

**REPUBLIC OF KENYA**

**COUNTRY POSITION PAPER ON THE SALE AND SEXUAL EXPLOITATION OF CHILDREN; INCLUDING CHILD PROSTITUTION, CHILD PORNOGRAPHY AND OTHER SEXUAL ABUSE MATERIALS IN KENYA.**

**April 2021**

**1.0 INTRODUCTION**

Kenya has a population of about 48 million people as in the 2019 National Housing and Population Census Report. Children constitute 48% of this population with 11,060,063 boys, 10,862,532 girls and 592 inter sex.

Kenya has been consistent in its efforts to promote human rights. It has ratified international and regional legal instruments whose provisions come into effect on the strength of her Constitution which states that any treaty or convention she has ratified, becomes a direct and automatic source of law unlike before when treaties came into force after domestication.

Kenya ratified the United Nations Charter on the Rights of the Child (UNCRC) in 1990, the African Charter on the Rights and Welfare of the Child (ACRWC) in 2000 and domesticated both by enacting the Children Act in 2001. To address the inconsistencies between the Children Act and the Constitution and, emerging issues brought about by technological, socio-cultural, economic, and political changes and advancements to the children’s environment, Kenya is in the final stages of developing a new statute for children.

The country has also put in place many other laws and policies to further safeguard the rights and welfare of children. Additionally, it has established institutions and created structures to implement these laws and policies. With all these efforts in place however, violence against children still remains a persistent vice. During this period of Covid-19, increased cases of child rights violations continue to be reported. Such cases include child trafficking, child marriage, female genital mutilation, defilement, online abuse, child prostitution and child pregnancy, among others.

Violence Against Children Survey Report 2019[[1]](#footnote-1) in Kenya reveals that both boys and girls experience high rates of sexual, physical and emotional violence. The report further notes that perpetrators of sexual violence are close family members and people known to children such as intimate partners, peers and caregivers. Studies have shown that these violations adversely affect the health, growth and development of children. It has also been established that children who have been exposed to violence including sale and sexual exploitation, face an increased risk of normalizing and accepting violence and consequently becoming perpetrators or victims of violence themselves. Violence also has financial implications to individual children, their families and society, including the burden on health and other systems such as social services, justice and loss of productivity.

Some of the factors contributing to sale and child sexual exploitation in Kenya include: Weak implementation of laws and policies, economic challenges and loss of livelihoods, harmful cultural practices such as Female Genital Mutilation (FGM) and child marriage, weakening of the social fabric and erosion of family values, increased use of online platforms, peer pressure, disasters and emergencies like the Covid-19 pandemic and their resultant effects among others.

To ensure that children are protected from any form of abuse, the Government of Kenya continues in its commitment to address child protection concerns in collaboration with its international, regional and local partners. Specifically, the Government has continued to establish and strengthen institutions and structures to combat the sale and sexual exploitation of children. It has also enhanced child participation at all levels of Government and scale up awareness creation efforts.

**2.0 FORMS OF MANIFESTATION ON SALE AND SEXUAL EXPLOITATION OF CHILDREN**

In Kenya the Sale and Sexual Exploitation of Children is manifested in various forms such as:-

* **Child trafficking** –This is the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of sexual exploitation, labor, organ harvesting or any other form of exploitation that violates children rights.
* **Child sexual exploitation** is a form of child sexual abuse in which a person(s), of any age take(s) advantage over power imbalance to force or entice a child into engaging in sexual activity in return for something received by the child and/or of those perpetrating or facilitating the abuse. It is manifested through child pregnancy, child marriage, child prostitution, sodomy, production and promotion of pornographic materials, transactional sex and death.
* **Maltreatment** involves physical, sexual and psychological/emotional violence, cruelty, violent punishment and neglect of children by parents, caregivers and other authority figures, most often at home but also in settings such as schools and other institutions of care.
* **Intimate partner violence** amongst children involves physical, sexual and emotional violence that mostly occurs in romantic relationships and child marriages. Although boys are victims, intimate partner violence disproportionately affects girls.
* **Sexual violence** involves non-consensual completed or attempted sexual contact and acts of a sexual nature not involving contact (such as voyeurism or sexual harassment); acts of sexual trafficking committed against someone who is unable to consent or refuse; and online exploitation.
* **Online sexual exploitation** commonly manifests through grooming, live streaming, consuming child sexual abuse material, sexting and sextortion. As technology advances, new forms of this crime are emerging. Like other forms of sexual abuse, online abuse can scar victims emotionally and physically for a lifetime. But unlike other forms of abuse, the child can potentially be re-victimized severally – every time an image is watched, sent or received.

