



NGEC

National Gender and
Equality Commission



MODEL LEGISLATIVE FRAMEWORK ON SEXUAL AND GENDER BASED VIOLENCE

For County Governments

2017



**MODEL LEGISLATIVE FRAMEWORK ON SEXUAL AND
GENDER BASED VIOLENCE
FOR COUNTY GOVERNMENTS
2017**



This model legislative framework ©2017 should be read together with the model policy framework©2017 for County Governments on sexual and gender based violence and by extension the Constitution of Kenya, and all legislative frameworks related to the subject.

County Governments are encouraged to domesticate the model legislation to their needs and specific context.



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FOREWORD

Kenya has a progressive Constitution and has made major strides in developing legislative frameworks on response, prevention and management of Sexual Gender Based Violence (SGBV). At the international and regional level, there exist a series of instruments that protect women and girls against SGBV. Kenya is a signatory to most of the commitments in these instruments and have a horde of legislative and policy frameworks to address SGBV.

This Model Legislative Framework was prepared to provide guidance to the County Government on critical elements and considerations for law on SGBV. This Model should be read alongside the Model County Policy on SGBV prepared by the Commission. I encourage Counties to domesticate this Model Law to their County needs.

I believe this Legislative Framework will further provide a mechanism for coordinating the response to SGBV. I urge County Governments to provide adequate resources and enhance partnerships for a comprehensive response to increasing incidences of SGBV.

This Legislative Framework is hoped to bring long-term and sustained change.



Winfred O. Lichuma, EBS
Chairperson
National Gender and Equality Commission

ACKNOWLEDGEMENTS

The National Gender and Equality Commission is grateful to the people and institutions who contributed in various ways to ensuring the development of this model legislative framework on sexual and gender based violence for County Governments. We want to particularly recognise the County Governments for their valuable inputs through the office of the County Executive Committee members in charge of gender affairs, the County Commissioners, the Women member of Parliament and the County Assemblies of Kakamega, Busia, Kisumu, Makeni, Kiambu and Nairobi.

We would also like to acknowledge the valuable technical inputs from the Judiciary, the National Police Service, Office of the Director of Public Prosecution, Ministry of Health, and Federation of Women Lawyers in Kenya. The Model legislation was subjected to various validation meetings and we would like to thank the members of the National GBV Working group coordinated by the NGECC; as well as the Ministry of Public Service, Youth and Gender Affairs, Kenya Law Reform Commission, Office of the Attorney General, and the Council of Governors for their immense con. We specifically thank the KLRC for their technical support in legal drafting of the model legislation.

We acknowledge that this project would not have been possible without the financial and technical support from the International Development Law Organisation (IDLO), through the generous support of DANIDA. We sincerely thank Dr. Ruth Aura who provided technical assistance during the development of the model legislation.

Finally, we are grateful to Commissioner Winfred Lichuma, Chairperson of the NGECC, and staff in the gender and women department who were instrumental in the design, formulation and finalisation of this model law.



Paul Kuria
Ag. Commission Secretary
National Gender and Equality Commission

NATIONAL GENDER AND EQUALITY COMMISSION

The National Gender and Equality Commission is a Constitutional Commission, established by the NGECA Act 2011. It is mandated to promote gender equality and freedom from discrimination in accordance with Article 27 of the Constitution of Kenya.

The functions of the Commission include;

- Monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws, and administrative regulations in all public and private institutions;
- Act as the principal organ of the State in ensuring compliance with all treaties and conventions ratified by Kenya relating to issues of equality and freedom from discrimination and relating to special interest groups including minorities and marginalized persons, women, persons with disabilities, and children;
- Co-ordinate and facilitate mainstreaming of issues of gender, persons with disabilities and other marginalized groups in national development and to advise the Government on all aspects thereof;
- Monitor, facilitate and advise on the development of affirmative action implementation policies as contemplated in the Constitution;
- Investigate on its own initiative or on the basis of complaints, any matter in respect of any violations of the principle of equality and freedom from discrimination and make recommendations for the improvement of the functioning of the institutions concerned;
- Work with other relevant institutions in the development of standards for the implementation of policies for the progressive realization of the economic and social rights specified in Article 43 of the Constitution and other written laws;
- Co-ordinate and advise on public education programmes for the creation of a culture of respect for the principles of equality and freedom from discrimination;
- Conduct and co-ordinate research activities on matters relating to equality and freedom from discrimination as contemplated under Article 27 of the Constitution;
- Receive and evaluate annual reports on progress made by public institutions and other sectors on compliance with constitutional and statutory requirements on the implementation of the principles of equality and freedom from discrimination;
- Work with the Kenya National Commission on Human Rights, the Commission on Administrative Justice and other related institutions to ensure efficiency, effectiveness and complementarity in their activities and to establish mechanisms for referrals and collaboration in the protection and promotion of rights related to the principle of equality and freedom from discrimination;

