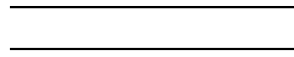


NO. 3 OF 2006

SEXUAL OFFENCES ACT

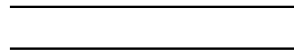
SUBSIDIARY LEGISLATION



List of Subsidiary Legislation

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SEXUAL OFFENCES REGULATIONS, 2008

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Interpretation.
3. Enhancement of sentence.
4. Prohibited publications.
5. . . .
6. Designated persons and medical practitioners.
7. Register of offenders.
8. Dangerous offenders.
9. Victim impact statements.

SCHEDULE

—

FORM 1: REGISTER OF CONVICTED SEXUAL OFFENDERS

SEXUAL OFFENCES REGULATIONS, 2008

[L.N. 132/2008.]

1. Citation

These Regulations may be cited as the Sexual Offences Regulations, 2008.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**Act**” means the Sexual Offences Act, 2006; and

“**Prohibited Publications Review Board**” means the Board by that name established under section 53(3) of the Penal Code.

3. Enhancement of sentence

(1) For purposes of sentences imposed by sections 3(3), 4, 5(2), 10 or any other under the Act which may require alteration, revision or enhancement, the High Court may exercise the powers and procedures provided for under sections 362, 363, 364, 365, 366, and 367 of the Criminal Procedure Code (Cap. 75).

(2) In exercise of the power to alter, revise or enhance sentences under the Act, regard shall be had to—

- (a) whether the sentence imposed is unlawful or contrary to that provided for by the Act;
- (b) the number of times the perpetrator of the offence has committed the offence;
- (c) the age of the victim(s) of the sexual offence;
- (d) the age of the perpetrator(s) of the sexual offence;
- (e) the victim impact statements adduced in accordance with section 33(b) of the Act;
- (f) whether force was involved;
- (g) prior criminal history;
- (h) the relationship existing at the time of the offence between the victim and the accused; and
- (i) any other factor which may be relevant in the opinion of the Court.

Provided that proceedings under this regulation shall be subject to section 382 of the Criminal Procedure Code (Cap. 75).

4. Prohibited publications

(1) The articles referred to in section 16 of the Act include those articles prohibited by an order published in the *Gazette* under section 52(1) and (2) of the Penal Code (Cap. 63).

(2) The Minister shall, in consultation with the Prohibited Publications Review Board, ensure the better implementation of section 16 of the Act.

(3) The Minister may, in consultation with the Prohibited Publications Review Board, and by an order in the *Gazette*, prohibit other publications for purposes of section 16 of the Act.

5. Designated persons and medical practitioners

(1) For purposes of section 26(5) of the Act—

- (a) “**designated person**” includes—
 - (i) a nurse registered under section 12(1) of the Nurses Act (Cap. 257); or
 - (ii) a clinical officer registered under section 7 of the Clinical Officers (Training, Registration and Licensing) Act (Cap. 260); and
- (b) “**medical practitioner**” means a medical practitioner registered in accordance with section 6 of the Medical Practitioners and Dentists Act.

6. Register of offenders

(1) The Registrar of the High Court shall maintain a register to be known as the Register of Convicted Sexual Offenders (hereinafter referred to as “the Register”) in accordance with section 39(13) of the Act, in which shall be entered the following information regarding a sexual offender—

- (a) the name(s) of the sexual offender and alias(es);
- (b) date of birth;
- (c) place of birth;
- (d) nationality;
- (e) physical description, in particular, sex, race, height, weight, eye colour, hair colour, scars, tattoos or other marks or characteristics;
- (f) passport photograph and a set of fingerprints;
- (g) physical address at the time of the offence and any other domiciles;
- (h) the offence with which charged;
- (i) the sentence entered by the trial court;
- (j) the date(s) of conviction and any sentence(s) imposed;
- (k) the sentence entered on reversal or enhancement;
- (l) the age of victim(s) in the sexual offence in question;
- (m) previous convictions entered against the convict under the Act or related penal laws;
- (n) the relationship between the convict and the victim, if any, including information as to whether there was a position of trust;
- (o) brief particulars of the offence as well as the circumstances under which the offences was committed;
- (p) whether the sexual offender has been declared dangerous by a court of law;
or
- (q) any other information, which, in the Registrar’s opinion, requires to be kept.