**3.0 ROOT CAUSES OF SALE AND SEXUAL EXPLOITATION OF CHILDREN**

The root causes of Sale and Sexual Exploitation of children in Kenya include: Orphan-hood; abandonment; poverty; dysfunctional families and poor parenting; imprisonment of a parent; child abuse including child labor; truancy; gender based violence; drug and substance abuse; retrogressive and harmful cultural practices; sexual risk-taking behaviors; information communication and technology influence as well as negative peer pressure.

Other contributing factors to Sale and Child Sexual Exploitation are; weak enforcement of legal and policy framework, natural and man-made disasters that cause displacements, emergency migrations, economic vulnerabilities, external cultural aspects and rapid social change in the society.

The following graphs show the prevalence of various forms of abuse based on data from the Child Protection Information Management System (CPIMS) from March 2020 to February 2021.

***Graph 1: Forms of Sale and Sexual Exploitation of Children***

From graph 1, Defilement (53%), child pregnancy (19%) and Child Marriage (12%) were the most prevalent forms of sale and child sexual exploitation. This is a clear indication that children in Kenya experienced sexual exploitation more than other forms of violence.

***Graph 2: Gender Disaggregated Data on Sale and Sexual Exploitation of Children***

Graph 2 shows that girls suffer more abuse than boys in cases of defilement (88%), child pregnancy (97%) and child marriage (92%). Boys are highly affected in cases of sodomy (92%).

The high prevalence of child sexual exploitation during this period is attributed to children being idle since they were away from school and confined with perpetrators and could not access the necessary support systems; had easy access to phones and internet and lacked adequate parental supervision.

**4.0 THE NATIONAL LEGAL AND POLICY FRAMEWORK FOR COMBATING THE SALE AND SEXUAL EXPLOITATION OF CHILDREN**

**4.1 International and Regional Instruments on Child Protection**

Kenya is a signatory to international and regional legal instruments including: the UNCRC[[2]](#footnote-2); the ACRWC[[3]](#footnote-3); the International Labor Organization Convention 182 on the Worst Forms of Child Labor; the Palermo Protocol and the East Africa Community Child Policy 2016.

**4.2 National Laws and Policies[[4]](#footnote-4)**

The Government has enacted several laws on child protection aimed at combating sale and sexual exploitation of children. These include:

* The Constitution of Kenya which enshrines child rights in the Bill of Rights. More specifically, Section 53 of the Constitution protects children from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment and hazardous or exploitative labor. It also, in Section 45(2), prohibits forced marriages and marriages for those below 18 years. The Constitution further upholds the paramountcy of child’s best interests’ principle in every matter concerning the child.
* Children Act, 2001 – it defines a child as any person below 18 years and is the main law that safeguards the rights and welfare of children in Kenya. It is currently under review to align it with the Constitution and to address emerging child protection issues.
* Sexual Offenses Act, 2006 – which elaborately protects children against sexual offences. It is currently under review to address the gender dimensions.
* Counter Trafficking in Person Act, 2010 – it protects persons including children from being trafficked for whatever reason and prescribes appropriate penalties for such offences.
* Prohibition Against Female Genital Mutilation Act, 2011 – it protects children from FGM. For most communities in Kenya that practice FGM, translates into marriage since it is a mark of maturity and signifies adulthood and readiness for marriage.
* The Protection Against Domestic Violence Act, 2015 – it seeks to protect victims of domestic violence including children. It defines violence to include, child marriage, FGM, defilement, incest, and virginity testing.
* Basic Education Act, 2013 – this law regulates and promotes free and compulsory basic education. Its enforcement has seen an increase in enrollment and retention of children in school greatly reducing the incidences of sale and sexual exploitation of children.
* Computer Misuse and Cyber Crimes Act, 2018 – Protects children from online abuse.
* Film and Stage Plays Act, 2012 – Protects of children from exposure to films and stage plays with age-inappropriate content.
* National Gender and Equality Commission Act (NGEC), 2011 – it was enacted to establish NGEC which seeks to address issues of gender inequalities/inequities among special interest groups.
* Victim Protection Act, 2014 – protects victims of crime and abuse of power by providing them with necessary information and support services.
* Marriage Act, 2014 – it sets the age of marriage at 18 years to explicitly protect children from child marriage.
* Employment Act, 2007 – this out-laws forced, hazardous or exploitative child labour.

