



Global Monitoring



Report on the

**status of action against commercial
sexual exploitation of children**

KENYA



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Contents

Glossary	4
Foreword	6
Methodology	8
Kenya: Introduction	11
National Plan of Action	15
Coordination and Cooperation	16
Prevention	18
Protection	22
Priority Actions Required	30
Endnotes	32

Glossary of terms and acronyms

AAC: Area Advisory Council

ABA: American Bar Association

AIDS: Acquired Immune Deficiency Syndrome

ANPPCAN: African Network for the Prevention and Protection against Child Abuse and Neglect

Code of Conduct: A code for travel and tourism companies, providing guidance on the protection of children from sexual exploitation

CRC: Convention on the Rights of the Child

CSE: Commercial sexual exploitation

CSEC: The commercial sexual exploitation of children consists of criminal practices that demean, degrade and threaten the physical and psychosocial integrity of children. There are three primary and interrelated forms of commercial sexual exploitation of children: prostitution, pornography and trafficking for sexual purposes. Commercial sexual exploitation of children comprises sexual abuse by the adult and remuneration in cash or in kind to the child or a third person or persons.

CST: Child sex tourism, or the commercial sexual exploitation of children by men or women who travel from one place to another, usually from a richer country to one that is less developed, and there engage in sexual acts with children, defined as anyone under the age of 18.

ECPAT: End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes

GJLOS: Governance, Justice, Law and Order Sector

Grooming: Preparing a child for sexual abuse and exploitation

HIV: Human immunodeficiency virus

ILO/IPEC: International Labour Organization/International Programme on the Elimination of Child Labour
INGO: International non-governmental organization
IOM: International Organization for Migration
ISPs: Internet service providers
ISPCAN: International Society against Child Abuse and Neglect
KAHC: Kenyan Association of Hotel Keepers and Caterers
MCTA: Mombasa Coast Tourism Association
NCCS: National Council for Children's Services
NGO: Non-governmental organization
NPA: National Plan of Action
NSCCTP: National Steering Committee to Combat Trafficking in Persons
NWG: National Working Group
UNICEF: United Nations Children's Fund

Foreword

Ten years have passed since the First World Congress against Commercial Sexual Exploitation of Children (CSEC) was held in 1996 in Stockholm, Sweden. The Stockholm Congress was a landmark event, providing testimony that convinced the world that sexual violations against children exist in all nations, irrespective of cultural differences or geographic location. It marked the first public recognition by governments of the existence of CSEC and resulted in a commitment to a global Declaration and Agenda for Action, which was formally adopted by 122 governments, as a guide to the specific measures that must be taken for counteraction.

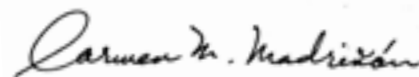
Since 1996, many actors around the world have focused their efforts around this common Agenda for Action and more government and non-government entities have linked, to ensure positive change for children and to protect their right to live free from sexual exploitation. This broad societal alliance (bolstered by a Second World Congress held in Yokohama in 2001, during which the number of countries adopting the Agenda rose to 159 - a figure which has since risen to 161) has made progress in improving protection for children from commercial sexual exploitation. However, the increasing sophistication of resources available to those who seek to exploit children have grown in equal measure. Responding to these challenges requires far more coordinated and targeted work to be undertaken to avoid retrogression.

Experience demonstrates that the level of responsibility and role that a government takes to set and uphold standards of protection, like the lead taken for protecting children's rights, determines the nature, quantity and quality of what the country achieves for its children. Governments can and have accelerated progress for implementation of the Agenda for Action, often opening new and important channels for such work. Nevertheless, their actions have not been uniform and, as these country profiles attest, far more urgent work must be done to protect children from such heinous violations, as these are still perpetrated with impunity in many countries.

This report aims to provide a baseline of information on actions taken and remaining gaps for addressing CSEC in each country, based on the framework of the Agenda for Action, to enable more systematic assessment of progress on implementation of this commitment. It also seeks to contribute to other international mechanisms that exist to protect children's rights; the *Convention on the Rights of the Child (CRC)* and the *Optional Protocol on the sale of children, child prostitution and child pornography* so as to strengthen the implementation and action against commercial sexual exploitation of children at all levels.

Another important objective of these reports is to stimulate the exchange of experience and knowledge among countries and different actors to create a dialogue that can further work against CSEC. While much has been achieved over the last 10 years, many gaps still remain. The implementation of the Agenda for Action is urgently required, for as the reports clearly illustrate, there is a compelling need for global action to protect children from these inhuman violations.

This project is the result of a broad and global collaboration. ECPAT International (EI) would like to thank all those who participated in the work and contributed their inputs, in particular the ECPAT member groups in the countries examined, local experts who provided valuable information and insights, other organisations that shared their experience and information, the dedicated staff and volunteers in the Secretariat of EI and the generous donors who backed the project (more extensive acknowledgements can be found in the Regional Report). This work would not have been realised without their support and solidarity.



Carmen Madriñán
Executive Director, ECPAT International

Methodology

The Agenda for Action against Commercial Sexual Exploitation of Children provides a detailed framework and categories of actions to be taken by governments in partnership with civil society organizations and other relevant actors for combating commercial sexual crimes against children. Broadly, these actions are focused on: 1) Coordination and Cooperation; 2) Prevention; 3) Protection; 4) Recovery, Rehabilitation and Reintegration; and 5) Child Participation. The Agenda for Action is thus the formal and guiding structure used by governments that have adopted it and committed to work against CSEC. As such, the Agenda for Action is also the main organising framework for reporting on the status of implementation of the Agenda as seen in the World Congress of 2001 and in the Mid-Term Review meetings held between 2004 and 2005. It has been used in the same way to structure and guide the research, analysis and preparation of information presented in these reports on the status of implementation of the Agenda in the individual countries.

Preparatory work for this report involved a review of the literature available on sexual exploitation for each of the countries where ECPAT works. A number of tools were prepared, such as a detailed glossary of CSEC terms, explanatory literature on more difficult themes and concepts and a guide to relevant CSEC-related research tools, to assist researchers in their work and to ensure consistency in the gathering, interpreting and analysing of information from different sources and parts of the world.

