



**LEGISLATION FOR SEXUAL VIOLENCE IN AFRICA:
PREPARING AND DELIVERING EVIDENTIARY
REQUIREMENTS**

Hon. Njoki Ndungu

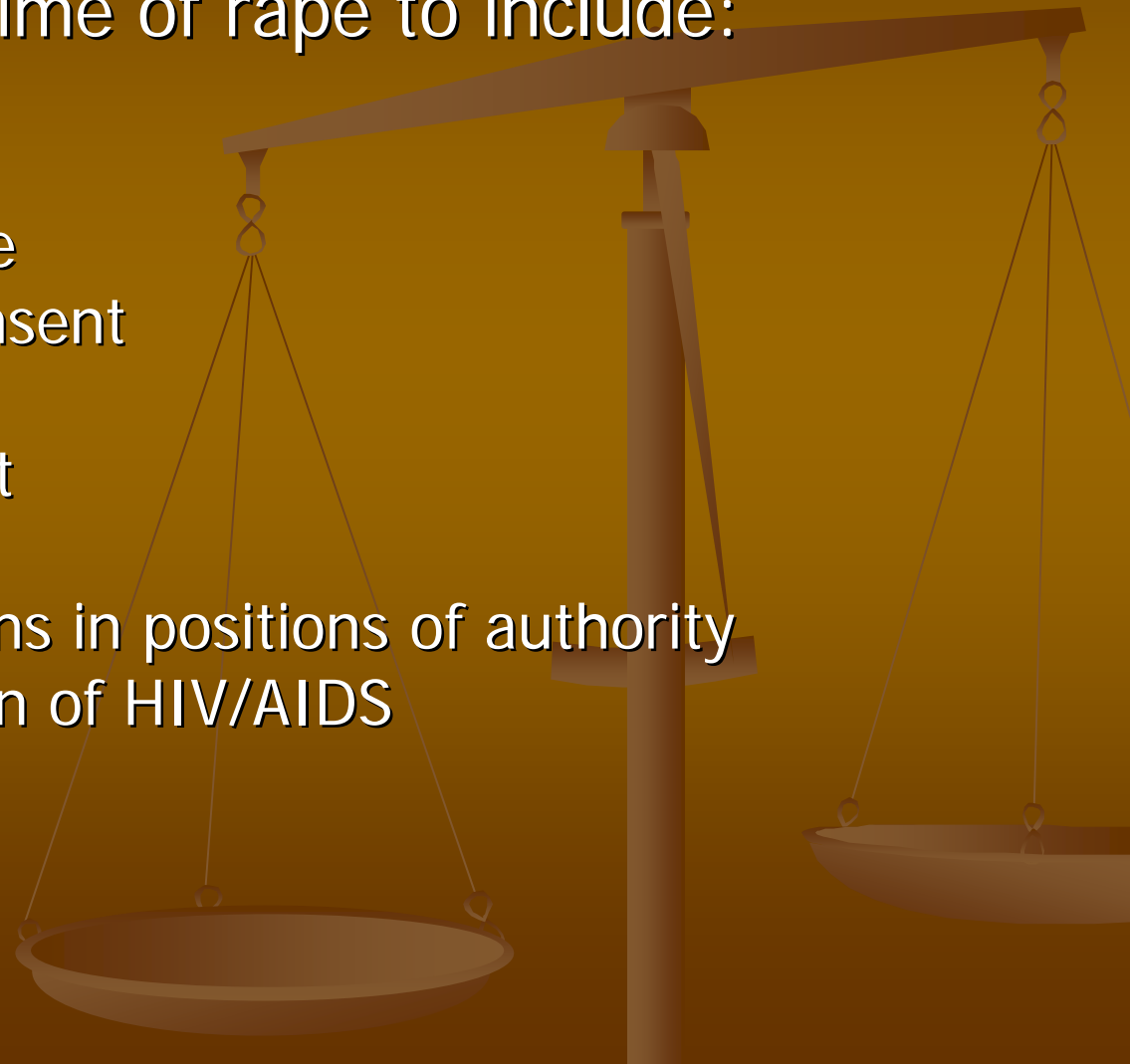
Purpose of the Act

The purpose of the Sexual Offences Act is:

- To address the rising problem of rape and sexual assaults in the Kenya by introducing a comprehensive law reform with regard to rape and sexual assault.
- To introduce stiffer and enhanced penalties for offenders