(2) The Register, which may also be kept in electronic form, shall be kept in the form set out in the Schedule.

(3) The registration period of a sex offender shall lapse upon the sex offender’s death.

(4) A sex offender shall notify the Registrar if he—

- (a) ceases to live or reside at the registered address or moves to a different address;

Sexual Offences Act

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- (b) leaves a job or obtains a new job, or leaves a school or enrolls in a new school;
- (c) leaves the jurisdiction of the High Court.

(5) Notice of the changes described in paragraph (4) above shall be in writing and shall be provided prior to the change, if feasible, and in any event within twenty-one days of the occurrence of the change.

(6) Notices of change in address or place of work or school attendance shall include the new address, location and phone information.

(7) In the exercise of the powers provided for under section 39(13) of the Act, regard shall be had to the need to protect the names and identity of the complainant, victims and other witnesses, especially where such persons have been declared vulnerable by a court of law during criminal proceedings.

(8) The Registrar may, in writing, indicate to any person who demonstrates to the Registrar that he has a reasonable interest whether a person's name has been entered in the Register.

(9) Notwithstanding any other provision in these Regulations, the Registrar shall at all times ensure access to the Register by the following person(s)—

- (a) judicial officers;
- (b) advocates of the High Court involved in criminal proceedings to which information kept in the Register has a bearing;
- (c) probation officers;
- (d) children officers;
- (e) state counsels and prosecutors;
- (f) police investigators;
- (g) the prisons department;
- (h) other relevant agencies which, in the opinion of the Registrar, may require such information.

(10) The Registrar shall not allow access to the Register where he has reason to believe that the information is intended to be used in a prejudicial manner.

(11) Any person who uses or allows to be used in a prejudicial manner information kept in the Register commits an offence and shall be liable, on conviction, to a fine not exceeding six thousand shillings or imprisonment for a term not exceeding six months, or both.

7. Dangerous offenders

(1) A prosecutor or an interested party in criminal proceedings may apply to a court of law, within a reasonable time after conviction but before a sentence is entered, to declare a person convicted of a sexual offence, a dangerous offender:

Provided that a trial court may on its own motion declare a convicted sexual offender dangerous.

(2) An application under paragraph (1) shall be made in open court and the convicted person shall be given an opportunity to state his case either in person or through an advocate of his choice.

(3) A court may order that either of the following institutions supervise a dangerous offender—

- (a) the prisons department;
- (b) the probations department;

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[Subsidiary]

- (c) the children’s department;
- (d) the police department; or
- (e) the criminal investigations department:

Provided that nothing in this regulation may be interpreted to take away the discretion of the court to decide the institution under which to place a person declared a dangerous offender for supervision.

8. Victim impact statements

For purposes of section 33 of the Act—

- (a) the provisions of sections 329A, 329B, 329C, 329D, and 329E of the Criminal Procedure Code (Cap. 75) shall apply *mutatis mutandis*; and
- (b) any rules made by the Chief Justice under section 329F of the Criminal Procedure Code (Cap. 75) shall apply.

SCHEDULE
[Regulation 7(2).]

Form 1

REGISTER OF CONVICTED SEXUAL OFFENDERS

Affix passport photo here

Full name(s) of the sexual offender

Alias(es) of the sexual offender (if any)

Date of birth Place of birth

Physical address Telephone No.

Sex Race Height Weight

Other physical characteristics

.....

.....