Early desktop research revealed a lack of information in the areas of Recovery, Rehabilitation and Reintegration; and Child Participation. After extensive efforts to collect information relevant to these areas for each of the countries covered, it was decided that as this information was not consistently available, the reports would focus only on those areas of

the Agenda for Action where verifiable information could be obtained. Thus, the report covers: Coordination and Cooperation; Prevention; and Protection, and where information on the other two areas was available, it has been included under the specific country or in the regional overview.

Research of secondary sources, including CRC country reports, alternative CRC reports, the reports of the Special Rapporteurs, submissions for the recent UN Study on Violence against Children, as well as research and field studies of ECPAT, governmental and non-governmental organizations, and UN agencies, provided the initial information for each report. This information was compiled, reviewed and used to produce first draft reports. In-house and consultant specialists undertook a similar process of review to generate information on specialised areas of the reports, such as the legal sections. Nevertheless, researchers often encountered a lack of information. While sources also included unpublished reports and field and case reports of ECPAT and other partners, many countries lacked up-to-date data and information on areas relevant to this report.

Despite these limitations, sufficient information was gathered to provide a broad overview of the situation in each country. Subsequently, first drafts were prepared and shared with ECPAT groups, which then supplemented the information with other local sources and analysis (taking care to identify them and source appropriately). Upon receipt of these inputs, a series of questions were generated by the ECPAT International team for deeper discussion through teleconferences, which involved ECPAT groups and specialists invited by them. The information from these discussions was used to finalise inputs to each of the reports. These consultations proved to be invaluable for analysis of the country situation.

They also served as a measure for triangulating and validating information as different actors offered their perspective and analysis based on their direct work.

As previously noted, the information of each country report is organised to correspond to the structure of the Agenda for Action. Thus all reports feature: (i) an overview of the main CSEC manifestations affecting the country; (ii) analysis of the country's National Plan of Action (NPA) against CSEC and its implementation (or the absence of an NPA); (iii) overview and analysis of coordination and cooperation efforts during the period under review; (iv) overview and analysis of prevention efforts; (v) overview and analysis of protection efforts, which includes detailed information on national legislation related to CSEC (see www.ecpat.net for further details); and (vi) priority actions required.



KENYA

Commercial sexual exploitation of children (CSEC) in Kenya is often conducted through organised networks in private houses.¹ Mombasa, Kenya's second largest and a major port city, has been identified as one of the main cities where CSEC takes place. It is a notorious location for sailors and marines who, while docking there, sexually exploit children. Reportedly, when an American Navy Aircraft carrier docks in Mombasa, girls can come from as far away as the Democratic Republic of Congo, Rwanda, Burundi, Tanzania or Uganda.²

A number of agencies have reported on the growing incidence of child sex tourism in the past five years, especially along the coastal areas. The UNICEF study, *The Extent and Effect of Sex Tourism and Sexual Exploitation of Children on the Kenyan Coast*, conducted and released in 2006, indicates that up to 30 per cent of all the 12 to 18-year-olds living in the coastal areas of Malindi, Mombasa, Kilifi and Diani are involved in casual sex work. As such, it is estimated that 10,000 to 15,000 girls living in these areas are being sexually exploited in tourism at irregular intervals or seasonally.³ A further 2,000 to 3,000 girls and boys are sexually exploited year-round by sex tourists, in these same areas.⁴ Other estimates suggest that as many as 30,000 girls between the ages of 12 and 14 are lured into hotels and private villas to be sexually exploited.⁵ During the low tourism season, local demand sustains the sexual exploitation of children.⁶ Children involved in prostitution are also compelled to provide sex to locals who help them gain access to tourists, such as beach boys, bar staff, waiters and others.⁷ These illegal activities involve tour operators, hotels and well-connected agents.⁸

Girls' prostitution not frowned upon

Awareness about the existence of child sex tourism is extremely high among Kenyans. In a recent UNICEF study, 99 per cent of the interviewees stated that they are aware of its existence in the country. Most striking in the research is the extent to which girls' exploitation in sex tourism is tolerated: 76.3 per cent of the interviewees found the practice "normal" and even appeared to approve of it, compared to only 20 per cent who considered the practice immoral and unacceptable:

Hair dresser: "The girls [with tourists] are lucky, most of them own expensive dresses, perfumes, homes, etc."

Tour operator: "Girls are respected as they are regarded as rich people."

Kiosk owner: "It's okay [for underage girls to be with tourists], I wish I had one (a tourist)."

Taxi operator: "Not a problem, it's something we're used to."

Pharmacist: "It changes the lives of families and girls drastically from very poor to middle class."

The UNICEF study indicates that Kenyan tourists form 39 per cent of the client base of exploited children. The nationalities of the foreign sex tourists are quite varied, ranging from regional and Western tourists to tourists from the Far East. Italian (18 per cent) German (14 per cent) and Swiss (12 per cent) are the top three nationalities.¹⁰ Tourists from Uganda and Tanzania have also been found to be involved in child sex tourism in Kenya.¹¹ According to the Institute for Security Studies, most such tourists are between 45 and 65 years old, either divorced or seeking to rekindle their sexual lives by having sex with teenagers, who are perceived to be free from HIV.¹²

Commercial and non-commercial sexual exploitation of boys demands more attention

Locations where child sex tourism takes place include the capital city, Nairobi and the town of Lamu, which are slowly gaining a reputation as destinations for homosexual tourists looking for young boys. Furthermore, evidence suggests that boys, many of whom are orphaned due to HIV/AIDS, are being sexually exploited along the Mombasa port.¹³ Additionally, the prostitution of boys is reported to be common in some communities in Nairobi.¹⁴ Homosexuality is illegal in Kenya, which may play a part in the general lack of sympathy regarding the sexual exploitation of boy children and their plight. Social attitudes also contribute to such indifference: the UNICEF study on child sex tourism found that boys engaging in sex with men is frowned upon, while the prostitution of girls is generally 'accepted'.¹⁵ Such attitudes may result in little support given to boys victimised by sexual exploitation. Little research has been conducted on the issue.