- Prepare and submit annual reports to Parliament on the status of implementation of its obligations under this Act;
- Conduct audits on the status of special interest groups including minorities, marginalized groups, persons with disabilities, women, youth and children;
- Establish, consistent with data protection legislation, data bases on issues relating to equality and freedom from discrimination for different affected interest groups and produce periodic reports for national, regional and international reporting on progress in the realization of equality and freedom from discrimination for these interest groups;
- Perform such other functions as the Commission may consider necessary for the promotion of the principle of equality and freedom from discrimination; and
- Perform such other functions as may be prescribed by the Constitution and any other written law.

THE [Insert Name of County] SEXUAL AND GENDER BASED VIOLENCE BILL, 20...

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**MODEL LEGISLATIVE FRAMEWORK ON SEXUAL AND GENDER BASED VIOLENCE
FOR COUNTY GOVERNMENT OF _____, 2017**

PREAMBLE

Kenya's National and County Governments' Constitutional and International commitments in the field of human rights include the elimination of SGBV;

In enacting this Act, the County Assembly of *[Insert Name of County]* recognizes the following—

1. Sexual and gender based violence (SGBV) is one of the most complex social problems globally. It maims, tortures, and kills victims psychologically, physically, sexually and economically. It is a common phenomenon in Kenya like in other jurisdictions and cuts across boundaries of culture, gender, class, education, income, ethnicity and age without exception. SGBV is a violation of human rights.
2. Having regard to the Constitution of Kenya 2010, and in particular, the right to equality and to freedom and security of the person; and the international commitments and obligations of the State towards ending violence, including obligations in the various International and Regional instruments, protocols and declarations;
3. And pursuant to the provisions in the Constitution of the Kenya, the Penal Code, The Children Act, HIV & AIDS Prevention and Control Act, The Sexual Offenses Act, Counter Trafficking in Persons Act, Prohibition of Female Genital Mutilation Act, , and the Protection Against Domestic Violence (PADV) Act, among others on SGBV, the measures provided in this law are designed to ensure implementation and proper management of SGBV by both the National and County governments.
4. The County governments in collaboration with the National government have a role to play in coordinating with public, private entities and community leaders in the implementation of legislation and policies aimed at prevention and response to (SGBV), and to provide support to victims.

Pursuant to the Constitution of the Republic and the legislation referred to above, the County Assembly of *[Insert Name of County]* enacts the following that shall have the force of law:

A Bill for

AN ACT of *[Insert Name of County]* County Assembly to provide measures for awareness, prevention and response to sexual and gender based violence (SGBV), to provide for the protection, treatment, counselling, support and care of victims of SGBV, and for connected purposes.

ENACTED by the *[Insert Name of County]* County Assembly as follows-

Part I – PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Sexual and Gender Based Violence Management and Control Act for *[Insert Name of County]* County Government and shall come into operation on such date as the CEC may appoint and different dates may be appointed for different parts or provisions.

Interpretation

2. In this Act, unless the context otherwise requires-

“County Executive Committee Member” means County Executive Committee member responsible for Gender and Youth Affairs

“Child” has the meaning assigned to it under the Constitution

“Sexual Based Violence” includes actual, attempted or threatened (vaginal, anal or oral) rape, including intimate partner violence; sexual abuse and exploitation; forced prostitution; transactional/survival sex; and sexual harassment, intimidation and humiliation;

“Gender Based Violence” means violence visited upon a person based on their gender and includes child marriage; female genital mutilation; forced marriage; forced wife inheritance; interference from in-laws; sexual violence within marriage; virginity testing; widow cleansing; damage to property; defilement; harassment; incest; intimidation; physical abuse; sexual abuse; stalking; sexual slavery; economic abuse, verbal abuse; or any other conduct against a person, where such conduct harms or may cause imminent harm to the safety, health, or well-being of the person, or any other act that results in, or is likely to result in, physical, sexual or psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life.

“Inhuman treatment” means cruel act; a deliberate infliction of pain and suffering, cruelty, abuse, ill-treatment, mistreatment, maltreatment and cruel or inhumane treatment.

