

**Sexual Exploitation of Children in Kenya**  
**Submission**  
for the Universal Periodic Review of the Human Rights situation in Kenya

Submitted by

**Kenya Alliance for Advancement of Children (KAACR)**

and

**ECPAT International**

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*Kenya Alliance for Advancement of Children (KAACR) is national umbrella body for NGO's cooperation and exchange of information on children rights in Kenya with a membership of over 250 children agencies in Kenya. KAACR, which was founded on the basis of the UNCRC, is a registered national umbrella NGO under the National Non-Governmental Organizations (NGO) Coordination Act of 1990 in 1995. KAACR is an NGO with Special Consultative Status with the Economic and Social Council (ECOSOC) of the United Nations (2000), Equivalence Determination Certification (2017) from NGO source, Observer Status with African Committee of Experts on the Rights and Welfare of the Child (ACRWC) – (2018), member of the Global Partnership to End Violence against Children (2018) and member of ECPAT. KAACR envisions a society that protects all the rights of children and youth to survive, develop and participate in all matters concerning them. KAACR's mission is to advocate for and promote the realization of rights and responsibilities of children and youth in Kenya. KAACR was the convenor of the Children Sector during the first Universal Periodic report for Kenya in 2015 and has led the process of complimentary CSO reports on Kenya three state party reports on implementation of UNCRC i.e. combined Initial & first (1997), second (2006) state party report and combined 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> state reports (2016).*



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*ECPAT International is a global network of civil society organisations working for the eradication of all forms of sexual exploitation of children. For the past 29 years, ECPAT has acted as the international watchdog, monitoring States' response to sexual exploitation of children, and advocating for robust international measures to protect children from sexual exploitation. ECPAT International currently has 109 network members operating in 96 countries.*

## **Justification for submission**

1. The purpose of the present submission is two-fold: (1) to serve as an update on the progress that has been made by the Government of Kenya (GoK) to end the sexual exploitation of children (SEC) in the country, and (2) to assess the level of implementation of the UPR recommendations relating to SEC made in 2015.<sup>1</sup>
2. During Kenya's previous UPR in 2015, the report of the Working Group contained 48 recommendations related to children's rights,<sup>2</sup> of which 15 are directly related to SEC.<sup>3</sup> Seven of these recommendations addressed SEC in general,<sup>4</sup> five encouraged Kenya to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC),<sup>5</sup> and three specifically expressed the need to combat child marriage.<sup>6</sup>

## **Methodology and Scope**

3. The content of this report is based on country work experience by Kenya Alliance for Advancement of Children (KAACR) and desk research by ECPAT International. It also includes the voices of children on protection issues important to them and an annex with stories from five children interviewed by KAACR.
4. The scope of this report is limited to SEC and its different manifestations, including exploitation of children in prostitution,<sup>7</sup> online child sexual exploitation (OCSE), child sexual abuse materials (CSAM),<sup>8</sup> child trafficking for sexual purposes, sexual exploitation of children in the context of travel and tourism (SECTT)<sup>9</sup> and child, early and forced marriage (CEFM).

## **Current status and developments of sexual exploitation of children in Kenya**

### *General overview of country conditions*

5. In the last several decades, economic growth in Kenya has been aided by significant political, structural and economic reforms.<sup>10</sup> If these trends continue, Kenya is positioned to become an upper-middle-income country by 2030.<sup>11</sup> Despite this progress, as of 2015, an estimated 36.1% of the population continues to live in poverty,<sup>12</sup> with research indicating that poverty rates are highest in rural areas of the country.<sup>13</sup>
6. According to the latest available estimates, in 2016, the country's population was 48,462,000,<sup>14</sup> of which 23,094,000 (48%) were children.<sup>15</sup> UNICEF's 2018 Country Office Annual Report notes that with respect to children's health and security, some progress has been made on immunization rates, nutrition, educational enrolment, and poverty.<sup>16</sup> However, children in rural communities continue to have significantly less access to health, security, and educational resources than children living in urban areas.<sup>17</sup>

## *Sexual exploitation of children in Kenya*

### Exploitation of children in prostitution

7. As of the date of this report, there have not been any recent studies examining the scope of the exploitation of children in prostitution in Kenya. However, existing information suggests that this phenomenon is often linked to other manifestations of SEC, particularly the exploitation of children in travel and tourism<sup>18</sup> and the trafficking of children.<sup>19</sup> A 2017 study by Awareness Against Human Trafficking of major tourist hotspots along the Kenyan coast found that children exploited in prostitution operate clandestinely.<sup>20</sup> The study, which sampled 10 children exploited in prostitution in the Bombolulu and Tudor areas of Mombasa County, also found that the average age of children who are initiated into prostitution is 14.8 (corresponding with information from other organizations taking part in the study), though children as young as 8 years have been reported as being exploited into prostitution.<sup>21</sup> The most recent data published by the National Child Helpline shows that 385 cases of sexual abuses were reported in 2016, but does not disaggregate this data by the type of sexual abuse.<sup>22</sup> Further, children are often exploited in prostitution in private villas and guest houses dotted along the coast.<sup>23</sup> Trace Kenya has supported 42 children (21 boys and 21 girls) exploited in prostitution and is currently rehabilitating an additional 24 girls.<sup>24</sup> More research is needed to understand the nature and scope of children exploited in prostitution.
  