The nationwide sexual exploitation of children by authority figures at schools and other institutions is one of the sources feeding the supply side of child sex tourism. Recent statistics show that sexual offences against students are the number one cause for dismissal of teachers. A Ministry of Education report indicates that 158 sex offenders were disciplined in the past year alone (the Rift Valley area had the highest number of sexual offences). At the same time, while the Teachers Service Commission handled approximately 700 complaints of immoral behaviour, not a single case was taken to court.¹⁶ The number of girls impregnated by their teachers is alarmingly high. Pregnant young girls or young mothers usually drop out of school and stand a high risk of having to leave their family to become breadwinners. These girls are often coerced into commercial sex work, and stand a higher chance of being trafficked. Many girls in such situations migrate to the coast from other parts of the country, and are forced into sex work even before they arrive.¹⁷ As such, in order to effectively combat child sex tourism, it is essential to tackle the sexual exploitation of children in the school environment.

Alert on schoolchildren being recruited for child sex tourism

“Child prostitution is one of the major hurdles undermining girls’ education in the coastal urban areas as girls fall prey to wayward tourists,” said the Coast Provincial Director of Education. “Girls, especially from impoverished families, drop out of school for tourists, who they think will better their lives.” This has resulted in a steady rise of school dropouts in the province. Boys are also affected, as they drop out of school after being lured by rich female tourists.¹⁸ There have also been reports indicating the existence of a Nairobi syndicate engaged in recruiting schoolchildren to be taken to the coast for exploitation in sex tourism.¹⁹ These children have, in many cases, experienced sexual abuse in their schools, by teachers or senior students. They may drop out of school as a result, becoming vulnerable to prostitution due to psychological damage suffered as well as a lack of income-generating opportunities for uneducated/unskilled youngsters. Sexual abuse in schools often goes unreported, especially as children are not taught to be assertive about their rights and when dealing with authority figures.²⁰

Child marriage still occurs, mainly among local ethnic groups such as the Digos, Giriama and Chonyis, on the Kenyan coast. Child marriage is considered a form of commercial sexual exploitation of children when it involves the marriage of underage girls in exchange for financial or in-kind compensation, usually to their families. Furthermore, the practice may place young girls at high risk of exploitation in prostitution. This is because divorce rates are very high, and when a divorce takes place the girl must repay the dowry that was given to her family. Female education is not encouraged and most girls get married at a very tender age, becoming young mothers. With little or no education, it is very difficult

for the girl divorcees to secure jobs, and their limited options coerce many into commercial sex work.²¹

Trafficking in children for sexual purposes takes place from Kenya to Uganda, Tanzania and other regions, such as southern Africa, Europe and the Middle East.²² There have also been instances of children being trafficked from Kenya to Rwanda and Uganda using fishing canoes and boats. They are trafficked at night and expected to pay for the journey by having sex with the fishermen. Child trafficking also takes place in the areas surrounding Lake Victoria to East African countries and beyond.²³

Children are also trafficked internally from rural to urban settlements within Kenya for sexual purposes, and also to work as domestic servants, street vendors and menial labourers, in conditions that usually expose them to commercial sexual exploitation. This is usually conducted through a network of family members or by individuals acting on their own. Typically, an aging grandmother, not capable of caring for her grandchildren, may think that they are better off with a distant relative and therefore unwittingly engages in trafficking.²⁴ Furthermore, a survey conducted by ECPAT International in 2004 revealed an emerging organised form of child trafficking in Nairobi whereby offices labelled 'house-help bureaus' entice young children from rural areas with promises of good jobs in the city and subsequently force them into CSEC.²⁵ Accurate data on the extent of trafficking is difficult to obtain.

Furthermore, it has proven difficult to find information about the existence, prevention and protection of children from CSE at the refugee camps in Kenya. As refugee children are usually at high risk of commercial as well as non-commercial sexual exploitation, this area needs immediate attention.

Information on the use of children in the production of child pornography in Kenya is scarce and difficult to obtain.²⁶ Available evidence suggests that such productions are concentrated in densely populated and/or tourist areas, such as in Nairobi, Mombasa, Malindi and Watamu.²⁷ As reported by the NGO End Child Prostitution in Kenya, children are being taken to the high seas to be used in the production of pornographic materials.²⁸ Furthermore, the downloading of pornographic materials by children seems to be increasing. In 2004, an Internet café in Nairobi reported that 12 out of every 20 downloads from a particular server constituted pornography, with most of the computer users being children and young people.²⁹

Oregon man videotaped sex acts with 10-year-old Kenyan stepdaughter

In April 2005, 52-year-old Lester Christian Weber from the US state of Oregon pleaded guilty to producing child pornography. He admitted that, in 2004, he had enticed the 10-year-old child of his Kenyan wife to engage in “sexually explicit conduct” for the purpose of producing pornographic video and still images, which he later took to the United States. Weber also admitted to having a prior conviction involving the sexual abuse of a minor. Given his prior conviction, he was subjected to a minimum sentence of 25 years in prison. Eventually, Weber was indicted on seven counts relating to international travel to engage in sexual acts with a minor and transporting and possessing child pornography. Investigations were carried out through close collaboration between ICE agents from Portland and the Kenyan National Police.³⁰

The high incidence of HIV/AIDS in Kenya has contributed to the commercial sexual exploitation of children in a number of ways,³¹ as children affected by HIV/AIDS face many of the typical situations that make children extremely vulnerable to sexual exploitation: impoverishment, orphanhood, the need to provide for their families, coercion into exploitative labour, school abandonment, discrimination and stigmatisation. Children exploited in commercial sex are at high risk of contracting HIV, among other reasons, because they are usually powerless to negotiate safe sex and tend to be in high demand by clients who believe them to be free from HIV/AIDS.³² A number of investigations have revealed that there is a category of tourists who travel to Kenya looking solely for virgins, encouraged by the myth that sex with a virgin may cure terminal conditions such as HIV/AIDS.³³

Kenya adopted the *Stockholm Declaration and Agenda for Action* in 1996 and reaffirmed its commitment at the Second World Congress in Yokohama in 2001.

