

**DETERMINANTS OF DELIVERY OF JUSTICE IN SEXUAL OFFENCE CASES  
PROSECUTED IN NAIVASHA LAW COURTS IN NAKURU COUNTY**

**BY**

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**DECLARATION**

This research project is my original work and has not been submitted for award of a degree in any other university.

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This research project has been submitted for examination with my approval as the university supervisor.

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## **DEDICATION**

I dedicate this research proposal to my family members for their love, support, patience, encouragement and understanding, they gave me the will and determination to complete my masters studies.

## **ABSTRACT**

The criminal justice system in Kenya has continually faced compounded challenges in addressing the plight of victims and survivors of sexual offences. There are relatively few convictions as compared to the number of cases reported. Evidence from the relevant genderbased violence care institutions; the police, Nairobi Women's Hospital and Director of Public Prosecutions (DPP's) office indicate that the prosecution of sexual offences in Kenya is constrained in several ways. This is evident from the low prosecutions and convictions achieved as compared to the high incidence of sexual crimes in the country. The challenges are also evident in the low rates of apprehensions following incidents and the high rate of withdrawal of cases brought to courts before the verdicts are made.

The purpose of this study was to assess determinants of delivery of justice in Sexual Offence cases prosecuted in Naivasha law courts. The study sought to fulfill three specific objectives which included analyzing the factors that support the delivery of justice in the prosecution of sexual offences cases in Naivasha law courts in Nakuru, assessing factors that constrain the delivery of justice in the prosecution of sexual offences cases in Naivasha law courts in Nakuru, and assessing the adequacy of systems and procedures for prosecution of sexual offence cases in Naivasha law court within Nakuru County. The study design employed was a combination of case study and secondary document analysis and targeted population of 14 people and the sample size was 30% of targeted population. The findings were analyzed and interpreted qualitatively. The findings of the study are that delivery of justice was supported by quality investigations, the legal system, good coordination by witnesses, investigating officers and prosecutors while the delivery of justice was constrained by witness failure to testify in court, delayed investigation and trials of the cases. The conclusions of the study was justice was not properly delivered to the parties involved in sexual offences tried in courts. Justice system should be client friendly and sensitive, and introduce gender focal points in all police stations manned by specialized officers. The gender mainstreaming within the police department should be taken seriously, so that more women get appointed as prosecutors and proper one-stop centers should also be introduced in all police stations or in select stations to ensure efficient delivery of justice in sexual offence cases. The government should work hand in hand with the locals to arrange meetings in which individuals are sensitized about sexual offences and how to handle such cases. Lastly the government needed to increase funding to the three institution involved in criminal justice that is police,

judiciary and prison department to be able to train more investigators and prosecutors ,  
establish forensic labs and increase personnel in judiciary so that cases can be speedily heard.

## **TABLE OF CONTENTS**

<b>DECLARATION.....</b>	<b>ii</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>iii</b>
<b>LIST OF TABLES.....</b>	<b>x</b>
<b>LIST OF FIGURES.....</b>	<b>xi</b>
<b>LIST OF ABBREVIATION.....</b>	<b>xii</b>
<b>CHAPTER ONE: INTRODUCTION.....</b>	<b>1</b>
1.1 Background Information.....	1
1.2 Problem Statement.....	5
1.4 Research Questions .....	6
1.5: Main Objective.....	7
1.6 Specific Objectives.....	7
1.7 Significance of the Study.....	7
1.8 Scope and Limitations of the Study .....	8
1.9 Definition of Key Terms.....	9
<b>CHAPTERTWO: LITERATURE REVIEW.....</b>	<b>10</b>
2.1. Introduction .....	10
2.2 Sexual Offences Cases.....	11
2.2.1 Prevalence and Experiences of Male Sexual Abuse.....	11
2.2.2 Incidence of Sexual Offences in Kenyan.....	12
2.2.3 Criminal Justice System.....	13
2.2.4 Coordination between the Medical and Legal Systems.....	14
2.2.5 Investigations and Prosecutions.....	14
2.3 Factors supporting delivery of Justice in prosecution of sexual offence cases.....	15
2.4 Factors Affecting delivery of Justice.....	17
2.4.1 The Role of Judges.....	18
2.5 Factors Constraining Delivery of Justice in Sexual Offences Cases.....	18
2.6 Systems And Procedures of Prosecution of Sexual Offences.....	20
2.7.2 Resource Dependency Theory .....	23
2.8 Summary of Literature Review.....	24
2.9 Conceptual Framework.....	25

<b>CHAPTER THREE: RESEARCH METHODOLOGY .....</b>	<b>26</b>
3.1 Introduction.....	26
3.2 Study.....	26
3.3 Research Design .....	26
3.5 Sampling Procedure. ....	27
3.5.1 Sample Size.....	27
3.6 Research Instruments ( Data collection tools ).....	28
3.7 Techniques and Procedures of Data Collection.....	29
3.8 Ethical Considerations. ....	30
3.9 Data Analysis Techniques .....	30
<b>CHAPTER FOUR: DATA ANALYSIS AND INTERPRETATION.....</b>	<b>31</b>
4.1 Introduction. ....	31
4.2 Investigators and Prosecutors.....	31
Prosecutors Interviewed .....	31
4.4 Medical Officers .....	34
4.7 From the Sample Files .....	39
4.8 Factors Supporting the Delivery of Justice in Sexual Offences Cases Prosecuted In Naivasha Law Court .....	41
4.9 Factors constraining the delivery of justice in the prosecution of sexual offences cases In Naivasha Law Court. ....	42
4.10 From Finalized Files. ....	45
4.11 Adequacy Of System and Procedures of Prosecution of Sexual Offences Cases.....	45
<b>CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMENDATIONS.....</b>	<b>49</b>
5.1 Summary Of Findings.....	49
5.2 Conclusion .....	50
5.3 Recommendations.....	51
5.2 Area of further study .....	54
<b>REFERENCES.....</b>	<b>55</b>
Appendix I : Interview Guide for Magistrates .....	i
Appendix II: Interview Guide for Doctors.....	v
Appendix III: Interview Guide for Prosecutorsand Investgaing Officers.....	ix
Appendix IV: What to Analyse from Finalised Files.....	xii
Appendix V: Time Plan.....	xvi

Appendix VI: The Budget Schedule ..... xvii

## LIST OF TABLES

Table 1: Showing number Investigators and prosecutors Respondents.....	34
Table 2: Showing Years in service for investigators .....	35
Table 3: Showing years in service for prosecutors.....	35
Table 4: Average Cases assigned to each respondent per week .....	36
Table 5: Showing Years in service for Medical Officers .....	35
Table 6: Showing Doctor Work related to sexual cases per week.....	35
Table 7: Magistrate work load on sexual offences cases per week .....	40
Table 8: Trends in determination of sexual offences cases.....	41
Table 9: Showing Number of Finalized Files between 2009 – 2012 .....	43
Table 10: Showing Period Taken For Decision Making In Months.....	45
Table 11: Showing Number of Witness Called By Prosecution for different Decisions.....	44

## **LIST OF FIGURES**

Figure 1: Conceptual Framework .....	28
Figure 2: Number of p3 forms filled by Doctors related to sexual cases per week .....	39
Figure 3: Number of cases convicted, acquitted and discharged between 2009 - 2012 .....	42

## **LIST OF ABBREVIATION**

**CPC:** Criminal Procedure Court

**EA:** Evidence Act

**SOA:** Sexual Offense Act

**PC:** Penal Code

**CA:** Children Act

**HC:** High Court

**COA:** Court of Appeal

**CPL:** Corporal of police

**PC:** Police constable

**IP:** Inspector of police

**CM:** Chief magistrate

**SPM:** Senior principal magistrate

**RM:** Residentmagistrate

**No:** Number

**%:**Percentage

# CHAPTER ONE:INTRODUCTION

## 1.1 Background Information

The criminal justice system consists of three main components: (1) Legislative (creation of laws); (2) adjudication (courts); and (3) corrections (jails, prisons, probation and parole). In a criminal justice system, these distinct agencies operate together both under the rule of law and as the principal means of maintaining the rule of law within society. Justice is a concept of moral rightness based on ethics, rationality, law, natural law, religion, or equity. It is also the act of being just and/or fair (Krug 2002).

According to Alvazzi (1998), a criminal justice system is a set of legal and social institutions for enforcing the criminal law in accordance with a defined set of procedural rules and limitations. In the United States, there are separate federal, state, and military criminal justice systems, and each state has separate systems for adults and juveniles. Criminal justice systems include several major subsystems, composed of one or more public institutions and their staffs: police and other law enforcement agencies; trial and appellate courts; prosecution and public defender offices; probation and parole agencies; custodial and departments of corrections. Some jurisdictions also have a sentencing guidelines commission. Globally, criminal justice system is expected not only to produce practical results in form of reduced crime and enhanced security, but also to achieve justice in society by holding offenders accountable and applying the force of the law proportionately and fairly (Van Kesteren et al, 2000 indicate all names of co-authors at first mention). In the administration of criminal law, the courts have a role of protecting the society from criminal acts which is achieved by punishment after prosecution

The criminal justice system involves three stages; investigation into alleged criminal act, the arresting of offenders (those who have committed criminal acts against the state or a person) and the trial of such offenders in courts of law. This same procedure is followed when a sexual crime is reported. However procedure may be altered when arrest has been made before investigation whereby it starts with arrest, investigations then trial of the suspect. Where a sexual offence has been committed the victims are advised not to take a bath or to dispose of the clothes they were wearing at the time of the sexual assault. Victims are also

advised to report the incident to the nearest police station as well as seek medical treatment as quickly as possible.

Clinard (1993) points out that sex related offences are universal phenomena, which take place in every society. Sexual offences often take the form of sexual violence, which sometimes cause severe and irreparable damage to the physical and mental health of the victims. Physical injury includes an increased risk of a range of sexual and reproductive health problems. Its impact on mental health can be as serious as that of physical injury. Sexual offences, when they assume the form of sexual violence may lead to among others murder, suicide, acute depression for the victims. It entirely disturbs the social well-being of the victims because of stigmatization and the consequential loss of status in their families and neighborhoods.

According to (Hawkins, 1998), a Sexual offence is a sexual contact with another person including touching of the sexual organs of another or touching of another with one's sexual organs without that person's consent. Any person may understand sexual violence as any sexual act using coercion regardless of their relationship to the victim, in any setting, including but not limited to home and work. In sexual violence, coercion constitutes an important component, which covers a whole spectrum of degrees of force. Apart from physical force, it may involve psychological intimidation, blackmail or other threats (Bancroft, 1974).

Kenya has in recent years embarked on addressing the prosecution of sexual offences and consequently parliament passed the Sexual Offences Act (SOA) 2006 which was seen as a major step in addressing some key forms of sexual violence. The Act came into force on 21<sup>st</sup> July 2006, to address the gaps that the penal code did not fully cover with regard to sexual offences.

In delivering justice the department of police in Kenya is charged with the responsibility to arrest a suspect after an incident is reported, investigate, compile a case file and charge the offender in court for trial. Although there are many reports by media and also annual police crime statistics showing high number of sexual offence cases reported (Annual crime statistics, 2009), analyses from courts indicate that few of the offenders are convicted. Reasons given for few convictions of sexual offenders include, poor investigations of the cases, lack of corroboration of witness evidence, and inconclusive medical reports.

This is further supported by Amnesty International report of 2002 which indicates that there was concern among local women activists and victims that the sexual offence cases were subjected to less vigorous police investigation than other crimes in Kenya. Consequently those victims were less inclined to report such cases to the police due to lack of confidence in police investigators and prosecutors. Other important public and private actors in this system include, defendants, private defense attorneys, bail bondsmen, other private agencies providing assistance, supervision, or treatment of offenders; and victims and groups or officials representing or assisting them. In addition, there are numerous administrative agencies whose work includes criminal law enforcement.

Legislators and other elected officials, although generally lacking any direct role in individual cases, have a major impact on the formulation of criminal laws and criminal justice policy. Such policies are also strongly influenced by the news media and by businesses and public-employee labor organizations, which have a major stake in criminal justice issues (Cernkovich, 2000).

Despite the increase in sexual offence cases reported and enactment of the SOA 2006, the courts still face various challenges in dealing with these cases. For example most sexual offence cases reported with respect to Kenya's post-election violence after the disputed presidential election of December 2007, have not been addressed conclusively. The 3500 post-election sexual violence cases were investigated by police and forwarded to the Director of public Prosecutions, (DPP) to peruse and advice on whether the evidence collected by police from witness was sufficient for suspects to taken to court for trial or not. The DPP on the 5<sup>th</sup> of August, 2012 returned 3100 cases to the police with comments that there was not enough evidence to take them to court and closed the files with no further action to be taken. The dropped cases constituted 88% of the files forwarded showing a great sense of injustice to victims due to failure of investigators to gather enough evidence which could secure conviction in court. Out of the 3500 cases forwarded more than 3400 complainants were female showing that females were more vulnerable than males to sexual crimes in the Kenyan society. In most cases woman who fall victim to sexual predators face challenges while trying to access justice. Other than the high cost of accessing such justice, the court system is fraught with technicality and there is also some level of ignorance amongst officials who may not be well equipped to handle victims of sexual offences. Corruption is also rampant among officers who may try to take advantage of such victims with a promise of justice. Victims

also face the risk of being victimized under section 38 of the SOA which provides measures against false allegations of sexual offences.

Police prosecutors carry out most prosecutions before subordinate courts where most sexual offences are prosecuted. State counsels who are trained lawyers handle the more serious crimes like murder and treason in High court. Studies have shown that access to justice is often determined by factors other than law and evidence. For example, in a system where access to justice is based on dichotomies of whether one is rich or poor, man or woman, healthy or sick; with the first variable almost always being the key determinant, women are bound to suffer (Seto, 2002).

Justice delayed is justice denied. The average time it takes to conclude sexual related cases in Kenya is approximately 4 to 5 years. This leads to loss of confidence in the judicial system, and some victims often give up their rights after weighing the time and financial costs.

The criminal justice system in Kenya has continually faced compounded challenges in addressing the plight of survivors of sexual offences. There are relatively few convictions as compared to the number of cases reported. For instance, Nairobi Women's Hospital received 536 rape cases after Kenya's disputed presidential election in 2007 and by October 2009 only four cases out of 56 registered in Nairobi Law court had resulted in conviction of offenders. Out of the same 56 cases, 25 had resulted in suspect acquittals while the remaining cases were still pending in court (FIDA Report 2009). More concerns about poor investigation in sexual cases have been expressed in the Criminal Case No. 404 of 2010 where the former JAVA Director Mr. Jon Cardon Wagner who was accused of defiling two minors was acquitted by a Nairobi high court. Mr. Jon Cardon Wagner was acquitted on grounds that the investigating officer did not cover the issue of the age of the victims which is necessary in such cases (Kenya Law Reform Commission Report January 2011).