8. The dire economic situation faced by the child or their family, in addition to “lack of social integration within and coherence amongst the community”, are considered some of the root causes of children being exploited in prostitution, including through their active engagement.<sup>25</sup> Additional causes of exploitation include being forced into prostitution as a consequence of trafficking and coercion by family members.<sup>26</sup> There are also reports of boys being groomed for prostitution after they have been recruited by foreigners to work in their homes.<sup>27</sup> Poor regulation and enforcement of child labour laws has also led to the exploitation of children in prostitution, such as in the artisanal gold mining operation in Migori County.<sup>28</sup>

### Online child sexual exploitation (OCSE)

9. In the last decade, Kenya has seen remarkable improvements in Internet access as a result of increased urbanisation, development of Internet infrastructure, and wide access to low-cost smartphones and tablets.<sup>29</sup> However, a significant consequence of this development has been an increased risk among children in Kenya to online child sexual exploitation (OCSE).<sup>30</sup> The increase in Internet availability across Kenya has not been matched by measures addressing how to adequately protect children in this new online environment.<sup>31</sup> A 2018 study found that some of the underlying causes of OCSE in Kenya include poverty, child abuse, traditional gender roles, and inadequate government and private sector action on the issue.<sup>32</sup> Further, children from vulnerable and marginalized groups are more likely to be at risk of OCSE.<sup>33</sup> The growth and expansion of OCSE in Kenya has also been aided by the “absence of a clear and enforceable regulatory framework

governing cybercafé operators.”<sup>34</sup> The Intercept Project has seen an increase in the number of children lured to the coastal urban centres of Mombasa, Ukunda and Malindi through online platforms.<sup>35</sup> Since October 2018, 67 children (out of 120) have reported being invited by social media, particularly Facebook, when travelling unaccompanied to the coast region.<sup>36</sup> Even in situations where children do not own mobile phones themselves, mere access increased their vulnerability to online child trafficking, exposure to pornographic materials and online sexual abuse and bullying.<sup>37</sup> Further, young boys are increasingly being groomed into male to male sex work through online recruitment.<sup>38</sup>

10. In Kenya, known forms of OCSE include online grooming (which involves both individuals and organized groups grooming children), live-streaming of child sexual abuse (instances of both boy and girl victims), and the production and distribution of child sexual abuse materials for offenders overseas.<sup>39</sup> In 2017, a case of live streaming OCSE was uncovered by the Kenya Television Network involving, among others, two girls aged 9 and 3 years old.<sup>40</sup>

#### Sale and trafficking of children for sexual purposes

11. Child trafficking comprises the main category of trafficked cases in Kenya, and children have been known to be trafficked for sexual purposes particularly along the coast.<sup>41</sup> Additionally, some of the areas known to be hotspots for trafficking of children for sexual purposes include the “khat cultivation areas, near Nyanza’s gold mines, along the coast by lorry drivers transporting stones from quarries, by fishermen on Lake Victoria, and at Lokichar in Turkana.”<sup>42</sup> Further, trafficking for sexual purposes often involves migration of children from “upcountry” regions in Kenya to the coastal regions.<sup>43</sup>
12. The latest available data from Childline Kenya shows that the national helpline received only 40 reports of child trafficking, abduction and kidnapping in 2016,<sup>44</sup> which was the least reported form of abuse and below the actual scope of this phenomenon in the country.<sup>45</sup> The Childline report suggests that this is a result of child victims of trafficking being unaware that the helpline is an avenue through which they can receive help.<sup>46</sup> Statistics from the report also reveal that the main perpetrators of child trafficking, abduction and kidnapping were neighbours, followed by immediate family members and extended family.<sup>47</sup>
13. Despite the widespread prevalence of trafficking of children for sexual purposes, there is a lack of comprehensive national data on the scope and nature of this phenomenon.

#### Sexual exploitation of children in travel and tourism

14. A 2015 study on the sexual exploitation of children in travel and tourism (SECTT) found that the issue is a significant and potentially growing problem in the country.<sup>48</sup> Foreign investment towards the construction of roadways and infrastructure has led to the growth of SECTT.<sup>49</sup> SECTT was found to be occurring in the major tourist destinations of Mombasa, Kisumu, Kakamega, and Nakuru.<sup>50</sup>

Victims of SECTT were most likely to be children in already vulnerable situations, such as orphans, children heading households and children from single parent households.<sup>51</sup> Additionally, the coastal regions' financial dependence on tourism,<sup>52</sup> particularly tourism that tends to attract individual travellers,<sup>53</sup> may exacerbate the sexual exploitation of children. As noted above, child trafficking comprises the main category of trafficked cases in Kenya, and a 2018 IOM study of 78 "key informants" from the government, NGOs and religious organizations found that the most commonly cited cause for trafficking into the coastal region was tourism (22%).<sup>54</sup> Combatting the growth in SECTT has proven difficult for a variety of reasons, including issues in detecting the offender because of the presence of middlemen, the use of private villas for sexual exploitation, reluctance of law enforcement to investigate and lengthy judicial proceedings inhibiting effective prosecution.<sup>55</sup>