NATIONAL PLAN OF ACTION (NPA)

A *National Plan of Action to Prevent and Combat the Commercial Sexual Exploitation of Children* was developed in 1997³⁴ by a National Task Force comprising line Ministries, NGOs and religious organisations, formed in preparation for the First World Congress against CSEC held in 1996.³⁵ However, the implementation of the NPA was never initiated and is no longer a valid planning tool.

COORDINATION AND COOPERATION

Local and National Level

The Department of Children's Services (within the Ministry of Home Affairs and National Heritage) oversees child protection issues in Kenya.³⁶ The Department's efforts to build knowledge on child protection issues has been hindered by a lack of funds and several of its children's officers have yet to receive accurate training on CSEC issues. In 2002, following the enactment of the *Children's Act*, the Government established the National Council for Children's Services (NCCS). NCCS is an inter-ministerial body which also comprises representatives from local governance, the Attorney General's office, the police, civil society/faith-based organisations and the private sector. It currently operates at national and district level only, as funds have not been made available for the establishment of divisional and village councils, which would allow for easier access to children. NCCS lacks human and financial resources, as well as expertise to develop a database on issues related to child protection and a nationwide referral system. Civil society organisations have set up local referral networks to improve coordination to support children in need of care and protection, but these networks have not been institutionalised and rely mainly on personal networks and contacts. In addition, Kenya still does not have a national focal point on CSEC, which would greatly improve action and coordination.

At national level, NCCS focuses on policy and coordination; at district level, the Area Advisory Councils (AAC) constitutes its implementing arm. The AACs are very active in some districts and play a key role in terms of district action planning for CSEC prevention on the coast. They comprise representatives from government and civil society.

In December 2006, the National Steering Committee to Combat Trafficking in Persons (NSCCTP) was established, chaired by the Ministry of Home Affairs. The Committee has set up a taskforce comprising government officials and civil society organisations, which is currently working on a national plan of action to combat trafficking in persons. The taskforce has already been trained by the International Organization for Migration (IOM) and a number of drafting sessions have taken place aiming at finalising the NPA by mid-2008. District committees have also been established on the coast and in the town of Lokichokio.

Regional and International Level

The Kenyan Government has not been actively engaged in regional and international cooperation to adequately combat the commercial sexual exploitation, which is of serious concern given the international nature of many such criminal activities. For instance, cooperation with law enforcers from countries such as Italy, Germany, Switzerland, Uganda and Tanzania should be increased to better combat child sex tourism. Greater cooperation is also needed to ensure safe repatriation of trafficked children.

ILO-IPEC runs a programme aimed at eliminating the commercial sexual exploitation of children in Kenya, Tanzania, Uganda and Zambia. The first phase of the sub-regional programme produced studies on good practices in fighting CSEC, and supported national workshops in the participating countries (as well as a final sub-regional workshop) to present findings and to share experiences for future interventions. The second phase has focused on replicating and scaling-up good practices to withdraw and rehabilitate CSEC victims in these four countries, and also in Ethiopia.

The American Bar Association (ABA) is implementing an East African Regional Programme aimed at fighting trafficking in women and children in Kenya, Rwanda, Tanzania and Uganda. The programme undertakes legal education for judges, lawyers, the police and NGOs; carries out media awareness; and provides legal aid to trafficking victims. It also provides small sub-grants to relevant NGOs and governmental departments. The programme has developed and is working through National Working Groups (NWGs) composed of NGOs, criminal justice professionals, legislators, judges, magistrates, prosecutors, police and immigration officials, which are responsible for developing national strategies to combat human trafficking.³⁷ In Kenya, the ABA collaborates with the Child Legal Aid Centre and Global Child Hope International.³⁸

Furthermore, the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN) is based in Nairobi, and has chapters in 16 countries across Africa. ANPPCAN facilitates the exchange of expertise among member organisations and works in close collaboration with the International Society against Child Abuse and Neglect (ISPCAN) in Kenya.³⁹

Finally, in 2006 the NGO Saint Margarita Development Centre, in collaboration with ECPAT member groups from Ethiopia, Gambia, Kenya, Togo, Uganda and Zambia,

conducted a regional research on the linkages between CSEC and HIV/AIDS. As a follow up, projects aiming to implement some of the research recommendations are being planned.

PREVENTION

Despite numerous activities and efforts to prevent the commercial sexual exploitation of children, the lack of a focal point and a strategic national plan with monitoring and evaluation mechanisms has diluted many of the interventions. As such, a key weakness in CSEC preventative efforts is actually lack of coordination between the various entities undertaking such work. Moreover, most interventions are carried out in areas registering incidences of commercial sexual exploitation of children, while areas that could be supplying the children are somewhat disregarded. A comprehensive prevention strategy should also involve knowledge building across relevant institutions such as the police, the Judiciary, hospitals, schools, etc., enabling them to act promptly if a child is found to be at risk or already exploited in commercial sex. It should also be noted that knowledge about boys' prostitution needs to be dispensed in order to plan effective interventions to protect boys.

In 2006, the Government launched a national 'Stop violence against children' campaign to end violence against children, including child labour, trafficking and sexual abuse. The initiative is being spearheaded by the Department of Children's Services, in collaboration with representatives from UNICEF, NGOs, religious groups, and the private sector.⁴⁰

The Ministry of Education also conducted a campaign to sensitise pupils and parents on the perils of prostitution. During public meetings, education officials create awareness on the dangers of child prostitution, and school administration staff are trying to encourage pupils to concentrate on their studies rather than dropout out of school under the false hopes that relations with tourists will improve their lives.

Another important effort has been carried out by the Provincial Administrations, which are trying to discourage child marriage through awareness raising campaigns.⁴¹ A national child helpline (116) is now available, providing emergency assistance, advice, information and counselling to children.

Newly-created child protection structures demand continuity and efficiency

The Governance, Justice, Law and Order Sector (GJLOS) programme, implemented by the Ministry of Justice since 2005, led to two important achievements. Firstly, district, divisional, local and school-based Child Labour Committees were established in Nairobi, Mombasa and Malindi. Secondly, Child-help desks were created at community level.⁴² However, there is no assembled data indicating how effective the help desks have been so far. It is hoped that the several new initiatives undertaken by the Government to enhance child protection will prove sustainable and effective, and take place in a more coordinated manner as part of a holistic national strategy for child protection.