The country has developed a number of policies and guidelines that support the implementation of the provisions in these Acts. These include: National Plan of Action for Children in Kenya 2015-2022; the National Policy on Human Rights: National Plan of Action Against Sexual Exploitation of Children in Kenya 2018-2022; National School Health Policy (2009) and the Safety Standards Manual for Schools in Kenya (2008); National Guidelines on the Management of Sexual Violence in Kenya, 2005; National Standard Operating Procedures for the Management of Sexual Violence Against Children (2018); County Government Policy on Sexual and Gender Based Violence 2017; National Plan of Action on Combating Online Child Sexual Exploitation and Abuse; National Family Promotion and Protection Policy; National Social Protection Policy; The Framework for Child Protection Systems in Kenya; Kenya Vision 2030; National Policy on Elimination of Child Labor; Child Participation Guidelines; The National Policy for Prevention and Response to Gender Based Violence; The National Policy for the Eradication of Female Genital Mutilation and; The National ICT Policy 2018; The Adolescent Sexual and Reproductive Health Policy.

**4.3 Institutional Framework**

Kenya has an elaborate institutional framework for child protection. These include: National Council for Children’s Services; Directorate of Children Services; Directorate of Social Development; Directorate of Social Assistance; National Social Protection Secretariat; Street Families Rehabilitation Trust Fund; National Council for Administration of Justice (special taskforce on children matters); Charitable Children Institutions; National Council of Non-Government Organizations; Office of the Director of Public Prosecutions; National Council for Persons with Disability; National Gender and Equality Commission; Kenya National Human Rights Commission; Probation and Aftercare Services; Ministry of Education; Ministry of Interior and Co-ordination of National Government; Ministry of Health (Department of Adolescents and Reproductive health); Directorate of Criminal Investigation-Anti Human Trafficking and Child Protection Unit; Child Protection Units and Center’s; Anti Female Genital Mutilation Board; National Adoption Committees; Hotlines such as Child Help Line 116, 1195 for Gender Based Violence, 999 for emergencies, *Fichua* Hotline by Directorate of Criminal Investigations; Community Policing (*Nyumba Kumi* Initiative); Refugee Affairs Secretariat; Council of Elders; Inter Faith Council; Gender Violence Recovery Centers; Counter Trafficking in Person Advisory Committee; Communication Authority of Kenya; National Covid-19 Response Team.

**5.0 OTHER MEASURES TAKEN TO ADDRESS SALE AND SEXUAL EXPLOITATION OF CHILDREN IN KENYA**

* These include;
* Membership to We PROTECT Global Alliance to End Sexual Exploitation of Children. Kenya has also signed to be a member of the Global Partnership to End Violence Against Children and is soon to be a Pathfinder Country.
* Establishment of the Counter Trafficking in Persons National Assistance Fund for victims of trafficking.
* Recognition of intersex persons including children in the National Population Census and in the Children Bill 2020.
* Issuance of periodic advisories by the government to state and non-state actors on issues of child protection.
* Establishment of Victim Protection Trust Fund to provide necessary support for the victims of sale and sexual exploitation as well as other abuses to facilitate recovery.
* Provision of Social Protection schemes such as *Inua Jamii*, Hunger Safety Net Programme and school bursaries that cushion children from various forms of vulnerabilities.
* Capacity building and awareness creation to the duty bearers to help them promptly identify and intervene on cases of child protection concerns.
* Establishment of the Children’s Assembly which provides a platform for child participation.
* Mandatory clearance of groups of children travelling out of the country by the Directorate of Children Services and parental consent for any child leaving the country to combat sale and trafficking of children.
* Screening and documentation of children and their families during emergencies as well as repatriation and systematic reintegration of children has reduced cases of sale and trafficking of children.
* Recognition of formal Mother Offer system for mothers who are not willing to keep their babies. This has reduced instances where children are abandoned become victims of sale and child trafficking.
* Establishment of an operational Child Protection Information Management System (CPIMS). This has provided reliable data which enables policy makers to come up with timely and comprehensive child protection interventions.