Evidence from the gender violence based institutions; the police, Nairobi women's hospital and from office of DPP indicate that the foregoing observations that the prosecution of sexual offences in Kenya is constrained in several ways. This is evident from the low prosecutions and convictions achieved as compared to the high incidence of sexual crimes in the country. The challenges are also evident in the low rates of apprehensions following incidents and the high rate of withdrawal of cases brought to courts before the verdicts are made.

Witnesses pose a major challenge in the prosecution of sexual offences. Challenges associated with witnesses include inter alia; unavailability, refusal to cooperate with the

prosecutors, hostility and inconsistency with attending court sessions. Ombwori (2009) similarly observes that forensic medical evidence obtained by examination of the victim is of crucial importance in the investigation and trial of rape offences. The decision whether or not to bring a case to trial often rests on the forensic evidence, in fact evidential issues accounted for one third of cases abandoned at the investigative stage (Pravin 2010).

These are among the major challenges facing the prosecution of sexual offences in Kenya. There is therefore need to study and analyze the root causes of these challenges and to address them in depth so as to come up recommendations for the improved justice system as regards the sexual offences in the country. This study seeks to investigate the determinant of delivery of justice in sexual offences cases prosecuted in Naivasha law courts in Nakuru County.

## **1.2 Problem Statement**

Globally, at the end of December 2009, the Interpol database held more than 4.2 million records of sexual crimes (Interpol 2010). This is an indication that sexual offenses are prevalent throughout the globe, both in developing and developed countries. The concept of justice is speedy disposal of cases, conviction of culprits, presentation of sufficient evidence, cooperation of witness, proper processing and handling of evidence and cooperation of support institutions. However the justice system as of now is fraught with a lot of acquittals , hostility of witness, witness not attending trials in court and unnecessary adjournment of cases by court. Unjustified acquittals or acquittals due to technicalities are a cause for alarm. Where suspected sexual offenders are acquitted on technicalities the trust in the justice system dwindles for both the victims and those affected in the society.

The study will focus on Naivasha law court. Naivasha law court has the highest number of sexual offences registered compared to other courts in the country. According to the police annual report for 2010 (950) sexual offences cases were taken to courts in Kenya. Of these cases Naivasha law court registered 70 which is about 10%. This shows that many sexual offence cases are reported despite Naivasha being a small town. Another report on sexual violence and implication on Educational leadership by Wanjiku and Wairimu (2006) indicated that every week, two cases are taken to Naivasha law court from Naivasha police station only.

The statistics from Naivasha law court registry shows that in 2007, a total of 43 cases were tried out of which 35 resulted in acquittals. In 2008 a total of 36 cases were tried and out of which 26 of them ended in acquittal, while in 2009 a total of 38 cases were tried out of which 26 of them resulted in acquittals. Finally in 2010 a total of 70 cases were tried out of which 45 resulted in acquittals. This indicates that out of all cases tried over 60% of them are acquitted hence the need to assess the challenges in regard delivery of justice in reference to prosecution of sexual offences cases in Naivasha law courts. The rate of acquittals in these courts is however not necessarily an indication of injustice but the causes of such acquittals if linked to technicalities or prosecutorial misconduct could be a cause for concern.

There are many challenges facing the prosecution of sexual offences in the country. The main problem lies mostly the trial stage thus the need collect and analyze data necessary to study this problem. The analysis will indicate what needs to be done to allow for smooth delivery of justice for victims of sexual crimes and at the same time address how the justice system as it is restrains the acquisition of justice if at all.

### **1.3 Main Question**

What are the factors that determine the delivery of justice in sexual offence cases prosecuted in Naivasha law court within Nakuru County?

### **1.4 Research Questions**

The study sought to answer the following questions:

- i. What factors are necessary to support the delivery of justice in the prosecution of sexual offences cases in Naivasha law courts?
- ii. What factors constrain the delivery of justice in the prosecution of sexual offences cases in Naivasha law courts?
- iii. Are the systems and procedures employed in the prosecution of sexual offence cases in Naivasha law court adequate for delivery of justice?

### **1.5: Main Objective**

The purpose of this study was to assess determinants of delivery of justice in sexual offence cases prosecuted in Naivasha law courts.

### **1.6 Specific Objectives**

- i. Identify the factors that support the delivery of justice in the prosecution of sexual offences cases in Naivasha law court within Nakuru County.
- ii. Identify factors that constrain the delivery of justice in the prosecution of sexual offences cases in Naivasha law court within Nakuru County.
- iii. Assess the adequacy of systems and procedures for prosecution of sexual offence cases in Naivasha law court within Nakuru County.

### **1.7 Significance of the Study**

The study will be important in providing understanding on why victims of sexual cases do not get justice promptly yet the procedure of investigating and prosecuting is well defined. The research will be important to the prosecutors as it will provide an insight on how to improve conviction rates of sexual offence cases. This will reduce cases of acquittal of suspects who may have committed sexual offences crimes but are acquitted due to insufficient evidence.

Other related studies done by researchers are prosecuting for justice, implementation of SOA, gender based violence, investigation and prosecution of sexual violence. Most of all studies have been looking on reported reports at police stations, registered cases and finalized files while this research will have questionnaires for magistrate as they play important role in delivering justice, interview prosecutors, investigating officers and doctors , in addition it will analyse finalized court files.

The research will be important to the public as will provide information that will raise the awareness of the public who may fall victims of sexual offence as such they will know what procedures to follow in seeking justice hence build confidence in seeking justice. The findings and recommendations will help improve prosecution of sexual offence cases not only in Naivasha Law courts but will help improve prosecution of such cases in all courts across the county.

## **1.8 Scope and Limitations of the Study**

The research was carried out at Naivasha law court jurisdiction, in Nakuru County. The study specially covered the period from 2009 to 2012. Its jurisdiction covers cases from Naivasha District, Gilgil District and Nyandarua South District which covers eight police stations. Naivasha law court was chosen because of the high prevalence of sexual offenses/crimes reported from the area. The study involved magistrates and prosecutors from Naivasha Law courts and file analysis of concluded sexual offenses cases in Naivasha law courts. Other respondents will be medical officers drawn from Engineer District hospital, Gilgil District Hospital, Naivasha District Hospital, Police investigators from Naivasha Police Division and Nyandarua South Police Divisions which serves the three administration districts of Naivasha, Gilgil and Nyandarua.

Since the focus of the study was on concluded cases files rather than on going cases, the greatest limitation of this approach was on corroboration of evidence because of lack of opportunity to interview or cross check with the parties. Gaps could also emerge in the files due to missing facts which might have been omitted during recording of the trial. It would be difficult to generalize based solely on the findings from the files. This limitation would however be addressed by relying on secondary data from published and unpublished secondary sources. There may be also misconception among the medical personnel and the police investigators that the study may seek confidential information on individual cases. This limitation will be overcome by assuring the selected respondents that the focus will strictly be on general facts and procedures and not on any individual cases. In addition all respondents will be assured the information obtained will be used only for academic purpose and will be treated in confidentiality and that the research will focus on the number of cases registered and finalized but not court proceedings.

## **1.9 Definition of Key Terms**

**Victim of sexual offence** – means any person who has been sexually abused.

**Sexual offense** – means any offence defined under Kenya's sexual offence Act 2006.

**Justice** – means fairness, rightness or the administration of punishment or reward.

**Criminal justice system**- means the system of practices and organization used by national and local government, directed at maintaining social control, deterring and controlling crime and sanctioning those who violate laws within criminal law penalties.

**Prosecution** – means presenting evidence before the court to seek fair trial and judgment from the court.

## **CHAPTER TWO: LITERATURE REVIEW**

### **2.1. Introduction**

This chapter reviews published and unpublished literature and data that are relevant to the study objective. It also presents the theoretical and conceptual frameworks used to gather, organize and interpret data for this study. It also reviews literature on literature determiners of delivery of justice in sexual offences cases

Most countries stipulate harsh penalties for those committing sexual offences. Nevertheless, despite punishments generally being increased in recent years, it appears that sexual offences are growing in number and severity in many jurisdictions. Moreover, many sexual offenders continue to re-offend after they have been convicted and served their sentences. It therefore appears that punishment alone is not the solution to this problem (Hansen, 2002). Some countries, such as Canada and the UK, have implemented treatment for the rehabilitation and reintegration of sexual offenders, both in an institutional and community setting. In some cases offenders are required to participate in such treatment as a condition of release on parole.

Numerous studies have been carried out on the effectiveness of treatment programmes for sexual offenders which suggest that certain types of treatment can be highly effective, and recidivism rates for those that have received treatment have been reduced (Hall, 1995). In addition to treatment, which it is hoped will have the effect of the offender curbing his behavior; some jurisdictions have introduced various measures intended to place controls on the offender's movements and activities for extended periods after they have served their sentences. Such measures allow the authorities to closely monitor offenders and hopefully prevent their re-offending (Marshall, 2006)

In Kenya the statistics by the Kenya Police Crime for 2007 point out that there were 876 cases of rape reported, 1,984 cases of defilement, 181 cases of incest, 198 cases of sodomy, 191 cases of indecent assault and 173 cases of abduction. Whereas it may be easy to document the number of cases of those suffering from violence, the psychological impact is undoubtedly indeterminate. Mental wounds suffered as a result of violence may never really heal and the psychological scars are undoubtedly never erased (Ombwori, 2009)

## **2.2 Sexual Offences Cases**

Clinard (1993) cites that sex related offences are universal phenomena, which take place in every society. Sexual offences aptly take the form of sexual violence, which sometimes cause severe and irreparable damage to the physical and mental health of the victims. Physical injury includes an increased risk of a range of sexual and reproductive health problems. Its impact on mental health can be equally serious as that of physical injury. Sexual offences, when they assume the form of sexual violence may lead to murder, suicide, acute depression, etc. of victims. It entirely disturbs the social well-being of the victims because of stigmatization and the consequential loss of status in their families and the neighborhood. According to (Hawkins, 1998), a Sexual offence is a sexual contact with another person (including touching of the sexual organs of another) or touching of another with one's sexual organs without that person's consent. Any person may understand sexual violence as any sexual act using coercion regardless of their relationship to the victim, in any setting, including but not limited to home and work. In sexual violence, coercion constitutes an important component, which covers a whole spectrum of degrees of force. Apart from physical force, it may involve psychological intimidation, blackmail or other threats (Bancroft, 1974).

A wide variety of sex related offences take place in different circumstances and social settings. Some of the most prominent ones are sexual assault (without intercourse), forcible rape, sexual abuse of mentally or physically disabled people, sexual abuse of children including statutory rape (sexual intercourse with or without consent with minors) adultery, sodomy, fornication, forced marriage and co-habitation including the marriage of children, violent acts against the sexual integrity of women including female genital mutilation and obligatory inspection for virginity and forced prostitution and trafficking of people for the purpose of sexual exploitation (Vetter, 1988).

### **2.2.1 Prevalence and Experiences of Male Sexual Abuse**

According to Sexual abuse of male adults and children is vastly under-reported and poorly understood. The limited research in this area suggests that sexual violence against boys and men is endemic in many areas of the world. Population-based studies conducted among adolescents in developing countries indicate that 3.4% of males in Namibia and 13.4% in Tanzania have experienced a sexual assault. 11% of male adolescents in South Africa and

29.9% in Cameroon reported forced sexual initiation (Krug 2002). Men who have sex with men (MSM) are frequently targets of homophobic violence, which may or may not be sexual. In Kenya, nearly 40 percent of men who had sex with men reported having been raped outside their home and 13 percent report having been assaulted by the police (Niang et al. 2002 in Barker and Ricardo, 2005). Men most commonly experience sexual violence in the form of receptive anal intercourse, forced masturbation of the perpetrator, receptive oral sex, or forced masturbation of the victim (WHO, 2003).

### **2.2.2 Incidence of Sexual Offences in Kenyan**

Shadle (2010) argues that much like justices in the colonial era and in English courts, Kenyan judges in the 1970s and 1980s remained highly skeptical of women's accusations of rape. Hale's dictum went unquestioned: "rape is an accusation easily to be made, hard to be proved, and harder yet to be defended by the party accused, though' never so innocent." Thus in 1970, Judge Simpson allowed an appeal of a convicted rapist: "It is hardly conceivable that a married woman with experience of sexual intercourse could be forced to submit to rape five times without being able to escape or raise an alarm. Moreover one would expect some injuries – bruising at least. There is no evidence of such injuries (High Court at Nairobi 394 of 1970.) Two years later, Simpson and Wicks released an appellant upon concluding that the woman had, at least before having sex, consented. The basis for this conclusion: her knickers were not ripped, there was no evidence of injury to her, and she had spoken freely with the appellant earlier that night. They explained away her cries by this (unsubstantiated) reasoning: "she had been discovered having intercourse in the open and that she found intercourse [sic] painful during menstruation and that she changed her mind during the course of the act." (High Court at Nairobi 34 of 1973 See also HC at Nairobi, 628 of 1976.

In a 1985 case, the Court of Appeal dismissed the appeal against a rape charge, but returned it to the High Court for resentencing. Yet two of the three justices, Hancox and Nyarangi, expressed hope that the high court judge "will bear in mind when considering sent the [rapist's] 13 years of professional life, his family circumstances and all that this conviction will mean to him and, moreover, that he has had this charged hanging over him for well over a year. CA 158 of 84.) (The implication: once consent has been given it cannot be revoked.) (Shadle 2010)

Until 2003, when the parliament eliminated corporal punishment, criminals could be sentenced to strokes with the cane – 24 for rape and defilement, 12 for indecent assault. Although (as noted in a 1995 judgment) the Penal Code “enjoin[ed] the court to include corporal punishment where the law so provide[d],” (See for example Criminal Appeal No 305 of 2004) not all magistrates did so: in about ¼ of the cases in which the law allowed strokes, magistrates imposed imprisonment only.

The law did not provide any sentencing guidelines in terms of how many strokes should accompany a certain length of imprisonment, but left the matter to the discretion of the magistrate. Magistrates tended to impose strokes on the more egregious cases: the mean months imposed in cases in which strokes were also ordered was, during the 1980s and 1990s, several months higher than the average when no strokes were ordered. A similar pattern was followed in cases on appeal to the high court.