Civil society, non-governmental and faith-based organisations are implementing numerous programmes to curb child sex tourism and CSEC in general. In relation to the role of the private sector, the implementation of the *Code of Conduct for the Protection of Children in Travel and Tourism* has encountered several difficulties, largely due to issues in the coordination between the Code stakeholders. In its first phase, the organisations promoting and working on the Code, namely UNICEF, the NGOs Respect and ECPIK, and the Steering Committee Secretariat, concluded that more lobbying and dissemination of information was needed, as most hotel managers lacked knowledge on how to deal with tourists who sexually exploit children. Kenya-specific awareness and training materials were then developed, followed by increased awareness raising initiatives.

Key tour operators in Kenya have now signed the Code of Conduct: the Kenyan Association of Hotel Keepers and Caterers (KAHC); the Mombasa Coast Tourism Association (MCTA); the Kenya Association of Tour Operators; and the Hotel and Restaurant Authority, as well as a further 20 individual signatories.⁴³ The Code initiative has received strong governmental support, especially from the Ministry of Tourism and Wildlife, the Ministry for Home Affairs and the Kenyan Tourism Board. The Code's implementation has involved several trainings targeting the tourism industry, as well as awareness raising targeting tourists coming from Austria,⁴⁴ undertaken chiefly by the Kenyan NGO Solwodi, along with Respect Austria. Solwodi has been very active in promoting the Code's adoption and implementation in coastal areas. Swiss tour operator Hotelplan and Kuoni, among others, have also conducted trainings for destination staff in Kenya and have planned future trainings as well. A second signing for an additional 20 hotels is planned to take place in December 2007.

The Danish Embassy is initiating a project on the coast to provide boys and girls exploited in commercial sex with alternative livelihoods. The project will seek to establish a secretariat for improved networking among organisations, targeting young people involved in commercial sex, based at the provincial Department of Children's Services office in Mombasa.

Cultural and social perceptions perpetuate the sexual exploitation of children

Many communities in Kenya fail to consider young adolescents under 18 as children in need of care and protection while developing into adulthood, and expect them to be ready to take on 'adult responsibilities', such as providing for the family, marrying and dealing with sexual issues. Hence, a community such as the Miji Kenda, which inhabits the coastal region, where a 13-year-old girl is considered of marriageable age and implicitly ready for sexual life, might have great difficulties in understanding the negative consequences of child marriage and even of children engaging in commercial sex to provide for their families.⁴⁵

The same happens in relation to sexual exploitation of children in tourism, which is often approved of by several individuals in the communities where it takes place on the grounds that it brings wealth to the girls and their families and generates income that benefits various sectors of the community.⁴⁶ For example, in 2006 a beach hotel was raided following complaints that the resort was condoning child prostitution. The mothers of the children were subsequently interviewed and stated that they regularly offered their daughters, aged between eight and 14 years old, to tourists for sex in exchange for cash.⁴⁷ Many street children are encouraged by their mothers or older siblings to engage in prostitution for survival.⁴⁸ These adults and fellow community members lack awareness of the fact that, while child sex tourism may contribute to the local economy by providing local employment and injecting money into beach areas, it is also responsible for high drop-out rates of children from school, high illiteracy rates, the spread of HIV and other sexually transmitted diseases, drug and alcohol abuse, family breakdown, violence, rape and even murder.⁴⁹

In 2004, ECPIK Kenya ran a national campaign to raise awareness about CSEC, through advertisements and a talk show broadcast on television. The talk show featured a lawyer and a counsellor discussing the issue of commercial sexual exploitation of children with professionals who work with sexually abused and exploited children.⁵⁰

Several organisations - such as the Undugu Society, Kenya Alliance for the Advancement of Children, Rehabilitation of Young Street Girls, Forum for African Women Educationalists and the Girl Child Network - work together within the African Network for the Prevention

and Protection against Child Abuse and Neglect (ANPPCAN). In 2004, ANPPCAN organised a Multi-Disciplinary Team Building Training Workshop targeting 38 multi-disciplinary professionals, with a view to enhancing their knowledge and skills in dealing with child abuse and neglect and formulating appropriate strategies for enhancing the delivery of child protection services.⁵¹

There has been a rapid expansion of NGO and CBO support for orphans and vulnerable children, providing a wide range of services - residential care, health care, skills building, counseling, income generating activities, HIV/AIDS education, community and family sensitisation, family support - that also focus on preventing the children from engaging in exploitative work. A number of outreach programmes are also available for children who are not attending school. However, research conducted by ECPAT International in 2006 indicated that CSEC victims hardly access such services, especially as these children are usually unavailable during the day, when the services operate. It seems that most HIV/AIDS interventions currently taking place only reach CSEC victims indirectly, rather than purposefully, as part of a broader strategy.⁵²

The need to reduce the vulnerability of children affected by HIV/AIDS to commercial sexual exploitation is being tackled by a number of organisations. For example, the Saint Margarita Development Centre collaborates with international NGOs such as World Vision to provide support to families and children living with HIV/AIDS as well as to orphaned children. Saint Margarita has also worked in partnership with ECPAT International and Concern Worldwide to carry out community sensitisation on child rights, HIV/AIDS and CSEC, in the Suba District in particular.⁵³ Target groups include chiefs, police officers, teachers, religious leaders, public health officers, women's group leaders, youth group leaders and beach community leaders.⁵⁴

The Kenyan Government has attempted to address the root causes of CSEC by implementing policies and projects on rural development, poverty alleviation and reduction of rural-urban migration. In addition, a partnership between the Government and UNICEF has created a cash transfer programme to support families looking after orphans and/or vulnerable children affected by HIV/AIDS. Some state revenue is going into the programme and it is anticipated that 100,000 families will have been targeted by 2012.⁵⁵

PROTECTION

Kenya ratified the *Convention on the Rights of the Child* in 1990.⁵⁶ Kenya signed but has not yet ratified the *Optional Protocol on the sale of children, child prostitution and child pornography*.⁵⁷ Kenya acceded to the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)* in January 2005. ILO Convention No. 182 was ratified in 2001.⁵⁸ At regional level, the *African Charter on the Rights and Welfare of the African Child* was ratified in 2000.

