

Protection Against Child Sexual Exploitation & Abuse in the Commonwealth



IT'S A PENALTY

**EXTRATERRITORIAL LEGISLATION
AGAINST CSEA AMONGST
COMMONWEALTH MEMBER STATES:**

EXECUTIVE SUMMARY

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EXTRATERRITORIAL LEGISLATION AGAINST CHILD SEXUAL EXPLOITATION AND ABUSE IN THE COMMONWEALTH: EXECUTIVE SUMMARY

This research and the production of this report has been undertaken by It's a Penalty, with considerable support and assistance provided by the Commonwealth Secretariat. The questionnaire, upon which a significant amount of this report is based, received a 53% completion rate.¹ In addition to the research facilitated by the content of completed questionnaires, comprehensive review of secondary data was undertaken in order to expand upon information provided by representatives of the Commonwealth Member States and explore the status of States which had not completed the questionnaire.

The scope of this report is limited to all 53 Commonwealth Member States. This focus of the report was chosen because of the significantly varied nature of the Commonwealth - in that its members often vary in culture, legal systems and economic development – which would lead to a highly interesting report. Additionally, it was identified in an initial research report produced by It's a Penalty in 2015, that extraterritorial legislation against CSEA was severely lacking in the Commonwealth, especially in comparison with other associations of states, such as the European Union or ASEAN. Furthermore, It's a Penalty had established a good working relationship with the Commonwealth Games Federation and the Commonwealth Secretariat, which facilitated the successful operation of the first stage of the research informing this report.

It's a Penalty

It's a Penalty is a charitable Non-Governmental Organisation working to end abuse, exploitation and trafficking globally. Campaigns run by It's a Penalty around major sporting events harness the power of sport to protect children and vulnerable people from these crimes worldwide, positioning these events as platforms for positive change. It's a Penalty works in accordance with the United Nations Convention on the Rights of the Child, advocating that 'protection from any exploitation, abuse and violence is the right of every child'. It's a Penalty brings together sport's biggest names, governing sporting bodies, international airlines, hotels, governments, law enforcement agencies, major corporations, International NGOs and the general public. For their 2018 Campaign, It's a Penalty have been shortlisted by Beyond Sport for the Global Impact of the Year Award. Alongside their Campaign work, It's a Penalty's Research and Advocacy work seeks to impact long-term change for children worldwide by improving child protection legislation and reporting mechanisms on a global scale. For more information on It's a Penalty, please visit www.itsapenalty.org.

The Commonwealth Secretariat

The Commonwealth is a voluntary association of 53 independent and equal sovereign states and home to 2.4 billion people. The Commonwealth Secretariat, supports member countries advance their shared goals of inclusive development, democracy and peace. The organisation helps countries to strengthen governance, build inclusive institutions and promote rule of law, access to justice and human rights in order to grow economies and boost trade, empower young people, and address threats such as climate change, debt and inequality. It does this through providing training and technical assistance, supporting decision-makers to draw up legislation and deliver policies and by deploying experts and observers who offer impartial advice and solutions to national problems while also providing systems, software and research for managing resources. At Commonwealth summits, government leaders come together to amplify their voices and achieve collective action on global challenges.

Disclaimer

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References

Australia, The Bahamas, Belize, Botswana, Brunei Darussalam, Cameroon, Canada, Cyprus, Gambia, Guyana, Kenya, Kiribati, Lesotho, Mauritius, Mozambique, Nauru, Rwanda, Saint Christopher and Nevis (Saint Kitts and Nevis), Seychelles, South Africa, Sri Lanka, Swaziland, Tonga, Tuvalu, Uganda, United Kingdom (UK), and Zambia. Within the full Research Mapping Report, Commonwealth Member States which completed the questionnaire will be marked by an asterisk (*).