Offence(s) with which charged

Sentence entered by the trial court

Whether the offender has been declared dangerous

Date(s) of conviction

Sentence entered on reversal or enhancement

Date(s) of reversal or enhancement

Age of the victim(s) in the sexual offence

Previous convictions

Dates of previous convictions

Relationship between the convict and the victim

Brief particulars of the offence

Any other information

Fingerprint

**SEXUAL OFFENCES (DANGEROUS OFFENDERS
DNA DATA BANK) REGULATIONS, 2008**

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Establishment of the DNA data bank.
 4. Contents of crime scene index.
 5. Contents of dangerous offenders' index.
 6. Additional contents.
 7. Procedure on receipt of DNA profile.
 8. DNA profile from foreign States, etc.
 9. Communication of DNA profile by Director.
 10. Application of regulations 8 and 9.
 11. Prohibited use of DNA profile.
 12. Prohibited communication of DNA profile.
 13. Access to information.
 14. Unauthorised use of information.
 15. Removal of information from crime scene index.
 16. Removal of information from dangerous offenders' index.
 17. Storage of samples, etc.
 - 18.
-

**SEXUAL OFFENCES (DANGEROUS OFFENDERS
DNA DATA BANK) REGULATIONS, 2008**

[L.N. 133/2008.]

1. Citation

These Regulations may be cited as the Sexual Offences (Dangerous Offenders DNA Data Bank) Regulations, 2008.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“**dangerous offender**” means a person declared as such under section 39 of the Act;

“**Director**” means the Director of the Criminal Investigations Department;

“**DNA data bank**” means the Dangerous Offenders DNA Data Bank established under regulation 3.

3. Establishment of the DNA data bank

The Director shall, for purposes of criminal identification, establish and maintain a data bank to be known as the Dangerous Offenders DNA Data Bank, which shall consist of a crime scene index and dangerous offenders' index.

4. Contents of crime scene index

The crime scene index shall contain DNA profiles derived from bodily substances that are found—

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

5. Contents of dangerous offenders' index

The dangerous offenders' index shall contain—

- (a) DNA profiles derived from bodily substances as provided for under section 122A(2) of the Penal Code; and
- (b) profiles derived from lubricants, any kind of hair or skin.

6. Additional contents

In addition to the DNA profiles referred to in regulations 4 and 5 above, the DNA data bank shall contain, in relation to each of the profiles, information from which can be established—

- (a) in the case of a profile in the crime scene index, the case number of the investigation associated with the bodily substances from which the profile was derived; and
- (b) in the case of a profile in the dangerous offenders index, the identity of the person from whose bodily substance the profile was derived.

7. Procedure on receipt of DNA profile

On receipt of a DNA profile, the Director shall compare it with the DNA profiles in the data bank in order to determine whether it is already contained in the data bank, and may then communicate, for the purposes of the investigation or prosecution of a criminal offence, the following information to any other law enforcement agency considered appropriate—

- (a) whether the DNA profile is already contained in the data bank; and
- (b) any information, other than the DNA profile itself, that is contained in the data bank in relation to that DNA profile.

8. DNA profiles from foreign States, etc.

On receipt of DNA profile from the government of a foreign State, an international organisation established by the governments of States or an institution of any such government or international organization, the Director may compare the DNA profile with those in the DNA data bank in order to determine whether it is already contained in the bank and may then communicate information referred to in regulation 7 to that government, international organization or institution.

9. Communication of DNA profile by Director

The Director may communicate a DNA profile contained in the crime scene index to the government of a foreign State, an international organization established by the governments of States or an institution of any such government or international organisation.

10. Application of regulations 8 and 9

Regulations 8 and 9 shall apply only if the government of Kenya or one of its institutions has entered into an agreement or arrangement, in accordance with an Act of Parliament, with that government, international organization or institution, as the case may be, authorising the communication solely for the purposes of the investigation or prosecution of a criminal offence.