### Child, early, and forced marriage

15. Though marriage is illegal before the age of 18, child and early marriage is widely practiced among many communities in Kenya.<sup>56</sup> Statistics reveal that despite child marriage falling nationwide from 26.4% in 2008/2009 to 22.9% in 2014, the rate of child marriage remained high in the northern part of the country (56%) and along the coast (41%).<sup>57</sup> As with other manifestations of SEC, the latest available data from 2014 shows that there are large differences in the rates of child marriage in different areas of the country and between rural and urban communities, with 56% prevalence in northern Kenya and 7% in Nairobi.<sup>58</sup> Further, a recent UNICEF survey has identified a correlation between the practice of female genital mutilation (FGM) and child marriage,<sup>59</sup> where FGM is often seen as a "pre-requisite" to child marriage.<sup>60</sup> Boys have also been known to victims of child marriage, often marrying after they drop out of school.<sup>61</sup>
16. Causes of child marriage include socio-economic factors (e.g., poverty, lack of education, treating girls as 'economic assets'), shortage of capacity among police officers and court officials, and the influence and community and religious leaders.<sup>62</sup> Girls are often seen as either an economic burden that necessitates they be forced to marry to lessen the family's expenses, or conversely as a valuable asset that can be sold into marriage in order to gain goods, money and livestock.<sup>63</sup> Further, child marriage tends to be more prevalent during conflict or natural disasters.<sup>64</sup> For instance, the ongoing drought in Kenya<sup>65</sup> has made children increasingly vulnerable to child marriage.<sup>66</sup> As the drought has killed many animals that provide food and income for rural communities, reportedly parents have begun to marry off their daughters in exchange for livestock.<sup>67</sup> Additionally, in 2017 approximately 175,000 students were recorded as being absent from school as a result of the drought,<sup>68</sup> further increasing the risk of child marriage.<sup>69</sup>

## Legislative framework on prohibition of sexual exploitation

### *Children's rights framework and sexual exploitation of children*

17. Domestically, the GoK has enacted a number of instruments and laws that include provisions related to SEC. These include the National Constitution (2010), the Children's Act (2001),<sup>70</sup> the Sexual Offences Act (2006),<sup>71</sup> the Employment Act (2007),<sup>72</sup> the Computer Misuse and Cybercrimes Act (2018),<sup>73</sup> and the Counter-Trafficking in Persons Act (2010).<sup>74</sup>
18. The Constitution provides that children are entitled to nutrition, shelter, healthcare, protection from all forms of violence, and the right not to be detained unless for the shortest appropriate time.<sup>75</sup> Further, it stipulates that "[a] child's best interests are of paramount importance in every matter concerning the child."<sup>76</sup> As highlighted above, due to the endemic socio-economic problems faced by Kenyan children, they are not able to fully realize these constitutional protections.
19. Section 15 of the Children's Act states that "a child shall be protected from sexual exploitation and use in prostitution, inducement or coercion to engage in any sexual activity, and exposure to obscene materials."<sup>77</sup> Further, the Act authorizes various officers and institutions to intervene when a child "is in need of care and protection."<sup>78</sup> Among other things, a child "is in need of care and protection" when they have "been sexually abused or [are] likely to be exposed to sexual abuse and exploitation including prostitution and pornography."<sup>79</sup>
20. The remainder of this section highlights provisions from the above laws relevant to the different manifestations of SEC.

### Exploitation of children in prostitution

21. Section 15 of the Sexual Offences Act explicitly criminalizes "child prostitution".<sup>80</sup> This provision is triggered when a person engages in a number of different activities to "procure" a child for another individual, including knowingly permitting a child to stay on any premises with the purpose of participating in sexual activity,<sup>81</sup> inducing a person to be a client of a child for any form of sexual abuse,<sup>82</sup> using their influence over a child to procure that child for any form of sexual abuse,<sup>83</sup> and threatening a child with violence to procure that child for any form of sexual abuse."<sup>84</sup> The criminal penalty under this section is imprisonment for a term not less than 10 years.<sup>85</sup> Criminalisation of physical sexual contact between an individual and a child is governed by Sections 8 and 11 on "defilement" and "indecent acts", respectively.<sup>86</sup> However, it is unclear if these provisions criminalize the offence of purchasing sexual services from children and thus fully protect children from exploitation in prostitution.