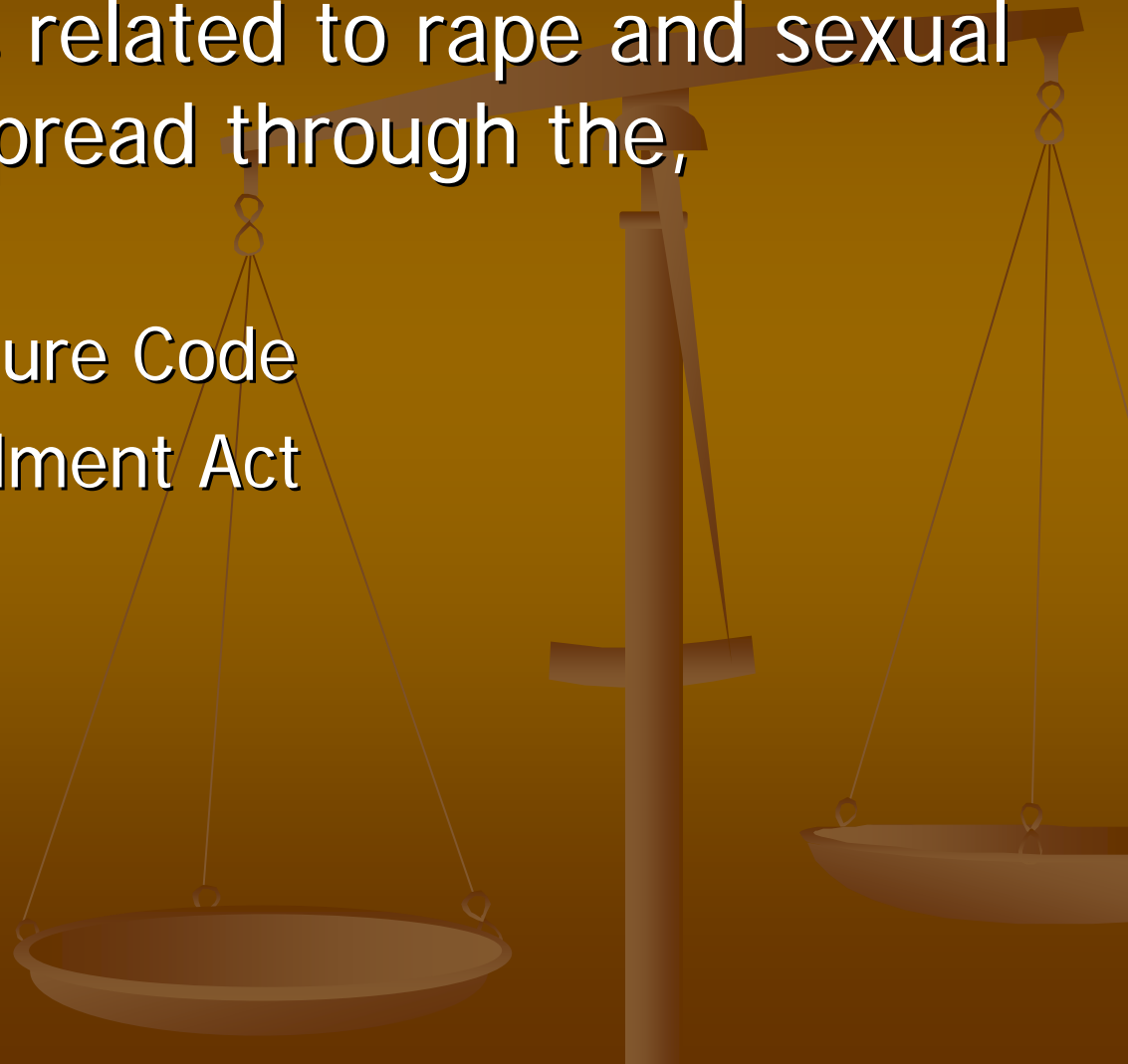
Purpose of the Act

- To redefine the crime of rape to include:
 - pedophilia
 - aggravated rape
 - male on male rape
 - revised age of consent
 - statutory rape
 - sexual harassment
 - child trafficking
 - offences by persons in positions of authority
 - deliberate infection of HIV/AIDS
 - gang rape
 - drug rape