**5.1 Response to Child Protection in the context of Covid-19**

When the first case of COVID-19 was reported in Kenya on 13 March 2020, the government took immediate action to contain the spread of the disease with travel restrictions, a ban on gatherings, closure of schools, and a dusk to dawn curfew. Although these measures were aimed at curbing the spread of the virus, they may have impacted negatively on the welfare of children. Media reports around this period revealed an increased risk of violence, abuse and neglect particularly affecting women and children as a result of the COVID-19 containment measures. In April 2020, the National Council on Administration of Justice (NCAJ) confirmed ***“a significant spike in sexual offences,”*** most often perpetrated by people living in the same home as the victims.

To address these concerns, the Government instituted several measures including: -

* The constitution of a national multi-sectoral emergency response team to co-ordinate and advise the government on response to child protection matters during covid-19 pandemic.
* The establishment of a relief fund for vulnerable families and tax relief for employees and businesses as well as the National Hygiene Program popularly known as *kazi mtaani* initiative which provided cash relief for the youth.
* The President directed the National Crime Research Centre to conduct a research to inform the individual, family and institutional response to the escalating number of GBV cases. He emphasized on the need for a nation-wide, comprehensive and multi-agency coordinated research whose findings and recommendations have since informed some of the good practices and interventions against child rights violations.
* Issuance of a directive for closure and release of children in learning and residential care back to their families in compliance with the GOK containment measures.
* The development and dissemination of child friendly protection Covid-19 related key messages to parents/ caregivers, children in families as well as those in institutions. This was done in collaboration with non-state actors in the children’s sector.
* Categorization of Child Protection Services as essential Services and therefore not bound by containment measures such as restriction of movements and curfews.
* Online/Virtual court proceedings to expedite children matters pending before court.
* Unpacking of the United Nations Global Technical Guidance Note on prevention and protection of children during the Covid-19 pandemic. This was also done in collaboration with non-state actors.

**6.0 COMMITMENTS TOWARDS THE FIGHT AGAINST SALE AND CHILD SEXUAL EXPLOITATION**

To address the gaps identified in the fight against the Sale and Sexual Exploitation of children including child prostitution, child pornography and other child abuse materials, the Government of Kenya shall: -

* Fast-track the enactment of the Children Bill 2020.
* Fast- track the ratification of the optional protocol on the Sale of Children, Child Prostitution and Child Pornography and the optional protocol on a Communication Procedure.
* Establish a National Integrated Children Database to inform policy and child protection interventions.
* Fast-track the determination of children matters in the justice system through enhanced legal representation of children.
* Improve mechanisms for capacity building and sensitization of stakeholders for effective prevention and protection of children from child rights violations.
* Mobilize and disburse resources for effective implementation of child welfare programs and services.
* Work with Internet Service providers to block, take down and report child sexual abuse materials.
* Popularize the hotline portal for reporting of child sexual abuse material and empower the public to identify and report child sexual exploitative tendencies in the community.
* Operationalize the victim protection fund to support survivors of sale and sexual exploitation of children.
* Accelerate implementation of the National Prevention and Response Plan on violence against children.
* Enhance the co-ordination, implementation, monitoring and evaluation of child welfare programs and services.
1. <https://www.unicef.org/kenya/reports/The-2019-Violence-Against-Children-Survey> [↑](#footnote-ref-1)
2. United Nations Charter on the Rights of the Child [↑](#footnote-ref-2)
3. The African Charter on the Rights and Welfare of the Child [↑](#footnote-ref-3)
4. <http://kenyalaw.org/kl/index.php?id=398> and <http://www.childrenscouncil.go.ke/> [↑](#footnote-ref-4)