## Online child sexual exploitation (OCSE) and child sexual abuse materials (CSAM)

22. As of the date of this report, there is no law that explicitly defines and criminalizes the different forms of OCSE.<sup>87</sup> Instead, a number of laws contain provisions on CSAM that may extend to the online environment. As described above, the Children’s Act protects children from “exposure to obscene materials”<sup>88</sup> and “pornography.”<sup>89</sup> Additionally, Section 11 of the Sexual Offences Act criminalizes “indecent acts” with a child,<sup>90</sup> which includes “exposure or display of any pornographic material to any person against his or her will.”<sup>91</sup> Section 12 of the Sexual Offences Act criminalizes both the (1) manufacture or distribution of any “article” that promotes a sexual offence with a child, and (2) supplies or displays an “article” to a child intended to be used in a sexual act with the intention that the child will perform such an act.<sup>92</sup>
23. The Sexual Offences Act contains the most pertinent provisions related to CSAM, which are Sections 16 and 16A on “child pornography” and “sexual communication with a child”, respectively. Section 16 criminalizes a wide range of activities, including possessing an (1) “indecent photograph of a child”, (2) displaying “obscene images, words, or sounds by means of print, audio-visual or any other media to a child” intending for the child to engage in a sexual act, and (3) selling, distributing, or publicly exhibiting a produced indecent photograph.<sup>93</sup> The section goes on to define what constitutes both “obscene” and “indecent”.<sup>94</sup> Crucially, an “indecent photograph” includes visual, audio or audio-visual media depicting actual children, a person who appears to be a child, or realistic images of a child.<sup>95</sup> Section 16A outlaws an individual over 18 from communicating with a child in a sexual manner or in a manner that encourages the child to respond in a sexual manner.<sup>96</sup>
24. The Computer Misuse and Cybercrimes Act, assented to in May 2018,<sup>97</sup> provides the broadest criminalization of OCSE in Kenya to date. Section 24 on “child pornography” penalizes the publication, production and possession of ‘child pornography’ on or through a computer system or computer data storage medium.<sup>98</sup> Like the Sexual Offences Act, ‘child pornography’ includes visual or audio data depicting actual children, a person who appears to be a child, or realistic images of a child.<sup>99</sup>
25. Despite the breadth of these laws, their provisions may not cover offences involving grooming, live-streaming of child sexual abuse, or online sexual extortion, all of which are increasingly common manifestations of OCSE. Therefore, Kenyan law falls short of fully protecting children from OCSE and CSAM.

## Sale and trafficking of children for sexual purposes

26. The Counter-Trafficking in Persons Act includes a comprehensive definition of trafficking that is in compliance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Palermo Protocol).<sup>100</sup> Further in line with the Palermo Protocol, the “recruitment, transportation, transfer, harbouring or receipt of a child for the purposes of



exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means” listed in the preceding subsection.<sup>101</sup> “Exploitation” for the purposes of the Act includes sexual exploitation.<sup>102</sup> Crucially, a child victim is immune from prosecution for any criminal act that may have resulted from being trafficked or for any offence related to being in Kenya illegally.<sup>103</sup> The criminal penalty for anyone who traffics another person for the purpose of exploitation is a term of imprisonment not less than 30 years, to a fine of no less than 30 million shillings (\$296,000 USD as of June 2019), or both.<sup>104</sup> The criminal penalty is the same for anyone who finances, controls, aids or abets the commission of an offence of trafficking in persons.<sup>105</sup>

27. A notable omission from Kenyan law is the criminalization of the “sale of children”, defined in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”<sup>106</sup> Even though the GoK has yet to ratify the Optional Protocol, expressing its intent to do so by 2019,<sup>107</sup> the government should take the proactive step of defining and criminalizing the sale of children. As of the date of this report, no information was available on whether the GoK will ratify the Optional Protocol in 2019.<sup>108</sup>

#### Sexual exploitation of children in travel and tourism

28. Section 14 of the Sexual Offences Act criminalizes “child sex tourism.”<sup>109</sup> This provision outlaws anyone from organizing travel arrangements for a person who intends to commit any sexual offence against a child (regardless of whether the offence is committed), anyone from printing or publishing any information intended to promote or facilitate a sexual offence against a child, and anyone from facilitating contact with a person under the auspices of promoting tourism in order to promote a sexual offence against a child.<sup>110</sup> This section applies to prospective tourists who reside either within or outside the borders of Kenya.<sup>111</sup>

#### Child, early and forced marriage

29. The Marriage Act sets the minimum age of marriage at 18 years.<sup>112</sup> However, Section 49 states any “[a]ny provision of this Act which is inconsistent with Islamic law and practices shall not apply to persons who profess the Islamic faith”, potentially permitting child marriage.
30. The Counter-Trafficking in Persons Act, described above, includes in its definition of “exploitation” both child marriage and forced marriage.<sup>113</sup> Further, the Children’s Act allows a court to render any “early marriage” null and void *ab initio* and states a child victim of early marriage should be placed under the care of a “fit person” and returned to school.<sup>114</sup> Further, the Act authorizes various officers and institutions to intervene when a child “is in need of care and protection”,<sup>115</sup> and a child is deemed to be “in need of care and protection” when they are likely to be subject to early marriage.<sup>116</sup>