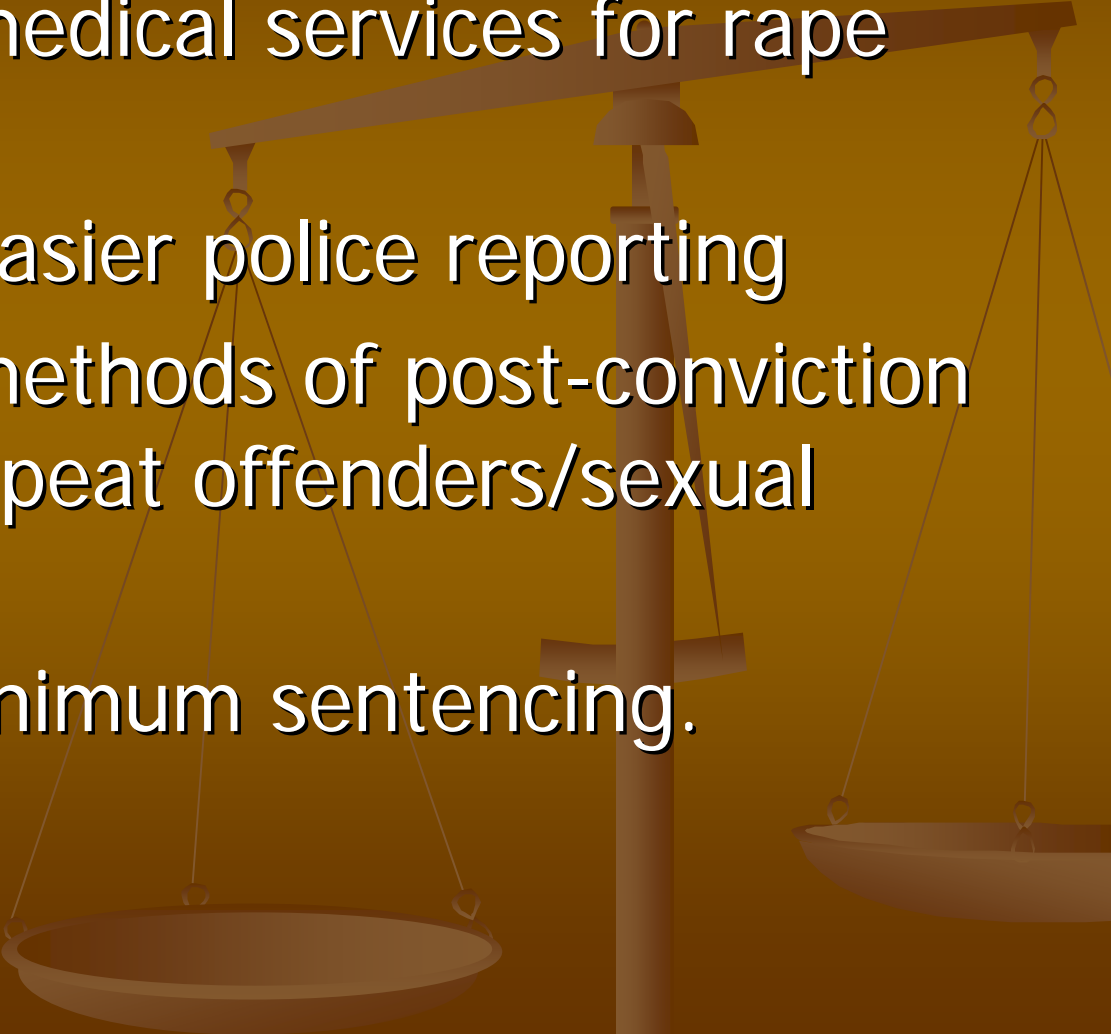


Previous Law

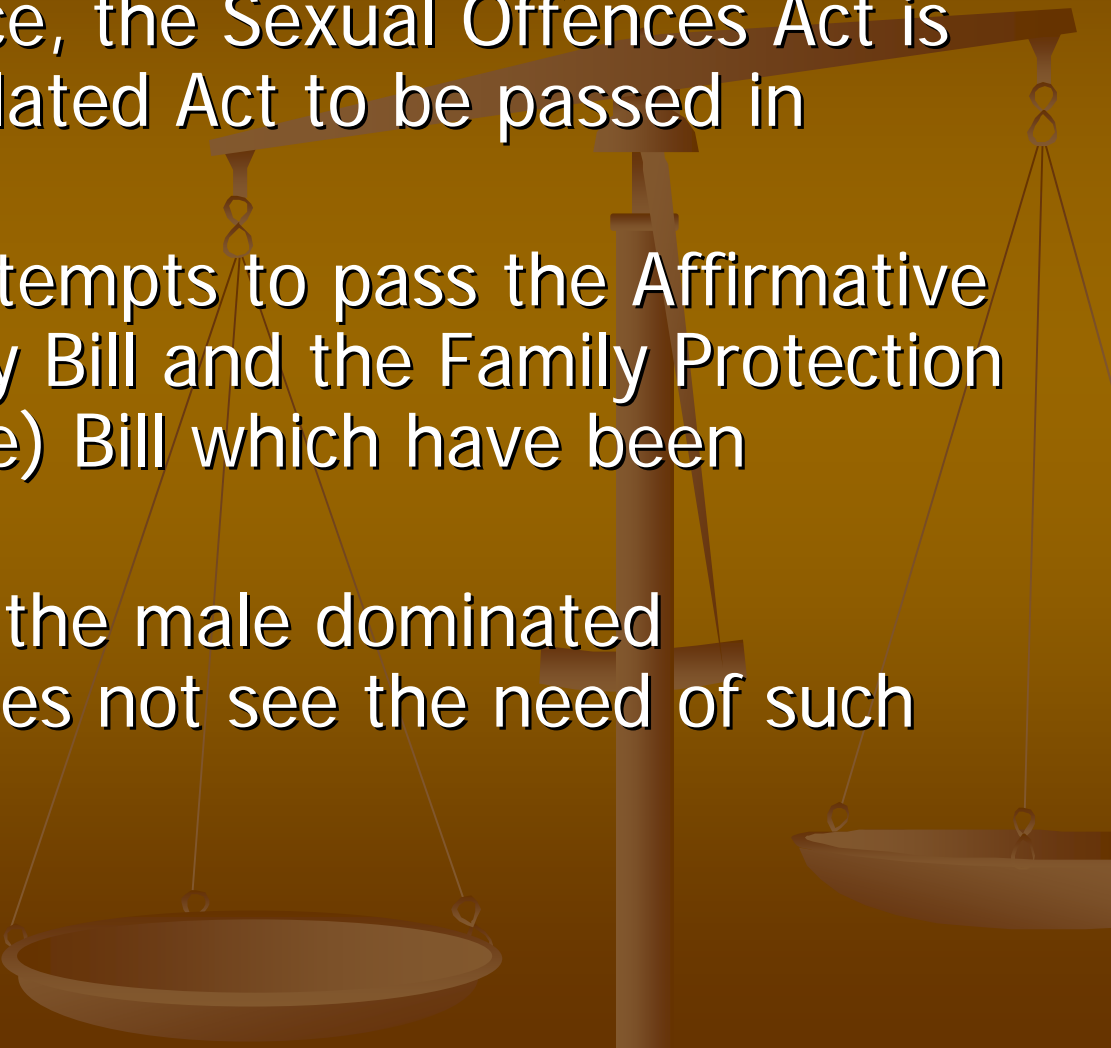
- Previously, laws related to rape and sexual violence were spread through the,
 - Penal Code,
 - Criminal Procedure Code
 - Criminal Amendment Act
 - Evidence Act.



Purpose of the Act

- To provide for medical services for rape victims
 - To provide for easier police reporting
 - To provide for methods of post-conviction monitoring of repeat offenders/sexual predators.
 - To introduce minimum sentencing.
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The Kenyan Parliament

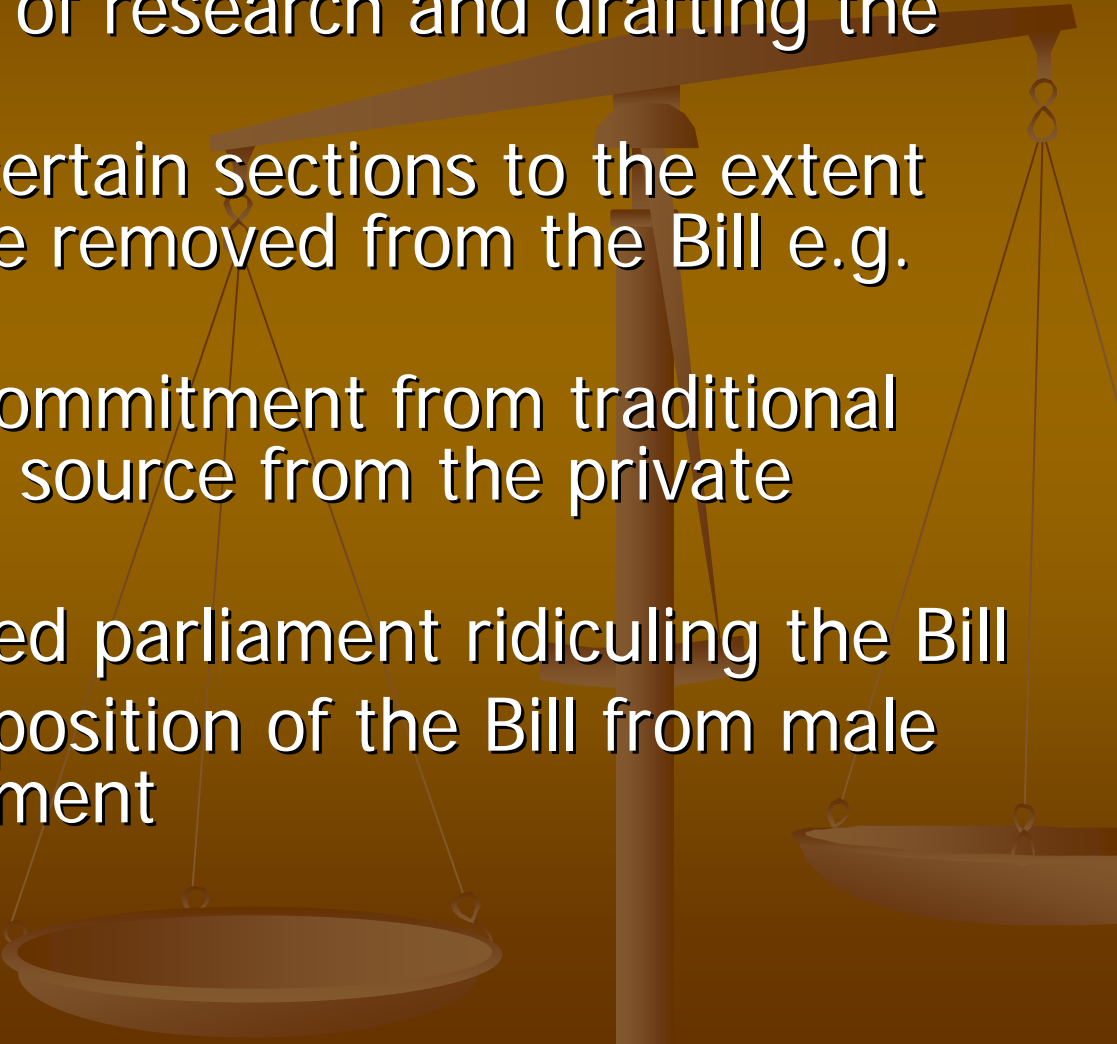
- Since independence, the Sexual Offences Act is the first gender related Act to be passed in Parliament.
 - There has been attempts to pass the Affirmative Action Bill, Equality Bill and the Family Protection (Domestic Violence) Bill which have been rejected.
 - This is because of the male dominated parliament that does not see the need of such laws.
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Lobby for Support

