program related to sexual offences. Since then, Mr. Ondieki noted that the Office has begun training chiefs on many aspects of sexual offences, including a.) awareness of offences and evidentiary requirements under the SOA, b.) how to improve reporting by linking victims, their communities, and the police, c.) identification of “vulnerable witnesses” to provide for their protection, and d.) collection of relevant data and evidence.

Financial constraints have limited the Office of the President’s ability to achieve as much as it would like in this area. For example, more resources are needed to update the chiefs’ sex offences training manual; also, resources are required to extend training to supervisors regarding the SOA. In rural areas, the chiefs’ ability to provide government services on behalf of SGBV victims is limited due to lack of transport. Communication challenges also exist, and the monitoring and evaluation of services, including protection rendered, remains weak.

Mr. Ondieki closed by noting that the Office of the President is pursuing financial support to remedy these challenges. Once the necessary funding is secured, the Office plans to revise the training manual; train Provincial Commissioners, District Commissioners, and District Officers; provide motorcycles to chiefs to enhance their mobility; devote funds to facilitating communication with chiefs; implement a national monitoring program; and identify alternative development funds.

DEPARTMENT OF PUBLIC PROSECUTIONS (DPP), BY MS. ALICE ONDIEKI

Ms. Ondieki opened by explaining that the Department of Public Prosecutions plays an implementation-related role by prosecuting sexual offence cases through state counsel or police prosecutors who have been delegated the necessary powers. The Department also advises police on investigations generally, including SGBV-related investigations.

Ms. Ondieki noted that since enactment of the SOA, the Department of Public Prosecutions has taken several steps toward fulfilling its implementation responsibilities. Coordination and training has been a first priority, with specialized training of state counsel occurring hand in hand with the specialized training of police prosecutors. These national sensitization and training workshops were launched in collaboration with civil-society colleagues (FIDA-Kenya, CREAM, GIZ, IJM, etc.).

A “sexual offences section” within the Department of Public Prosecutions has helped ensure that internal prosecutorial policies are updated in light of the SOA. Ms. Ondieki mentioned that the Department has taken on several complex SGBV cases, including some involving child pornography; in many of these cases, it has been assisted by International Justice Mission (IJM). In addition, the Department has explored the possibility of appointing special magistrates for SOA-related cases, in light of the judiciary’s limited capacity.

Most recently, the Department of Public Prosecutions has worked with GIZ to revise the police training manual in order to improve police education related to SOA implementation. The manual is in-depth and trainings include substantial content.

Ms. Ondieki explained that the Department is in the process of drafting amendments to the Act in light of their experiences to date. One of the most important amendments it proposes would provide for the continuance of cases that pre-date the SOA’s enactment, since the original text of the SOA did not provide for this eventuality.

Finally, Ms. Ondieki reported that the Department’s ongoing priorities include the review of prosecutorial regulations, the continuation of specialized trainings, and enhancing cooperation among stakeholders.

STATEMENT OF THE POLICE COMMISSIONER’S OFFICE, READ *IN ABSENTIA*

The statement offered by the Police Department explained that the police force is charged with implementing the SOA. The force has had the following successes to date: a.) the officer in charge of SGBV matters sits as a member of the Task Force on the Implementation of the SOA, b.) some police officers have been trained to work with victims of sexual offences, c.) every police station has a “gender desk” staffed with well-qualified “gender officers” to handle reports of sexual and gender-based violence, d.) complaints regarding police handling of SGBV cases have decreased, e.) “child protection units” have been established to handle cases involving children under 15, and f.) police have conducted SGBV-related awareness programs in secondary schools and public forums in provinces across Kenya.

According to the police department’s statement, the primary challenge police face is the failure of victims to report sexual offences. Reasons underlying this failure to report include fear, as well as pressure to resolve matters outside of court. Also, cultural beliefs in the rural areas regarding marriage of minors and traditional practices can conflict with the law. Consequently, victims are often not supported in coming forward.

The police statement noted that another challenge for the police is the premature prosecution of cases, before investigations are complete. This can result in wrongful acquittals. Also, there is difficulty working with DNA and other forensic evidence due to the complexity of collecting and handling evidence, as well as challenges related to chain of custody. Police often do not have sufficient training to overcome these hurdles.

MINISTRY OF PUBLIC HEALTH & SANITATION (MOPHS),
DIVISION OF REPRODUCTIVE HEALTH, BY MS. ALICE MWANGANGI

Ms. Mwangangi introduced the Division of Reproductive Health (DRH), in the Ministry of Public Health and Sanitation. She said that the Division seeks to address issues of SGBV in Kenya through collaborating with other stakeholders; developing national policy, training and standards for SGBV service delivery; coordinating SGBV service delivery throughout Kenya; mobilizing necessary resources; developing the capacity of SGBV healthcare providers; supervising care offered by provincial and district level reproductive health care providers; and contributing input at the local level toward the development of related national policy.

Specifically, Division of Reproductive Health facilities provide victims of SGBV with the following services: clinical and forensic examinations, physical injury management, post-exposure prophylaxis for HIV and sexually-transmitted infections as well as emergency contraception, psychosocial support, and documentation of SGBV incidents. They also provide referrals to social, legal, and economic support services.

Ms. Mwangangi noted that the Ministry and Division have enjoyed several achievements related to SGBV response. These include the training of 50 Sexual Assault Forensic Examiners (SAFEs) to give expert testimony in court. The Ministry of Public Health and Sanitation has also supported the office of the Government Chemist's work generating DNA profiles and developing an offender DNA database. The Ministry has developed post-rape care kits and revised the Post-Rape Care (PRC) form, which awaits review and gazette. In addition, gender violence recovery centers have been created in hospitals in the Nairobi, Coast, Rift Valley, and Nyanza provinces to handle SGBV cases. SGBV support services have been rolled out in district-level hospitals, as well. In terms of policy, the Ministry developed the National GBV Framework (understood to include sexual violence as well) with the Gender Commission to coordinate SGBV-related activities across Kenya. SGBV is also being incorporated into the training curricula for nurses and clinical officers. Finally, Kenya's National AIDS Strategic Plan addresses issues of gender and SGBV.

The Ministry of Public Health and Sanitation continues to face challenges, however. First, significant delays in prosecuting cases result because only one police surgeon is authorized to sign P3 forms for all of Nairobi. This is exacerbated by inconsistent court receptivity to use of the PRC form as alternate or supplemental to medical evidence.⁴ In addition, not enough healthcare workers are adequately trained on proper completion of the PRC form. Further, doctors and healthcare workers who properly submit the PRC form and other medical evidence are often reluctant to go to court due to the perceived waste of time and transport costs. These limitations can contribute to a lack of medical evidence, which in turn limits the number of successful SOA convictions.

DEPARTMENT OF THE GOVERNMENT CHEMIST,
MINISTRY OF PUBLIC HEALTH AND SANITATION, BY MR. JOHN KIMANI MUNGAI

Mr. Mungai introduced the relevant role of the Government Chemist's office as focused on the analysis of physical evidence collected from crime scenes in order to generate conclusions that will

⁴ The P3 and PRC forms are used by police and healthcare workers, respectively, to document incidences of sexual offence brought to their attention. The differences between these forms—and the challenges that use of separate documentation creates—is discussed in further detail in the summary of Day 1, Plenary Session 3, below. The forms (current as of May, 2011) are included in the appendix.

be helpful to a court of law. As with other types of crime, if physical evidence in a sexual offence case is not properly collected, stored, and transported, its analysis may be compromised and it may lose its evidentiary value.

Mr. Mungai reminded Workshop participants to think of the “crime scene” expansively, for example as including even the victim’s body. Here, he invoked Locard’s principle: “Every contact leaves a trace.” Forensic samples can be taken from a survivor’s clothing, for example, or a used condom. They can be taken directly and painlessly from an accused person’s body as well. DNA profiles can be generated from samples of blood, semen, hair, saliva, etc.

Forensic evidence can serve a critical function in criminal prosecutions—especially in sex crimes, where there may be no eyewitnesses or other proof. If properly collected, stored, and transported, analysis of physical evidence can link a perpetrator with a survivor. It can also exonerate an innocent person. It can corroborate other evidence, and is generally more reliable than eyewitness testimony.

Mr. Mungai explained that his office has an important role under the SOA, which places a new emphasis on the value of forensic evidence in sex offence cases. Despite having Government Chemist branch offices in Mombasa and Kisumu that can evaluate general forensic evidence, the *Nairobi office is the only one equipped to conduct DNA analysis.*

The Government Chemist’s office has been working to meet its obligations under the SOA. In 2010, requests for forensic analysis were submitted in 232 sexual violence cases. The office has moved through most of them, with only 86 pending by the time of the Workshop. In addition, the Government Chemist has participated in training chiefs, medics, and police officers on the nature and importance of forensic evidence. The Government Chemist’s office also utilizes key equipment and a trained DNA analyst in its handling of sexual offence cases.

However, many challenges remain. In terms of training the police, for example, forensic evidence trainings rarely lead to more effective investigations because most of those trained are primarily senior officers—the actual police officers conducting investigations rarely benefit from such training. Thus, their skill level remains low in terms of evidence collection, preservation, and transport. As a result, Mr. Mungai noted that forensic samples transported to the Government Chemist for analysis often deteriorate or are tampered with, making it impossible to extract a DNA profile. This can lead to an evidentiary gap and a lost opportunity to assist a prosecution.

Mr. Mungai noted that the Government Chemist staff itself can rarely take advantage of ongoing training due to lack of resources and a backlogged caseload.

Further, the equipment in the Government Chemist lab is insufficiently maintained. Critical chemicals and supplies can be limited or delayed due to a cumbersome procurement process. Certain machinery is simply lacking: the Government Chemist lab has neither a quantification system nor a freezer mill to preserve particularly challenging samples.

NATIONAL COMMISSION ON GENDER AND DEVELOPMENT, BY MS. EMMAH NUNGARI

Ms. Nungari first presented the role of the National Commission on Gender and Development (“Gender Commission”), which is to facilitate gender and development policies and priorities and advise the government on related issues. She noted that the Commission is a member of the Task Force. The Gender Commission has also been working with the Ministry of Gender to develop legislative and policy reform to ensure that critical issues presented in the SOA are addressed in the national SGBV policy framework.

Another key aspect of the Commission’s work revolves around the development and maintenance of a Gender-Based Violence Information Management System (GBVIMS) to track the incidence of reported rapes in Kenyan communities. The Commission is working closely with the Ministry of Public Health and Sanitation’s Division of Reproductive Health and LVCT to harmonize data. The Commission is also working to reconcile Standard Operating Procedures used in various sectors (for example, security, legal, health).

Finally, Ms. Nungari explained that the Gender Commission is mapping the services offered to SGBV survivors and identifying which services are not yet adequately offered, in order to inform proper scale-up of support. This critical mapping and coordination process is currently being undertaken by the Commission through monthly meetings with the national SGBV Working Group. Moving forward, Ms. Nungari reported that the Commission intends to continue with SOA-related trainings and develop a national monitoring system.

HON. CHARLES MBOGO, CHIEF MAGISTRATE FROM ELDORET HIGH COURT,
OFFERING COMMENTS IN HIS INDIVIDUAL CAPACITY

Hon. Mbogo began by explaining that a judicial officer may not generally communicate with or alongside representatives of the police department. However, in light of the unavoidable absence of an official presenter from the Judiciary, Workshop organizers had approached him a few minutes earlier to provide some insights from his personal experience as an adjudicator—and he agreed.

Thus, in his individual capacity, the judge explained that in Eldoret, the courts have observed several difficulties in the presentation of evidence in sex offence cases. If victims report their experiences at all, they often go to the local chief—so this point of contact has been critical in determining whether a complaint will proceed to the police or evidence will be preserved. Thus, in 2009, the Eldoret courts invited all relevant stakeholders—the police, prisons, health, civil society—to a series of meetings to address the gaps that exist in advancing sex offence cases through the court system. They ultimately formed a “court users committee” to improve communication and coordination on sex offence cases. This cross-sectoral dialogue was designed to improve stakeholders’ abilities to support survivors—for example, learning more about evidentiary standards and investigatory processes has enabled local chiefs to better advise survivors about the preservation of evidence at a critically early stage in the process.

Hon. Mbogo also noted other capacity challenges—police have rarely been invested in sexual offence cases, police prosecutors are not adequately trained to litigate them, and courts are rarely victim-friendly (especially for children). One objective of the “court users committee” in Eldoret has been to support the local police in their investigations and understanding of evidence and evidentiary processes so their work can contribute to sound convictions that will likely be upheld if appealed.

Hon. Mbogo mentioned that some magistrates in Eldoret had benefited from a training conducted by USAID and other partners. These magistrates, in turn, shared their learning with colleagues on the bench who had not been able to attend. This collective learning and knowledge sharing is expected to enhance magistrates’ handling of sex offence cases.

Finally, a question arose as to the status of the sex offender database required by the SOA. It is unclear to magistrates whether such a database or registry yet exists; accordingly, courts’ reporting responsibilities remain unclear.

Plenary Session 3: Mapping the SOA and Placing it in Context

This plenary session was attended by all Workshop participants. It was aimed at providing an opportunity for all Workshop participants to view and analyze the ideal accountability “process” envisioned by the SOA, to a.) enhance clarity about the SOA’s scope and provisions, b.) better reveal how various sectors’ and actors’ roles are linked to a larger process, and c.) set the stage for subsequent diagnosis of where priority breakages exist.

To that end, Kim Thuy Seelinger, from the Human Rights Center, and Jane Serwanga, from FIDA-Kenya, diagrammed a timeline of the SOA’s “ideal” process by which a survivor can obtain justice through Kenya’s formal legal system. The diagram was hand-drawn in real time and projected to a screen behind the podium. It presumed a hypothetical defilement case and the real-life events that might follow. Specifically, the timeline flowed horizontally from “rape” to “justice”—with all possible events in between (notifying chiefs, obtaining healthcare, reporting to police, investigation, prosecution, trial, and sentencing). Ms. Seelinger and Ms. Serwanga then took turns discussing the relevant laws and guidelines that should ideally inform each stage of the process, visually indicating on a visual timeline where in the process these provisions apply.

DISCUSSION

At the outset, Ms. Seelinger reminded the plenary that the timeline is a simplification of reality—many events do not actually follow a set or linear path, especially at the beginning of a case, when a survivor may first access help from different sources (for example, a local chief, healthcare clinic, or police). Nevertheless, a visual timeline of events, as they may fit within an ideal process, can provide a helpful overview of different sectors’ roles and relationships—and how failure to fulfill obligations at any step of the process can affect the ability of other actors to deliver on their obligations. This sense of inter-connected purpose and responsibility among community, health, security, legal, judicial, and forensic sectors is critical to the SOA’s full implementation.

The presenters noted that the formal justice process for sexual offence cases can be loosely divided into four stages: pre-investigation, investigation, prosecution and trial, and post-trial. They then walked through the relevant legal, regulatory, and administrative provisions that describe each stage of the ideal process. Specifically, they pulled from the Kenyan Constitution, the SOA and its 2008 regulations, and the 2009 National Guidelines on Management of Sexual Violence in Kenya (the “2009 National Health Ministry Guidelines,” issued jointly by the Ministry of Public Health and Sanitation and the Ministry of Medical Services). They also referenced the Prosecutors’ handbook on sexual offences, which is not generally available to the public.

Pre-Investigation Stage

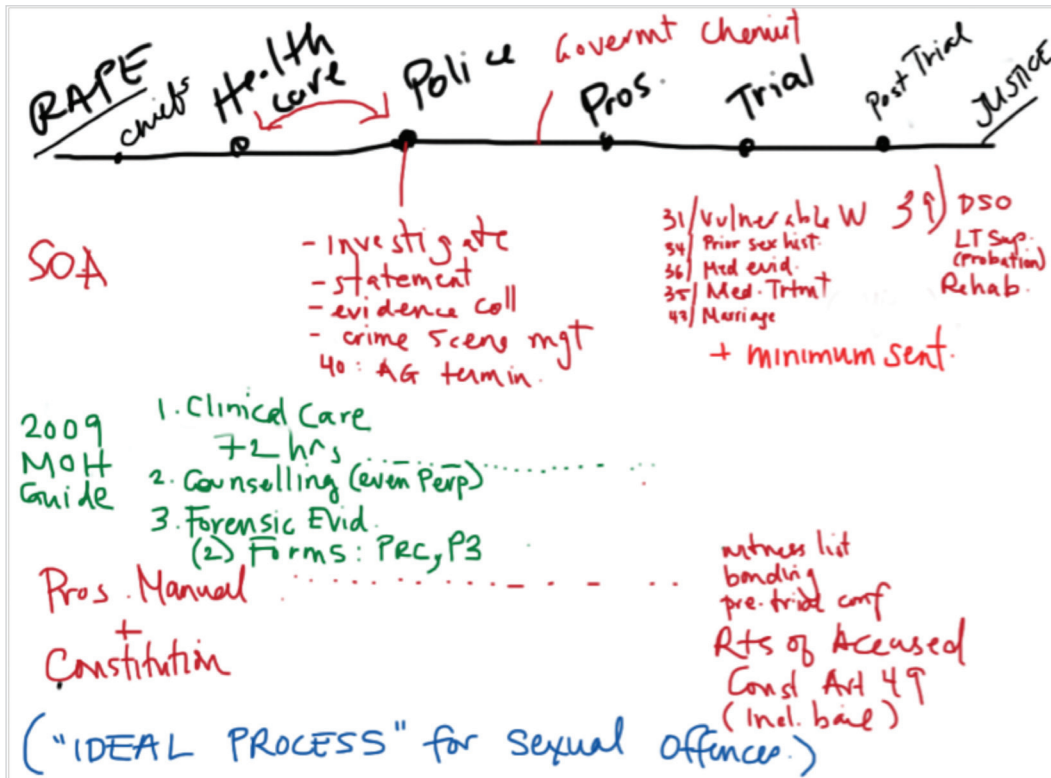
Ms. Serwanga noted that Section 2 of the SOA provides some guidance, as it delineates who may file a report as a complainant.

The 2009 National Health Ministry Guidelines are also relevant to this stage, as they instruct healthcare providers to perform a post-rape examination, ideally within 72 hours of the attack, with two purposes in mind. The first is to lay a foundation for clinical care. The second purpose is the prompt collection of forensic evidence for any potential criminal case. The SOA’s 2008 Regulations specify who may perform these medical services.⁵

5 2008 Regulations at Cl. 6(1).



Jane Serwanga (FIDA-Kenya) and Kim Thuy Seelinger (HRC) draw out the “ideal process” of accountability for a sexual offence in Kenya, according to the SOA and related regulations.



Rough sketch of laws and guidance governing the “path to justice” in cases of sexual and gender-based violence, hand-drawn and projected in real-time during the presentation.

Ms. Seelinger added that both the SOA and the 2009 National Health Ministry Guidelines require the provision of psychosocial support for any survivor who seeks it,⁶ and at any point in the process. Though the SOA and 2009 National Health Ministry Guidelines also provide for psychosocial support of the accused and convicted persons, it is unclear at what stage of the process he/she may receive such support. Certainly a court may so order. However, there is some indication in the 2009 National Health Ministry Guidelines that an accused person might receive support at this early stage, as well.⁷

Investigation Stage

Ms. Serwanga touched briefly on constitutional rights implicated during the investigation stage, such as rights to due process and rights of the accused.

Though the SOA is silent as to the specific procedures required for investigating sexual offences, it does feature some critical provisions that are relevant at this stage. For example, Serwanga noted that Section 40 provides that only the Attorney General’s office can pursue (or terminate) the investigation of a crime enumerated in the SOA. Further, Section 37 makes the mismanagement of the crime scene a crime in and of itself.

Ms. Serwanga also mentioned that Kenya’s Force Standing Orders (which internally prescribe various procedures for police and military) outline specific steps for investigating crimes, including sexual offences. These steps include recording statements, opening case files, and collecting and analyzing evidence.

Prosecution & Trial

Ms. Serwanga pointed out several constitutional rights implicated at the prosecution and trial stage, particularly regarding the accused. These protections include the right to be brought to court within 24 hours, to be informed for the reason for arrest and continued detention (as relevant), to representation in court, to a fair hearing, and to cross-examine witnesses. Ms. Serwanga further noted the accused’s right to bail, which raises an important outreach challenge: “bail” itself is often not understood in the local community. So, upon seeing an accused person released from detention, people often assume the court or police have been bribed. Also, Ms. Seelinger noted that SOA Section 35 apparently provides medical or psychosocial support for an accused person when he or she from suffers substance abuse—but it is not clear at what point this right to support attaches.

Much of the SOA addresses prosecution and trial practices. Critical provisions include Section 31 (whereby courts must determine who is a “vulnerable witness” entitled to trial-related protections), Section 34 (which precludes introduction of evidence regarding the survivor’s prior sexual history), and Section 36 (outlining the circumstances under which forensic evidence can be collected from the accused, and how it should be stored). Section 40 is also relevant, as it stipulates only the Attorney General can withdraw a claim, as is Section 41, which provides extraterritorial reach to Kenyans abroad.

6 See SOA Section 35(2)–(4) and 2009 *National Guidelines on the Management of Sexual Violence in Kenya* (“2009 National Health Ministry Guidelines”), Ministry of Public Health and Sanitation, Ministry of Medical Services, pp. 17–24.

7 See SOA Section 35(1) and 2009 *National Health Ministry Guidelines*, p. 19.

The SOA contains several controversial provisions related to this stage of the process. For one, there is the infamous Section 38, which provides that, if in the course of trial or after trial, it is determined that a witness (including the survivor) has offered false evidence against the accused, that witness may be penalized with the maximum sentence permitted by the charge lodged against the accused. This is the so-called “false allegation” offense. (It is relevant to the post-trial stage if the accused is acquitted—however, it may also be relevant during trial itself.) Also a source of contention, Section 43(5) contains a “marriage exception” whereby an accused cannot be convicted of a sexual offence against his/her spouse. Finally, the SOA establishes minimum sentences for several sexual offences, a departure from previous penal code provisions.

Post-Trial

Ms. Serwanga started her discussion of this stage by providing an overview of relevant aspects of the new Kenyan Constitution. She noted, for example, several protections enshrined in the new Bill of Rights.

The SOA contains several provisions governing post-trial procedures. These mainly concern the related issues of a.) maintenance of a government DNA database and sexual offenders registry, b.) probation and parole of convicted persons, and c.) rehabilitation and care for convicted persons.

As mentioned above, the SOA provides for a number of databases or registries related to SOA convictions. First, there is the aforementioned “DNA database” that is supposed to store an accused person’s DNA if the court ordered a sample during the course of trial.⁸ If acquitted, the accused has the right per Section 36(3) to have any forensic evidence collected from his/her person during the course of trial (such as DNA) purged from the government database.⁹ The same provision provides that, where a conviction results, any DNA profile generated from the offender must remain in the DNA database. The database should also retain any forensic evidence derived from the crime scene itself. However, neither the DNA database, nor a separate “convicted sexual offenders registry” managed by the High Court, have yet been established.

Ms. Seelinger made note of SOA Section 39, as well, which discusses the designation and special treatment of convicted persons who are considered “dangerous sexual offenders.” Section 39(1) presents three circumstances under which a person should be categorized as a “dangerous sexual offender”: repeat offenders, offenders who inflict or threaten violence, and those who commit an offence against children. Section 36 alludes to the creation of a “dangerous sexual offenders” database.

Ms. Seelinger then asked whether there is need to clarify the relationships between the DNA database, the “convicted sexual offenders” High Court registry, and the “dangerous sexual offenders” database. She also noted that the distinction between convicted sexual offenders and dangerous sexual offenders is critical, as designation as one or the other has serious probation and parole implications per Section 39.

Finally, SOA Section 35 provides for the psychosocial care and rehabilitation of a convicted person if ordered by the Court. A survivor may access the same support under SOA Section 35, with or without a court order. Notably, the 2009 National Health Ministry Guidelines provide for both, without reference to whether a court order must be made.

8 SOA Section 36.

9 SOA Section 36(3).

MEDICAL DOCUMENTATION: THE “P3 FORM” AND THE “PRC FORM”¹⁰

THE P3 FORM The P3 form is a 5-page “medical examination document” that a Kenyan police officer uses when requesting a medical examination of a complainant reporting any type of crime; while it is not specific to sexual Offences, it is used in such cases. The police officer initiates the form, filling in essential background information. Then the complainant is required to see an authorized medical practitioner for an examination; the authorized medical practitioner then completes the bulk of the form. The P3 form serves as an official investigations document and, if properly filled out, is admissible as evidence in a Kenyan court of law. In Nairobi, it is understood that the P3 form must be signed by the “police doctor.” However, there is currently only one police doctor in all of Nairobi, a fact that has proven problematic.

THE PRC FORM The PRC form is a 6-page document filled out by healthcare providers when they receive a SGBV survivor at a healthcare facility. It is designed to capture relevant physical and psychosocial data specific to an SGBV survivor’s condition. It includes space for a survivor’s medical history, mental health status, and special findings relevant to child victims. It also includes diagramming space to capture non-genital evidence of assault. Finally, the PRC form allows for recording any prescriptions and referrals that are provided, including for possible exposure to HIV and other sexually transmitted infections, as well as psychosocial, forensic, or police follow-up.

Concurrent Session 1: Health Sector

During this session, attended by fourteen Workshop participants, the group highlighted various challenges healthcare providers face when attempting to fulfill their direct and indirect obligations under the SOA.

The main challenges they identified are as follows:

1. *Training-related issues*

Participants noted that training is not only expensive but is also frequently superficial or emphasizes interrogation or religious preaching rather than actual therapy specific to SGBV or trauma. An additional challenge is biases among health care providers about sex offences. Thus, many participants felt that sensitization and attitude change should be a primary goal of provider trainings.

In terms of systems, existing trainings can be redundant within institutions. There is often no way to track who has been trained on which topics, and thus cohesively build cumulative expertise. Further, there is no *uniform* training curriculum across the health sector. This is partly due to a lack of coordination between the two health ministries (Medical Services and Public Health & Sanitation). However, some of this redundancy may be resolved by the pending merger of these entities.

Finally, there are no standard qualifications for, or regulation of, trainers. This has the potential to affect quality control.



¹⁰ Again, a copy of each of these examination forms is available in the appendix.

2. *Lack of standardized forensic examination*

Another source of inconsistency related to the delivery of care and evidence procurement is the absence of a standardized forensic examination of SGBV survivors. Though Nancy Cabelus from the United States Department of Justice has trained a team of sexual assault forensic examiner (SAFE) nurses in past years, the program was based on an American curriculum. It is reportedly being adapted to the Kenyan context, but securing resources to support adequate roll-out has been problematic.

3. *Inadequate availability of post-trauma counseling*

Another significant gap participants noted was the lack of counseling options for survivors. As a threshold matter, there are not enough providers to deliver care, especially at the district level. Even existing counselors do not have specialized training in SGBV or trauma. It was noted that perhaps Kenyatta National Hospital (KNH) could train additional professionals to increase the presence of counselors at the local level.

In addition, there is no provision for ongoing psychological support once a survivor has left a health care facility.

A related need is the high rate of turnover and/or burnout among healthcare providers and counselors. This may be tied to a lack of psychological support or any debriefing opportunity for providers and counselors, many of whom are at risk of vicarious trauma due to their ongoing interactions with traumatized SGBV survivors.

4. *SGBV documentation and data issues*

Accurate documentation of SGBV in Kenya faces both micro and macro challenges.

On the micro level, or individual case level, participants noted the difficulty of reconciling or streamlining the P3 form and the PRC form when documenting physical evidence related to a sexual offence. It is unclear which form should have priority, regardless of the general court preference for the P3 form. Though it is better tailored to SGBV and should constitute medical evidence to supplement the official police form, the PRC form is not yet used uniformly at the local level and its acceptance in court generally depends on the disposition of the individual magistrate. Session participants emphasized the need for the PRC form to be gazetted, so that its admissibility in court (alongside or even instead of the P3 form) can be assured.

On the macro level, participants noted that there was insufficient awareness or understanding of existing national documentation or data collection systems. The Gender-based Violence Information Management System (GBVIMS) run by UNFPA and the Gender Commission seems to be a major data repository, and has been rolled out in eight hospitals already. However its scope and uses were unclear to many session participants. Because of this ambiguity, KNH has piloted a new form to capture a broad array of GBV, including and in addition to rape.

Despite the existence of these programs, participants expressed concern that there does not seem to be a national system for effectively analyzing data collected about the SGBV that occurs in Kenya. Further, it is unclear who is in charge of national data, including its analysis and its conversion into improved policy and practice.

5. *Service limitations due to funding restrictions*

Participants briefly noted a discrete but well-recognized limitation to the availability of psychosocial support in Kenya: the tyranny of funding restrictions. The challenge of donor-driven programs is that, when a specific SGBV survivor does not fit the profile supported by a funding stream, he/she may not qualify for services. Participants did not elaborate on this issue. However, this seems to be an issue for many civil society organizations.

6. *Unrealistic expectations of survivors*

Another briefly-addressed challenge to the health sector derives from survivors themselves. Participants noted that some survivors have unrealistic expectations that a health-care provider can “work miracles,” despite having come for care too late to preserve forensic evidence (72 hours or more after an attack) or presenting other difficult barriers to care (linguistic incompatibilities, resistance to reporting intimate partner violence, and attachment to local customs or beliefs about SGBV, etc.).

In light of these challenges, participants noted that one of the health ministries is developing a “psychological bill” that has the potential to provide some standardization of support services. This should help with consistency of training, forensic exams, and perhaps even the availability of post-trauma counseling.

Representatives from the Ministry of Medical Services indicated that the Ministry would follow-up on the gazettement of the PRC form and related regulations.

Concurrent Session 1: Investigations & Prosecution

This concurrent session was attended by approximately twenty-five Workshop participants, drawn largely from the legal services, health care, and judicial sectors, and focused on challenges to the investigation and prosecution of sexual offences.

CHALLENGES TO THE INVESTIGATION OF SEXUAL OFFENCES IN KENYA

Initial discussion of the challenges affecting the investigation of sexual offences presented three broad themes: inadequate resources, inadequate investigatory capacity, and contextual obstacles.

I. *Inadequate Resources*

The group first touched on the issue of *inadequacy of resources*, which seemed obvious to all but critical to mention. Participants noted that sufficient human resources are key to the meaningful pursuit of investigations. For example, there is an urgent need for more SOA-trained police throughout Kenya’s rural areas, along with sufficient administrative support and increased staffing of forensic laboratories. More resources are required for facilities, as well. This includes improving the spaces available for sexual offence investigation (for example, police gender desks, private interview space, forensic labs, safe shelters, etc.). It became clear that the issue of resources was closely tied to the second theme of “inadequate capacity,” so the discussion moved quickly in that direction.



2. *Inadequate Investigative Capacity*

With regard to police investigation of sexual offences in Kenya, participants emphasized four capacity challenges:

- a) Inadequate specialized training.
- b) Weak evidentiary chains.
- c) PRC and P3 form-related challenges.
- d) Witness vulnerability.

As itemized above, the first identified capacity challenge was *inadequate specialized training*. Specifically, participants felt that police need more training related to taking statements, interviewing clients, and understanding the legal criteria for SOA-related cases, including the elements of the crimes that a prosecutor must establish to secure a conviction. Other participants noted additional gaps in police capacity, including inadequate case documentation and limited training regarding witness protection and support, including the protection and support of SGBV survivors.

The issue of statement-taking arose several times during this discussion. One participant suggested that perhaps statement guidelines and examples could be drafted for use by police prosecutors handling sexual offences cases, as with the “sample charge sheets” created by the Department of Public Prosecutions for its prosecutors. Another mentioned a few models and guidelines for interviewing and documenting SGBV cases that may be useful.

The limitations of language can also give rise to critical challenges in the recording of statements and their use in court. As a threshold matter, the experience of sexual and gender-based violence is often not easily or even accurately explained during the course of an interview—a problem that can be exacerbated when working in local languages that do not have clear terms for various sexual acts to begin with. Also, the terminology used by the victim may not align with the offences delineated in the SOA. Further, interviews and statement-taking in a local language can suffer from mistranslation at various points in the investigatory and prosecutorial process, leading to confusion on the part of witnesses as well as those who receive the evidence.

This point triggered a discussion about the requisite rank an officer must have in order to take statements in SOA cases. There was some debate as to whether police recruits must attain a certain rank before undertaking investigations, even in marginalized communities. This point was not settled. Participants also indicated that the current police training curriculum should be revised to include more SOA coverage. Further, participants noted that insufficient or inconsistent staffing of gender desks in police stations around Kenya contribute to uneven access to justice, especially in rural areas.

The second critical capacity challenge that was highlighted was *maintaining the chain of evidence*. Participants emphasized the difficulty in ensuring proper collection, storage, preservation, and analysis of physical evidence in sexual offence cases.

The first point of attention was the critical linkage between health care provider and law enforcement. Simply, as per national guidelines issued in 2009 regarding the man-

agement of sexual and gender-based violence cases,¹¹ a health care provider performing an examination of a survivor of sexual or gender-based violence must provide necessary clinical care as well as collect any available forensic evidence. This forensic sample must be transmitted to law enforcement if a formal investigation is initiated. However, it is unclear how this initial transfer from health care facility to police custody should happen. This lack of clarity or systematic process can lead to loss of evidence.