31. While the breadth of the above legislative framework is impressive, the Gok has faced difficulties in effectively implementing its provisions, due to reasons of inadequate human and financial resources, poor monitoring and evaluation frameworks, among other reasons.<sup>117</sup> In particular, strong cultural beliefs can prevent effective application of the law, such as in cases of child marriage.<sup>118</sup>

#### *Extraterritorial jurisdiction and extradition*

32. For acts committed wholly outside the borders of Kenya, Section 25 of the Counter-Trafficking in Persons Act states that a citizen or permanent resident of Kenya who commits an offence outside the country that would constitute an offence under the Act is liable to the same penalty described in the Act.<sup>119</sup> The Sexual Offence's Act has an identical provision on extraterritoriality in Section 41.<sup>120</sup> The Computer Misuse and Cybercrimes Act provides jurisdiction over an act committed outside Kenya that if committed in Kenya would constitute a crime under the Act if (1) the person committing the crime is a citizen or resident of Kenya, (2) the act is against a citizen of Kenya, and (3) the person who commits the act is present in Kenya after its commission.<sup>121</sup>
33. However, there is no jurisdiction over offences committed abroad by a non-citizen or non-resident against a Kenya citizen or resident, thus limiting the protection of children from some of the SEC-related crimes above.
34. The Extradition (Commonwealth Countries) Act states an offender may be extradited from Kenya if (1) the law in the requesting country punishes the offence by a term of imprisonment of at least 12 months, (2) the offense in the requesting country falls within any description in an attached Schedule to the Act, and (3) the act constituting the offence would also be offence against Kenya law if it took place in Kenya.<sup>122</sup> This establishes a requirement of dual criminality for extradition and as such, an offender may escape prosecution for an SEC offence if Kenya does not recognize that SEC offence. The Extradition (Contiguous and Foreign Countries) Act outlines procedures for extradition with non-Commonwealth countries.<sup>123</sup>

#### **Recommendations to the GoK**

- Ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.
- Define and criminalize grooming, live-streaming of child sexual abuse, and online sexual extortion.
- Criminalize the “sale of children” in line with the OPSC.
- Amend the Marriage Act to outlaw all exceptions to 18 years as the minimum age of marriage.
- Amend the Extradition Act to abolish the requirement of dual criminality.

## Implementation

### *National policies and programmes*

35. The National Plan of Action (NPA) Against Sexual Exploitation of Children in Kenya 2018 – 2022 presents an outline of activities to be implemented to prevent and protect victims of SEC, broken down into six thematic categories: identification, prevention, protection, rescue, recovery and reintegration, and child participation, with additional coordinating, monitoring and evaluation activities.<sup>124</sup> Each category contains objectives, activities, target groups, actors, expected results, indicators, and a rough budget. As such, the Plan is very comprehensive and provides a strong foundation to address SEC in the coming years. As of the date of this report, the GoK has not published any monitoring or evaluation report on the implementation of the Plan.<sup>125</sup>
36. Additional plans and policies that address SEC and its manifestations include the National Plan of Action for Children 2015 – 2022,<sup>126</sup> the National Adolescent Sexual and Reproductive Health Policy,<sup>127</sup> the Gender Policy,<sup>128</sup> the National Children Policy Kenya 2010,<sup>129</sup> and the National Plan of Action for Combating Human Trafficking 2013 – 2017,<sup>130</sup> and the National Standard Operating Procedures for the Management of Sexual Violence Against Children.<sup>131</sup>

### *Coordination and evaluation*

37. The Framework for the National Child Protection System for Kenya outlines the linkages between the different actors in the child protection system.<sup>132</sup> Child protection is coordinated between the National Council for Children's Services (NCCS)<sup>133</sup> and the Ministry of Labour and Social Protection.<sup>134</sup> Broadly, the NCCS is responsible for formulating and coordinating policies on children's issues, while the Ministry (through the Department of Children's Services) is responsible for supervising children services through the country and ensuring implementation of activities designed by NCCS and other institutions.<sup>135</sup> Additional ministries, officials, NGOs, and the private sector fill supplementary roles in the framework.<sup>136</sup>
38. Coordination at the national level faces challenges because these different government ministries and departments are responsible for different aspects of child protection, and their mandates conflict at times.<sup>137</sup> Further, it has been noted that the Department of Children's Services is not a clearly visible institution within the Ministry of Labour and Social Protection and would be more effective in another Ministry.<sup>138</sup>

### **Recommendations to the GoK**

- Streamline the different national plans and policies in order to avoid redundancies and to provide clarity to stakeholders in implementation.
- Allocate ex-ante financial and human resources for the implementation of activities included in the Plans, particularly the National Plan of Action Against Sexual Exploitation of Children in Kenya 2018 – 2022, in order to avoid delays and poor outcomes.

- Establish clear operating procedures for each ministry to avoid a conflict in mandates.
- Update outdated policy frameworks and other policies that have outlived their usefulness.