- Consultative meetings held with,
 - Police & AG
 - Medical Fraternity
 - Non-Governmental Organizations
 - Media
 - Religious leaders
 - Member of the Public (electorate)
 - Members of parliament (Committee on Legal Affairs)
 - Regrettably Judiciary not involved




Challenges of the process

- Expensive process of research and drafting the Bill
 - Misconception of certain sections to the extent that they had to be removed from the Bill e.g. castration.
 - Lack of resource commitment from traditional donors and had to source from the private sector
 - The male dominated parliament ridiculing the Bill
 - Stiff structured opposition of the Bill from male members of parliament
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SCHEDULE OF OFFENCES AND PUNISHMENTS UNDER THE SEXUAL OFFENCES ACT.

PROVISION	OFFENCE	SENTENCES
Section 3	Rape	Imprisonment for not less than 10 years and may be enhanced to Imprisonment for Life.
Section 4	Attempted Rape	Imprisonment for not less than 5 years and may be enhanced to Imprisonment for Life.
Section 5	Sexual Assault	Imprisonment for not less than 10 years and may be enhanced to Imprisonment for Life.
Section 6	Compelled Or Induced Sexual Acts	Imprisonment for not less than 5 years
Section 7	Acts that Cause Penetration or Indecent acts done within the view of a Child or a Mentally Disabled person	Imprisonment for not less than 10 years



Section 8	Defilement	<ul style="list-style-type: none">•Of a child of 11 years or less imprisonment for life•Of a child of 12-15 years imprisonment of not less than 20 years•Of a child of 16 – 18 years imprisonment of not less than 15 years
Section 9	Attempted Defilement	Imprisonment of not less than 10 years
Section 10	Gang Rape	Imprisonment for not less than 15 years and may be enhanced to Imprisonment for Life.
Section 11	Indecent Act with a Child	Imprisonment for not less than 10 years
Section 11A	Indecent Act with an Adult	Imprisonment of two years or fine of Kshs 50,000/-
Section 12	Promotion of Sexual Offences with a Child	Imprisonment for not less than 5 years or a fine of not less than 500 000 Kenyan Shillings



Section 13	Child Trafficking	Imprisonment for not less than 10 years, and if a Juristic person a fine of not less than 2 Million Kenyan Shillings.
Section 14	Child Sex Tourism	Imprisonment for not less than 10 years, and if a Juristic person a fine of not less than 2 Million Kenyan Shillings.
Section 15	Child Prostitution	Imprisonment for not less than 10 years.
Section 16	Child Pornography	Imprisonment for not less than 6 years, or to a fine of not less than 500,000 Kenyan Shillings, or both.
Section 17	Exploitation of Prostitution	Imprisonment for not less than 5 years, or to a fine of not less than 500,000 Kenyan Shillings, or both.