This report is not exhaustive in its findings, as a lot of information relating to criminalisation of CSEA and prosecutions is only known by governments of States themselves. Whilst great effort has been undertaken to ensure the information in this report is as accurate as possible, it may not always be exact and It's a Penalty makes no assurances that the content of this report is free from error. The author of this report welcomes Commonwealth Member States who have not completed the questionnaire to do so, to add to the information contained within this report, and to correct if needed.

Child Sexual Exploitation and Abuse: A Global and Commonwealth-Wide Human Rights Issue

Child Sexual Exploitation and Abuse (CSEA) is an increasingly global human rights issue, described by some as a global humanitarian crisis.² It has been estimated that between 1.8-2 million children worldwide are being abused and exploited in the global sex trade.³ CSEA is defined as activity including the physical abuse of a child, such as rape; sexual assault or other physical contact of a sexual nature with a child; grooming a child as a precursor to sexual activity, whether online or offline; exploitative use of children in prostitution or other unlawful sexual exploitation; making, sharing or viewing of indecent images and videos of children (child sexual abuse materials).⁴

The activity of offenders committing crimes of CSEA extraterritoriality, or whilst travelling, is a common occurrence. Primarily, extraterritorial CSEA occurs in a commercial context, involving the exchange of goods or moneys for the sexual 'services' of a child, but many cases have been recorded without a commercial or transactional element.⁵

All children could potentially become victims of CSEA. The legacy of such exploitation and abuse is vast, and victims are often afflicted with severe physical, emotional and psychological damage for the rest of their lives, with relationships with others and themselves irrevocably changed forever.⁶ Predominantly, victims of CSEA are girls, although this differs depending on the country, and the majority are between 13 and 18 years of age, although the under-13 victim population is growing.⁷

Offenders of extraterritorial CSEA originate from countries all over the world, and many do not solely experience sexual attraction to children.⁸ No country is immune to CSEA and, as with most areas of the world, the Commonwealth is greatly afflicted.⁹ Particularly affected regions include the Pacific, Africa, the Caribbean, and South and South-East Asia.

Extraterritorial Legislation: A Proposed Solution

Extraterritorial legislation is one of the key tools in combating CSEA on a worldwide scale, as it allows legal authorities to hold citizens and residents accountable for crimes committed abroad and undertake prosecution in their country of origin.

² Fredette, K. (2009). 'International Legislative Efforts to Combat Child Sex Tourism: Evaluating the Council of Europe Convention on Commercial Child Sexual Exploitation', *Boston College International and Comparative Law Review* 32:1, pp. 1-43 (p. 1).

³ International Labour Organisation (ILO). 'Commercial Sexual Exploitation of Children and Adolescents: The ILO's Response', p. 2. Available at: https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-addis_ababa/documents/poster/wcms_237022.pdf (accessed 11 September 2018).

⁴ National Crime Agency (NCA) (2016). 'Annual Strategic Assessment: Child Sexual Exploitation and Abuse 2016', p. 8. Available at: <https://static.lgfl.net/LgflNet/downloads/online-safety/LGfL-OS-Research-Archive-2016-NCA-ASA-CSEA.pdf> (accessed 11 September 2018); United Nations (UN) (1989); 'Convention on the Rights of the Child', p. 10. Available at: https://downloads.unicef.org/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=2.169587110.687766330.1494248147-1760828396.1494248112 (accessed 7 June 2018).

⁵ ECPAT (2008). 'Combating Child Sex Tourism: Questions & Answers', p. 6. Available at: http://www.ecpat.org/wp-content/uploads/legacy/cst_faq_eng.pdf (accessed 20 August 2018).

⁶ Hawke, A. and Raphael, A. (2016). 'Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism', *ECPAT International*, p. 13. Available at: <http://cf.cdn.unwto.org/sites/all/files/docpdf/global-report-offenders-move-final.pdf> (accessed 20 August 2018).