## Prevention

39. The inclusion of detailed sections on Prevention and Child Participation in the NPA Against Sexual Exploitation of Children 2018 – 2022 highlights the importance the GoK places in combatting SEC through preventative measures.<sup>139</sup> Following the first NPA on SEC,<sup>140</sup> the GoK implemented a number of prevention programmes, including providing children with information on SEC in schools, establishing community-based child protection mechanisms for detecting and responding to SEC and launching a pilot program on “positive parenting” with parents and children in Nairobi.<sup>141</sup>
40. The Communications Authority of Kenya (CAK) launched a “BE the COP” campaign in 2015 in order to sensitize parents, guardians and teachers on the risks faced by children online.<sup>142</sup> The first phase involved campaigns across social media based on international guidelines by the International Telecommunications Union, with the second phase intended to follow up on the progress of the campaign across primary and secondary schools.<sup>143</sup> The CAK has also established the National Kenya Computer Incident Response Team – Coordination Centre, responsible for detecting, preventing and responding to cyber threats at the national level.<sup>144</sup> Further, the CAK now holds annual events for sensitizing stakeholders on the risks faced by children online.<sup>145</sup>
41. There are also number of NGOs throughout the country involved in implementing prevention programmes. Watoto Watch Network, whose mission it is to create a safe online environment for children in Kenya, is involved in raising awareness of online child protection, coordinating the Safer Internet Day, and delivering education sessions to children, parents and teachers in schools.<sup>146</sup> Similarly, CRADLE conducts awareness raising campaigns on OCSE and advocates for policies aimed that protecting children from OCSE and other manifestations of SEC.<sup>147</sup>
42. With respect to child participation, the Kenyan Children Assembly is a mechanism for children from diverse backgrounds to come together and share their thoughts with government bodies on policies affecting children.<sup>148</sup> Most recently in 2017, the Assembly helped to create a Children’s Charter that collected children’s views on important matters to them.<sup>149</sup> However, the Assembly has not held an election for a new President since 2018, resulting in a lack of leadership and direction.<sup>150</sup>
43. Though a significant number of prevention programmes have been implemented, a number of issues hinder their effective implementation, including a lack of financial and human resources, weak enforcement measures, and harmful cultural practices.<sup>151</sup> These issues are most prevalent in rural communities.<sup>152</sup>

## Recommendations to the GoK

- Allocate sufficient human and financial resources towards prevention programmes, particularly in rural communities that have been historically underserved.
- Ensure that children are involved during the drafting of policies and plans directly affecting them.
- Convene the Kenyan Children Assembly to elect new officials.

## Protection

### *Measures adopted by the GoK to protect the rights and interests of child victims*

44. Some of the agencies dealing with SEC issues include the Anti-Human Trafficking and Child Protection Unit,<sup>153</sup> the Anti-Child Exploitation Unit.<sup>154</sup> Within the Anti-Human Trafficking and Child Protection Unit is a Cyber Crimes Unit, responsible for responding to cybercrimes, including OCSE.<sup>155</sup> As of 2018, the Cyber Crimes Unit had 21 officers who, among other responsibilities, were tasked with investigating and gathering evidence of OCSE, though none of the officers appeared to be individually assigned to investigate instances of OCSE.<sup>156</sup> The Unit faces several challenges in investigating offenders of OCSE, including lack of regulations that allow cybercafé users to remain anonymous and limited technical knowledge on OCSE.<sup>157</sup> The GoK has also allocated a children's officer to the Directorate of Criminal Investigations to handle OCSE matters, though the work remains overwhelming with just one police officer and one children's officer.<sup>158</sup>
45. With respect to the judicial system, the Children's Act established Children's Courts nationwide to oversee civil proceedings under the Act and gave them the ability to make an order or judgment when a child "is in need of care and protection".<sup>159</sup> Child-sensitive justice measures include the provision of free legal aid,<sup>160</sup> compensation for victims of trafficking from a trust fund<sup>161</sup> and providing extensive protection measures for witnesses in sexual offence proceedings.<sup>162</sup> As of the date of this report, magistrates around the country handle children's rights matters by converting their court to a children's court twice a week where proceedings are done in camera.<sup>163</sup> KAACR has trained 20 magistrates as trainers of trainers and lobbied for children's rights to be a unit within the Judicial Training Institute for all new magistrates.<sup>164</sup>
46. While the provisions above establish comprehensive legal protection for children, physical, sexual and/or emotional violence appears to be widespread at all stages of the justice system,<sup>165</sup> undermining the ability of children to safely bring SEC claims. SEC victims often lack access to justice "due to social stigma, pressure from family members, low rates of investigation and prosecution, frequent delays in court proceedings [and] lenient sanctions imposed."<sup>166</sup>
47. Lastly, a noteworthy protection measure is Childline Kenya, which operates a 24/7 toll free number that allows anyone, including children, to call or text to report child abuse.<sup>167</sup>