The second critical evidence-chain linkage is between the police and the government laboratories tasked with forensic assessment, specifically DNA analysis. Currently, there are three Government Chemist laboratories in Kenya that analyze forensic evidence in criminal cases. They are located in Nairobi, Mombasa, and Kisumu. However, the only lab authorized to perform DNA analysis, as indicated by the SOA, is the Government Chemist laboratory in Nairobi, where Mr. John Kimani Mungai generates DNA profiles from forensic specimens. This poses capacity issues, given the large volume of cases Mr. Mungai must handle (including but not limited to sexual offence cases). It also poses serious access issues, given the distance a forensic sample may have to be transported from rural areas.

A third capacity challenge for investigations concerned the *lack of clarity regarding the use of, and relationship between, the PRC and P3 forms*.

In sexual offence cases where a survivor has sought medical attention from a health care facility, the health care provider fills out a PRC form, although some confusion remains as to which providers are authorized to do so. The PRC form is typically transmitted to the police if an investigation is initiated. The police then transfer relevant information from the PRC form to the P3 form for completion by the medical practitioner authorized to perform a police medical examination. A survivor must then appear before the police (or in Nairobi, the sole police doctor) for examination.

Aside from potential paperwork redundancies, session participants noted the risk of contradiction that can result when the physical examination performed at the health clinic indicates different physical evidence than what is detected at the later police medical examination. Session participants noted that discrepancy can occur because physical evidence—such as bruising, lacerations, or the existence of blood or semen—can obviously change between the two appointments. While innocent, any seeming disparities reflected in the PRC and P3 forms can pose significant problems in court. This critical delay in time between examinations is clearly exacerbated in Nairobi by the difficulty in securing an appointment with Dr. Kamau, currently the only physician authorized to perform police medical examinations in the city. This lack of access can be aggravated when Dr. Kamau is called out of the office to testify in court.

One final capacity challenge was *the vulnerability of witnesses*, an issue to which the police and prosecutors are not yet adequately sensitized. Participants considered the various ways in which lack of security for survivors and other witnesses directly undermines the ability to investigate a sexual offense case. Survivors and other witnesses are often unable or unwilling to proceed with an investigation if they do not feel safe throughout the

11 2009 *National Guidelines on the Management of Sexual Violence in Kenya* (“2009 National Health Ministry Guidelines”), Ministry of Public Health and Sanitation, Ministry of Medical Services.

process. One issue needing attention is the fact that, per Section 31 of the SOA, vulnerable witness statements should not be recorded in the open or disclosed during the course of investigations. However, as a practical matter, this does occur. Accordingly, witnesses' identities and security can be compromised. Critically, the Witness Protection Program is not yet fully operational, especially for children. It is possible that the Family Protection Bill, which has been reviewed but not passed, might allow for this much-needed protection, at least in defilement cases.

3. *Contextual obstacles*

Participants touched on several other obstacles to the effective investigation of sexual offences. These can be loosely categorized as follows:

- a) Need for public awareness of the law.
- b) Enhanced relationships with informal justice mechanisms.
- c) Violence within the home setting.
- d) SOA Section 38 (the "false allegation provision").
- e) Balancing the rights of the accused with constitutional limits.
- f) Cross-border and jurisdictional issues.

First, participants agreed that a threshold challenge for the investigation of sexual offence cases is a lack of *public awareness about the SOA* at the community level, including what constitutes a sexual crime and what types of evidence are needed to convict a perpetrator. Participants agreed that having a sensitized public is as critical as having sensitized investigators: without sufficient knowledge in the community, it is difficult to expect sexual offences to be reported or evidence to be collected in a timely manner. There may be many helpful SOA provisions that Kenyans do not know about or fully understand. For example, the SOA allows *anyone* to be a complainant—even a parent for a child—as long as the requisite evidence exists.

Second, participants noted the profound challenge of *working with Kenya's informal justice systems*. One key area of contention is the relationship between police and local chiefs. In rural areas, chiefs are more likely than police to be recognized as having the authority to handle sexual offence cases within the community. A chief can thus face conflicting priorities between his knowledge of legal mandates and his commitment to his own culture, community, and relationships. This reminded participants of the need to engage and train community elders, who effectively "hold court" on these matters.

Third, participants discussed the ways in which *violence and obstruction within the home* can undermine investigations. When a family does not support a member's pursuit of formal justice, a crime may not be reported or the survivor may be discouraged from following up with an investigation. Participants mentioned several known cases where parents had sent a child-victim away from the home to avoid investigators.

Fourth, participants listed SOA *Section 38* as a hindrance to effective investigations. Known widely as the "false allegation" provision, Section 38 states, "Any person who makes false allegations against another person to the effect that the person has committed an offence under this Act is guilty of an offence and shall be liable to punishment equal to that

for the offence complained of.”¹² As was noted in an earlier Plenary 3 presentation, Section 38 was intended to deter fraudulent claims. However, most Workshop participants seemed to agree that it may cause more problems than the mischief it was meant to cure. Many expressed longstanding worry that, where an accused person is exonerated of a sexual offence for any number of reasons (insufficient evidence, poor investigations, corruption, etc.), the complainant may be unjustly penalized for having come forward. Such a “boomerang” penalty does not exist for any other crimes. Given the perceived risk, a survivor who has heard about the provision may choose not to report what he or she suffered. Session participants further noted that in some cases, police who do not wish to investigate a case will tell a complainant who *does* come forward that there is not enough evidence to convict the alleged perpetrator, that the case will backfire and he/she may be accused of making a false allegation. Ultimately, many experts are concerned that the section creates a chilling effect that hampers the reporting and prosecution of sexual offences.

Fifth, participants acknowledged that various *constitutional provisions that safeguard the rights of the accused* can limit investigations. For example, police investigators can run up against the requirement that an accused cannot be detained for more than 24 hours without being formally charged. This can be particularly onerous in sexual offence cases, where threshold evidence can be difficult to obtain quickly. One possible strategy for overcoming this obstacle could be urging police to be more pro-active about seeking time extensions from courts when addressing sexual offences.

Finally, participants noted *insufficient coordination among east African states* in terms of evidence-sharing and the extradition of suspects, particularly with regard to sex-based cases.

CHALLENGES TO THE PROSECUTION OF SEXUAL OFFENCES IN KENYA

Many of the prosecution challenges identified by participants are rooted in the investigations challenges noted above. In fact, it was estimated that three quarters of the sexual offence files that come across prosecutors’ desks are doomed to fail due to poor investigations, including lack of admissible evidence. Lack of effective witness protection can similarly lead to the disappearance of witnesses and thereby eviscerate critical testimony. Another obvious challenge inherited from the investigations stage is confusion over how to properly fill out the P3 form so that it stands up in court.

However, several challenges were identified that are unique to the work of the prosecution. They fall into three general categories: Inadequate prosecutorial capacity or caseload pressures, compromising police practices, and court organization and functioning.

1. *Inadequate prosecutorial capacity / caseload pressures*

Session participants found that a key impediment to the effective prosecution of sexual offence cases is simply the overwhelming caseload borne by police prosecutors, who handle the majority of SOA-related cases. Participants noted that the pile of files one must contend

¹² SOA Section 38. Though the actual operation of Section 38 requires clarification by the Chief Justice and likely was not intended to automatically “boomerang” a maximum sentence onto the survivor, the provision lacks clarity and remains highly controversial. It is currently slated for repeal by the SOA Amendment Bill submitted to the Attorney General in July 2011, as a result of discussions at this Workshop.

with makes it impossible to pay full attention to any one case. One participant noted that most of the police prosecutors she had met were quite smart and tried to do the best job possible. However, their workload was simply overwhelming. Someone noted further that in addition to the massive caseload, the playing field was uneven: most police prosecutors are not lawyers and are not formally trained in court procedures, including objections, for example. Even a skilled police prosecutor may lack sophisticated legal knowledge; he/she is simply no match for an experienced defense attorney. In addition, police prosecutors do not focus on sexual offence cases, so they may not have a fair chance to develop these specialized skills.

This triggered a query as to whether Kenya might benefit from specialized prosecutors or specialized “sexual offence magistrates.” After all, there is precedent for specialized courts in Kenya, including for traffic violations. Participants noted that the Liberian model might be instructive here.

Finally, many participants noted the lack of child-relevant guidelines for prosecutors, who must develop trust and rapport with child survivors in order to effectively represent them in court. A particular challenge arises in cases where a child has been abused by a male adult. Given that most police prosecutors are male, how can they overcome the possibility that children or individuals who have been harmed by men will find them intimidating or even re-traumatizing?

2. *Compromising police practices*

Participants also remarked on the challenges a prosecutor faces when a case is occasionally compromised by police mistake or misconduct, since police mishandling of the accused can have constitutional implications and result in an acquittal.

Participants then revisited the issue of Section 38 of the SOA and asked why some police unilaterally terminate the investigation of a sexual offence case even though the Director of Public Prosecutions has sole authority to do so. Many sexual offence cases are closed because, according to the police report, either the victim or evidence were not available. Workshop participants voiced concern that in some cases, police officers were not making an earnest effort to investigate and might even be discouraging survivors from pursuing a case. Participants expressed a need to find ways to compel improved police response and prioritization of these cases.

3. *Court organization and functioning*

Another key issue concerned the organization of Kenya’s courts and how that environment is experienced by SGBV survivors. It was agreed that Kenyan courts are not always victim-friendly. This is seen not just in terms of structure and operation, but also in terms of the impact of repeated delays and adjournments due to overdocketing or a failure to present necessary police or medical witnesses.

Though the discussion was focused on identifying prosecutory challenges, certain possible strategies surfaced. Again the question arose as to whether specialized SGBV courts might be a good option for Kenya, triggering a significant degree of interest among participants. However, some ventured a critical perspective. For example, one person asked

whether this was truly the best option, as it would single out sexual violence cases and perhaps lead to increased stigmatization of anyone working in or otherwise utilizing such courts. Also, in some contexts, isolated accommodation of SGBV cases in a resource-limited legal system might create an uneven distribution of justice.

A proposed alternative was to set aside certain days for SGBV cases in existing courts. This option could promote more privacy and less exposure for survivors. Another possibility would be to allocate specific times of day for such cases.

In the end, it was agreed that Kenya’s courts are not sufficiently accommodating of SGBV survivors. This consequently poses a challenge for prosecutors who work on SOA-related cases.

Concurrent Session 1: Judicial Sector

This session was attended by fifteen Workshop participants, drawn mostly from the legal and judicial sectors. The group also benefited from participation of representatives from development partners, UNHCR, and the Department of Probation and Aftercare Services.

Discussion of the three main challenges faced by the judiciary emphasized the following points:¹³

I. *Lack of guidance governing the adjudication of sexual offences*

Participants noted that the lack of consistency and clarity in the adjudication of SOA-related cases in Kenyan courts stems largely from an absence of guidance from the Chief Justice. Though the SOA was passed in 2006 and a subsequent amendment called on the Chief Justice to develop related rules of the court (per Section 47(a)), no such rules have yet been issued. This has led to considerable confusion and disparity in the adjudication of sexual offence cases in Kenya. For example, there is no consistent interpretation of the SOA’s “vulnerable witness” provision, Section 31. This can have implications ranging from the practical (whether and how a witness is entitled to testify *in camera*, how to accommodate child witnesses, etc.) to the constitutional (whether an accused has the right to face-to-face cross examination of his/her accuser instead of through an intermediary). Lack of procedural clarity can also lead to ill-informed outcomes. For example, without clear guidance regarding when and how to use “victim impact statements” provided for in SOA Section 33, a judge may be unaware of the continued suffering or vulnerability of a witness when determining an appropriate sentence.

The group thus agreed that a primary challenge to the judiciary’s full implementation of the SOA was the lack of centralized guidance from the office of the Chief Justice. Practice guidelines are critical to a.) create uniformity in SOA-related adjudication, b.) address any conflict of laws, and c.) resolve policy issues related to sexual offence cases.



¹³ It should be noted that participants noted several additional challenges to adjudication, including cultural taboos that affect witnesses’ participation in court, and a general lack of witness protection.

2. *Inadequate training, capacity, and support of law enforcement, as well as other legal and judicial personnel*

During the course of discussion, it became clear that the challenges faced by the judiciary are linked to challenges that arise during each step of the legal process.

TRAINING

Participants noted that inadequate training can have a negative impact on the adjudication of sexual offence cases. First, poor investigations due to a lack of familiarity with SOA legal requirements can lead to insufficient or inadmissible evidence. This can, in turn, lead to an acquittal or an easily-appealed conviction. Similarly, judges struggle to handle sexual offence cases in which the prosecution is poorly trained in terms of court rules, objections, cross examinations, etc. The weak prosecution of a case can cripple a judge's ability to convict an accused. Moreover, where an ill-trained prosecutor has made procedural mistakes in an otherwise clear case of guilt, an eventual conviction can be successfully appealed. Finally, judges themselves suffer from inadequate training on SOA-related provisions and issues. They may lack an understanding of forensic evidence, making it impossible to properly evaluate such evidence in court. Or they may be unfamiliar with new Offences or minimum sentences under the SOA and revert instead to repealed penal code provisions.

CAPACITY AND STAFFING

The judiciary also faces several capacity-related challenges to the implementation of the SOA. First, there are not enough judges or support staff. As a result, Kenyan judges experience a tremendous degree of docket pressure, with an overwhelming number of cases from across all areas of law. This leaves insufficient time to dedicate to any individual case, much less to develop specialized expertise in a specific area of law like the SOA. Judges are often unable to schedule pre-trial conferences or look ahead to the need for special measures such as the assignment of an intermediary or use of a witness box for a child witness, as required in individual cases. Inadequate technological or staff support requires judges to take their own notes during proceedings, making interaction or evaluation of witness demeanor difficult. They are also required to perform any necessary legal research on their own. Participants suggested that perhaps law students, recent graduates, and/or training institutions might be more actively recruited to work as law clerks to support the court system.¹⁴

In addition, the constant transfer of judges from one jurisdiction to another creates frequent delays for pending cases. This is a general problem, but undue delay can have a particularly detrimental impact on traumatized or at-risk SGBV survivors.

OTHER SUPPORT

Participants noted that, in addition to psychosocial support provision for SGBV victims, attention should be paid to the psychological health of adjudicators who must repeatedly address difficult and even graphic sexual violence cases. Counseling should be provided

¹⁴ Editor's note: Law school clinics could be a fertile source of support, as they could assist in the supervision of student-clerks; also, clinic students could work for academic credit and not for pay, which would bring support for no added cost.

to law enforcement, advocates, and adjudicators who routinely deal with cases of violent crime—including SGBV—to avert vicarious trauma and premature burn-out.

3. *Ineffective advocacy regarding SOA-related challenges*

Participants acknowledged that some judicial reform might be best pushed for from outside the legal system. This includes challenging particularly controversial laws, such as the SOA’s Section 38 (the so-called “false allegation” provision) and Section 39 (regarding the rehabilitation of offenders). Public awareness campaigns and/or public interest litigation on these issues might facilitate reform. Alternately, advocacy directed at the Chief Justice’s office while regulations are being discussed might also prove effective.¹⁵

Concurrent Session 1: Community Mechanisms

This session was attended by approximately twenty Workshop participants. The moderators proposed first identifying potentially relevant community mechanisms. Then, the group would explore what challenges a SGBV survivor can face when encountering such mechanisms. Finally, the group would try to identify how certain community-level mechanisms impede the justice process, and which of these obstructions are most critical to address.

Participants identified three general categories of community-based mechanisms that can conflict with formal justice processes: informal systems (e.g., councils of elders, faith-based organizations, religious leaders); formal systems (e.g., schools, local administration, workplace / employment structures); and socialization processes / factors (e.g., negative cultural practices, patriarchy, family / community pressures, victims’ personal belief systems.)



I. *Informal Systems*

The group discussed several ways in which community mechanisms and informal justice systems may not only obstruct a survivor’s access to formal justice, but even contribute to the perpetuation of SGBV.

In terms of traditional practices and structures that can contribute to SGBV, participants identified customs that exist in certain parts of Kenya. For example, participants noted that some communities in Western Kenya encourage their young men to defile young women as part of their rite of passage into manhood. Participants noted that in other areas, a man who rapes a woman is pressured by the community to marry her, leading not only to forced marriage but also to the likelihood of ongoing abuse throughout a woman’s life. Other customs that directly perpetuate SGBV in Kenya include early marriage and female genital mutilation (FGM).

Participants also noted local practices and systems that obstruct the pursuit of formal investigation or prosecution, such as rituals that require a rape survivor to burn her clothes and bathe in the river, thereby destroying physical evidence that could otherwise support a prosecution. The adjudicators in the informal systems—elders and religious leaders in

¹⁵ As noted earlier, the proposed statutory amendment submitted to the Attorney General in June 2011 by the TFSOA and Workshop Steering Committee would repeal SOA Section 38.



Eldoret Chief Magistrate Charles Mbogo, CoExists’s Wanjala Wafula, and Advocacy Mt. Elgon’s Christiano Nyongesa share a light moment during a tea break. The Workshop brought grassroots advocates and judicial officers together for relaxed and constructive dialogue.

particular—are often men who may not be sensitized to SGBV issues, or who may not even see it as a crime. Also, the resolution of sexual offences through community-based mediation often requires family or clan reconciliation through compensatory exchange—the transfer of goats from the perpetrator’s family to the victim’s, for example. Vindication of the individual survivor’s rights is simply not prioritized.

Participants did concede, however, that informal community mechanisms remain important despite the fact that they can be at odds with formal justice. Moreover, informal justice can be cheaper, faster, and more accessible than official processes. (This highlighted the baseline need of the formal system to be a more efficient, approachable option for survivors.) The query then became: *Is it possible to harmonize the informal systems with the formal systems so that the needs and interests of victims can be better addressed? And if so, how?*

Though some participants expressed a desire to eliminate informal justice systems entirely, the general consensus was that this was both impossible and unnecessary. The challenge was framed instead as finding a way to synergize and connect the formal and informal systems, simultaneously helping to instill positive notions of femininity and masculinity at the local level. There is a critical need to engage and educate elders, religious leaders, and other community leaders about SGBV and what official laws require.

2. *Formal Systems: Schools*

The discussion then turned to one of the primary systems in Kenya that encounters a significant number of sexual offence cases: public schools. This provided an opportunity for the group to learn more about the work and mandate of the Teachers Service Commission (TSC), charged with guiding and maintaining minimum standards of conduct among teachers employed by Kenya’s public schools. When a case of school-related sexual abuse or defilement is reported, the TSC employs an internal grievance and investigation process that can result in the transfer of a teacher who is found innocent, or discipline and/or removal of a teacher who is found guilty. Participants asked how often the TSC does, in fact, punish or fire teachers found to have abused their students. It was explained that the TSC

cannot take teachers to court. However, the TSC can refer cases to an outside organization for litigation and prosecution. (Note: the TSC does not have jurisdiction to discipline non-teaching staff within the school system; this falls to the Ministry of Education, which participants felt does not have a clear system in place to handle such cases.)

Participants agreed that the main challenge for schools is preventing sexual violence—including preventing the abuse of power that teachers hold over their students.

Plenary Session 4: Report back on Concurrent Session 1—Priority Challenges and Breakages

In small groups during Concurrent Session 1, participants had discussed implementation challenges faced in each of four areas: health, judicial, investigations and prosecutions, and community mechanisms. Now, with all participants reconvened in a plenary session, representatives from each small group presented their priority challenges. The Day Chairs then opened the floor to general discussion.

The *priority challenges* identified in the four sectors were reported as follows:

Report back from “Health Sector”

1. Lack of a *regulatory framework* to oversee health sector accreditation, standards, and training curriculum with respect to SGBV-related support services.
2. *Documentation* issues—specifically, the PRC form should be gazetted and its relationship to the P3 form clarified.
3. Lack of sufficient training, personnel, and guidance regarding *psychosocial support*.
4. *Unrealistic expectations* on the part of communities and survivors, given current sector capacity.

Report back from “Judicial Sector”

1. *Inadequate capacity*: the sector has insufficient training, funding, and human resources to meet its responsibilities under the SOA.
2. *Lack of practice guidelines* from the Chief Justice to guide and standardize trial-related procedures and protections.
3. *Insufficient external advocacy* to cope with trial-related challenges posed by the SOA, as with Section 38 (the “false allegation” provision).
4. *Current systems gaps* including:
 - a. Lack of a court case management system to track and provide referrals in SOA-related claims, and
 - b. Lack of progress toward SOA-mandated data collection for a DNA database, Dangerous Sexual Offenders registry, etc.

Report back from “Investigations and Prosecutions”

1. Capacity challenges:
 - a. Need for effective, sustained SGBV sensitization and training of police officers and prosecutors;

- b. Inadequate resources to conduct proper investigations or commit sufficient time per case;
 - c. Inadequate skills in statement-taking, case documentation, and evidence management;
 - d. Language, cultural, and gender barriers, especially regarding sexual offences.
2. Insufficient evidence management and production:
 - a. Police lack understanding of the SOA's evidentiary requirements;
 - b. Poor evidence collection and storage skills;
 - c. Confusion regarding use of the P3 versus PRC form;
 - d. Chain of custody: Lack of clear, resourced, evidence-transfer mechanisms between health clinics, police, and the government chemist.
 3. Lack of witness protection and potential witness intimidation.
 4. Lack of psychosocial support, especially for children.
 5. SOA Section 38 (the "false allegation" provision).

Report back from "Community Mechanisms"

1. Poor relationship between formal and informal justice systems: a lack of mutual understanding and/or connection, and different "justice" priorities (for example, individual versus community).
2. Pressure to adhere to traditional practices and notions of gender roles, combined with cultural / religious / community taboos around sex, leading to a lack of awareness and reporting.
3. Community responses to sexual offences frustrating the collection of evidence needed for the formal investigatory / prosecutorial system (for example, cleansing the survivor in the river, burning her clothes, etc.).

DISCUSSION

Open discussion expanded into a meta-conversation about justice itself, touching on several points. First, participants grappled with how to approach different notions of justice: for example, what a SGBV survivor may seek, what the criminal justice system seeks, and what village and community elders may seek. To take a survivor-centric approach requires understanding that a survivor's wish for justice may be complicated by the risk of stigmatization or community exclusion. It may also be affected by lack of protection from community pressure or even outright threats to the victim's safety. Or, of course, it may be shaped simply by lack of awareness of one's legal rights, including the option for investigation and prosecution. Taking community-level justice objectives into account means understanding religious, cultural, and tribal notions of gender—as well as what is risked by exposure and the prosecution of acts criminalized by the SOA.

Participants noted repeatedly that, even though the gap between the formal justice system and informal community systems may be wide, it is critical to bridge that distance. Community pressure—and the costs of ostracization—are too great for most survivors to resist alone and unprotected. It is thus necessary to begin sensitizing community and religious leaders about SGBV, as well as understand and respond to their ideas about such forms of violence. Participants felt that improved linkages between formal and informal arbiters of justice might be the only hope for

the prevention of sexual and gender-based violence through normative change at the local level. Ideally, improved understanding and sensitization at the local level would, in turn, a.) reduce stigmatization and the mistreatment of survivors who want to report their experiences, b.) improve the quality of investigations and evidence collection by eliminating evidence-destroying practices and empowering community members to provide greater support for survivors through the healthcare and police systems, and c.) encourage community members to stand by survivors as they move through trial and prepare to face their perpetrators, thereby enhancing prosecutorial efforts.

Participants also named several cross-cutting challenges that need to be addressed. First, the issue of *language* can affect everything from reporting (how do police interview a survivor sensitively, even in a common language?) to documentation (is there consistent terminology throughout case documentation, and does that terminology comport with SOA provisions?) to testimony at trial (is the witness prepared to understand the terminology used during questioning and to answer with sufficient clarity?). One participant noted that the language challenge is even more extensive, claiming that the SOA itself is presented in an elitist way—it has not been translated into enough local languages to have any relevance in the provinces. She noted that perhaps one should start with providing simplified and translated versions of the law that lay people can understand.

Other participants reminded the group to maintain a survivor-centric approach when thinking about increasing access to the health and legal sectors. The motivation cannot be solely to force a person into the formal justice system—this may not be his/her objective, and it may compromise his/her physical or psychological well-being. It was urged that all stakeholders think about providing access to resources for both health and legal reasons. Provision of psychosocial, medical, and legal support should not be contingent on whether someone is willing to push through to trial.

Interestingly, one participant suggested that the group consider justice not just from the survivor's perspective, but from society's. She noted that it is in society's interest to deliver punishment for sexual offences whenever possible, in order to deter it from happening again. However, she agreed that perhaps "accountability" or "punishment" may take both formal or informal shapes—it might be prosecution and sentencing in a court, reparation or an apology, or a combination of these.

Other issues raised included the very real problem of low police morale, which can affect investigations and invite corruption by the wealthier or more powerful party. This point was closely tied to a recurrent but unresolvable observation that SGBV is often linked to poverty. First, vulnerability to sexual abuse can derive from economic need or powerlessness; then, justice itself can elude the survivor who is forced to accept a settlement for financial reasons, or cannot afford to influence the system. Participants noted a need to tie the issue of SOA implementation and SGBV prevention to the broader issue of economic empowerment, especially for women and girls.

Day 2: May 26, 2011

Plenary Session 5: A National Effort Under the New Constitution

This plenary session featured a presentation on the relationship between the SOA and the New Constitution by Hon. Justice (Rtd.) Violet Mavisi, followed by a presentation titled "Key Aspects of the National Consultation Towards the National Policy Framework" by Tom K'Opere of the Law Society of Kenya. Afterwards, the chairs facilitated an open discussion relating to issues raised during the two presentations.

PRESENTATION: NATIONAL EFFORTS UNDER THE CONSTITUTION,
BY HON. LADY JUSTICE (RTD.) VIOLET MAVISI

Hon. Lady Justice (Rtd.) Mavisi oriented her talk around the question, “How can we use the Constitution to make the Sexual Offences Act better?” She commenced by listing gains realized by the new Kenya Constitution that have the potential to aid the Act’s implementation.

First, Hon. Lady Justice (Rtd.) Mavisi highlighted the importance of recognizing the Constitution’s supremacy in Kenyan law. Specifically, gaps in the Sexual Offences Act can be addressed by recourse to international treaties and conventions, ratified by Kenya, which are now part of Kenyan law based on Article 2 of the new Constitution. She also, however, identified limiting provisions that hinder the Act’s implementation, particularly noting SOA Section 43, which permits marital rape and sexual abuse.

Hon. Lady Justice (Rtd.) Mavisi further noted the need to dig more deeply into international conventions and treaties to determine how they can be applied to protect SGBV survivors. She suggested the Task Force take a leading role in this effort. She further noted that the Constitution’s article 19(2) stresses the need to promote the dignity of victims. Thus, the question becomes how to do this utilizing Kenya’s existing legal framework.

The former judge pointed out that the Bill of Rights favors interpretations that give full effect to the rights recognized in the Constitution. Next, she discussed several specific articles, including Article 27, which deals with equality before the law: she stressed that many times, actors know to protect the rights of the accused, however the Constitution also now recognizes and protects the rights of victims (the latter under Article 50). This right to protection includes handling cases within the shortest time possible. However, she noted, the Sexual Offences Act is silent on issues of victim compensation.

The right to health recognized in the Constitution is also important: Hon. Lady Justice (Rtd.) Mavisi raised the question of how to make this right a reality as envisaged by Section 35 of the Sexual Offences Act, which allows courts to order medical treatment for survivors and perpetrators. With regard to the right to health, one challenge is providing adequate psychological health care. The former judge explained that securing counseling for persons going to court can be challenging; a lack of adequate psychological support makes it difficult for survivors to testify.

Next, Hon. Lady Justice (Rtd.) Mavisi discussed the right to freedom of and security for the person, a right recognized in the Sexual Offences Act through new offences relating to the abuse of positions of authority or trust. Unfortunately, however, she noted this right does not protect against sexual violence within families.

Next, the former judge discussed the right to bail: Kenya’s Constitution provides that everyone has a right to bail, however a resulting issue is how to protect victims when perpetrators are released on bail. (This is especially complicated in marital assault cases.) How can society ensure that survivors can live well *and* can give evidence without negative consequences?

What about the safety of children living in the same home as the perpetrator? It is not clear from the Sexual Offences Act or Children’s Act where to take children who need special care and protection. Justice Mavisi underscored that better means of evidence provision are also needed to protect children from trauma. Importantly, Article 53 of the Constitution deals with the protection of children. Hon. Lady Justice (Rtd.) Mavisi proposed that such protections be incorporated in the Protection of the Rights of Victims Bill. Finally, and on a related note, she explained that Article

50(9) requires Parliament to pass a law on Protection of the Rights of Victims of Offences: she urged participants to engage with the process to ensure that the rights of victims are foregrounded.

The right to a fair trial was also discussed. Rights of the accused are outlined in the Constitution. However, an effort is needed to ensure that the rights of victims are also protected. One example of this right in action is when evidence is secured from children before adults, which spares children excessive delays in courts or police stations.

The Constitution's Article 50(7), which allows for evidence to be provided by an intermediary, is already permitted under the Sexual Offences Act. However, Hon. Lady Justice (Rtd.) Mavisi noted that this provision has caused problems in practice since there are no Chief Justice rules to guide these proceedings. She challenged the participants to determine how the provision might be used innovatively to most benefit victims.

Article 50(8) of the Constitution, which provides for exclusion of the press and members of the public from sexual violence-related hearings, enjoys a similar provision in the Act.

As for the Sexual Offences Act itself, Hon. Lady Justice (Rtd.) Mavisi pointed out the need to use the new Constitution as a basis for arguing cases in court, explaining that this external authority, in addition to international treaties and conventions, can supplement gaps in the Act. She cautioned that any amendments to the Act must be designed to comply with such treaties and conventions. As for Section 38, the "false allegation" provision that has proved especially controversial, she suggested using international legal sources to see how the section might be made to work more effectively. Finally, she stressed that proper use of the Constitution can lead to victims securing their right to health, including emergency health care. She ended with a call to ensure that all rights provided for in the Act and Constitution be cascaded, and that cases be resolved quickly at devolved levels.

PRESENTATION: KEY ASPECTS OF THE NATIONAL CONSULTATION TOWARD THE NATIONAL POLICY FRAMEWORK, BY TOM K'OPERE, LAW SOCIETY OF KENYA

Mr. K'Opere explained that the National Policy Framework derives from section 46 of the Sexual Offences Act. The Act came into force *before* a policy was developed, which is not ideal. Following the enactment of the SOA, the Attorney General—via Gazette Notice 2155 of 26 March, 2007—established the Task Force on the Implementation of the Sexual Offences Act with a mandate to prepare a national policy framework featuring guidelines to ensure the uniform treatment and care of offenders. During the development of the framework, the Task Force collected views from Kenyans as to what that policy should reflect. A draft policy has been developed and is currently with the Attorney General, awaiting cabinet approval.

Mr. K'Opere then noted the rationale underlying the national policy. Per the Act, the underlying rationale is the government's need to have a legal and administrative system for combating sexual violence and ensuring uniformity in the Act's implementation. Guidelines are necessary to address victims' needs and deal with perpetrators in a manner that conforms to Kenya's international obligations.

Mr. K'Opere then discussed recommendations for the national policy that have emerged. He explained that, based on public consultations, the draft policy focuses on the following: prosecuting sexual violence cases; detecting and preventing sexually violent crimes; addressing offenders at stages other than just post-incarceration; developing the Register of Convictions and Dangerous

Offenders DNA Database; establishing an intersectoral authority that captures a range of expertise to coordinate various efforts, including data collection, outreach, and education, including curriculum development; recommending budgetary provisions for administering the Act; seeking the government's commitment to addressing SOA-related issues; establishing structures that properly delineate how responsibilities should be divided between various entities; creating a body responsible for multi-sectoral coordination; and addressing challenges in allocating resources for diverse departments, including the police, the department of the public prosecutor, the government chemist, and others.

Mr. K'Opere noted that, per Section 46(b) of the Act, the policy will be reviewed every five years, which provides an important opportunity to audit and amend the policy based on practical experiences. This provision is tied to Gazette Notice 2155, which mandates the task force to review laws, policies and regulations relating to sexual Offences.

DISCUSSION

The plenary was then invited to engage in a general discussion about the topics that had been raised. One participant noted a tendency to forget issues related to defense counsel, who can question survivors viciously during trials. She raised an example from Kawle, where a defense attorney kept questioning a survivor until the magistrate became proactive and overruled the defense. This example suggests a need for defense guidelines that delineate proper conduct with regard to victims.

Another participant noted that sexual violence always increases during emergency situations such as displacement, an issue on which the SOA is silent. A fellow participant then explained that a special bill on the protection of victim rights is being developed to address these issues. It was further noted that the vice president has convened a task force to draft that bill, which will address various bail-related issues, including supervision.

Another participant expressed his frustration at the development of arguably unnecessary policies. In light of his estimate that as many as 70 percent of Kenyans are unaware of the Act, he expressed some exasperation that so much time is spent developing papers instead of providing direct services to the public.

The subject then turned to the need to advance gender equality to prevent sexual violence—a manifestation of gender discrimination. One commentator stressed the related need to strengthen preventative measures, especially with regard to children. This need takes many forms. For example, in some areas it is prohibited to leave children home alone, but poverty and the need for caregivers to earn money complicates any alternative. In addition, there is the issue of pornography and the potential for the Internet (both pornography-related and not) to exacerbate sexual violence against children.