### **2.2.3 Criminal Justice System**

According to Seelinger *et al* (2011) Sexual violence takes many forms, including rape, sexual slavery, or forced pregnancy, as well as defilement, sexual harassment, sexual assault, incest and trafficking. Sexual violence also varies by scale and context. For example, rape can be committed by an intimate partner within the family or by a colleague or supervisor at work. Rape can also occur on a vast scale involving thousands of victims, with perpetrators operating in organizational forms as different as state armies, Para-military groups, local police units or youth gangs.

Finally, sexual violence can take place during peacetime, during periods of social or political unrest (such as during election periods, as observed in Zimbabwe, Haiti, or Kenya), or during times of extreme, organized collective violence, as happened in the Balkans and Rwanda in the early 1990s. The form, scale and context of sexual violence fundamentally shapes how it is legally conceptualized and prosecuted in national courts. Because of their link to large-scale violence, international crimes (war crimes, crimes against humanity, and genocide) are generally used to prosecute mass sexual violence; domestic charges of sexual violence are used most often to prosecute “peacetime” or threshold forms of sexual violence such as marital rape, incest or sexual harassment. Significantly, as discussed above, both international sex crimes and domestic crimes of sexual violence can be prosecuted in national courts, assuming the national penal code has been amended to recognize war crimes, crimes against humanity and genocide.

#### **2.2.4 Coordination between the Medical and Legal Systems.**

In areas characterized by a lack of confidence in the law enforcement or judiciary, victims of sexual violence may be more likely to seek medical care than police or legal assistance right after the attack. Consequently, strengthening the links between the legal system and the hospitals and clinics where victims seek medical care can increase the number of sexual violence cases that are ultimately filed in court. These linkages establish an entry point into the legal system for victims who decide to pursue a claim after seeking medical attention; they can also help ensure that case-related information is transferred properly between the medical sector and the legal sector.

#### **2.2.5 Investigations and Prosecutions**

Even when a victim of sexual assault is willing to come forward and pursue her or his attacker in court, myriad challenges can obstruct the road to justice. The investigation itself can be difficult the collection of testimony and evidence in sexual violence cases can pose unique challenges. These problems can be compounded in times of political unrest and armed conflict, when authority structures are disrupted and authorities may even be the perpetrators. In some cases, investigators and prosecutors may bear the same gender biases or rape myths prevalent in their community, treating sexual violence cases as personal matters or as less important than other crimes. Further, a lack of coordination between prosecutors and investigators can also create problems with evidence collection, causing eventual prosecutions to suffer.

According to Wesley (2010), Prosecutors may gather evidence independently or rely on law enforcement (the police) or other agencies. When the prosecutor has all the evidence believed necessary to convince a judge or jury of the accused's guilt, the evidence is then disclosed to the defense attorney. The defense represents the interests of the accused in court and has complete access to all the information the prosecutor knows. Prosecutors are also responsible for administering all rules applied to how evidence is gathered, examined and presented to the court. The prosecutor is liable for any breach in the rules of evidence that would lead to the information being inadmissible in court. In line with gathering evidence, the prosecutor must also schedule and make available all witnesses who will testify during the trial. Prosecutors will issue subpoenas to insure a witness will testify.

### **2.3 Factors supporting delivery of Justice in prosecution of sexual offence cases.**

The legislation of an offence does not automatically ensure that it has been successfully dealt with. There must be a supportive and enabling environment for the utilization of the law for the benefit of survivors.

For instance, despite the enactment of laws outlawing sexual harassment, it remains an endemic problem amongst Kenyan women and girls in institutions of learning, in employment situations and in everyday life. In the employment sector, the vice is especially prevalent in low paying blue collar jobs such as in the flower, tea and clothes manufacturing industries.

In Kenya's Export Processing Zone (EPZ) for example, where over 90% of the country's textile manufacturing is done for export, sexual harassment is rampant. A 2007 Kenya human rights and business country risk assessment established that more than 90% of female workers in the sector have experienced or observed sexual abuses at their workplace<sup>79</sup>. Senior managers working in the EPZ, admitted that most companies are aware of the rampant sexual harassment, but are powerless to intervene unless the survivors file a complaint, which rarely happens, as most survivors believe that they will be victimized (ACORD Report, 2009). Most women will therefore, withstand the harassment and attempt to put an end to it personally, or they will simply quit their jobs and change employers, in order to escape from the offender.

In the conduct of this study, two cases touching on sexual harassment which are still pending in court were analyzed. Two cases referenced by the ACORD report did not however involve prosecution of sexual harassment in the context of Section 23 of the SOA. They arose in civil employment suits, where the women involved were suing against alleged wrongful dismissal by their employers and they cited sexual harassment as the ground of dismissal due to their refusal of sexual advances from their superiors. In both suits, only damages for wrongful dismissal were sought from the court. No prosecution of the offender was instituted in the manner envisaged under the SOA. From the above, it is clear that the mere legislation of an offence is not enough.

The right holders must be educated on the fact that such laws exist and they must be encouraged to take action against offenders, where an offence is committed.

In addition, duty bearers (employers) who have the responsibility to create conducive environments that protect employees from sexual harassment should accelerate their compliance to the supportive employment legislation requirements, for adopting sexual harassment policy and civic education on the same. Similarly, behavioural change in society must be advocated for, so that the society itself, understands that sexual harassment is a crime and it is not acceptable in any context.

Although the SOA define minimum sentences upon conviction, it leaves room for the exercise of judicial discretion in delivery of justice. For instance in a rape matter, the judge or magistrate has discretion to hand out a sentence of 10 years and above to the maximum set of life imprisonment. They can therefore choose to give the minimum sentence or enhance it if they are of the opinion that the circumstances warrant this. The appellate court also has discretion to interfere with the sentence handed out by the trial court if satisfied that the same is in its view, inordinately harsh or excessive. For instance in the case of *Solomon KahiMwanga vs. R.*, the trial court had on the evidence presented before it found the accused guilty of the offence of rape. By law, such a conviction carries an automatic minimum sentence of 10 years under Section 3 of the SOA. The magistrate handed out a 20 year sentence. On appeal, the High Court upheld the conviction but reduced the sentence to the minimum set of 10 years. In the judge's view, the sentence of 20 years was. "rather harsh and excessive." taking into consideration that the accused was a first offender (Kilonzo et al 2003)

In examining the legal normative framework, it emerges that, to a large extent, the Sexual Offences Act has remedied some of the gaps with respect to articulating sexual violence crimes. We note that marital rape and domestic violence continue to rage unabated and the law has not sufficiently addressed or recognized it as a crime. Further, even where laws are present, the social, cultural environment may hinder women's ability to seek protection or claim their rights. The experiences relating to sexual harassment demonstrate this. Whilst appreciating the legal framework as a basis for advancing claims for protection and ending sexual offence case, it is important to remain keenly aware that the law is not the panacea for survivors of sexual offence case. The provisions of rape in the Sexual Offences Act require to be expanded and anticipate necessary ingredients, proof and punishment for marital rape.

## **2.4 Factors Affecting Delivery of Justice.**

The legislation of an offence does not automatically ensure that it has been successfully dealt with. There must be a supportive and enabling environment for the utilization of the law for the benefit of survivors. For instance, despite the enactment of laws outlawing sexual harassment, it remains an endemic problem amongst Kenyan women and girls in institutions of learning, in employment situations and in everyday life. In the employment sector, the vice is especially prevalent in low paying blue collar jobs such as in the flower, tea and clothes manufacturing industries.

The right holders must be educated on the fact that such laws exist and they must be encouraged to take action against offenders, where an offence is committed. In addition, duty bearers (employers) who have the responsibility to create conducive environments that protect employees from sexual harassment should accelerate their compliance to the supportive employment legislation requirements, for adopting sexual harassment policy and civic education on the same. Similarly, behavioral change in society must be advocated for, so that the society itself, understands that sexual harassment is a crime and it is not acceptable in any context.

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### **2.4.1 The Role of Judges**

Judges can play a crucial role in managing the trial in ways that can either support or undermine effective prosecution of these cases. However, judges are often ill-prepared to preside sensitively over these trials. Like other court personnel, they are often uncomfortable with sex-related topics and can be distrustful of women alleging rape and other forms of sexual violence. Because of their authority in the courtroom, their own disrespectful conduct toward victims can be especially harmful; more generally, their failure to control defense counsel can leave victims facing harassment and intimidation. Moreover, judges' unconscious gender biases may affect their rulings on pre-trial and trial-related motions which can, in turn, affect the outcome of trial. Three measures are widely recommended to address these challenges. First, the assignment of women judges to cases involving sexual violence may create a more hospitable courtroom climate for victims of sexual violence.

### **2.5 Factors Constraining Delivery of Justice in Sexual Offences Cases.**

The most prominent difficulty in the delivery of justice to the victims of sexual offences is the very low reporting of cases. Data relating to sex related offences are mostly available from the police record, clinical setting, non-governmental organizations and survey research. But whatever information is available on the subject is merely the tip of the iceberg. Because of the very nature of the offence, incidents are not properly reported to the police on account of many reasons arising out of ignorance, illiteracy, and fears of retaliation from the offenders or merely because of an inability to have access to the police. There is also a fear of shame and stigmatization of the victims and their families, or reluctance on the part of the family to report the case, especially where the perpetrator is powerful and rich. Lack of faith of the common people in the official law enforcement mechanisms of the Police, Courts and laws also add to the problem of under reporting of sexual cases (Marshall & McGuire, (2003).

Many victims of sexual offences seek assistance, support and advice. This assistance is sought from a variety of people, including rape counselors, traditional healers, religious leaders, psychologists and psychiatrists. The concern arises that if victims of sexual offences know that their private thoughts, expressed to such persons, are going to become a matter for open debate in a public court of law, they may be deterred from reporting the offence to the police and may be discouraged from seeking the support they need. Courtroom testimony is a frightening experience for most victims and child victims in particular. Ways must therefore be found to make this process less traumatizing (McGuire, 1995). Sexual crime,

unfortunately, is not the priority area of research and surveys in many countries. Nongovernmental organizations (NGOs) findings are not always dependable. Combined results of all those are poor visibility of the magnitude of the problem. The international crime survey in countries in transition conducted by the UN Interregional Crime and Justice Research Institute, Rome, in 1998 (UNICRI, Rome) has revealed that the reporting of assault cases had been mainly very poor ranging from 0.8% (Botswana, Africa) to 6% (Albania, Eastern Europe). Reporting of such cases in Asian Countries including, China, India, Indonesia and Philippines was between 0.3% (Philippines) to 2.7% in Indonesia. The situation in this regard is slightly better in Eastern European countries where the reporting ranged from 2% (Budapest) to 6% (Albania) (Sagar, 1992)

Immediate physical examination of the victim is of utmost importance because this is the beginning point of any investigation. Moreover, it helps in ruling out the possibility of false allegation, which happens many times because of many reasons. It is recommended that the victim should always be provided with medical treatment by the same person collecting the forensic evidence and that the victim not be referred to another practitioner or facility. In India, though about 80 per cent of the rape cases are charge sheeted by the police, a large number of these cases ultimately end in acquittal because of various factors like delayed reporting, unfavorable medical opinion, witnesses turning hostile. One important factor behind the failure of a large number of cases in courts of law is the negative opinion given by the Medical Officers who examine the rape victims. Medical evidence is a crucial piece of information to establish the case of rape. The police investigator has to rely upon the examining physician collecting the best evidence in the case – evidence from the body of the victims (Crowell & Burglass 1996).

Female victims also feel shy and embarrassed to answer delicate questions posed by male investigating officers. It will be useful if female investigating officers record the statements of rape victims wherever possible. It is necessary that the strength of women investigating officers in the State Police be adequately increased and also to train them in supportive and sympathetic interviewing techniques. Most of the magistrates hearing cases under SOA are males while most of the victims are young girls and women who may shy off from telling the truth given the person hearing the matter is of the same sex as the suspect. Most of the language used in our court system to prove matters under SOA requires evidence of what was used during the incidence like mentioning words like penis and entering into the vagina of a

female. To some society is against the norms for female to mention such words like the Kalenjin tribe in Kenya, while it is a requirement to do so while giving evidence.

## **2.6 Systems And Procedures of Prosecution of Sexual Offences.**

In Kenya, provisions protecting survivors of sexual and gender based violence can be found in a comprehensive form within the Sexual Offences Act 2006 (SOA). The Kenyan Constitution and the Employment Act 2007 also respond to some sexual offences. Kenya's Constitution, in its Bill of Rights, provides for the respect of individual fundamental rights and freedoms. The Sexual Offences Act came into force on 21 July 2006. This particular piece of legislation was enacted after many years of intense lobbying by *inter alia* women's rights groups, civil society organizations and female Members of Parliament who decried the bald-faced inadequacies of the provisions of the Penal Code on sexual offences under the misleading head, "Offences against Morality". The purpose of the Sexual Offences Act (SOA) was to introduce a comprehensive law reform with regard to rape and sexual assault, to introduce stiffer and enhanced penalties for offenders.

The enactment of the SOA by the Kenya's 9th Parliament was lauded, by all, as a major achievement because it remedied these patent shortfalls by *inter alia*: expanding the list of sexual offences legislated against to incorporate offences such as the rape of men, sexual harassment, gang rape, child sex tourism, and child pornography amongst others; including minimum sentencing provisions to curb the inconsistent and largely lenient sentences previously handed out by the judiciary to convicted offenders; eliminating the authoritarian requirement of corroboration in sexual offences cases; enacting novel provisions that take into account social realities such as HIV & AIDS, and the commission of sexual offences by juristic persons; recognizing the need to safeguard the privacy of survivors of sexual offence case crimes when prosecuting these matters in a court of law by enacting provisions that amongst others allow certain witnesses to be declared vulnerable and restricting the type of questions than can be asked of a witness and integrating technological developments such as use of DNA profiling in the detection and proof of sexual offences amongst many others. The system does not address issues on what happens in case of an appeal by a suspect who has been convicted under the Sexual Offences Act when the appeal judges are of the opinion that there was an error by the trial court instead of using the evidence in record they refer the matter to a subordinate court to have the matter start de novo. This makes difficult for the

prosecution to locate their witnesses as many of them might have moved from the place they were when the matter was being tried and their whereabouts not known. Other victims when the matter is ordered to start afresh have grown up and might have been married to far places in regard to the place they were when matter was reported and they have lost interest to go back to court and give evidence.