## *National complaint mechanisms*

48. The Children’s Act allows for “any person who has reasonable cause to believe that a child is in need of care and protection [to] report the matter to the nearest authorised officer.”<sup>168</sup> Additionally, the Employment Act permits any person to make a complaint to a labour or police officer if they believe a child is being subjected to an activity constituting a “worst form of child labour”, which includes the sexual exploitation of children.<sup>169</sup> Additionally, children have the Constitutional right to bring cases when “a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.”<sup>170</sup>
49. Despite the many positive initiatives and legal safeguards for child protection, a prevailing issue in Kenya is the inability for children to receive adequate protection services because reportedly most organizations focus “on awareness raising activities rather than direct service provision.”<sup>171</sup> Following the devolution of the legislative and executive arms of government to the 47 counties in Kenya,<sup>172</sup> certain counties have struggled with insufficient resources to implement child protection systems.<sup>173</sup> Child protection services are further hampered by limited infrastructure and a lack of social welfare workers with adequate knowledge.<sup>174</sup> In 2018, the GoK expressed its intention to issue more licenses and accreditations to expand to social services workforce.<sup>175</sup> Religious and cultural beliefs, discrimination, gender inequality and social norms concerning masculinity are all ongoing challenges to child protection.<sup>176</sup> Many cases of SEC are not processed through the criminal justice system because families feel they are more likely to receive compensation through “traditional” justice systems in the community.<sup>177</sup>

### **Recommendations to the GoK**

- Address reports of violence against children in the judicial system to ensure children are provided a safe environment to advance their claims.
- Allocate sufficient resources to each county to ensure that children in every county have equal access to child protection services.
- Establish a state-managed fund to provide compensation to child victims of all forms of sexual exploitation.

## **International cooperation**

50. In terms of international cooperation via domestic law, the Computer Misuse and Cybercrimes Act contains a section allowing the Office of the Attorney General and Department of Justice to request another state for assistance in any investigation related to a crime under the Act, and vice versa.<sup>178</sup> Additionally, the Mutual Legal Assistance Act outlines procedures for when Kenya requests legal assistance from another state, and vice versa.<sup>179</sup>
51. In May 2019, Kenya became the first African country to join INTERPOL’s International Child Sexual Exploitation database.<sup>180</sup>

## Voices of children

52. In order to design effective prevention and protection systems for children at risk of sexual exploitation and child victims of sexual exploitation, the voices of children must be heard and taken into account. To this end, this report provides information from recent discussions that took place with Kenyan children where they discussed different protection concerns affecting them.
53. During the Mombasa Children’s Voices Conference 2018, children discussed issues affecting them at the county and regional levels, including issues of child trafficking, early marriages, sexual violence and exploitation of children in prostitution.<sup>181</sup> With respect to SEC, children expressed that there is a heightened risk of sexual abuse from idlers around trash dumpsites, reports of girls exploited in prostitution to pay school fees and reports of sexual violence against children by adults.<sup>182</sup> Children recommended that protection hotlines be used more frequently, that the Department of Children’s Services follow up on children’s issues with more seriousness and that action be taken against perpetrators of early marriage.<sup>183</sup> Likewise, during the Day of the African Child in June 2019, children expressed that child trafficking, child marriage, defilement and sexual exploitation are all issues affecting children in the country.<sup>184</sup>
54. In June 2019, KAACR conducted a workshop with children from counties outside of Nairobi to listen to their most pressing concerns.<sup>185</sup> In response to several questions, the children indicated that they were aware of a number of laws and treaties protection children, including the CRC, the African Charter, the Children’s Act and the Kenyan Constitution.<sup>186</sup> Further, the children explained they have been to several government meetings on children’s rights (though most of what they learn is through NGOs) and that they were aware of the child helpline but felt further advertisement of the helpline is needed.<sup>187</sup> The Children recommended that the GoK establish more child protection unit, liaise with CSOs for advocacy, create a special fund for children’s protection issues and create a ministry solely dedicated to children’s rights.<sup>188</sup>

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<sup>1</sup> Human Rights Council. (2015). [Report of the Working Group on the Universal Periodic Review: Kenya](#). A/HRC/29/10, 26 March 2015.

<sup>2</sup> See Human Rights Council. (2015). [UPR of Kenya – Second Cycle – Thematic List of Recommendations](#).

<sup>3</sup> Human Rights Council. (2015). [Report of the Working Group on the Universal Periodic Review: Kenya](#). A/HRC/29/10, 26 March 2015, Recommendations 143.18, 143.5, 143.25, 143.27, 143.21, 142.66, 142.77, 142.83, 142.84, 142.80, 142.65, 142.50, 142.47, 142.55, 142.48.

<sup>4</sup> Ibid, Recommendations 142.66, 142.77, 142.83, 142.84, 142.80, 142.47, 142.55.

<sup>5</sup> Ibid., Recommendations 143.18, 143.5, 143.25, 143.27, 143.21.

<sup>6</sup> Ibid., Recommendations 142.65, 142.50, 142.48.

<sup>7</sup> In line with the recently and widely adopted Terminology Guidelines, ECPAT prefers the term “exploitation of children in prostitution” instead of “child prostitution.” ECPAT International (2016). [Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse, Adopted by the Interagency Working Group in Luxembourg, 28 January 2016](#), 29. Bangkok: ECPAT.