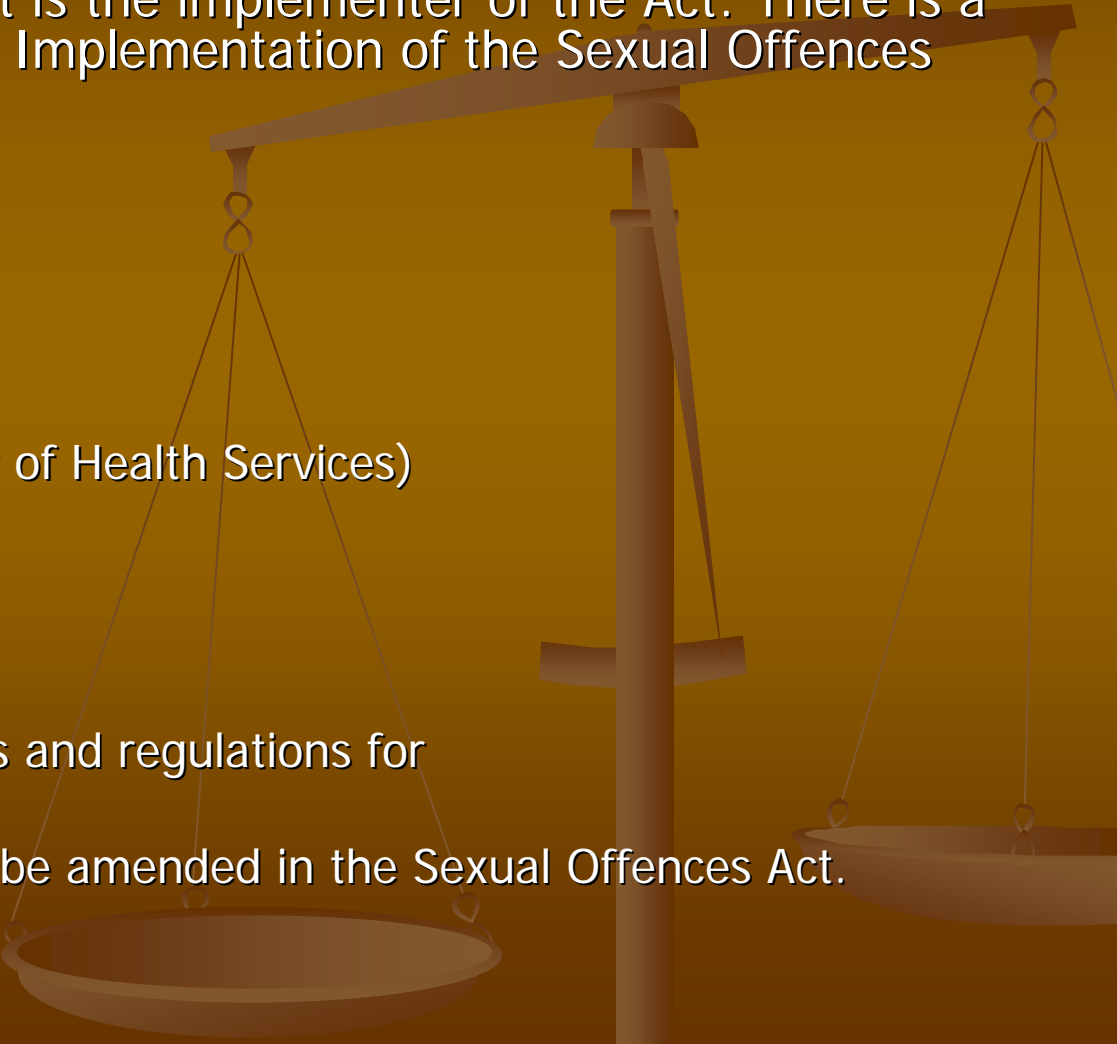


Section 18	Trafficking for Sexual Exploitation	Imprisonment for not less than 15 years, or to a fine of not less than 2 Million Kenyan Shillings, or both.
Section 19	Prostitution of Persons with Mental Disabilities	Imprisonment for not less than 10 years, and if a Juristic person a fine of not less than 2 Million Kenyan Shillings.
Section 20	Incest by Male Persons	Imprisonment for not less than 10 years
Section 21	Incest by Female Persons	Imprisonment for not less than 10 years
Section 23	Sexual Harassment	Imprisonment for not less than 3 years, or to a fine of not less than 100, 000 Kenyan Shillings.
Section 24	Sexual Offences relating to Position of Authority and persons in position of Trust	Imprisonment for not less than 10 years



Section 26	Deliberate transmission of HIV or any other life threatening Sexually Transmitted Disease	Imprisonment for not less than 15 years but may be enhanced to life.
Section 27	Administering Substance with Intent	Imprisonment for not less than 10 years
Section 28	Distribution of Substance by a Juristic Person	A Juristic Person can be fined for not less than 5 Million Kenyan Shillings, or the imprisonment of its Directors for not less than 10 years, or both.
Section 29	Cultural and Religious Sexual Offences	Imprisonment for not less than 10 years
Section 30	Non Disclosure of Conviction of Sexual Offences	Imprisonment for not less than 3 years, or to a fine of not less than 50, 000 Kenyan Shillings, or both.

Implementation

- S 46 and 47 - Government is the implementer of the Act: There is a National Taskforce on the Implementation of the Sexual Offences Act
 - Working with the
 - Judiciary
 - Prosecutions (AG)
 - Police
 - Medical officers (Ministry of Health Services)
 - Prisons
 - Education Ministry
 - Social Services Ministry
 - * To develop policies, rules and regulations for implementation of the Act.
 - Also identifying areas to be amended in the Sexual Offences Act.
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Evidentiary requirements