A representative from the educational sector then argued that something radical is needed to protect children in schools. Further, victims, especially children, need access to psychosocial services and long-term support. She noted that the issue of rehabilitation is a controversial one: she raised the example that many people may not be confident taking children to a school where a teacher has just emerged from rehabilitation. She stressed the need to instead focus on prevention, and suggested that schools may be the ideal environment through which to address this need. A final participant urged the plenary to develop an administrative structure to supervise services that address gender-based violence in Kenya.

PRESENTER RESPONSES

The presenters were then provided an opportunity to respond to the many issues that had been raised. Mr. K’Opere spoke first. He proposed that issues relating to defense counsel be addressed through development of the Chief Justice’s rules, as these would determine how cases are conducted under the SOA. He also recommended that Section 31 of the Act, along with Section 4 of the Children’s Act, be used to protect vulnerable witnesses.

As for emergency and displacement situations, Mr. K’Opere agreed that no effective structure is in place. However, the body proposed under the national policy would have a budget to deal with emergency situations. Regarding bail, he proposed more frequent application of Article 49 of the Constitution, which highlights compelling situations in which bail should be made conditional. He agreed that the development of the national policy has been delayed, but stressed that the Task Force will push for it to come into force. He also pointed out that advocacy for the Act has been hindered by a lack of funds. As for the need for preventative measures, the national policy does provide measures for both prevention and response, including psychosocial support. He ended by addressing the suggestion that leaving children unattended leads to sexual abuse, recognizing that a balance between alleviating poverty and protecting children can be difficult to achieve.

Hon. Lady Justice (Rtd.) Mavisi then responded to the comments. She agreed that more should be done to ensure that Kenya ratifies various international conventions, although she stressed that most remaining unratified relate to the Optional Protocols. She also pointed out that Article 20 of the Constitution contains provisions that indicate that the Bill of Rights be interpreted to speak to gender equality. Ensuring the Constitution becomes a reality for all remains a challenge. As for the rehabilitation of perpetrators, the Act guides magistrates as to how to deal with rehabilitation; however the problem remains whether such programs are actually provided in prisons. Finally, she explained that supervision and rehabilitation are currently provided only for dangerous convicts, but in a proper scenario, all sexual offenders would be supervised.

The moderator ended the session by challenging the plenary to consider how the findings and recommendations raised during this session might be implemented.

Concurrent Session 2: Government and Civil Society

This session was attended by approximately thirty workshop participants drawn from all participating sectors, including medical services, legal services, the judiciary and education. The moderator, Judy Gitau of the International Commission of Jurists (Kenya), identified the session objective as identifying three key linkage challenges between civil society and the government related to implementation of the Sexual Offences Act. The session commenced as an open discussion among participants and culminated in a brainstorming of thematic challenges and potential strategies.

In opening, one participant observed that the public sector (government) frequently focuses on policy development, while the private sector tends to focus on maximizing profits, with little cooperation between them. When civil society organizations partner with public *and* private institutions, they are able to leverage the resources and infrastructure of those partners. To do this, government agencies and individuals could be encouraged to adopt practices that NGOs have successfully implemented.

Participants noted that this type of approach is important because the organizations represented in the workshop have been working on the ground, while many government agencies have

not. Ultimately, civil society partners can serve as a link between the government and the community, thereby helping the government create policies and programs that are responsive to people's lives. Civil society can also advise the government regarding the potential effect of proposed policies on the ground. Moreover, it can also help roll out policies at the community level, as has been the case with a teacher-training collaboration between the Teachers Service Commission and CREAM.

The question was then raised, why do civil society organizations struggle to engage with government? One participant theorized that there is no framework to guide such partnerships, as well as a lack of expertise in civil society as to how government organizations work. Such gap in understanding makes it difficult to identify entry points through which civil society can engage with government.

It was noted that partnerships only become feasible where the government and civil society organization share objectives. Thus it is critical for civil society organizations to determine how their work relates to existing government objectives. If civil society organizations fail to appreciate what those objectives are, they run the risk of government becoming defensive if their goals conflict; one consequence is that the civil society organization will likely be unable to secure a government grant. Thus, it is critical to find common ground between each party's work and to identify projects that will achieve both parties' objectives.

The following question arose: How can government objectives be identified? One suggestion was to go the various ministries' websites. Most departments post their strategic plan, through which each ministry's priorities for that year may be ascertained. It is also possible to consult with other civil society organizations that work with various government branches to obtain more information. Alternately, an organization could engage with parliamentary committees.

Participants also noted the importance of building non-adversarial relationships with government officials to create advantageous networks within government. For example, a workshop participant explained that introductions can be as simple as asking a familiar administrator or civil servant for further introductions to the appropriate ministry or office.

The group then attempted to identify potential linkages, as well as challenges that frustrate those linkages.

One participant raised the point that in talking about government–civil society linkages, it is important to engage in smart lobbying strategies. One way to bring about cooperation from a government entity may be to consider its “performance contract” objectives—either by influencing the development of the performance indicators for any given agency (so they include making progress on the initiatives prioritized by civil society), or by finding ways to fit civil society's priorities into a government agency's existing performance contract.

The speaker also stressed financial implications, specifically that it is important to know the fiscal impact of any project on an agency's performance contract.

Finally, participants acknowledged a need for greater sophistication about *when* to approach a government partner: before or after the agency's budget has been determined?

One linkage challenge was clear: civil society and government stakeholders do not communicate well with each other about their programs. Thus, it is important to create opportunities to hear each other, encourage joint resource mobilization, and prevent duplication of services or competition for the same resources.

The session participants then enumerated key challenges impacting government-civil society coordination:

Capacity building

1. Failure of civil society and government to agree as to what aspects of capacity to prioritize.
2. Gap between what civil society and/or government decide to build and what will work in light of practical realities.
3. Lack of clarity regarding *who* is responsible for improving capacity.
4. Waste of resources when civil society and government duplicate efforts.
5. Inadequate capacity-building outside of Nairobi (this includes a need for comprehensive and updated service / training mapping related to the SOA).
6. Frequent misallocation of resources (especially where untrained police are staffed to “gender desks”).
7. Lack of needs assessments and situation analyses, which should be conducted before deciding how to allocate resources and training.

Service delivery

1. Lack of coordination or sharing of resources between civil society and government entities working on the same issues.
2. Lack of consistent standards for service delivery.
3. Failure to ensure that services are needs-driven instead of donor-driven.
4. Unequal distribution of services, both thematically and geographically (the group joked that “everyone is in Kibera”).
5. The inaccessibility of sections of the Rift Valley.

Communication and information dissemination

1. Mistrust and mutual suspicion between government and civil society.
2. Poor documentation and reporting internally as well as to each other.
3. Poor monitoring and evaluation of the impact of government or civil society’s work.
4. Lack of clear guidelines and standards for engagement between civil society and government.

In the remaining time, session participants briefly brainstormed potential strategies for resolving these above challenges. These included the following:

1. Developing guidelines for public/private alliances where they do not yet exist.
2. Sharing best practices between organizations to minimize duplication of effort.
3. Bringing together the resources enjoyed by government and civil society.
4. Developing guidelines for “civil society to civil society” and “civil society to government” alliances.
5. Developing coordination mechanisms for government and civil society interaction.
6. Developing a national monitoring and evaluation framework that includes guidelines for interacting with government and a framework for information sharing.

Concurrent Session 2: Linking the Medical and Legal Systems

This session, attended by 29 participants drawn from all of the sectors represented at the workshop, was divided into two parts: a presentation by Mary Njeri of COVAW on monitoring evidentiary chains, followed by general discussion to identify key medico-legal linkage challenges and explore strategies to move forward.

PRESENTATION: MAINTENANCE OF THE CHAIN OF EVIDENCE BY MARY NJERI, COVAW

Ms. Njeri identified her presentation objective as highlighting linkages that would help maintain the chain of evidence in sexual violence cases, and making recommendations to assist that process. She noted the importance of keeping in mind the process timeline—from police investigation to sentencing—for identifying and prosecuting offenders. Among the existing weak links are policy formulation, accessibility of the Sexual Offences Act, exclusion of the perspectives of women and children in decision-making, a lack of guidelines for medical staff regarding the proper handling of evidence, the need for shelters, problems with police doctor availability, and social attitudes about sexual violence.

Ms. Njeri then discussed each of these weaknesses in some detail. Regarding policy formulation, because the two tracks of medical and legal policy-making are separate, both sides are often unaware of each other when making decisions. Thus, stronger links between the two sectors are needed, even as represented in legislation. Key questions to be addressed include: How does legislation affect the medical sector? Are we ensuring that legislation empowers that sector?

A further gap is the inaccessibility of the Sexual Offences Act for non-legal actors. Ms. Njeri explained that medical staff tend to perceive the Act as “too legal,” designed for lawyers and not others. The legal jargon is difficult for many to understand and the Act is believed to complicate the process of addressing sexual violence.

Moreover, Ms. Njeri noted that the voices of women and children are often absent from the process of drafting administrative rulings that may not appear to have gender-related implications. For example, when the movement of *matatus* was restricted by the city of Nairobi in an effort to reduce



Felicia Coleman, Chief Prosecutor of Liberia’s Sexual and Gender-based Crimes Unit, shares her experiences regarding linkages between legal and health sectors. Carol Ajema (LVCT) and Shonali Shome (AIDS Free World) moderate.

traffic congestion, it forced many women to walk home from work late at night, leaving them more vulnerable to assault.

Medical staff and police also suffer from a lack of guidelines for handling evidence and cases more generally. Ms. Njeri stressed that it is imperative to consider what is safest for victim-survivors when determining who should be the first responder. A survivor's first point of contact depends on the situation—it could be someone in the community, or a healthcare provider, or the police. However, many challenges have been observed when the first responder is the police. For example, Ms. Njeri noted that police officers may be insensitive, may not be skilled at fact-finding or interviewing, or may fail to collect forensic evidence because of mistaken assumptions about its viability.

Ensuring proper evidentiary chains was discussed as particularly critical: weak linkages exist especially with police doctors' capacity and the effectiveness of related documentation forms. Dr. Kamau is the sole police doctor for Nairobi cases, and long lines form outside his office early each morning. More police doctors are clearly needed to fill out P3 forms, and courts will not allow a case to proceed without it. Many women find the P3 form and police examination process traumatizing and are reluctant to participate.

A related problem is expense: police often charge money to fill out the complaint and examination forms even though they are supposed to be free. Ultimately, both bribery and a "blame game" discourage survivors from coming forward.

Access to medical care is another barrier to treatment. While some medical services may be available, the lack of others can potentially unravel a chain of evidence. For example, the town of Dol Dol has a police station but no health clinic. Thus, by the time a victim arrives at the hospital, the examiner may be unable to detect any evidence of the attack. At this point, the critical time frame for collecting viable evidence may have passed.

Other issues may contribute to a lack of evidence. A perpetrator may have used a condom or not been able to ejaculate, or there may have been so much bleeding on the part of the victim-survivor that semen can no longer be detected. Police may tell a survivor that if there is not enough evidence, he/she may later be suspected of submitting a false report and face potential penalties. Police may also lack training in handling and transporting evidence, especially over long distances.

After identifying these issues, the presenter provided several recommendations, including 1) further sensitizing law enforcement and health care workers to the special needs of survivors and the legal process; 2) conducting pre-trial sessions for police, lawyers and health care workers to coordinate information and maximize linkages between them; 3) demystifying the law by making it clear what the evidence-giving process is for police and medics, and thereby making the process less intimidating; and 4) integrating one-stop centers into response plans.

DISCUSSION

One commentator noted that individuals involved in the sexual violence response timeline look at sexual violence from their own perspective. While not necessarily wrong, the question becomes how to connect the dots between those perspectives. Maintaining a holistic view of the process is imperative.

The discussion then turned to the issue of where the survivor first seeks help. Circumstances frequently dictate where the victim goes and therefore who collects the initial evidence and when.

For example, if a woman has a clear medical need, she is likely to go to the hospital first; if she is comfortable with or knows somebody at the police station, she might first go there.

A representative from Liberia then noted that from her experience, the point of first contact depends on the stage of abuse. For example, with children, sometimes an incident is not discovered for weeks or months. Thus, it is especially important to ensure that children can receive services immediately after coming forward, an issue the law does not address. The point of contact for children may differ, as well: they are more likely to first seek help from a teacher or parent because of their relationship with those individuals, instead of from police or healthcare workers.

Another commentator stressed that it is not so important where an individual first reports, so long as the first responder knows how to collect evidence and what their role is in the evidence-collection process.

The chain of evidence was the next substantive issue to be addressed. One speaker, who works in a hospital setting, noted the importance of hospitals and clinics retaining the clothing of victims/survivors and calling police to retrieve the clothing for evidence. However, this is not what usually happens in practice. The speaker explained that the hospital where she works has stored some victims' clothing for more than ten years. A suggestion was made to maintain a list of police station contacts with whom to follow up if evidence is not collected promptly.

One participant noted that the “one-stop shop” model, which enables integrated services, allows for the shortest possible chain of evidence. Kenyatta National Hospital was identified as one of the best examples of a provider of integrated services in Kenya. The hospital has a counselor, a Gender Violence Recovery Center, and a nearby police station. (It falls short of serving as an ideal one-stop center, which would have all points of contact, including police investigators, on site.)

Another commentator observed that no formal standards currently exist for preserving evidence along the chain of custody. Another stressed that the national policy guidelines should provide a single standard and/or a chart detailing how evidence can and should be collected. Finally, it was noted that the transportation of evidence remains a key issue, including the need for funds to pay for transportation—especially between police and the Government Chemist.

The documentation and storage of evidence were the next substantive issues discussed. One participant explained that police must take statements at police stations, not at Kenyatta or other hospitals. Therefore, participants suggested that the Police Act be amended to remove this limitation. Another commentator noted that doctors tend to see survivors as patients and not as potential parties to a criminal complaint, and therefore frequently fail to recognize the need for collecting evidence. Another key issue in the development of evidence is the cost of processing DNA evidence and who pays for that analysis.

The drafting of criminal charge sheets by police was also identified as problematic, especially because of variation in use of terms such as “rape” or “defilement.” Participants stressed that if the charge sheet is not properly drafted, the ensuing case may be dismissed. One proposed solution was the creation of a standard, updated charge form, especially since many existing forms are based on outdated penal codes and not the Sexual Offences Act.

The complicated relationship between the P3 and PRC forms was also discussed, including the crimes each addresses. Only the PRC form is tailored to document cases of rape and defilement (the PRC was *supposed* to complement the P3 form, but that never effectively occurred in practice).

One participant noted that the Attorney General cannot gazette the documentation forms: this can only be done by the Ministry of Medical Services. Another mentioned that the Sexual Offences Act is not the only legal authority that covers assault: there are also relevant criminal procedure provisions.

The conversation then turned to the presentation of evidence in court. One participant raised the issue that health workers are not trained to give evidence in court. Another noted that although doctors are supposed to receive a copy of the P3 form from the police before they testify in court, too frequently they do not see it in advance. This can lead to conflicting or incomplete testimony.

The next issue addressed was the perceived lack of dialogue between the legal and medical sectors when creating related policy and legislation. Also missing is a common vision and/or mission among various government sectors. One participant argued that the draft national policy should reflect the various missions and visions of all relevant organizations.

The final major issue was that of resources. One participant stressed the need for a costing exercise regarding SOA implementation, including an analysis of how much it costs society *not* to provide supportive or protective services. Another speaker emphasized the need for financial resources to be coordinated between civil society organizations and government. And another proposed that the Ministry of Medical Services add satellite clinics to enhance access to medical care and reduce the wait time for medical care and evidence collection.

At this point, the conversation turned to a few subsidiary issues that remained unaddressed. For example, one speaker noted that a continuing weakness is the absence of an appropriate process for collecting evidence from girls and women with disabilities. She raised the example of a severely disabled girl who is deaf, blind, and mute who was sexually violated. The girl became pregnant, which is the only reason the violence was discovered. Another final point concerned the cultural challenges to service provision. For example, some communities have specific rules regarding what must happen after a woman is raped. In some cases, victims may be required to wait in their homes for two or three days before they are able to move around freely and seek medical and legal assistance. Stakeholders designing implementation efforts should take these obstacles into consideration.

Concurrent Session 2: Comparative Models of Integrated Services

This session was attended by approximately fifteen workshop participants, drawn predominately from the medical and legal sectors. The moderator, Dr. Nduku Kilonzo, stressed the objective of the section as exploring how different integrated service / referral models work in different circumstances, according to representatives from various sectors. Two presentations were made—one by Dr. William Green, an emergency doctor and forensic specialist from the University of California Davis Medical Center, and one by Dr. Jill Keesbury from Population Council. Presentations were followed by a question-and-answer session.

PRESENTATION: SEXUAL ASSAULT RESPONSE TEAMS (SARTS),
BY DR. WILLIAM GREEN, UNIVERSITY OF CALIFORNIA, DAVIS MEDICAL CENTER

Dr. Green began by explaining what Sexual Assault Response Teams (SARTs) are and providing details about how he started a SART in 1989. He described SARTs as multidisciplinary community teams dedicated to timely, comprehensive attention to the medical and emotional needs of patient/victims and to the forensic needs of the criminal justice system. A SART is not a one-stop center.

Instead, SARTs are response teams made up of at least five representatives: 1) a representative from law enforcement, 2) a Sexual Assault Forensic Examiner, 3) a prosecutor, 4) a victim advocate, and 5) a criminalist (e.g., a government chemist). These representatives work in separate agencies but physically come together as soon as a sexual assault incident is reported.

Dr. Green then proceeded to describe how rape crisis centers and victim advocacy work in several California counties. A small amount of funding is provided by the state for basic infrastructure. Most staff and advocates operate as volunteers; some of the most effective staff members are themselves former victims. Each member of the victim advocacy team participates in a minimum 40-hour training course, which is standardized and covers emergency response; crisis intervention, support and education; criminal justice accompaniment; basic individual and peer counseling; and referrals to professional counseling. The roles of the various SART partners include conducting investigations and arresting suspects; processing crime scenes and analyzing evidence; analyzing cases and proceeding with prosecution and conviction; and supporting and educating victims.

Dr. Green also explained the role of the Forensic Examiner, who must address two sets of needs, represented by two categories of consumer. The first is the patient/victim, who may need acute medical evaluation and treatment, crisis intervention and emotional support, prophylaxes against STDs and pregnancy, and medical and emotional care. The criminal justice system is the second consumer. For this consumer, the Forensic Examiner must provide a focused medical and assault-related history, document any physical findings, properly collect and handle evidence, interpret findings, and present both findings and expert opinions.

SART team-related issues still to be addressed include pre-notification of pending exams; team assembly and coordination; the handling of high-priority exams; providing secure, dedicated space; advocacy for immediate point support and education; joint coordinated medical and law enforcement interviews to ensure consistency and streamline the interview process; organizational support (including specialized trainings, ensuring the presence of an interdisciplinary advisory board, collaboration and cooperation with community resources, and the creation of comprehensive policies and procedures).

Dr. Green then noted some features common to successful SART teams. They include 1) effective communication (with trust built on open, candid information; understanding the job and roles of each team member; engaging in respectful and effective problem solving; and developing positive relationships); 2) a particularly committed leader or coordinator; 3) a victim-centered approach; 4) effective organization (including well-established policies and procedures, effective and consistent coordination, and regular meetings with full attendance); 5) collaboration (requiring buy-in from the top, as well as shared priorities and mutual support); and 6) dedication to higher principles (including the passion to make it work).

PRESENTATION: INTEGRATED SERVICES,
BY DR. JILL KEESBURY, POPULATION COUNCIL

Population Council is a non-governmental organization that conducts research in the areas of HIV/AIDS; poverty, gender and youth; and reproductive health. It currently works in nine countries, operating with more than 20 partners.

Dr. Keesbury began her presentation by sharing basic facts about sexual and gender-based violence in the African region: that the rate of sexual violence exceeds that of physical violence gener-

ally. It is more prevalent than HIV. Most survivors who seek services are children. Survivors include women *and* men (in one hospital as many as 20 percent of survivors are male).

Dr. Keesbury then discussed the role of “one-stop health centers” in linking sectors. In such centers, all services are integrated in stand-alone facilities. She provided the examples of the Thuthuzela Care Centers in South Africa and Isange Center in Rwanda. In such centers, all services are provided in one location with different rooms dedicated for medical exams, police investigation and counseling. They often feature six or seven staff, including doctors, nurses, intake personnel, drivers and police. These centers have advantages and disadvantages. They are exceptionally convenient and provide sensitive care for the client. They are also believed to improve the quality of service and maximize utilization of the full package of available services (although little hard data is available to confirm this). Finally, they can serve as “centers of excellence.” At the same time, “one-stop” centers are very expensive and potentially unsustainable because they typically require heavy donor funding. They may only make sense in high-volume situations, and no data is available regarding their actual effectiveness.

Dr. Keesbury next discussed how such centers commonly operate: they are an amalgamation of services, usually housed in a hospital ward. Typically, they accommodate other clients when not exclusively serving survivors of gender based violence. They often include gynecology, outpatient and emergency wards. They conduct referrals to police and social services, which are especially effective when based on personal relationships.

However, Dr. Keesbury noted that “one-stop centers” are not the only—or even always the best—option. She highlighted an emerging trend which is exemplified by Mulago Hospital in Kampala, Uganda. This integrated service model is based in an existing institution, like a hospital. Yet another example is present in Malawi, which provides focused care in a unit that treats sexually transmitted infections. Another model operates from trauma centre adjoining a hospital in South Africa. The advantages of these alternate, “integrated service models” are that they are relatively low cost and can be built into an existing program or institution. They can be implemented at facilities without high client loads. Finally, they have a demonstrated impact. The disadvantages are that they require multiple stops, which increases the risk of attrition as a survivor moves through the support process. They also require training many providers because they do not utilize small, specialized staffs. Finally, it is more difficult to ensure consistent service provision because the services are diffuse.

Integrated service models outside health units were also noted. For example, in Zambia, police officers are the first point of contact and provide referrals. Through a pilot project, 95 to 100 percent of police stations made referrals to health care.

In addition to government-run integrated programs, there are also stand-alone centers operated by NGOs, including YWCA Zambia, Swaziland Women and Girls Against Abuse. However, while these provide non-health as well as health services, they are heavily donor-dependent.

Dr. Keesbury concluded that several approaches exist (there is no single fix—instead, each attempt must be context-specific.) She advised that more evidence on the effectiveness of these models must be ascertained (considering cost, client perception, etc.) and insisted that prevention strategies should not be overlooked.

DISCUSSION

During the general discussion, one participant noted that the Justice Department has sponsored SAFE trainings in Kenya. However, only 50 trained health-care providers (mostly nurses, not doctors) currently exist, and all are in Nairobi. Trainings of SAFE nurses are desperately needed in order to provide this critical resource in the provinces.

Another discussion focused on what SARTs *are*: a participant thus clarified that there is no one model, that SARTs are mainly characterized by a collaboration of various fields of expertise. One participant raised the need to ensure that if children need to be removed from their existing living arrangement, there be a connection with a safe house. Dr. Green clarified that SARTs are for adults and adolescents; different pediatric teams deal with safe houses and foster care for children. As for the overall structure, Dr. Green explained that SARTs generally do not have their own brick-and-mortar facilities—his team consists of members from different agencies who gather at the hospital—but the meeting place or center of SART operations could be elsewhere. Each team member represents, and is compensated by, his or her own agency. The only individual who needs independent funding is the SART team’s part-time coordinator. Thus, buy-in from the top of each agency is crucial to ensure that members are allocated the time and support needed to participate in work that may take them away from the office or their regular commitments.

Another commentator discussed the alternate process when an individual goes first to a chief, thereby engaging at a different entry point. Such a process should be integrated into the bigger picture.

It was pointed out that TFSOA provides an action plan at the back of their report on one-stop centers, which might be a useful guide.

LVCT’s insights were also highlighted. LVCT has been evaluating integrated services for six years in 38 facilities across Kenya. They are currently considering the effectiveness of the model that refers individuals to police. LVCT also trains police and must do so every year because of attrition. In their experience, children’s cases present the biggest challenge to treatment and accountability.

Additional challenges include:

1. The need for resources, especially human resources from the health, social services, and law enforcement sectors.
2. The need for additional training of SAFE nurses, especially on issues relating to evidentiary requirements.
3. Better understanding of the different types of models, including whether a model or framework would prove most advantageous.
4. Not assuming linkages exist where they may not, throughout the process of service delivery.
5. Evaluating whether standards exist and what standards are needed.
6. Ascertaining who is the custodian of these services and systems.

Participants emphasized the need to define standards for each level of care, to ensure that SAFEs are available and linked to the police, and to foster relationships between community health workers and the various chiefs.

Another participant stressed the need to “scale up” cross-sectoral trainings with both prosecutors and health representatives, specifically for prosecutors to train police and medical profession-

als on basic evidentiary matters. (Here, Dr. Green emphasized the need to first come to agreement among all stakeholders as to what the actual post-rape examination process should entail; once there is agreement, it becomes easier to develop training materials because the framework that all sectors are relying on is consistent.)

A participant proposed that the custodians of such a system represent the highest level possible from each sector, and that “thin staffs” be provided for each district, even if such staff consist of just one person from each ministry. It was again stressed that cross-sectoral trainings are critical to educate legal professionals about the medical aspects of evidence gathering, as well as to educate healthcare professionals about legal requirements in sexual offence cases. Further, health care providers must be trained and supported regarding court procedures and how to provide testimony. Otherwise, they can be reluctant to appear. Courtrooms can be intimidating and providing testimony is generally challenging in light of time constraints.

STRATEGIES AND THE WAY FORWARD

The following needs were identified as critical to moving forward:

1. An agreed-on system regarding evidence at the outset: what it is, how it should be handled, and how to ensure the integrity of custody based on local realities.
2. *Cross-sectoral* training that touches on issues common to all sectors.
3. Coordination, especially an opportunity to feed key recommendations into a policy framework that includes the creation of an appropriate team at every level, including at the district level (for example, by creating a national level authority and policy-level framework).
4. Standardization of protocols and minimum standards at every level of government, or in the alternate, national standards that can be adapted across different models (specifically, a recognition that there can be different models, but that each must meet certain minimum standards).

Plenary Session 6: Report Back on Weak Linkages and Discussion

During this plenary session, three groups reported back regarding the challenges and solutions identified during their earlier concurrent sessions. The concurrent sessions had focused on identifying weak linkages between the various sectors and proposing potential solutions. The reports were followed by a general discussion.

REPORT BACK FROM GROUP 1: LINKING GOVERNMENT AND CIVIL SOCIETY

The two challenges identified by the group were 1) a lack of resources and 2) a lack of coordination between institutions. Proposed strategies included developing guidelines for the engagement of civil society with government organizations, creating reporting standards, and establishing monitoring and evaluation guidelines.

REPORT BACK FROM GROUP 2: LINKING THE MEDICO-LEGAL SYSTEMS

Group 2 identified as key challenges 1) a lack of capacity, including information technology and resources, 2) a lack of coordination of medical and legal efforts, and 3) issues related to documentation. Proposed solutions included the following: to improve the lack of capacity, the group sug-

gested creating a policy framework that would provide the basis for a joint curriculum for training different actors. To address coordination weaknesses, the group suggested creating a central body to coordinate efforts between the various sectors and various organizations. Regarding documentation, the group recommended having both the PRC and P3 forms be presented together in court.

REPORT BACK FROM GROUP 3: COMPARATIVE MODELS OF INTEGRATED SERVICES

Challenges identified by this group included 1) a need for resources, especially human resources, 2) a need for improved psychosocial support for victims, and 3) a need to coordinate processes and procedures across sectors. Possible strategies for tackling these challenges included developing and requiring minimum national standards for evidence, documentation, procedures and protocols; engaging in cross-sectoral trainings; and coordinating efforts across regions through the development of a single national authority, whose efforts could be devolved to the district level.

DISCUSSION

The discussion began with recognition of overlap among the identified challenges. One participant observed that this suggests that a lack of a common vision has contributed to the difficulty in unifying sectors. The issue then arose whether the Task Force would be the appropriate body to coordinate such efforts. A representative from the Task Force explained that they had been given a specific mandate and timeframe (the latter of which had been extended to 2012), suggesting the need for the Sexual Offences Act to be amended to create an alternate authority with a permanent mandate. The discussion then focused on the challenges of working such an amendment through the parliamentary process, and queries as to whether Kenya's Attorney General might have the authority to create an alternate implementation structure.

Next, the discussion focused on the ways in which linkages might be created and enhanced between the private sector and government. References were made to other countries, such as Uganda, that have developed structures for linking the government with civil society. Participants noted that the Kenyan government and civil society currently suffer from mutual suspicion, as evidenced by the existence of two human rights commissions, one for each sector. Because civil society is not involved in the budgeting process, their concerns are not represented. One suggestion for addressing this mutual suspicion was to create a common curriculum or training manual. Another participant noted that linkages are needed not only between civil society and government: within the health sector, for example, many players could work together better to complement each other's efforts.

The conversation then turned to issues related to the documentation of sexually violent crimes through the PRC and P3 forms. A heated discussion ensued as to whether it would be preferable to adopt both forms, or just the more detailed of the two. In some cases, the two forms potentially contradict one another, as they are based on exams performed by different experts. It was explained that the P3 form is a police form. One participant argued that the PRC and P3 form should be harmonized so that they no longer conflict. Alternately, if the PRC form (and appropriate medical regulations governing its use) were gazetted, then the police would be required to accept it, and other healthcare professionals besides doctors (for example, nurses and clinical officers) could testify in court.

Next, a call was made to prioritize issues for the Task Force to work on between the end of the Workshop and the end of the Task Force’s mandate in December 2012. To facilitate that work, it was suggested, civil society should speak with one voice. Sectoral needs, as well as a big-picture perspective, should be identified to improve coordination across sectors and with government.

Another speaker suggested the need for costing exercises, and wondered whether documentation and data-sharing might be helpful for creating an “ask” to be answered by government. It was also suggested that participants consider how they could support each others’ work—for example, it would be helpful for each person to consider what they or their institution can do to help the government chemist overcome delays in collecting and analyzing evidence. Another person suggested this might be accomplished, in part, by encouraging informal relationships between government actors and civil society.

The discussion then turned to resources. As noted by one participant, it is important to identify how much of the government budget is going to implementation of the Sexual Offences Act. It was then explained that the budgeting process is not based on programming so that would be impossible to track; for example, funds given to the various ministries are not earmarked for specific programs. It was also noted that limited funds are available within government units for training.

Another participant reminded the plenary that recognizing gender-based violence as a priority issue is a recent development. Thus, there is a critical need for more awareness-raising and advocacy, which in turn raises the need for documentation. The participant then made a call for studies to be conducted regarding the prevalence of gender-based violence, stressing that greater coordination of data collection could help all institutions with planning and monitoring, and encourage evidence-based interventions.

A final participant emphasized the need to consider the cost to Kenya of *not* providing adequate services, and the importance of stressing this cost when advocating for increased funding. For example, the lack of capacity in the government chemist’s office and the ensuing backlog wastes time and money. That cost should be highlighted when arguing for future government expenditures.

Concurrent Session 3: Improving Capacities—Investigations and Prosecutions

During this session, three overarching challenges for investigations and prosecutions were discussed. The group then identified possible responses for addressing these challenges.

DISCUSSION OF KEY CAPACITY-RELATED SHORTFALLS FOR INVESTIGATIONS AND PROSECUTIONS

Shortfalls Specific to Investigations

The first investigations challenge was identified as communication barriers, predominately language issues, between police and locals. For example, Kikuyu police frequently do not understand the Somali dialect. A second challenge is that investigators possess inadequate knowledge and skills for managing crime scenes. Police officers often do not know what steps victims should take, how to identify evidence, and/or whether to forward specific evidence to the government chemist. Particularly acute is the insufficiency of knowledge about how to 1) collect evidence and 2) handle situations specific to child victims.

The discussion then turned to the need for greater gender sensitivity when interacting with victims. Police may question a victim’s judgement or seem to assign blame by asking, “Why were

you dressed like that?” when investigating sexually violent crimes (implying that the victim had somehow invited the attack.)

A lack of logistical support for carrying out investigations, such as lack of adequate vehicles or fuel, was also identified as a problem.

From the legal side, Section 38 of the Sexual Offences Act was said to hamper reporting: this provision purportedly stifles investigations by preventing witnesses from coming forward to share information, since potential witnesses do not want to risk being later accused of making false allegations.

The group then turned its attention to the three challenges prioritized by the concurrent session on Investigations and Prosecutions: 1) inadequate resources and skill levels, 2) problems with witness protection measures, and 3) inadequate capacity in evidence management.

Shortfalls Specific to Prosecutions

The discussion then turned to the challenges undermining the prosecution of sexual violence cases. In many ways, the major obstacles to effective prosecution are rooted in limitations that arise from the investigations stage, especially the quality and quantity of admissible evidence produced. Thus, the identification of prosecutions challenges was understood to overlap with the prior investigations discussion. The additional complexity of having police prosecutors be tasked with prosecuting sexual offence cases in court was noted as well—they are not trained lawyers, nor do they specialize in sexual or gender-based violence cases. For this reason, they are often at a disadvantage when facing defense counsel in SOA-related cases.