Legal system do not address issues on compensation of victims due to psychological issues suffered during the incidence and do not make it a mandate for the courts to compensate

## **2.7 Theoretical Framework**

Although there are many different contexts in which sexual assault or offence occurs—and thus a variety of causes and complicating factors it is possible to discuss overall trends in the theories that have been advanced to explain how institutions working towards same goals should work and also why for example men rape. To most effectively provide services to victims of sexual assault and hold perpetrators accountable, members of the community must share a common understanding of sexual offence. The theoretical framework adopted organizing, analyzing and interpreted data in this study were the following.

### **2.7.1 New Institutional Theory**

Institutional theory attends to the deeper and more resilient aspects of social structure. It considers the processes by which structures, including schemas, rules, norms, and routines, become established as authoritative guidelines for social behavior. It inquires into how these elements are created, diffused, adopted, and adapted over space and time; and how they fall into decline and disuse. Although the ostensible subject is stability and order in social life, students of institutions must perforce attend not just to consensus and conformity but to conflict and change in social structures.

According to Scott (2004) Defining 'institutions' ... there is no single and universally agreed definition of an 'institution' in the institutional school of thought asserts that "Institutions are social structures that have attained a high degree of resilience. They are composed of cultural-cognitive, normative, and regulative elements that, together with associated activities and resources, provide stability and meaning to social life. Institutions are transmitted by various types of carriers, including symbolic systems, relational systems, routines, and artifacts. Institutions operate at different levels of jurisdiction, from the world system to localized interpersonal relationships. Institutions by definition connote stability but are subject to change processes, both incremental and discontinuous"... Powell and DiMaggio (1991:8) shed light on the meaning of 'institutions' by offering a definition of the (neo-)institutional field: "The new institutionalism in organization theory and sociology comprises a rejection of rational-actor models, an interest in institutions as independent variables, a turn toward cognitive and cultural explanations, and an interest in properties of supra-individual units of analysis that cannot be reduced to aggregations or direct consequences of individuals' attributes or motives".

Enactment and (re-)production of institutions These social structures (mentioned above) are both imposed on and upheld by the actors (e.g. an individual, an organisation, etc.) behaviour.... One cognitively oriented view is that a given institution is encoded into an actor through a socialization process. When internalized, it transforms to a script (patterned behavior). When (or if) the actor behaves according to the script, the institution is enacted. In this manner, institutions are continuously (re-)produced. The enactment of an institution externalizes or objectifies it - other actors can see that the institution is in play, and a new round of socialization starts. After some time, the institution (and the resulting patterned behaviour) becomes sedimented and taken for-granted. Then, it might be difficult for the actors even to realize that their behaviour is in fact partly controlled by an institution. Acting in accordance with the institution is viewed as rational by those who share the institution.

### **2.7.2 Resource Dependency Theory**

Organizational success in resource dependency theory (RDT) is defined as organizations maximizing their power (Pfeffer 1981). Research on the bases of power within organizations began as early as Weber (1947) and included much of the early work conducted by social exchange theorists and political scientists. Generalization of power-based arguments from intra-organizational relations to relations between organizations began as early as Selznick (1949). RDT characterizes the links among organizations as a set of power relations based on exchange resources.

RDT proposes that actors lacking in essential resources will seek to establish relationships with (i.e., be dependent upon) others in order to obtain needed resources. Also, organizations attempt to alter their dependence relationships by minimizing their own dependence or by increasing the dependence of other organizations on them. Within this perspective, organizations are viewed as coalitions alerting their structure and patterns of behaviour to acquire and maintain needed external resources. Acquiring the external resources needed by an organization comes by decreasing the organization's dependence on others and/or by increasing other's dependency on it, that is, modifying an organization's power with other organizations.

RDT rest on some assumptions:

1. Organizations are assumed to be comprised of internal and external coalitions which emerge from social exchanges that are formed to influence and control behavior.

2. The environment is assumed to contain scarce and valued resources essential to organizational survival. As such, the environment poses the problem of organizations facing uncertainty in resource acquisition.
3. Organizations are assumed to work toward two related objectives: acquiring control over resources that minimize their dependence on other organizations and control over resources that maximize the dependence of other organizations on themselves. Attaining either objective is thought to affect the exchange between organizations, thereby affecting an organization's power.

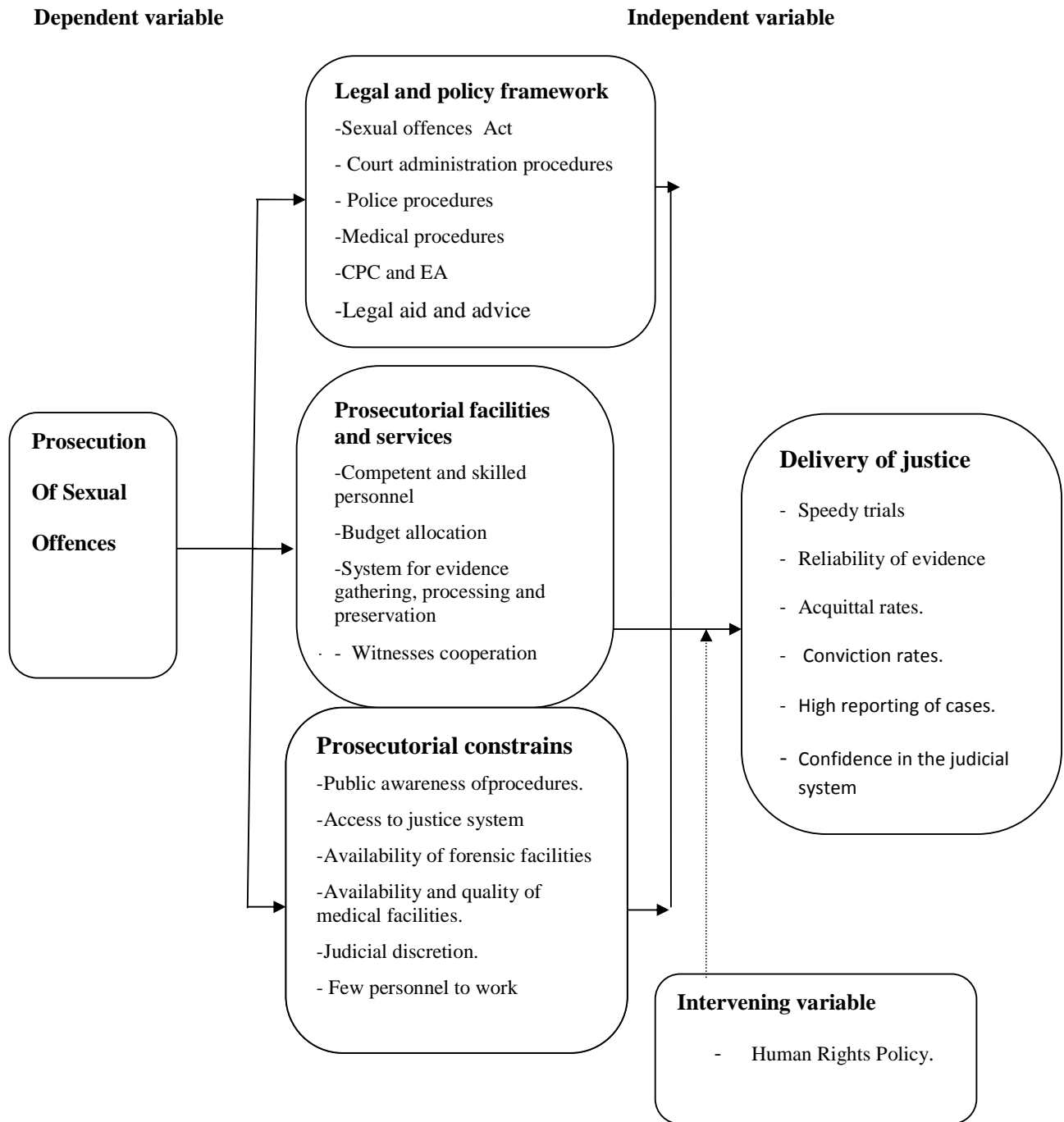
Although RDT was originally formulated to discuss relationships between organizations, the theory is applicable to relationships among units within organizations. RDT is consistent with ecological and institutional theories of organizations where organizations are seen as persistent structures of order under constant reinterpretation and negotiation, interacting with an indeterminate environment of turbulence and a multitude of competing interests.

### **2.8 Summary of Literature Review.**

The purpose of reviewing related literature is among other concerns to examine how certain factors which have possible influence on the problem under the study are inter related. The literature reviewed will shape the researcher's conceptual framework and is intended to identify gaps in knowledge hence create an entry point to the new study. Various standing between determinants of justice delivery and prosecution of sexual offence cases has been highlighted in the literature review. The literature cited have documented dismal delivery of justice in regard to prosecution of sexual offences cases. The studies reviewed have dealt with various factors hindering delivery of justice such as gap in law and obstructions of justice by suspect and their agents. This study however extends the inquiry into the field of prosecution of sexual offences by examining option for optimizing the performance of investigation and prosecution

## 2.9 Conceptual Framework

Figure 1: Conceptual Framework



## **CHAPTER THREE: RESEARCH METHODOLOGY**

### **3.1 Introduction**

This chapter provided an overview of the research methodology. It includes a description of the research population and site, research design and sampling procedures. It also described the data collection instruments and techniques that were used and also indicates data analysis and interpretation methods.

### **3.2 Study**

According to Mugenda and Mugenda (1999), target population is the entire group a researcher is interested in or the group about which the researcher wishes to draw conclusions. Mugenda further adds that a population is any set of persons or objects that possesses at least one common characteristic.

The study was conducted at Naivasha law court which is about 100 kilometers west direction away from Nairobi capital city of Kenya. The court has five magistrates headed by chief magistrates, 36 staffs and five prosecutors. It serves two police division both having nine police stations. The police divisions are Naivasha and North Kinangop while the stations are; Naivasha, Maaimahiu, Kongoni, Gilgil, Njambini, Magumu, Engineer, Kwaharaka and Karagita police stations. The court covers a large area as there is no other court apart from the bordering courts which are Narok court, Limuru court and Nakuru court covering an area of about 10, 000 kilometers square.

The study involved the staff and other relevant agencies responsible for administration of justice at Naivasha law courts. These included magistrates at Naivasha law court, investigating officers within Naivasha Police Division and South Kinangop Police Division. It also covered the staff from Naivasha District Hospital, Gilgil District Hospital and Engineer District Hospital.

### **3.3 Research Design**

The study design employed was a combination of survey and secondary document analysis. A survey is a means of gathering information about the characteristics, actions, or opinions of a large group of people, referred to as a population; it describes data and characteristics about the population or phenomenon being studied and answers the questions who, what, where, when and how (Robert 2003). This method was seen to be appropriate for the study because

it enabled collection of data from a cross section of respondents based on a set of standardized questions. Document analysis was undertaken to compliment the survey data. This is because the sexual offences cases were only a portion of the wide range of cases prosecuted at the Naivasha law courts.

### **3.4 Unit Of Analysis**

The unit of analysis was Naivasha law court with a specific focus on prosecution of sexual offences. The source of data was from court registry, judicial officers, police officers and medical staffs

### **3.5 Sampling Procedure.**

A sample is a subset of the total population that is used to give the general views of the target population (Robert, 2003). Sampling was necessary which provided an easy and acceptable method to get information from all the targeted respondents. Simple random sampling was used in this study.

A sample of 30 % was drawn from the total target population of representing respondents which is in agreement with Orodho (2003) who recommends a sample size of between 30% and 50 %, where the target population is small. This method was ideal for this study because each individual was given an equal probability of being selected and the sample being generalized to the larger population. The source of the data target was from magistrates from Naivasha law court, investigating officers from Naivasha and North Kinangop police divisions, medical officers from Naivasha district hospital and staffs from the Naivasharegistry law court. Other sources were from secondary documents which included; law reports, crime reports registers at police stations, court files and prosecutions registers.

The study was based on analysis of finalised files on sexual offence cases prosecuted at Naivasha law court for the period between 2009 – 2012. The analysis contained the reasons given by the deciding magistrate for conviction, acquittal or dismissal of a case. Four files were obtained from each of the three categories. Information from these files was supplemented with field interviews from : magistrates, doctors, prosecutors and investigating officers drawn from relevant institutions around Naivasha law court.

#### **3.5.1 Sample Size**

The target population was a total of 14 people comprising of three (3) magistrates, two (2) prosecutors drawn from Naivasha law courts, three (3) doctors drawn from Naivasha District

Hospital, Gilgil District Hospital and Engineer District Hospital and six (6) investigating officers drawn from the two (2) Police Divisions serving Naivasha law courts.

Also finalized files on sexual offences cases in Naivasha law courts amounting to 24 files. Two files from convictions, two acquittals and two discharged files on every year for the four years.

### **3.6 Research Instruments( Data collection tools )**

Research instruments are the data collection tools that were used in this study (Robert, 2003). The instruments used in this study were questionnaire and interview schedules. Primary data was collected by the use of questionnaires and interview schedule. The questionnaire was used to obtain data from the prosecutors and magistrates while the interview schedule was used to collect data from the doctors and the investigating officers. The reason for using different data collection instruments is that the questions directed to the prosecutor and the judges were straight forward and standard while more explanation was needed from the investigating officers and doctors.

A questionnaire is a list of standard questions prepared to fit a certain inquiry (Mugenda and Mugenda, 1999). The questions asked were structured, non-disguised questionnaire i.e. questions listed in a pre-arranged order. The respondents were informed about the purpose of collecting the information before they were given the questionnaires or interviewed. Both closed and open ended questions were used.

In closed ended questions, the respondent was asked to select from a fixed list of replies and was to select any one of the options given or multiple options. This method facilitated coding and helped in quantifying the answers to the questions. Open ended questions gave the respondents an opportunity to express their opinions. In these types of questions, there was no predetermined set of responses and the respondents are free to answer by choice (Yin, 1994).

The questionnaire was divided into three parts; the first part sought information on factors that support delivery of justice in prosecution of sexual offences cases; part two provided information on factors that constrain delivery of justice in prosecution of sexual offence cases while part three collected information on adequacy of systems and procedures for prosecution of sexual offence.

The researcher opted for a questionnaire because it was found suitable for a survey design like this. It also provides enough time for the respondents to carefully consider their answers before giving their responses. The method is also free from biases. Interview Schedule method is a face to face technique where by the interviewer had a list of predetermined questions which the researcher asked the magistrates .The researcher used this method because the magistrates could not have enough time to fill in the questions by themselves due to their tight work schedules. All the responses were accurately recorded by the researcher. This method had the flexibility of adapting and adopting as the interview continued. It was also reliable, accurate, and gave the researcher a good opportunity to clarify the questions that were not clear to the respondents. It was found to be less expensive. Document review and analysis was used for the court files.