⁷ Fredette, K. (2009). 'International Legislative Efforts to Combat Child Sex Tourism: Evaluating the Council of Europe Convention on Commercial Child Sexual Exploitation', *Boston College International and Comparative Law Review* 32:1, pp. 1-43 (p. 5); International Labour Organisation (ILO) (2005). 'A Global Alliance against Forced Labour'. Available at: <https://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-i-b.pdf> (accessed 11 September 2018).

⁸ Fredette, K. (2009). 'International Legislative Efforts to Combat Child Sex Tourism: Evaluating the Council of Europe Convention on Commercial Child Sexual Exploitation', *Boston College International and Comparative Law Review* 32:1, pp. 1-43 (p. 7).

⁹ ECPAT (2008). 'Combating Child Sex Tourism: Questions & Answers', p. 6. Available at: http://www.ecpat.org/wp-content/uploads/legacy/cst_faq_eng.pdf (accessed 20 August 2018).

Often, destination countries for CSEA are unable or even unwilling to prosecute offenders;¹⁰ extraterritorial legislation is a crucial way of protecting the children of these destination countries. The adoption of comprehensive extraterritorial legislation is strongly recommended by agencies concerned with child protection across the world.¹¹ However, such legislation has still not been enacted in the majority of countries globally. This lack of action is described as a 'major hurdle' in combatting the sexual exploitation and abuse of children around the world.¹²

Even when extraterritorial legislation has been introduced, most countries' rates of prosecution for overseas child sex crimes are relatively low.¹³ It has been suggested that this is due to the several gaps which can be identified within the existing extraterritorial legislation adopted by states.¹⁴ Further hindrances to prosecution rates also include a lack of resources to dedicate to investigative and prosecutorial proceedings, training of law enforcement and severe underreporting of CSEA offences.

The introduction of comprehensive extraterritorial legislation is clearly not enough on its own to improve prosecution rates of offenders, deter potential perpetrators and protect victims all over the world. Nevertheless, it is a starting point to reducing CSEA around the world, without which offenders will continue to act with impunity. The introduction of extraterritorial provisions into a country's law sends a clear message that such abhorrent behaviour will not be tolerated amongst citizens or residents.

It is both the responsibility of the individual state and the international community to protect vulnerable children around the world from exploitation and abuse. To do so, it is essential that we prevent these criminals from being able to escape punishment and ensure that anyone who commits a crime against children whilst abroad can be prosecuted both overseas and at home.

¹⁰ Beaulieu, C. (2008). 'Strengthening Laws addressing child sexual exploitation: A Practical Guide', *ECPAT International*, p. 105. Available at: http://www.ecpat.org/wp-content/uploads/legacy/Legal_Instrument_En_Final.pdf (accessed 21 August 2018).

¹¹ Fredette, K. (2009). 'International Legislative Efforts to Combat Child Sex Tourism: Evaluating the Council of Europe Convention on Commercial Child Sexual Exploitation', *Boston College International and Comparative Law Review* 32:1, pp. 1-43.

¹² Kosuri, M. (2014). 'Child Sex Tourism: A Violation of Children's Rights', p. 3. Available at: <https://www.apa.org/international/united-nations/un-matters/kosuri-sex-tourism.pdf> (accessed 5 June 2018).

¹³ Edelson, D. (2001). 'The Prosecution of Persons Who Sexually Exploit Children In Countries Other than Their Own: A Model For Amending Existing Legislation', *Fordham International Law Journal* 25:2, pp. 483-540 (p. 499).

¹⁴ Beaulieu, C. (2008). 'Strengthening Laws Addressing Child Sexual Exploitation: A Practical Guide', *ECPAT International*, p. 9. Available at: http://www.ecpat.org/wp-content/uploads/legacy/Legal_Instrument_En_Final.pdf (accessed 21 August 2018).