“Minimum Package of Healthcare Services” is the package of services that the County government will provide to its citizens in an equitable manner and which are often expected to achieve multiple goals for more effective care including: improved efficiency, equity, political empowerment and accountability

“Harmful Practices” means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of people as their right to life, health, dignity, education and physical integrity, freedom of choice; “multi-sectoral approach” means the holistic inter-organizational and inter-agency efforts that promote participation of people of concern, interdisciplinary and inter-organizational cooperation, and collaboration and coordination across key sectors, including (but not limited to) health, psychosocial, legal and security.

“Safe house or shelter” is a residential facility providing short-term intervention for victims of SGBV in crises. This intervention includes meeting basic needs as well as providing support, counselling and skills development.

“Stakeholders” means both state and non-state actors and includes Police, Office of the Attorney General, Office of the Director Public Prosecution, Probation, Prisons, faith based organizations, public officials, healthcare providers, counsellors, psychologists, civil society organizations, donors, media, private sector, Community based organization, Council of elders, traditional leaders and other relevant stakeholders

“Unwholesome treatment” means treatment not conducive to physical or mental health.

“Victim” has the meaning assigned to it under Section 2 of the Victims Protection Act and also means any natural person who suffers injury, loss or damage as a consequence of an offence

“Widow” means a woman who has not remarried after her husband’s death.

“Widower” means a man who has not remarried after his wife’s death.

Object of the Act	<p>3. The object of this Act is to provide a legislative framework to—</p> <p>(a) promote public awareness about the causes, impacts, consequences, means of prevention and response to SGBV;</p> <p>(b) provide protection to victims of SGBV in line with existing laws and regulations which address sexual and gender based violence by—</p> <ol style="list-style-type: none"> i. prohibiting harmful cultural and traditional practices; ii. outlawing gender discrimination in all its forms and subtleties; iii. guaranteeing the right to privacy of the individual; iv. ensuring the provision of minimum package of healthcare services; v. ensuring the provision of psycho-social support including guidance and counselling to victims of SGBV; vi. guaranteeing availability of safe houses/shelters; and vii. providing witness protection <p>(c) Positively address and seek to eradicate conditions that aggravate SGBV by promoting and advocating for social justice.</p> <p>(d) support and facilitate the gathering of desegregated data (by age, sex, ethnicity and disability)</p> <p>(e) establish a clear reporting and referral system to enable victims of and/or witnesses to SGBV know to whom they should report</p>
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Part II –COLLABORATION WITH OTHER AGENCIES

Collaboration Approaches to SGBV	<p>4. (1) The County Government shall in all its responses and prevention of SGBV adopt a multi-sectoral approach with all actors.</p> <p>(2) For purposes of directing and co-ordinating the functions provided under this Act and all laws and policies relevant in addressing SGBV the County Government shall ensure—</p> <ul style="list-style-type: none">a) efficient and effective coordination of the established units under this Actb) Where necessary, establish its own service delivery co-ordination units for purposes of co-ordination with the national government and all relevant stakeholders. <p>(3) For effective coordination mechanism specific to SGBV, the County Government shall</p> <ul style="list-style-type: none">a. enhance strategic capacity information sharing and managementb. Work with the community to increase use of secondary prevention services and further primary prevention efforts to increase awareness of the intersection of SGBV and gender inequality as well as existing laws on SGBV.c. Establish centres and integrated SGBV services with referral linkages to police, health services, psychosocial support and legal aid in a collaborative manner.
Determination of SGBV coordination mechanism	<p>5. The County Government shall determine the type of SGBV coordination units suitable within its jurisdiction for effective administration of justice to the victims of SGBV</p>

**Part III – ESTABLISHMENT OF SEXUAL AND GENDER BASED VIOLENCE
COUNTY MANAGEMENT COMMITTEE**

<p>Establishment of SGBV County Management Committee</p>	<p>6. (1) There is established the SGBV County Management Committee</p> <p>(2) The Management Committee consists of—</p> <ul style="list-style-type: none"> a) a chairperson who shall be the County Executive Committee Member responsible for Gender and Youth Affair; b) the county commissioner c) one person representing County Executive Committee Member responsible for Finance; d) one person representing County Executive Committee Member responsible for Health; e) one person having specialized skill or knowledge on gender issues; f) two persons representing the Civil Society Organizations; g) two representatives from the Inter-Religious Council of Kenya; h) two persons representing the youth from both gender; i) one person representing persons with disability j) Any other persons that the Committee members may co-opt. <p>(3) The Agencies nominating persons under subsection 2(f) to (i) shall_</p> <ul style="list-style-type: none"> (a) ensure nomination process is competitive; (b) forward names representing both genders; and (c) Ensure the persons nominated meet the requirements of Chapter Six of the Constitution. <p>(4) The Management Committee Members shall be appointed by the Governor</p> <p>(5) Appointment shall take into consideration gender, ethnicity, youth and persons with disabilities inclusion.</p> <p>(6) The Committee shall be established within twelve (12) months upon commencement of this Act.</p>
<p>Tenure of members</p>	<p>7. The County SGBV Management Committee shall serve a term of three years renewable once.</p>