The three magistrates interviewed were one chief magistrate, one senior principal magistrate and one resident magistrate; the reason was to have different information as every rank in judiciary had different powers assigned to each and the rank had different experiences. The investigating officers interviewed were mostly corporals of police as they were the ones assigned duties to investigate sexual reports made at different police stations. The reason given by officers commanding stations to assign the sexual cases investigations to senior police officers was because the cases were sensitive in nature and had a lot of public interest. The doctors interviewed were one senior doctor and other two doctors for the reason to get enough information in regard of different experience. A check list observation was used for finalized files for the purpose of checking for different opinions and comments for sentencing, acquittal or discharge by the deciding magistrate.

### **3.7 Techniques and Procedures of Data Collection.**

The researcher began his official study by seeking approvals from the relevant authorities which included approval for commissioning and collection of data. The researcher first obtained a research permit from the Ministry of Higher Education through the National Council of Science and Technology, then from the Chief Magistrate in charge of Naivasha Lawcourts and from the head of the Prosecution. The researcher then had briefing meetings with the respondents to inform them about the research, sought their consent to be involved in the study. Once schedules had been agreed upon with the respondents, the researcher went ahead to administer the instruments appropriately. The researcher also took notes during the face to face interview .Other questions outside the interview guide were used to clarify certain important issues.

### **3.8 Ethical Considerations.**

Throughout the research exercise, the researcher observed ethical principles in the constitutional rights of every person and that lead to seeking informed consent of the respondents and assuring confidentiality of the data and information collected. The researcher undertook not to reveal the identity of the respondents and ensure that the data or information to obtained was only used for academic research purposes.

### **3.9 Data Analysis Techniques**

Data generated for this study were mainly qualitative, the analysis procedures used involved three steps; condensing of data; pictorial display in form of tables and figures; data analysis and interpretation.

## CHAPTER FOUR: DATA ANALYSIS AND INTERPRETATION.

### 4.1 Introduction.

This chapter presents the summary, organization and analysis of the data. The findings of the study are analyzed using both qualitatively and quantitatively description statistics where necessary. The field study sought to examine the determinants of justice delivery in sexual offence cases at Naivasha law court for the period ‘between’ 2009 – 2012.

### 4.2 Investigators and Prosecutors.

The study interviewed investigators and prosecutors involved in investigation and prosecutions of sexual offences in Naivasha area in order to establish the number of cases investigated and the challenges faced during investigation and prosecution of cases under sexual offences act. The study interviewed a total of six investigators and two prosecutors.

**Table 1: Investigators and prosecutors**

Station	No. of investigators	No. of prosecutors
Naivasha	2	2
Gilgil	2	Nil
Kongoni	1	Nil
Maaimahiu	1	Nil

*Researcher, 2013*

The researcher found of paramount importance to determine number of investigators interviewed. The officers were drawn from different police stations, Naivasha and Gilgil police station each had two officers as majority of cases heard at Naivasha court originated from the two stations and the rest of respondents were one from Kongoni and another from Maaimahiu.

#### **Prosecutors Interviewed**

On the number of prosecutors interviewed, the results evidently revealed only two prosecutors were interviewed from Naivasha reason being Naivasha hosted all the five prosecutors serving Naivasha law court as the other stations did not have prosecutors and cases emanating from those station were tried only at Naivasha.

**Table 2: Years in service for investigators**

<b>Respondent</b>	<b>Station</b>	<b>Years in service</b>	<b>Years served at that station</b>
1	Naivasha	15	3
2	Naivasha	6	2
3	Gilgil	18	4
4	Gilgil	10	3
5	Kongoni	12	2
6	Maaimahiu	8	2

*Researcher, 2013*

The study showed all the correspondents had served the police for more than six years hence had experience and they had stayed in their duty stations for more than two years thus had knowledge of the station area as sexual cases were sensitive and needed visiting the scene of incidents. They complained transfers affected their work as they had to take over investigation of cases of those officers transferred as they had to start looking for witness when they did not know the area they came from.

The study further explored on years served at that station. Majority had served more than two years in their current station meaning they had knowledge of sexual offences cases registered at Naivasha law court.

All respondents interviewed were experienced officers and experience was shown as one of the factors supporting to the delivery of justice, however most respondents in this category reported that the frequent transfers largely contributed to factors constraining the delivery of justice.

**Table 3: Years in service for prosecutors**

<b>Respondent</b>	<b>Station</b>	<b>Years in service</b>	<b>Years at that station</b>
1	Naivasha	20	2
2	Naivasha	12	3

The study showed that prosecutors had experience for more than ten years and had stayed at that station for more than three years hence they were experienced and had handled majority of files been studied from 2009 to 2012. They complained when transferred they were not given chances to finalize prosecuting part heard cases that affected performance as those who took over from them had no knowledge about the cases. All prosecutor had the rank of

inspector of police as the law before the new constitution required only officers above the rank of inspector of police could be appointed by the attorney general to prosecute. The high transfers of prosecutors was seen as constrain to the delivery of justice.

**Table 4: Cases assigned to each respondent per week**

<b>Respondent</b>	<b>Designation</b>	<b>Rank</b>	<b>SOA cases assigned</b>	<b>SOA cases taken to court</b>
1	Prosecutor	IP	6	6
2	Prosecutor	IP	8	8
3	Investigator	CPL	4	3
4	Investigator	PC	3	2
5	Investigator	CPL	3	2
6	Investigator	CPL	3	3
7	Investigator	CPL	4	4
8	Investigator	PC	2	2

*Researcher, 2013*

IP – inspector of police

CPL – corporal of police

PC – police constable

SOA – cases under sexual offences act

The respondents were also asked to indicate their respectful ranks. It was clearly indicated that majority were at the ranked CPL's while the rest were ranked as PC's.

This is clear indication that sexual cases were more allocated to corporal officers who had extra training in investigations more than constables. The respondent cited almost all cases reported were rushed to court immediately after reporting without proper investigation done due to the sensitivity of sexual cases reported as the society and human right put a lot of pressure sighting that the investigating officers were corrupt incase the suspect was released from police cells before taken to court. Also of great concern was challenges of the law especially were the suspect had been arrested by members of public or administration officers before the report had been received by the police as it is a mandate from the Kenyan constitution a suspect be taken to court as quickly as possible after arrest and not after expire of 24 hours. Looking at the number each respondent investigated it could be impossible to conduct proper evidence due to the reasons that stations covered large areas and did not have vehicles for mobility to those areas, they were supposed to accompany the victims and take suspects to hospital for medical checkup which were far away, for example Naivasha district hospital was 65 kilometers away from Kongoni police station. The respondent pointed out

that suspects were taken to court even before filling of p3 forms by the victims and most of the suspects were tried in court without having first taken to hospital for examination leading to acquittal of cases in court. The respondents complaint there were few officers investigating Sexual cases and there was need to train more officers to assist them which will increase the time to collect evidence in any case reported. The high number of cases allocated to each officer was a constrain to the delivery of justice as they could not manage to properly investigate before taking to court while there was also a constrain on the part of the law requiring all suspects to be taken to court within 24 hours after arrest.

#### **4.4 Medical Officers**

The study interviewed medical officers involved in gathering forensic evidence of sexual offences in Naivasha area in order to establish the number of p3 forms filled per week concerning victims of sexual cases and the number of times the officers testified in court per week. The study interviewed a total of three medical officers from Naivasha district hospital who were the only officers allowed by the hospital authority to fill medical reports concerning sexual matters as Gilgil and Engineer district hospital had made arrangements to have all p3 forms from their area to be filled at Naivasha district hospital to minimise time taken to go and testify in court as Naivasha hospital was only one kilometer away from the court compared to Gilgil which was 20 kilometers and Engineer was 50 kilometers away from the court. The table below shows number of doctors interviewed, station of service, designation, number of years in service and number of years at the current station.

**Table 5: Medical Officers**

<b>Respondent</b>	<b>Station</b>	<b>Designation</b>	<b>No. years in service</b>	<b>No. of years at current station</b>
R1	Naivasha	Senior doctor	18	8
R2	Naivasha	Doctor	4	2
R3	Naivasha	Doctor	2	2

*Researcher, 2013*

On the number of years in service, R1 indicated 18 years, R2 4 years and R3 2 years. The study further determined number of years at the current station whereby R1 revealed 8 years, R2, R3 said 2 years each respectively thus all respondents were experienced which supported factors of delivery of justice. Each respondent work done in regard of cases reported on every week at the Naivasha district hospital is shown below

**Table 6: Doctors' Average Weekly Workload on Sexual Cases**

<b>Respondent</b>	<b>Average no. of p3 forms filled</b>	<b>Average no. of p3 forms testified in court</b>
R1	8	4
R2	10	6
R3	16	10

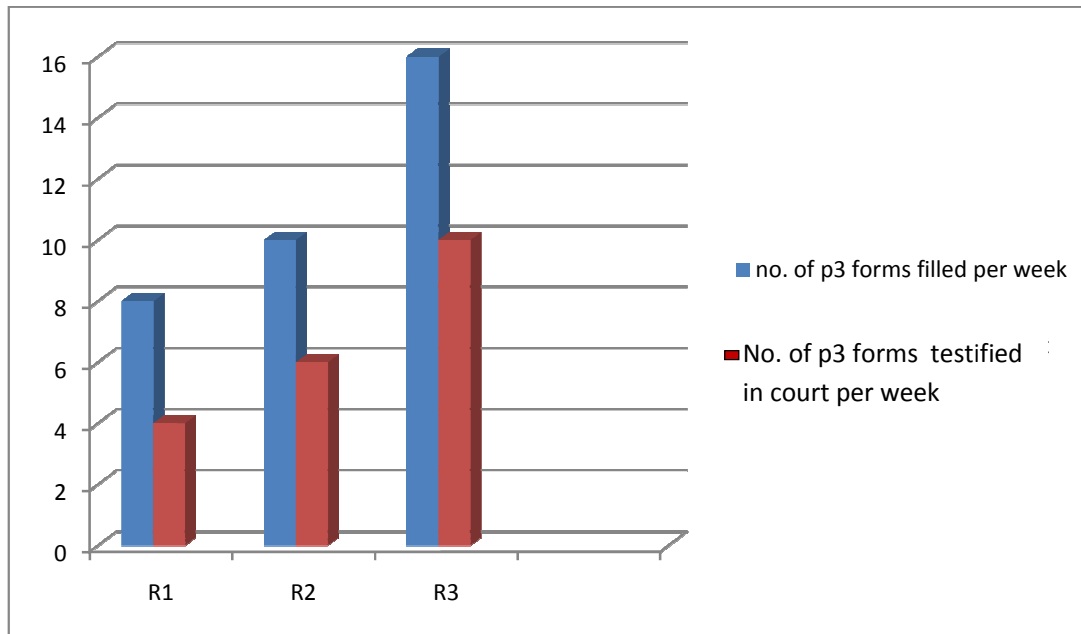
*Researcher, 2013*

P3 forms are legal documents filled by medical officers to assist the court on expertise opinion regarding medical examinations. The high number of p3 forms filled explains for cases ending up in filling in the court resulting into delays in finalising of cases. The consequences are that cases would drag in court for several months affecting the delivery of justice as delay of hearing contribute to one of the biggest reason for acquittal of cases. The findings are that despite the medical officers involved with their normal work of treatments they had a lot of work to examine sexual offences victims hence they didn't have enough time to full examine every victim and fill all required information thus constraining delivery of justice.

Table 6 shows senior medical officers had lower work load compared to the junior officer as shown in column 4. This was explained by R1 that senior officer had other works allocated to them as administration work and handled complicated medical issues in the hospital.

The below graph shows comparison of p3 forms filled by each respondent each week and the number of p3 form each testify in court

**Figure 2: Doctors' Average Weekly Workload on Sexual Cases**



The discrepancy between the p3 forms filled and testified in court respondent indicated fewer cases ending in court could be contributed by failure of victims to pursue their cases or interference from other source like family members of suspects this was seen by most respondents as one of constrain in delivery of justice.

The study established average number of p3 forms filled. The study results revealed that R1 filled 8 p3 forms, R2 filled 10 p3 forms while 16 of them and who were the majority filled by R3. The data shows that doctors who were not experienced enough were assigned a lot of work to fill p3 forms and it was explained that the senior doctors had administration work within the hospital to undertake, also information from correspondent indicate that only doctors who had served two years in service where allowed to fill the p3 forms this was explained by the senior doctor that before two years of service were not allowed to fill as they were still under probation.

A bout 40% of the p3 forms filled were not produced in court by the doctors showing they formed part of acquitted cases in court by simple reason of witness not going to court and this was major constrain of delivery of justice.

#### 4.5 Magistrates

The study also established the patterns in the determination of sexual offences cases that ended in convictions, acquittals and discharged. The interviewed three magistrates were all involved in hearing and determine the results of sexual offences in Naivasha area. The study interviewed a total of three magistrates of different designation out five magistrates at Naivasha law court. The table below shows the designation of respondents, number of years served, number of years served at current station and average number of cases under SOA heard per week.

**Table7: Magistrates work load on sexual offences per week**

Station	Respondent	Designation	No. of years served	No. of years at current station	Average no. of cases heard per week
Naivasha	R1	CM	12	2	8
Naivasha	R2	SPM	8	4	8
Naivasha	R3	RM	2	2	12

*Researcher, 2013*

CM – Chief magistrate

SPM – Senior Principle magistrate

RM – Resident magistrate

The respondent interviewed had more than two years experience and each had served for more than two years at the current station. The numbers of cases heard by each respondent were more than 8 per week and the average time taken to hear every case was 14 months that cases end up filling in the court. The number of years served was between 2 – 4 years indication of frequency of transfer which affected the time each case could be concluded as the law required any new magistrate taking over a case the defence could request the matter to be heard a fresh as provided in section 200 of criminal procedure code. The work load in the distribution of cases for magistrates ( table 7) was balanced more than for medical officers ( table 6).

The average results by every respondent on work done every week are shown in the table below:

**Table 8: Trends in determination of sexual offences cases**

<b>Respondent</b>	<b>Conviction rate</b>	<b>Acquittal rate</b>	<b>Discharge rate</b>
R1	35%	65%	No data
R2	40%	55%	5%
R3	40%	55%	5%
Average	38.33%	58.33%	3.33%

*Researcher, 2013*

The results of the findings revealed that 58.33% which is the largest proportion of the concluded cases were acquitted, 38.33% convicted and the 3.33% were discharged. The reasons given to the high number of cases acquitted were witnesses failure to attend court, witnesses becoming hostile in court, insufficient evidence from prosecution side and also suspects released on bond absconding and never attend the trial.