11. Prohibited use of DNA profile

No person who receives a DNA profile for entry in the DNA data bank shall use it or allow it to be used other than for the purposes of the administration of the Act.

12. Prohibited communication of DNA profile

No person shall, except in accordance with these Regulations, communicate or allow to be communicated a DNA profile that is contained in the DNA data bank or any other related information.

13. Access to information

Access to information contained in the DNA data bank may be granted to any person or class of persons that the Director considers appropriate for the purposes of the proper operation and maintenance of the DNA data bank.

14. Unauthorised use of information

No person to whom information is communicated under regulation 13 or who has access to information under any provision of these Regulations shall use that information other than for the purposes referred to in that regulation or provision thereof.

[Subsidiary]

15. Removal of information from crime scene index

(1) Information in the crime scene index shall be permanently removed, if the information relates to a DNA profile derived from a bodily substance of—

- (a) a victim of a sexual offence that was the object of the relevant investigation; or
- (b) a person who has been eliminated as a suspect in the relevant investigation.

(2) Subject to any other provision of these Regulations, information in the dangerous offenders' index shall be kept indefinitely.

16. Removal of information from dangerous offenders' index

(1) The following information in the dangerous offenders' index shall be permanently removed without delay after—

- (a) the conviction of a suspect is squashed and a final acquittal entered;
- (b) in the case of information in relation to a person who has been discharged—
 - (i) the expiry of three years after the person is discharged absolutely, unless the person is convicted of another sexual offence during that period; or
 - (ii) the expiry of five years after the person is discharged conditionally, unless the person is convicted of another offence during that period.

(2) Information in the dangerous offenders' index in relation to a child shall be permanently removed without delay.

17. Storage of samples, etc.

(1) When bodily substances are transmitted to the Director under regulation 7 or 8, the Director shall store, safely and securely for the purpose of forensic DNA analysis, the portions of the samples of the bodily substances that he considers appropriate, and shall destroy the remaining portions without delay.

(2) Forensic DNA analysis of stored bodily substances may be performed if the Director is of the opinion that the analysis is justified because significant technological advances have been made since the time when a DNA profile of the person who provided the bodily substances, or from whom they were taken, was last derived.

(3) Any DNA profile that is derived from stored bodily substances shall be transmitted to the Director for entry in the dangerous offenders index and no person shall use such a DNA profile except to transmit it under this subsection.

(4) Access to stored bodily substances may be granted to any person or class of persons that the Director considers appropriate for the purpose of preserving the bodily substances.

(5) No person shall transmit stored bodily substances to any person or use stored bodily substances except for the purpose of forensic DNA analysis.

(6) The Director may at any time destroy any or all of the stored bodily substances if he considers that they are no longer required for the purpose of forensic DNA analysis.

(7) The Director shall nevertheless destroy the stored bodily substances of a person without delay—

- (a) after the conviction is quashed and a final acquittal entered; and

- (b) if the person has been discharged—
 - (i) after the expiry of three years after the person is discharged absolutely, unless the person is convicted during that period of another offence; or
 - (ii) after the expiry of five years after the person is discharged conditionally, unless the person is convicted during those three years of another offence.

(8) Despite anything contained in this regulation, stored bodily substances of a person in respect of whom a pardon is in effect shall be kept separate and apart from other stored bodily substances, and no such bodily substance shall be used for forensic DNA analysis, nor shall the existence of such a bodily substance be communicated to any person.

(9) The Director shall, without delay, destroy stored bodily substances of a child.

18. Every person who contravenes any provision of these Regulations commits an offence and shall be liable, on conviction, to a fine not exceeding six thousand shillings or imprisonment for a term not exceeding six months, or both.

SEXUAL OFFENCES (MEDICAL TREATMENT) REGULATIONS, 2012

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Right to medical treatment
 4. Notification.
 5. Medical examination.
 6. Receipt of Notification
-

[Subsidiary]

SEXUAL OFFENCES (MEDICAL TREATMENT) REGULATIONS, 2012

[L.N. 133/2012.]