Existence & Enactment of Extraterritorial Legislation in the Commonwealth

Overall, it can be seen that a relatively low number of Commonwealth Member States have enacted extraterritorial legislation (or jurisdiction) to combat the sexual abuse and exploitation of children by their citizens when travelling abroad. Moreover, it is clear that many weaknesses can be found in the few extraterritorial laws against CSEA that do exist, and many difficulties have been encountered in the implementation of existing laws.¹⁵ While some states have introduced extraterritorial legislation that is fully comprehensive, evidently there is still much room for improvement across the Commonwealth.

Commonwealth Member States without extraterritorial legislation against CSEA

A significant number of Commonwealth Members States, equating to 47% of the Commonwealth, lack any form of extraterritorial legislation against CSEA, or, in other words, legislation which could be used to prosecute their citizens or residents for sexual abuse or exploitation of children whilst overseas. This means that a worrying number of children worldwide are unprotected from abuse at the hands of these countries' travelling offenders. Furthermore, many of these states' non-extraterritorial legislation against CSEA is insufficient, meaning that their own children are too legally unprotected from abuse and exploitation.

- | | |
|---|---------------------------|
| 1. Antigua and Barbuda | 16. Saint Vincent and the |
| 2. The Bahamas ¹⁶ | Grenadines ²⁵ |
| 3. Bangladesh ¹⁷ | 17. Samoa |
| 4. Barbados ¹⁸ | |
| 5. Botswana | |
| 6. Dominica | |
| 7. Ghana | |
| 8. Grenada ¹⁹ | |
| 9. Kiribati ²⁰ | |
| 10. Malawi ²¹ | |
| 11. Mauritius | |
| 12. Mozambique ²² | |
| 13. Namibia ²³ | |
| 14. Papua New Guinea | |
| 15. Saint Kitts and Nevis ²⁴ | |

¹⁵ Najat Maalla M'jid (UN Human Rights Council), 'Report of the Special Rapporteur on the sale of children, child prostitution and child pornography' (2012), p. 6.

¹⁶ The Bahamas' non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

¹⁷ Bangladesh's' non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

¹⁸ Barbados' non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

¹⁹ Grenada's non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

²⁰ Kiribati's non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

²¹ Malawi's non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

²² Mozambique's non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

²³ Namibia's non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

²⁴ In order to establish whether existing legislation has extraterritorial scope, online access is needed to legislation of Saint Kitts and Nevis.

²⁵ In order to establish whether existing legislation has extraterritorial scope, online access is needed to legislation of Saint Vincent and the Grenadines.

18. Seychelles²⁶
19. Sierra Leone
20. Solomon Islands

21. Swaziland²⁷
22. Tonga²⁸
23. Tuvalu²⁹

24. Uganda³⁰
25. United Republic of Tanzania

Commonwealth Member States with insufficient extraterritorial legislation against CSEA

Many Commonwealth Member States have extraterritorial legislation against CSEA in place, but such existing legislation needs improving or elements changed in order to be fully comprehensive. As found in this report, 34% of Commonwealth Member States fall into this category.

1. Belize³¹
2. Brunei³²
3. Cameroon³³
4. Cyprus³⁴
5. Fiji³⁵
6. Gambia³⁶

7. Guyana³⁷
8. India³⁸
9. Jamaica³⁹
10. Malaysia⁴⁰
11. Nigeria⁴¹
12. Pakistan⁴²

13. Rwanda⁴³
14. Saint Lucia⁴⁴
15. Sri Lanka⁴⁵
16. Trinidad and Tobago⁴⁶
17. Vanuatu⁴⁷
18. Zambia⁴⁸

²⁶ Seychelles' non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

²⁷ In order to establish whether existing legislation has extraterritorial scope, online access is needed to legislation of Swaziland. Swaziland's non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

²⁸ Tonga's non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

²⁹ Tuvalu's non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

³⁰ Uganda's non-extraterritorial legislation against CSEA is also insufficiently comprehensive and should be improved.

³¹ Existing extraterritorial legislation against CSEA under Belizean law does not comprehensively criminalise commercial or transactional CSEA.