- Best practices
 - on the
- African Continent

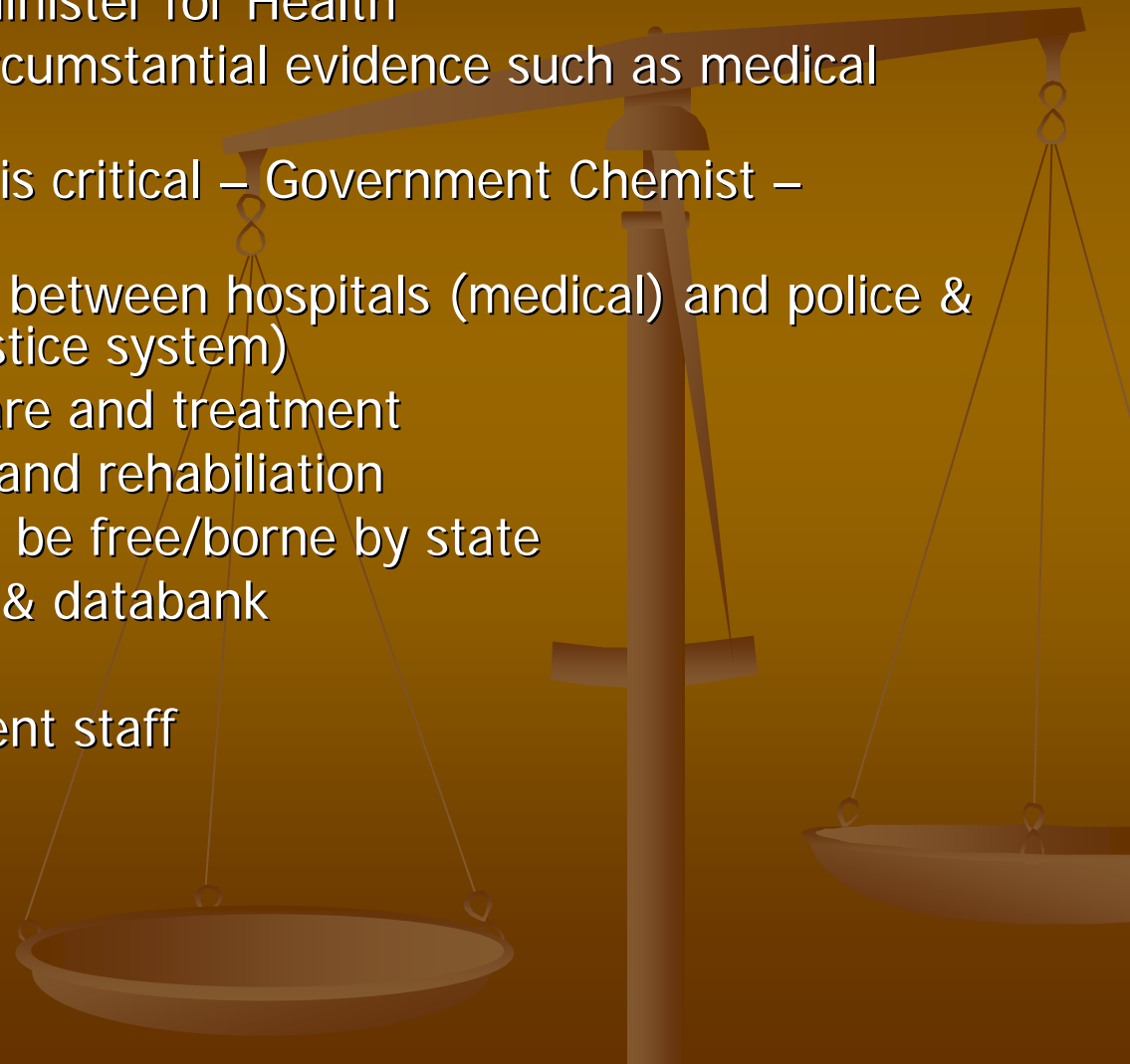



Privacy and Protection

- No automatic right to withdraw
 - In Camera Proceedings (video link/ witness protection box)
 - Restrictions on publishing the identity of the victim
 - Using an intermediary
 - Rape Shield
 - Legal Assistance – South Africa
 - Sexual Offences Courts – South Africa/Namibia
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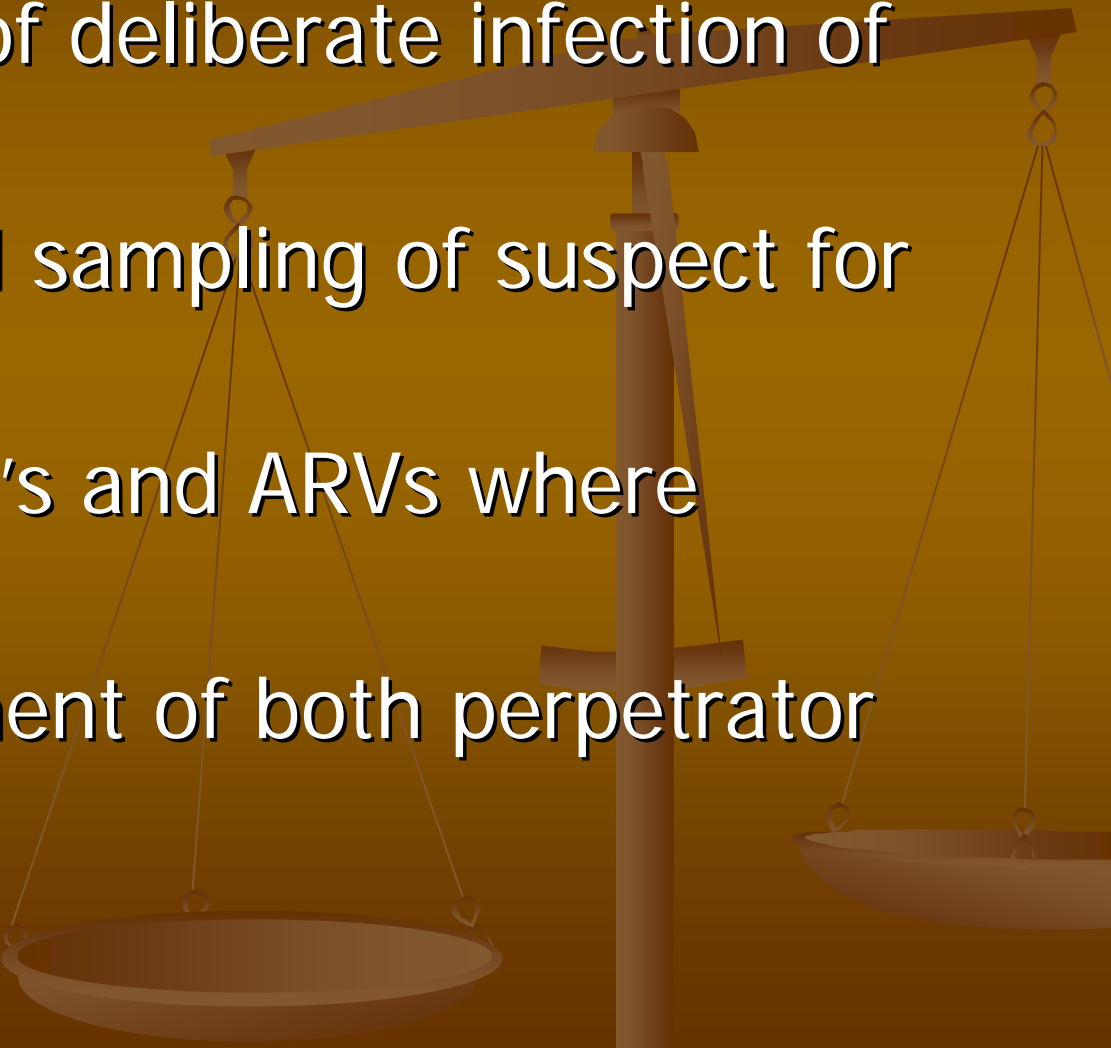
Care and Treatment

- Orders under S.35- the Minister for Health
- Courts have to rely on circumstantial evidence such as medical reports
- Preservation of evidence is critical – Government Chemist – Forensics Lab
- Establish the relationship between hospitals (medical) and police & prosecutions (criminal justice system)
- Need for guidelines on care and treatment
- Must include counselling and rehabilitation
- Medical treatment should be free/borne by state
- Need for forensic testing & databank
- Penalties for tampering
- Mixed genders of treatment staff



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- Termination of Pregnancy and Abortion
 - South Africa – on demand
 - Benin, Burkina Faso, Cameroon, Ethiopia, Zimbabwe, Botswana, Ghana, Liberia, Namibia, Swaziland & Togo – rape or incest
 - Kenya and Zambia – not provided. Prevention of pregnancy is by emergency contraception