Legislation

In July 2006, Kenya enacted the *Sexual Offences Act*,⁵⁹ which introduced 14 new offences, including child prostitution, child pornography, child trafficking and child sex tourism. It also deals with rape, defilement, sexual assault and sexual harassment. The Act is considered by many as a milestone in Kenya's legislative history.⁶⁰ One of its main strengths is that unlike previous statutes it imposes minimum sentences for all offences, taking away judicial discretion to impose lesser penalties. It also defines a child as any person up to the age of 18, without distinction between girl and boy children. However, due to poor awareness creation, not all courtrooms in Kenya have a copy of the Act, and enforcement is very poor. The challenge of creating awareness of and enforcing the legislation remains.

Furthermore, according to Kenya's Second Periodic report under the Convention on the Rights of the Child, the coming into force of the Children's Act in March 2002 was widely seen as a new beginning for the effective protection of Kenya's children. The Act codified and replaced three statutes: The *Children's and Young Person's Act* (Cap 141), the *Adoption Act* (Cap 143), and the *Guardianship of Infants Act* (Cap 144). It is currently the only legal instrument in Kenya that provides social, economic and cultural rights along with some protection of civil liberties.

Prostitution of Children

Significant progress has been made with the enactment of the *Sexual Offences Act*. The new provisions on child prostitution have filled some of the existing gaps in protection, for example by affording equal protection to all boys and girls up to the age of 18. At the same time, while the coming into force of the *Sexual Offences Act* is a positive development towards better protecting children, numerous challenges remain, especially at the level of enforcement. Furthermore, the Committee on the Rights of the Child pointed out that several provisions applicable to child sex abuse - including provisions on rape, abduction, indecent assault, defilement and detention of women for immoral purposes - are sometimes complex and inconsistent to some level. For example, the age of protection varies from one statute to another, and boys are often afforded lesser protection. It is also a matter of concern that a minimum age for sexual consent for boys is not clearly established.⁶¹

The *Criminal Law (Amendment) Act* of 2003, by amending the *Penal Code*, has set the age of sexual consent at 16 for girls. The previous age was 14 years. There is no minimum age set for boys even though the *Penal Code* states that boys under the age of 12 are unable to engage in sex. Though the minimum age for sexual consent is 16 for girls, the different laws on marriage allowing girls under 16 to be married will make the implementation of this provision on minimum age for sexual consent difficult. There are ongoing plans to harmonise relevant laws through constitutional review and legal reform. There are also proposals to raise the age of sexual consent to 18.⁶²

The *Sexual Offences Act*⁶³ prohibits acts of defilement on children under the age of 18. Defilement is defined as an act that involves penetration,⁶⁴ and penalties vary according to the age of the child: life imprisonment upon conviction if the victim is 11 years or below, a minimum sentence of 20 years if he or she is between the ages of 12 and 15, and a minimum sentence of 15 years if the victim is between 16 and 18 years old. Attempted defilement is punishable with imprisonment for a minimum of five years, depending on the age of the victim. Anyone who commits an indecent act on a child is liable to imprisonment for a minimum of ten years. Indecent acts are widely defined under the Act and include sexual contact, exposure or display of the genitals as well as exposure or display of pornographic material to another person against his or her will.⁶⁵

The Act specifically addresses child prostitution: It punishes the procuring of a child under the age of 18 “for the purposes of sexual intercourse or for any form of sexual abuse or indecent exhibition or show”,⁶⁶ inducing a person to be a client of a child for sexual purposes or indecent exhibition or show,⁶⁷ and giving monetary consideration, goods

or other benefits or any other form of inducement to a child or his parents with the intent to procure the child for sexual purposes.⁶⁸ All of the above offences are subject to imprisonment for a minimum term of ten years.

The Act also addresses exploitation through prostitution by making it an offence to intentionally cause or incite another person to become a prostitute, or intentionally control the activities of another person relating to that person's prostitution, in expectation of gain for him or herself or a third person. The maximum sentence for this offence is five years' imprisonment, regardless of the age of the victim (there is no provision specific to children).⁶⁹ The client is also penalised.⁷⁰

Furthermore, the *Sexual Offences Act* targets child sex tourism. Anyone who makes or organises any travel arrangements for or on behalf of another person, whether or not that other person is a resident of Kenya, with the intention of facilitating the commission of any sexual offence against a child, irrespective of whether that offence is committed; or anyone who publishes any information to promote or facilitate a sexual offence against a child; or who introduces, organises or facilitates contact with another person under the auspices of promoting tourism in order to promote the commission of a sexual offence against a child, is guilty of the offence of promoting child sex tourism and liable to imprisonment for a minimum of ten years, and to a fine of at least two million shillings (approx. US\$29,290) when the offender is a juristic person.⁷¹

Trafficking in Children for Sexual Purposes

Although Kenya has no comprehensive laws on trafficking, the provisions on trafficking in persons included in the *Sexual Offences Act* and in the *Children's Act* are harmonised with the *Trafficking Protocol*. A *Counter-Trafficking Bill* is currently being examined by the Attorney General. However, its draft form so far does not include the definitions contained in the *Trafficking Protocol*. As previously mentioned, the key issue is the enforcement of the law, and as a matter of priority the Government must take the necessary measures to ensure enforcement of the *Sexual Offences Act's* provisions on child trafficking.

Despite the legislative provision in the *Children's Act*, whereby “a child should be entitled to protection from physical and physiological abuse, neglect and any other form of exploitation, including sale, trafficking or abduction by any person” effective protection

remains weak and rarely results in investigations and sanctions.