After a few minutes of discussion about prosecutions of sexual offence cases, participants did identify three key capacity shortfalls in this realm: 1) inadequate evidence and poor investigations; 2) inadequate witness protection measures and mechanisms; and 3) resource constraints.

Strategies for Addressing Investigation and Prosecution Challenges

First, participants discussed the need to revise the police training curriculum. It was suggested that specialized training could be developed for police recruits, who could then be posted throughout the country. One participant emphasized that the training should include basic information specific to sexual violence investigations. Then, mid-level officers and supervisors should be educated about the requirements and procedures for investigating such cases. The investigatory process often breaks down when commanders and supervisors do not understand what officers are supposed to be doing to adequately investigate crimes.

Participants also highlighted the need to retain police who have been trained to handle sexual violence cases. As underscored by one participant, there is little consistency or retention among the force as officers are frequently moved from post to post. For example, they may be trained to investigate sexual violence cases, but end up posted in a stockroom. To address this issue, a “two-ended pipe” was recommended, whereby all police obtain some basic training, and then those who want or are identified for specialized training can proceed to the next level. One participant noted that in his province, police have to rotate every four months, so there is a constant need to train new officers. His advice was to 1) conduct continuous training on the ground, and 2) provide focal trainers who know what training each police group has completed and build a sequential, cumulative curriculum.

Another participant explained there is a new department of investigations under consideration to ensure Kenya's Criminal Investigation Department (CID) remains semi-autonomous. The department will be funded through the Treasury, and many hope such funding will enable specialized units within the CID. If the new department comes to fruition, it could solve the problem of excessive transfers among police investigators.

Participants identified the creation of this new department as a possible solution, however another speaker stressed the importance of ensuring that trainings address the field in which each officer will work, and requiring that sexual offense investigations are handled only by people who have been appropriately trained (which would help solve the retention problem). As noted by another participant, a specialized unit within the police force is charged with dealing with sexual and gender-based violence cases (called Gender and Child Protection and Community Policing), however they are not responsible for investigating all sexual violence cases. They predominately serve as a "focal point" for sexual violence because the police are understaffed.

The need for a special unit within the Criminal Investigations Department was emphasized. This group could be charged with setting standards and conducting trainings. However, most officers are trained at their stations to save time, since the CID is located far from most facilities. In gender-based violence cases, the loss of time in evidence collection can be critical. The speaker emphasized that because of this, the CID unit cannot be depended on to conduct all sexual and gender-based violence investigations; instead, it is crucial to train recruits. If 7,000 recruits were trained, then even if they were transferred, someone else within the station would likely have the necessary training. Another speaker disagreed with this argument, emphasizing that the CID could be tasked with the responsibility because it is represented at the divisional and local levels. This speaker then emphasized the need to strengthen police "gender desks."

Next, a participant stated that the discussion had focused too much on police to the detriment of other issues, including other sectors that need enhanced skills for dealing with survivors. She suggested that the group consider the skill level of every actor along each potential entry point of a sexual violence case.

The group then addressed the issue of inadequate resources, including infrastructure, personnel, equipment and government funding. One participant stressed the need for a specific line item in the government budget dedicated to sexual and gender-based violence. Another emphasized the importance of engaging the media to educate communities about the issue of resources. If cases are identified and publicized where perpetrators are clearly guilty but cannot be prosecuted because of a lack of resources, that may create urgency and encourage funding, perhaps through the Ministry of Finance. Another participant countered by explaining that the Treasury would not be the appropriate body through which to secure funding because sexual and gender-based violence does not involve program work. Instead, because this is a multi-sectoral issue, all of the ministries should be approached. However, a third participant noted that the issue keeps getting lost among "all these different pockets." Instead, the participant suggested targeting a specific ministry to take ownership of the issue so that it would not keep getting passed along.

It was suggested, then, that these possible solutions be divided into short-term and long-term goals, and that perhaps different media packages be created to target each sector. A final speaker suggested that funding for the development of strategy plans be addressed by the budget for the Ministry of Public Health and Sanitation (MOPHS).

Session participants then created a detailed overview of the various challenges that had been discussed, and identified how each might be addressed and who should be responsible for implementing each tactic.

INVESTIGATIONS CHALLENGES AND POSSIBLE RESPONSES

| | 1. Inadequate resources and skill levels | 2. Witness Protection | 3. Inadequate capacity in evidence management |
|------------|---|---|--|
| Who | <ul style="list-style-type: none"> - Criminal Investigations Department - Ministry of Finance - Civil Society Organizations - Permanent Secretary - Media - Parliament | <ul style="list-style-type: none"> - Judiciary (to develop court rules) - Ministry of Finance - Ministry of Health (to aid with psychosocial components of witness care) - Ministry of Finance (budget) | <ul style="list-style-type: none"> - Victims - Community - Medical personnel - Service providers - Forensics Specialists - Police |
| How | <ul style="list-style-type: none"> - Have civil society lobby in support of agency-identified needs - Lobby Ministry of Education for increased funding - Conduct research to identify relevant statistics to substantiate lobbying efforts - Identify incentives to retain investigators, doctors, attorneys and magistrates with SGBV training - Provide counseling for professionals who work with survivors to combat vicarious traumatization - Investigate whether unused moneys from the CDF fund can be reallocated to SGBV organizations | <ul style="list-style-type: none"> - Devise relevant court rules (Chief Justice) - Enhance physical protection for witnesses (establish safe houses and temporary shelters; assign protection officers) - Train personnel - Secure additional funding | <ul style="list-style-type: none"> - Conduct specialized trainings for all relevant groups - Enhance financial and technical resources - Increase number of specially trained personnel - Enhance community awareness through outreach, targeted at victims and the sensitization of officers - Produce detailed standard operating procedures for police - Provide evidentiary kits to doctors who collect evidence - Provide travel reimbursement for police through creation of an official policy or guideline so that such reimbursement becomes legally binding - Enhance regional and international coordination and legal assistance - Strengthen extradition processes |

PROSECUTION CHALLENGES AND POSSIBLE RESPONSES

| | 1. Inadequate evidence and poor investigations | 2. Witness Protection | 3. Resource Constraints |
|------------|---|---|---|
| Who | <ul style="list-style-type: none"> - Criminal Investigations Department - Department of Public Prosecutions - Service providers | <ul style="list-style-type: none"> - Judiciary (to develop court rules) - Ministry of Finance - Ministries of Health (to aid with psychosocial components of witness care) - Ministry of Finance (budget) | <ul style="list-style-type: none"> - Criminal Investigations Department - Ministry of Finance - Civil Society Organizations - Permanent Secretary - Media - Parliament |
| How | <ul style="list-style-type: none"> - Professionalize the prosecution of sexual violence cases (to combat the perception that assignment to sexual violence cases is a prosecutor's punishment) - Build capacity through specialized trainings - Mobilize resources - Increase personnel through recruitment and specialized trainings | <ul style="list-style-type: none"> - Devise relevant court rules - Enhance physical protection for witnesses (establish safe houses and temporary shelters; assign protection officers) - Train personnel - Secure additional funding | <ul style="list-style-type: none"> - Have civil society lobby to meet needs identified by each agency - Lobby Ministry of Education for increased funding - Conduct research to identify relevant statistics to substantiate lobbying efforts - Identify incentives to retain investigators, doctors, attorneys and magistrates with SGBV training - Provide counseling for professionals who work with survivors to combat vicarious traumatization - Investigate whether unused moneys from the Community Development Fund can be reallocated to SGBV organizations |

Participants agreed that it can be hard for civil servants to lobby within their own agency because of risks to job security if they are seen to be undermining their superiors. Therefore a strategy is needed to help civil servants lobby within their ministries, or if civil servants' needs can be identified internally, then civil society can advocate externally.

One speaker noted that much could be learned from the Ministry of Education, which has the largest degree of funding. For example, when the Ministry of Education lobbies the Ministry of Finance, its representatives come with set amounts, numbers, costs of programs, and hard numbers. This may be an effective strategy to adopt. However, it was also noted that the Department of Public Prosecution is harder to budget for because the department is divided up, with set amounts to be shared among sections. Unfortunately, government transparency around the budgeting process

has been inadequate: as stated by one participant, “By the time you understand what you’re supposed to do, the budget is finished.”

Regarding the Ministry of Education, a representative from the Teachers Service Commission noted that although it has a large budget, it has few discretionary funds, since most funding goes to teacher salaries. One participant then asked if there is a time of year when budgets are set, around which advocacy might occur.

One of the moderators explained that her organization gets funding for three years at a time. She explained that one has to lobby within each of several sectors—it takes a long time to figure out the process. She suggested the best way to secure funding would be to engage in a sector-wide approach and noted that upcoming public hearings may be the best place to advocate. However, preparation must occur in advance, including research into specific numbers and statistics, to improve effectiveness of the advocacy. Such research is quite time-consuming and takes away from daily responsibilities.

Another participant then voiced encouragement for engaging in this process despite the challenges. As she noted, people often shy away from specific processes because they take a long time, but she suggested the need to continue anyway. For example, her organization lobbied for an emergency services line for Kenyan children. The process took four years, but is now a permanent budget line item. She stressed that engaging in the budgetary process takes perseverance but is worth the wait. She further stressed the need for civil society and government, and even civil society within itself, to speak with one voice.

Participants focused on the importance of sending the appropriate person to lobby for funds. One noted that many government departments send the wrong people to lobby for money, individuals who may not be able to properly explain the program when questioned.

The discussion then turned to the issue of what to lobby for. A proposal was made to lobby for funding for a technical unit within the Criminal Investigations Department. Another participant suggested finding and lobbying for ways to retain people in the specific areas for which they have been trained. Incentives need to be identified, for example possible pay raises based on increased expertise. Without those incentives, specialists will not be motivated to stay. Another participant noted that the rate of attrition in the Attorney General’s office is almost 80 percent; retention was also recognized as an issue for magistrates and doctors. The issue of vicarious traumatization was noted as well, along with the need for counseling for professionals who regularly work with survivors.

Finally, it was pointed out that a percentage of the CDF fund normally goes untouched; it was suggested that civil society might investigate whether those funds could be re-allocated to sexual and gender-based violence organizations.

Concurrent Session 3: Implementing Medical Management Guidelines

During this session, attended by approximately ten participants from the medical and public health sectors, the group addressed the following question: “What problems are we having with the implementation of the National Guidelines on the Management of Sexual Violence?” A quick-paced discussion ensued, resulting in the challenges and solutions outlined below.

CHALLENGES TO IMPLEMENTATION OF THE NATIONAL GUIDELINES ON THE MANAGEMENT OF SEXUAL VIOLENCE

The following challenges were collectively identified:

1. The guidelines have not been disseminated to lower levels of government and to medical institutions due to a lack of funds.
2. The guidelines have not been translated into local languages and thus remain incomprehensible for many populations.
3. The infrastructures of medical levels 2 and 3 discourage implementation, even for those well versed with the guidelines' basic principles.
4. Individuals tend to focus on the theoretical aspects of the guidelines, while the practical components tend to be overlooked.
5. The current training manuals for medical practitioners are obsolete because they are not in line with the national guidelines, the Sexual Offences Act or Kenya's new Constitution.

PROPOSED SOLUTIONS TO THE CHALLENGES IMPEDING IMPLEMENTATION OF THE NATIONAL GUIDELINES

Regarding the first issue, it was announced that a dissemination plan and budget already exists, however no money is available to support it. Several speakers suggested that one way to secure the necessary funding would be to push for allocating 15 percent of the national budget currently earmarked for county development, including the improvement of schools, hospitals, etc.. However, it would be critical, if engaging in this approach, to identify government partners to help lobby for and secure that funding. Ideally, lobbying should fall under the Ministry of Public Health and Ministry of Medical Services. Because all donor money goes to the Ministry of Public Health Services, to be effective, one must collaborate with that ministry anyway. On the basis of this discussion, it was ultimately suggested that the Ministries of Medical Services and Public Health lobby together to secure this funding.

Regarding outreach to local populations, it was recommended that the patient guidelines be extracted from the medical management guidelines. The language of those guidelines should be simplified, translated into Swahili and other local languages, and posted on flyers for community use.

The next issue, a lack of adequate infrastructure, was attributed to general understaffing, as well as insufficient numbers of staff specifically trained to treat sexual violence cases. Additional needs include appropriate facilities and an improved ability to conduct sophisticated blood, urinalysis and other tests. Some participants noted that one problem contributing to the lack of qualified staff is that the government does not want to hire people from outside the various regions, so too frequently unqualified people are hired from within a given region; as a result uniformed but unlicensed staff are serving in some hospitals. Other staff are trained in the classroom but not in practice. Proposed solutions included lobbying for funds at the county level to hire additional qualified personnel and support human resources, as well as creating a mentorship program to provide staff with practical experience. It was also recommended that supplies, equipment and drugs be provided to level 2 and level 3 health centers and dispensaries, and that lobbying for related funds and additional staff occur at the county level.

The group further noted that existing training manuals are obsolete and not in line with current law. Proposed solutions included updating training manuals and standard operating proce-



Health sector experts like Dr. Margaret Meme focus on strategies for improved implementation of Kenya's National Guidelines on the Management of Sexual Violence.

dures to conform to the medical management guidelines, Sexual Offences Act, and new Constitution. Updated and aligned Standard Operating Procedures are also needed.

Finally, a participant proposed that monitoring and evaluation be encouraged to track the gaps, gains and impacts made under implementation of the national guidelines, and thereby better understand the impact of existing services on victims and courts. To develop effective indicators of progress achieved in the medical and legal sectors, it was suggested that tracking be conducted at various stages, including input (money and resources coming in to the system), output (products and services created within the system), and outcome (measured in terms of the community and how survivors have fared). More information should be obtained as to how long it takes for information to get to court, how much money is given to various activities, how much is spent, etc. Participants stressed the need for anonymous, aggregate data, where only geographic data is revealed.

In addition, a feedback mechanism is needed from the judiciary to medical personnel to communicate the effectiveness of medical court-related services. This could help identify where weaknesses arise, and thereby improve medical involvement in the prosecution of sexual offenders. (As noted by one speaker, cases are often lost in court but the medical professionals are never told why.) If a case fails in court because of evidence, it would be helpful for the healthcare provider involved with evidence collection to find out what that problem was so that the system can be improved. A conduit between the courts and medical sectors would facilitate the flow of feedback now that the two sectors are communicating.

Concurrent Session 3: Coordinating Capacity-Building Efforts

This discussion aimed at identifying three key capacity shortfalls related to coordinating capacity-building efforts and begin exploration of how to address those shortfalls.

CHALLENGES TO COORDINATING CAPACITY-BUILDING EFFORTS

The group first highlighted several challenges relevant to the coordination of capacity-building among actors responding to SGBV in Kenya:

1. Monitoring and evaluations, as well as data collection and management more generally.
2. Awareness of the Sexual Offences Act.
3. Technological capacity to aid the collection of forensic evidence.
4. Service capacity at Kenyan health facilities.
5. Limited, specialized psychosocial support services.
6. The duplication of roles.
7. Commodities and supplies.
8. Professionalism when interacting with victims.
9. Professional training and qualifications.
10. Lack of capacity to document practices.
11. Ineffective case management at the court and police level.
12. A range of issues related to safe shelters.
13. Skills enjoyed by all sectors and agencies.
14. The Task Force's capacity to meet short, medium and long-term objectives.

While a few of these issues were simply noted for the record, several were carefully addressed. Those more detailed discussions are highlighted below.

Monitoring and evaluation, including data management, were the first issues discussed in detail. Participants were unclear as to which ministry has the mandate to collect and maintain SGBV data. It was also noted that an assessment is needed to determine what intervention model works for primary care in Kenya, and that monitoring and evaluation is needed for any models that currently exist.

The second topic was awareness of the Sexual Offences Act. It was explained that many police stations do not even have a copy of the Act. One participant inquired whether the issue is a lack of capacity or a lack of a willingness to understand it. A representative from CREAM announced that they had worked to simplify the Act in English and Swahili and have begun disseminating it at the community level. Further assistance with grassroots-level distribution is needed.

As for services and the capacity of Kenyan health facilities to meet victims' needs, another participant explained that there is no capacity for survivors at Levels 1 and 2, which deal with comprehensive care; there is also confusion about what happens at the district level.

Next, the group addressed capacity in the context of commodities and supplies, an issue described as a "big problem." Providers can offer services but actual supplies are short, and most facilities lack the capacity to meet the volume of need. Whether health centers have the necessary equipment is determined by the Ministry of Public Health and Sanitation, but subdivisions within the ministry coordinate the provision of supplies and commodities. For example, the Division of Reproductive Health may supply emergency contraceptives but not other supplies. Having supplies organized by so many different providers is confusing and problematic.

Professionalism in dealing with victims also generated discussion. Specifically noted was a "sensitivity gap" on the part of law enforcement agents when questioning survivors. Another participant noted such a gap among other members of the community, such as village chiefs, victims' neighbors, etc. A third speaker explained that service providers have been known to breach professional ethics (for example, when a policeman calls friends to hear what a victim has been saying in private). In such cases, protocol is ignored.

The inadequate supply of relevant and properly trained professionals is also an issue. The IDP context was highlighted as particularly problematic; one participant noted there are many IDP volunteer counselors who are unqualified or lack capacity. There is little to no monitoring and evaluation or formal training. How to effectively provide multi-sectoral training was raised as a related issue.

The next substantive issue was case management. One speaker noted that courts experience frequent adjournments, which create delay and waste resources. In addition, statements can only be taken at a police post, and statement-taking can last a full day. The burden of pushing a case forward is left to the victim; investigations take a long time and frequently require victims to return to stations repeatedly. One participant noted that Sierra Leone employs family support units in police stations, and argued that gender desks should be staffed with personnel who can adequately handle emerging cases. Another argued in favor of enhanced sensitization in case management, as well as educating victims by explaining the legal process to them, and thereby avoiding the primary reason why most survivors abandon their cases: because they do not adequately understand the process.

At shelters, participants argued, that greater quality management, including monitoring and evaluation, is needed. Lack of shelter capacity was also noted as problematic. One participant pointed out that it is unclear how shelters are defined, including the minimum standards and requirements for operating a shelter. A proposal was made that monitoring and evaluation practices be borrowed from HIV voluntary care and treatment response. Another speaker explained that the Task Force has created a position paper on standards for safe shelters, however a coordinating body is needed to implement minimum standards, as well as coordinate one-stop centers. UN Women will issue a rapid assessment and recommendations for shelters in the third quarter of 2011.

Participants agreed that skills need improvement across all sectors and agencies. While the Ministries of Health are tasked with providing health-related skills, the Ministry of Justice is responsible for legal skills. The Division of Reproductive Health is also responsible for some training.

Finally, a discussion ensued as to whether the Task Force's capacity might be enhanced between now and the end of its mandate. One participant recommended the Task Force serve as the coordinating body for the various agencies and serve as a central repository for the work identified above.

DISCUSSION OF CORE COMPETENCIES, CROSS-SECTORAL CAPACITY BUILDING, FUNDING, COORDINATION

Next, the conversation shifted from identifying challenges to discussing how to enhance agencies' core competencies, improve cross-sectoral capacity building, and improve funding and coordination. The first topic was monitoring and evaluation, and why mandates to engage in monitoring and evaluation remain unfulfilled. The Ministry of Public Health identified the problem as lack of a budget for such activities.

A proposal was made to move beyond discussing what is not working, and see if something more integrated might be developed. Several speakers pointed out that to do so, however, it is necessary to determine why the various efforts are not working effectively. One participant explained that the structures exist, but lack of funding prevents implementation. The question then becomes whether this is due to problems with internal budgeting, the mismanagement of resources, or lack of money in the first place. Another speaker explained that no money is specifically allocated for

implementation of the Sexual Offences Act, and that specific budget lines are needed for the necessary activities.

A few participants identified possible fiscal resources. One explained that the Fiscal Management Act opened up funds for greater representation of gender-based violence issues. Additionally, funds are available for reproductive health. However, it remains unclear which body has the mandate to engage in monitoring and evaluation and the ability to coordinate capacity-building. The State Law Office has coordinating ability for capacity-building within law enforcement agencies, and the Department of Public Prosecution should be coordinating those efforts.

Finally, one speaker raised the issue of the potential role of media in enhancing resource mobilization.

DISCUSSION OF DATA, TECHNOLOGY AND INFORMATION MANAGEMENT

Next, the discussion turned to tactics for improving data, technology and information management. Current data on gender-based violence is unavailable. Participants recognized the need for data-collection relevant to each sector (health, legal, case management), as well as coordination and dissemination. It was unclear to participants whether this fell under the mandate of the Bureau of Statistics. If so, it is important to explain to them that the process is not working well. Requesting information from them may help encourage prioritization. One participant announced in a side note that the Gender Commission may have data on rape cases.

Another participant proposed the creation of a computer-based system for logging quantitative data relevant to sexual and gender-based violence. However, small village hospitals often have paper-based data. Thus, a data management system is needed that works for both paper and non-paper based systems.

The discussion then turned to which coordinating body would be most effective at housing data. One participant argued that the Bureau of Statistics is too high up the government hierarchy and not concentrated enough. A concern was also raised about the validity of government-reported statistics, in light of the gap between police reporting of rapes and actual rapes, and the political issue of the government wanting to appear stable. Participants also highlighted the need to identify what kinds of data should be collected.

THREE MAIN CHALLENGES RELEVANT TO COORDINATING CAPACITY-BUILDING

The three main challenges that were ultimately identified were enhancing the skills of health care workers and law enforcement; improving data management, including the development of a comprehensive system for monitoring and evaluation of service provision; and ensuring the availability of adequate supplies. As for improving the skill sets of health care workers, participants suggested that the Division of Reproductive Health (DRH) work with the Ministry of Medical Services to conduct trainings on quality control and supervision. In addition, DRH's capacity must be enhanced so that it is able to deliver on its mandate.

Regarding law enforcement skills, participants noted it is the State Law Office's responsibility to coordinate the capacity building of law enforcement agencies. However, the Department of the Public Prosecutor could help train law enforcement, while the Kenya Magistrates and Judges Association (KMJA) could help train the judiciary.

With regard to data management, monitoring and evaluation, participants noted that the Kenya Bureau of Statistics (KBS) is responsible for data management, but may not be concentrating on service-related data. Participants suggested that the Gender Commission assume the task of coordinating the provision of a centralized database and information system.

As for supplies, it is unclear whether the issue of inadequate resources is due to a lack of resources or mismanagement of resources. Clarification is needed.

Finally, it was noted that the Ministry of Medical Services and the Ministry of Public Health and Sanitation have different policies relevant to SGBV; these should be reconciled.

Plenary Session 7: Report Back on Individual Capacity Challenges

This plenary session was attended by almost all workshop participants. Three groups reported on their discussions regarding capacity challenges for 1) investigations and prosecutions, 2) implementing the National Guidelines for the Management of Sexual Violence, and 3) coordination of capacity-building efforts.

REPORT BACK FROM “INVESTIGATIONS AND PROSECUTIONS”

This group identified the three main challenges facing *investigations* as 1) inadequate resources, 2) inadequate witness protection mechanisms, and 3) inadequate infrastructure, skill-base, and personnel capacity.

As a response to the first challenge, the group proposed lobbying for a specific line in the government budget for addressing sexual and gender-based violence. They explained a debate arose during their session about the feasibility of this proposal because the budget is not assigned to programs but to the various ministries, so it would be necessary to lobby the Permanent Secretaries of Ministries to acquire funding. They concluded this lobbying should be conducted by civil society organizations and not civil servants, the latter of whom might risk their jobs should they participate in lobbying efforts.

As a response to the second challenge, the group suggested enacting rules of court regarding the physical protection of witnesses at safe houses and providing witnesses with police protection. They noted that training, recruiting, and retaining personnel to conduct witness protection services is desperately needed, as is the money to put such mechanisms in place.

As for inadequate capacity, increased training and enhanced financial resources are needed to enhance personnel. The group proposed creating a specialized unit within Kenya’s Criminal Investigations Department to handle sexual and gender-based violence cases, through which investigators could be provided with specialized training. Developing guidelines is not enough; legally-binding provisions are also needed. In addition, regional and international assistance would be extremely helpful, as both evidence and perpetrators frequently cross borders.

The group’s conclusions relevant to *prosecution* challenges were presented next. The three main challenges they identified were: 1) inadequate evidence and investigations, 2) inadequate witness protection mechanisms, and 3) resource constraints. Many of the suggested responses mirrored the proposed responses to investigation-related challenges. For inadequate evidence and investigations, it was again suggested that a specialized unit, capable of providing specialized training, be established within the Criminal Investigation Department. It was also suggested that prosecution

services be professionalized: currently when police are assigned prosecutorial duties, that assignment is viewed as a punishment since the police do not receive much money for their efforts. Fundraising is needed for equipment and training and to improve incentives for prosecutorial services. The suggestions for addressing inadequate witness protection were identical to the suggestions related to witness protection at the investigatory stage, above.

As for resource constraints, the primary suggestion was to lobby for a specific budget line to enhance monetary resources. Achieving this would likely require significant effort. However, it was noted that similar lobbying for a line item to provide child hotline services had been successful. While it took four years, the successful outcome was encouraging.

The group then identified the following entities as potential partners in achieving these goals: the judiciary, the Criminal Investigation Department, the various ministries, service providers, and the media, the last of whom who should be encouraged to push for greater support of efforts designed to address sexual and gender-based violence.

REPORT BACK FROM “MEDICAL MANAGEMENT GUIDELINES”

The challenges identified by the second group were 1) a failure to disseminate the medical management guidelines to rural areas due to financial constraints; 2) a need to translate the guidelines into local languages; 3) a need to create an infrastructure for implementation of the guidelines for dispensaries and health centers; and 4) a need to update the current medical training manuals to align them with the Sexual Offences Act, the Constitution, and 2009 Health Ministries guidelines.

Proposed solutions included simplifying the 2009 health sector guidelines, translating them into local languages, and disseminating those simplified versions throughout the country; expanding the involvement of the Ministries of Health at the national and county levels; reviewing, updating and aligning the current manuals with the Sexual Offences Act, Constitution and 2009 guidelines; developing standard operating procedures for working with the guidelines; creating a monitoring and evaluation plan to track progress in medical and legal activities; creating feedback mechanisms between the judicial and medical sectors so that the medical sector can learn which efforts are working and where improvement is needed; and rolling out gender-based violence information management systems, an effort UNFPA has commenced.

REPORT BACK FROM “COORDINATION OF CAPACITY BUILDING EFFORTS”

Challenges identified by this group included 1) data management, 2) awareness of the Sexual Offences Act, 3) technical capacity, 4) lack of adequate training for staff who deal with victims, and 5) case management at the court and police levels. The following groups were identified as potential partners for addressing these challenges: For data management, it was suggested all sectors be involved; however, participants seemed to agree that sexual violence-related data should be coordinated by the Gender Commission. The Ministry of Public Health and Sanitation and Kenya Medical Supply Agency were identified as the best institutions to tackle issues related to evidence management. Finally, participants noted that the Government of Kenya is ultimately responsible for training police and improving case management.

DISCUSSION

A general discussion then commenced regarding the various groups' reports. The first issue raised was budgeting and the role of civil society organizations in the budgeting process. Participants noted that there are opportunities for civil society organizations to present at sector hearings for setting budgets. In addition, it was stressed that the Department of Probation and Aftercare Services must form part of the capacity-building efforts since they engage in all assault and other dangerous cases, and have valuable information that the magistrates generally do not have.

One participant stressed the need for gender mainstreaming in all permanent contracts and interrogating the process of creating those contracts. The participant also stressed the need for civil society organizations to figure out how they can give input to government institutions and ministries so that any policies developed accord with the Sexual Offences Act.

The educational sector was identified as a particularly valuable sector through which to work on sexual violence issues. One participant explained that much can be done within the school system to raise children's awareness, as well as community awareness about these issues. The Ministry of Education has developed a life-skills education mandate for schools, which, if enforced, will result in many more citizens being aware of their rights, relevant opportunities, and support facilities so they are better prepared to respond, if ever sexually violated.

Another participant explained that the Fiscal Management Act has opened up space for more public engagement, including an ability to question the budget, as has the committee system in Parliament. There are lobby groups within Parliament (such as the Women Parliamentary Association) that can be used to ensure that the government tackles sexual and gender-based violence issues even in resource-limited locations. It was noted by another participant that contributions of not only money, but land, would be helpful to support the development of safe houses and other structures. If all sectors came together to successfully lobby the government to set aside land, civil society organizations could come up with the necessary structures. Participants should be aware that the Ministry of Health does not deal with line items and thus if they try to get support as a line item that tactic will fail.

Another participant stressed the need for *preventing* sexual violence in the first place to minimize the need to spend a lot of money on response. The speaker noted that when the Task Force considers prevention they tend to look at police powers and how they work, however that is not really preventative. For example, if a teacher is abusive, the community needs to find preventative means to stop that abuse, as through rehabilitation.

The next speaker disagreed with the idea of counseling teacher-offenders, because she believes that justifies sexual violence as caused by stress. She argued for the prompt dismissal of teachers at the first sign of even potential impropriety, instead of merely transferring that teacher to another school, and for the prosecution of chiefs when they abuse students. The previous speaker then clarified that he was not justifying the sexual violence, but arguing that preventative methods should be employed.

A representative from the educational sector explained that when teachers rape, they are not transferred. They are dismissed and removed from the register. There are some cases where teachers are acquitted and then transferred. The Teachers Service Commission needs a foolproof system to help deal with those cases. The Commission's Circular is very explicit that touching is bad enough to send a teacher home, however guilt must be proven first. Also, there is the issue of gov-

ernment employees dealing with sexual offenders—if they are not sensitized to the issue, or worse, if they themselves are offenders, the process is futile. Therefore a comprehensive, cross-sectoral approach for sensitization and oversight of the accountability process is needed.

One speaker then argued that data indicates schools are safe spaces for girls, a comment that triggered a heated response. A second speaker explained that schools feel threatened so they do not report correct data about the abuse occurring, and thus the data is wrong. She argued that schools are not safe, but one of the worst places for girls. The first speaker then clarified that the data shows girls in school are much less vulnerable than those out of school so that *comparatively* it is safer for girls to be in school than out, a comment that was better received.

The discussion then returned to budgeting. One participant noted there is a difference between line budgeting and itemized budgeting, and that government ministries operate according to both systems. It would be helpful to find a way of harmonizing the budgeting process; line budgeting would be particularly helpful for the health ministry because it allows for prioritization. Another speaker clarified that within the ministries, it is the procurement officer or Chief Financial Officer who should be approached about budgeting issues. A third participant argued that religious organizations could make a strong partner to advocate for many of these issues.

Another participant stressed the need for economic empowerment and income-generating activities since during the post-election violence those women and children who were violated were among the poorest citizens. This triggered another participant to ask, “Where is the community?” noting the need for ownership of the process by local leadership and the traditional justice system.

The next speaker, who comes from a non-urban area, then provided a snapshot of the “reality on the ground.” She noted that in her community, most of the victims of post-election violence were women and children. There was no hospital in the community at which they could be treated after they were raped. In addition, there was an issue of culture and stigmatization; most women would not admit to having been raped because of this stigma. Further, during armed conflict, police might be perpetrators. So how can victims be told to report their experiences to police stations? Most police stations do not have a gender desk, and victims usually must report to a man about their experience. In her region, most referrals went to Moi Teaching and Referral Hospital—one woman there suffered from fistula after being gang-raped by 12 men during the post-election violence. These communities have no access to media or hospitals, and have never even seen the Sexual Offences Act.

A specialized unit for gender crimes is needed within the police structure. In Malawi and elsewhere, specialized units exist and their gender-based violence response is somewhat better than in Kenya; they might provide a good model for moving forward. A participant explained that in Kenya’s Northeastern Province, where there are refugees, there are also police officers who handle sexual and gender-based violence investigations—this could be replicated nationwide. The challenge remains, however, of too few female police officers. On the positive side, UNHCR has entered into a pact with the Kenyan government that police responsible for refugee camp areas will be trained to better understand refugee law. They will also be trained in the prevention of sexual exploitation and SGBV issues.

Another participant offered the example of Liberia, which also has specialized police units: specifically, there is a Women and Children Protection Section to handle sexual and gender-based violence. Officers are trained in methods for investigating and collecting evidence and are gaining

expertise in handling gender-related violence. Victims now have a place to go; when they report, they encounter trained individuals and can obtain counseling; the service and referral processes have become more effective. Participants suggested that it may be a good starting point to create a dedicated unit within the Kenyan police.

As for pro-active approaches to prevent sexual and gender-based violence, CREAM conducted a rape-prevention campaign with the police in 2005. They partnered with the city council and asked them to clear tunnels and put up lights and security near a problematic roundabout. Billboards addressing rape-related issues were placed at some of the most notorious areas highlighted by police. This became an effective awareness tool that helped prevent further sexual offences. The speaker also stressed the need to simplify relevant provisions of the Sexual Offences Act into local languages, explaining that CREAM has translated the act into English and Kiswahili and welcomed assistance with the continued distribution of these translations.