<p>Functions of Committee</p>	<p>8. The functions of the SGBV County Management Committee shall be to—</p> <ul style="list-style-type: none"> (a) coordinate and oversee of all SGBV activities (b) ensure that there is adequate financial and technical resources that correspond to the nature and scope of the activities planned for SGBV intervention; (c) establish a policy implementation team to advice Chief Officer Responsible for Gender and Youth Affairs (d) facilitate training and procedures in each Sub County (e) meet regularly to advice the Chief Officer Responsible for Gender and Youth Affairs on policy implementation, prevention and response strategies f) ensure that there is sufficient and adequately trained staff to carry out planned SGBV interventions g) undertake and promote research on SGBV h) ensure data collection (desegregated by sex, age, ability) as a basis for driving high quality and more relevant service development i) prepare and submit reports on a quarterly basis to the County Assembly on the status of SGBV interventions under this Act; j) develop County Action Plan for prevention and response to SGBV within one year of establishment k) develop, cultivate and promote effective linkages l) perform any other function as may be assigned by legislation
<p>Vacancy of office</p>	<p>9. (1) The Office of the chairperson or a member of the SGBV Management Committee, other than an ex officio member shall become vacant if the holder—</p> <ul style="list-style-type: none"> (a) dies; (b) resigns from office by notice in writing addressed to the Governor; (c) is convicted of a criminal offence and sentenced to a term of imprisonment; (d) completes the term of office; (e) is absent from three consecutive meetings of the committee without good cause; or ; (f) is removed from office on any of the following grounds_ <ul style="list-style-type: none"> (i) gross violation if the Constitution or any other written law; (ii) gross misconduct or behaviour; (iii) inability to perform functions of the office arising out of physical or mental infirmity; (iv) incompetence or neglect of duty or bankruptcy. <p>(2) A vacancy under this section shall be filled within three months.</p>

Part IV – SEXUAL AND GENDER BASED VIOLENCE EDUCATION AND INFORMATION

<p>SGBV education and information</p>	<p>10. The County Government through multi-sectoral approaches shall promote public awareness about the causes, impacts, consequences, means of prevention and response to SGBV. (2) The educational and information campaign referred to in subsection (1) shall—</p> <ol style="list-style-type: none"> a. employ pragmatic and innovative approaches; b. focus on the family as the basic social unit; c. confront the dangers and impact of SGBV; and d. be carried out in learning institutions, places of worship, in all communities within the County. <p>(3) In conducting the educational and information campaign referred to in this section, the County Government shall_</p> <ol style="list-style-type: none"> (i) collaborate with relevant stakeholders (ii) ensure the involvement and participation of victims and perpetrators of SGBV.
<p>SGBV education in institutions of learning</p>	<p>11. The County Executive Committee responsible for education shall work with relevant stakeholders to—_</p> <p>(1) integrate instruction on the causes, impacts, consequences, means of prevention and response to SGBV in subjects taught in public youth polytechnics and related institutions of technical industrial vocational education and training (TIVET).</p> <p>(2) promote sensitization and awareness creation on SGBV in the learning institutions.</p> <p>(3) The CEC responsible for education shall in consultation with the relevant Ministry at the national level, utilizing official information provided by the Ministry, shall work together to integrate instruction on the causes, impacts, consequences, means of prevention and response to SGBV in subjects taught in public and private schools at primary, secondary and tertiary levels, including informal, non-formal and indigenous learning systems.</p>