³² Existing legislation does not offer full legal protection to male victims of CSEA. Extraterritorial legislation is limited under a condition of dual criminality.

³³ Presently, extraterritorial legislation under Cameroonian law is limited in its criminalisation of CSEA offences and needs to be expanded.

³⁴ It remains unclear whether Cyprus exercises extraterritorial jurisdiction over its legislation criminalising CSEA. In order to improve, this needs to be confirmed.

³⁵ At present, Fijian law applies extraterritorial jurisdiction solely over the offence of 'sexual servitude', which, whilst could be applied to prosecute some cases of CSEA overseas by Fijian citizens or residents, does not cover all CSEA offences.

³⁶ Existing legislation in the Gambia criminalises 'foreign travel which promotes child prostitution' and 'child sex tourism' within the Gambia, but not specifically the crime of exploiting or abusing a child abroad.

³⁷ In order to be more comprehensive, Guyana should remove their condition of dual criminality applied to their extraterritorial legislation against CSEA.

³⁸ Indian law currently only exercises extraterritorial jurisdiction over offences within its Penal Code. However, in order to comprehensively criminalise CSEA overseas, extraterritorial jurisdiction should be extended to include the Sexual Offences Act (2012) of India. Furthermore, presently, Indian extraterritorial jurisdiction applies only to Indian citizens. In order to be more comprehensive, this jurisdiction should be extended to include residents of India.

³⁹ At present, only some offences under the Sexual Offences Act (2011) of Jamaica have extraterritorial jurisdiction applied to them. In order to comprehensively criminalise CSEA overseas, extraterritorial jurisdiction should be extended to all offences within the Act.

⁴⁰ Malaysian extraterritorial jurisdiction currently is only applicable to citizens and should be extended to be applicable to residents of Malaysia as well, in order to be more comprehensive.

⁴¹ It is currently unknown whether the Sexual Offences Against Children Bill (2017) of Nigeria has been enacted into law, this needs confirmation.

⁴² Pakistani extraterritorial jurisdiction currently is only applicable to citizens and should be extended to be applicable to residents of Pakistan as well, in order to be more comprehensive.

⁴³ Rwandan extraterritorial jurisdiction currently is only applicable to citizens and should be extended to be applicable to residents of Rwanda as well, in order to be more comprehensive.

⁴⁴ Presently, Saint Lucia law against CSEA does have extraterritorial jurisdiction, but it does not expressly protect under 12's from exploitation and abuse.

⁴⁵ Sri Lankan extraterritorial jurisdiction currently is only applicable to citizens and should be extended to be applicable to residents of Sri Lanka as well, in order to be more comprehensive. Furthermore, there is presently a statute of limitations of 20 years attached to criminal proceedings under Sri Lankan law, which could be removed.

⁴⁶ Presently, extraterritorial legislation against CSEA in Trinidad and Tobago only criminalises commercial or transactional offences under the Children Act (2012). In order to be more comprehensive, this Act should be amended to apply extraterritorial jurisdiction to all forms of CSEA criminalised within.

⁴⁷ In order to be more comprehensive, Vanuatu should remove their condition of dual criminality applied to their extraterritorial legislation against CSEA.

⁴⁸ Zambian extraterritorial jurisdiction currently is only applicable to citizens and

should be extended to be applicable to residents of Zambia as well, in order to be more comprehensive.

The changes needed to existing extraterritorial legislation in the Commonwealth in order to improve child protection from sexual exploitation and abuse include:

- the removal of limiting conditions such as dual criminality or statutes of limitations;
- the extension of criminalisation to include all forms of CSEA;
- the extension of extraterritorial jurisdiction over anti-CSEA laws.

Commonwealth Member States with satisfactory extraterritorial legislation against CSEA

Some Commonwealth Member States have sufficiently comprehensive extraterritorial legislation against CSEA in place, but only 19%. Even when such legislation has been introduced by states, reported prosecutions rates are low and information available to the public is limited, meaning that improvements could still be made in order to protect children from abuse at the hands of these countries' offenders.