A participant noted Sierra Leone as an example of a country that has created a permanent family support unit within local police stations as a means to decentralize services and bring those services closer to people in outlying communities. While participants recalled that women in urban areas are abused as well as those in more rural neighborhoods, they agreed that there is a need to improve linkages to maximize services to all populations. For some populations, it may not help to take copies of the Sexual Offences Act out into the community; for those communities, radio may be a more effective means of communication.

The plenary also discussed the role of media: the Health Rights Advocacy Forum (HRAF) has begun the process of engaging media in the budgeting process. They conducted three months of intensive media lobbying, which resulted in HRAF becoming heavily involved in the budgeting process. Notably, while this approach can work, journalists need training on the Sexual Offences Act and related processes.

The discussion concluded with a few final notes regarding training and data management. Women *and* men can be trained to provide effective services to address gender and sexual violence related issues, not just within-sector but multi-sectorally. Also, it might be possible to harness universities to provide data management and storage at a relatively cheap price, should a collective data management tool be developed.

Day 3: May 27, 2011

Plenary Session 8: SGBV and Emergency Situations

Approximately 90 participants attended this plenary presentation and discussion of sexual and gender-based violence in emergency settings. Four representatives of civil society and the justice sector offered presentations (Carole Ageng'o conveyed Hon. Mr. Justice Waki's remarks, as he was obliged to return to Nairobi on business).

PRESENTATION: "SEXUAL VIOLENCE IN CONFLICT: WHAT IS UNIQUE ABOUT IT?"
BY CAROLE OSERO AGENG'O,
INTERNATIONAL WOMEN'S PROGRAM, OPEN SOCIETY INSTITUTE

Ms. Ageng'o began by noting that sexual and gender-based violence (SGBV) is fundamentally rooted in gender inequality and discrimination, affecting women and girls disproportionately. Attention to SGBV has focused on women as victims, but women can also be perpetrators. She

Jane Serwanga (FIDA-K) introduces Carole Osero Ageng'o (OSI), who discussed the unique features and challenges related to sexual violence in times of conflict and political unrest.



noted that it is critical to have a better understanding of violence against men as well. The range of gender-based violence includes domestic violence, harmful traditional practices such as female genital cutting, early or forced marriage, and sex trafficking. All of these practices are exacerbated during conflict, when conventional law and order break down and populations move out of conflict areas but become more vulnerable.

To contextualize SGBV during periods of conflict, Ms. Ageng'o noted that it is useful to examine general levels of such violence during the various phases of emergencies, from pre-conflict through active conflict to post-conflict reconstruction. Police, for example, may respond appropriately to investigate rape in peacetime but may become perpetrators when conflict erupts. Often they remain immune from prosecution.

During the post-conflict period in Kenya, the mediation process prioritized stopping the violence but did not allow opportunities for community-level crimes to be addressed. The Commission to Investigate the Post-Election Violence (CIPEV) went beyond its mandate and included violence against women as part of its inquiry, largely due to the personal interest of Commission Secretary George Kegoro.

Ms. Ageng'o further noted that Kenya's lack of attention to SGBV is consistent with regional weaknesses in accountability. She cited Sudan, northern Uganda, and Democratic Republic of Congo as countries that place similar burdens on women to prove a rape was committed and experience similar challenges with regard to the investigation and prosecution of such crimes.

PRESENTATION: "HOW DID THE COMMISSION ON THE INVESTIGATION OF POST-ELECTION VIOLENCE (CIPEV) INCLUDE SGBV CRIMES IN ITS INQUIRY?"
BY HON. MR. JUSTICE PHILIP WAKI,
JUDGE OF APPEAL, KENYA COURT OF APPEAL, AND
CHAIR OF THE COMMISSION OF INQUIRY ON POST-ELECTION VIOLENCE

Hon. Mr. Justice Waki's comments, delivered by Carole Osero Ageng'o, began by noting that the Commission of Inquiry on Post-Election Violence (CIPEV) was the first commission to address sexual violence in the context of the post-election crisis. He explained that Commissioners were personally horrified by the stories of sexual violence, although they had limited capacity to investigate and document all of the cases that came to their attention. They took 31 statements from women aged 17 to 55. (Evidence of male victimization was also brought to their attention, including

forced circumcision, however no male victims testified before the Commission.) Twenty-four of the victims who provided statements had been gang-raped, and the majority of those who testified were poor.

Despite the ethnic nature of much of the violence, the commission also found evidence of rapes within tribes (e.g., Luo men raping Luo women, Kikuyu men raping Kikuyu women), suggesting that some women were victimized because of their gender, not because of their ethnic or political affiliations. Few women reported the crimes to the police: some feared retaliation, others knew nothing would be done or did not know where to report the violations. Police sometimes advised them to report arson or other crimes instead of rape, making it difficult to ascertain the prevalence of such rapes or hold police accountable when they were the perpetrators.

Many NGOs and local healthcare facilities responded well—for example, Nairobi Women’s Hospital treated and served 653 individuals. The violence reached its peak in January and February 2008, yet the number of patients dipped during these months, probably because victims were unable to reach hospitals or care centers.

The consequences of widespread sexual violence were many and devastating, ranging from the lasting physical effects of HIV to victims’ desertion by their husbands to more intangible effects, such as loss of trust in the government and state security agencies. One group of women, aged 13 to 52, all of whom became pregnant as a result of their rapes, has banded together for support, since they have been ostracized by their families due to the attendant stigma.

In conclusion, CIPEV made a number of recommendations:

- Establish Gender Violence Recovery Centers in every public hospital, each with its own staff, facilities and budget.
- Staff every police station with a gender unit.
- Conduct more extensive public awareness campaigns to inform the public about steps they should take as victims or witnesses of such crimes.

PRESENTATION: “SGBV AS AN INTERNATIONAL CRIME,”
BY JUDY GITAU, ICJ-KENYA

Ms. Gitau framed her presentation as a discussion of a.) whether sexual violence is an international crime, and b.) if it is, whether and how to prosecute the sexual violence that occurred during Kenya’s post-election violence before international and/or domestic tribunals.

Ms. Gitau began by explaining that an “international crime” is one that shocks the human conscience and is abhorrent to human dignity. She noted that there are three major types charged: First, “genocide” encompasses various acts—including killing, rape, and forced displacement—committed with the intent of wiping out a community, nation, or race in whole or in part. “War crimes” are committed when civilians or non-combatants are attacked during the course of an armed conflict. Finally, “crimes against humanity” include various intentional acts, such as murder or rape, committed in furtherance of state policy. These must be widespread or systematic. Ms. Gitau cited several examples of politically and/or ethnically motivated mass sexual violence that have been analyzed through the lens of international law. She confirmed that both international tribunals and the Rome Statute, which underlies the jurisprudence of the International Criminal Court (ICC), have acknowledged sexual violence as a crime.

Ms. Gitau then discussed whether the SGBV that occurred during Kenya's post-election violence met the criteria for consideration by the ICC. She explained the separate requirements of admissibility and gravity, and presented the arguments by which both prongs were deemed met by the tribunal: as to admissibility, it was found that Kenya's domestic system lacked both willingness and ability to prosecute the PEV cases; as to gravity, considerations included the degree of social and international alarm, the amount of violence committed in a short period of time, and the high rank of suspected perpetrators.

Ms. Gitau then discussed the option of creating a domestic tribunal to hold perpetrators of the post-election violence accountable. First, she explained what legislation might be applicable. She noted that Kenya's International Crimes Act, which domesticated the Rome Statute, was not effectuated until January of 2009, well *after* the commission of the post-election violence, thereby seeming to preclude application because the International Crimes Act is not retrospective. However, here Ms. Gitau contributed a new and novel theory that might support such domestic prosecution: in 1978, Kenya acceded to the 1968 *Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity*, which essentially provides that war crimes and crimes against humanity are so heinous that their prosecution should not be limited by statutory time frames. Ms. Gitau proposed that, when taken into account alongside Article 2 of Kenya's new Constitution (which holds signed international treaties to the same requirements as domestic law in Kenya), the Convention potentially allows for domestic prosecution of various forms of post-election violence as international crimes. Ms. Gitau then suggested that Kenya establish a Special Tribunal to address mid-level perpetrators of post-election violence, to complement the initial prosecutions launched by the ICC.

Ms. Gitau closed her presentation by noting several lessons that Kenya's domestic systems might learn from the ICC. Specifically, she noted the ICC's enhanced recognition of the victim, who can participate in the court process. The ICC also has specific witness protection measures that can assist in sensitive cases such as those involving SGBV. Also, the ICC has a trust fund for victims to provide economic support as directed by the court. Finally, the ICC incorporates gender sensitization, mainstreaming, and hiring within its operational structure. Ms. Gitau closed by suggesting that the Kenyan judicial system take the issue of gender sensitization into similar account.

PRESENTATION: "THE ROLES OF GOVERNMENT AND CIVIL SOCIETY
IN EMERGENCY," BY MAINA KIAI, UN HUMAN RIGHTS COUNCIL

Mr. Kiai began with the observation that he and Kenya as a whole have failed the post-election violence survivors of SGBV. Much of Mr. Kiai's initial reflections consisted of stories of women he had met in Kisumu in July 2009—many of whom had shared their stories of rape, subsequent incontinence, and abandonment by their communities. Several testified before the Waki Commission but were then forgotten. Mr. Kiai expressed regret that, in the wake of the violence they suffered and the exposure they risked when offering testimony, these women were offered no meaningful or sustained support. They need livelihood, he said. They need psychosocial counseling. Mostly, though, they need to be remembered—by government, by civil society organizations, by their fellow Kenyans.

In terms of how to best support them, Mr. Kiai offered a few possibilities. One was to ensure the inclusion of survivors of post-election violence in all relevant support and benefits programs.



Maina Kiai, UN Special Rapporteur on Rights to Freedom of Peaceable Assembly and Association, revisits government and civil society’s response during Kenya’s post-election violence.

Further, where survivors have organized themselves into groups to advocate for the coverage of school fees, family reunification, medical care, food, or even jobs, broader society should pay attention and try to support these efforts. Also, despite reasonable misgivings about providing small loans to beneficiaries lacking adequate training or qualifications, Mr. Kiai proposed that funders take the chance. “Some will succeed,” he said, “some will fail. It’s understandable—they’re traumatized. We just have to keep at it.” Finally, it is critical to find a way to make personal contact whenever possible—to show solidarity, enhance understanding, and decrease stigmatization.

Mr. Kiai noted that the Kenyan government continues to fail the country’s internally displaced. Not only have reparations efforts been paltry, there is not even a clear documentation system that can show where all the IDPs are, or where the SGBV victims are. Without updated and accurate mapping, it is impossible to provide adequate services. Instead, Mr. Kiai argued, government and CSOs have tended to use the post-election violence and displacement of persons for their own convenience or benefit. He also noted that the rhetoric about which community was most harmed or displaced is imbalanced, inaccurate, and unproductive—Mr. Kiai urged all CSOs and all communities to instead acknowledge the harm suffered within each community.

Looking forward, Mr. Kiai shared some thoughts regarding the potential for renewed violence during the 2012 elections. In 2007/2008, Kenya had a poor understanding of how many people had been displaced by violence, and yet, the Red Cross could have provided this information early on. Mr. Kiai recommended better coordinating with organizations like the Red Cross that have the capacity to provide immediate relief all over the country. Further, CSOs and government must acknowledge that SGBV may occur in the context of political violence, and must be prepared to respond across all sectors. In addition, findings of the Waki Commission indicate that SGBV was not merely committed between opposing tribes—there were several reports of rape committed *within* individual ethnic communities. This risk of generalized, opportunistic rape should be understood as a possibility in the future, as well.

In sum, Mr. Kiai observed that Kenyans have largely failed their compatriots who suffered the most in the post-election violence. Perhaps in first acknowledging this failure, however, the country can improve its future response.

DISCUSSION: HOW TO ADAPT SGBV RESPONSES TO PERIODS OF EMERGENCY?

An open discussion focused on identifying methods for improving the response to SGBV during times of unrest clustered around several recurrent themes:

SGBV and conflict

A few overarching comments bear repeating: First, that SGBV occurs both in and out of conflict. And although it can differ in terms of its nature, motivation, and prevalence, in either context any relief requires cross-sectoral coordination and support. Second, individuals who have experienced SGBV may not identify solely—or at all—as “SGBV victims.” This is particularly true of survivors of conflict-related SGBV, who often suffer multiple forms of violence during periods of crisis. A participant reminded her colleagues to be mindful of this possibility, and to navigate the fine line between providing responsive, SGBV-related care and pigeonholing individuals who resist identification as “SGBV victims.”

Women and children

Participants noted that not enough attention has been paid to the correlation between decreased development and the situation of women during crisis. There is a clear relationship between the plight of individual women and the economic progress of the nation as a whole. Also, participants commented on the impact of political unrest on children—not only are they direct victims of violence, but they suffer when their education is disrupted or when they must leave their schools due to displacement. Further, the specific psychosocial and security needs of child survivors of violence (including SGBV) must be considered, both in school and out. Several participants commented that the thoughtful and sustained care of children is especially important in order to break the cycle of violence.

Adapting and coordinating response services

Another repeated theme, the coordination of cross-sectoral response, also featured prominently in this discussion. Participants noted the heightened need for a coherent response during periods of unrest, and the subsequent need for all sectors to consider and address the ongoing needs of IDPs.

Medical, psychosocial, and legal support can be critical in any SGBV-related context, but cases born from conflict require an immediate linkage between healthcare and law enforcement to ensure the provision of clinical care and preserve any available forensic evidence for later prosecutions.

Individual sectors may need to create modified guidelines for “emergency contexts.” Notably, Kenya’s current health guidelines do briefly address the rape response to humanitarian crises. However, they do not provide much detail as to the actual, practical adjustments that should be made. For example, they instruct that in a non-emergency context, a rape survivor should normally be given two weeks’ worth of post-exposure prophylaxis medication if he/she comes to a clinic within 72 hours of the attack. He/she would then be asked to return for follow-up checks after two weeks to see if it is safe to continue the medication. However, during a crisis situation where a clinic may never see the patient again, what should be done? Should the patient be given more

than a two-week supply of medication? Sectors should examine their current practices and see what adjustments might be necessary in times of crisis.

Emergency-context SGBV cases may also require more longterm support services than other SGBV cases. For example, patients / victims may require heightened counseling for complex trauma (for harm sustained or witnessed in addition to the SGBV suffered), witness protection (especially when police were perpetrators), housing (when displaced), and/or reparations (when displaced or otherwise harmed). Because of the isolation of most IDP communities, access to such services can be quite difficult. Participants thus called for improved outreach and referral systems among sectors. This includes appealing to donors to fund survivor transport to services, as necessary.

Government / civil society responsibilities

A related issue is the ineffectiveness of, and lack of coordination between, government and civil society in times of national emergency. Participants acknowledged that both government and civil society failed to adequately protect and care for individuals during the post-election violence. They noted that generally speaking, neither side acts until a situation has reached crisis level, at which point, it is often too late to make a significant, positive impact.

For one thing, civil society organizations lack coordination at a baseline level. Their services are rarely mobile, making it difficult to expand support to other parts of the country if they do not already have a strong grassroots component. Also, most civil society organizations are privately funded; thus, they frequently prioritize their programmatic obligations over the immediate needs of victims / survivors, which can constrain them when it comes to providing a sudden response to unanticipated events.

On the government side, a major challenge in dealing with emergency violence is the lack of a centralized command center to direct the relevant agencies to respond as needed. One participant reported that a multi-sectoral team was created in Nairobi in 2010 that was charged with responding to emergencies. This team is supposed to be replicated in all parts of Kenya.

Another important point was that if existing police and health sector capacity is not sufficient to deal with baseline levels of SGBV, how can such actors respond to sudden, widespread SGBV? The dearth of police investigations of rapes committed during the post-election violence was unsurprising for many Workshop participants. In fact, one noted that nearly all of the 80 SGBV case files that resulted from the post-election violence period were closed for lack of sufficient evidence.

Participants seemed to concur regarding the need for government to coordinate an emergency response in conjunction with civil society support. A member of government soberly noted that one of the most important roles for civil society is to be a watchdog over government agencies to ensure preparedness, efficacy, and coordination. While ministries argue over money, the participant said, “we need civil society to pressure us.”

Prevention

This was a thread that ran through several parts of the discussion. As mentioned earlier, the role of adequate livelihoods in preventing sexual abuse or exploitation during times of displacement seemed clear to most participants. Another issue was the engagement of men and boys in prevention efforts: without them, a participant noted, SGBV and stigmatization will persist. A few participants suggested encouraging men and boys to think about SGBV in terms of their own mothers,

daughters, or sisters—even more so than in terms of their wives. The sensitization of men might be most effective if framed to appeal to their most protective instincts.

Livelihood

Participants noted the dilemma posed by the question of livelihood-provision for SGBV survivors. On the one hand, it is clear that the ability of a survivor to earn a livelihood is critical to achieving the freedom that comes with financial independence (especially the ability to move away from a perpetrator), to overcome the handicap of stigma, and to access formal justice mechanisms. On the other hand, it is often difficult for funders to finance livelihood-related programs because they are commonly small-scale and unsustainable. The other aspect of livelihood enhancement that resonated throughout the discussion was its relationship to SGBV *prevention*: when people can support themselves, they are less vulnerable to sexual exploitation or entrapment in abusive situations, such as domestic violence. Finally, participants noted that the relationship between livelihood creation and prevention of SGBV *during* conflict merits further discussion.

RESPONSES FROM PANELISTS

Provided an opportunity to comment on points raised during the open discussion, the panelists offered the following thoughts.

Prevention and accountability

Ms. Ageng'o noted that in order to devise effective prevention methods, it is important to study and understand the root causes of SGBV. She agreed with participants who had pointed out that the engagement of men is critical, and suggested it might be especially effective to appeal to men's concern for their own children.

Mr. Kiai agreed with the earlier observation that education is an important mechanism through which to sensitize Kenya's youth—however, he felt that the simplest way to prevent SGBV is still through the certainty of punishment.

Ms. Gitau elaborated on the ways accountability can be delivered. First, she noted the theory of liability called “command responsibility” in international jurisprudence, which can be used to help hold superiors responsible for atrocities committed by their subordinates. Mr. Kiai provided an example from Kenya's post-election violence: if it were confirmed that police officers from a particular department perpetrated SGBV, then the leaders of a department should be sanctioned even if the individual perpetrators' identities are unknown.

Ms. Gitau then offered another suggestion for curbing election-related violence: punish violence at the party level. When party members and candidates endorse or commit election-related violence, the electoral management system can de-register individuals or even remove a candidate from a race. This might ensure that parties take measures to control the behavior of their supporters.

Ms. Ageng'o noted another avenue to accountability: she urged civil society groups to be creative and pursue public interest litigation to address SGBV. There could be several possible claims, including challenging the police to prove their record in providing protection from, and investigating, sexual offences.

Relationship between government and civil society

Panelists agreed that coordination between government and civil society is particularly important in times of emergency. They noted that, unfortunately, when government failed to respond to Kenya's post-election violence, it fell to civil society to provide services and protection to victims of the chaos. However, organizations were unable to meet the need: they required stronger referral mechanisms and sustained funding in order to provide the level of assistance necessary. Mr. Kiai expressed frustration about having encountered women who had suffered SGBV in their communities who were then ordered by the government to return those communities. Government, he noted, requires significant sensitization itself before it can be helpful.

Livelihood

Mr. Kiai raised the question of why remedies tend to overlook the individual survivor. Macro-level response is obviously critical, he said, but is it right to pursue systematic reform to the exclusion of micro-level aid?

Ms. Ageng'o suggested that organizations in search of funding be creative and pragmatic when designing livelihood-related programs. For example, she noted a successful proposal that involved working with pastoralists and combining awareness-sensitization with working on a new grinding mill. Awareness-raising and sensitization should not be disembodied or unanchored from the practical, and livelihood programs should not be uni-dimensional. She offered this advice generally, but said it is also a relevant consideration when applying for funds to assist survivors of post-election violence.

In closing, Ms. Ageng'o urged her fellow participants to work together to find a way to break the cycle of ethno-political tension and impunity. She ended the discussion by declaring her hope that the small baby being raised by the displaced widow would not grow up to become a tool of revenge, throwing stones.

Concurrent Session 4: SOA and the Protection of Children

This concurrent session was attended by approximately 20 participants. Brief presentations from representatives of the International Justice Mission (IJM) and the Teachers Service Commission (TSC) illuminated the critical experiences of children's legal advocates and the public school system. Discussion focused on ways in which the SOA can and should protect children, and how to overcome any obstacles to this protection.

PRESENTATION: CHRISTINE NKONGE, INTERNATIONAL JUSTICE MISSION (IJM)

Ms. Nkonge began with a brief introduction of the International Justice Mission's (IJM) work, which is to provide child victims of sexual violence with legal and medical counseling. IJM prosecutes perpetrators of such crimes, while offering integrated psychosocial support for children throughout the process. Ms. Nkonge briefly described some inherent challenges in litigating sexual violence cases involving children, including the great difficulties posed by the victims' immaturity and lack of understanding, both regarding their experiences and the trial process.

Ms. Nkonge noted that, in theory, the SOA's preamble anticipates both the prevention of and protection from harm. She also explained that the SOA criminalizes several sex-related acts par-



Vicky Wambua (CREAW) moderates a session focused on the SOA’s protection of children, with Joan Ngunnzi (TSC) and Christine Nkonge (IJM-Kenya) presenting.

ticularly relevant to children, namely defilement, child pornography, sex tourism, and trafficking for purposes of sexual exploitation.

Children should also benefit from several SOA protections during the trial process, such as witness protection, the use of intermediaries, protection of their identities from the public, closed proceedings, the use of “victim impact statements” by psychological experts, psychosocial treatment orders, and the entry of perpetrators into a database listing “dangerous sexual offenders.”

However, Ms. Nkonge noted that these potential provisions often remain unrealized. Sometimes this is due to impossibility: few courts have a witness protection box, so child witnesses are frequently forced to testify facing their alleged abuser. Or perhaps a court has failed to appoint intermediaries to speak for a child. Also, there is currently no database of “dangerous sexual offenders” through which to track perpetrators of child-related sexual abuse. Other failures result from passivity or ignorance of appropriate procedure: lack of clarity regarding the treatment of a child as a “vulnerable witness” can lead to inconsistent protection, for example. In addition, many advocates do not know to request a court order for psychological support services, which are supposed to be provided at government expense. These are some of the many ways in which implementation of the SOA’s child-friendly provisions have stalled.

PRESENTATION: JOAN NGUNNZI, TEACHERS SERVICE COMMISSION (TSC)

Ms. Ngunnzi briefly introduced the history and mandate of the Teachers Service Commission (TSC), which was formed in 1967 under the Teachers Service Commission Act to provide registration, professional regulation, and support for Kenya’s public school teachers. The Commission currently employs 268,000 public school teachers. The TSC is relevant to discussions regarding SOA implementation insofar as it is the administrative body tasked with sensitizing and disciplining Kenyan public school teachers about the sexual abuse of students.

With respect to the SOA, the TSC enacted a rule in 2007 requiring resolution of all school-related sexual offense cases within three months. However, this rule had little practical effect. So in 2009, in response to an ActionAid report that sexual abuse in Kenyan schools remained high, the TSC (in coordination with CREAW, Education for All, and others) conducted a survey about the procedures that existed to address sexual offences in Kenyan schools.

The study found that 633 cases of school-related sexual abuse had been reported between 2003 and 2007. Yet the TSC estimates this figure represents only 10 percent of actual cases. Underreporting is likely due to a lack of understanding of complaint systems, fear of repercussion, and intimidation by (or lack of faith in) education officials and the disciplinary system. Ms. Ngunnzi also noted corruption as an obstacle to successful reporting. She further mentioned the social forces of “kipka”—a “one of us” mentality that discourages individuals from taking matters outside one’s local community.

Ms. Ngunnzi then addressed additional challenges that may frustrate accountability for the sexual abuse of students, including the TSC’s limited investigation skills and powers. Also, a lack of sensitization or legal understanding among some TSC staff members can impede progress.

Finally, the TSC Act may not be strong enough to effectively deal with cases of school-related sexual violence. For example, the Act’s terminology is unclear and inconsistent. Further, the commission’s administrative process does not provide for the protection of vulnerable witnesses. There is no provision by which the TSC must forward cases to the formal justice system. Moreover, Section 5 of the TSC Act allows the Commission to rescind a case of sexual abuse lodged against a teacher; the Act does not even require the TSC to fire or suspend a teacher who is found guilty. (In fact, when a case does not result in a guilty verdict, the TSC is frequently sued by the accused teacher, making every case potentially expensive for the Commission.)

Despite these challenges, the TSC is moving forward in fighting sexual abuse in Kenya’s public schools. The Commission established a GBV Unit in 2010 to monitor SGBV in schools; it is developing both a system of referrals to support services as well as a databank to track teachers who are found guilty of sexual offences. Finally, the TSC has published a circular to educate teachers on SGBV and proper conduct—as soon as the Commission has adequate funding, this circular will be widely distributed.

DISCUSSION

Participants emphasized a few recurrent themes. First, the need for *cross-sectoral, child-centric coordination* is critical to protect children. Specifically, community leaders, medical care providers, schools, and law enforcement must be aligned in terms of understanding children’s risks and needs. They must work together to develop a coherent, child-friendly response system that carries a minor from the point of attack through any eventual trial. This includes the need for a coordinated response and rescue, confidential reporting, sensitive healthcare and counseling, and effective evidence collection.

Another significant issue in terms of child protection is the need to clarify any overlap and/or gaps that exist between the SOA and other relevant laws relating to the welfare of children (such as Kenya’s Children’s Act and the TSC Act). For example, it was unclear whether the law requiring mandatory reporting in sex offence cases includes those involving children. Similarly, harmonization between the SOA and the Children’s Act might provide guidance as to which cases should be tried in Children’s Court.

Implementation presents a related challenge. Participants echoed other Workshop sessions in calling for court regulations to be issued by the Chief Justice, in order to guide the treatment of child survivors and witnesses in SOA-related cases. Such regulations could help ensure the consis-

tent protection of children as vulnerable witnesses, and encourage the provision and use of witness boxes, intermediaries, etc. Also, with various laws and policies related to the welfare of children, and various government entities charged with their implementation, there is need for expanded coordination of efforts. For now, participants suggested that the legal office within the Ministry of Education be sensitized to and strengthened in terms of its response to child sexual abuse and the application of relevant laws. Ministry Workshop participants welcomed the potential support of other participants in making this happen. Further, it was declared that under the new Constitution, TSC should copy the Department of Public Prosecutions on any allegations of sexual abuse by teachers within its jurisdiction. This would allow the Department of Public Prosecutions to direct police to investigate these matters, and thereby supplement TSC efforts.

Finally, participants stressed the need for more effective outreach to teachers, parents, and community leaders regarding the issue of child sexual abuse. Such outreach should address cultural taboos regarding sex and the high deference accorded teachers, in order to encourage students and their families to come forward to expose wrongdoing.

In sum, the group recommended three strategies to facilitate the way forward:

1. Harmonize laws related to children, both with each other and the new Constitution.
2. Advocate for government to provide administrative and institutional support for services for child-victims of SGBV, and hold government accountable for failing to allocate necessary resources.
3. Build the capacity of all stakeholders to engage in a collective response to SGBV committed against children.

Concurrent Session 4: SOA and Psychosocial Support

This session explored three critical aspects of psychosocial support as related to SOA implementation. First, participants discussed whether the SOA caters to vulnerable persons needing psychosocial support. Second, participants identified the obstructions that block provision of this support in Kenya. Third, participants brainstormed potential strategies for overcoming these obstructions. Dr. Margaret Makanyengo of Kenyatta National Hospital's Gender Violence Recovery Center (GVRC) presented on the services provided by her institution; Lydia Muthiani (COVAW) moderated the discussion that followed.

PRESENTATION: DR. MARGARET MAKANYENGO, KENYATTA NATIONAL HOSPITAL

The Gender Violence Recovery Center (GVRC) at Kenyatta National Hospital (KNH), established in 2006, is the main government entity charged with providing psychosocial support for survivors of SGBV in Nairobi. It is a semi-autonomous body based within a regional referral hospital; it conducts research and policy development as well as outreach and direct services. In terms of direct service, the GVRC functions as a one-stop center for SGBV by providing survivors with medical examinations and care, psychosocial support, and referral to legal services. The Center has grown rapidly, increasing the numbers served from 123 survivors in 2006 to over 400 in 2010.

Dr. Makanyengo described the various forms of medical and psychosocial support offered at GVRC, including trauma counseling and monthly support groups for adults and children. The GVRC staff also provides social work, referrals, medical services and legal intervention through

partners like COVAW, CRADLE, IJM, etc. In addition, the Center refers survivors to churches when spiritual support is appropriate. Notably, the GVRC plans to collaborate with the national probation and prisons departments to design future interventions for perpetrators.

The GVRC's major challenges are a.) the need to develop a strategic plan and b.) the need to engage in sustained fundraising. The program is growing rapidly, but lacks clearly defined short, medium, and longterm goals. Further, without proper support, GVRC is unable to expand its services to meet demand, or to conduct critical outreach into the provinces. Moreover, without additional funding, the critical services currently offered may be compromised or discontinued, which would have serious practical, medical, and ethical implications.

DISCUSSION

Participants identified several challenges related to the delivery of SOA-mandated psychosocial support services. These included a general lack of awareness of the nature and availability of psychosocial support, the absence of a general policy and framework to support service provision, and financial constraints, which limit the reach of services.

Specific areas of concern included the lack of reach beyond urban areas, lack of transport reimbursement for survivors who must travel long distances for care, and lack of home-based care for those unable to travel to the GVRC. Other capacity-related issues include a scarcity of qualified staff, an ill-defined referral system and terms of service, and a lack of vision regarding how to engage and utilize community social workers in the effort to provide counseling.

Representatives from the Ministry of Medical Services indicated that the Permanent Secretary has made SGBV a priority and is calling for creation of a department within the ministry to explore and establish gender mainstreaming services and centers.

Ultimately, the group identified the following main implementation challenges with respect to the provision of psychosocial support for SGBV survivors in Kenya:

1. *Lack of a national policy framework* that explicitly recognizes psychosocial support as essential to the care and treatment of survivors under SOA Sections 31 (treatment of vulnerable persons) and 46 (authority for a national policy framework).
2. *Lack of capacity* in terms of awareness, skills, reach, human and financial resources.
3. *Lack of coordination* of services, including referral and networking systems.

To meet these challenges, participants noted the following possible strategies:

1. *National Policy Framework*—As the bill travels through Parliament, it will be important to stay engaged and review it for inclusion of adequate psychosocial support provision. If the bill does not include provisions for adequate psychosocial support, intervention and advocacy will be needed from a supporting ministry. The Ministry of Medical Services might be the appropriate stakeholder to assume this task.
2. *Capacity*—Two priorities were identified: a.) the creation of a coordinated cross-sectoral training curriculum that outlines access to, and standards for, the provision of psychosocial support, and b.) identification of appropriate leadership for fundraising and resource allocation. Whether the Ministry of Medical Services or the Ministry of Public Health and

Sanitation would be the more appropriate organization to address capacity issues with the Ministry of Finance remained undecided.

3. *Coordination*—The need for a coordinating body to bring relevant ministries and stakeholders together to ensure appropriate provision of psychosocial support under the SOA was widely recognized. Participants noted that although the TF SOA mandate will end in December 2012, the Task Force might continue to serve as a coordinating body for the time being. The relevant committee affiliated with the TF SOA would act under its direction. Another suggestion was to incorporate psychosocial support into the mandate of the task force established with the passage of the pending Victim Protection Bill.

Concurrent Session 4: SOA and Displaced Populations

This session's participants were tasked with evaluating the nature and prevalence of SGBV among Kenya's displaced communities: specifically, IDPs and refugees. Presentations by Ms. Doris Kawira (IDP Network) and Mr. Samuel Yogo Kotonya (UNHCR—Dadaab Refugee Camp field office) discussed the high rates of SGBV in these contexts and the circumstances of displacement that create unique challenges for protection and response. The group was asked to discuss the reach of the SOA's protections into these "invisible" communities and to consider ways in which the Act's legal protections and processes could be better implemented in both contexts.

PRESENTATION: DORIS KAWIRA, IDP NETWORK

Ms. Kawira provided an overview of how SGBV affects IDPs in Kenya. She noted that it is critical to start with an on-the-ground perspective in order to understand the larger issues affecting relevant SOA implementation.

For example, after Kenya's post-election violence in late 2007 and early 2008, the IDP Network learned of people who had been raped by police in the course of being displaced from their homes. The formal process envisioned by the SOA is, of course, based on filing a report of sexual violence with the police to begin the judicial process. However, this avenue of relief is understandably unthinkable for survivors who suffered at the hands of police, so few survivors come forward in these cases. Ms. Kawira posed the question: "How does the SOA provide for these vulnerable individuals, who may not feel safe reporting to their perpetrators (the police)?"

Aside from the sexual violence that happened during the post-election violence, the circumstances relevant to displacement have lent themselves to ongoing SGBV among IDPs. First, the lack of a livelihood creates desperation and vulnerability: women frequently offer themselves and their children for sexual services in exchange for money. This is particularly striking among widows of the post-election violence, who have lost their husbands and the support they traditionally provided. Further, there are several known cases of sexual exploitation and abuse by humanitarian relief volunteers, who demand (or accept) sexual favors in return for rations and supplies.