1. Citation

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

2. Interpretation

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 (Cap. 257); and
- (b) a clinical officer registered under section 7 of the Clinical Officers (Training, Registration and Licensing) Act (Cap. 260);

“**medical practitioner**” means a medical practitioner registered in accordance with section 6 of the Medical Practitioners and Dentist Act (Cap. 253);

“**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.

3. 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.

(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. Notification

A police officer who is on duty shall, who receives 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.

5. Medical examination

(1) A court may order the collection of the appropriate samples from any person who has been charged with a sexual offence, under the Act, at such place and subject to such conditions that the court may specify.

(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 practitioner 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. Receipt of Notification

(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.

Sexual Offences Act

[Subsidiary]

SCHEDULE
POST RAPE CARE FORM (PRC)

MOH 363		PRC FORM IS NOT FOR SALE		PRC	
Ministry of Health National Post Rape Management Guidelines:				Post Rape Care Form (Logo)	
Examination documentation form for survivors of rape/sexual assault (to be used as clinical notes alongside with P3 form for legal purposes.)				PART A	
Date		County Code		District Code	
Day	Month	Year		Facility Name	OP/IP No.
					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		
Day	Month	Year	Hr	Min	No. of perpetrators
Alleged perpetrators		<input type="checkbox"/> Male		Estimated Age	
<input type="checkbox"/> Unknown		<input type="checkbox"/> Female		Occupation of perpetrator	
<input type="checkbox"/> Known (is there relationship)					
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?)					
.....					
.....					
.....					

Sexual Offences Act

[Subsidiary]

SCHEDULE, (PRC) FORM—continued

Type of Assault		Use of condom?	Incident already reported to police?								
<input type="checkbox"/> Oral		<input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> Yes (indicate which police station)								
<input type="checkbox"/> Vaginal		<input type="checkbox"/> No	Date and time of report		Day	Month	Year	Hr	Min	<input type="checkbox"/> AM	
<input type="checkbox"/> Anal		Attended a health facility before this one?						Were you treated?		Were you given referral notes?	
<input type="checkbox"/> Other (specify)		<input type="checkbox"/> No <input type="checkbox"/> Yes (Indicate name of facility)						<input type="checkbox"/> Yes		<input type="checkbox"/> Yes	
		Date						<input type="checkbox"/> No		<input type="checkbox"/> No	
		Date	Day	Month	Year	Hr	Min	<input type="checkbox"/> AM			
								<input type="checkbox"/> PM			
Comments											
Significant medical and/or surgical history											
OB/GYN History	Parity	Contraception type	LMP	Known Pregnancy?		Date of last consensual sexual intercourse					
				<input type="checkbox"/> Yes <input type="checkbox"/> No							
General Condition	BP	Pulse Rate	RR	Temp	Demeanor/Level of anxiety (calm, not calm)						
Forensic											
Did the survivor change clothes?			State of clothes (stains, torn, color, where were the worn clothes taken)?								
<input type="checkbox"/> Yes											
<input type="checkbox"/> No											
Were the clothes put in a non-plastic paper bag?				Were the clothes given to the police?							
<input type="checkbox"/> Yes <input type="checkbox"/> No				<input type="checkbox"/> Yes <input type="checkbox"/> No							

Sexual Offences Act

[Subsidiary]

SCHEDULE, (PRC) FORM—continued

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 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 (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)

Sexual Offences Act

[Subsidiary]

SCHEDULE—continued
MOH 363

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			Date		
			Day	Month	
			Year		
LABORATORY	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					

Sexual Offences Act

[Subsidiary]

SCHEDULE, MOH 363—continued

SAMPLES	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	

THE SEXUAL OFFENCES RULES OF COURT RULES 2014

[L.N. 101/2014.]

