SEXUAL OFFENCES (MEDICAL TREATMENT) REGULATIONS 2012

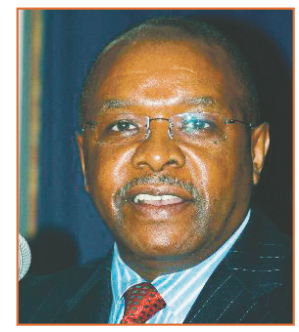
GOVERNMENT OF KENYA

giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Prof Githu Muigai, Attorney General

Hon. Beth Mugo EGH, MP, Minister for Public Health and Sanitation

Lady Justice (Rtd) Effie Owuor



Mr. Wanjuki Muchemi, Solicitor General

The Taskforce on the implementation of the Sexual Offences Act (TFSOA) was set up by the Attorney General in 2007 to support coordination in the implementation of the Sexual Offences Act (SOA). The TFSOA is headed by the Hon. Lady Justice (Retired) Effie Owuor assisted by two Joint Secretaries. It has a membership of 27 drawn from all critical sexual and gender based violence prevention and response actors both state and non-state (civil society organisations). These include health, police, prosecution, justice, judiciary, education social and welfare, finance, administration and legal aid.

To date, the TFSOA has achieved the following milestones:

a. National Policy and Guidelines Framework on implementation and administration of the SOA has been developed and submitted to the Attorney General
b. Development of mechanisms for rehabilitation, reintegration and supervision (including psychosocial support) of perpetrators in sexual offences.
c. Development of standard operating procedures for the various actors to support coordination and referral in sexual violence response and prevention.
d. Audit and review of the various legal instruments, provider practices and community norms with a view to recommend changes to align with the SOA. The audit report was instrumental in the recent repeal of Section 38 of the SOA.
e. Public education has been conducted in nine sites across the country: Coast, Eastern, Central, Nyanza, Western and Rift Valley. Additionally, jointly with the GIZ Good Governance Project, the TFSOA supported the Sexual and Gender Based Violence (SGBV) multistakeholder trainings for actors in Naivasha, Nakuru, Eldoret, Kisumu and Vihiga. The TFSOA has also been called upon to educate the public on the SOA via media and Judiciary open forums
f. All regulations required for implementation of the Act have been developed, gazetted and published: in March 2009, the TFSOA published the gazette notice No.132 – the Sexual Offences Regulations, 2008 and in November 2012, the TFSOA gazetted the Sexual Offences Medical Regulations and the Post Rape Care Form vide Gazette Notice No. 133 of 16. November 2012.

The Sexual Offences (Medical Treatment) Regulations, 2012 are made pursuant to Section 35 (3) and (5) of the Sexual Offences Act as required of the Minister responsible for health. These regulations are particularly significant as they provide the legal basis for access to free medical treatment for victims of sexual violence in public health facilities and authorize the filling in and production of medico-legal documents (P3 Form and Post Rape Care Form) by nurses and clinicians in addition to doctors. This will address the persistent delay in filling in of P3 Forms and production of medical evidence in court. Further, the regulations outline the procedure for handling of forensic evidence among the police, medical personnel and Government Chemist to safeguard the integrity of the evidence. It is noteworthy that most cases of sexual violence are lost due to mishandling of evidence between the police and health facilities.

The Constitution, 2010, expressly provides for the right to health and specifically that no person shall be denied emergency medical treatment. Viewed from this perspective, these Regulations aim to safeguard the rights of victims of sexual offences in line with the Constitutional guarantees.

LEGAL NOTICE NO. 133 of 16 November 2012

THE SEXUAL OFFENCES ACT, 2006 *(No. 3 of 2006)*

IN EXERCISE of the powers conferred by section 35(3) of the Sexual Offences Act, 2006, the Minister for Public Health, makes the following Regulations-

THE SEXUAL OFFENCES (MEDICAL TREATMENT) REGULATIONS, 2012

Citation.

Interpretation.

Cap. 257 Cap. 260

Cap. 253

1. These Regulations may be cited as the Sexual Offences (Medical Treatment) Regulations, 2012.

2. In these Regulations, unless the context otherwise requires-

"designated person" includes-

(a) a nurse registered under section 12(1) or enrolled under section 14 (1) of the Nurses Act; and

(b) a clinical officer registered -under section 7 of the Clinical Officers (Training, Registration and Licensing) Act;

"medical practitioner" means a medical practitioner registered in accordance with section 6 of the Medical Practitioners and Dentist Act;

"medical treatment" includes counseling;

"public hospital" means a Government health facility at all levels of health care, or such other health facility as may be designated, by notice in the Gazette, as a public hospital for the purpose of this Act.

Right to medical treatment.

(1) A victim, suspect, a person convicted or witness of a sexual offence has the right to medical treatment in a public hospital, private hospital or any other medical facility.

(2) The expenses incurred by a victim, a person who is suspected to have committed a sexual offence, a person convicted or witness of a sexual offence for medical treatment in a public hospital shall be borne by the Government.

Notification.