Ms. Kawira also noted that, in addition to the 250,000 Kenyans still living in IDP camps, there are scores of "integrated IDPs" who are living with extended family or other contacts. The Kenyan government does not count these individuals among official IDP numbers, nor has it begun to calculate how to extend supportive services to them. This is relevant to SOA implementation insofar as they, too, need support in order to enjoy security and avert possible sexual exploitation and abuse.



Doris Kawira, from the IDP Advocacy Network, presents ground-level perspectives Kenya's IDP camps.

PRESENTATION: SAMUEL YOGO KOTONYA,
UN HIGH COMMISSION FOR REFUGEES (UNHCR)

Mr. Kotonya began by defining what he meant by “refugee,”¹⁶ in order to distinguish refugee populations from the IDPs previously discussed. He noted that at the time of the SOA Implementation Workshop, there were approximately 473,000 refugees in Kenya. This figure represents approximately 48,000 refugees in Nairobi, 80,000 in Kakuma (the UNHCR camp at the Sudanese border), and 334,000 in the three UNHCR camps at the Somali border, collectively known as Dadaab.¹⁷

Mr. Kotonya noted that the principal responsibility for ensuring refugee welfare falls to the Kenyan government; he briefly reviewed the domestic legislation that codifies the relevant international treaties and governs Kenya's relationship to foreigners who seek refugee protection within Kenyan borders.¹⁸ He noted that when governments are unable or unwilling to protect their citizens, people must seek the protection of other countries. UNHCR has the responsibility to work with such host countries to protect uprooted populations and find them permanent residence.

16 According to Article 1(a) (2) of the 1951 *Refugee Convention* and its 1967 *Protocol*, a refugee is “a person who, owing to a well founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unwilling to avail himself of the protection of his country, and is not willing to return to it.” More expansively, the Organisation of African Unity, in its 1969 *Convention Governing the Specific Aspects of Refugee Problems in Africa*, finds that the term refugee “shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”

17 During the time this Report was drafted, Dadaab's already emergent situation became particularly dire due to a surge in migration from Somalia. By August 2011, Dadaab was accommodating approximately 420,000 refugees. The government allowed for extension of the three camps at Dadaab to relieve congestion. See <http://www.unhcr.org/4e39583f9.html>.

18 See Section 3(1),(2) of Kenya's *Refugee Act of 2006*, which incorporates the definition of a refugee under the 1951 *Convention* and the *OAU 1969 Convention*.

Mr. Kotonya also explained that SGBV violates human rights under international law and is often also an international crime.¹⁹ Various Kenyan statutes, including the SOA and the Children's Act, have domesticated these international principles

As Ms. Kawira did for the IDP context, Mr. Kotonya reviewed the myriad points of vulnerability a refugee experiences from the point at which she leaves her home country, through border-crossing, into encampment in a new host country. These risk stages are similar to those experienced by IDPs—initial conflict and crisis that may or may not feature SGBV, then vulnerability during flight, and finally risk of exploitation and assault while displaced. In addition, there is a dearth of protection provided in refugee camps. Police presence is often scarce; there is little shelter for people who need to escape from danger in the camp. Moreover, Mr. Kotonya noted that access to courts is quite limited, because the courts are located very far from the refugee camps. At Dadaab, a mobile court visits each month for five days in an attempt to administer justice in the camps.

Refugees face several unique challenges related to SGBV. Mr. Kotonya noted that refugees often have a harder time accessing justice mechanisms in their host country due to language and cultural barriers, lack of awareness of local laws and processes, and invisibility or even mistreatment due to lack of legal documentation. Sometimes, survivors in refugee communities are exposed to harmful traditional practices such as female genital mutilation or early marriage, which were legal in some of their home countries but which are illegal in their countries of refuge. They also struggle with pressure to conform to the informal justice mechanisms of their own people, which can be at odds with entering the formal justice system of their host country. Even in an urban context, entry into a formal investigation can be difficult, especially as there is only one government doctor who can fill out the requisite medical form (the P3 Form) in the whole of Nairobi.

Finally, even the baseline issue of overcrowding in Kenya's refugee camps has implications for SGBV risk and response. For example, the population explosion in Dadaab, in conjunction with the camp's inability to expand, means that increasing numbers of refugees must crowd around the outskirts of the camp where they cannot be properly served or protected by UNHCR. Population density also affects the availability of resources, which can in turn increase the risk of sexual exploitation by those who control distribution.

UNHCR is working with NGOs and informal community justice systems to better protect refugees from SGBV. This includes thinking about how to involve—and protect—men and boys. However, Mr. Kotonya emphasized the need for more political will on the part of the Kenyan government to extend the SOA's protections into refugee communities and assist with the provision of witness protection and psychosocial support.

DISCUSSION

Session participants felt acutely aware of the need to adopt a survivor-centric perspective in the context of displacement. While this theme was reiterated throughout the SOA Implementation Workshop, it was particularly resonant when discussing contexts in which the basic necessities for survival (e.g., access to water, food, soap, etc.) might outweigh interests in formal justice.

¹⁹ See, for example, the Human Rights Center Working Paper, "The Jurisprudence of Sexual Violence as an International Crime," at <http://www.law.berkeley.edu/HRCweb/sva.html>.

That said, participants acknowledged that it is critical to extend the SOA’s protections into Kenya’s refugee and IDP camps. This includes *sensitization of camp residents, UN and NGO staff, and local police* serving those jurisdictions. All service providers must understand not only SGBV and the SOA provisions, but the unique risks and challenges posed in displacement, as well as the cultural traditions and barriers that may exist in the displaced community.

It is also necessary to create a *protocol for protection and response to SGBV in the IDP and refugee camp context*—none currently exists. In addition, in order to fully comply with the SOA, linkages must be established between healthcare providers, law enforcement, forensic labs, and the judiciary to ensure the delivery and analysis of evidence. Such a protocol should be developed with an understanding of the limitations inherent in most displacement settings—as well as any traditional and informal justice mechanisms that may co-exist.

Further, *special measures may be needed to provide effective psychosocial support and witness protection* in humanitarian zones. On this topic, a critical point was raised: psychosocial support for those who have fled conflict should not be exclusively focused on SGBV—it is quite likely that the displaced person has also survived other harms during the course of flight and resettlement, and he/she may not be solely struggling with SGBV-related trauma. In fact, individuals might not even identify as an “SGBV survivor” or “SGBV victim” in light of the countless other harms they may have suffered.

Participants also noted the Attorney General’s responsibility to *explore compensation and restitution options* for IDPs in Kenya; special provisions for the survivors of SGBV may be appropriate. At a minimum, however, restitution might provide stability and security that would alleviate the risk of further sexual exploitation.

Other priorities in combating SGBV in IDP and refugee communities include:

1. Reaching out to informal justice systems that effectively control awareness of, and response to, SGBV in refugee communities.
2. Thinking beyond the SOA to address trafficking, labor violations, and child abuse that is motivated by a desperation to survive (i.e., do we want to prosecute an IDP mother who offers her daughter to secure food and water for the two of them?).
3. Preventing and punishing sexual exploitation and abuse committed by INGO, NGO, and other humanitarian and relief workers.

Essential to achieving any of the above, however, is coordination among agencies serving IDP and refugee communities in Kenya. Participants felt it is critical that the TFSOA, as well as the Attorney General’s office and the Ministries of Health, start by remembering IDP and refugee communities when designing strategies for SOA implementation.

Concurrent Session 5: Non-Legal Approaches for Awareness and Response

Fifteen participants joined this ninety-minute session, divided into two parts: presentations by Mr. John Gicharu and Mr. John Kipchumba, followed by a lengthy discussion regarding challenges and proposed solutions for data collection, management, and analysis. The group concluded by outlining four predominant challenges for non-legal approaches.

PRESENTATION: GBV INFORMATION MANAGEMENT SYSTEM, BY JOHN GICHARU,
NATIONAL COMMISSION ON GENDER AND DEVELOPMENT (NCGD) / UNFPA

Mr. John Gicharu began his presentation by discussing the impetus for creating the Gender-Based Violence Information Management System (GBVIMS). After the post-election violence in 2008, many organizations sought funding from donors to support survivors but found a lack of data, such as the number of those affected, to support their work. As a result, UNFPA, the International Rescue Committee, and UNHCR collaborated via the UN Human Rights Working Group to establish GBVIMS, currently in its pilot phase. The primary goal of GBVIMS is to collect, analyze, and provide statistics on gender-based violence to support funding decisions and guide program development for survivor care. Key government ministries involved include the Ministry of Medical Services, Ministry of Public Health and Sanitation, Ministry of State for Provincial Administration and Internal Security, and Ministry of Gender and Children. The judiciary, CSOs, and psychosocial providers are also included.

GBVIMS operates on the basis of several key principles:

1. Confidentiality – Specific names of survivors are never shared.
2. Voluntary Information-Sharing—All partners must sign a form agreeing to share information.
3. Timelines—Partners agree to submit and analyze information on consistent, scheduled deadlines.
4. Donor partnership.

To ensure consistency, GBVIMS uses a standardized form for data collection. The data is then sent to the National GBV Central Data Repository for analysis and disseminated to users in the field. Currently, data are gathered from five or six hospitals and police stations in Kenya, including Kenyatta National Hospital, Kitale District Hospital, Nakuru Provincial Hospital, and the Thika and Naivasha districts. Since the system has not yet been implemented nationally, the information is not fully representative and consequently has not yet been made public.

Based on the information gathered thus far from the period of September 2009 to April 2011, there are a number of interesting trends and statistics. The majority of cases reported during this period were rape and sexual assault, most of which occurred in the home. Perpetrators were predominantly between the ages of 18 and 40, and more than 90 percent were male. Ninety-three percent of survivors were women, the majority being below the age 18 and therefore legally minors. Data of this nature can affect the design of programs to support survivors.

Moving forward, there are several systemic gaps to be addressed. For effective implementation and collection of comprehensive data, GBVIMS should be implemented across the country. A single gatekeeper, ideally one of the ministries, should house the database. The Office of the President is ideal, as it enjoys numerous linkages and can obtain information from the police, ministries, and judiciary. Lastly, the ability to track where cases are being lost in the system would facilitate the identification of areas that need improvement and assist with the development of interventions.

PRESENTATION: SOCIAL DEVELOPMENT NETWORK,
BY JOHN KIPCHUMBA, SODNET

Mr. John Kipchumba followed with a presentation on the Social Development Network (SODNET). SODNET is an NGO aimed at fostering strategic alliances between CSOs, social movements, and citizens to influence policy-making on issues of social development. It seeks to empower civil society to facilitate social change and employs the use of technology in furthering its mission.

When tackling a social issue, SODNET examines three things: who the target audience is, what data exists, and in what form. In terms of the target audience, one of the key strategies SODNET employs is to identify and utilize what already exists. In other words, they harness the power of networks that have already been established by churches, schools, and associations to promote their efforts and engage the public. For example, teachers, students, the Ministry of Education, and TSC are examples of individuals and organizations they would try to work with in order to implement SOA provisions related to education. After identifying these contacts, SODNET would then map out the strengths of each group—capacity, resources, connections with other institutions, relationship with government, technological ability, etc. They would assess what data exists to support advocacy and find ways to use that data strategically to address SGBV issues in schools, government, and the private and public sectors, using extant technology.

One example of SODNET's use of technology is the development of a citizen-based election monitoring platform. After consulting with organizations working on election monitoring, SODNET built a system that allowed citizens to report incidences of violence to a centralized database using SMS. Citizens could opt to anonymously send information from their mobile phones. All information was then aggregated and monitored by one of SODNET's partner organizations. Given that widespread participation was crucial to the platform's success, SODNET used existing channels and promoted the resource through churches and other organizations that were well connected to their local communities. In total, 1,523 reports were collected. Although sending SMS messages is not free, the cost actually served as a quality control mechanism rather than a hindrance. Using the same strategy of tapping into existing forums and networks, the SMS-based election monitoring system was rapidly deployed and successfully replicated in Tanzania and Uganda. SODNET received positive feedback from UN groups when they deployed the system in Kisumu and Gogoma; these groups reported that it allowed them to better understand and respond to issues that individuals were facing.

DISCUSSION

Following the presentations, a general discussion ensued. Many of the subjects addressed focused on data collection and management. The discussion was framed by the following fundamental questions:

Who will guide the conversation regarding data collection and management? Who is the appropriate body to manage the data? Agreement and buy-in from senior level officials, especially the health ministries, is necessary. The police are amenable to the system, but ask that the discussion be relayed through the Police Commissioner.

What kind of information should be collected? GBVIMS is currently limited to hospitals and police stations as data sources. Consequently, its reach and impact are restricted. For example, the database is of limited help to TSC, since the system does not index teacher-related cases. The infor-

mation collected should reflect the needs of the various sectors—legal, medical, psychosocial, and so forth. A standardized approach to data collection is essential to ensure the potential for high-quality analysis. As a point of clarification, NCGD serves as the manager of the GBVIMS system but is not the proprietor of the information—each organization retains ownership over its data.

Who will have access to the data? What is the proper way of disseminating the information? The current system is a pilot, and a means of sharing data among agencies has yet to be determined. A dissemination strategy that is inclusive of the different sectors will need to be developed.

How do we ensure data quality? Data duplication is a potential issue—data from two or more sources must be adequately vetted and cross-checked. A portion of the information submission form asks whether the case has been reported to different agencies. The system is not perfect but does take the potential for duplication into consideration.

What do we do with the data once we have it? Teaching stakeholders and partners how to use the system and interpret data is another issue that should be considered, as different organizations have varying levels of technological skill. Several individuals expressed their concern about the coordination of capacity-building, since there are many trainings and the work is sometimes replicated. One suggested solution would be for NCGD to conduct all training on the system, as it is their responsibility to coordinate GBV response on behalf of government.

How do we incorporate community-based data? How do we ensure that the gathered data is accessible to the community at large? There is a gap in the flow of information from the community to the national level. Traditional justice systems are an overlooked source of data—chiefs regularly receive reports on SGBV from the community, but there is no formal system of documentation. Incorporating this information will be challenging, but it needs to be captured.

Concerns were also raised in regard to singling out agencies that may be perpetrating sexual violence—for example, what if the statistics demonstrate that teachers and police are the primary perpetrators? Stakeholders have interests they seek to safeguard. It was pointed out that GBVIMS avoids singling out individual parties; currently it is a sector-based system that reports on sectoral-specific problems.

Moving forward, it was recognized that GBVIMS stakeholders should meet to discuss lessons learned. It was also suggested that NCGD take stock of best practices from other countries to inform further long-term implementation.

Concurrent Session 5: Coordinating Impact Strategies

This session was aimed at exploring the advantages of coordinating impact strategies across and within sectors to improve SOA implementation. Participants described areas of their work that would benefit from coordination, then identified mechanisms and strategies that could assist with coordination. The group concluded by outlining three best practices and strategies by sector.

I. Cross-Sectoral Trainings

Cross-sectoral trainings are needed to improve response from the police. A particular issue with police training on SGBV is the high turnover rate of officers. There is also a lack of awareness as to who is conducting the police training, which sometimes leads to duplication of efforts.

2. *Working Groups and Networks*

One successful example of effective coordination is the Protection Working Group based at Moi Teaching and Referral Hospital. The group was created after the post-election violence and includes representatives from government, district chiefs, civil society organizations, national ministries and representatives from the police. The group has proven to be an important source of networking and referrals. While adopting a working group model could assist with the coordination of trainings for police, engagement with higher authorities is necessary for success.

The example of the Protection Working Group highlights the importance of expanding and strengthening existing working groups. Such efforts could help minimize duplication and maximize impact. Specific to the health sector, it was brought to the group's attention that government representatives meet regularly through stakeholder forums at the district level. There is also an intra-country network focused on the prevention of sexual exploitation and abuse convened by the Red Cross and UN Office for the Coordination of Humanitarian Affairs (UNOCHA). It was suggested that counseling centers and the Kenya Association of Professional Counselors be included in working groups in order to address underserved psychosocial needs.

3. *Linkages with the Legal Sector*

Regarding linkages to the legal sector, the "court users committee" serves as a focal point for all victims and offenders coming through the courts. The committee is active in commercial cases but could be incorporated into criminal cases and linked to groups that work one-on-one with victims.

An issue with which the legal sector should become more involved is the 'right to life' detailed in the Constitution. In many instances, doctors who terminate pregnancies for medical reasons face hostility from the community and individual clinical workers. It was suggested that lawyers could connect with the doctors in these cases to provide legal and social support.

4. *Government Accountability for Resource Allocation and the Responsibility to Protect*

The need for government accountability in resource allocation and its responsibility to protect survivors were also highlighted. Participants cited a lack of resources for the government chemist and police as barriers to justice, and argued that CSOs should demand transparency in funding decisions. The use of health information systems could assist lobbying for more funding; however, there is a large gap in data sharing and accurate SGBV data is not readily available.

FIDA is currently pursuing litigation at the constitutional court, accusing the state of systemic human rights violations. Citing 160 defilement cases of girls in a rural Kenya town, FIDA is arguing that the state has failed in its responsibility to protect victims. This type of litigation is time-consuming and can take anywhere from 3–5 years. Such litigation does, however, create an opportunity to collaborate with colleagues in the health sector, whose professional expertise is needed to support the litigation.

5. *Broader Community Support and Involvement*

The need for male inclusion and support for secondary victims (such as victims' children and spouses) were themes raised during discussion about community involvement. Participants suggested involving men and boys as reproductive health coordinators to encourage more holistic coordination and collaboration. Proactive and visible male participation in addressing SGBV may improve broader community support. Such participation may also encourage gradual sensitization about the extremely underreported issue of male SGBV. As it is, men and boys in Kenya who have suffered sexual violence are very unlikely to come forward to seek help due to the fear of stigma.

6. *Community-Based Mechanisms*

Community-based institutions and individuals are important assets in developing effective cross-sectoral strategies. Within the health sector, community extension health workers can reach the community at large. Paralegals can disseminate information and mobilize community members. The involvement of health extension workers and paralegals can help build trust in CSO's and government agencies, as they are members of the communities which they serve.

Another suggestion was to include community policing as a component of coordination strategy, since law enforcement can promote social linkages. Community policing mechanisms can be useful for preventing re-traumatization and alerting victims when perpetrators return to the community.

Concurrent Session 5: Witness Protection

This session featured four presentations, which focused on: a.) witness protection in Kenya, b.) witness protection in Liberia, c.) post-trial assistance in Liberia, and d.) best practices and witness protection models from other countries. Following the presentations, participants engaged in a discussion focused on identifying possible areas of collaboration and coordination to strengthen witness protection mechanisms in Kenya.

PRESENTATION: WITNESS PROTECTION IN KENYA

Ms. Alice Ondieki, Director of Kenya's Witness Protection Agency, presented an overview of witness protection in Kenya. She delivered a brief history and outline of protection mechanisms under the Witness Protection Act, as well as a description of additional laws that support witness protection.

Ms. Ondieki explained that the Witness Protection Act of Kenya was passed in 2006 after a long history of witness-related problems. The Act was established under the Attorney General, but it has a budget line separate from that of the State Law Office.

The Act defines a number of types of protection, ranging from the use of intermediaries to a witness protection program. The witness protection program, which includes relocation and change in identity, is considered a last resort and is used only in life-threatening cases. Protections that are more frequently used include pseudonyms, in-camera hearings, orders against supplying evidence in advance of a trial, and the redaction of witness-identity information from certain documents. Section 4(2) also provides for physical protection in a safe house, although the duration is



Commissioner Deweh Gray, of Liberia's Law Reform Commission, reflects on witness protection challenges in Kenya and Liberia.

limited to 24 hours. The use of video enables a witness to testify outside the courtroom. Additional protections are provided by Section 30, which states that any person who discloses the identity or location of a witness is guilty of a criminal offense.

Ms. Ondieki noted that, aside from the Witness Protection Act, several other laws also pertain to witness protection in Kenya. The Constitution itself discusses the right to protection and security. As referenced in a previous session, Sections 31 and 32 of the SOA define vulnerable witnesses and outline protective measures. Section 80 of the International Crimes Act of 2008 further supports the measures outlined in the SOA.

The Witness Protection Agency is at an advanced stage of planning, currently awaiting funding and staff recruitment.

PRESENTATION: WITNESS PROTECTION IN LIBERIA

Ms. Felicia Coleman, Chief Prosecutor at the Sexual and Gender-based Crimes Unit of the Liberian Ministry of Justice, followed with a presentation on sexual violence and witness protection in Liberia. Noting that the workshop had been quite a learning experience, Ms. Coleman conceded that Liberia has not yet achieved everything it would have liked to, but has made significant strides to protect witnesses and prosecute offenders.

Liberia's special court for sexual and gender-based crimes became functional in 2009, and though it includes a number of protection mechanisms, prosecutors and witnesses still face many challenges. A protection box located within the court chambers allows victims and/or witnesses to remain unseen during testimony. The presiding judge has the ability to prohibit the name of the victim from being published. However, this measure does not fully protect the individual because the victim's name, along with the victim's statement, is still listed on public police records. Although it is possible to expunge the name of the victim from those records, removal does not occur until *after* the trial has concluded. Rules regarding pre-trial conferences stipulate that prosecutors must disclose everything they have to the defense, including statements from all the witnesses. Given that many of the details become public, prosecutors sometimes move victims and witnesses

into safe homes. Currently there is one safe home in Montserrado County and seven under construction.

In addition to the special court, a Sexual and Gender-based Crimes Unit was established by the Liberian Ministry of Justice in 2009. The Unit helps victims access justice and provides various means of support outside the court. It runs a 24-hour hotline through which individuals can report SGBV crimes and seek advice. Psychosocial counselors are also available and can inform victims about the court process.

Despite these witness protection mechanisms, prosecutors often find that witnesses remain unwilling to testify. Either witnesses do not feel they can be kept safe for the duration of a drawn-out legal process, or they are bribed to keep quiet. Further, many victims and witnesses are poor and cannot afford legal fees.

PRESENTATION: POST-TRIAL ASSISTANCE IN LIBERIA

Ms. Deweh Gray, a Counselor of Law at the Supreme Court of Liberia and Commissioner on the Liberian Law Reform Commission, continued the presentation by highlighting the need for post-trial assistance. Several years ago, the Government of Liberia was awarded a grant from the Danish government to develop the previously-discussed special court. Recognizing that support is needed beyond the conclusion of a trial, a portion of the grant was used to establish an endowment fund for child witnesses. Funds were used to relocate children when necessary, as well as cover tuition and psychosocial counseling. When discussing witness protection, it is imperative to think broadly beyond the scope of a trial and consider a comprehensive approach.

PRESENTATION: BEST PRACTICES FROM OTHER MODELS AND COUNTRIES

Ms. Betsy Apple, Legal Director at AIDS-Free World, presented next on best practices, drawing on examples of witness protection from the International Criminal Court (ICC), Colombia, and Sierra Leone. She reported that key best practices include:

Early intervention. The ICC has a sophisticated and well-resourced witness protection program that focuses on early intervention and provides continuous support through the post-trial period. This support lasts until it is deemed safe for a witness to return to his or her community.

Victim-centric approach. The ICC's standard is always to act in the best interest of a witness or victim, rather than what is best for a case. Protection is broadly defined and includes mental and emotional support provided by experts trained in SGBV trauma. A victim is assessed at every step along a case and additional services may be as needed. In Colombia, victim assistance centers (CAVs) serve as liaisons between victims and the prosecution. Interdisciplinary teams of law students, counselors, and other professionals provide the victim with support through the process.

Dedicated police units. In Sierra Leone, the police have a dedicated Family Support Unit. Victims can go to an FSU staff person, specially trained in SGBV to receive referrals for services.

Financial support. International financial support is critical. Effective witness protection plans are comprehensive, and often expensive—they can require child-care stipends, financial stipends, secure cell phones, and even the creation of emergency numbers for local authorities. Given that such plans require considerable funding, it is important to be innovative and find low-cost solutions when and where possible.

DISCUSSION

Participants identified possible areas of inter-sectoral collaboration to improve witness protection in Kenya. The need for collaboration with police was especially noted. If the police were trained in witness protection, they could step in early to prevent the need for relocation later in the process. In terms of psychosocial support, there are a number of opportunities for government agencies to collaborate with civil society to serve victims' needs. Medical societies could help source psychologists and psychotherapists, and could partner with the new Witness Protection Agency to provide services. Other private-public partnerships could be of use, such as partnerships between government and mobile phone providers, who could provide secure communications for witnesses and victims.

Specific to the judiciary, a few participants suggested that a special SGBV court be established in Kenya, or that certain days be designated within existing courts to address SGBV-related issues. Private physical space in courts for victims and support teams should be created, and cases where victims are being actively threatened should be prioritized. A pool of intermediaries from different disciplines should be made available to help guide victim-witnesses through the process. Similarly, a victim-witness association could be created to provide additional support.

Participants also discussed legal ethics. One noted that confidentiality and the manner in which files are kept should be carefully considered. This applies to every sector—how case management systems are operated, what information is kept, and how, is all critical to adequate victim-witness protection.

The need for early medical and legal intervention was emphasized, along with the need for service providers to be linked together strategically. Cross-sectoral training was suggested wherein experts from disciplines such as counseling, forensics, and health could train judges, magistrates, prosecutors and other legal officials about best practices for witness protection.

At the community level, it was stressed that community ownership and participation in witness protection could help combat the threats and bribery that frequently undermine cases. An example would be to provide a family member with monetary support to house a victim or witness during trial. Community-oriented solutions can be particularly useful in resource-limited settings.

Finally, the need for media sensitization around the perils of exposing witnesses was mentioned, as many members of the media are unaware of the implications of their actions. Witnesses themselves could use training in what to do and not to do, what to say and not say as their case proceeds through court.

Plenary Session 9: Report Back from Concurrent Sessions 4 and 5

In this plenary session, all participants gathered to hear back from each of the small groups that met during concurrent sessions 4 and 5 and open up the points they raise for broader discussion.

REPORT BACK FROM “SOA AND THE PROTECTION OF CHILDREN”

Victoria Wambua, CREAM, presented a summary of her group's discussion. She highlighted the SOA provisions related to children. She then noted the main challenges and strategies identified by the small-group participants. First, implementation suffers because of a lack of coordination with other laws and policies. The remedy here requires passage of court rules by the Chief Justice; harmonization with the Children's Act, Trafficking Act, and Teachers Service Commission Act; as

well as consideration of cultural norms related to schools and children. Ms. Wambua then noted a second challenge: the lack of institutional, administrative, and structural mechanisms to actualize the Act’s protection of children (such as lack of infrastructure, absence of witness boxes and court intermediaries, lack of psychosocial support adapted to children, etc.). The proposed strategy hinges on advocating for government to provide the necessary administrative and supportive structures to accommodate child survivors of SGBV. Finally, a third major challenge to rolling out the SOA’s protections for children was identified as the lack of a survivor-centered approach. This requires the active and sustained sensitization of all stakeholders from across sectors—from chiefs to police to healthcare workers to the judiciary.

REPORT BACK FROM “SOA AND PSYCHOSOCIAL SUPPORT”

Ms. Gaudencia Mokaya, Ministry of Medical Services (MOMS), presented the findings of this small-group discussion. She articulated the three main challenges to full provision of psychosocial support of SGBV survivors, as prioritized in the concurrent session: a.) current absence of a national policy framework that articulates the importance of, and delivery standards for, psychosocial support; b.) inadequate capacity (human, infrastructure, and resources); and c.) lack of coordination of services and strategies at regional and national levels. Ms. Mokaya noted that it is necessary to identify the stakeholders who can drive the effort to deliver psychosocial support for SGBV survivors. The small group had agreed that MOMS and its partner Ministry of Public Health and Sanitation (MOPHS) could be natural sponsors of policies related to this scale-up—however, meaningful consultation and coordination is needed, especially with respect to government bodies tasked with the implementation of relevant laws.

In terms of capacity-building, the group emphasized the need for a national training curriculum and manual. This could derive from a parent ministry (MOMS or MOPHS) or another body, possibly with Ministry oversight and regulation. The acquisition of adequate resources would likely require active lobbying by, and allocation through, a host ministry (again, perhaps MOMS or MOPHS). Representatives of those ministries attending the SOA Implementation Workshop should undertake to build support within their respective workplaces.

Finally, participants deemed it critical to establish a permanent national coordinating body per SOA Section 46 in order to drive the effort to provide psychosocial support to SGBV survivors. Depending on its structure, this body could also generate policies and obtain necessary resources. For now, the Task Force should be able to serve much of this function.

REPORT BACK FROM “SOA AND DISPLACED POPULATIONS”

Wafula Wanjala, CoExist, summarized the discussion regarding extending the SOA’s protections to internally displaced persons (IDPs) and refugees in Kenya. Mr. Wanjala began by reviewing a litany of special challenges faced by displaced persons relating to SGBV. Key among these are a desperation for daily survival that can lead to vulnerability to sexual exploitation, as well as cultural and linguistic barriers to reporting and care that may be especially acute among refugee communities. Informal justice systems in both rural IDP and refugee contexts must be addressed and engaged. Mr. Wanjala then relayed the small group’s request that stakeholders remember these “invisible” populations when implementing the SOA, as levels of SGBV are extremely high in IDP and refugee communities, while response mechanisms are often weaker than in other contexts. The small

group had emphasized the possibility of restitution and compensation for IDPs in particular, to help alleviate the vulnerability to sexual exploitation that comes with economic disempowerment. In addition, the presence of security and judicial mechanisms should be extended more meaningfully into IDP and refugee communities—this includes the recruitment of female police officers and UN staff.

REPORT BACK FROM “NON-LEGAL APPROACHES TO SOA IMPLEMENTATION”

Mr. Mike Wachira, CREAM, presented a summary of this group’s discussion. He explained his session had addressed documentation, use of technology, and other advocacy strategies to assist with SOA implementation. Mr. Wachira summarized one primary challenge as lack of coordination and synergy among actors, which limits innovation and the benefits of coordinated advocacy and outreach. Mr. Wachira also noted the challenge posed by a lack of creative approaches—advocacy efforts are often repetitive, even when unsuccessful. Finally, documentation practices are frequently inadequate and uncoordinated. This can lead to bodies of data that are difficult to harness for broad-based advocacy and/or policy development. Mr. Wachira presented the small group’s suggested strategies as follows: First, build upon the GBVIMS database already operated by the National Commission on Gender and Development / UNFPA to act as a central repository of data for multiple stakeholders. This requires a greater understanding of the GBVIMS by government and civil society actors. Relatedly, stakeholders need a way to feed their own data into the central system. Second, effective national data collection requires standard documentation procedures as well as innovative advocacy strategies to improve data collection and information dissemination. Third, Mr. Wachira noted the importance of sharing best practices with foreign contacts who have employed innovative data-collection strategies and technologies, as well as those who have translated data into effective advocacy.

REPORT BACK FROM “COORDINATING IMPACT STRATEGIES”

Ms. Agnes Odawa, Ministry of Education, presented six tactics identified by the group to coordinate impact strategies related to SOA implementation. These generally involved taking greater advantage of existing mechanisms. Specifically, the group suggested a.) engaging court users committees, b.) reinforcing healthcare structures (e.g., ensuring the presence of reproductive health coordinators at the district, provincial *and* national levels, or making better use of public-private partnerships to link medical and legal practices), c.) expanding use of community resources such as rural paralegals, d.) tapping resources such as the Red Cross’s international network to participate in broader SGBV prevention strategies and lessons, and/or approaching parliamentary committees to sponsor critical legislative and policy reform, e.) brainstorming impact litigation strategies that represent cross-sectoral concerns (such as resolving the P3 and PRC form issue or providing resources to ensure the proper custody of forensic evidence), and f.) developing a coherent, cross-sectoral strategy for information sharing and management.

REPORT BACK FROM “WITNESS PROTECTION AND SUPPORT”

The representative from this session noted that the primary challenges to providing effective witness protection in Kenya are a.) lack of collaboration between government departments and other stakeholder organizations, and b.) inadequate resources (financial, human, infrastructure).

The small group had particularly valued the creation of certain institutions: specialized police units in each county, safe houses to provide shelter and protection throughout the investigation and trial period, and crime victim assistance centers that would provide legal, counseling, and health support to SGBV survivors. Several collaborations were also emphasized as critical. For example, technological / communications partnerships with service providers like Safaricom could help secure hotlines and free mobile contact between witnesses / survivors and police / support services. In addition, the judiciary could collaborate with technical advisers to create a case management system to flag SGBV cases for specific support and processing (including the appointment of intermediaries and counselors, where appropriate). Collaboration between the Witness Protection Agency and the Children’s Department is also critical in order to promptly and properly tend to cases involving minors. Better coordination with community-level groups is essential in order to clarify the placement and protection options that exist to protect witness/survivors. The reporter also noted that a series of trainings and sensitization efforts would help promote witness protection. For example, the media must be alerted to the security risks and ethical costs of exposing a witness/survivor for the sake of a “good story.” Providers at every level of every sector should be trained in the ethical aspects of casework, including confidentiality and file management. Finally, witnesses/survivors must be educated, as well, about the risks and responsibilities that come with state protection.