The *Sexual Offences Act* also addresses child trafficking. Anyone who knowingly or intentionally makes or organises any travel arrangements for or on behalf of a child within or outside the borders of Kenya, with the intention of facilitating the commission of any sexual offence under the Act against that child, in addition to any other offence for which he or she may be convicted, is liable to a minimum of ten years' imprisonment, irrespective of whether the offence is actually committed. Anyone who supplies, recruits, transports, transfers, harbours or receives a child, within or across the borders of Kenya, for the purposes of the commission of any sexual offence within the Act against such child or any other persons, is subject to the above penalty as well.⁷⁵

In addition, the *Sexual Offences Act* contains a provision entitled "trafficking for sexual exploitation", under which anyone who arranges or facilitates travel within or across the borders by another person, or intends to do anything to or in respect of the person during or after the journey in any part of the world, which if done will involve the commission of an offence under the Act, shall be punished with a minimum of 15 years' imprisonment and/or a fine of at least two million shillings (approx. US\$29,290).

Efforts to enforce the law against child trafficking must be substantially enhanced

Reports indicate that during 2006, the Kenyan Government an effort to punish acts of trafficking, however its law enforcement agencies reported no investigations, prosecutions or convictions of trafficking crimes.⁷⁶ In February 2007, the Committee on the Rights of the Child expressed concern that the level of investigations for child trafficking remains very low.

Child Pornography

The *Sexual Offences Act* contains some provisions on child pornography but should be amended to include a clear definition of child pornography, consistent with the *Optional Protocol*. Under international law, any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes, is considered child pornography. The relevant provision of the *Sexual Offences Act* is entitled "child pornography" but nowhere does it actually elaborate on what it means. The current definition does not even refer to children,

focusing instead on what is considered “obscene”. Therefore, it should be strengthened to better reflect international standards.

Under the *Sexual Offences Act*, any person, including a juristic person, who sells, rents, distributes, publicly exhibits or in any manner circulates, or for purposes of sale, rent, distribution, public exhibition or circulation, makes, produces or has in his or her possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object; imports, exports or conveys any obscene object for any of the above purposes is guilty of an offence of child pornography and upon conviction is liable to imprisonment for a term of not less than six years and/or to a fine of not less than 50,000 shillings, and upon subsequent conviction, for imprisonment for not less than seven years without the option of a fine.

The same penalties apply to anyone who takes part in or receives profits from any related business, or advertises that any person is engaged or ready to engage in any act which is an offence under the above section, or that any obscene object can be produced from or through any person. Offers or attempts to commit any of the above offences are also punishable.⁷⁶

Under the Act, a book, pamphlet, paper, drawing, painting, representation or figure or other object is considered obscene if it is lascivious or appeals to the prurient interest; or if its effect tends to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it. There are a number of exceptions to this definition, including publications for educational and religious purposes as well as “activities between two persons of over 18 years by mutual consent”.

Extraterritorial Legislation

Any citizen or resident of Kenya who commits an act outside Kenya that would constitute an offence under the *Sexual Offences Act* had it been committed in Kenya, is guilty of such an offence and subject to the same penalty prescribed for such an offence under the Act. However, a person may not be convicted of such an offence if he or she has already been acquitted or convicted in the country where the offence was committed.⁷⁸

Child Protection Units

Under the Governance, Justice, Law and Order Sector (GJLOS) programme, the police and other law enforcement personnel were trained on issues of protection and child rights. It was envisaged that each police station should have at least one police officer with this special training. However, police officers are often transferred and there is no tracking system indicating where the trained officers are posted. Police stations are required to have child-friendly facilities with trained staff – child protection units – but their establishment is going moving at a slow pace. Only five per cent of all police stations in the country have such facilities.

The *Sexual Offences Act* gives courts the power to declare certain witnesses vulnerable in the course of criminal proceedings. Child victims are to be considered vulnerable witnesses and benefit from special protective measures.⁷⁹ Upon declaration of a witness as “vulnerable”, the court must impose one or more protective measures. Children may be allowed to give evidence under the cover of a witness protection box, or through an intermediary; the court may direct that the proceedings may not take place in open court; or may prohibit the publication of the identity of the complainant or of the complainant’s family, including the publication of information that may lead to the identification of the complainant or the complainant’s family. In addition to these measures, the court also has the discretion to impose any measure that it deems just and appropriate.⁸⁰

In the Nairobi Children’s Court, a witness protection box is available to separate accused persons during children’s testimony. Steps are being taken to provide all Kenyan courts with similar facilities.⁸¹

Most importantly, the *Criminal Law (Amendment) Act* of 2003 amended Section 124 of the *Evidence Act*, (Cap. 80) which required compulsory corroboration of the evidence of a child of 10 years or younger in sexual abuse cases.⁸² *The Sexual Offences Act* restates this principle and provides that a court shall treat the evidence of a child witness in criminal proceedings with caution and shall not call for corroboration of evidence solely on the account of the fact that the victim is a child.⁸³

Support Services for Children

The development of a national system of local service delivery and referral networks to protect children from abuse, neglect, sexual molestation and exploitation is a high priority. The Government runs a few protection institutions for children but relies heavily on NGOs and CBOs in this regard. Rehabilitation tailored to the needs of child victims of commercial sexual exploitation is virtually inexistent. The Committee on the Rights of the Child has pointed out that children in need of care are kept in the same institutions as children in conflict with the law, and that detention facilities are overcrowded. Free legal aid for children should be systematised and assistance for child victims enhanced.⁸⁴ Some NGOs have mentioned difficulties in reintegrating girls and boys who have been involved in commercial sexual exploitation, as very often they cannot return to their community due to stigmatisation. Research on effective ways to reintegrate sexually exploited children in the Kenyan context would be useful.

Despite a vacuum in support services for children, a few projects in this regard do exist. These include the Nairobi Child Protection Initiative, which created a system through which child victims or potential victims of abuse can get protection and assistance. It currently operates in Nairobi, and the services offered include legal representation, medical attention, temporary accommodation, prosecution of child abuse cases in court and counselling.⁸⁵

ANPPCAN supports vocational centres for children aged between 15 and 17 who have been involved in commercial sex and domestic work, to provide them with alternative livelihoods.⁸⁶ In addition, the local NGO SOLWODI offers psychosocial counselling, skills/vocational training, medical care or assistance to access such services, school retention support, and income-generating activities for family members.