(3) A victim of a sexual offence shall be entitled to receive medical treatment at any medical facility, whether they have or have not reported the matter to the police.

(4) The Minister may, at any time, enter into agreements with private hospitals or any other health facility to be designated as public hospitals for purposes of the Act.

4. A police officer who is on duty shall, upon receiving a report that a sexual offence has been committed against anyone, notify a medical practitioner or designated person at any health facility and refer the victim of the sexual offence to the medical practitioner or designated person at any health facility.

Specimen collection.

5.

(1) A court may order the collection of the appropriate samples from any person who has been charged

CONTINUED NEXT PAGE

PART A

MOH 363

PRC FORM IS NOT FOR SALE

PRC Post Rape Care Form

Ministry of Health National Post Rape Management Guidelines: Examination documentation form for survivors of rape/sexual assault (to be used as clinical notes alongside with P3 form for legal purposes.)

Date: Day / Month / Year	County Code	District Code / Facility Name	OP/IP No. / PRC reg. No
Last Name	First Name	Date of birth: Day / Month / Year	☐ Male ☐ Female

Contacts (Residence and Phone number) _____

Disabilities (Specify) _____ Marital Status (specify) _____

Orphaned vulnerable child (OVC) _____ Citizenship _____

Date and time of Examination: Day / Month / Year / Hr / Min / ☐AM ☐PM	Date and Time of Assault: Day / Month / Year / Hr / Min / ☐AM ☐PM	No. of perpetrators

Alleged perpetrators ☐ Male ☐ Female Estimated Age _____

☐ Unknown ☐ Known (is there relationship) 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: ☐ Oral ☐ Vaginal ☐ Anal ☐ Other (specify) _____

Use of condom? ☐ Yes ☐ No

Incident already reported to police? ☐ No ☐ Yes (indicate which police station) _____

Date and time of report: Day / Month / Year / Hr / Min / ☐AM ☐PM

Attended a health facility before this one? ☐ No ☐ Yes (Indicate name of facility) _____

Date: Day / Month / Year / Hr / Min / ☐AM ☐PM

Were you treated? ☐ Yes ☐ No

Were you given referral notes? ☐ Yes ☐ No

Comments

Significant medical and/or surgical history

MOH 363

OB /GYN History	Parity	Contraception type	LMP	Known Pregnancy? ☐ Yes ☐ 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? ☐ Yes ☐ No	State of clothes (stains, torn, color, where were the worn clothes taken)?

Were the clothes put in a non-plastic paper bag? ☐ Yes ☐ No	Were the clothes given to the police? ☐ Yes ☐ No
Did the survivor have a bath? ☐ Yes ☐ No	Did the survivor go to the toilet? ☐ Long call? ☐ 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? ☐ Yes ☐ No If Yes specify.....

PSYCHOLOGICAL ASSESSMENT	Mental state (normal, confused, flashback, hyper-aroused, dazed, coma, retarded, extremely calm, etc) **(Complete psychological assessment section in PART B)**

Genital Examination of the survivor -indicate discharges, inflammation, bleeding

Describe in detail the physical status

Physical injuries the (sign in body map) _____

Outer genitalia _____

Vagina _____

Hymen _____

Anus _____

Other significant orifices _____

Comments

Immediate Management	PEP 1st dose	ECP given	Stitching /surgical toilet done	STI treatment given
	☐ No ☐ Yes (No of tablets)	☐ No ☐ Yes	☐ No ☐ Yes(Comment)	☐ No ☐ Yes(Comment)

MOH 363
Physical Examination [Indicates sites and nature of injuries ,bruises and marks outside the genitalia]
NB: Sketches to indicate injuries,inflammations,marks on genitalia of survivor available on original PRC form

MOH 363

Any other treatment / Medication given /management?

Referrals to

☐ Police Station ☐ HIV Test ☐ Laboratory
☐ Legal ☐ Trauma Counseling ☐ Safe Shelter
☐ OPD/CCC/HIV Clinic ☐ Other (specify)

Name of Examining Medical/clinical/Nursing Officer

Signature of Examining Medical/clinical/Nursing Officer — Date: Day | Month | Year

LABORATORY SAMPLES	Sample Type	Test	Please tick as is applicable: National government Lab	Please tick as is applicable: Health Facility Lab	Comments
	Outer Genital swab Anal swab Skin swab Oral swab Specify	Wet Prep Microscopy			
		DNA			
		Culture and sensitivity			
	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 which and to where)

To	Police Officer's Name	Signature	Day / Month / Year	
By	Medical/clinical/Nursing Officer's Name	Signature	Day / Month / Year	

FROM PREVIOUS PAGE

with a sexual offence, under the Act, at such place and subject to such conditions that the court may specify.

Medical examination.

(2) Upon receiving an order made under paragraph (1), a police officer of any rank above the rank of police constable shall request any medical practitioner or designated person to take the appropriate samples from the person charged with a sexual offence.

(3) The medical practioner or designated person shall determine the samples to take, the parts of the body from which the samples shall be taken from and the quantity that is reasonably necessary in accordance with the national guidelines for the management of sexual violence.