DISCUSSION

The plenary discussion focused on issues related to stigmatization, technology and information management, and suggestions for organizing efforts. Participants noted that institutions can contribute to *ostracization and stigmatization* if they are not carefully designed and operationalized, since survivors can be labeled “victims” for accessing services that are clearly dedicated to SGBV response or support. Further, some participants reminded the plenary that to be truly victim-centered, government and civil society must make room for the victim/survivor to choose the support services in his/her best interests. This degree of informed autonomy is critical to avoid further disempowerment of the individual.

In terms of *technology and information sharing*, the Ministry of Gender is partnering with Airtel to develop a telephone helpline. Further, the GBVIMS already operationalized by the National Commission on Gender and Development and UNFPA could work as a basis for national data collection. The session chair asked the Commission representative if he could commit the Commission to be the lead agency for SGBV-related information management, which would include engaging and orienting other stakeholders to the process. He agreed, on behalf of the Commission.

With respect to *organizing efforts to move forward*, plenary session participants suggested that the TFSOA or the SOA Implementation Workshop Steering Committee create teams from the parties present to work on specific subjects such as healthcare, information systems, etc. However, there was not enough time to do this in a meaningful fashion. The TFSOA and Workshop Steering Committee agreed to table this suggestion until it could be properly addressed after the Workshop.

Plenary Session 10: Recommendations, Action Items, Next Steps

In this final plenary session, all participants gathered to review the overarching recommendations that had emerged from three days of plenary and small group discussion. Mary Njeri, COVAW, facilitated the review of key recommendations and pushed the group to distill clear action items and

identify or assign responsible parties, where possible. It was acknowledged that this exercise would be limited by the fact that certain action items could not be officially assigned without further consultation with various permanent secretaries who were not present at the Workshop. However, to the extent that those present were authorized to take up certain responsibilities—or able to suggest who *else* might do so—the group sought to outline and assign priorities and next steps.

Two fundamental recommendations from earlier discussions remained in the background: a.) To establish a permanent, government body to coordinate and oversee the SOA’s implementation and b.) To secure guidance from the Chief Justice regarding the proper handling of SOA-based cases in court.

The following recommendations and action items were also identified:

1. *Establish the National Commission on Gender Development as the central repository for SGBV data coordination*

A conversation with the National Commission on Gender Development is needed to expand GBVIMS to include all relevant partners. Standards for documentation are needed, as well as a framework for collecting and disseminating related information across sectors and to the public.

RESPONSIBLE PARTY: The National Commission for Gender Development committed to assume this responsibility with the assistance of various partners. It agreed to provide training and outreach relevant to the system and educate others how to contribute to data collection.

ACTION ITEM: Follow-up with UNFPA, NASCOP, and KEMRI, as they already have an infrastructure for collecting data on a national scale relevant to reproductive health

2. *Form working teams for each sector to identify gaps and move action items forward*

RESPONSIBLE PARTY: The Workshop Steering Committee was asked (and trusted) to adopt this responsibility.

ACTION ITEM: The Workshop Steering Committee should meet after the Workshop to discuss its post-Workshop configuration and capacities. It was suggested that the Steering Committee may require reconfiguration or expansion, and should undertake this process as appropriate. More representation is specifically needed from education, probation, and other disciplines.

Members of the “new” Steering Committee should organize Workshop participants and other stakeholders into working groups by thematic area and provide ongoing coordination of implementation strategies and information sharing, in communication with the TFSOA.

3. *Gazette the PRC form and appropriate medical regulations*

RESPONSIBLE PARTY: TFSOA

ACTION ITEM: Faith Kabata, a TFSOA representative, will follow up with the Ministry of Public Health and Sanitation about the potential for gazetting the PRC form. Ministry representatives present at the Workshop (specifically Gaudencia Mokaya and Dr. John Kihama) agreed to support this effort by reaching out to the Permanent Secretary.

4. *Standardize all SGBV-related guidelines and training curricula*

RESPONSIBLE PARTY: The TFSOA is responsible for coordinating the effort to develop documentation and training standards. Kenya’s universities—including the schools of

clinical medicine and nursing—should also be invited to participate as partners to develop pre-service training curricula.

ACTION ITEM: To be determined.

5. *Administer Workshop Follow-Up*

RESPONSIBLE PARTY: The Human Rights Center

ACTION ITEM: 1.) HRC will provide a preliminary document outlining major recommendations and action items resulting from the Workshop within a month. 2.) HRC will also set up a listserv to enable Workshop participants to stay in touch, share resources, coordinate implementation efforts, etc. 3.) The Steering Committee will meet to strategize how best to move action items forward. 4.) HRC will provide a full Workshop Report by October or November 2011.

6. *Involve the community in developing solutions*

RESPONSIBLE PARTY: To be determined.

ACTION ITEM: To be determined.

7. *Educate and engage the media regarding SGBV and the SOA*

RESPONSIBLE PARTY: Development Through Media volunteered to serve as the focal institution for this outreach and training.

ACTION ITEM: To be determined.

8. *Increase transparency of, and communication from, the TFSOA*

RESPONSIBLE PARTY: TFSOA

ACTION ITEM: Participants requested that the TFSOA share information regarding their current initiatives and planned activities in order to avoid duplication of efforts and assess remaining gaps. (Use of the listserv established by HRC could be one means to expand TFSOA communications.)

9. *Convene government ministries, departments, and agencies to educate civil society about how government works*

RESPONSIBLE PARTY: Unclear. Possibly TFSOA? Another government representative?

ACTION ITEM: To be determined. Such a convening was requested to clarify and “demystify” government mandates, processes, and activities in order to facilitate stronger partnerships between ministries and CSOs, as well as strengthen ties and enable greater communication across ministries.

9. *Increase the involvement of the Ministry of Education and the Teachers Service Commission*

RESPONSIBLE PARTY: The Attorney General’s office should expand the TFSOA to include representation from these institutions; TFSOA should work more closely with the school system to improve SOA-related protections.

ACTION ITEM: To be determined.

Closing Remarks

Hon. Lady Justice (Rtd.) Effie Owuor, Chair of the Task Force on the Implementation of the Sexual Offences Act, spoke first. She thanked and commended the participants for a successful workshop, expressing her appreciation for each individual’s hard work and contributions. She was deeply impressed by the level of dedication and perseverance demonstrated by the Workshop participants. Hon. Lady Justice (Rtd.) Owuor promised that the TFSOA would not let them down, and promised that it would work equally hard in taking steps forward. She noted that the Workshop had motivated clearer signs of political will to implement the SOA than ever seen before. For example, the Hon. Attorney General Amos Wako had that day requested a meeting with the Workshop Steering Committee for the following morning (Saturday, May 28, 2011) to learn more about the Workshop’s findings and recommendations. Hon. Lady Justice (Rtd.) Owuor thanked the participants for creating this opportunity to brief the Attorney General and earn his support.

Ms. Kim Thuy Seelinger from the Human Rights Center began her closing statement with the Haitian expression, “*men anpil, chay pa lou*” (“with many hands, the load is light”). She thanked the TFSOA, the Workshop Steering Committee, and the Workshop sponsors for making the three-day meeting possible. She then thanked the participants for engaging so intently in this historic cross-sectoral dialogue—their commitment, expertise, and camaraderie had been extraordinary. Finally, Ms. Seelinger thanked the administrative team from FIDA, LVCT, AIDS Free World, and HRC, who had taken care of countless logistics behind the scenes. She asked the Workshop sponsors to support the participants in their efforts to move forward from this Workshop, and also asked the TFSOA to keep everyone abreast of their efforts in securing government buy-in and results. Ms. Seelinger closed by promising that HRC would help provide tools to facilitate follow-through, including a preliminary “action items” document, a listserv to host participants’ ongoing communication, and a full Workshop report. However, in the end, she noted, full implementation of the SOA’s protections lies in Kenya’s able hands.

REVIEW OF WORKSHOP FINDINGS ON PRIORITY CHALLENGES

In the various plenary and concurrent sessions, Workshop participants identified the following overarching and common challenges to implementation of Kenya's Sexual Offences Act:

1. Insufficient awareness regarding sexual offences and the SOA itself among survivors, communities, and implementation stakeholders alike.
2. Resource constraints among government and civil society actors.
3. Individual capacity gaps in government and civil society.
4. Disconnection between professional sectors, between urban and rural areas, between government and civil society, and among civil society actors themselves.

The challenges of awareness-raising and resource allocation ran throughout the Workshop discussion and were common to almost all aspects of implementation.

In terms of *other* individual capacity gaps and linkage challenges, Workshop participants identified several pressing issues.

Individual sector challenges

I. *Community actors and informal justice systems*

It was clear to Workshop participants that community pressures can either help or hinder a survivor's ability—and desire—to seek support or accountability through formal institutions. One basic obstacle posed by community forces was the lack of sensitivity to sexual and gender-based violence; these crimes are taboo and many men, in particular, are not adequately engaged in efforts to change societal norms.

In addition, insufficient awareness about the SOA was regarded as a significant problem. Some participants also noted ways in which traditional responses to sexual and gender-based violence can literally destroy a case—for example, where custom dictates that a woman who has been raped should cleanse herself in the river and burn the clothes she was wearing when the attack occurred. Practices like this may contribute to customary healing, however they can also destroy any chance of collecting forensic evidence that could help convict the perpetrator. Or, even if a survivor should travel to a local healthcare facility for post-rape care and treatment, her willingness to report the crime to the police or engage in psychosocial support services is frequently determined by pressures for intra-community mediation or fear of stigmatization. Finally, several at the Workshop noted that even a survivor who files a police report and begins the investigative or prosecutorial process can be pressured by community members to withdraw the case or even disappear.



2. Health Sector

The primary challenges affecting the health sector's ability to fulfill its SOA-related obligations involve a general lack of standardization and dearth of resources. At a fundamental level, the sector struggles to coordinate functions currently held by two separate health ministries: the Ministry of Medical Services and the Ministry of Public Health and Sanitation. It also suffers from a gross disparity in resources and services provided by major referral hospitals in urban centers and smaller clinics in rural areas. The sector lacks uniform training for all healthcare employees regarding sexual and gender-based violence, and few opportunities are available to develop workers' abilities. Nor is there a standardized forensic examination procedure in place, despite brief mention in the 2009 *National Guidelines on the Management of Sexual Violence*. The 2009 *Guidelines* themselves have not been rolled out uniformly throughout Kenya. Similarly, data collection about SGBV-related cases has been inconsistent and remains uncoordinated at a national level. Further, the health sector has had difficulty meeting its SOA-based obligations to provide meaningful psychosocial support to survivors (as well as accused persons) due to the lack of standardization and resources.



One additional, concrete challenge faced by healthcare providers concerns the conflicting means of documentation of sexual offence cases. Specifically, there is a longstanding tension between forms used by police and healthcare workers. The medical examination form used by the police ("P3 Form") is admissible in court but is not tailored to sexual offence cases and, in Nairobi, requires the signature of a single doctor who is burdened with significant backlog. The post-rape care form used by most healthcare providers ("PRC Form") allows for much more detail relevant to sexual violence, but is neither officially nor consistently accepted as admissible evidence in court. This "battle of the forms" is a problem because any contradictions are often resolved in favor of the police form, which typically documents a much later, more cursory examination of the survivor than the PRC form. Finally, healthcare providers who are summoned to court to testify about their medical findings are often unprepared for such an experience, as they are trained neither in evidentiary standards nor courtroom procedure.

3. Investigations & Prosecution

Participants identified several police-related challenges to investigating SOA-related cases, difficulties which frequently lead to later challenges in prosecution. One major obstacle to the investigation of sexual and gender-based violence cases is a lack of effective witness protection. Survivors are frequently unwilling to engage with police or go to trial when they fear or even know their perpetrators. Participants also highlighted inadequate sensitization and training among police officers. Poor training and victim interaction can result in weak evidence gathering, ranging from the collection, storage, and transmittal of forensic evidence, to basic interviewing and statement taking. Many participants felt police should also have more training in handling children's



cases, as well as sensitivity to the need for psychosocial support for survivors entering the investigatory or prosecutorial process.

Finally, there are community- and statute-based obstacles to the effective investigation of sexual offence claims. First, public awareness of the SOA is low. This impedes the reporting of violations and can inadvertently lead to the destruction of evidence, as noted above. In addition, the SOA itself contains disincentives to reporting—specifically, Section 38 provides for the possible punishment of a survivor found to have falsely testified in an SOA case, a sanction that does not exist for complainants of other crimes. Others feared this provision may prevent some individuals from coming forward. They noted that even if most complainants did not know about the provision, Section 38 may be misused by some to discourage survivors from pursuing prosecution.

Most major challenges to the *prosecution* of sexual offences in Kenya are rooted in the investigation-related difficulties noted above. However, a few issues are specific to the prosecution: inadequate expertise regarding the SOA or even clear courtroom procedures for police prosecutors (who are currently tasked with litigating most sexual offence cases even though they are not lawyers), prosecutors' overburdened caseloads, and the absence of SOA practice guidelines from the Chief Justice too frequently lead to inconsistent processes and protections in the courtroom.

4. *Forensics*

In Kenya, forensic evidence is analyzed by the office of the Government Chemist, which has three sites: Nairobi, Mombasa, and Kisumu. However, all DNA analysis is conducted in the Nairobi laboratory. The Office's mandate includes generating DNA profiles for every homicide, sexual offence, and paternity case in Kenya—creating a tremendous backlog for the laboratory. In addition, the lab lacks a critical element (a quantification system) and is in ongoing need of maintenance and supplies to keep up with its caseload.

Challenges faced by police with regard to evidence collection can lead to downstream challenges for the Government Chemist as well. Often, the DNA analyst is unable to generate a full DNA profile of the accused because the blood, semen, or saliva sample received from the police was compromised by improper collection, storage, or transport. This can result in the acquittal of guilty parties. Also, the DNA analyst must often travel to courts outside of Nairobi to testify about the evidence he was (or was not) able to produce for a case. This often means losing an entire day in the laboratory, further contributing to the DNA-processing backlog.

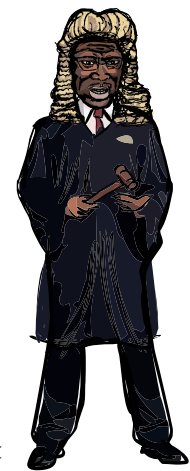


Finally, Workshop participants noted that no progress has been made toward developing either of the sexual offender databases prescribed by the SOA, to house the DNA profiles of accused and convicted parties.

5. *Judiciary*

Workshop participants observed that the judiciary suffers from inadequate resources and needs additional training and sensitization about sexual offences and related legislation, including the SOA itself. One major obstacle faced by courts is the lack of practice guide-

lines from Kenya’s Chief Justice, which would standardize courtroom procedures for SOA-related cases. Promulgation of such rules would clarify critical issues, such as who constitutes a “vulnerable witness” under the SOA or how a court should treat a “victim-impact statement.” Another struggle is how to address SOA’s minimum sentences—especially when faced with insufficient evidence due to poor investigations. For some offences, judges no longer have the flexibility to order a lowered sentence commensurate with the evidence or testimony provided—sentences are typically high and “all or nothing.”



Other judiciary-related challenges were not specific to SOA cases but clearly affected them: the need for a national case management system to track cases (including sexual offence cases), the need for psychosocial support for judges, and the need to minimize the routine transfer of judges, which can create undue delay and confusion in individual cases.

6. *Prison / Probation*

Post-trial phases such as incarceration and probation had been largely ignored when discussing SOA implementation. Yet they are critical to the full implementation of the SOA. Workshop participants addressed this oversight, noting the following challenges: a.) lack of clarity and progress regarding the Dangerous Sexual Offenders’ database, which relates to the general database of convicted sexual offenders and has severe implications for a convicted person’s rights to parole and supervised release, b.) essential lack of psychosocial or rehabilitative support within the prison system to help reform offenders *before* their release back into society, and c.) the effect of minimum sentencing on prison system resources.



Linkage challenges

I. *Across Sectors: Community / Health / Law Enforcement / Legal*

Apart from individual sector capacity challenges, Workshop participants identified several gaps between sectors into which a survivor’s case can fall, and then fall apart. These include a.) inadequate community and media sensitization about sexual and gender-based violence, the SOA, and how to obtain government protection, b.) survivors’ difficulty navigating health and police support, c.) lack of systematic and safe transfer of survivors’ forensic samples from healthcare providers to the police, d.) lack of resource support and a uniform mechanism for the transport of forensic samples from the police to the Government Chemist’s laboratory for analysis, e.) discrepancies between post-attack examinations and documentation by healthcare workers and police doctors, f.) sectors’ disparate training curricula and understanding of the SOA’s evidentiary requirements, g.) inadequate witness protection and psychosocial support to enable survivors and witnesses to move through the legal and healthcare processes, h.) lack of psychosocial and rehabilitative support for accused or convicted persons, during both trial and incarceration, i.) insufficient coordination among government agencies with respect to development of SOA-mandated

databases to track DNA and “dangerous sexual offenders,” and j.) insufficient engagement with the school system, a critical stakeholder with respect to preventing the sexual abuse of children.

2. *The Government / Civil Society Divide*

Participants noted several areas in need of improved coordination between government and civil society stakeholders. As a threshold matter, civil society actors articulated a need for better understanding how their government counterparts work: what are relevant agency mandates, structures, strategic plans, and processes? (Many government actors could similarly benefit from an improved understanding of each other’s mandates and processes.) Civil society members also cited a need for SOA implementation to be better connected to the government budgeting process. Both government and civil society members agreed that information sharing between government and civil society regarding SOA implementation efforts needs improvement. SOA-related standards, monitoring and evaluation processes, and the data collection efforts of both sides require significant attention and development. Finally, participants determined that the establishment of a standing, funded, national coordinating body—with more authority and resources than the current, temporary Task Force—is critical to oversee the above.

3. *The Urban / Rural Divide*

Not surprisingly, Workshop participants noted SOA-related disparities between urban centers and rural areas. First, awareness of the SOA eludes many Kenyans living in rural areas, many of whom are unaware of the protections it provides due to inaccessibility to legal aid, lack of translation of the Act into local languages, and other issues. Participants also noted that any standards and processes dictated by Nairobi-based government entities need to (and currently do not) take into account the realities of healthcare and police capacities in the provinces. Improved communication and connection is required for the effective provision of trainings, resources, supportive services, and information-sharing between Nairobi and the provinces. Also, if the SOA’s emphasis on forensic evidence is to be translated into reality for rural survivors, local police must be better supported in their collection and transport of forensic samples to the urban-based Government Chemist.

The need to connect Kenya’s rural and urban communities is particularly critical in order to deliver an improved response to sexual and gender-based violence committed in times of national emergency, as with 2007–2008’s post-election violence. In addition, significantly more attention is needed to expand the SOA’s protections into Kenya’s internally displaced (IDP) and refugee communities.

4. *Bridging the Formal and Informal Justice Systems*

Workshop participants articulated various “justice” priorities, identifying the inherent tension between community healing (the goal of most informal justice mechanisms) and individual justice (as prioritized by the SOA). They identified a need for improved engagement and sensitization of community leaders, village and religious elders, and teachers to the SOA’s provisions. Without improved understanding and cooperation from these critical figures, most survivors of sexual or gender-based violence may never enter the formal

justice system. Worse yet, proponents of informal justice systems may contribute to the destruction of evidence or hide survivors and witnesses from police to avoid state interference in what is perceived to be a private community matter.

On the other hand, where community resistance to formal justice mechanisms is rooted in a lack of faith in Kenya's legal system, it is incumbent on healthcare workers, police, prosecutors, forensic experts, and judges to earn the community's confidence by proving their competence in handling cases of sexual and gender-based violence. A critical first task in this regard is the provision of community-sensitive witness protection mechanisms since, without them, survivors are unlikely to expose themselves to the risks that can attach when entering the formal justice system.

Though some participants advocated for eliminating all informal justice systems, most agreed that the ultimate challenge here is to find ways in which informal justice objectives might be aligned with those of the formal accountability process.

WORKSHOP RECOMMENDATIONS

In light of the above challenges to SOA implementation, and in spite of gains made, Workshop participants identified the following priority recommendations:

Recommendations: Improved National Coordination

1. Attorney General's office should establish a permanent, national coordinating body within the government to oversee state and civil society implementation efforts. This body must be endowed with greater resources and authority than the current, temporary Task Force on the Implementation of the Sexual Offences Act.
2. Task Force on the Implementation of the Sexual Offences Act should inform stakeholders of status and contents of National Policy Framework such that it can be understood, discussed, and implemented.
3. Civil society should form sector-specific teams to work with the Task Force or future permanent government agency to identify gaps and move action items forward. This effort could be coordinated by the Workshop Steering Committee.
4. The Workshop Steering Committee or a broader segment of civil society should reconfigure a coordinating body to support the TFSOA's efforts by:
 - adding key stakeholders from the public school system, probations, gender and health ministries, as well as informal justice and religious communities;
 - developing a clear mandate and internal accountability structure to support the current Task Force or future permanent coordinating body.
5. All sectors should standardize and coordinate inter- and intra-sector guidelines and training curricula regarding SOA implementation.
6. Relevant government and civil society partners should improve data collection and data management regarding sexual and gender-based violence in Kenya.
7. Relevant government ministries should determine the structure of, and a maintenance plan for, SOA-mandated databases (DNA, dangerous sexual offenders, etc.).
8. The TFSOA and its civil society counterparts should improve their mutual engagement and communication with regards to SOA implementation efforts, resources, etc.
9. The TFSOA should oversee a review and harmonization of the SOA with Kenya's related laws, including the Children's Act and the Witness Protection Act.
10. Civil society groups should simplify and translate the SOA into local languages and work with organizations with rural outreach capacity such as COVAW, CREAM, FIDA-K, the

Caucus for Women’s Leadership, the IDP Network, and UNHCR’s implementing partners to disseminate these versions at the community level.

11. Relevant government entities should improve coordination with entities working in Kenya’s refugee and IDP communities to ensure that SOA-related protections and processes reach all survivors.
12. Relevant government entities, with support from civil society, should advocate for the repeal of SOA Section 38, the “false allegation” clause.

Recommendations: Common to All Sectors

1. All government entities, with relevant civil society partners, should explore how to create cumulative training models that track and build on individuals’ prior training in order to deepen expertise, rather than simply repeat exposure to basic training materials.
2. All SOA implementers should develop monitoring and evaluation mechanisms to gauge effectiveness in delivering SOA-mandated protection and support.
3. The TFSOA or other appropriate liaising body should help identify and introduce individual organizations to key government and civil society counterparts in order to build relationships, coordination, and trust among diverse implementers.
4. The TFSOA and its civil society partners should work to improve internal training of community leaders, healthcare providers, law enforcement, and the judiciary, especially regarding the “chain of custody” of forensic evidence in SOA-related cases, including proper forensic evidence collection, storage, and transport methods, etc.
5. The TFSOA and its civil society partners should develop mechanisms that would enhance provision of psychosocial support for first responders (particularly in the health and law enforcement sectors) as well as advocates, lawyers, and judicial staff who experience routine exposure to difficult sexual violence cases.

Recommendations: Specific Sectors

Health Sector

Workshop recommendations for the improved provision of medical / psychosocial support of survivors of sexual offences include:

1. The relevant government entities should secure gazettelement of medical regulations concerning the management of sexual and gender-based violence, including use of the PRC form.
2. Until a single health ministry emerges, there is a need to clarify roles and responsibilities of the appropriate government departments regarding health sector aspects of SOA implementation.
3. The relevant actors should standardize implementation of the 2009 *Guidelines for the Medical Management of Sexual Violence* in all health facilities through dissemination fora.



4. Health sector groups in civil society should advocate for increased resources and supplies for the clinical care and forensic examination of survivors.
5. The relevant health ministry actors should establish one-stop gender violence recovery centers at Level 5 healthcare facilities as appropriate, while strengthening referral mechanisms in all other contexts.
6. Medico-legal partnerships among civil society actors should support healthcare workers in preparing for possible court appearances.
7. The relevant government entities should develop psychological care guidelines specific to survivors of sexual and gender-based violence.
8. Government and civil society partnerships should explore expanded training of and support for community-based counselors and therapists to increase the provision of limited psychosocial services for rural SGBV survivors.
9. The relevant health ministry actors should develop protocols for the clinical care and forensic examination, as well as psychosocial support, of children in sexual offence cases.

Law Enforcement / Investigations / Prosecutions

Workshop Recommendations for improved investigation and prosecution of sexual offences include:

1. Entities tasked with police training should improve sensitization regarding sexual and gender-based violence among law enforcement personnel, including:
 - a. “statement taking” skills;
 - b. general understanding of the SOA’s evidentiary standards and proper techniques regarding the collection, storage, and transfer of forensic evidence;
 - c. management of children’s cases.
2. The police department should provide consistent, well-trained officers at “gender desks” at police stations throughout Kenya so these gender desks can offer a meaningful presence in their communities.
3. Relevant training entities should improve police prosecutors’ familiarity with the process for seeking restraining orders in sexual offence cases to better protect witnesses from accused persons.
4. The TFSOA should commission further research on Witness Protection models to determine the best system to meet the differing needs of Kenya’s various communities.
5. The relevant government entities should enable the Witness Protection Agency to provide critical support for sexual and gender-based violence survivors and witnesses, including “safe shelters.”



6. Civil society organizations should increase the use of rural paralegal systems, which can provide Nairobi-based technical assistance to paralegals in the provinces.

Judiciary

Workshop recommendations regarding SOA implementation on the part of the Kenyan judiciary include:

1. TFSOA should obtain judicial practice guidance from the Chief Justice regarding the handling of SOA-related cases.
2. The Ministry of Justice should develop a case management system within the judiciary to enable appropriate support and follow-up in SOA-related cases.
3. The Ministry of Justice, with appropriate technical support, should develop the SOA-mandated sexual offenders registry for the judicial sector.



Recommendations: Improved Cross-Sectoral Response

To enhance cross-sectoral response to sexual offences in Kenya, Workshop participants suggested the following measures:

1. All government and civil society entities should involve both formal and informal justice systems, including rural communities, in developing solutions.
2. The TFSOA and civil society partners should deliver cross-sectoral training regarding the SOA and evidentiary requirements that bring community leaders, healthcare, law enforcement, legal and judicial officers *into the same room*.
3. The TFSOA should commission further research and assessment regarding appropriate models to bring critical systems together for survivors (including “integrated service models,” such as Population Council’s programs and the Sexual Assault Response Team model used in California).
4. A civil-society / government partnership should convene government ministries, departments, and agencies to educate civil society about how government operates and the availability of various government resources with respect to SOA-related efforts.
5. The relevant health ministry and appropriate civil society partners should provide more coordinated and comprehensive access to psychosocial support through all stages of a case—both for survivors, as well as accused and convicted persons, as appropriate.
6. Legal advocacy groups engaged in impact litigation should coordinate strategic litigation strategies related to SOA implementation to avoid duplication and improve mutual support.
7. Medical and legal advocacy groups should identify shared policy reform priorities among legal and health sectors and develop coordinated legal / non-legal advocacy strategies around issues of mutual concern.

8. Local courts should support expanded use of “court users committees” to improve coordination and information-sharing about case successes and challenges among local community advocates, health care providers, police, lawyers, and judicial staff.
9. Civil society groups and major media partners should educate and engage the general media regarding SGBV and the SOA, including the need to respect witness and survivor identities.
10. All SOA-implementing entities should increase their engagement with the Ministry of Education and the Teachers Service Commission.
11. Any entities involved in outreach and data collection should explore the enhanced use of mobile technology to improve access to local resources and encourage reporting of sexual offences, both in times of peace and crisis.

ADDITIONAL RECOMMENDATIONS

After the Workshop, the Task Force noted the following additional recommendations to improve SOA implementation:

1. Lobby for allocation of funds to support SOA implementation efforts.
2. Prioritize compensation of victims of sexual violence in consultation with the victims and their communities, as envisaged in the Victims of Offences Bill.
3. Implement the Power of Mercy Act to enable victims of sexual offences to make representation to the advisory committee in petitions relating to sex offenders.
4. The TFSOA should consult with the Teachers Service Commission to learn of their plans to develop an internal offenders' registry and to harmonize, coordinate as necessary.
5. Development of DNA analysis capacity at the Government Chemist offices in Mombasa and Kisumu in order to provide more localized services throughout Kenya and eliminate the need to transport all DNA samples to the Nairobi laboratory.

Based on the discussions and conclusions that emerged from the Workshop, as well as research conducted before and after May 2011, the Human Rights Center offers the following supplemental recommendations:

1. The TFSOA should conduct a *second*, more thorough "SOA mapping" exercise *with high-level government and civil society / community leaders present* to further refine identification of ground-level breakages and finalize strategies to address them in overall guidelines with government buy-in at outset.
2. All government and civil society implementing entities should attend to the special protection and outreach needs of particularly vulnerable and/or stigmatized populations affected by sexual and gender-based violence in Kenya in addition to children, refugees, and internally displaced persons. These groups include male survivors, HIV+ persons, sexual minorities, elderly, and the disabled.
3. The TFSOA and any other civil society coordinating body should explore the use of Internet-based mechanisms such as Yahoo or Google groups to centralize communications and resources for cross-sectoral stakeholders involved in SOA implementation. It is critical to stay connected to local actors and to involve them in implementation efforts and information-sharing.
4. In terms of strengthening referral mechanisms, SOA implementers engaged in the provinces should consider engaging community volunteers in rural areas to act as "individual

guides” or “advocates” to accompany an individual survivor through the health, law enforcement, and judicial systems.

5. Groups involved in outreach should explore the use of community radio to sensitize local populations to sexual and gender-based violence and SOA provisions, perhaps by adapting the model toolkit created by Raising Voices in Kampala, Uganda (see www.raisingvoices.org).
6. The TFSOA or Kenya National Human Rights Commission should support ongoing study into the legal mechanisms by which the perpetrators of sexual and gender-based violence during 2007–2008 post-election period might yet be held accountable, including options for retrospective application of Kenya’s 2008 *International Crimes Act*. ICJ-Kenya has started significant research into this question and should be consulted.
7. Stakeholders in all sectors—particularly medical, legal, and law enforcement—should continue examination of the ways in which intra- and inter-sectoral responses to sexual and gender-based violence must be adapted in times of crises; they should make necessary protocol or policy modifications as soon as possible.

POST-WORKSHOP UPDATES AND OUTCOMES

The Sexual Offences Act Workshop has already borne fruit. Some outcomes were anticipated: participants made critical connections with their counterparts in other sectors and geographies; their three days of intense dialogue produced significant theories for improved implementation; HRC produced an immediate “Action Items” document in June, 2011, and Workshop Steering Committee members worked together to produce this post-Workshop report as a basis for further action.

The Workshop also prompted an immediate meeting with then-Attorney General Amos Wako, after which the Task Force and the Workshop Steering Committee were encouraged to submit an amendment to the SOA. Additionally, the Task Force itself made progress on several Workshop-related recommendations in the second half of 2011.

SOA Amendment Bill (2011)

An immediate outcome of the SOA Implementation Workshop was a coming together of the Workshop Steering Committee under the auspices of the Task Force to review the impediments to justice for SGBV victims within the legislation itself. A relatively easy starting point, the team sought to enumerate a list of amendments as well as additions to the SOA for recommendations to the office of the Attorney General. A solid legislative framework would then spearhead the Workshop’s recommendations. These amendments would be legislated by way of National gazette notice.

These recommendations included the repeal of the notorious Section 38 of the SOA, which threatened to punish a complainant in the event that the case was dismissed. Further, the recommendations sought to widen the definition of sexual offences and types of perpetrators. They also map out basic obligations owed to an SGBV victim by a medical caregiver.

This amendment would find concordance with the Constitution, given the elaborate bill of rights that provides for Social and Economic rights including the right to the highest standard of medical care (health).

Finally, the recommendations sought to give statutory backing to a body coordinating the various sectors. The amendments established a multidisciplinary authority with ministerial funding through the office of the Attorney General.

The recommendations were submitted to the office of the Attorney General for Publishing but are yet to be gazetted.