The Government operates two children homes, both situated in Nairobi, one for children below seven years of age and the other for children above seven and below 18 years old. These are supposed to be transit

homes for further placement in NGO homes or reintegration into the community. There are also two governmental primary boarding schools for girls in need of counselling, who are supposed to be reintegrated into the community after spending a certain period at the schools.⁸⁷

A partnership between the Government and UNICEF is ongoing, with a view to creating drop-in centres offering basic services such as rehabilitation, medical, legal and referral mechanisms. Drop-in centres are currently being opened in Mombasa, Malindi and Garissa, under a pilot project funded for three years. It is expected that at the end of this term the Government will take over the project and proceed with the opening of centres nationwide.

Moreover, the Government has provided a modern call centre in Nairobi which will be managed by Childline Kenya and provide support with case work, home visits, court reports, and so on. It is also envisaged that the National Steering Committee to Combat Trafficking in Persons will open a rescue centre for trafficked and sexually abused children in Mombasa in 2008.

Training Law Enforcement Personnel

The Committee on the Rights of the Child recommends that the Kenyan Government provide systematic training of children's officers, volunteer children's officers and other law enforcement agencies such as the police, to investigate, review and respond to child rights complaints.⁸⁸

Training on law enforcement, including elements of CSEC, has taken place on several occasions under the Governance Justice Law and Order Support project, financed by a number of donors. In 2005, UNICEF carried out a two-day training focusing on CSEC. It targeted a wide range of stakeholders including law enforcement.

ANPPCAN's Head Office runs workshops on team building for government officers from the police, children's services, health and the Judiciary, in ten districts in the country. The workshops also train the officers on how to identify the needs of vulnerable children in their districts, besides informing them about child protection policy and legislative frameworks that exist in Kenya.⁸⁹



PRIORITY ACTIONS REQUIRED

- ✦ To seriously address the commercial sexual exploitation of children in Kenya, a national plan of action focused specifically on CSEC needs to be drafted upon consultation with all stakeholders concerned. Adequate financial and human resources must be allocated for its urgent implementation.
- ✦ National research should be undertaken to establish the extent and manifestations of commercial sexual exploitation of children in Kenya, thus providing a solid basis for the draft of a new NPA against CSEC.
- ✦ It is urgent that a national focal point on CSEC be put in place to coordinate nationwide activities to combat CSEC. The focal point could be based within existing government structures such as the NCCS.
- ✦ A national referral system as well as a database with information on cases of sexual exploitation of children must be developed - as well as a national identification and referral/rescue system for child victims of trafficking.
- ✦ The extent of boys' exploitation in commercial sex needs to be further explored to enable adequate protection and prevention mechanisms. Such research should also explore "attitudes towards the prostitution of boys" and suggest how to reduce stigmatisation and address the specific needs of the boy child in terms of prevention, support services, rehabilitation and reintegration into society.
- ✦ There are no government strategies or initiatives to tackle child pornography in Kenya: the Government and civil society therefore need to learn from other countries' experiences and include relevant provisions in a national plan of action against CSEC.
- ✦ Communities should be made aware of how to identify CSEC and child sex tourism in particular. Misperceptions that such criminal activities may contribute to the local economy and 'help' children and their families must be strongly addressed through sensitisation programmes targeting families, children, community leaders, schools, the tourism industry etc. and how to respond, attitude and behaviour change programmes should be advanced. Similarly, the demand aspect must be tackled through campaigns targeting tourists and those who facilitate child sex tourism (tour operators, taxi drivers etc.) and by training and equipping local law enforcers.
- ✦ Maximising coordination of staff training activities by the multiple European signatories of the *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*, who bring over so many tourists to Kenya, is extremely important to counteract the growing child sex tourism in the country.

- Preventative and law enforcement interventions are urgently required in areas where prostitution of children is notorious, such as the port area of Mombasa, Malindi, Lamu and the Majengo area of Nairobi. Interventions could include training and improving linkages between the tourist police, the police, the Judiciary and the children's officers from the Department of Children's Services. Support should also be provided to NGOs and CBOs offering services for children exploited in commercial sex in such areas, to improve service delivery, facilitate group discussions with such children and campaign on attitude and behaviour change.
- Law enforcers need further education on the *Children's Act and the Sexual Offences Act*, as an initial step to addressing their poor enforcement.
- Kenya must ratify the *Optional Protocol on the sale of children, child prostitution and child pornography*.
- While the *Sexual Offences Act* corrected some of the previous legal gaps, it is imperative that enough resources are devoted to its actual enforcement - particularly in relation to child trafficking offences. Further, the *Counter-Trafficking Bill* should be harmonised with the *Trafficking Protocol* standards.
- Legal provisions must be adopted to define and prohibit all acts related to child pornography, in accordance with the *Optional Protocol* standards.
- The establishment of child protection units at police stations, as well as child-friendly courts, must be expedited.
- The active involvement of educational authorities is required to combat the widespread sexual abuse of children in the school environment. Perpetrators, especially teachers, must be punished not only at administrative level but also legally. Procedures must be in place to facilitate and encourage reporting by abused children and anyone who is aware that the sexual abuse of a student has taken place, or that a student is being exploited in prostitution. Students should be taught about their rights and what to do if a teacher or other students attempt to abuse them. The Ministry of Education should also include sex education in the curriculum.
- Interventions targeting the demand aspect of commercial sexual exploitation of children, the perpetrators in particular, must specify the interface between HIV/AIDS and commercial sexual exploitation of children: they should aim to dispel the various myths, attitudes and social perceptions that motivate exploiters to seek children for sex, thus increasing their vulnerability to both CSEC and HIV/AIDS.
- Appropriate livelihood options and vocational centres must be made more widely available in rural and urban areas, for both in-school and out-of-school children, and particularly for those at higher risk of sexual abuse and exploitation and HIV/AIDS. This could involve training in the agricultural business with a focus on horticulture development, poultry, dairy farming, sewing and knitting, which would greatly enhance poor girls' ability to develop and manage their business, produce marketable goods, secure income and/or leave exploitative situations.
- Ethnic communities where child marriages take place need to be further sensitised on its negative consequences. A sensitisation campaign should involve village chiefs, parents, teachers associations, community and faith-based organisations as well as the private sector, under the Government's support and coordination.

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