- | | | |
|--------------|----------------|-----------------|
| 1. Australia | 5. Malta | 9. South Africa |
| 2. Canada | 6. Nauru | 10. UK |
| 3. Kenya | 7. New Zealand | |
| 4. Lesotho | 8. Singapore | |

Summary of Questionnaire Responses from Governments

In their questionnaire responses, the Governments of Commonwealth Member States offered a multitude of reasons as to why extraterritorial legislation has not yet been enacted in their states. Predominantly cited as reasons were:

- insufficient awareness and education amongst law enforcement and government of CSEA as an issue and the existence of such legislation;
- societal stigma of the offences and victims, inhibiting the introduction of such legislation;
- inadequate resources available to dedicate to enactment and implementation.

The Governments of Commonwealth Member States where sufficient extraterritorial legislation against CSEA exists cited diverse reasons to explain why their rates of prosecution are seemingly meagre. Most commonly highlighted by government representatives in their questionnaire responses were:

- scarce resources, both human and financial, to specifically assign to investigative and prosecutorial proceedings for CSEA offences;
- low political will or pressure to prioritise prosecution of offenders and protection of victims;
- underreporting of CSEA cases and disinclination of victims to come forward or associate with police force.

Several valuable suggestions were made by the Governments of Commonwealth Member States of actions they believe should be undertaken in order to encourage the enactment of this extraterritorial legislation against CSEA and/or to improve the rates of prosecutions which take place under it where it presently exists. Key measures include:

- improved awareness amongst victims and the public of CSEA and how to report offences through government-implemented educational campaigns;
- training of law enforcement and other personnel on how to identify offences and approach victims;
- programmes specifically targeting stigma surrounding and tolerance of CSEA to help protect victims.

Concluding Observations and Recommendations

Many significant efforts have evidently been undertaken by the Governments of Commonwealth Member States to protect children from sexual exploitation and abuse, both within their own country and overseas. However, it has been found that most states lack provisions in law which allow them to prosecute their citizens or residents for the abuse of children whilst abroad. In total, only 10, or 19% of, Commonwealth Member States have satisfactory extraterritorial legislation against CSEA. Even in the states where such legislation has been enacted, its use to prosecute offenders has been insubstantial, and child protection is further limited by conditions such as dual criminality, or insufficient criminalisation of CSEA offences. In conclusion, the extent of child sexual exploitation and abuse, within the Commonwealth and beyond, warrants more action and effort than are presently being exerted on the part of governments to combat this global scourge.

In order to improve child protection both within their countries and on a worldwide scale, Commonwealth Member States should prioritise the following measures:

- Enact comprehensive legislation against CSEA with extraterritorial jurisdiction over both citizens and residents, which is not subject to a statute of limitations;
- Harmonise ages of consent and majority in line with international recommendations;
- Increase political will to pursue prosecutions of CSEA offenders, both who have offended overseas and domestically;
- Ensure adequate human, financial and technical resources for investigative and prosecutorial proceedings with regards to cases of CSEA;
- Conduct awareness-raising activities and campaigns to combat the stigmatisation of victims of CSEA in society and communities;
- Establish, publicise and maintain a national three-digit 24/7 helpline for child victims and concerned members of the public which is free to use and staffed by trained counsellors;
- Develop child-friendly justice systems and services;
- Dedicate improved amounts of resources for the training of relevant personnel dealing with victims of CSEA;
- Ensure the development of programmes and policies which target the prevention of CSEA, and recovery and social reintegration for victims;
- Establish mechanisms, procedures and guidelines to ensure proper handling and mandatory reporting of cases of CSEA;
- Strengthen regional and international cooperation in investigations and arrests, information- and expertise-sharing on convicted travellers, and mutual legal assistance.