1. Citation

These Rules may be cited as the Sexual Offences Rules of Court, 2014.

2. Orders of the Court

(1) The court may make such orders or give such directions for the efficient disposal of cases and —

- (a) ensure victims and vulnerable witness are treated in a manner that recognises their vulnerability;
- (b) protect the privacy of victims; or
- (c) protect the privacy of a child accused of an offence under the Act.

(2) The court may limit access of the press or the media or any other person to the court room or the court proceedings during the trial or any part of the trial to protect the privacy of a victim, a vulnerable witness or a child accused of committing an offence under the Act.

3. Expedited testimony of witness

The court may permit the expedited testimony of a witness where it is necessary in the circumstances to meet the ends of justice.

4. Determination of age

When determining the age of a person, the court may take into account evidence of the age of that person that may be contained in a birth certificate, any school documents or in a baptismal card or similar document.

5. Sentence passed against minor

Where a minor has convicted of an offence under the Act, the court shall take into account the provisions of section 191 of the Children Act (No 8 of 2001) when sentencing the minor.

6. Special arrangements for vulnerable witnesses

(1) The court may permit a vulnerable witness to give evidence without the benefit of special arrangements if that vulnerable witness informs the court of the desire to do so.

(2) The court may not permit a vulnerable witness to testify using special arrangements if the use of such special arrangements will give rise to a significant risk of prejudice to the trial that significantly outweighs the risk of prejudice to the interests of the vulnerable witness.

(3) The court may seek the opinion of a vulnerable witness regarding any special arrangements that may be made for the witness when testifying and the court shall take into consideration the age and maturity of the witness when considering the opinion of the witness.

(4) Where a vulnerable witness is accompanied by a parent or an intermediary, and the parent or the intermediary does not agree with the opinion of the witness given under sub-Rule (3), the opinion of the vulnerable witness shall prevail.

7. Appointment of an intermediary

(1) The court may, on the request of the prosecutor or if the court deems it fit to do so, direct that a vulnerable witness shall be accompanied by an intermediary when testifying in court.

(2) A vulnerable witness may refuse to be accompanied by an intermediary appointed by the court but the court may refuse to permit the witness to testify without being accompanied by an intermediary because of the age or the maturity of the witness.

[Subsidiary]

(3) A vulnerable witness may request the court to appoint an intermediary of the witness's choice but the court may refuse to permit appoint the intermediary if such an appointment will not be in the interests of justice.

(4) When the court refuses to appoint an intermediary of a vulnerable witness's choice, the court shall do so in writing and shall state the reasons for refusing the appointment.

(5) Where a vulnerable witness has refused to be accompanied by an intermediary appointed by the court, and the court has agreed with the vulnerable witness's decision, and where the court has refused to appoint an intermediary of a vulnerable witness's choice, both the court and the witness may jointly choose an intermediary to accompany the witness during the testimony of the witness.

(6) An intermediary may accompany a vulnerable witness when that witness is —

- (a) making a statement to any person in relation to the case;
- (b) being interviewed in relation to the case; or
- (c) testifying in court.

(7) When an intermediary accompanies a vulnerable witness when the witness is testifying in court, the intermediary shall remain visible to the court except when the court makes an order that prevents the intermediary from being visible to the court or any other person present before the court.

(8) An intermediary shall affirm to the court that the intermediary shall —

- (a) assist the vulnerable witness to the best of the intermediary's ability; and
- (b) not interfere with the vulnerable witness or the evidence of the vulnerable witness.

(9) In performing the functions of an intermediary, an intermediary may —

- (a) accompany, stand or sit near the vulnerable witness;
- (b) give the vulnerable witness the physical or psychological support that the witness might require;
- (c) stand or sit in full view of the vulnerable witness; or
- (d) draw the attention to the court if the vulnerable witness is in distress.

(10) An intermediary shall not instruct a vulnerable witness regarding the giving of evidence.