<p>SGBV education as a healthcare service</p>	<p>12. (1) SGBV education and information dissemination shall form part of the delivery of healthcare services by healthcare providers.</p> <p>(2) For the purposes of subsection (1), the County Government in collaboration with relevant stakeholders in the health sector shall ensure training of healthcare providers on proper information dissemination and education on SGBV.</p> <p>(3) The training of healthcare providers under this section shall include education on SGBV-related ethical issues such as sensitivity, confidentiality, the duty to provide treatment, and report to the relevant authorities for further action.</p>
<p>SGBV education in the workplace</p>	<p>13. (1) The County Government shall ensure the provision of basic information and instruction on SGBV to—</p> <ul style="list-style-type: none"> (a) employees of all County Government Ministries, Departments, authorities and other agencies; and (b) employees of private and informal sectors. <p>(2) The information provided under this section shall cover issues such as confidentiality in the work-place and mechanisms of reporting SGBV victims.</p> <p>(3) The County Government shall develop Anti Sexual and Gender Based Policy with in the work place to address the problem</p>
<p>S G B V information in communities</p>	<p>14. (1) The County Government, in collaboration with all the relevant stakeholders, shall conduct an educational and information campaign on SGBV within its area of jurisdiction.</p> <p>(2) The information provided under this section shall cover issues such as details of where to get help and the processes involved.</p>

Part V – ACCESS TO HEALTH CARE SERVICES

<p>Access to healthcare services</p>	<p>15. (1) Every health institution, whether public or private, and every health management organization or medical insurance provider shall facilitate access to healthcare services to SGBV victims without unnecessary impediments.</p> <p>(2) The County Government shall facilitate the establishment of a County Forensic Laboratory for purposes of analysis of samples on SGBV.</p> <p>(3) The County Government shall ensure access to essential healthcare services for victims of SGBV.</p>
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Part VI – SAFE HOUSES/SHELTER

<p>Establishment of safe houses/ shelter</p>	<p>16. (1) The County Government shall facilitate the establishment of safe houses at least one safe house per sub-county.</p> <p>(2) The County Government shall ensure access to essential healthcare services at affordable prices.</p> <p>(3) The County Government shall make budgetary allocations for new and existing shelter programs.</p> <p>(4) The County Government shall ensure better access to health care, law enforcement, and prosecution by fostering linkages through relevant government coordinating entities</p>
<p>Functions of the safe houses/ shelter</p>	<p>17. The safe house shall</p> <ul style="list-style-type: none"> (a) Offer temporary stay for victims of SGBV (b) Provide services in the most effective and efficient way as far as possible. (c) Provide services that are holistic, intersectoral and delivered by appropriate multi-disciplinary team (d) Be accountable for the delivery of an appropriate and quality service (e) Contextualize the community environment (f) Ensure access to a most empowering environment and programmes appropriate to victim’s individual developmental and therapeutic needs.

<p>Management of safe houses/shelters</p>	<p>18. (1) The Governor in consultation with the County Public Service Board shall appoint a person to be charged with the day-day management of the shelter.</p> <p>(2) the manager appointed under section 18(1) above shall report to the SGBV County Management Committee.</p> <p>(3) the manager shall be tasked with the preparation and submission of reports on the status of safe houses to the SGBV County Management Committee bi-annually or upon request.</p>
<p>Part VII – FUNDING</p>	
<p>Funding</p>	<p>19. (1) The County Government shall ensure a sustained budget through its annual budgetary allocations for purposes of prevention, control and management of SGBV.</p> <p>(2) The County Government may seek grants from the national government, development and other implementing partners to facilitate its SGBV programmes and activities.</p> <p>(3) The County Government shall provide Annual Comprehensive Financial statement/Report for the SGBV programmes and activities.</p>

MEMORANDUM OF OBJECTS AND REASONS

This principal objective of this Bill is to provide for the promotion of public awareness on causes, impact and consequences of SGBV. Pursuant to this objective, the Bill proposes means of prevention of SGBV and protection for those subjected to SGBV.

Part I of the Bill contains the preliminary matters. These provisions are related to the short title, commencement of the Act and interpretation.

Part II of the Bill outlines a framework for collaboration with stakeholders and other agencies. These bodies include Civil Society Organizations, Youth, Religious Organizations through the Inter-Religious Council of Kenya and persons living with disabilities.

Part III of the Bill provides for the establishment of the SGBV County Management Committee. It also sets out the tenure of office for Members of the Committee and stipulates functions of the Committee.

Part IV contains the standards for SGBV education and information. It also outlines with whom and how the education and information will be disseminated.

Part V provides for access to health services. The Bill obligates healthcare institutions and insurance companies to facilitate ease in access for SGBV victims without unnecessary difficulty.

Part VI provides for establishment of safe houses and shelters for victims SGBV.

Part VII of the Bill sets out the financial provision for enabling SGBV activities. Clause 19 obligates the County government to allocate funds for purposes of prevention and control of SGBV.

Date the:, 2017

Name:

[Insert Name of County] **County Executive Committee Member, (Responsible for Gender)
Gender and Youth Affairs**



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