TFSOA Activities

The findings of the SOA Workshop included specific and important recommendations to remedy the challenges identified in the implementation of the SOA. The Task Force reports the following important gains relating to these recommendations:

1. *Review and Finalization of National Policy Framework and Guidelines:* The TFSSOA reviewed the National Policy Framework and Guidelines to align it with the new Constitution and prepared a cabinet memo for submission of the National Policy Framework and Guidelines to cabinet. The *National Policy Framework and Guidelines* was submitted to the Honourable Attorney General in June 2011 for review and onward transmission to Cabinet for approval.
2. *Finalization of the Chief Justice Practice and Procedure Rules:* The TFSSOA, together with the High Court Rules Committee, SOA Workshop Steering Committee members, and the Directorate of Public Prosecutions, validated the Chief Justice Practice and Procedure Rules in June 2011. The Rules have been finalized and will be submitted to the Chief Justice for gazettelement.
3. *Development of comprehensive policies for the protection of victims of sexual offences and management of sex offenders:* Jointly with the Probation and Prisons Departments, the TFSSOA is conducting a baseline survey to establish the current programmes for protection of victims of sexual offences and management of sex offenders; identify the gaps and recommend appropriate programmes and mechanisms.
4. *Development of National Referral Mechanism:* TFSSOA is developing a National Referral Mechanism to facilitate multi-sectoral coordination in the administration and implementation of the Sexual Offences Act. This is in line with the Action Plan formulated by stakeholders in December 2010 after consideration of the Position Paper.
5. *Audit and review of existing laws, policies, regulations, practices and customs relating to sexual offences:* The findings of the field and desk research will be validated by stakeholders in November 2011 and subsequently submitted to the Attorney General with recommendations for amendment, modification and/ or abolition.
6. *Public Awareness, Sensitization and Education:* The TFSSOA is conducting intensified nationwide public awareness campaigns with the twin objectives of enhancing awareness on the provisions of the Sexual Offences Act to the citizenry and sensitizing implementers of the Act—government agencies, civil society and community based organizations on multi-sectoral coordination. The first phase of the public awareness campaigns runs from July 2011 to December 2011 and is funded by GIZ.
7. *The Child Justice Bill vis-a-vis Prosecution of Child Sexual Offenders:* In June 2011, the TFSSOA submitted proposals to a technical team working on the Child Justice Bill. The technical workshop was organized by the Law Society of Kenya. The Bill aims to provide a comprehensive legal framework for protection of children in conflict with the law. The TFSSOA presentation addressed issues relating to prosecution of child sexual offenders.
8. *Bill on the Protection, Welfare and Rights of Victims of Offences:* In June 2011, the TFSSOA presented proposals to the Task Force on the Victims of Offences Bill and Bail Supervision Information Bill. The Task Force on the Victim of Offences Bill is established by the Vice-President under the Ministry of Home Affairs pursuant to Article 50 (9) of the Constitution is mandated to develop the Victims of Offences Bill and Policy. The TFSSOA presentation proposed a national legal reparative framework for victims of sexual violence.

APPENDIX 1: WORKSHOP PROGRAM

SEXUAL OFFENCES ACT

IMPLEMENTATION WORKSHOP 2011

May 25-27, 2011
Great Rift Valley Lodge
Kenya



WORKSHOP LEADERSHIP

ORGANIZERS

Task Force on the Implementation of the Sexual Offences Act (G.o.K.) (TFSOA)
Human Rights Center, University of California, Berkeley (HRC)
Federation of Women Lawyers - Kenya (FIDA-K)
Liverpool VCT (LVCT)
AIDS Free World

STEERING COMMITTEE

Task Force on the Implementation of the Sexual Offences Act (G.o.K.) (TFSOA)
AIDS Free World
Center for Rights, Education, and Awareness (CREAW)
Coalition on Violence Against Women (COVAW)
Federation of Women Lawyers - Kenya (FIDA-K)
Human Rights Center, University of California, Berkeley (HRC)
International Commission of Jurists (ICJ)
Liverpool VCT (LVCT)

SPONSORS

Open Society Institute, International Women's Program (OSI)
Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ)
Embassy of Finland, Nairobi
Global Fund for Women
UN Women

WELCOME

May 25, 2011

Dear Colleagues,

On behalf of the Task Force on the Implementation of the Sexual Offences Act and the Human Rights Center at the University of California, Berkeley, we welcome you to the Sexual Offences Act Implementation Workshop.


We gather here to critically assess our fight against sexual offences in Kenya – what our successes have been, and what challenges remain. Since the passage of the 2006 Sexual Offences Act, it has become clear that meaningful and coherent response to these crimes relies on coordinated, cross-sectoral efforts. This means finding a way for all of us – in healthcare, law enforcement, legal professions, forensics, the judiciary, and the broader community – to come together to address the problem. This also means connecting government and civil society, Nairobi and the provinces. We have a tremendous, but important, task ahead.

This Workshop offers the first opportunity for this critical, cross-sectoral dialogue. We have structured the meeting to be discussion-oriented, with several topical break-out sessions for focused discussion. We hope you will all contribute your thoughts, experiences, and expertise to ensure a rich collective understanding of how sexual crimes are affecting our communities and how they can be addressed.

Many thanks to the workshop steering committee for their efforts to make the workshop a success. We are also grateful to you, the participants, for your commitment to accountability and justice for survivors of sexual offences, and for your willingness to chart the way forward together.

Warmly,


Hon. Justice (Retd.) Effie Owuor
Chair of the Task Force on the Implementation of the Sexual Offences Act


Camille Crittenden
Executive Director
Human Rights Center, University of California, Berkeley

**SCHEDULE
QUICK GUIDE**

| DAY 1: WEDNESDAY, MAY 25TH | |
|----------------------------|---|
| <i>Time</i> | <i>Activity</i> |
| 08:00 - 10:00 | PLENARY 1: Welcome / Opening Remarks / Keynote |
| 10:00 - 10:30 | Tea Break & Group Photo |
| 10:30 - 12:30 | PLENARY 2: Status Updates from Government |
| 12:30 - 13:30 | PLENARY 3: Mapping the SOA and Placement in Context |
| 13:30 - 14:30 | Lunch |
| 14:30 - 16:00 | CONCURRENT SESSION 1: Current Sector Challenges |
| 16:00 - 17:00 | PLENARY 4: Report Back and Prioritizing Breakages |
| 17:00 - 17:30 | Closing Session Day 1 |

| DAY 2: THURSDAY, MAY 26TH | |
|---------------------------|--|
| <i>Time</i> | <i>Activity</i> |
| 08:00 - 08:30 | Re-Cap of Day 1 |
| 08:30 - 10:00 | PLENARY 5: A National Effort Under the New Constitution |
| 10:00 - 10:30 | Tea Break |
| 10:30 - 12:00 | CONCURRENT SESSION 2: Addressing Weak Linkages |
| 12:00 - 13:30 | PLENARY 6: Report Back on Weak Linkages & Discussion |
| 13:30 - 14:30 | Lunch |
| 14:30 - 16:00 | CONCURRENT SESSION 3: Improving Capacities |
| 16:00 - 17:00 | PLENARY 7: Report Back on Individual Capacity Challenges |
| 17:00 - 17:30 | Closing Session Day 2 |

**SCHEDULE
QUICK GUIDE**

| DAY 3: FRIDAY, MAY 27TH | |
|--------------------------------|---|
| <i>Time</i> | <i>Activity</i> |
| 08:00 - 08:30 | Re-Cap of Day 2 |
| 08:30 - 10:00 | PLENARY 8: SGBV and Emergency Situations |
| 10:00 - 10:30 | Tea Break |
| 10:30 - 11:15 | PLENARY 8 Continued |
| 11:15 - 13:00 | CONCURRENT SESSION 4: Response & Support |
| 13:00 - 14:00 | Lunch |
| 14:00 - 15:30 | CONCURRENT SESSION 5: Coordination & Next Steps |
| 15:30 - 16:00 | Tea Break |
| 16:00 - 17:00 | PLENARY 9: Report Back from Concurrent Session 5 |
| 17:00 - 17:30 | PLENARY 10: Action Items, Next Steps, Recommendations |
| 17:30 - 18:00 | Closing Remarks and Vote of Thanks |

| DAY 4: SATURDAY, MAY 28TH | |
|----------------------------------|--------------------------------|
| <i>Time</i> | <i>Activity</i> |
| 09:30 | Hotel Check Out / Bus Check In |
| 10:00 | Buses Depart for Nairobi |

DAY 1 SCHEDULE
WEDNESDAY, MAY 25TH

Theme: Where Kenya Stands
Day Chairs: Milly Odongo, TFSOA (G.o.K.), and George Kegoro, ICJ

07:00 to 08:00

Registration

08:00 to 10:00

PLENARY 1: WELCOME / OPENING REMARKS

Welcome

Jacinta Nyamosi, TFSOA (G.o.K.)
Carole Osero Ageng'o, OSI
Camille Crittenden, HRC

Opening Remarks and Keynote

Hon. Justice Philip Waki, Court of Appeals
Hon. Justice (Rtd.) Effie Owuor, TFSOA (G.o.K.)
Hon. Amos Wako, Attorney General of the Republic of Kenya

10:00 to 10:30

Tea Break and Group Photo

10:30 to 12:30

PLENARY 2: STATUS UPDATES FROM GOVERNMENT

Objective: To learn from government agencies what progress they have made to date in terms of SOA implementation, as well as next steps.

Moderators: Day Chairs

Presenters: C.F. Kimani, Office of the President
Alice Ondieki, DPP
Beatrice Nduta, Police (tent.)
Dr. John Kihama, Ministry of Medical Services
Dr. Shiphrah Kuria, Ministry of Public Health
John K. Mungai, Government Chemist
Emmah Nungari, Gender Commission
Naivasha Magistrate, Judiciary (TBA)

Question and Answer

12:30 to 13:30

PLENARY 3: MAPPING THE SOA AND PLACEMENT IN CONTEXT

Objective: To visualize the anatomy of a case according to SOA provisions, then to provide a sectoral overview of the SOA's implementation before breaking into sectoral groups.

Moderators: Day Chairs

SOA Mapping Exercise

Kim Thuy Seelinger, Human Rights Center
Jane Serwanga, FIDA-K

Discussants

Dr. Nduku Kilonzo, LVCT
Roselyn Korir-Lagat, TFSOA (G.o.K.)

Question and Answer

13:30 to 14:30

Lunch

14:30 to 16:00

CONCURRENT SESSION 1: CURRENT SECTOR CHALLENGES (ASSIGNED)

Objective: Each sector will gather to identify three priority challenges for Plenary report-back (10 min each sector). Afternoon tea served during this discussion.

Group 1:

Moderators:

Health Sector

Carol Ajema, LVCT
Andrew Buluma, GIZ/TFSOA

Group 2:

Moderators:

Investigations and Prosecution

Beatrice Nduta, Police (tent.)
Alice Ondieki, DPP

Group 3:

Moderator:

Judicial Sector

Tom K'Opere, Law Society of Kenya

Group 4:

Moderators:

Community Mechanisms

Mike Wachira, CREAM
Lydia Muthiani, COVAW

16:00 to 17:00

PLENARY 4: REPORT BACK AND PRIORITIZING BREAKAGES

Objective: To review sectors' most serious challenges and provide TFSOA an opportunity to respond, prioritize from these various obstacles. Open discussion to follow.

Moderators: Day Chairs

17:00 - 17:30

CLOSE OF DAY BY CHAIRS

DAY 2 SCHEDULE
THURSDAY, MAY 26TH

Theme: Addressing Linkages and Capacities
Chairs: Dr. Nduku Kilonzo, LVCT, and Dr. Jill Keesbury, Population Council

08:00 to 08:30

RE-CAP OF DAY 1

Moderators: Day Chairs

08:30 to 10:00

PLENARY 5: A NATIONAL EFFORT UNDER THE NEW CONSTITUTION

Objective: To review SOA implementation as a national effort according to the New Constitution.

Moderators: Day Chairs

The SOA and the New Constitution

Hon. Justice (Rtd.) Violet Mavisi

Key Aspects of the National Consultation Towards the National Policy Framework

Tom K'Opere, Law Society of Kenya

Discussion

10:00 to 10:30

Tea Break

10:30 to 12:00

CONCURRENT SESSION 2: ADDRESSING WEAK LINKAGES (ASSIGNED)

Objective: To have assigned, cross-sectoral discussion groups identify three key linkage challenges and explore best strategies / steps forward. Representatives will prepare for report back at Plenary.

Group 1: Linkages: Government & Civil Society
Moderator: Judy Gitau, ICJ
Presenter: Mike Wachira, CREAW

Group 2: Linking the Medico-Legal Systems
Moderator: Carol Ajema, LVCT
Presenter: Shonali Shome, AIDS Free World
Mary Njeri, COVAW

Group 3: Comparative Models of Integrated Services
Moderators: Dr. Nduku Kilonzo, LVCT
Presenters: Dr. William Green, UC Davis Medical Center
Dr. Jill Keesbury, Population Council

12:00 to 13:30

PLENARY 6: REPORT BACK ON WEAK LINKAGES AND DISCUSSION

Objective: To hear from smaller discussion groups what main three breakages exist for each area and what three responses were offered; discuss linkage building as a larger group.

Moderators: Day Chairs

13:30 to 14:30

Lunch

14:30 to 16:00

CONCURRENT SESSION 3: IMPROVING CAPACITIES

Objective: Open, moderated discussions aimed at identifying three key capacity shortfalls in each sector and beginning exploration of who and how to “fix” them. Prepare for report-back. Afternoon tea served during the session.

Group 1: Investigations and Prosecution
Moderators: John K. Mungai, Government Chemist
Alice Ondieki, DPP

Group 2: Implementing Medical Mgt. Guidelines
Moderator: Dr. Shiphrah Kuria, Ministry of Public Health and Sanitation

Group 3: Coordinating Capacity-Building Efforts
Moderators: Vicky Wambua, CREAM
Mary Njeri, COVAW

16:00 to 17:00

PLENARY 7: REPORT BACK ON INDIVIDUAL CAPACITY CHALLENGES

Objective: To hear from smaller groups what three main capacity challenges exist for each area and what responses were considered; discuss capacity building as a larger group.

Moderators: Day Chairs

17:00 to 17:30

CLOSE OF DAY BY CHAIRS

~20:00

SURPRISE SCREENING (OPTIONAL)

DAY 3 SCHEDULE
FRIDAY, MAY 27TH

Theme: Prevention, Response, and Next Steps
Chairs: Jane Serwanga, FIDA-K, and Mary Njeri, COVAW

08:00 to 08:30

RE-CAP OF DAY 2

Moderators: Dr. Nduku Kilonzo, LVCT, and Dr. Jill Keesbury, Population Council

08:30 to 10:00

PLENARY 8: SGBV AND EMERGENCY SITUATIONS

Objective: To open discussion on SGBV in times of national or regional crisis, such as PEV in 2007 – 2008. How does SGBV in these emergencies differ? How must response be adapted? How is SGBV treated under international law and Kenya's International Crimes Act, 2008?

Moderators: Day Chairs

Election-Related SGBV and PEV Retrospective
Hon. Justice Phillip Waki, Court of Appeals

SGBV in Crisis: What's Unique About It?
Carole Osero Ageng'o, OSI

SGBV as an International Crime / International Crimes Act
Judy Gitau, ICJ

Emergency Response: Roles of Government and CSOs
Maina Kiai, UN Human Rights Council; former chair, KNCHR

Discussion / Question and Answer

10:00 to 10:30

Tea Break

10:30 to 11:15

PLENARY 8 CONTINUED

Open Discussion - Adapting Reponse to SGBV in Emergency: What Changes?

11:15 to 13:00

CONCURRENT SESSION 4: RESPONSE AND SUPPORT

Objective: To focus on critical support issues, especially for vulnerable or invisible populations – how does the SOA protect these groups? What are the three key implementation blockages for each? What are the best strategies for overcoming them?

Group 1:
Moderator: Patricia Joseph, CRADLE
Presenters: Christine Nkonge, IJM
Joan Ngunzi, TSC

Group 2:
Moderator: Lydia Muthiani, COVAW
Presenter: Dr. Margaret Makanyengo,
Kenyatta National Hosp., GVRC

Group 3:
Moderator: Kim Thuy Seelinger, HRC
Presenters: George Oduor, UNHCR
Sam Kotonya, UNHCR
Keffa Magenyi, IDPAC Kenya

13:00 to 14:00

Lunch

14:00 to 15:30

CONCURRENT SESSION 5: COORDINATION AND NEXT STEPS

Objective: To explore and prioritize cross-sectoral advocacy strategies, to identify points of collaboration and coordination regarding the challenges and strategies discussed previously.

Group 1:

Non-Legal Approaches for Awareness and Response

Moderator: Mike Wachira, CREAW

Presenters: Emily Jacobi, Digital Democracy (remotely)
John Gicharu, UNFPA
John Kipchumba, SODNET

Group 2:

Coordinating Impact Strategies

Moderator: Jane Serwanga, FIDA-K

Group 3:

Witness Protection and Support

Moderator: Judy Gitau, ICJ

Presenters: Alice Ondieki, DPP
Felicia Coleman, SGBV Unit, Liberia Ministry of Justice
Deweh Gray, Liberia Law Reform Commission
Betsy Apple, AIDS Free World

15:30 to 16:00

Tea Break and Evaluations

16:00 to 17:00

PLENARY 9: REPORT BACK FROM CONCURRENT SESSION 5

Objective: To hear from smaller groups what three main capacity challenges exist for each area and what responses were considered; discuss capacity building as a larger group.

Moderators: Day Chairs

17:00 to 17:30

PLENARY 10: ACTION ITEMS, NEXT STEPS, AND RECOMMENDATIONS

Objective: Open discussion time for final thoughts from the floor.

Moderators: Day Chairs

17:30 to 18:00

CLOSING REMARKS AND VOTE OF THANKS

Closing Remarks

Hon. Justice (Rtd.) Effie Owuor, TFSOA (G.o.K.)

Vote of Thanks

Kim Thuy Seelinger, HRC

APPENDIX 2: WORKSHOP PARTICIPANT LIST

| PARTICIPANT | ORGANIZATION | EMAIL |
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| | | |
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| Joy Masheti | Caucus for Women's Leadership | jmasheti@kwpcaucus.org |

| | | |
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| Lawson Ondieki | International Commission of Jurists (ICJ)-Kenyan Section | ondieki.lawson@icj-kenya.org |
| Charles Ondieki | Office of the President | |


| | | |
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| Celestine Otunga | Ministry of Finance | |
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APPENDIX 3: TFSOA MEMBERSHIP LIST (current as of October, 2011)

Members of the Task Force on the Implementation of the Sexual Offences Act

| NO. | NAME | ORGANIZATION |
|-----|----------------------------------|---|
| 1. | Justice (Rtd.) Effie Owuor | Chairperson |
| 2. | Hon. Justice Njoki Ndungú | Supreme Court of Kenya |
| 3. | Mr. Tom K'Opere | LSK Representative |
| 4. | Commissioner Milly Odongo | National Cohesion and Integration Commission |
| 5. | Mr. Wilson Muiruri | Judiciary |
| 6. | Ms. Agnes Odawa | Ministry of Education |
| 7. | Mr. Charles F. Kimani | Ministry of State for Provincial Administration & Internal Security |
| 8. | Dr. Josephine Kibaru | Ministry of Health—Medical Services & Public Health and Sanitation |
| 9. | Joash Dache | Kenya Law Reform Commission |
| 10. | Judy Njoki Ndungú | Department of Children Services |
| 11. | Caroline Atieno | Probation Services |
| 12. | Mr. Titus Karani | Prisons Department |
| 13. | Deputy Pol. Comm. Beatrice Nduta | Police Department |
| 14. | Comm. Winfred Lichuma | Kenya National Commission on Human Rights |
| 15. | Dr. Regina Mwachia | National Commission on Gender & Development |
| 16. | Justice Roselyne Korir Langat | Judiciary |
| 17. | Mr. Paul Ndemo | Directorate of Public Prosecutions |
| 18. | Mr. Gad Awuonda | Gad, Keter & Okello Advocates |
| 19. | Mr. Tom Aziz Chavangi | ANPPCAN |
| 20. | Hon. Millie Odhiambo Mabona | CRADLE |
| 21. | Dr. Kigen Barmasai Bartilol | Kenya Medical Association |
| 22. | Ms. Judith Pareno | Advocate |
| 23. | Mr. John Mungai | Government Chemist |
| 24. | Mrs. Celestine Otunga | Treasury |
| 25. | Ms. Margaret Shava | Truth Justice and Reconciliation Commission |
| 26. | Dr. Sam Thenya | Nairobi Women's Hospital |
| 27. | Dr. Joachim Osur | IPAS |
| 28. | Ms. Jane Serwanga | FIDA Kenya |
| 29. | Mr. Samson Mainye | Joint Secretary TFSOA, State law Office |
| 30. | Ms. Jacinta Nyamosi | Joint Secretary TFSOA, Directorate of Public Prosecution |
| 31. | Representative from KEMRI | Kenya Medical Research Institute |

APPENDIX 4: MOH 363—MINISTRY OF HEALTH POST RAPE CARE FORM (“PRC FORM”)

| | | | | | | | | | | | | | | | | |
|---|-------|---|------------|--|--|--|---------------|---|------|--|--|---------------------|-------|------|---|-----|
| MOH 363 | | | | | | | | | | | | PRC | | |  | |
| Ministry of Health National Rape Management Guidelines: Examination documentation form for survivors of rape/sexual assault (to be used as clinical notes to guide filling in of the P3 form) | | | | | | | | | | | | Post Rape Care Form | | | | |
| Date | Day | Month | Year | Province Code | | | District Code | | | OP/IP No. | | | | | | |
| | | | | | | | Facility Name | | | PRC reg. No. | | | | | | |
| Last Name | | | First Name | | | Date of birth | Day | Month | Year | <input type="checkbox"/> Male <input type="checkbox"/> Female | | | | | | |
| Contacts (Residence and Phone number) _____ | | | | | | | | | | | | | | | | |
| Disabilities (Specify) _____ | | | | | | Marital Status (specify) _____ | | | | | | | | | | |
| Orphaned vulnerable child (OVC) _____ | | | | | | Citizenship _____ | | | | | | | | | | |
| Date and time of Examination | | | | | | Date and Time of Assault | | | | | | No. of perpetrators | | | | |
| Day | Month | Year | Hr | Min | <input type="checkbox"/> AM <input type="checkbox"/> PM | Day | Month | Year | Hr | Min | <input type="checkbox"/> AM <input type="checkbox"/> PM | | | | | |
| | | | | | | | | | | | | | | | | |
| Alleged perpetrators (Indicate relation to victim) | | | | | | <input type="checkbox"/> Male <input type="checkbox"/> Female | | Estimated Age _____ | | | | | | | | |
| <input type="checkbox"/> Unknown | | <input type="checkbox"/> Known | | Occupation of perpetrator _____ | | | | | | | | | | | | |
| Place Assault Occurred /Where incidence occurred _____ | | | | | | | | | | | | | | | | |
| Administrative location _____ | | | | | | | | | | | | | | | | |
| Chief complaints / Presenting Symptoms | | | | | | | | | | | | | | | | |
| Circumstances surrounding the incident (survivor account) remember to record penetration (how, where, what was used? Indication of struggle?) | | | | | | | | | | | | | | | | |
| _____ | | | | | | | | | | | | | | | | |
| _____ | | | | | | | | | | | | | | | | |
| _____ | | | | | | | | | | | | | | | | |
| Type of Assault <input type="checkbox"/> Oral <input type="checkbox"/> Vaginal <input type="checkbox"/> Anal <input type="checkbox"/> Other (specify) _____ | | Use of condom? <input type="checkbox"/> Yes <input type="checkbox"/> No | | Incident already reported to police? <input type="checkbox"/> No <input type="checkbox"/> Yes (indicate which police station) _____ | | | | Date and time of report | | Day | Month | Year | Hr | Min | <input type="checkbox"/> AM <input type="checkbox"/> PM | |
| | | Attended a health facility before this one? <input type="checkbox"/> No <input type="checkbox"/> Yes (Indicate name of facility) _____ | | | | Were you treated? <input type="checkbox"/> Yes <input type="checkbox"/> No | | Were you given referral notes? <input type="checkbox"/> Yes <input type="checkbox"/> No | | Date | | Day | Month | Year | Hr | Min |
| Comments | | | | | | | | | | | | | | | | |
| Significant medical and/or surgical history | | | | | | | | | | | | | | | | |

MOH 363

| | | | | | |
|---|---|--|---|---|---|
| OB /GYN History | Parity | Contraception type | LMP | Known Pregnancy? <input type="checkbox"/> Yes <input type="checkbox"/> No | Date of last consensual sexual intercourse |
| General Condition | BP | Pulse Rate | RR | Temp | Demeanor /Level of anxiety (calm, not calm) |
| Forensic | | | | | |
| Did the survivor change clothes? <input type="checkbox"/> Yes <input type="checkbox"/> No | | State of clothes (stains, torn, color, where were the worn clothes taken)? | | | |
| Were the clothes put in a non-plastic paper bag? <input type="checkbox"/> Yes <input type="checkbox"/> No | | Were the clothes given to the police? <input type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| Did the survivor have a bath? <input type="checkbox"/> Yes <input type="checkbox"/> No | | Did the survivor go to the toilet? <input type="checkbox"/> Long call? <input type="checkbox"/> Short call? | | | |
| Comments: | | | | | |
| Does the survivor have any details on the assailant? Is the assailant known, is there any relation? Did the survivor leave any marks on the assailant? <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | |
| Comments | | | | | |
| Genital Examination of the survivor-indicate discharges, inflammation, bleeding | | | | | |
| Describe in detail the physical status | | | | | |
| Physical injuries (sign in the body map) _____ | | | | | |
| Outer genitalia _____ | | | | | |
| Vagina _____ | | | | | |
| Hymen _____ | | | | | |
| Anus _____ | | | | | |
| Other significant orifices _____ | | | | | |
| Comments | | | | | |
| Immediate Management | PEP 1st dose <input type="checkbox"/> No <input type="checkbox"/> Yes (No of tablets) | ECP given <input type="checkbox"/> No <input type="checkbox"/> Yes | Stitching /surgical toilet done <input type="checkbox"/> No <input type="checkbox"/> Yes(Comment) | STI treatment given <input type="checkbox"/> No <input type="checkbox"/> Yes(Comment) | |

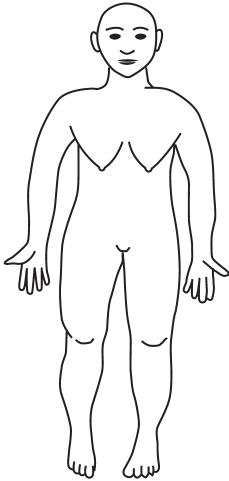
MOH 363

Physical examination [indicates sites and nature of injuries, bruises and marks outside the genitalia]

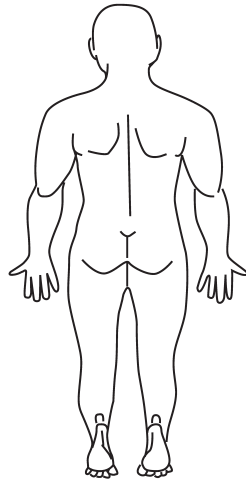
Please use the sketches below to indicate injuries, inflammations, marks on various body parts **of the survivor**

Sketch of person

Anterior view



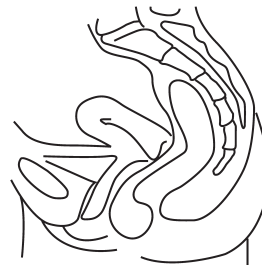
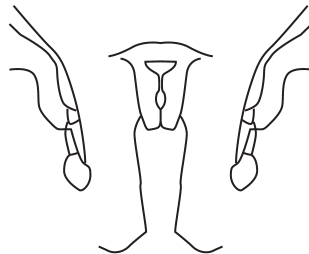
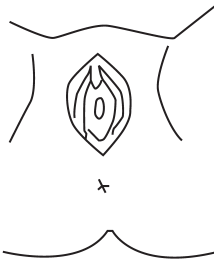
Posterior view



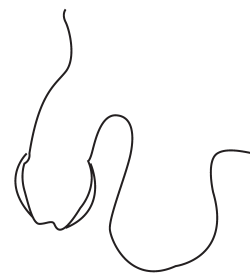
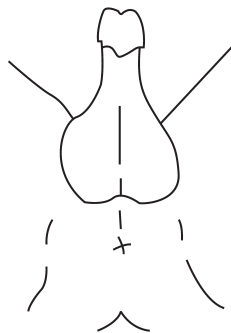
Comments



Female Genitalia



Male Genitalia



| | | | | | | | | |
|--|---|--|------------------------------|---------------------------------------|----------|-------|-------|------|
| Any other treatment / Medication given /management? | | | | | | | | |
| Referrals to | | | | | | | | |
| <input type="checkbox"/> Police Station | | <input type="checkbox"/> HIV Test | | <input type="checkbox"/> Laboratory | | | | |
| <input type="checkbox"/> Legal | | <input type="checkbox"/> Trauma Counseling | | <input type="checkbox"/> Safe Shelter | | | | |
| <input type="checkbox"/> OPD/CCC/HIV Clinic | | <input type="checkbox"/> Other (specify) | | | | | | |
| Name of Examining Medical/clinical/Nursing Officer | | | | | | | | |
| Signature of Examining Medical/clinical/Nursing Officer | | | | D a t e | Day | Month | Year | |
| | | | | | | | | |
| L A B O R A T O R Y S A M P L E E S | Sample Type | Test | Please tick as is applicable | | Comments | | | |
| | | | National government Lab | Health Facility Lab | | | | |
| | | Outer Genital swab | Wet Prep Microscopy | | | | | |
| | | Anal swab | DNA | | | | | |
| | | Skin swab | | | | | | |
| | | Oral swab | Culture and sensitivity | | | | | |
| | | Specify | | | | | | |
| | | High vaginal swab | Wet Prep Microscopy | | | | | |
| | | Urine | Pregnancy Test | | | | | |
| | | | Microscopy | | | | | |
| | | | Drugs and alcohol | | | | | |
| | | | Other | | | | | |
| | | Blood | Haemoglobin | | | | | |
| | | | HIV Test | | | | | |
| | | | SGPT/GOT | | | | | |
| | VDRL | | | | | | | |
| | DNA | | | | | | | |
| | Pubic Hair | DNA | | | | | | |
| | Nail clippings | DNA | | | | | | |
| | Foreign bodies | DNA | | | | | | |
| | Other (specify) | | | | | | | |
| Chain of custody | | | | | | | | |
| These /All / Some of the samples packed and issued (please specify) | | | | | | | | |
| To | Police Officer's Name | | | Signature | | Day | Month | Year |
| | | | | | | | | |
| By | Medical/clinical/Nursing Officer's Name | | | Signature | | Day | Month | Year |
| | | | | | | | | |

**APPENDIX 5: KENYA POLICE MEDICAL EXAMINATION REPORT
(P3 FORM)**



**THE KENYA POLICE
MEDICAL EXAMINATION REPORT**

P3

PART 1-(To be completed by the Police Officer Requesting Examination)

From.....Ref.....
Date.....
 To the.....Hospital/Dispensary
 I have to request the favour of your examination of:-
 Name.....Age.....(If known)
 Address.....Date and Time of the alleged offence.....

 Sent to you/Hospital on the.....20.....under escort of.....
and of your furnishing me with a report of the nature and
 extent of bodily injury sustained by him/her.
 Date and time report to police.....
 Brief details of the alleged offence.....

 Name of Officer Commanding Station Signature of the Officer Commanding Station

PART 11-MEDICAL DETAILS - (To be completed by Medical Officer or Practitioner carrying out examination)

*(Please type **four** copies from the original manuscript)*

SECTION 'A'-THIS SECTION MUST BE COMPLETED IN ALL EXAMINATIONS

- Medical Officer's Ref.NO.....
1. State of clothing including presence of tears, stains (wet or dry) blood, etc.

 2. General medical history (including details relevant to offence).....

 3. General physical examination (including general appearance, use of drugs or Alcohol and demeanour)

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**SECTION 'B'- TO BE COMPLETED IN ALL CASES OF ASSAULT,
INCLUDING SEXUAL ASSAULTS, AFTER THE
COMPLETION OF SECTION 'A'**

1. Details of site, situation, shape and depth of injuries sustained:-
 - a) Head and neck.....
.....
.....
 - b) Thorax and Abdomen.....
.....
.....
 - c) Upper limbs.....
.....
.....
 - d) Lower limbs
.....
.....
2. Approximate age of injuries (hours, days, weeks).....
.....
3. Probable type of weapon(s) causing injury.....
.....
4. Treatment, if any, received prior to examination.....
.....
5. What were the immediate clinical results of the injury sustained and the assessed degree, i.e. 'harm', or 'grievous harm'.*

DEFINITIONS:-

'Harm' Means any bodily hurt, disease or disorder whether permanent or temporary.

'Maim' means the destruction or permanent disabling of any external or organ, member or sense

'Grievous Harm' Means any harm which amounts to maim, or endangers life, or seriously or permanently injures health, or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent, or serious injury to external or organ.

.....
Name & Signature of Medical Officer/Practitioner

Date.....

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**SECTION "C"-TO BE COMPLETED IN ALLEGED SEXUAL OFFENCES
AFTER THE COMPLETION OF SECTIONS "A" AND "B"**

1. Nature of offence.....Estimated age of person examined.....
2. **FEMALE COMPLAINANT**
 - a) Describe in detail the physical state of and any injuries to genitalia with special reference to labia majora, labia minora, vagina, cervix and conclusion.....
 - b) Note presence of discharge, blood or venereal infection, from genitalia or on body externally.....
3. **MALE COMPLAINANT**
 - b) Describe in detail the physical state of and any injuries to genitalia.....
 - c) Describe in detail injuries to anus.....
 - d) Note presence of discharge around anus, or/ on thighs, etc.; whether recent or of long standing.....

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SECTION "D"

4. MALE ACCUSED OF ANY SEXUAL OFFENCE

a) Describe in detail the physical state of and any injuries to genitalia especially penis.....

.....
.....
.....

b) Describe in detail any injuries around anus and whether recent or of long standing.....

.....
.....
.....

5. Details of specimens or smears collected in examinations 2,3 or 4 of section "C" including pubic hairs and vaginal hairs.....

.....
.....

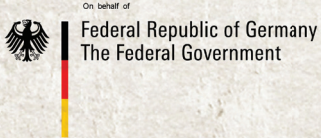
6. Any additional remarks by the doctor.....

.....
.....
.....

.....
Name & Signature of Medical Officer/Practitioner

Date.....

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