#### **4.6 Analysis of finalized court sexual offences cases from Naivasha law court registry.**

The study also examined finalized sexual offences cases files sampled from the court registry. The files sampled were those presented to the court between 2009 and 2012

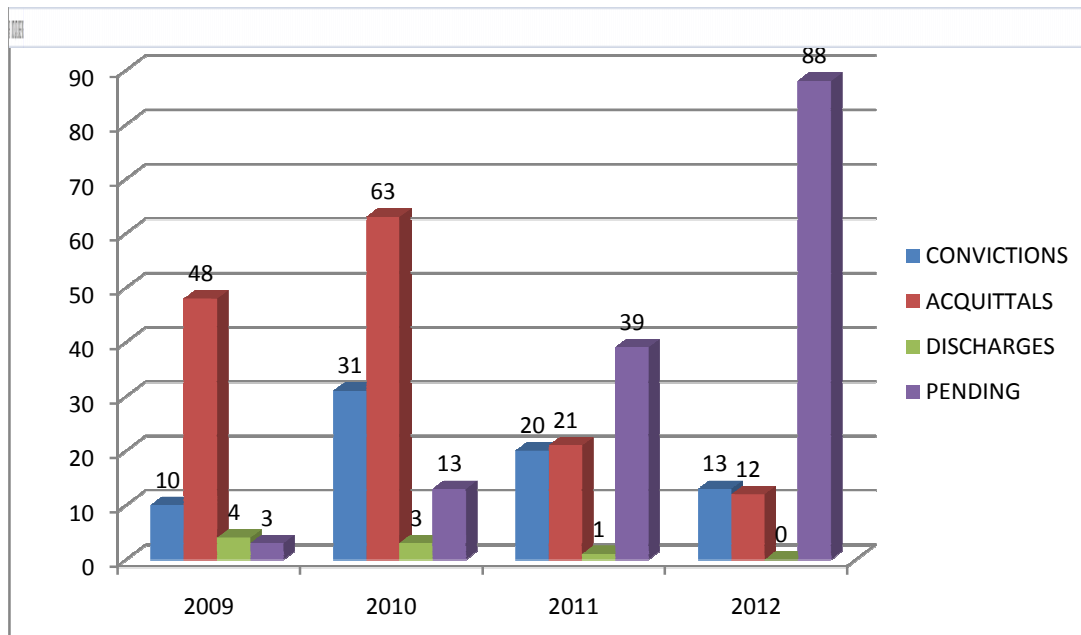
**Table 9: Analysis of Finalized cases Files**

<b>YEAR</b>	<b>Total cases</b>	<b>Conviction</b>	<b>Acquittal</b>	<b>Discharge</b>	<b>Pending</b>
2009	65	10	48	4	3
2010	110	31	63	3	13
2011	81	20	21	1	39
2012	113	13	12	0	88
Total	369	74	144	8	143

*Researcher from court registry, 2013*

Conviction occurred in cases where magistrate found suspect guilty of an offence after full trial or when suspects pleaded guilty to the offence after been taken to court, acquittal is a decision made by a magistrate after hearing a case that the accused person is not guilty of the offence and discharge is a decision by the court that a charge sheet brought before the offence referred doesn't exist or the particulars of the charge sheet are defective.

**Figure 3: Total number of cases convicted, acquitted and discharged for each year from 2009 to 2012**



From the table almost 32.7% shows conviction on average for the four years calculating from the finalized files only. Explanation on the decrease on discharge it was found that prosecutors were careful when signing charge sheets thus all charge sheets for 2012 had been accepted by the court. The rate of convictions shows upward trends a factor that could be explained by the introduction of SOA. For example, out of finalized files for 2009, 16.1%, 2010, 32%, 2011, 47.6% and 2012, 52% conviction rates were archived.

Based on this pattern it could be predicted that for the pending files most would result to acquittals due the length of time taken before cases are finalized. A total of 369 files were recorded from 2009 to 2012, out of which 2 files each year on convictions and acquittals, 1 file on discharge for 2009, 2010, and 2011 were examined as there wasn't discharge for 2012.

#### **4.7 From the Sample Files**

The study sought to find out from finalized files the period take for trial, number of witness called and reasons given by deciding magistrates in filed convicted, acquitted and discharged.

A total of eight convicted finalized cases, eight acquitted files and eight discharged were analysed and result as follows:

**Table10:Average Time Taken For Decision Making In Months**

Year	conviction	Acquittal	Discharge
2009	5.5	13	3
2010	6	16	2
2011	4.5	15	1
2012	3	8	No data

*Researcher from finalized files, 2013*

The study shows that the short the time taken most cases resulted into conviction and the longer the time took for trial resulted into acquittal. This was explained by the chief magistrate and chief prosecutor that majority of witness had interest in following their cases in shortest time and lost interest or there were likely of interferences incase of prolonged trial time. It was established there was no law on the time it took to finalise cases and magistrates stated the long period taken for acquittals of cases was due to unnecessary adjournments on application by prosecution waiting to avail witnesses in court but at the end of the day failed avail witnesses leading to acquittal. The period for discharge was short as the magistrates stated could not hold suspects who had brought in court with a defective charge sheet. This was establish after getting the age of victims few who were found to be adults who could give consent for sex while their guardians could complaint to police as minors.

**Table 11: Average Number of Witness Called By Prosecution per case leading to decision by magistrate**

Year	Conviction	Acquittal	Discharge
2009	5	2	No data
2010	5	3	No data
2011	6	5	No data
2012	4	5	No data

*Researcher, 2013*

From thefinalised files it was observed majority of convictions were after prosecution availed, the victim of a case, two other witnesses, medical officer and investigating officer

who testified in court ( as shown table 13 column 2). The witnesses were for the purpose of corroborative the evidence. Majority of files resulting to acquittal had been closed by prosecution before all witnesses had testified and further adjournment of the case denied by court, non appearance of witnesses in court, lack of corroborative evidence from witnesses (as shown in table 13 column 3 where few witness testified compared to column 1), for discharge no witness was called as it was only application on admissibility of the charge sheet by defence.

#### **4.8 Factors Supporting the Delivery of Justice in Sexual Offences Cases Prosecuted In Naivasha Law Court**

On seeking to establish which factors supports delivery of justice in the prosecution of sexual offenses cases, most of the investigating officers cited that Cases involving sexual offenses can be very difficult to prosecute, and because of their nature require sensitive and careful handling, especially with regard to victim care and support. The provision of accurate and up-to-date information to the victim throughout the life of the case, together with quality support, and careful consideration of any special measures requirements are all important factors for the investigators to consider.

The most of the investigating officers and magistrates recommended that it is important that witnesses work closely with the police and other agencies to ensure that the best evidence is gathered and presented to the court. A strong, coordinated prosecution team is required to proactively build and manage a case. It is also essential that we liaise with Independent Sexual offenses Advisers – (where these exist), Witness Care Units (WCU), and voluntary sector support organizations, to ensure that the victim's safety and support needs are addressed throughout the life of a case. All respondents interviewed stated corroborative evidence supports the delivery of justice in all cases.

Corroborative evidence means evidence that tends to support a proposition that is already supported by some initial evidence, therefore confirming the proposition. It is dependent testimony which affects the accused by connecting or tending to connect him with the crime, confirming in some material particular not only the evidence that the crime has been committed but also that the accused committed it<sup>1</sup>This is evidence which strengthens, adds to, or confirms already existing evidence.

Previously technicalities in law made it almost impossible for magistrates and judges to hear cases to the fullest but with introduction of section 159 of the constitution which guards

against dismissal of cases on technicalities; it has become easier trial out cases to the fullest in court. This was considered by prosecutors and magistrates supporting delivery of justice.

The medical officers interviewed cited forensic examination as the most important report to be presented in court to support delivery of justice, also the victim been taken to hospital immediately as possible the incident and avoid washing clothes they wearing as well not bathing highly supported the end results of trial of sexual cases.

Magistrate cited timely presentation and hearing of cases supported delivery of justice as it reduced inferences of cases by either family member of parties involved or by police officers.

#### **4.9 Factors constraining the delivery of justice in the prosecution of sexual offences cases In Naivasha Law Court.**

The investigating officers and medical officers cited of lack of proper evidence and limited mechanisms for gathering evidence as the main factors constraining the delivery of justice in the prosecution of sexual offences cases. The study inquired on the various reasons for large proportions of sexual offences cases resulting in acquittal. There were many reasons for the high proportion of acquittal in sexual cases and these were delayed investigation, laxity on the part of the investigating officers, non-availability of witnesses and lack of medical evidence as a crucial piece of information, which is required for establishing the cases of sexual offences in a court of law.

The investigators involved in the questionnaires collecting data for this thesis stated that they mostly face challenges when it comes to collection of evidence. The investigating officers are put to ask to try as much as possible to gather sufficient evidence and ensure that the physical evidence collected is not contaminated. They stated that “most of the sexual offences occur in rural areas and slums, areas which are mostly inaccessible due to bad roads and the police station does not have enough motor vehicles to access every crime scene”.

They also stated that there was an increase in sexual offences reported in the station after the post-election violence since Naivasha saw an influx of internally displaced persons {IDPs}. In such cases involving the IDPs it is exceptionally difficult to reach the witnesses and at times the victims moved from camp to camp thus making it impossible to prosecute these cases. When it comes to incest, officers stated that these were generally tough to prove due to “cover up by family members”. One other investigating officer stated that “most of the victims do not report in good time and the police department has not been able to provide

enough equipment to use in investigations, for example gloves and stationeries”. Investigation into sexual offences is faced with many challenges including:-

Due to the particular sensitive nature of sexual offences, victims have greater difficulty talking of their ordeal than in any other non-intimate crimes. This makes it really difficult for investigators to gather first-hand information from victims which could come in handy in identification of the offender. Non-collaborative victims make bad witnesses and this affects the case in further stages.

Where investigators are male or where the investigator is not trained or sensitive to issues of sexual offence it creates a gender dynamic that makes it uncomfortable for female victims mostly to narrate their ordeal.

At times the victim and the offender live in the same village and the fear of reiteration is paralyzing to some victims who would rather not testify. Other witnesses may also choose not to come forward with information where the offender is known to them due to fear or intimidation.

Where the victims are young children not emotionally mature, the trauma of a sexual offence can affect their ability to coherently or fully recount the experience. Where an investigator is not trained to handle traumatized victims it could be very difficult to gather any useful information from the victim.

There is also the language barrier challenge in some cases where the investigator does not speak the victim’s first language. Where an investigator need interpretation this could pose a major challenge as a lot gets lost in interpretation. Flawed interpretations can easily lead to confusion and misunderstanding.

Ensuring that DNA evidence is not interfered with is probably the biggest challenge that investigators face while gathering evidence in sexual offences. Unlike in many other offences, the scene of the crime is the body of the victim and in some cases the body of the offender.

The investigator is tasked with ensuring that the evidence is not interfered with before the victim gets to the hospital for proper gathering of DNA evidence. This evidence forms a major part of the investigation and prosecution of sexual offences. This kind of evidence is known as medico-legal evidence. The medical officers cited they only collected sample for DNA tests which are forwarded to government chemist in Nairobi for analysis as they lacked

the equipment in that hospital and could not control any interference by police who transported the samples to Nairobi.

The legal challenges where prosecution cannot withdraw under section 87(a) of CPC as section 40 of SOA states that it is only Director of public prosecution(DPP) who can terminate any case taken to court under SOA locking public prosecutors from withdraw. Also the sentence for offender who has committed defilement with victims aged between 12 and 13 years, 15 and 16 years not provided in the statute. Magistrate interviewed stated issue of balancing the evidence of prosecution and defence was the most difficult part to deal with and also victims with special problem like dumb, imbecile mentally challenged victims had difficult in giving their testimony.

There are many challenges encountered while gathering forensic evidence in sexual offence cases. In any sexual offence case, time is of the essence. Evidence should be collected within the first 72 hours of the occurrence of the assault. Sexual assault victims are advised to report the incidence as soon as possible after occurrence to help in collection of evidence. The victim is advised not to take a shower or wash the clothes they had on during the assault as this will contaminate or tamper with any useable evidence the victim might have on them or on the clothes. Unfortunately there is no telling how someone will react after such an ordeal. Some victims prefer to “wash it away” and forget it happened, others will take a lot of time before reporting the incidence. This makes it really difficult to collect any traces of forensic evidence that would link the victim to the assailant. One medical officer from Naivasha District Hospital stated that one of the major challenges in gathering information in suspected sexual offences is tampering of evidence by both the victim and the medical personnel.

There is also the chance that the medical officer or clinical personnel who has first chance of examining the victim does not collect the samples necessary for DNA a testing and only concentrates on treating the victim. The victim in such case will have to undergo another testing procedure to gather the required samples and this leads to interfering with important DNA samples.

The types of laboratory equipment required for DNA testing require high level maintenance and are mostly not available in local hospitals. Where a forensic laboratory is underfunded or lacks proper trained personnel, forensic analysis capacity may be minimal or unreliable.

Ensuring the integrity and adequacy of the information gathered during the medical examination is the most crucial part of any investigation but according to the medical officer

interviewed for this project; this is the least adhered to measure. Due to inadequate facilities and a backlog in government institutions there is delay in processing of samples gathered on victims and assailants thus increasing the chances that such evidence will be tampered with. Other than this there is also the issue of reporting the findings to court. The medical officer interviewed stated that, “in majority of medical investigations pertaining to sexual offences the medical practitioner who conducts the preliminary examination and writes up the report is not the same person who presents evidence before a court of law. This means the integrity of the evidence reported is diminished because it is not a first person account of medical findings.” Legal requirements regarding collection of medico-legal evidence can restrict which medical personnel may testify in court, impose mandatory reporting of certain categories of allegations, thus medical personnel who are not well versed with the legal procedures may get confused and disoriented in the process.

#### **4.10 From Finalized Files.**

The reasons given for convictions or acquittals in the files were almost the same. Convictions were given due to prosecution proofing the case beyond any reasonable doubt by well collaborated evidence by witness and exhibits. Acquittals were given as a results the evidence was not collaborated. Observations from magistrate witness not telling the truth, non appearance by prosecution witnesses, withdraw by the prosecution before the end of prosecution case. Of great observation is than all the matters which were heard in the first six months after the incidence more than 85% resulted into convictions and the more the cases took to be finalized the conviction rate decreased.