(11) In the interests of justice or for the protection of a vulnerable witness, the court may direct that an intermediary —

- (a) shall not communicate with the vulnerable witness;
- (b) shall not do any act in relation to a vulnerable witness; or
- (c) to take such action in relation to a vulnerable witness as the court may require.

(12) When the court appoints an intermediary for a vulnerable witness, it shall inform in writing the accused person against who or form who the witness is going to testify of the appointment of the intermediary and shall give the accused person an opportunity to be heard regarding the appointment of the intermediary.

8. Factors to take into account when making special arrangements

(1) Before a court gives directions under section 31(4), it may consider —

- (a) whether the vulnerable witness is capable of giving a complete and undistorted testimony;
- (b) the wellbeing and interests of the vulnerable witness; or
- (c) the availability of facilities or locations for the protection of the vulnerable witness.

(2) The court may give directions under section 31(4) during the giving of all the testimony by the witness or during the giving of part of the testimony of the witness.

(3) The court may not give directions under section 31(4) if the effect of the direction would be—

- (a) to prevent the vulnerable witness from giving a complete and undistorted testimony;
- (b) to prevent the vulnerable witness from being cross-examined on the vulnerable witness's testimony;
- (c) to prevent the court or the accused person from observing the demeanour of the vulnerable witness while the witness is testifying; or
- (d) to prevent the accused person from enjoying the benefit of legal representation when the vulnerable witness is giving testimony.

9. Application for special measures

Despite the power of the court to give directions for the protection of vulnerable witnesses —

- (a) the person who has called the vulnerable witness to testify may apply to the court for special measures to protect the vulnerable witness;
- (b) an application for the protection of a vulnerable witness may be made to the court at any time during the trial;
- (c) an application for the protection of a special witness shall be notified to the accused person in writing by the person making the application;
- (d) an application for the protection of a special witness shall be notified to the accused person in writing by the person making the application; and
- (e) an application for the protection of a vulnerable witness may be made in accordance with the directions of the court.

10. When directions for special measures may not be made

(1) The court may not give directions for the protection of a vulnerable witness if the court is satisfied that —

- (a) if it is not in the interests of justice; or
- (b) it is not practicable.

(2) In making a decision whether or not it is in the interests of justice to give directions for the protection of a vulnerable witness, the court shall consider —

- (a) the harm that the vulnerable witness may suffer if the witness is protected or not protected;
- (b) whether or not the vulnerable witness is capable of testifying effectively; and
- (c) whether or not the use of special measures for the protection of a vulnerable witness will give the testimony of that witness greater weight.

(3) Where the court refuses to give directions for the protection of a vulnerable witness it record its reasons for refusing.

(4) Where any person applies to the court to treat a witness as a vulnerable witness, that person shall be treated as a vulnerable witness until the court declares that person to be a vulnerable witness or not.

11. Samples may be collected from child

Where a person has been accused of committing an offence under the Act, and it is alleged that a child has been born alive as a consequence of the commission of that offence, the court may order the collection of such samples in the form provided in the Schedule as may be required from the accused person and such samples may undergo such tests as the court may order to determine whether or not the child is the result of the commission of the alleged offence.

[Subsidiary]

12. Application to discontinue investigation or prosecution

Any application to discontinue an investigation into the commission of an offence under the Act or the prosecution of an offence under the Act shall be made to the court by a person specially authorised by the Director of Public Prosecutions.

13. Court to admit evidence taken in other proceedings

A court may admit the evidence taken in other criminal proceedings, on the application of any person, if the court is satisfied that —

- (a) the evidence is relevant to the proceedings before the court;
- (b) the person who gave that evidence—
 - (i) is dead;
 - (ii) is too ill or infirm to give evidence; or
 - (iii) has not been found after a diligent search.