HIV/AIDS and Sexual Violence

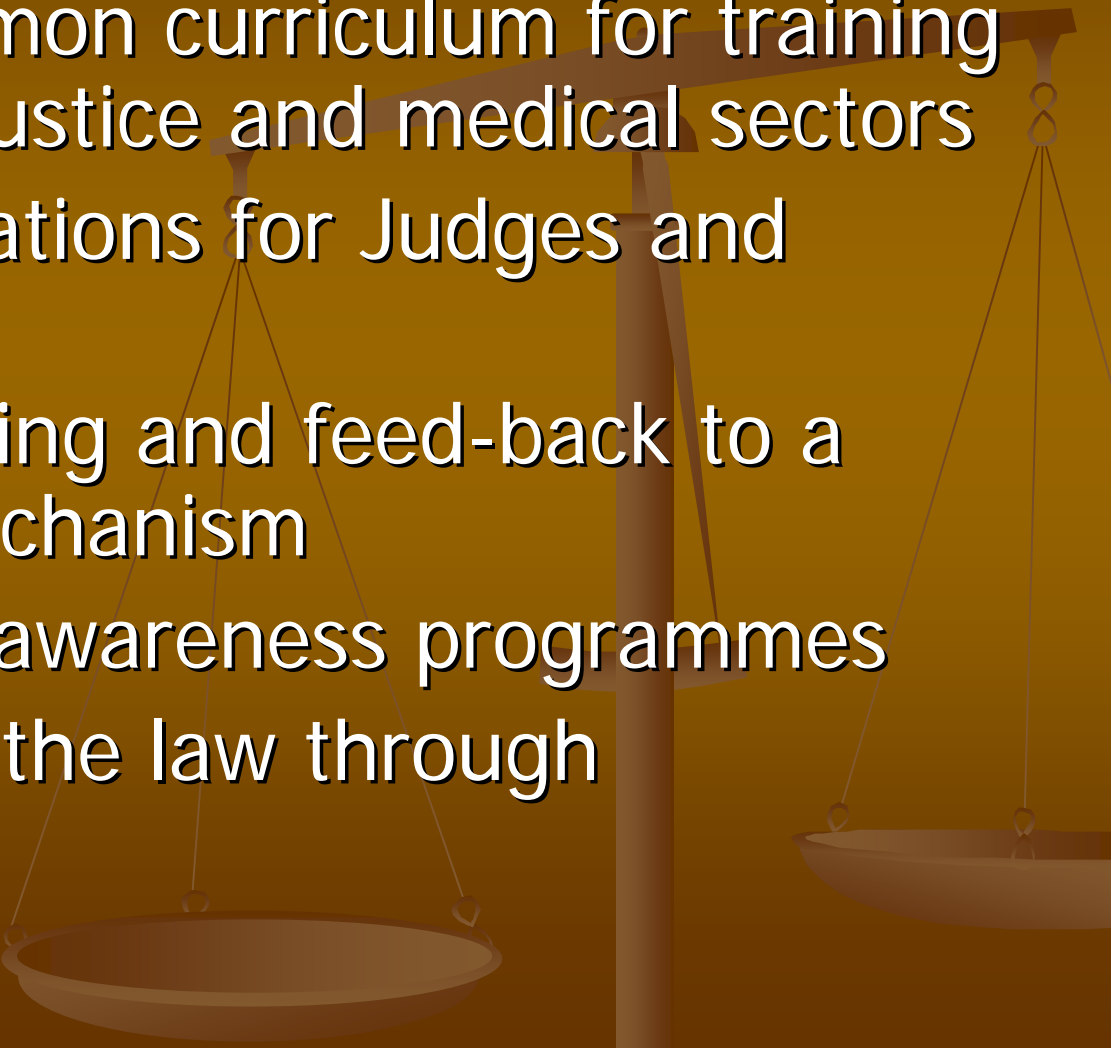
- Criminalisation of deliberate infection of HIV/AIDS
 - Legally provided sampling of suspect for HIV/AIDS
 - Provision of PEP's and ARVs where necessary
 - Care and treatment of both perpetrator and victim
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Key indicators for effective implementation



- National Policy Framework to secure acceptable and uniform treatment of all sexual related offences
- Inter-ministerial and multi-sectoral implementation of law and policy
- Need for Parliament to allocate more funding to addressing prevention, care, treatment and rehabilitation of SV
- National policy guidelines for medical professionals, police officers, prosecutions staff, social services and prisons