#### **4.11 Adequacy Of System and Procedures of Prosecution of Sexual Offences Cases.**

In Kenya, provisions protecting survivors of sexual and gender based violence can be found in a comprehensive form within the Sexual Offences Act 2006 (SOA). The Kenyan Constitution and the Employment Act 2007 also respond to some sexual offences. Kenya’s Constitution, in its Bill of Rights, provides for the respect of individual fundamental rights and freedoms. The Sexual Offences Act came into force on 21 July 2006. This particular piece of legislation was enacted after many years of intense lobbying by *inter alia* women’s rights groups, civil society organizations and female Members of Parliament who decried the bald-faced inadequacies of the provisions of the Penal Code on sexual offences under the misleading head. “Offences against morality”. The purpose of the Sexual Offences Act (SOA)

was to introduce a comprehensive law reform with regard to rape and sexual assault, to introduce stiffer and enhanced penalties for offenders.

The justice system involved three institutions: the police department, medical department and judiciary. Victims usually report to police who starts investigation immediately and a referred to hospital medication purposes and examinations. The respondents stated that many victims went to hospital before reporting to the police although at the hospital staffs there referred them to make report with police before treatment. The examination dealt with the feeling of the p3 form although there was a concern whether the standard medical report form limits the doctors when it comes to reporting. When this question was posed to a medical officer at the Naivasha district hospital, she stated that “the standard issue medical report forms a suitable guideline as to the most relevant findings gathered in cases of suspected sexual offences”. Medical officers play a major role not only in the prosecution of sexual offences through reporting but also in encouraging victims to report incidences of sexual abuse where they have not already done so.

The prescribed procedure in collecting evidence in a sexual offence victim involves:-

Taking relevant history.

Recording patient’s recollection of the event..

Carrying out relevant laboratory test such as vaginal swabs, serology such as HIV and HBV.s etc.

Recording the information in the medical report form.

After recording the findings in the p3 form the victim returns back to police and looks for witness who present or knows anything about the incidence to ensure the investing officer gathers sufficient evidence and ensure physical evidence collected is not contaminated. The investigating officer then forwards the findings to prosecutor who plays a key role in the criminal justice system as he decides who will be charged and what charges to be filled against the offenders. The prosecutor can in this regard be regarded as being the “controller of the doors to the courthouse. The outcome of any prosecution depends heavily on the evidence on record once the case goes into trial. The prosecutor heavily relies on the investigators to carry out comprehensive evidence gathering before deciding whether to prosecute a case. Once the investigator has gathered enough evidence it is the work of the prosecutor to present the evidence to court.

The prosecutor makes the call on the cases to prosecute and even once initiated the prosecution of sexual offences can be plagued with lack of sufficient evidence. It is the work of the prosecutor then to ensure that they present their evidence to court in such a way to convince the court they have a case. Sometimes the forensic evidence from medical reports could be inadequate due to poor collection or storage or the witness evidence could be inadequate. Prosecution rates under the Kenyan Act are astonishingly low, with only a few known convictions.

Once the investigator has completed their evidence gathering, it is the work of the prosecutor to make sense of all the data and present it to court in a way that makes their case stand in court. The prosecutor knits together all the information into one and has to ensure that the information presented to court does not contradict but support their case. All data presented to court has to corroborate. The highest cause of conviction in sexual offence cases is **corroborative evidence**. This corroborative evidence stems from both witnesses and medical reports. The other causes of conviction include sufficiency of evidence, medical reports and proper recording of statements. All these rotate back to corroborating evidence. As a matter of fact the highest the most common source of corroborative evidence are medical reports. Where there is lack of corroboration or where medical reports do not support direct evidence this result in acquittals.

Once the prosecutor has presented all the evidence to the court, it is left to the court to decide whether they have established their case and to put the accused person to their defence. When it's all said and done it comes down to the judge to decide whether the accused person is guilty or not, guided by both substantive and procedural law. In Kenya the substantive law is mostly imbedded in the Sexual Offences Act (SOA) and the procedural law is derived from the Criminal Procedure Code. These together with the Constitution and the penal code form the major part of the decision making process for judges and magistrates presiding over sexual offence trials.

The system did not legally address issues of witness protections, number of times of adjourning a case by any party to act as guidance to the magistrates, of great concern proper guidance on how to get evidence by investigating officers from witnesses and how police could manage victims who were traumatized. Magistrate interviewed raised concern that most of the suspects were not presented by advocate and did not have knowledge of the law which could enter up injustice been done to the suspects. There was no guidance on how

police could work with the medical officers as it was cited by investigating officers it was crucial to be accompanied by them at the scene where samples like blood for analysis could be collected. The investigating officers stated they were never accompanied by the officers and most of the time victims went to hospital met only nurses who are not experts as relate sexual cases.

The system does not address issues on what happens in case of an appeal by a suspect who has been convicted under the Sexual Offences Act when the appeal judges are of the opinion that there was an error by the trial court instead of using the evidence in record they refer the matter to a subordinate court to have the matter start de novo. This makes difficult for the prosecution to locate their witnesses as many of them might have moved from the place they were when the matter was being tried and their whereabouts not known. Other victims when the matter is ordered to start afresh have grown up and might have been married to far places in regard to the place they were when matter was reported and they have lost interest to go back to court and give evidence.

Legal system do not address issues on compensation of victims due to psychological injury suffered during the incidence and do not make it a mandate for the courts to compensate expenses to the victims incurred during the time of testifying.

## **CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMENDATIONS**

### **5.1 Summary Of Findings.**

This study sought to achieve three specific objectives; first to analyze the factors that support delivery of justice in the prosecution of sexual offences cases in Naivasha law court in Nakuru county, secondly it sought to assess factors that constrain the delivery of justice in the prosecution of sexual offences cases in Naivasha law court in Nakuru county and finally it sought to assess the adequacy of systems and prosecution of sexual offences cases in Naivasha law court within Nakuru county. The study found that women were reluctant to approach the police and had only reported their cases when the violence had become so extreme that they needed intervention to protect their lives. Those who reported did not follow through their case hence not all cases were registered by police at the court.

With respect to the factors supporting the delivery of justice the study found that victims reporting cases in a timely manner and avoid actions that would compromise evidence supported delivery of justice. Corroboration of evidence and testimonies from all witnesses in addition to expert evidence full supported the delivery of justice as well as availability and easy access to forensic facilities. Training investigators, victims reporting the incidence as quickly as possible to enable the medical officers to collect all the evidence needed and quick action by police supported the delivery of justice.

Delivery of justice was constrained by lack of proper training of investigating officers, insufficient evidence by prosecution witnesses and limited mechanism for gathering evidence. In addition to these delayed investigations, non appearance and non cooperation of prosecution witness and high numbers of suspects absconding after been bailed out is a big challenge to the delivery of justice. Limited and inadequately equipped medical facilities in the sub county and its environs that do not guarantee that vital tests in medico-legal cases can be undertaken formed part of factors that constrains of delivery of justice. The government should set aside some money for victim's compensation to avoid witness failing to attend court because of lack of bus fare. The system and procedure to prosecute are adequate.

The criminal justice system does not address the challenges that occurs whenever an appeal by a suspect who has been convicted under the Sexual Offences Act files an appeal, often when judges are of the opinion that there was an error by the trial court instead of using the evidence in record they refer the matter to a subordinate court to have the matter start denovo.

This makes it difficult for the prosecution to locate their witnesses as many of them might have moved from the place they were when the matter was being tried and their whereabouts not known. In other instances the victims circumstances could have changed by the time the order to start the matter a fresh is given. In a number of cases they would have grown and even got married, gone to far places and would have lost interest in matter making it hard for them to give fresh evidence in court.

Legal system do not address issues on compensation of victims due to psychological injury suffered during the incidence and do not make it a mandate for the courts to meet expenses of the victims in relation to testimonies they give in court.

## **5.2 Conclusion**

Considering the finding that only approximate four in every ten cases registered in Naivasha law court resulted in convictions this study observes that delivery of justice in sexual offences is not adequate. The study established that many victims reported to police and had p3 forms filled less number of cases were recorded at the criminal registry at Naivasha thus the administration should make a follow up to make sure all cases are registered.

To improve the delivery of justice to parties involved in sexual offence, we must first have a paradigm shift in the justice delivery system. We must make our justice system client friendly and sensitive. We must introduce gender focal points in all police stations manned by specialized officers. Also, gender mainstreaming within the police department should be taken seriously, so that more women get appointed as prosecutors. Model one-stop centers should also be introduced in all police stations or in select stations to ensure efficient delivery of justice in sexual offence cases. The government should work hand in hand with the locals to arrange meetings in which individuals are sensitized about sexual offences and how to handle such cases.

To minimize factors constraining delivery of justice, the government need to increase funding to the three institutions of police to be able to train more investigators and prosecutors , the hospitals to have forensic labs and increase personnel in judiciary so that cases can be speedily heard.

When it's all said and done it comes down to the stakeholders in the justice delivery system to ensure that justice is done for victims of sexual offenders. Whether male or female, the victims of sexual crime deserve swift justice. This should be the goal of any criminal justice

system to provide redress to victims and punish and rehabilitate offenders. The government through the office of the Attorney General should put in place a system to monitor the outcome of cases in courts to ensure that the decision reached is free and fair.

### **5.3 Recommendations**

This section deals with some of the necessary recommendations required in the major sectors involved in the road to justice for sexual assault victims.

#### **( i )Gender diversity and Establishing gender desks at police stations**

Most victims feel more comfortable speaking to a female investigator than a male one. Where a woman has been sexually assaulted it is easier for her to open up to a female investigator rather than a male one. Introducing trained female investigators to deal with victims of sexual assault will go a long way to ensure that the victims are forthcoming with information that could be necessary for the investigation. Also the government has been active in establishing gender desks at police stations. Research shows that victims are more forthcoming with information when dealing with the officers they know are specialized in certain areas. Though these desks have been introduced in police stations, there is still an issue with funding. The desks are often under-funded and understaffed. In addition to trained personnel, a successful gender desk requires a commitment of physical resources: for example, adequate space for interviewing, computer-assisted work and file storage. In Kenya, an analysis of 2005-2009 budget allocations for the Ministry of State for Provincial Administration and Security found no specific allocations for gender desks, this is a problem.

#### **( ii )Training investigating officers**

The investigation officer must be trained and sensitized to deal with traumatized victims of sexual assault. The impact of trauma may affect a victim's ability to coherently or fully recount the experience. Memory can suffer; emotional numbness can complicate responsiveness to questioning. Investigators must be trained to work through an interviewee's psychological difficulties, or may not know how and when to refer a traumatized witness for supportive counseling. Investigators may themselves suffer vicarious traumatization from repeatedly listening to accounts of rape, sexual mutilation, or other violence. A form of counseling must also be availed for the investigators to allow them deal with any issues that affect them personally. A well trained and sensitized officer leads to useful investigations that could go a long way to help the victims of sexual violence achieve justice.

### **( iii )Increase in government resources**

Like many other government institutions, police stations are not provided with enough finances to run their operations. For example during the interview, the officers pointed out that they lack even the most essential tools at times, including pens and gloves. The government needs to put more effort in allocating resources to police stations to allow smooth running of operations. The officers also pointed out that where most of the incidences happen is hard to access the areas. It is important that the government allocates enough vehicles to police officers to help deal with such incidences.

### **( 2 )Medical Officers and Forensic Evidence Gathering**

The fact that sexual violence usually leaves physical evidence is both a blessing and a challenge. When it is present, DNA evidence can place a perpetrator at a crime scene with more certainty than eyewitness testimony. However, many factors can limit the availability of DNA evidence, and it is important to remember that an investigation can continue even in the absence of DNA samples. In many places, victims who seek medical treatment undergo examination by a doctor or nurse for the purposes of clinical care. In order to obtain evidence for possible prosecution, victims may also need to submit to a forensic examination, which is defined as a “medical examination conducted in the knowledge of the possibility of judicial proceedings in the future requiring medical opinion.

Forensic evidence is by far the best corroborative evidence in sexual offences and thus there is need to ensure that the process collection of such evidence runs smoothly. The following are some suggestions:-

#### **( i )Furnishing government labs**

Most of the government labs are underfunded and understaffed. In such a situation there is likelihood of interfering with the samples collected from the victims. The sanctity of the results has to ensure if the quality of the evidence is to be trusted in court. The government needs to step up and fund forensic labs and increase their staff in such institutions. A fully-operational forensics lab then requires adequate equipment, trained personnel, and maintenance – all of which require adequate funding.

**( ii )**There is also need to improve the link between the medical and the legal sector. The better approach would be to have some kind of “one-stop shop”. Here, when the victim comes for medical care, the medical care provider could easily pass then to a legal officer

without delay. Where the two services work in close co-ordination it is easier for victims to go through the process. There could be a legal department set up at a hospital or an institution that put up that has both sectors working hand in hand to assist victims of sexual assault.

( iii ) The medical care providers should be allowed to produce more than the P3 form in court. There is more information in the “PRC1” than in the P3 form. There are two separate forms used to document a sexual attack. First, there is the Kenya Police Medical Examination Form, or “P3” form, which is a general legal document found in police stations that doctors complete when examining crime survivors in order to later prove, corroborate, or even disprove an alleged attack. It is not specific to sexual crimes. A second form, the “Post Rape Care” Form, or “PRC 1,” affords Kenyan healthcare providers the opportunity to record details relevant to a sexual attack when a victim comes forward for care. However, the PRC form – though more responsive to sexual violence documentation – does not yet carry the evidentiary weight of the P3 form, and in practice is often treated as an optional “supplement” to the primary police document. The relationship between the two forms – as well as restrictions as to who must fill them out to preserve admissibility in court is a source of confusion at this time. Failure to present coherent, properly-completed documentation can thus cause the prosecution of sex crimes in Kenya to fall apart for lack of sufficient evidence.

( iv ) The person who collects the forensic evidence should be the same person who presents the evidence in court. This is the ideal way to ensure that the information is presented correctly and coherently and not just read out from a paper. Unfortunately this is not the situation on the ground. It would also help to keep the medical officers aloof of the legal requirements regarding the collection and presentation of forensic evidence in sexual offence cases.

( v ) There is need to increase the forensic analysis capacity, Improved collection, storage, and analysis of forensic evidence starts with improved capacity at the point of initial victim contact.

#### **(4 )Prosecutors and the Prosecution Process**

##### **( I )Improving the link between prosecutors and investigators.**

These two works hand in hand thus a good working relationship between the prosecutor and the investigator is necessary in any case. The prosecutor cannot adequately perform their duty in court if the investigator does not do proper work in the field. Thus a breakdown in communication between these two offices can be fatal to any trial.