14. Examination of vulnerable witnesses

The court may—

(1) admit in evidence a recorded statement made by a vulnerable witness as the evidence-in-chief of the vulnerable witness or as part of the evidence-in-chief of the vulnerable witness;

(2) hold a special sitting for the purpose of examining, in full or in part, the vulnerable witness;

(3) make an audio-visual recording of the examination, in full or in part, of a vulnerable witness at a special sitting of the court held to examine the vulnerable witness; or

(4) permit a vulnerable witness to be present in the courtroom when an audio-visual recording or part of an audio-visual recording of the examination of the witness made at a special sitting of the court to record the testimony is played back in court.

15. Taking evidence from a vulnerable witness

(1) When a court holds a special sitting to examine a vulnerable witness, whether in full or in part —

- (a) the court may hold the sitting where it thinks it fit to do so but only if the sitting is held within the precincts of the court building;
- (b) the court shall exclude the accused person from being present in the court but if the accused person wants to observe the examination of the vulnerable witness, the court shall make arrangements for—
 - (i) the proceedings to be transmitted so that the accused person can hear and observe the examination of the vulnerable witness; and
 - (ii) the accused person, whether or not represented by an advocate, to communicate with the court during the examination of the vulnerable witness;
- (d) the court may limit access to the court where the vulnerable witness is being examined; and

the court may give directions regarding any matter relevant to the examination of the vulnerable witness.

(2) The court may defer the identification of evidence taken from a vulnerable witness by the witness until the witness has completed the giving of all other evidence if the court determines that there is good cause for the deferment.

16. Audio-visual recording of the evidence of a vulnerable witness

(1) The court may direct the making of an audio-visual record of the testimony of a vulnerable witness when the facilities for making an audio-visual record are available.

(2) An audio-visual record of the testimony of a vulnerable witness shall form part of the record of the court.

(3) If the court admits an audio-visual record of the testimony of a vulnerable witness, the court may excuse the witness, wholly or in part, from giving evidence in person in later proceedings.

17. Exception to hearsay rule

The court may admit in evidence a statement of facts-in-issue made by a vulnerable witness to an intermediary if the statement is made in accordance with the provisions of the Evidence Act.

18. Evidence-in-chief in the form of a prior statement

The court may excuse a vulnerable witness from testifying about a statement made by the vulnerable witness that has been admitted in accordance with these Rules and the court may treat the statement as the witness's evidence-in-chief or part of the witness's evidence-in-chief.

19. Report of identification parade

(1) Where a prosecutor intends to rely on an identification report in which a vulnerable witness or another witness identifies an accused person as the person who committed an offence under the Act, the court shall presume that the person named in the identification report is the same person undergoing trial.

(2) Despite sub-Rule (1), the court may not presume that the person named in an identification report is the same person undergoing trial-

- (a) unless the prosecutor has served the accused person with a copy of the identification report;
- (b) the prosecutor notifies the accused person that prosecutor intends to rely on the identification report; and
- (c) the accused person, within seven days or within such period that the court may direct, of receiving the copy of the identification report and notice of the intention of the prosecutor to rely on the identification report notifies the court that the accused person intends to challenge the facts stated in the identification report.

20. Victim impact statement

(1) The court may rely on a victim impact statement during the sentencing of an accused person the court convicted of committing an offence under the Act.

(2) A victim impact statement may be given by—

- (a) the victim;
- (b) an expert witness; or
- (c) a person giving the statement on behalf of the victim.

Sexual Offences Act

[Subsidiary]

SEXUAL OFFENCES ACT, 2006
SEXUAL OFFENCES RULES OF COURT, 2014
ORDER FOR COLLECTION OF SAMPLES

CASE No. IN THE

MAGISTRATES' COURT AT

WHEREAS the prosecutor has applied to this court for an order under section 26 of the Sexual Offences Act, 2006, for the collection of samples from the accused person.

IT IS ORDERED that samples of the following be collected from the accused person —

- (a) _____
- (b) _____
- (c) _____
- (d) _____

Signed

Dated