6. (1) Upon receiving the notification given under regulation 4, the medical practitioner or designated person shall-

(a) conduct a full medical-forensic examination on the victim and prescribe the appropriate medical treatment; and

(b) Provide appropriate professional counseling to the victims of the sexual offence;

(c) complete the prescribed Post Rape Care form and psychological assessment form as set out in the schedule and any other relevant records;

(d) collect and preserve the necessary medical forensic samples in accordance with the national guidelines on management of sexual violence;

(e) inform and forward to the investigating officer or his or her representative, the samples collected, while maintaining a record of the chain of custody by appending his or her signature for the samples; and

(f) initiate appropriate referral to the relevant areas for subsequent areas for the necessary subsequent care.

(2) A medical practitioner or designated person shall also provide the medical treatment prescribed in paragraph (1) (a), (b), (d), (e) and (f) to a person who is suspected to have committed a sexual offence.

(3) The medical practitioner or designated person may, where they deem appropriate, conduct other examinations and treatment on the victim of sexual offence(s), witnesses or a person who is suspected to have committed a sexual offence.

Part B PSYCHOLOGICAL SECTION

Mental Assessment Examination

Psychological assessment should be done by trained health care providers (Doctors, Nurses, Clinical Officers, Psychological Counselors, Social Workers, Psychiatrists who may be counselors recognized by accredited counseling associations or by the Ministry of Health as rape trauma counselors.

- **Past Medical history ----------**
- **General appearance:** Note appearance, gait, dress, grooming (neat or unkempt), posture, appear older or younger than stated age? ----------
- **Motor behavior:** Level of activity: psychomotor agitation or psychomotor retardation, emotional appearance –anxious, tense, panicky, bewildered, sad, unhappy; voice-faint, loud, hoarse; eye contact.(Does the survivor maintain eye contact or not)----------
- **Attitude during interview:** How survivor relates to examiner-irritable, aggressive, seductive, guarded, defensive, indifferent, apathetic, cooperative, sarcastic.----------
- **Mood:** (Steady or sustained emotional state)-gloomy, tense, hopeless, ecstatic, resentful, happy, bashful, sad, exultant, elated, euphoric, depressed, apathetic, anhedonic, fearful, suicidal, grandiose, nihilistic)----------
- **Affect:(** Feeling tone associated with idea)-labile, blunt, appropriate to content, inappropriate, flat.)----------
- **Speech:** (Slow, fast, pressured, garrulous, spontaneous, taciturn, stammering, stuttering, slurring, staccato. Pitch, articulation, aphasia, coprolalia, echolalia, incoherent, logorrhea, mute, paucity, stilted.)----------
- **Perceptual disorders:** (Hallucination),-olfactory, auditory, hap tic (tactile), gustatory, visual; (illusions); hypnopompic or hypnogogic experiences; feeling of unreality, déjà vu, dejaentendu, .)----------
- **Thought content:** Delusions-/persecutory (paranoid), grandiose, infidelity, sensory, thought broadcasting, thought insertion, ideas of reference, ideas of unreality, phobias, obsessions, compulsions, ambivalence, autism, dereism, blocking suicidal or homicidal preoccupation, conflicts, nihilistic ideas, hypochondria sis, depersonalization, Derealization, flight of ideas, idée fixe, magical thinking, neologisms.)----------
- **Thought process:** (Goal-directed ideas), loosened associations, illogical, tangential, relevant, circumstantial, rambling, ability to abstract, flight of ideas, perseveration.)----------
- **Sensorium: (**Level of consciousness-alert, clear, confused, clouded, comatose, stupor-us; orientation to time, place person, cognition.)----------
- **Memory:** (Remote memory (long-term memory); past several days, months, years.)----------
- **Recent memory** (short term): recall or events in past day or two). ----------
- **Immediate memory** (very short-term memory): Lying down of immediate information with ability to quickly recall data.)----------
- **Concentration and calculation:** ability to pay attention; distractibility; ability to do simple math). ----------
- **Information and intelligence:** (Use of vocabulary; level of education; fund of knowledge.------
- **Judgment:** (Ability to understand relations between facts and to draw conclusions; responses in social situations.)----------
- **Insight level:** (Realizing that there are physical or mental problems; denial of illness, ascribing blame to outside factors; recognizing need for treatment).....----------

NB inquire if possible about if there has been any abuse or if this is first episode
FOR A CHILD
Evaluate behavior, mood and speech as above but use the following to evaluate thought:-

- Drawing – allow child to comment on the drawing and report verbatim.
- Play – by use of toys ; allow child to comment on the drawing and report verbatim
- Assess the unconscious world of the child by:----------
  - Asking about feelings e.g. ask the child to report the feeling that he/she commonly experiences and ask what makes him/her feel that way
  - Wishes
- Take full History including Past medical history and full physical examination as indicated

Conclusion

Dated the 17th October 2012

BETH MUGO
Minister for Public Health and Sanitation