##### **( ii ) Increasing the prosecution numbers.**

In just a day work, one prosecutor can deal with around 30 files, all of which involve different kinds of crime. With such caseload it is almost impossible to keep track of every other case. It is thus important to increase the number of prosecutors in stations to enable them deal effectively with cases.

**( iii ) Introducing trial alternatives.** The most common trial alternative is plea-bargaining. While this is common in other jurisdictions, it is rarely practiced in Kenya. Where offenders plead guilty and there is plea bargaining for sentence given reduces case load for a prosecutor and they can deal with other important cases. However plea bargaining in sexual offences has its disadvantages and thus has to be practiced with caution.

#### **( 5 ) Magistrates**

**( i )** Increase the numbers of magistrates so that SOA cases can be heard in less than six months after cases are filed, to have specialist magistrates to handle only SOA cases so as to increase level of justice to both victims and suspects.

**(ii)** Introduce mobile courts to reduce costs of travelling by witnesses and be able to hear cases at places where offences occurred.

**(iii)** To have a standard guide lines on how to handle cases of minors who cannot testify in court due to their age, disability or who are mentally disadvantaged.

#### **5.2 Area of furtherstudy**

The study focused on determination of justice delivery on sexual cases in Naivasha Law courts, i recommend similar further studies to be done on the reasons for the high rates of acquittals and what can be done to reduce the number of cases acquitted compared to number of conviction of sexual cases registered at Naivasha law court.

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## APPENDICES

### Appendix I : Interview Guide for Magistrates

My name is Mike KingooMuia. I am a criminology student at the University of Nairobi. The purpose of this interview is to collect information regarding the prevalence of sexual offences in Naivasha law courts and the sentencing, dismissal and acquittals of sexual offences in the said courts. The information collected in this interview guide shall be used for purely academic purposes. You have free will and the information you share with me will not be discussed to anybody without your permission. I expect this interview to take half an hour, you will be free to get out of research on your free will and you are at liberty to leave out information you are not comfortable divulging. Your time and co-operation is highly appreciated.

1. Designation\_\_\_\_\_ (Optional)

2. Number of years in service

Less than 2 years

2-5 years

6- 10 years

More than 10 years

3. How long have you served in Naivasha law court

Less than 1 year

1-2 years

More than 2 years

4. How often do you hear sexual offences cases in Naivasha law court?

a. 1 case per month

b. 3-5 cases per month

c. 6-10 cases per month

d. More than 10 cases per month

5. How often do prosecuted sexual offences cases in Naivasha result in dismissal?

a. <10%

- b. 10-25%
- c. 25-40%
- d. 40-60%
- e. 60%<

6. What are the most common causes of dismissal of sexual offences prosecuted at Naivasha law court?

- a. Investigation queries
- b. Inadequate cooperation from witnesses
- c. Inadequate cooperation from victims
- d. Unreliable evidence
- e. Others (specify)

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 .....

7. What are the most common causes of conviction in sexual offences prosecuted at Naivasha law court?

- a. Effective prosecution
- b. Sufficiency in evidence
- c. Other (specify)

.....  
 .....

8. What challenges do you experience in determining sexual offences cases in Naivasha?

- a. Restrictive legal framework. YES ( ) NO ( )
- b. limited technical capacity of staff. YES( ) NO ( )
- c. excessive case load. YES ( ) NO ( )

d. unwarranted interference with witnesses and evidence. YES ( ) NO ( )

e. technicalities causing delay. YES ( ) NO ( )

9. What actions or steps do you consider necessary to mitigate these challenges?

a. reduction of technicalities in the legal framework in sexual offence cases.

b. training court staff in handling sexual offences matters in regard to evidence.

c. reduction of the caseload per court

d. public information regarding prevalence of sexual offenders in the area.

10. In what ways do you consider the legal framework in Kenya supportive in securing justice in sexual offences cases?

a. Effective legislation

b. Reduced technicalities

c. Punitive measures for offenders

d. Other (specify)

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11. In what ways do you consider the legal framework in Kenya not supportive in securing justice in sexual offences cases?

a. unnecessary technicalities

b. delay in court processes

c. others (specify)

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.....  
.....

12. what is the prevalence of dismissal of sexual offences cases in Naivasha Law courts?

Very high  High  Low  Very low

13. In your observation, what are the factors that determine those acquittals?

A. Investigation queries YES (  ) NO (  )

B. Inadequate cooperation from witnesses YES (  ) NO (  )

C. Inadequate cooperation from victims YES (  ) NO (  )

D. Unreliable evidence YES (  ) NO (  )

E. Others (specify)

.....  
.....

14. What systems and procedures in Kenyan courts do you consider effective in the delivery of justice in sexual offences in Naivasha?

a. effective prosecution

b. inclusive legislation

c. reduced technicalities

d.others(specify).....

.....  
.....

15. What steps do you consider necessary to ensure that the systems and procedures in the Kenyan courts support effective delivery of justice in the prosecution of sexual offences?

a. reduction in technicalities

b. reduced tampering of evidence

c. thorough investigations into sexual offence claims

d. increased public awareness about sexual offences prevalence

e. reduced delay in delivery of justice.

**AppendixII: Interview Guide for Doctors**

My name is Mike KingooMuia. I am criminology student at the University of Nairobi. The purpose of this interview is to collect information regarding the prevalence of sexual offences in Naivasha law courts and the sentencing, dismissal and acquittals of sexual offences in the said courts. The information collected in this interview guide shall be used for purely academic purposes. You have free will and the information you share with me will not be discussed to anybody without you permission. I expect this interview to take half an hour , you will be free to get out of research on your free will and you are at liberty to leave out information you are not comfortable divulging. Your time and co-operation is highly appreciated.

- 1. Station .....
  
- 2. Number of working experience
  - ( ) Less that 2 years
  - ( ) 2 – 5 years
  - ( ) 6 – 10 years
  - ( ) More that 10 years
  
- 3. What role do you have in addressing suspected sexual offence cases that are brought to your attention?
  - a. Investigation
  - b. Reporting
  - c. Data analysis
  - d. Other(specify).....  
.....  
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4. What resources or techniques do you employ/utilize in collection, preservation and reporting of information that is relevant in suspected sexual offence cases?

On the victim

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.....

On the offender

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5. Do you consider the resources available to you adequate for collection, preservation and reporting of information in suspected sexual offences cases?

(YES)

State why.....

(NO)

State why.....

6. What challenges do you experience in ensuring the information you present in suspected sexual offences cases is adequate and reliable?

- a. Prevention of evidence tampering.
- b. Collecting sufficient evidence.
- c. Ensuring co-operation from witnesses
- d. Ensuring timely collection and delivery of evidence in court.

- e. Other  
(specify).....  
.....  
.....

7. What measures do you consider necessary to ensure the integrity and adequacy of the information you report in suspected sexual offences cases?

- a. Effective evidence collection
- b. Prevention of tampering with evidence
- c. Assessment of witnesses to appear before court
- d. Co-operating with the prosecution team.
- e. Other  
(specify).....  
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8. Does the standard issue medical report limit the amount of information you present to court in rape or defilement cases?

If YES state how.....

If NO state how.....

- a. Other  
(specify).....  
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9. What are the factors that impede the gathering and presentation of accurate and sufficient scientific results in medical investigations pertaining to sexual offences in Naivasha?

- a. Unnecessary tampering of evidence when changing hands
- b. Lack of co-operation from government pathologists
- c. Insufficient equipment in government institutions
- d. Excessive workload in government institutions.
- e. Other  
(specify).....  
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10. What are the factors that limit the relevance and reliability of the evidence that you present in court during proceedings relating sexual offences from time to time?

- a. Evidence tampering
- b. Witness hostility
- c. Insufficiency of evidence
- d. Procedural and substantive technicalities.
- e. The individual medical reports are confidential

### **Appendix III: Interview Guide for Prosecutors and Investigating Officers**

My name is Mike Kingoo Muia. I am a criminology student at the University of Nairobi. The purpose of this interview is to collect information regarding the prevalence of sexual offences in Naivasha law courts and the sentencing, dismissal and acquittals of sexual offences in the said courts. The information collected in this interview guide shall be used for purely academic purposes. You have free will and the information you share with me will not be discussed to anybody without your permission. I expect this interview to take half an hour, you will be free to get out of research on your free will and you are at liberty to leave out information you are not comfortable divulging. Your time and co-operation is highly appreciated.

1. Designation .....
2. Number of years worked as police officer ?  
 Less than 2 years                       2 – 5 years  
 5 – 10 years                               More than 10 years
3. Number of years while dealing with sexual cases in Naivasha?  
 Less than 2 years  
 2 – 5 years  
 6 – 10 years  
 More than 10 years
4. What is the percentage average sexual offences reported end up being taken to court ?  
 Less than 10%                               10% - 35%  
 35% - 60%                                   More than 60%
5. How many sexual offences cases do you investigate per month ?  
 ( a ) 0 – 2                                       ( b ) 2 – 4  
 ( c ) 6 – 8                                       ( d ) More than 8

6. Out of the cases you take to court per year how many are the accused convicted?

( a ) Less than 25% ( b ) 25% - 50%

( c ) 50% - 75% ( d ) 75% - 100%

7. Out of the cases you take to court per year what is percentage for acquittals?

( a ) less than 25% ( b ) 25% - 50%

( c ) 50% - 75% ( d ) 75% - 100%

8. Out of the cases you take to court per year what is the percentage dismissal?

( a ) Less than 25% ( b ) 25% - 50%

( b ) 50% - 75% ( d ) 75% - 100%

9. What is the average time to your opinion is good for victim to report after the incidence for you to get better evidence?

( a ) Less 2 hours ( b ) 2hours - 5hours

( c ) 5hours – one day ( d ) more than one day

10. What is the average period for case taken to court to get finalized?

( a ) Less than 3 months ( b ) 3 – 6 months

( c ) 6 – 12 months ( d ) more than 12 months

11. According to you can you give starting with priority what contributes to conviction of sexual offences cases?

( a ) proper drafting of charge sheet

( b ) Good statements recording

( c ) Period taken to institute investigation after the incidence

( d ) Witness cooperation with investigator

( e ) Good handling of exhibits

( f ) conducting pre trials before testify

( g ) Quick handling of cases by courts

12. According to you can you give starting with priority what contributes to acquittal of sexual offences cases?

( a ) Poor recording of statements

( b ) witness turning hostile in court

( c ) cases take to court without evidence

( d ) Medical reports not supporting the direct evidence

( f ) Good knowledge of the law by the defence

( g ) Uncorroborated evidence by prosecution witness

13. According to you can you give starting with priority what contributes to dismissal of sexual offences cases?

( a ) Witness failure to attend court

( b ) Technicalities of law

( c ) The required standard required set high to prove a case

( d ) Withdraw of the case by complaint.

**Appendix IV: What to Analyse from Finalised Files.**

1. How many files have been filed during the period of research (2009-2012)?  

( a ) Less than 100	( b ) 100 – 200 cases
( c ) 200 – 300	( d ) More than 300
  
2. What is the percentage of the files filed in the period 2009 – 2012 are still pending?  

( a ) Less than 25 %	( b ) 25% - 50%
( c ) 50% - 75%	( d ) 75% - 100%
  
3. What is the percentage of suspects taken to court have been convicted for sexual crimes during the period of research?  

( a ) Less than 25 %	( b ) 25% - 50 %
( c ) 50% - 75%	( d ) 75% - 100%

4. What were the main reasons were given for the convictions?

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5. What was the comment from deciding magistrate?

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6. What is the percentage of suspects taken to court have been acquitted for sexual crimes within the period of research?

- ( a ) Less than 25%
- ( b ) 25% - 50%
- ( c ) 50% - 75%
- ( d ) 75% - 100%

7. What are main reasons given for the acquittals?

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8. What is the percentage of suspects taken to court have been dismissed for sexual crimes within the period of research?

- ( a ) Less than 25%
- ( b ) 25% - 50%
- ( c ) 50% - 75%
- ( d ) 75% - 100%

9. Reasons are main reasons for dismissal from each file

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Comments from deciding magistrate for dismissing on each file  
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10. From the sample files where suspects were convicted what is the average time taken to complete the trial?

- ( a ) Less than 3 months
- ( b ) 3 – 6 months
- ( c ) 6 – 9 months
- ( d ) More than 9 months

11. From the sample files where suspects were acquitted what is the average time taken to complete the trial?

- ( a ) Less than 3 months
- ( b ) 3 – 6 months
- ( c ) 6 – 9 months
- ( d ) More than 9 months

12. From the sample files where suspects were dismissed what is the average time taken to complete the trial?

- ( a ) Less than 3 months
- ( b ) 3 – 6 months
- ( c ) 6 – 9 months
- ( d ) More than 9 months

13. On average how many witnesses were called to testify in each case? What is the essence of corroboration in sexual offence cases?

- ( a ) Less than 3
- ( b ) 3 – 5
- ( c ) 5 – 7
- ( d ) More than 7

14. Is the burden of proof required of the prosecution a necessary measure or does it hinder justice from being carried out?

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**Appendix V: Time Plan**

Phase	Description	Week										
		1	2	3	4	5	6	7	8	9	10	11
1	Preliminary Activities											
2	Literature Review 2 weeks											
3	Research Methodology											
4	Report writing 2 weeks											
5	Compilation and presentation 2 weeks											

## Appendix VI: The Budget Schedule

ITEM	COST
<b>PROPOSAL WRITING</b>	
Printing of 45 pages @ Kshs. 13	1,140.00/-
a. Reproduction 6 copies @ Kshs. 80	4,800.00/-
b. Binding 6 copies @ Kshs. 50	300.00/-
c. Travelling Expenses	4,000.00/-
d. Subsistence	4,000.00/-
e. Miscellaneous expenses	3,000.00/-
	<b>17,240.00/-</b>
<b>PRODUCTION OF THE FINAL DOCUMENT</b>	
- Data collection	23,000.00/-
- Books and reading material	5,000.00/-
- Data analysis and computer runtime	5,000.00/-
- Printing 70 pages @ Kshs. 30	2,100.00/-
- Reproduction 6 copies @ Kshs. 40	8,400.00/-
- Binding 5 copies @ Kshs. 1,000/-	5,000.00/-
- Miscellaneous expenses	4,000.00/-
	<b>52,500.00/-</b>
<b>GRAND TOTAL</b>	<b>69,800.00/-</b>

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