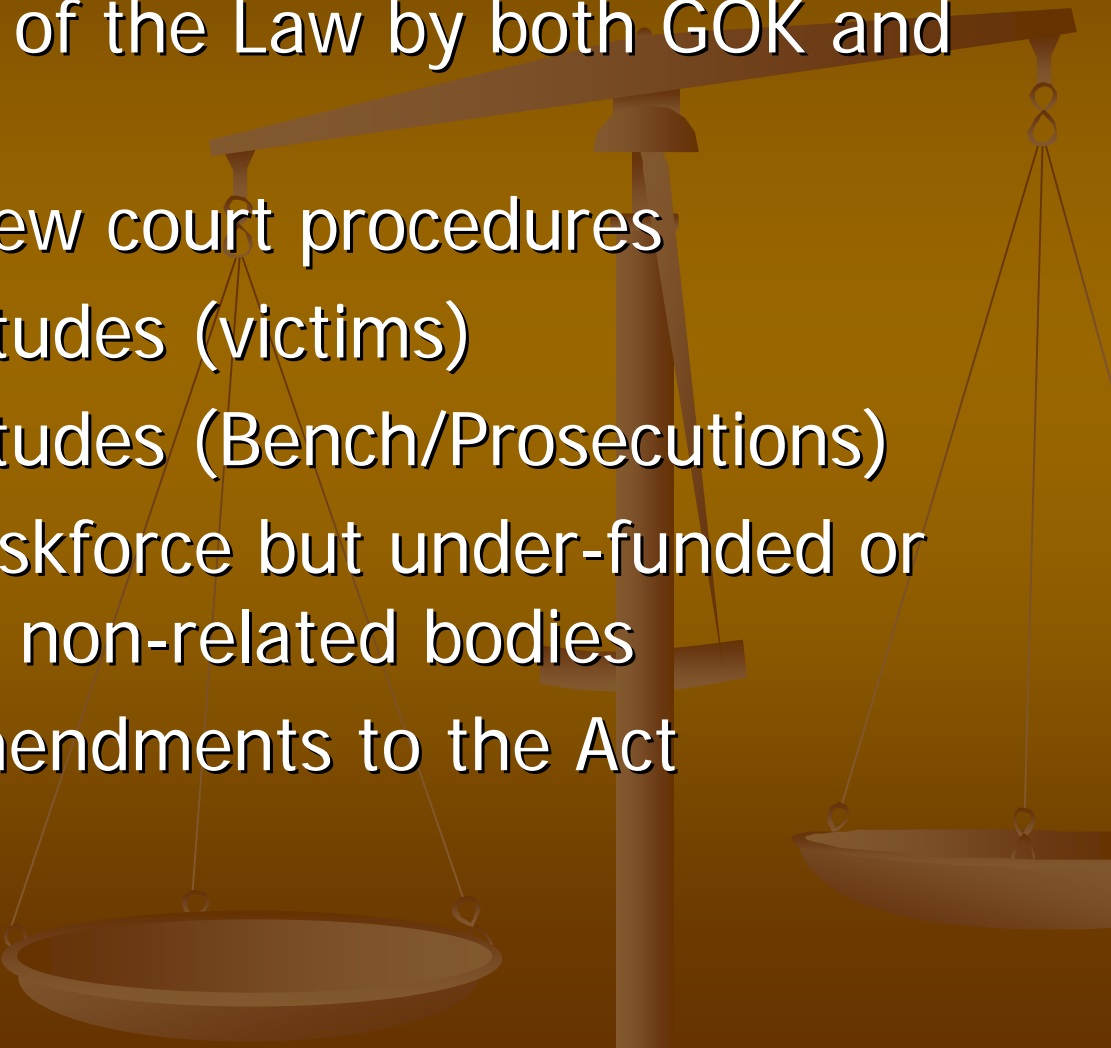
Successful implementation contd

- Need for a common curriculum for training of the criminal justice and medical sectors
 - Rules and regulations for Judges and Magistrates
 - Need for Reporting and feed-back to a coordinating mechanism
 - Need for public awareness programmes
 - Need to update the law through amendments
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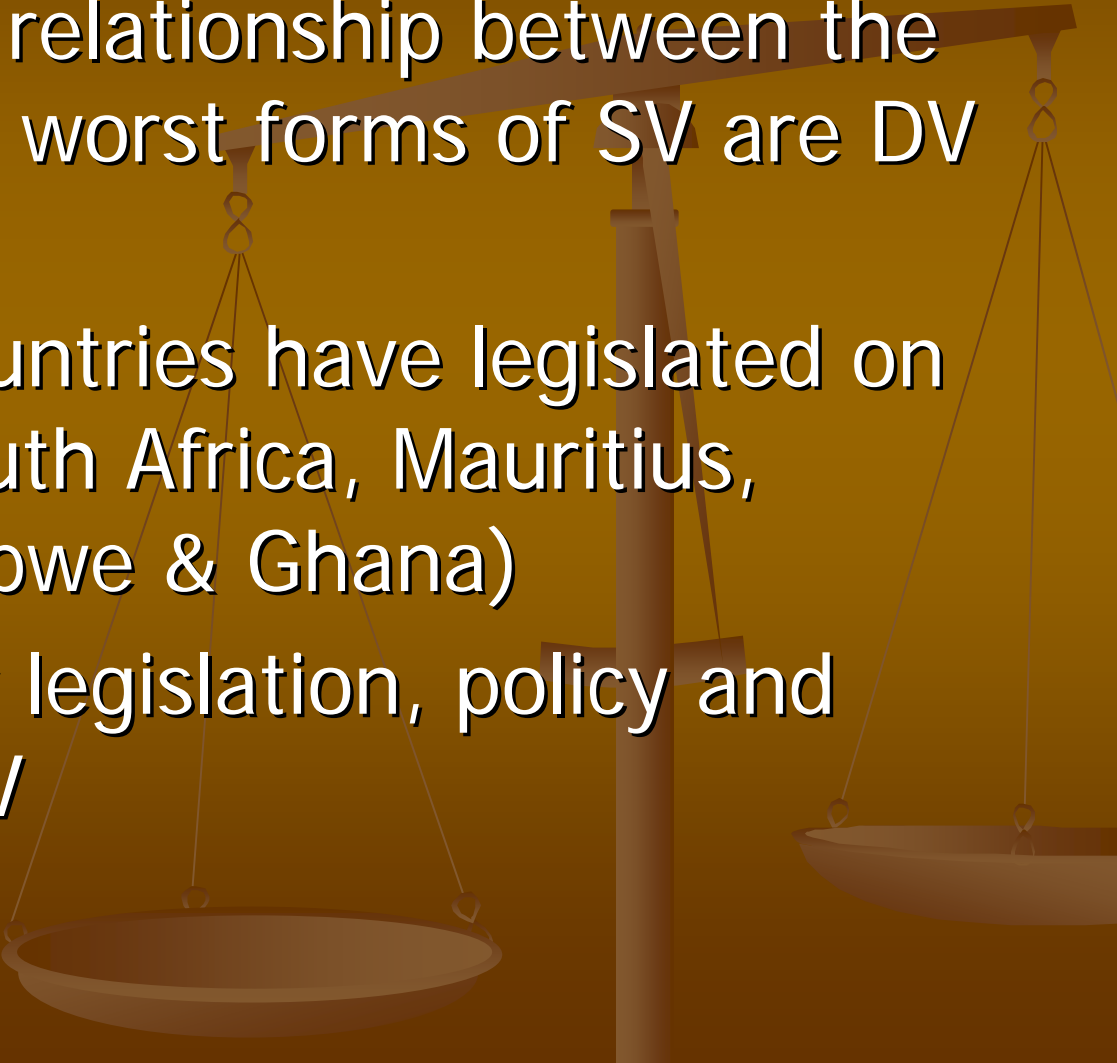
Kenyan Experience

- Judiciary: Kenya Women Judges Association/CLICK
 - Police: Department of Community Policing and Gender (WiLDAF)
 - MOH: Medical Services and Dept of Reproductive Health/LVCT/CLICK
 - AG/Office of the DPP: Prosecutions – Division for Sexual Offences (WiLDAF/IPAS)
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Feedback

- * Lack of awareness of the Law by both GOK and public
 - Lack of rules for new court procedures
 - Problems with attitudes (victims)
 - Problems with attitudes (Bench/Prosecutions)
 - Coordinated by Taskforce but under-funded or resources given to non-related bodies
 - Has resulted in amendments to the Act
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Sexual violence and domestic violence

- There is a close relationship between the 2 forms of GBV; worst forms of SV are DV cases
 - More African countries have legislated on SV than DV (South Africa, Mauritius, Namibia, Zimbabwe & Ghana)
 - Urgent Need for legislation, policy and guidelines on DV
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End

- For further information please visit our website

- www.thesexualoffencesact.com