<sup>8</sup> In line with the recently and widely adopted Terminology Guidelines, ECPAT prefers the term “child sexual exploitation material” or “child sexual abuse material” instead of “child pornography.” Ibid., 39.

<sup>9</sup> Ibid., 54.

<sup>10</sup> The World Bank. (March 2019). [The World Bank In Kenya – Overview](#).

<sup>11</sup> United Nations Development Programme. (2019). [UNDP Kenya Annual Report 2018](#). 6.

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- <sup>16</sup> UNICEF. (2018). [Country Office Annual Report 2018 – Kenya](#). 2–3.
- <sup>17</sup> Ibid.
- <sup>18</sup> See Awareness Against Human Trafficking. (December 2017). [Exploring Attitudes towards the Sexual Exploitation of Children in Tourism and Travel along the Coast of Kenya](#).
- <sup>19</sup> See International Organization for Migration. (May 2018). [Assessment Report on the Human Trafficking Situation in the Coastal Region of Kenya](#). 8.
- <sup>20</sup> Awareness Against Human Trafficking. (December 2017). [Exploring Attitudes towards the Sexual Exploitation of Children in Tourism and Travel along the Coast of Kenya](#). 23.
- <sup>21</sup> Ibid., 39.
- <sup>22</sup> Childline Kenya. (2016). [Child Protection Report \(2006-2016\)](#). 3.
- <sup>23</sup> Ibid.
- <sup>24</sup> KAAACR. (July 2019). Personal communication.
- <sup>25</sup> Awareness Against Human Trafficking. (December 2017). [Exploring Attitudes towards the Sexual Exploitation of Children in Tourism and Travel along the Coast of Kenya](#). 12.
- <sup>26</sup> Ibid., 13.
- <sup>27</sup> Ibid.
- <sup>28</sup> UNICEF. (2018). [Situation Analysis of Children and Women in Kenya 2017](#). 17.
- <sup>29</sup> Terre des Hommes Netherlands. (February 2018). [The Dark Side of the Internet for Children: Online Child Sexual Exploitation in Kenya – A Rapid Assessment Report](#). 3.
- <sup>30</sup> Ibid.
- <sup>31</sup> Ibid., 14.
- <sup>32</sup> Ibid., 11–13.
- <sup>33</sup> Ibid., 13; *see also* UNICEF. (December 2017). [The State of the World’s Children 2017: Children in a Digital World](#).
- <sup>34</sup> Ibid., 3.
- <sup>35</sup> KAAACR. (July 2019). Personal communication.
- <sup>36</sup> Ibid.
- <sup>37</sup> Ibid.
- <sup>38</sup> Ibid.
- <sup>39</sup> Terre des Hommes Netherlands. (February 2018). [The Dark Side of the Internet for Children: Online Child Sexual Exploitation in Kenya – A Rapid Assessment Report](#). 25–28.
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- <sup>42</sup> UNICEF. (2018). [Situation Analysis of Children and Women in Kenya 2017](#). xxi.
- <sup>43</sup> Ibid., 38.
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- <sup>45</sup> KAAACR. (July 2019). Personal communication.
- <sup>46</sup> Ibid., 4.
- <sup>47</sup> Ibid., 7.
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- <sup>52</sup> Awareness Against Human Trafficking. (December 2017). [Exploring Attitudes towards the Sexual Exploitation of Children in Tourism and Travel along the Coast of Kenya](#). 17–21.
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- <sup>58</sup> UNICEF. (2018). [Situation Analysis of Children and Women in Kenya 2017](#). 96.
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- <sup>78</sup> Ibid., Sections 38(2)(l), 46, 48, 63(1)(a), 120, 122, 123, 125, 147(5).
- <sup>79</sup> Ibid., Section 119(1)(n).
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- <sup>82</sup> Ibid., Section 15(c).
- <sup>83</sup> Ibid., Section 15(d).
- <sup>84</sup> Ibid., Section 15(e).
- <sup>85</sup> Ibid., Section 15.
- <sup>86</sup> Ibid., Sections 8 & 11.
- <sup>87</sup> Terre des Hommes Netherlands. (February 2018). [The Dark Side of the Internet for Children: Online Child Sexual Exploitation in Kenya – A Rapid Assessment Report](#). 21.
- <sup>88</sup> Kenya Law. (2018). [Act Title: Children](#). Section 15.
- <sup>89</sup> Ibid., Section 119(1)(n).
- <sup>90</sup> Kenya Law. (2018). [Act Title: Sexual Offences](#). Section 11.
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- <sup>112</sup> Kenya Law. (2014). [Act Title: Marriage](#). Section 4.
- <sup>113</sup> Kenya Law. (2012). [Act Title: Counter-Trafficking in Persons](#). Section 2.
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- <sup>115</sup> Ibid., Sections 38(2)(l), 46, 48, 63(1)(a), 120, 122, 123, 125, 147(5).
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<sup>187</sup> *Ibid.*

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